



**Legislative Council Staff**

*Nonpartisan Services for Colorado's Legislature*

**Fiscal Note**

|                         |   |                        |   |
|-------------------------|---|------------------------|---|
| <b>Drafting Number:</b> | LLS 22-0638                                       | <b>Date:</b>           | February 11, 2022                                     |
| <b>Prime Sponsors:</b>  | Sen. Pettersen; Rodriguez<br>Rep. Herod; Sullivan | <b>Bill Status:</b>    | Senate Business                                       |
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**Bill Topic:** WHISTLEBLOWER PROTECTION HEALTH AND SAFETY

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

This bill expands the current whistleblower protections for workers raising any workplace health and safety concerns, rather than only concerns relating to a public health emergency. The bill will increase state expenditures and may minimally increase state revenue on an ongoing basis.

**Appropriation Summary:** For FY 2022-23, the bill requires appropriations of \$874,626 to multiple departments.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under SB 22-097**

|                             |                           | <b>Budget Year<br/>FY 2022-23</b> | <b>Budget Year<br/>FY 2023-24</b> |
|-----------------------------|---------------------------|-----------------------------------|-----------------------------------|
| <b>Revenue</b>              |                           | -                                 | -                                 |
| <b>Expenditures</b>         | General Fund              | \$874,626                         | \$624,840                         |
|                             | Cash Funds                | -                                 | \$250,000                         |
|                             | Centrally Appropriated    | \$73,915                          | \$81,725                          |
|                             | <b>Total Expenditures</b> | <b>\$948,541</b>                  | <b>\$956,565</b>                  |
|                             | <b>Total FTE</b>          | <b>5.7 FTE</b>                    | <b>6.2 FTE</b>                    |
| <b>Transfers</b>            |                           | -                                 | -                                 |
| <b>Other Budget Impacts</b> | General Fund Reserve      | \$131,195                         | \$93,726                          |

## **Summary of Legislation**

This bill expands protections for workers who report concerns about health and safety, or violations of health and safety rules, to their employers. Current law only protects retaliation against reports related to a public health emergency. This bill expands protections to cover all reports of threats to, or violations of, health and safety.

## **Background**

Under current law, complaints regarding labor violations, including the whistleblower protections regarding health and safety concerns related to a public health emergency created by House Bill 20-1415, can be filed with the Division of Labor Standards and Statistics in the Department of Labor and Employment (CDLE). If a complaint is investigated and the division rules in favor of the complainant, it may order a range of remedies, including the reinstatement of an employee, payment of lost wages, fines or penalties, or orders to cease the prohibited behavior. After any internal appeals with the CDLE are exhausted by an employee or employer, the final decision may be appealed to district court.

## **Assumptions**

While the provisions of House Bill 20-1415 remain in statute indefinitely, the process created in that bill depends on the presence of a public health emergency. While it is unknown when the current public health emergency will end, funding for the existing CDLE investigations program created by House Bill 20-1415 is scheduled to expire at the end of the current fiscal year. Therefore, the costs in this fiscal note reflect the whole costs of continuing the program with the expanded scope of this bill.

## **State Revenue**

To the extent that the bill increases appeals to district court, the bill will minimally increase cash fund revenue to the Judicial Department for civil filing fees starting in FY 2022-23. This revenue is subject to TABOR and may minimally impact refunds to taxpayers.

## **State Expenditures**

This bill increases state expenditures by \$948,541 in FY 2022-23 and by \$956,565 in FY 2023-24 and future years. Costs are paid from the General Fund in the first year, and General Fund and cash funds in the second and future years. These costs, which are in the Department of Labor and Employment and the Department of Personnel and Administration (DPA), are shown in Table 2 and described below.

