



**Colorado
Legislative
Council
Staff**

Initiative # 1

**INITIAL FISCAL
IMPACT STATEMENT**

Date: December 5, 2016

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LCS TITLE: INDEPENDENT ETHICS COMMISSION

Fiscal Impact Summary	FY 2018-2019	FY 2019-2020
State Revenue		
General Fund	See State Revenue section.	See State Revenue section.
State Expenditures	(\$36,252)	(\$62,072)
General Fund	86,856	186,239
Cash Funds	(120,161)	(240,320)
Centrally Appropriated Costs	(2,947)	(7,991)
FTE Position Change	0.2 FTE	

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

Summary of Measure

The proposed ballot initiative transfers the responsibilities of the Commission on Judicial Discipline (commission) to the Independent Ethics Commission (IEC). The proposed initiative also establishes IEC procedures for investigating a complaint against a judge or justice, holding a public hearing if probable cause exists to believe an ethics violation has occurred, Supreme Court acceptance of IEC recommendations, and making all records related to the investigation public.

Background and Assumptions

The Commission on Judicial Discipline was created as the result of a voter-initiated constitutional amendment in 1966. This commission monitors the conduct of the judiciary, including judges of county and district courts; judges of the Court of Appeals, and justices of the Supreme Court. The commission is authorized to discipline for willful misconduct, willful or persistent failure to perform duties, intemperance, or violations of judicial ethics principles; retire a judge for a disability; and recommend that the Supreme Court remove a judge from office. The commission is comprised of ten citizens. Members include two county court judges and two district court judges who are appointed by the Chief Justice of the Supreme Court; two lawyers, appointed by the Governor; and four citizens who are not currently lawyers or judges, also appointed by the Governor. Under the proposed initiative, the responsibilities of the commission cease on December 31, 2018, and the commission is eliminated on January 1, 2019.

The IEC is an independent commission that was created as a result of a voter-initiated constitutional amendment in 2006. The IEC gives advice and guidance on ethics issues arising under Article 29 of the Colorado Constitution and other standards of conduct or reporting requirements as provided by law, hears complaints, issues findings, and assesses penalties and sanctions where appropriate. The IEC has jurisdiction over all state executive, legislative, and locally elected officials and employees with the exception of home-rule counties and municipalities that have their own ethics codes. The IEC currently does not have jurisdiction over judges or employees of the Judicial Branch. The IEC consists of five commissioners appointed by the Governor, the Speaker of the House, the President of the Senate, the Chief Justice of the Colorado Supreme Court, and one commissioner elected by the four other members. The fifth member must represent local government.

The IEC is funded through a General Fund appropriation from the General Assembly. The Commission on Judicial Discipline is cash funded from a portion of attorney registration fees. Attorney registration fees are set by the Colorado Supreme Court, continuously appropriated, and are intended to cover costs for various attorney regulatory programs for at least five years. This results in an initial fund surplus which is depleted over a period of five years or more following a fee increase. The last attorney registration fee increase took effect on January 1, 2014.

State Revenue

The proposed initiative may increase state revenue from records fees by a minimal amount. If the IEC determines that probable cause exists to conduct a public hearing on judicial conduct or disability, the IEC must make all records related to its investigation public. It is assumed that records will be made available to requesting parties electronically; however, any requests for hard copies will result in a minimal increase in General Fund fee revenue charged for the reproduction of such records.

This fiscal impact statement assumes that attorney registration fee revenue will not be transferred to the IEC. Therefore, by reducing cash fund obligations, the proposed initiative increases the amount of fee revenue that will be retained in the Attorney Regulation Cash Fund. This may impact attorney registration fees, but the impact has not been determined.

State Expenditures

The proposed initiative reduces net state expenditures by \$36,252 in FY 2018-19 and by \$62,072 in FY 2019-20. Cash fund expenditures for the Commission on Judicial Discipline will decrease while General Fund expenditures for the IEC will increase. In FY 2018-19 only, one-time costs are incurred to hire a temporary program assistant. These costs are summarized in Table 1 and discussed below.

Table 1. Expenditures Under Proposed Initiative # 1.		
Cost Components	FY 2018-19	FY 2019-20
Commission on Judicial Discipline	(\$120,161)	(\$240,320)
Personal Services	(111,408)	(222,815)
FTE	(1.5 FTE)	(1.5 FTE)
Operating Expenditures	(2,917)	(5,834)
Legal Services	(1,250)	(2,500)
Contract Investigations	(500)	(1,000)
Travel and Other Meeting Expenses	(4,086)	(8,171)
Independent Ethics Commission	\$86,856	\$186,239
Personal Services	67,215	138,609
FTE	1.7 FTE	1.5 FTE
Operating Expenditures	2,917	5,834
Legal Services	7,604	10,456
Contract Investigations	3,000	6,000
Travel and Other Meeting Expenses	6,120	17,840
Outreach	0	7,500
Combined Centrally Appropriated Costs	(2,947)	(7,991)
TOTAL	(\$36,252)	(\$62,072)

Assumptions. The costs of the proposed initiative are based on the following assumptions:

- the IEC will continue to be funded using the current funding model and Attorney Regulation Cash Fund moneys will not be used for this purpose. Therefore, the proposed initiative increases IEC General Fund obligations and decreases Attorney Regulation Cash Fund obligations;
- the IEC will utilize the same staffing model as the commission (1.5 FTE), however it is unknown if the IEC will hire new staff or employ current commission staff; and
- the number of judicial discipline investigations will increase under this initiative due to the broader scope of judicial discipline and the IEC's ability to reopen previously dismissed cases. This increases costs for legal services, contract investigations, and travel expenditures.

