



Legislative Council Staff

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Final Fiscal Note

Drafting Number: LLS 22-0638 **Date:** July 13, 2022
Prime Sponsors: Sen. Pettersen; Rodriguez **Bill Status:** Signed into Law
Rep. Herod; Sullivan **Fiscal Analyst:** Clare Pramuk | 303-866-4776
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Bill Topic: **WHISTLEBLOWER PROTECTION HEALTH & SAFETY**

Summary of Fiscal Impact:

<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 and includes appropriations totaling \$646,128 to multiple departments.

Fiscal Note Status: The fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 22-097

		Budget Year	Budget Year
		FY 2022-23	FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$646,128	\$417,843
	Cash Funds	-	\$228,499
	Centrally Appropriated	\$73,915	\$81,725
	Total Expenditures	\$720,043	\$728,067
	Total FTE	5.1 FTE	5.6 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$96,919	\$62,676

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 an employee or employer has exhausted any internal appeals with the CDLE, the final decision may be appealed to the district court.

Assumptions

While the provisions of HB 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 HB 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, after accounting for 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 \$720,043 in FY 2022-23 and by \$728,067 in FY 2023-24 and future years. Costs are paid from the General Fund in the first year, and both the General Fund and cash funds in the second and future years. These costs, which are in the CDLE and the Department of Personnel and Administration (DPA), are shown in Table 2 and described below.

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

Cost Components	FY 2022-23	FY 2023-24
Department of Labor and Employment		
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 ¹	\$73,915	\$81,725
FTE – Personal Services	4.3 FTE	4.8 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE
CDLE Subtotal	\$491,544	\$499,568
Department of Personnel and Administration		
Legal Services	\$103,499	\$103,499
Settlement Expense	\$125,000	\$125,000
FTE – Legal Services	0.6 FTE	0.6 FTE
DPA Subtotal	\$228,499	\$228,499
Total	\$720,043	\$728,067
Total FTE	5.1 FTE	5.6 FTE

¹ 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 requires 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 requires \$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, three additional 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. First-year 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 legal services required.

- *Legal services.* Assuming 350 hours per case for three additional cases, legal service costs provided by the Department of Law will increase by \$103,499 per year.
- *Settlement payments.* It is assumed that one additional case per year will involve a settlement with the state. Assuming an average settlement amount of \$125,000, costs will increase by the same amount per year.

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 was signed into law by the Governor and took effect May 31, 2022.

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 0.2 FTE; and
- \$228,499 to the Department of Personnel and Administration, of which \$103,499 is reappropriated to the Department of Law with 0.6 FTE.

State and Local Government Contacts

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