



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 22-0764 Date: June 30, 2022
Prime Sponsors: Sen. Lee; Gardner Bill Status: Signed into Law
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Bill Topic: COMMISSION ON JUDICIAL DISCIPLINE

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

The bill establishes the Office of Judicial Discipline and creates the Legislative Interim Committee on Judicial Discipline. Starting in FY 2022-23, the bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires and includes an appropriation of \$1,196,901 to the multiple state agencies.

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

Table 1
State Fiscal Impacts Under SB 22-201

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers (General Fund, Cash Funds, Net Transfer), and Other Budget Impacts (General Fund Reserve).

1 This transfer is made through an appropriation of General Fund to a cash fund. Transfers in FY 2023-24 and future years depend on the end balance of the Commission on Judicial Discipline Special Cash Fund in the previous year.
2 Total expenditures in FY 2022-23 and future years will vary depending on the amount of cash funds spent by the OJD on special investigations. Expenditures in FY 2023-24 and future years will increase by the amount OJD spends on administrative and IT support services

## **Summary of Legislation**

The bill establishes the Office of Judicial Discipline (OJD) as an independent office in the Judicial Department and creates the Legislative Interim Committee on Judicial Discipline.

**Office of Judicial Discipline.** The OJD is created to investigate and address allegations of misconduct against justices and judges in the Judicial Department. As part of its duties, the OJD must staff and support the operations of the Colorado Commission on Judicial Discipline (CCJD), including assisting with preparation of its budget and an annual report of its activities. The OJD is also required to receive requests for evaluation of judges and justices, conduct public outreach concerning the judicial discipline process and recommendations from the CCJD, and provide related education information.

The bill also:

- provides commissioners on the CCJD with legal immunity in carrying out their official duties;
- directs the Judicial Department to provide the OJD and CCJD with office space indefinitely, and administrative and technological support through June 30, 2023, at which point the OJD and CCJD will be responsible for finding alternatives to these services;
- establishes requirements for confidential information sharing between the CCJD and judicial oversight agencies, including disciplinary records of a judge or justice;
- requires complaints from Judicial Department staff, volunteers, and contractors alleging misconduct of a justice or judge be documented for as long as the subject of the complaint is a justice or judge, plus three years, along with the department's handling of the complaint;
- requires the Judicial Department to notify external complainants about the CCJD and provide the commission's contact information, and forward written or electronic materials received from the complainant to the CCJD;
- requires the CCJD to gather and maintain annual data and statistics about judicial complaints and investigations related to judicial misconduct, and to report these annually during its annual SMART Act hearings; and
- creates the continuously appropriated Commission on Judicial Discipline Special Cash Fund, appropriates \$400,000 to the fund in FY 2022-23, and requires the General Assembly to make annual appropriations so that the fund begins each fiscal year with at least \$400,000.

**Legislative Interim Committee on Judicial Discipline.** The bill creates a legislative interim committee that must meet during the interim between the 2022 and 2023 legislative sessions to study the effectiveness of Colorado's system of judicial discipline and related best practices.

## **Background**

The CCJD is composed of 10 uncompensated members, including two district court judges, two county court judges, two attorneys, and four non-lawyer/non-judge citizens. The judicial members of the CCJD are selected by the Colorado Supreme Court. The attorney and other members of the CCJD are selected by the Governor and confirmed by the Senate. The CCJD is authorized to discipline and remove judges for willful misconduct in office; willful or persistent failure to perform duties; intemperance; and violation of the Colorado Code of Judicial Conduct.

In 2020, the CCJD processed 199 requests for evaluation of judicial conduct. Of those, two cases resulted in public discipline, three cases resulted in private sanctions, and two cases resulted in dismissal with concerns. In 2021, the CCJD experienced similar case volumes with two cases resulting in public discipline, one case resulting in private sanctions, and four cases dismissed with concerns.

## **State Revenue**

Starting in FY 2022-23, state cash fund revenue will increase to the extent that expenses, attorney fees and other costs are recovered pursuant to the operations of the OJD. Some of this revenue is subject to TABOR.

## **State Transfers**

In FY 2022-23, the bill annually transfers at least \$400,000 from the General Fund to the Commission on Judicial Discipline Special Cash Fund. Transfer amounts in FY 2023-24 and future years are conditional on the ending fund balance from each prior year. The special cash fund is required to have a balance of at least \$400,000 at the start of each fiscal year.

## **State Expenditures**

The bill increases General Fund expenditures in the Judicial Department by \$743,438 in FY 2022-23 and at least \$712,638 in FY 2023-24 and future years. Expenditures may also increase by up to \$400,000 in FY 2022-23 and future years from the Commission on Judicial Discipline Special Cash Fund. The bill increases state General Fund expenditures in the Legislative Department by \$53,463 in FY 2022-23 only. Costs are detailed below and shown in Table 2.

**Office of Judicial Discipline—Judicial Department.** The Judicial Department will incur costs for staff, outreach, and training to create the new Office of Judicial Discipline.