**Table 2  
Expenditures Under SB 22-097**

| <b>Cost Components</b>                            | <b>FY 2022-23</b> | <b>FY 2023-24</b> |
|---|-------------------|-------------------|
| <b>Department of Labor and Employment</b>         |                   |                   |
| Personal Services                                 | \$343,343         | \$374,557         |
| Operating Expenses                                | \$6,480           | \$6,480           |
| Capital Outlay Costs                              | \$31,000          | -                 |
| Legal Services                                    | \$31,050          | \$31,050          |
| Software  | \$5,756           | \$5,756           |
| Centrally Appropriated Costs <sup>1</sup>         | \$73,915          | \$81,725          |
| FTE – Personal Services                           | 4.3 FTE           | 4.8 FTE           |
| FTE – Legal Services                              | 0.2 FTE           | 0.2 FTE           |
| <b>CDLE Subtotal</b>                              | <b>\$491,544</b>  | <b>\$499,568</b>  |
| <b>Department of Personnel and Administration</b> |                   |                   |
| Legal Services                                    | \$206,997         | \$206,997         |
| Settlement Expense                                | \$250,000         | \$250,000         |
| FTE – Legal Services                              | 1.2 FTE           | 1.2 FTE           |
| <b>DPA Subtotal</b>                               | <b>\$456,997</b>  | <b>\$456,997</b>  |
| <b>Total</b>                                      | <b>\$948,551</b>  | <b>\$956,565</b>  |
| <b>Total FTE</b>                                  | <b>5.7 FTE</b>    | <b>6.2 FTE</b>    |

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

**Department of Labor and Employment.** Expanding the scope of whistleblower protections to reports regarding any concern about health or safety, not just those regarding a public health emergency, is expected to increase the number of complaints filed with the Division of Labor Standards and Statistics in the CDLE to a total of about 150 complaints per year, which will result in the need for additional staff and resources as described below.

- *Staffing.* Within the investigations unit, the CDLE will require 2.0 FTE for compliance investigators, 1.0 FTE for a staff assistant, and 1.0 FTE for a program manager. These staff will receive and investigate complaints, issue findings, and communicate with employees and employers about their cases. In addition, 0.8 FTE is required for an administrative law judge to hear internal appeals. Costs for these staff, including personal services, operating, and capital outlay expenses are shown in Table 2 above.
- *Legal services.* The CDLE will require about 315 hours of legal services concerning complaints that are later appealed to the courts. Legal services are provided by the Department of Law at a blended rate of \$98.57 per hour.
- *Software.* The CDLE will have costs of \$5,756 per year for licenses for software used by the new investigatory and administrative staff.

- *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 shown in Table 2.

**Department of Personnel and Administration.** In recent years, the state has received about 30 employment-related claims per year. It is estimated that, under this bill, an additional six cases would involve a whistleblower allegation concerning health or safety. Based on these assumptions, the DPA is estimated to have costs in two areas starting in FY 2022-23.

- *Legal services.* Assuming 350 hours per case for six additional cases, legal service costs provided by the Department of Law will increase by \$206,997 per year. These costs are paid from the General Fund.
- *Settlement payments.* It is assumed that two additional cases per year will involve a settlement with the state. Assuming an average settlement amount of \$125,000, costs will increase by \$250,000 per year. First-year settlement costs are assumed to require General Fund; in the second and subsequent years, and costs will be paid from the Risk Management Fund using assessments paid by state agencies based on actual claims and adjusted through the annual budget process.

**Judicial Department.** To the extent that the bill increases the number of employment-related cases investigated by the CDLE that are later appealed to district court, workload in the trial courts in the Judicial Department will increase. No change in appropriations is required to manage a small number of additional civil cases.

## **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 beginning in FY 2022-23. 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 above, which will decrease the amount of General Fund available for other purposes.

## **Local Government**

Similar to the state, the bill potentially increases costs for cities, counties, school districts and other local governments relating to increased liability as an employer concerning health and safety whistleblower complaints. These impacts will vary by local government and have not been estimated.

## **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## **State Appropriations**

For FY 2022-23, the bill requires the following General Fund appropriations:

- \$417,629 to the Department of Labor and Employment and 4.8 FTE, of which \$31,050 is reappropriated to the Department of Law with an additional 0.2 FTE; and
- \$456,997 to the Department of Personnel and Administration, of which \$206,997 is reappropriated to the Department of Law with 1.2 FTE.

## **State and Local Government Contacts**

|                |                    |                        |
|----------------|--------------------|------------------------|
| Counties       | District Attorneys | Information Technology |
| Judicial       | Labor              | Law                    |
| Municipalities | Personnel          | Regulatory Agencies    |