Personal services. Currently the Commission on Judicial Discipline has 1.5 FTE, which includes a director and an administrative assistant. Under the proposed initiative, personal services for the commission will be reduced by 1.5 FTE, while personal services for the IEC will increase by 1.7 FTE. Since the IEC already has a director, the fiscal impact statement assumes that the IEC will hire a program manager (1.0 FTE), an administrative assistant (0.5 FTE), and a temporary program assistant (0.2 FTE). This results in a net decrease in personal services expenditures beginning in FY 2018-19 due to the lower salary of the program manager. A temporary program assistant is needed in FY 2018-19 to aid in the transition of all commission functions to the IEC, the creation of IEC rules and procedures, and the conversion of judicial discipline records to the IEC. Personal services are prorated to reflect the January 1, 2019, start date and the General Fund paydate shift.

The proposed initiative also increases IEC workload to make records public and respond to records requests. This workload increase can be accomplished within existing appropriations. It is assumed that all operating costs will remain unchanged resulting in an increase of \$5,834 General Fund and a decrease of \$5,834 cash funds per year beginning in FY 2018-19. Operating costs are prorated in FY 2018-19.

Legal services. Beginning in FY 2018-19, the commission's legal services costs will be reduced. IEC legal services costs are expected to increase for legal advice sought by the IEC in rule making and implementing judicial discipline functions. Legal services costs are prorated in FY 2018-19. Under the proposed initiative, the IEC is not bound by appellate court findings and may conduct an investigation on a case that the commission currently would not. Additionally, the IEC can investigate complaints previously dismissed by the commission. IEC legal services costs are expected to further increase in FY 2019-20 and beyond as a result of this broader scope of judicial discipline.

Contract investigations. Beginning in FY 2018-19, the commission's contract investigation costs will be reduced and IEC contract investigation costs will increase. All judicial discipline complaints received by the IEC will receive an initial preliminary investigation. If probable cause exists, a full investigation will be undertaken by a contract investigator. IEC contract investigation costs are expected to increase under this initiative due to the broader scope of judicial discipline, the ability to reopen and investigate prior cases, and the IEC not using the attorney discipline investigators that are currently used by the commission. FY 2018-19 costs are prorated and include pending investigations transferred from the commission and investigations of new complaints received.

Travel and other meeting expenses. The broader scope of judicial discipline and the ability of the IEC to investigate previously closed investigations will increase the number of judicial discipline meetings held. This results in an increase in travel expense reimbursement and meal expenses for IEC commissioners attending the meetings beginning in FY 2018-19 and a reduction in travel expenses for the commission.

Outreach. For FY 2019-20, \$7,500 in one-time expenditures are needed for IEC outreach activities to inform the public of the transfer of judicial discipline functions to the IEC, provide information regarding new IEC policies and procedures for conducting judicial discipline, and to explain the expanded scope of judicial discipline under the IEC. Outreach will occur in FY 2019-20 after the transition of judicial discipline responsibilities to the IEC and the implementation of new IEC policies and procedures.

Attorney registration fees. Some state agencies pay the annual attorney registration fees for their employees that are attorneys. Any change in attorney regulation fees affecting these agencies will be addressed through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this initiative are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills. The centrally appropriated costs subject to this policy are estimated in the fiscal impact statement for informational purposes and summarized in Table 2. It is assumed that staff transferring to the IEC will continue to occupy the same office space.

Table 2. Centrally Appropriated Costs Under Proposed Initiative #1.		
Cost Components	FY 2018-19	FY 2019-20
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$436)	(\$3,343)
Supplemental Employee Retirement Payments	(2,511)	(4,647)
Leased Space	0	0
TOTAL	(\$2,947)	(\$7,991)

Effective Date

The proposed ballot initiative is effective January 1, 2019.

State and Local Government Contacts

Information Technology
Office of State Planning and Budgeting

Judicial
Department of Local Affairs

Abstract of Initiative 1: Independent Ethics Commission

An initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of December 2016, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State revenue and spending. Beginning in FY 2018-19, the proposed initiative may increase state General Fund revenue from records fees by a minimal amount. The proposed initiative decreases net state spending by about \$36,000 in FY 2018-19 and \$62,000 in FY 2019-20 and beyond.