



Legislative
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HB 19-1081

**FINAL
FISCAL NOTE**

Drafting Number: LLS 19-0045
Prime Sponsors: Rep. Williams D.

Date: May 7, 2019
Bill Status: Postponed Indefinitely
Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: RESPONDENT RIGHTS DISCRIMINATION COMPLAINTS

**Summary of
Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill would have allowed a respondent to a discrimination complaint filed with the Colorado Civil Rights Division or Commission to request representation by a public defender; request to move the matter to a court of competent jurisdiction in certain cases; and to recoup legal costs and lost business income if all appeals are exhausted or if the U.S. Supreme Court rules in their favor. The bill would have increased state expenditures on an ongoing basis beginning in FY 2019-20.

**Appropriation
Summary:**

In FY 2019-20, the bill would have required an appropriation of \$2,634,892 to the Judicial Department, which included an appropriation for costs that are typically addressed through the annual budget process due to the number of FTE required by the bill.

**Fiscal Note
Status:**

This fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under HB 19-1081**

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditures	General Fund	at least \$1,824,244	at least \$1,833,247
	Centrally Appropriated	\$810,648	\$849,411
	Total	at least \$2,634,892	at least \$2,682,658
	Total FTE	27.7 FTE	30.2 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill allows a respondent in a complaint regarding employment, housing, public accommodations, or advertising discrimination, that is either investigated by the Colorado Civil Rights Division (CCRD) or heard or pursued by the Colorado Civil Rights Commission (CCRC), to:

- ***Request representation by a public defender.*** Specifically, the respondent has a right to request representation by a public defender at any point in the administrative process, regardless of indigent status or the lack of an arrest for or charge of a crime.
- ***Request to move the matter to another court.*** The respondent may request to move the matter to a court of competent jurisdiction if the respondent asserts that he or she engaged in the alleged discriminatory conduct on the basis of first amendment rights.
- ***Recoup costs and lost income if a favorable decision is reached.*** A respondent who obtains a favorable decision after all appeals are exhausted or if the U.S. Supreme Court rules in favor of the respondent must be paid attorney fees, costs, and lost business income. This is retroactive to appeals or actions for judicial review filed on or after December 1, 2013.

Background and Data

Colorado Civil Rights Division. The CCRD investigates matters alleging discrimination based on a protected class. Protected classes in Colorado include age (employment only); color; creed; disability; familial status (housing only); marital status (housing and public accommodation only); marriage to co-worker (employment only); national origin/ancestry; race; religion (employment and housing only); retaliation (for engaging in protected activity); sex; and/or sexual orientation/transgender.

In FY 2017-18, the division received 1,693 complaints, found probable cause in 41 complaints, found no probable cause in 418 complaints, and filed notice of hearing for 15 complaints. There are other closure determinations which include: settlement agreements, resulting from voluntary mediation or through an investigator shuttling settlement offers between parties; right-to-sue letters; complaint withdrawals or private settlement between parties; lack of division's jurisdiction; a complainant's failure to cooperate; and/or a respondent who cannot be located.

Colorado Civil Rights Commission. At the conclusion of a complaint investigation where a notice of hearing is filed and mediation has failed, the CCRC determines whether to set the case for an adjudicatory administrative hearing. The commission also hears appeals where the CCRD has found no probable cause. In addition, the commission may request that the division investigate discrimination issues with public policy implications.

Office of the State Public Defender. The Office of the State Public Defender (OSPD) provides legal services to indigent persons accused of crimes that are commensurate with those available to non-indigent persons. The office does not currently handle any clients outside of this scope, nor does it typically work on civil cases.

Masterpiece Cakeshop v. Colorado Civil Rights Commission. The U.S. Supreme Court found that the CCRC's actions in this case violated the Free Exercise Clause of the U.S. Constitution on June 4, 2018. On August 14, 2018, Masterpiece Cakeshop filed suit in federal court against the state related to a subsequent complaint lodged with the CCRC.

Assumptions

Public defender workload. The fiscal note assumes that 90 percent of discrimination claim respondents will take advantage of legal representation through the OSPD provided at no cost. Expenditure estimates are based on the FY 2017-18 CCRD complaint statistics outlined in the Background and Data section, and assume that a public defender would spend 15 hours per each complaint, 15 hours per each finding of probable cause, and 30 hours per hearing. The fiscal note has not estimated the costs associated with any training on civil matters; it is assumed these costs will be addressed during the annual budget process. Finally, the fiscal note assumes these staff will start July 1, 2019.

Respondents' recouped costs. It cannot be determined how many cases will reach the threshold under the bill in any given year; however, the fiscal note assumes there will be at least one per year and notes there is at least one case outstanding, as discussed in the Background and Data section. Using \$250 as the average hourly rate for Colorado-based attorneys and an estimate of approximately 800 hours for the average case to proceed through the administrative process, the Colorado Court of Appeals, and the Colorado Supreme Court, one attorney's fees are estimated at \$200,000. Other legal costs incurred and loss of business income will vary depending on the type and size of the business.

State Expenditures

The bill will increase state General Fund expenditures by at least \$2.6 million in FY 2019-20 and by at least \$2.7 million in FY 2020-21. Costs are shown in Table 2 and described below.

Table 2
Expenditures Under HB 19-1081

Cost Components	FY 2019-20	FY 2020-21
Judicial Department		
Personal Services	\$1,651,044	\$1,801,137
Operating Expenses and Capital Outlay Costs	\$169,780	\$28,690
Attorney Registration Fees	\$3,420	\$3,420
Centrally Appropriated Costs*	\$810,648	\$849,411
Total	\$2,634,892	\$2,682,658
Total FTE	27.7 FTE	30.2 FTE

* Centrally appropriated costs for bills with 20 or more new FTE are included in the bill's appropriation.

Judicial Department. Beginning in FY 2019-20, the OSPD will hire approximately 18 new attorneys to handle the workload under the bill, each necessitating payment of an annual attorney registration fee. Support staff for the attorneys will also be hired, pursuant to the office's standard ratio for investigators, administrative assistants, and central support staff. Standard operating and capital outlay costs are included. First year costs reflect the General Fund pay date shift. The bill may increase civil court cases transferred away from the CCRC at the respondent's request; this workload increase is expected to be minimal and can be accomplished within existing appropriations.

Department of Regulatory Agencies. Beginning in FY 2019-20, costs will increase for the department to pay respondents legal and other costs. As discussed in the Assumptions section, this is estimated to cost at least \$200,000 per year; however, these costs will be requested during the annual budget process as they can not be precisely estimated.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with bills are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills. These costs include employee insurance, supplemental employee retirement payments, indirect costs, and leased space. However, when a fiscal note identifies a need for at least 20 new FTE to implement a bill, as this fiscal note does, these costs are included in the appropriation.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on January 29, 2019.

State Appropriations

In FY 2019-20, the bill requires a General Fund appropriation of \$2,634,892 to the Office of the State Public Defender in the Judicial Department, and an allocation of 27.7 FTE.

State and Local Government Contacts

Information Technology
Personnel

Judicial
Public Defender

Law
Regulatory Agencies