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Revised Fiscal Note

(replaces fiscal note dated March 24, 2021 )

Drafting Number: LLS 21-0558 Date: May 18, 2021
Prime Sponsors: Sen. Winter; Pettersen Bill Status: Senate Appropriations
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Bill Topic: PROTECTING OPPORTUNITIES & WORKERS' RIGHTS ACT

Summary of Fiscal Impact: [X] State Revenue [X] TABOR Refund
[X] State Expenditure [X] Local Government
[ ] State Transfer [ ] Statutory Public Entity

This bill expands discrimination and unfair employment protections for Colorado workers. It will increase state and local revenue and expenditure on an ongoing basis.

Appropriation Summary: For FY 2021-22, this bill requires an appropriation of \$3.95 million to multiple state agencies.

Fiscal Note Status: This fiscal note reflects the introduced bill, as revised by the Senate Judiciary Committee.

Table 1
State Fiscal Impacts Under SB 21-176

Table with 3 columns: Category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures (General and Cash Funds, Reappropriated Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

## **Summary of Legislation**

This bill expands protections for Colorado workers by:

- adding 'marital status' and 'caregiver status' as protected classes under the Colorado Anti-Discrimination Act (CADA);
- clarifying when independent contractors are considered employees for the purpose of harassment and discrimination claims;
- broadening the definition of harassment when claiming discrimination or an unfair employment practice;
- assigning more requirements to employers related to their ability to disprove claims and avoid liability, including requiring employers of twenty or more employees to provide training and maintain records;
- limiting the ability of an employer to require confidentiality during settlement;
- requiring the Civil Rights Division (CCRD) in the Department of Regulatory Agencies to develop training and education programs to be made available to employers at no cost; and
- changing the pathway for claims to be heard in court by allowing claims to be brought in district or county court.

Employers who violate the requirements in this bill related to providing training and education, posting written notice and signage, and record keeping may be fined no less than \$500 and no more than \$10,000.

## **State Revenue**

To the extent that the bill increases civil case filings, state revenue to the Judicial Department will increase beginning in FY 2021-22. This increase may be offset partially, to the degree that some cases shift from district court to Denver County Court. This fee revenue is subject to TABOR. In addition, fee revenue may increase if employers are found in violation of the requirements in this bill.

## **State Expenditures**

This bill will increase state expenditures across multiple agencies by \$3.95 million beginning in FY 2021-22 and in future years. For the first year, it is assumed that these costs will be paid primarily from the General Fund, and with various cash funds paying some costs for additional human resources staff. In future years, costs for the Department of Personnel and Administration and to the Department of Law will be reappropriated funds from other state agencies based on the number of claims incurred, and will be paid using a mix of General Fund and cash funds from affected agencies. These costs are displayed in Table 2 and described below.

**Table 2  
 Expenditures Under SB 21-176**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Regulatory Agencies</b>		
Personal Services	\$491,487	\$536,167
Operating Expenses	\$13,500	\$13,500
Capital Outlay Costs	\$62,000	-
Legal Services	\$15,951	\$15,951
Training	\$25,000	-
Centrally Appropriated Costs <sup>1</sup>	\$254,944	\$268,247
FTE – Personal Services	9.2 FTE	10.0 FTE
<b>DORA Subtotal</b>	<b>\$862,882</b>	<b>\$833,865</b>
<b>Department of Personnel and Administration</b>		
Personal Services	\$111,427	\$116,242
Operating Expenses	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-
Legal Services	\$340,288	\$340,288
Legal Services (Outside Counsel)	\$171,200	\$171,200
Settlements	-	\$828,756
Centrally Appropriated Costs <sup>1</sup>	\$25,083	\$26,518
FTE – Personal Services	1.5 FTE	1.6 FTE
FTE – Legal Services	2.0 FTE	2.0 FTE
<b>DPA Subtotal</b>	<b>\$655,548</b>	<b>\$1,484,354</b>
<b>HR Staff - Multiple Agencies</b>		
Personal Services	\$2,486,423	\$2,712,462
Operating Expenses	\$40,770	\$40,770
Capital Outlay Costs	\$187,240	-
Centrally Appropriated Costs <sup>1</sup>	\$504,633	\$550,324
FTE – Personal Services	27.7 FTE	30.2 FTE
<b>Multiple Agencies Subtotal</b>	<b>\$3,219,066</b>	<b>\$3,303,556</b>
<b>Total</b>	<b>\$4,737,496</b>	<b>\$5,621,775</b>
<b>Total FTE</b>	<b>40.4 FTE</b>	<b>43.8 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Personnel and Administration.** This bill will increase expenditures in the state's risk management program and the State Personnel Board in the Department of Personnel and Administration. The state's actual costs will depend on a number of factors, including number and complexity of cases, case outcomes, and the timing of cases and judgements. This fiscal note assumes cases will increase by 50 percent, and that 86 percent of those cases will result in a settlement payout by the state. Potential costs include:

