

Colorado Legislative Council Staff

**STATE
FISCAL IMPACT**

Drafting Number: LLS 04-0397
Prime Sponsor(s): Rep. Brophy

Date: April 21, 2004
Bill Status: House Judiciary
Fiscal Analyst: Lon Engelking (303-866-4751)

TITLE: CONCERNING THE IMPEACHMENT OF JUDGE JOHN W. COUGHLIN.

Fiscal Impact Summary	FY 2003/2004	FY 2004/2005
State Revenues General Fund		
State Expenditures General Fund *	\$13,100 - \$28,000	
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: Upon adoption by the House of Representatives		
Appropriation Summary for FY 2003/2004 and FY 2004/2005: The fiscal note indicates the above costs that could occur. However, since this is a resolution, there is no mechanism for an appropriation clause. Therefore, some additional appropriation bill or existing appropriation line-item would be needed to cover the expenditure requirements.		
Local Government Impact: None		

** See the **State Expenditure Section** for an explanation of two different scenarios on possible expenditures. It should also be noted that the state may also be liable for attorney fees of Judge Coughlin under certain circumstances.*

Summary of Legislation

This resolution calls for the adoption of the following articles of impeachment against Judge John W. Coughlin, by the House of Representatives:

ARTICLE I

For malfeasance in office for denying the right to freedom of religion guaranteed by the First Amendment of the United States Constitution and Section 4 of Article II of the Colorado Constitution of Dr. Cheryl Clark by ordering that "Dr. Clark make sure that there is nothing in the religious upbringing or teaching that the minor child is exposed to that can be considered homophobic."

ARTICLE II

For malfeasance in office for denying the right to freedom of religion guaranteed by the First Amendment of the United States Constitution and Section 4 of Article II of the Colorado Constitution of the daughter of Dr. Cheryl Clark by denying her access to the Christian religion by barring the teaching of anything "that can be considered homophobic."

ARTICLE III

For malfeasance in office for disregarding the Colorado Revised Statutes in granting parental responsibilities to a non-biological, non-adoptive parent without showing a lack of fitness of the legal parent.

The resolution states that the Speaker of the House of Representatives would appoint a Committee of Managers, consisting of five members of the House, to exhibit these Articles of Impeachment before the Senate, and to conduct the prosecution of these Articles of Impeachment in accordance with the provisions of the Constitution of the State of Colorado and of the rules of the Senate relating to the trial of impeachment.

Background and History of Impeachment in Colorado

In Colorado, the Governor and state and judicial officers can be impeached for high crimes, misdemeanors, or malfeasance in office. The House has the sole power of impeachment, and the Senate has the power to try impeachment. The constitution limits the penalty for impeachment to removal from and disqualification for office. Impeachment does not preclude prosecution, trial, judgment, and punishment according to state or federal law for an official's actions, regardless of the outcome of the impeachment proceedings.

Neither the constitution nor the House rules describe the process by which impeachment proceedings are initiated or carried out. Since the first recorded impeachment attempt in 1911, three state officers have been impeached by the House. The officer impeached in 1935 resigned prior to a trial in the Senate. Two officers impeached by the House in 1939 were tried in the Senate, but they were not found guilty of any allegations.

- The 1911 impeachment proceedings began when allegations against a district judge were filed in the House by a citizen. The House approved a motion for the Speaker to appoint a special committee to investigate the allegations. After 19 investigative hearings, the committee submitted three different recommendations to the House. The House adopted the majority report of the committee to discontinue the impeachment proceedings, and no articles of impeachment were drafted.
- The Governor called a special session in 1935 for the legislature to consider impeaching the Secretary of State. The House approved a resolution calling for the Speaker to appoint a special committee to determine whether charges should be filed against the accused. After six days of investigative hearings, the committee submitted a report to the House recommending impeachment. Another special committee was appointed to prepare the

articles of impeachment. The House adopted seven such articles and appointed a committee to prosecute the accused in the Senate. However, the trial never began and the impeachment proceedings were discontinued because the accused official resigned.