- **Staff.** The OJD will require 4.0 FTE for an executive director, assistant, attorney, and investigator staff to investigate and address allegations of misconduct against judges and justices in the Judicial Department. The executive director is required to be paid the same salary as a district judge. Standard operating and capital outlay costs are included.
- **Record digitization.** The bill requires one-time digitization costs of \$6,000 in FY 2022-23 to digitize historical CCJD records from microfilm.
- **Support services.** The Judicial Department must provide the OJD with office space indefinitely, as well as technological and administrative support through June 30, 2023. Starting in FY 2023-24, as the OJD transitions to a new source for its accounting, information technology, human resources and payroll, and other support services, it will require additional funding for all of its operational needs, which will be requested through the annual budget process. These costs will depend on the source and breadth of services provided, and are not estimated in this fiscal note.

- **Travel, training, and outreach.** The bill requires the new OJD to conduct public outreach concerning the judicial discipline process and recommendations from the CCJD, and provide related education information and training throughout the state. The fiscal note assumes the office will require \$50,000 for these purposes annually, including informational and educational materials, and making materials available on the web.
- **Legal services.** The OJD will require 900 hours of legal services in FY 2022-23 and FY 2023-24 for general counsel and advice on implementation, administration and ongoing development of office processes. Legal services are provided by the Department of Law at a rate of \$98.57 per hour. This general counsel will reduce to 450 hours in FY 2024-25 and out years.

**Table 2  
Expenditures Under SB 22-201**

<b>Cost Components</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Office of Judicial Discipline</b>		
Personal Services	\$484,907	\$484,907
Operating Expenses	\$9,800	\$3,800
Capital Outlay Costs	\$26,400	\$1,600
Record Digitization	\$6,000	-
Support Services	-	not determined
Special Investigations	up to \$400,000	up to \$400,000
Travel, Training and Outreach	\$50,000	\$50,000
Legal Services	\$88,713	\$88,713
Centrally Appropriated Costs <sup>1</sup>	\$83,618	\$83,618
FTE – Personal Services	4.0 FTE	4.0 FTE
FTE – Legal Services	0.5 FTE	0.5 FTE
<b>OJD Subtotal</b>	<b>\$1,143,438</b>	<b>\$1,112,638</b>
<b>Legislative Department</b>		
Personal Services	\$37,156	-
Operating Expenses	\$675	-
Capital Outlay Costs	\$6,200	-
Member Travel and Per Diem	\$9,432	-
Centrally Appropriated Costs <sup>1</sup>	\$8,742	-
FTE – Personal Services	0.5 FTE	-
<b>Legislative Subtotal</b>	<b>\$62,205</b>	<b>-</b>
<b>Total</b>	<b>\$1,205,643</b>	<b>at least \$1,112,638</b>
<b>Total FTE</b>	<b>5.0 FTE</b>	<b>4.5 FTE</b>

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

**Office of Judicial Discipline—Special Investigations.** Starting in FY 2022-23, the OJD will have access to at least \$400,000 each year for special investigations. Use of these funds will increase to the extent that the OJD hires attorneys for special investigations. These costs are expended from the Commission on Judicial Discipline Special Cash Fund, which is continuously appropriated to the OJD.

**Judicial Department—complaints, centralized support and disciplinary rule changes.** The bill requires the Judicial Department to document and share complaints of misconduct concerning judges and justices with the OJD within 35 days of receiving a complaint from Judicial Department staff. There are existing Judicial Department processes that align with most requirements in the bill, therefore the fiscal note assumes any increased workload can be accomplished using existing appropriations. If additional resources are required to comply with these requirements, they will be requested through the annual budget process.

The bill requires the Judicial Department to provide accounting, human resources, and IT support to the OJD until June 30, 2023 as it transitions to other sources for these services. This support can be accomplished using existing appropriations.

When the Supreme Court adopts rules, guidelines, and procedures related to judicial discipline, they must provide the OJD with an opportunity to object and engage in efforts to resolve any differences. The Judicial Department must post each new rule, guideline and procedure on their website, allow for public comment and include an opportunity for the public to address the Supreme Court. These costs are indeterminate, and the fiscal note assumes the Judicial Department will address any additional costs through the annual budget process as needed.

**Legislative Department.** The standard costs for Legislative Council Staff and the Office of Legislative Legal Services to staff an interim committee includes 0.3 FTE of a researcher, 0.1 FTE of an attorney, and 0.1 FTE of a legislative editor. Standard operating and capital outlay costs are included. Because staff are part-time, the General Fund pay date shift has not been applied.

- **Member reimbursements.** Reimbursement for judicial discipline committee members assumes 5 meetings with per diem of \$111.82 and \$124.00 travel for 8 legislative members.

**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.

## **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, which will decrease the amount of General Fund available for other purposes.

## **Effective Date**

This bill was signed into law by the Governor and took effect on May 20, 2022.

## **State Appropriations**

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

- \$743,438 to the Judicial Department, including \$659,820 in OJD costs and \$83,618 in employee insurance and supplemental retirement payments, with 4.0 FTE; of which, \$88,713 is reappropriated to the Department of Law with 0.5 FTE;
- \$400,000 to the Commission on Judicial Discipline Special Cash fund; and
- \$53,463 to the Legislative Department with 0.5 FTE, of which \$24,456 is to Legislative Council Staff, \$19,574 is to the Office of Legislative Legal Services, and \$9,433 is to the General Assembly.

In addition, the bill continuously appropriates money from the Commission on Judicial Discipline Special Cash Fund to the Commission on Judicial Discipline, therefore no appropriation is required.

## **State and Local Government Contacts**

Counties	District Attorneys
Information Technology	Judicial
Law	Legislative Council Staff
Office of Legislative Legal Services	State Auditor
Treasury	