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Final Fiscal Note

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Prime Sponsors: Sen. Fenberg; Gardner Bill Status: Signed into Law
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Bill Topic: PROTECTIONS FOR DONOR-CONCEIVED PERSONS & FAMILIES

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [] Local Government
[] State Transfer [] 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 and includes an appropriation of \$192,293 to the Department of Public Health and Environment.

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

Table 1
State Fiscal Impacts Under SB 22-224

Table with 5 columns: Category, Sub-category, Budget Year FY 2022-23, Out Year FY 2023-24, Out Year FY 2024-25. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve, TABOR Refund).

Summary of Legislation

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

- gamete and embryo donors agree and consent to the release of identifying information and medical history when any DCP using their gametes or embryo turns 18 year of age;
- gamete agencies, gamete banks, and fertility clinics disclose donor records to interested DCPs after they turn 18 years of age;
- gamete agencies, 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 agencies, gamete banks, and fertility clinics maintain records and take measures to ensure donors are used to establish no more than 25 families in and out of the state;
- gamete donors be at least 21 years of age;
- gamete agencies, gamete banks, and fertility clinics request regular contact information and medical history updates from donors;
- gamete agency, gamete bank, and fertility clinic licenses be issued on an annual basis starting on January 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 January 1, 2025. The sharing of information about other gamete banks applies to gamete or embryos received by a Colorado gamete bank or fertility clinic after July 1, 2023.

Licensure of gamete banks and fertility clinics. The 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 January 1, 2025. Gamete banks and fertility clinics must obtain a license from the CDPHE on or after January 1, 2025 to operate in Colorado. The bill creates the Gamete Agency, 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 increases state cash fund revenue to the CDPHE by about \$22,500 per year starting in FY 2024-25. Revenue impacts are described below.

Fee impact on gamete banks and fertility clinics. Starting on January 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 maximum allowed by the bill. Actual fees will be set administratively by the CDPHE. These fees will be subject to annual adjustment for inflation and are subject to TABOR.

**Table 2
Fee Impact on Gamete Banks and Fertility Clinics**

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2024-45	License Fee	\$500	45	\$22,500

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 \$217,534 in FY 2022-23 and \$356,970 in FY 2023-24. Costs in the first two years are paid from the General Fund; costs in FY 2024-25 and beyond will be partially paid from the Gamete Agency, Gamete Bank, and Fertility Clinic Fund once fee revenue has been established. Expenditures are shown in Table 3 and detailed below.

**Table 3
Expenditures Under SB 22-224**

	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$102,733	\$262,920
Operating Expenses	\$2,160	\$5,400
Capital Outlay Costs	\$12,400	-
DCP Educational Materials	\$75,000	-
Travel Expenses	-	\$25,000
Centrally Appropriated Costs ¹	\$25,241	\$63,650
Total Cost	\$217,534	\$356,970
Total FTE	1.6 FTE	4.0 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, educational materials, establishing rules and regulations concerning DCPs, ensuring compliance with new rules, and processing gamete bank and fertilization clinic licenses.

- ***Program administration.*** The CDPHE requires 2.0 FTE to implement and manage a program to regulate gamete banks and fertility clinics in Colorado. A unit supervisor will be responsible for managing program operations, including budgeting and serving as a lead on rulemaking efforts. A program assistant will serve as a point of contact for program inquiries, process license applications and program documents, support inspection scheduling, and schedule meetings for rulemaking purposes. Standard operating and capital outlay costs are included for this staff. The fiscal note assumes a September 1 start date, and first year costs reflect the General Fund pay date shift.
- ***Facility investigation.*** Starting in FY 2023-24, the CDPHE requires 2.0 FTE to investigate gamete banks and fertilization clinics to ensure compliance with the new requirements. 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 costs for travel.
- ***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.
- ***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.

TABOR refunds. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue in years in which there is a TABOR surplus will increase the TABOR refund obligation, which will reduce the amount of General Fund otherwise available to spend or save. In years when revenue subject to TABOR falls below the Referendum C cap, the bill will not impact the amount of General Fund revenue available for spending or saving.

Effective Date

The bill was signed into law by the Governor on May 31, 2022, and takes effect on August 9, 2022, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires and includes General Fund appropriations of \$192,293 to the Department of Public Health and Environment, and 1.6 FTE.

Departmental Difference

The CDPHE estimates that it requires \$757,344 and 7.3 FTE in FY 2022-23 to establish the new regulatory program required by the bill, and to ensure annual compliance by gamete agencies, gamete banks, and fertility clinics with new licensing requirements. The CDPHE staffing estimate includes 1.0 FTE for a unit supervisor, 1.0 FTE program aide, 4.0 FTE investigative staff to conduct two annual on-site investigations of each facility, 1.0 FTE mental health professional to develop and distribute educational written materials and consult with facilities on an ongoing basis, and 0.3 FTE administrative staff to assess and enforce penalties for violations of the new regulations. The CDPHE also estimates \$50,000 annually for investigator travel expenses, and \$100,000 annually to update and maintain educational materials.

The fiscal note does not include all of these costs for several reasons. First, this analysis assumes that CDPHE will require at least one program year, FY 2022-23, to establish program rules and licensing requirements, and that investigations concerning licensing will not be required until FY 2023-24 at the earliest. In addition, the fiscal note assumes that only 2.0 FTE investigative staff will be required, and that 1.0 FTE program aide is sufficient to manage various administrative tasks concerning communication and enforcement. Lastly, the fiscal note assumes that CDPHE will only require \$25,000 annually for travel expenses starting in FY 2023-24, that development of educational materials will require one-time costs of \$75,000 in FY 2022-23, and that CDPHE will use contractors to provide ongoing technical assistance to facilities using available revenue from licensing fees starting in FY 2024-25.

State and Local Government Contacts

Information Technology
Personnel
Treasury

Judicial
Public Health and Environment

Law
Regulatory Agencies