- **State Personnel Board:** To the extent that this bill increases the number of cases the State Personnel Board hearings, workload will increase. In addition, the bill limits non-disclosure provisions in settlements, which may lead to fewer cases being settled and an increase in workload for the board. The expected increase in cases will require 0.6 FTE of additional administrative judges.
- **Risk Management Liability Program:** To the extent that more civil cases are filed, this bill could cause an increase in the number of liability claims received by the state. The new provisions in this bill expands the number of people eligible to bring claims and lowers the standards to prove harassment or a hostile work environment. An increase in claims and a broader definition of harassment will increase the number of investigations required, the amount of legal services provided by the Department of Law and outside counsel, and more payouts from the state liability pool. To handle the administrative work from the anticipated increase in cases, the State Risk Management division will require 1.0 FTE additional administrative staff.
- **Legal services.** The Department of Law will represent the state in discrimination cases that are heard by the State Personnel Board. Assuming 3,200 hours annually at a rate of \$106.34 per hour, state agencies will have costs of \$340,288, paid to the Department of Law. The Department of Law requires 2.0 FTE for this work. In cases where the Department of Law has a conflict of interest, outside counsel will be brought in at a cost of \$214 per hour for an estimated 800 hours annually.

**Department of Regulatory Agencies.** This bill will increase expenditures in the Civil Rights Division. The actual costs will depend on a number of factors, including the number and complexity of claims filed. Costs are displayed in Table 2 and described below.

- **Additional case filings.** This bill will increase complaints filed with the Civil Rights Division (CCRD). This fiscal note assumes a 25 percent increase in case filings based on expanding which groups are protected classes, by broadening the definition of harassment, and by adding more types of workers under this law. The expected increase in case filings will require an additional 7.0 FTE to investigate, track, and manage new cases. Staff required include compliance investigators, legal assistants, technicians, administrative assistants, mediators, and an investigations manager.
- **Claims documentation.** The bill requires that the CCRD provide complainants with any documents related to previously filed claims against the respondent in their case. This will require additional staff to find, redact, and send out these documents, and based on the number of claims filed last fiscal year it is estimated that 3.0 FTE will be needed for this work. To the extent that some respondents refuse to provide this documentation, CCRD will need to seek legal recourse

through subpoena servers and legal services. Any additional funds for this purpose will be handled through the regular budget process.

- **Training.** The bill requires that the CCRD develop and provide to employers training and education programs related to the prevention of workplace and harassment and discrimination at no cost and posted on a website. It is estimated that the training modules can be developed for a one-time cost of \$25,000.

**Judicial Department.** This bill may increase the number of case filings and increase workload for the trial courts by expanding who can file a discrimination. It is assumed that any increase can be managed by the courts within existing appropriations. In addition, because the bill allows claims to be filed in either district or county court, it is also expected that some of the workload increase will be offset by some cases being filed with Denver County Court, outside of the state court system.

