



**Colorado
Legislative
Council
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HB17-1177

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0711 **Date:** February 13, 2017
Prime Sponsor(s): Rep. Wist; Garnett **Bill Status:** House SVMA
 Sen. Cooke **Fiscal Analyst:** Amanda Hayden (303-866-4918)

BILL TOPIC: MEDIATION FOR DISPUTES ARISING UNDER CORA

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
State Expenditures	See State Expenditures section.	
Appropriation Required: None.		
Future Year Impacts: Ongoing potential change in state expenditures.		

Summary of Legislation

This bill makes changes to the Colorado Open Records Act (CORA). It specifies that any person denied the right to inspect a record or who alleges a violation of the fee provisions of CORA may seek to resolve the dispute through mediation, where both parties evenly split the costs of the mediation process. If the person chooses not to participate in mediation, he or she must give written notice of intent to sue to the custodian of the record no less than three business days before filing a complaint in district court. If the person and the custodian agree to mediation, either party may seek a court order to enforce a written mediation agreement executed by both parties.

Disputes settled in court after mediation. If the mediator determines there is a legal question of whether disclosure of the record is prohibited, the mediator may order that the custodian apply to the court to have the dispute settled. If the parties participate in mediation but cannot resolve their dispute without a court action, and the court determines that denial of the CORA request was proper, the court may award court costs and reasonable attorneys fees to the custodian. If the court determines the denial was not proper, the court must award the mediation costs, court costs, and reasonable attorneys fees to the applicant. The provisions of the bill regarding attorneys fees do not apply to any court action initiated by the mediator.

Disputes settled in court without mediation. In any action where the parties did not participate in mediation:

- if the court finds the denial was proper and that the applicant's action was frivolous, vexatious, or groundless, the court must award court costs and reasonable attorneys fees to the custodian;

- if the court finds the denial was not proper and the applicant did not request mediation or refused to consent to mediation when requested by the custodian, the court must award court costs and reasonable attorneys fees to the applicant in an amount to be determined by the court but not to exceed \$10,000; or
- if the court finds the denial was not proper and the applicant requested mediation but the custodian refused, the court must award a penalty to the applicant not to exceed \$100,000, in addition to court costs and reasonable attorneys fees.

In cases when a custodian believes that disclosing a record would do substantial injury to the public interest or when the custodian is unable to determine, after reasonable inquiry, if a record is subject to disclosure, and he or she applies to the court to make a determination, the bill specifies that no court costs or attorneys fees may be awarded against the custodian.

Background

The Colorado Dispute Resolution Act allows any party involved in a dispute to enlist a mediator of their choice to help resolve the dispute, before or after filing a civil action. The Office of Dispute Resolution within the Judicial Department provides services for cases where the court orders mediation but the parties involved either have not chosen a mediator or cannot afford one. The Supreme Court has set mediator rates for civil proceedings in district court at \$75 per hour per party.

State Expenditures

Beginning in FY 2017-18, this bill may affect state expenditures for all state agencies subject to CORA. To the extent that the bill results in more CORA disputes settled through mediation rather than in court, it may decrease expenditures for agencies incurring fewer legal costs. Contrarily, in cases where the court rules against the state and where the custodian refused to attempt mediation, an agency may face a penalty of up to \$100,000, plus court costs and attorneys fees.

The bill may also affect the workload of the Department of Law, which provides legal counsel and representation for state agencies involved in CORA disputes. The impact to state expenditures depends on how many disputes arise under CORA; whether or not the parties agree to mediation; the fees, costs, and time associated with mediation; whether or not the dispute is settled in mediation or in court; and the outcome of any court ruling. Given the many variables associated with the bill, the precise impact to state expenditures cannot be determined. Any change in expenditures requiring a change in appropriations will be addressed through the annual budget process.

Local Government, School District, and Statutory Public Entity Impact

Similar to the state, the bill may affect the expenditures of local governments, school districts, and statutory public entities. For the same reasons outlined in the State Expenditures section, the precise impact cannot be determined.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

All state agencies
Legislative Council Staff
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School Districts

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