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Fiscal Note

Drafting Number: LLS 22-0794
Prime Sponsors: Rep. Williams

Date: February 28, 2022
Bill Status: House Judiciary
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Bill Topic: **PROHIBIT DISCRIMINATORY PRACTICES IN SCHOOLS**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> School District

The bill prohibits teaching or using instructional materials at public schools that promote discrimination. The bill increases state revenue and expenditures beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$456,147 to the Colorado Department of Education.

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

Table 1
State Fiscal Impacts Under HB 22-1206

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	State Education Fund	\$250,000	\$250,000
Expenditures	General Fund	\$456,147	\$555,842
	Centrally Appropriated	\$82,583	\$108,775
	Total Expenditures	\$538,730	\$664,617
	Total FTE	4.6 FTE	6.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$68,422	\$83,376

Summary of Legislation

The bill prohibits teaching or using instructional materials in public schools that promote discrimination. Public schools are prohibited from employing certain discriminatory practices based on a student's, a student's family, or a teacher's race or ethnicity. If the Commissioner of Education finds that a school or district knowingly violates the prohibition, the school or district must pay a fine of \$25,000 to the State Education Fund.

An employee, or a parent or guardian of a minor student, may bring a civil suit against a public school, a Board of Cooperative Educational Services, or the state Charter School Institute for injuries suffered as a result of being subjected to a violation of the prohibition. If a civil action is brought for these injuries, the bill waives sovereign immunity for public schools.

State Revenue

Based on the expectation of up to 10 schools or school districts paying the \$25,000 fine for violations, state revenue is increased by \$250,000 in both FY 2022-23 and FY 2023-24. See State Expenditures section. This fiscal note assumes that this revenue is not subject to TABOR.

State Expenditures

The bill increases state expenditures in the Colorado Department of Education (CDE) by \$538,730 in FY 2022-23, and by \$664,617 in FY 2023-24 from the General Fund. Personal services costs are prorated in FY 2022-23 for the General Fund pay date shift and a September 1 effective date. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under HB 22-1206

	FY 2022-23	FY 2023-24
Colorado Department of Education		
Personal Services	\$406,697	\$542,242
Operating Expenses	\$6,750	\$8,100
Capital Outlay Costs	\$37,200	-
School Fine Accounting	\$5,500	\$5,500
Centrally Appropriated Costs ¹	\$82,583	\$108,775
Total Cost	\$538,730	\$664,617
Total FTE	4.6 FTE	6.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

CDE Personal Services. The CDE must create a complaint investigation procedure for parents, guardians, and teachers to report violations of the bill, and a formalized hearing process where evidence can be presented and a determination can be made of a violation. The complaint intake and investigative procedures require new staff to process cases, conduct fact finding activities, determine the veracity of complaints, develop reports and summary findings, and make recommendations to the Commissioner of Education. A program director is required to oversee and manage investigations and the processing of school fines.

The CDE currently maintains investigative teams for oversight responsibilities such as complaints under the Individuals with Disabilities in Education Act, and disciplinary actions for educator licensing. Based on the time and staff needed to conduct existing investigations, it is estimated that each new complaint will require up to 50 hours to investigate, 10 hours to review findings, and 8 hours to produce an incident report, resulting in a total of 68 hours per complaint.

There are currently 2,956 public schools and 178 school districts in the state. Assuming the department receives complaints originating from 5 percent of schools and districts, CDE will investigate up to 157 complaints, each estimated to require 68 hours of work, resulting in about 5.0 full time investigators, in addition to a program manager.

CDE School fine accounting. The fiscal note assumes that up to 7 percent, or about 10 claims will result in a violation and require a fine paid by the school or district to the State Education Fund. The School Finance and Accounting Units at CDE require contract staff for tracking, invoicing, and processing these payments, estimated at 44 hours and \$125 per hour.

Department of Law. The CDE will require ongoing legal services from the Department of Law to assist with rules and provide legal counsel to the Commissioner in adjudicating complaints. If legal services exceed 100 hours in either fiscal year, the department will seek additional appropriations via the annual budget process.

Judicial Department. Parents or teachers may file a civil action with the courts for damages as an alternative to (or in addition to) processing complaints through the Commissioner of Education. Because of plaintiff costs, this fiscal note assumes civil case will be less frequent than adjudications through the CDE, and any increase in case load in the Judicial Department will be minimal and not require additional appropriations.

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 \$68,422 in FY 2022-23, and by \$83,376 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

School District

The bill requires that school districts prohibit the teaching or use of instructional materials promoting discrimination. This fiscal note assumes a high degree of compliance by districts and that policies and training will be provided to teachers in order to ensure compliance; however, some number of complaints will occur, increasing school district costs for legal services to respond to state investigations. A limited number of districts will also be compelled to pay a fine for confirmed violations. Some other limited number of schools and district must respond as defendants to any civil action brought against them, increasing workload and legal expenses.

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 2022-23, the bill requires a General Fund appropriation of \$456,147 to the Colorado Department of Education, and 4.6 FTE.

State and Local Government Contacts

Education
Law

Judicial
School Districts