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Fiscal Note

Drafting Number:	LLS 23-0416	Date:	April 19, 2023
Prime Sponsors:	Sen. Hansen Rep. Snyder; Soper	Bill Status:	Senate State Affairs
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Bill Topic: **ACCESS TO GOVERNMENT RECORDS**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill updates various provisions of the Colorado Open Records Act (CORA). The bill will increase state expenditures to multiple agencies on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of at least \$1.8 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated to reflect additional information and further review.

Table 1
State Fiscal Impacts Under SB 23-286

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	at least \$1,731,696	at least \$1,853,682
	Cash Funds	\$125,716	\$32,336
	Centrally Appropriated	\$174,381	\$232,140
	Total Expenditures	at least \$2,031,793	at least \$2,118,158
	Total FTE	10.8 FTE	14.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$259,754	\$278,052

Summary of Legislation

The bill makes several changes to the Colorado Open Records Act (CORA).

Definitions and procedures. The bill replaces the term “electronic mail” with the term “electronic communication”, and expands the definition of public records to include records maintained by any office of the state. It requires state agencies to provide digital records of electronic communication when requested, and prohibits a record custodian from converting searchable or sortable digital records into non-searchable or non-sortable formats before transmitting to a requester.

Exempt records. Current law allows an agency to deny a record request if that disclosure is contrary to the public interest. The bill expands the authority to deny requests if the record includes telephone numbers or home addresses of elected officials and if the record contains information about an individual who has accused an elected official of sexual harassment.

Fee restrictions. The bill prevents agencies from charging a per-page fee for providing digital records to requesters. Agencies must allow the requester of the public record to pay permissible fees via credit card or an electronic payment, if the agency allows members of the public to pay for any other service or product by electronic payment.

Retention requirements. The bill requires electronic communications to be retained for the length of any applicable investigation, hearing, or other process for obtaining information for a state agency. Proceedings by the General Assembly and courts are exempt from this requirement. In addition, the bill specifies that records that may be responsive to a request must be retained until any appeals related to the request are resolved.

State Revenue

The bill impacts state cash fund revenue from fees by an indeterminate amount. To the extent additional or more voluminous records requests are received, revenue will increase to state agencies from fees charges for staff time and providing copies. Fee revenue may decrease from prohibiting per-page fees for documents provided electronically. The overall impact cannot be estimated. Records fees, in most cases, are subject to TABOR.

State Expenditures

The bill increases state expenditures across state agencies by at least \$2.1 million in FY 2023-24 and \$2.1 million in FY 2024-25, paid primarily from the General Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under SB 23-186**

	FY 2023-24	FY 2024-25
All State Agencies		
Personal Services	\$650,642	\$867,523
Operating Expenses	\$15,390	\$18,495
Capital Outlay Costs	\$93,380	-
OIT Enterprise Solution (OIT)	at least \$1,000,000	at least \$1,000,000
Payment Processing (DOS)	\$98,000	-
Centrally Appropriated Costs ¹	\$174,381	\$232,140
Total Cost	at least \$2,031,793	at least \$2,118,158
Total FTE	10.8 FTE	14.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

All state agencies. Workload and costs will increase across all state agencies related to responding to records requests and maintaining records. These costs will vary based on their current records retention procedures and the number of CORA requests they process. State agencies will require additional staff to process CORA requests, including to gather additional types of electronic communications, including text messages, electronic chats, and other types of instant/electronic messaging. Agencies may also be required to upgrade their existing information technology software and systems to accommodate additional storage and allow for electronic payment processing.

The fiscal note assumes that, at a minimum, each state agencies will require an additional 0.5 FTE. Agencies with higher volumes of request and covered proceedings will require more staff. On the high end, the Department of Personnel will require 3.5 FTE; other agencies will require additional staff between these amounts. Costs by agency are shown in Table 3 at the end of this document. Costs are prorated for the bill's start date, and include capital outlay and operating expenses for these new staff. Costs are assumed to be paid from the General Fund, except for the Department of State. The Department of State will also have a one-time cash fund expenditure of \$98,000 to update its payment processing system.

Governor's Office of Information Technology. The bill increases state expenditures to the Governor's Office of Information Technology (OIT) by at least \$1 million per year in FY 2023-24 and ongoing. OIT provides technology services for all state agencies. The office will invest in additional storage and retention technologies to allow state agencies to comply with the additional types of communication subject to CORA request and the increased length of time that records must be stored. Contracts with software vendors will be updated and expanded to comply with the bill's requirements, resulting in both increased cost for contracts and staff time to develop and implement updated contracts. The exact amount of increased staff time and contract costs has not been determined due to time constraints. The costs for a new enterprise solution for text message storage and retrieval is estimated by OIT to be in the tens of millions of dollars, as noted in the Departmental Difference section.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Technical Note

The change in the definition of “public records” to include any office of the state may currently require independent judicial agencies, including the Office of the Alternate Defense Counsel, the Office of the Child’s Representative, the Office of the Respondent Parent’s Counsel, and the Independent Ethics Commission to comply with CORA requirements under the bill. These Judicial agencies are currently exempt and the fiscal note assumes that their exemption still is applicable, but additional clarification is needed to determine if these agencies are included in the definition of “office”. Costs will increase if these agencies are part of the bill.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires at least \$1,857,812 in appropriations, as follows:

- at least \$1.0 million from the General Fund to the Office of Information Technology for an enterprise solution for expanded electronic records retention/retrieval;
- \$759,412 and 10.8 FTE to various state agencies, as shown in Table 3, for additional staff to process CORA requests, including \$731,696 General Fund and \$27,716 from the Department of State Cash Fund; and
- \$98,400 from the Department of State Cash Fund to the Department of State for payment processing updates.

Departmental Difference

The Governor’s Office of Information Technology anticipates the bill will require a new enterprise solution to store retrieve and convert all electronic communication into a searchable format and comply with CORA requests. While the exact cost would require additional time to determine, OIT anticipates that this will cost at least \$10 million dollars. The fiscal note has not included this full amount, based on time constraints to examine potential system needs and costs. This cost may be added in a future fiscal note.

State and Local Government Contacts

All State Agencies

Table 3
FY 2023-24 Appropriations to State Agencies
for Additional CORA Workload

Agency	FTE	Personal Services	Operating	Capital	Total
Department of Agriculture	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Corrections	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Early Childhood	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Education	0.4	\$23,746	\$562	\$3,408	\$27,716
Governor's Office	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Health Care Policy and Financing	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Higher Education	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Human Services	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Labor and Employment	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Law	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Local Affairs	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Natural Resources	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Personnel and Administration	2.2	\$137,728	\$3,254	\$19,767	\$160,749
Department of Public Health and Environment	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Public Safety	0.8	\$47,492	\$1,121	\$6,816	\$55,429
Department of Regulatory Agencies	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Revenue	0.6	\$37,994	\$899	\$5,453	\$44,346
Department of State	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Transportation	0.4	\$23,746	\$562	\$3,408	\$27,716
Department of Treasury	0.4	\$23,746	\$562	\$3,408	\$27,716
Office of Economic Development and International Trade	0.4	\$23,746	\$562	\$3,408	\$27,716
Total	10.8 FTE	\$650,642	\$15,390	\$93,380	\$759,412