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Fiscal Note

Drafting Number:	LLS 22-0770	Date:	April 26, 2022
Prime Sponsors:	Sen. Fenberg; Gardner Rep. Tipper	Bill Status:	Senate SVMA
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Bill Topic: **PROTECTIONS FOR DONOR-CONCEIVED PERSONS & FAMILIES**

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

The bill establishes new rules and regulations concerning donor-conceived persons. The bill increases state revenue on an ongoing basis starting in FY 2024-25, and increases state expenditures on an ongoing basis starting in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$251,066 to the Department of Public Health and Environment.

Fiscal Note Status: The fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under SB 22-224

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$251,066	\$183,846
	Centrally Appropriated	\$18,532	\$31,754
	Total Expenditures	\$269,598	\$215,600
	Total FTE	1.4 FTE	2.2 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$37,660	\$27,577

Summary of Legislation

The bill requires the licensing of gamete and fertility clinics starting July 1, 2025. It also defines several terms and establishes regulations around donor-conceived persons (DCP), their families, and for gamete and fertility clinics. Specifically, the bill requires that:

- gamete donors agree and consent to the release of identifying information and medical history when any DCP using their gametes turns 18 year of age;
- gamete banks and fertility clinics disclose donor records to interested DCPs after they turn 18 years of age;
- gamete banks and fertility clinics disclose non-identifying medical information about a donor, or contact information for other banks from which gametes or embryo used in the assisted reproduction came from, to the parent or guardian of a DCP if they are under the age of 18;
- gamete banks and fertility clinics maintain records and take measures to ensure donors are used to establish no more than 10 families in and out of the state;
- gamete donors be at least 21 years of age;
- gamete banks and fertility clinics request regular contact information and medical history updates from donors;
- gamete bank and fertility clinic licenses be issued on an annual basis starting on July 1, 2025, and that ongoing licensure be dependent on compliance with rules and regulations established by the bill; and
- gamete donors and recipients be provided with written materials related to DCPs and gamete donation.

Requirements concerning collection and sharing of donor information and medical history applies to gametes collected and embryos received by a regulated institution in Colorado on or after July 1, 2024. The sharing of information about other gamete banks applies to gamete or embryos received by a Colorado gamete bank or fertility clinic after January 1, 2023.

Licensure of gamete banks and fertility clinics. The Colorado State Board of Health and the Department of Public Health and Environment (CDPHE) are responsible for ensuring compliance with the requirements of the bill and prioritizing the best interest of DCPs and their families. The CDPHE must establish rules for gamete banks and fertility clinics, as well as written materials for donors and recipient parents by July 1, 2024. Gamete banks and fertility clinics must obtain a license from the CDPHE on or after July 1, 2025 to operate in Colorado. The bill creates the Donor Gamete Bank and Fertility Clinic Fund, which is annually appropriated to the CDPHE by the General Assembly, and requires the CDPHE to establish license fees that are deposited into the fund. The CDPHE may assess civil penalties for gamete banks and fertility clinics that are operating out of compliance with these new rules and regulations.

Background

According to the OVU Surrogacy and Fertility Network, there are 42 fertility clinics in Colorado. According to a national directory of sperm cryobanks, there are 4 gamete banks in Colorado.

State Revenue

The bill increase state cash fund revenue to the CDPHE by around \$200,000 per year starting in FY 2024-25. Revenue impacts are described below.

Fee impact on gamete banks and fertility clinics. Starting on July 1, 2025, gamete banks and fertility clinics must be licensed and regulated by the CDPHE. It is assumed that license applications and fee revenue will be received in FY 2024-25 prior to this deadline. The estimated amount of fee revenue is based on the CDPHE costs, as described in the State Expenditure section below. Actual fees will be set administratively by the CDPHE based on cash fund balance, program costs, and the number of license applicants. These fees are subject to TABOR. Assuming around 45 licensed facilities, an annual fee of about \$5,000 would be required to cover the costs of regulation.

Fines. Fines assessed on gamete banks and fertility clinics that violate the new DCP rules and regulations are credited to the General Fund. The fiscal note assumes that most facilities will comply with the new rules and regulations, and the revenue from fines will be minimal. These fines are subject to TABOR.

State Expenditures

The bill increases state expenditures in the CDPHE by \$269,598 in FY 2022-23 and \$215,600 in FY 2023-24 from the General Fund. Future-year costs will be paid from Donor Gamete Bank and Fertility Clinic Fund once fee revenue has been established. Expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under SB 22-224**

	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$72,618	\$130,673
Operating Expenses	\$1,620	\$2,700
Capital Outlay Costs	\$12,400	-
DCP Educational Materials	\$75,000	-
Information Technology Updates	\$50,000	-
Legal Services	\$39,428	\$39,428
Vehicle Lease	-	\$6,879
Vehicle Operating	-	\$4,166
Centrally Appropriated Costs ¹	\$18,532	\$31,754
FTE - Personal Services	1.2 FTE	2.0 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE
Total Cost	\$269,598	\$215,600
Total FTE	1.4 FTE	2.2 FTE

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

Department of Public Health and Environment. The CDPHE will incur costs for staff, materials, computer programming, and legal services to establish rules and regulations concerning DCPs, ensure compliance with new rules, and process gamete bank and fertilization clinic licenses.

- **Facility investigation.** The CDPHE requires 1.2 FTE in FY 2022-23 and 2.0 FTE in future years to investigate and review applications of an estimated 46 gamete banks and fertilization clinics to ensure compliance with the new requirements before issuing a license. If violations are found during any inspections, the CDPHE must conduct follow-up inspections to ensure implementation of a corrective action plan. Standard operating and capital outlay costs are included for this staff, along with leasing and operating costs for one vehicle starting in FY 2023-24. The fiscal note assumes a September 1 start date, and first year costs reflect the General Fund paydate shift.
- **DCP educational materials.** The CDPHE is required to produce educational materials that inform donors and recipients about various subjects related to DCPs and gamete donation. The fiscal note estimates that creation and distribution of these materials, including online, will cost \$75,000 in FY 2022-23 only.
- **Legal services.** The CDPHE will have around \$40,000 in costs per year for legal services, provided by the Department of Law at the standard rate of \$98.57 per hour. Initially, legal services are required for rulemaking and program set-up. In future years, legal services will be required for complaints, investigations, and any disciplinary actions involving licenses or violations of terms of the bill.
- **Information technology updates.** To facilitate data tracking and licensing of gamete banks and fertility clinics, the CDPHE will have costs of about \$50,000 in FY 2022-23 only for updates to its facility licensing systems.
- **Technical assistance and education.** The CDPHE may use fees to provide technical assistance and education to gamete banks and the public concerning compliance with the new DCP rules and regulations. The CDPHE may contract with private entities to assist with this work. Expenditures in the CDPHE will increase by an indeterminate amount to the extent that it engages in these activities.

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

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 General Fund appropriations of \$251,066 to the Department of Public Health and Environment, and 1.2 FTE. Of this amount, \$39,428 is reappropriated to the Department of Law for legal services, with an additional 0.2 FTE.

State and Local Government Contacts

Information Technology
Personnel
Treasury

Judicial
Public Health and Environment

Law
Regulatory Agencies