**All state agencies.** This bill will increase the amount of grievances and claims filed in each state agency's internal human resources department and will increase the number of claims that need to be investigated due to a broader definition of harassment, which will require additional HR staff to handle this workload. To calculate the number of additional HR staff that each state agency will require, this fiscal note assumes a ratio of 1 additional FTE per 1,000 state employees. It is assumed that agencies with less than 500 FTE will not require additional HR staff. In total, this will increase HR staff by 30.2 FTE across all state agencies. This staff will be paid for using General Fund and various cash funds. Staff in FY 2021-22 is prorated to 27.7 FTE due to the General Fund paydate shift. Table 3 includes a breakdown of staffing amounts and total costs by department.

**Table 3  
 Human Resource Staffing by Department**

<b>Agency</b>	<b>FTE Required</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
Corrections	6.0	\$539,292	\$547,000
Education	0.8	\$71,905	\$72,933
Governor	0.5	\$44,941	\$45,583
Health Care Policy and Financing	0.5	\$44,941	\$45,583
Human Services	5.0	\$449,410	\$455,835
Information Technology	1.0	\$89,882	\$91,167
Judicial	5.0	\$449,410	\$455,835
Labor and Employment	1.2	\$107,858	\$109,400
Law	0.5	\$44,941	\$45,583
Natural Resources	1.5	\$134,823	\$136,750
Public Health and Environment	1.4	\$125,835	\$127,633
Public Safety	1.8	\$161,788	\$164,100
Regulatory Agencies	0.5	\$44,941	\$45,580
Revenue	1.5	\$134,823	\$136,750
Transportation	3.0	\$269,646	\$273,500
<b>Totals</b>	<b>30.2 FTE</b>	<b>\$2,714,433</b>	<b>\$2,753,232</b>

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$784,660 in FY 2021-22 and \$845,089 in FY 2022-23.

**TABOR refunds.** The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

## **Local Government**

Similar to the state, to the extent that there is an increase in the number of claims relating to local government entities and employees, costs and workload may increase for local governments. In addition, expanded liability for local governments will increase costs for insurance coverage, settlements, and legal costs. Actual costs for a particular local government will vary based on the number of cases filed within that jurisdiction.

**Denver County Court.** This bill allows civil case filings to be filed in district or county court. To the extent cases shift from district court to county court, revenue, costs, and workload will increase for the Denver County Court, which is managed and funded by the city and county of Denver.

## **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 2021-22, this bill requires the following appropriations:

- \$607,938 General Fund and 9.2 FTE to the Department of Regulatory Agencies, of which \$15,951 is reappropriated to the Department of Law for legal services;
- \$630,465 General Fund and 1.5 FTE to the Department of Personnel and Administration, of which \$340,288 is reappropriated to the Department of Law for legal services with an additional 2.0 FTE; and
- \$2,714,433 and 27.7 FTE from General Fund and various cash funds to multiple agencies for HR staff, based on the information in Table 3.

## Departmental Difference

Several departments estimated that they will require additional HR staff beyond that included in the fiscal note. The fiscal note used a consistent methodology across all agencies, which resulted in differing staffing estimates in some cases. The fiscal note does not include the full amount requested by departments in these cases due to different assumptions on required workload. Table 4 includes a comparison of differing department estimates and the fiscal note estimate for increased HR staffing.

**Table 4**  
**Comparison of Department and Fiscal Notes Staff Estimates**

<b>Department</b>	<b>Department Estimate</b>	<b>Fiscal Note Estimate</b>
Agriculture	0.8 FTE	None
Healthcare Policy & Financing	1.0 FTE	0.5 FTE
Corrections	7.0 FTE	6.0 FTE
Judicial	5.0 FTE	5.8 FTE
Labor and Employment	3.0 FTE	1.2 FTE
State	0.1 FTE	None
Treasury	0.1 FTE	None
Higher Education	1.0 FTE	None

## State and Local Government Contacts

All State Agencies

Counties

Judicial

Municipalities