- In 1939, the Governor called a special session for the legislature to consider impeaching members of the Civil Service Commission. The House approved a resolution calling for the Speaker to appoint a special committee to determine whether charges should be filed against any of the commissioners. After three days of investigative hearings, the committee submitted a report to the House recommending the impeachment of two commissioners. Another special committee was appointed to prepare articles of impeachment against each commissioner. The House adopted all the articles of impeachment that were drafted, then appointed a committee to prosecute the accused officials in a Senate trial. The trial lasted three days, and the Senate did not find either of the commissioners guilty of any charges.

State Expenditures

Since very little background exists to determine the specific procedures and guidelines surrounding an impeachment of a state official, two different scenarios are presented to estimate the potential costs of an impeachment trial in the Senate. In both scenarios, it is assumed that all House of Representative hearings and investigations would occur during the current legislative session. Therefore, no additional costs are assumed for House member Per Diem or expense reimbursement. Likewise, no additional costs are shown for staff salaries in the House. All other expenses are assumed to be equal in either scenario. The following is an explanation of the two scenarios with the estimated costs shown in Table 1. **Both scenarios assume a three-day trial in the Senate.**

Scenario #1 - Assumes that the actual trial held in the Senate could not occur during the current regular session because of the shortness of time available for preparation and given the other business of the Senate. Even though past impeachment proceedings took place during a special session, it appears that the Senate could meet outside of the confines of a special session and the House would not need to convene with the Senate. Factors influencing the fiscal impact of this scenario are as follows:

- Metro legislators are paid at the Per Diem rate of \$45 per day with an allowance for mileage of one round trip per day - currently 20 metro members;
- Non-metro legislators are paid at the Per Diem rate of \$99 per day with and allowed one round-trip to home per week - currently 15 members;
- In addition to the year-round staff of the Senate, the following additional staff would be required at a minimum:
 - Chief Assignable Clerk
 - Chief Sgt. at Arms
 - Assistant Sergeant at Arms
 - Billroom Supervisor
 - Docket Clerk
 - Reading Clerk
 - 2 Enrolling Clerks

- Although not necessarily prescribed, it is assumed that the House would be represented by outside legal counsel during the trial in the Senate. The rate of \$160 per hour is used for the cost of counsel and that preparation and trial time would approximate 6 days;
- It is further assumed that the actual trial would require the services of a court reporter. Transcriptions costs are estimated at \$7.20 per page with an average 3-day trial producing 475 pages; and
- Document printing and copying would be significant and cost approximately \$2,000.

Scenario #2 - Assumes that the impeachment trial in the Senate could occur during the current legislative session. Therefore, no additional expense is shown for Senate member Per Diem and expense reimbursement. Likewise, no additional Senate staff costs are shown.

Table 1 Fiscal Impact to the Legislative Department for Impeachment Trial FY 2003-04		
	Scenario #1 Trial Outside of Regular Session	Scenario #2 Hearing and Trial during Regular Session
Member Per Diem: Metro @ \$45/day - 20 members Non-Metro @\$99 - 15 members	\$2,700 4,455	
Member Travel: Non-Metro @ \$.28 @ 258 miles Metro @ \$.28 @ 28 miles @ 3 days	\$1,084 470	
Senate Staff Salaries PERA	\$5,567 624	
Attorney Fees for Legal Counsel to the House of Representatives *	\$7,680	\$7,680
Court Reporter and Transcripts	\$3,420	\$3,420
Printing/Copying/Misc.	\$2,000	\$2,000
Total Expenses	\$28,000	\$13,100

* *Impeachment proceeding in other states indicates a potential for paying legal fees of Judge Coughlin under certain instances. The amount shown for legal counsel to the House of Representatives may approximate this potential cost and therefore, increase the cost in either scenario.*

State Appropriations

The fiscal note indicates that the costs to the Legislative Department would be in the range of \$13,100 to \$28,000 depending on when the trial would occur in the Senate. However, since this is a resolution, there is no mechanism for an appropriation clause. Therefore, some additional appropriation bill or existing appropriation would need to be used to fulfill the expenditure requirements.

Departments Contacted

Office of Legislative Legal Services Legislative Council Senate Judicial