



**Colorado  
Legislative  
Council  
Staff**

**HB16-1078**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated February 2, 2016)

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0755

**Date:** March 2, 2016

**Prime Sponsor(s):** Rep. Kagan

**Bill Status:** House Appropriations

**Fiscal Analyst:** Damion Pechota (303-866-4789)

**BILL TOPIC:** LOCAL GOVERNMENT EMPLOYEE WHISTLEBLOWER PROTECTION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	<b><u>\$29,120</u></b>	<b><u>\$29,120</u></b>
<b>State Expenditures</b>	<b><u>\$170,468</u></b>	<b><u>\$173,767</u></b>
Cash Funds	146,294	149,146
Centrally Appropriated Costs	24,174	24,767
<b>TABOR Impact</b>	\$29,120	\$29,120
<b>FTE Position Change</b>	1.4 FTE	1.4 FTE
<b>Appropriation Required:</b> \$146,294 - Department of Personnel and Administration (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing state expenditure increase.		

**Note:** This revised fiscal note is provided to reflect updated information.

**Summary of Legislation**

The bill prohibits a local education provider, county, or municipality (local government employer) from taking any disciplinary action against an employee on account of the employee's statements about the local government employer that the employee believes to show:

- a violation of state, federal, or local government policy;
- a waste or misuse of public funds;
- fraud;
- an abuse of authority;
- mismanagement; or
- a danger to the health or safety of students, employees, or the public.

The prohibition of disciplinary action does not apply to an employee who knowingly discloses false information or discloses information from a closed public record, or that is confidential under state law or federal law.

In addition, the bill establishes deadlines and other requirements for an employee to file a complaint with the Office of Administrative Courts in the Department of Personnel and Administration (DPA) for referral to an administrative law judge (judge). If the employee prevails in his or her complaint, the judge may award damages and other relief deemed appropriate. If the judge determines that the local government employer did not violate the law by imposing disciplinary action, the employee may bring a civil action in the district court.

### **State Revenue**

The DPA charges \$182 per hour for administrative law judge services. The average time of service for an administrative law judge is 16 hours per case. Assuming 10 whistleblower retaliation cases are heard each year, the bill will result in a \$29,120 increase in revenue each year, credited to the Administrative Hearings Cash Fund.

### **TABOR Impact**

This bill increases state revenue, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

### **State Expenditures**

**The bill increases costs in the DPA by at least \$170,468 and 1.4 FTE in FY 2016-17 and \$173,913 and 1.4 FTE in 2017-18.** These costs are summarized in Table 1 and discussed below.

<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$134,839	\$147,097
FTE	1.4	1.4
Operating and Capital Costs	\$11,455	\$2,049
Centrally Appropriated Costs*	\$24,174	\$24,767
<b>TOTAL</b>	<b>\$170,468</b>	<b>\$173,913</b>

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

**Department of Personnel and Administration.** The fiscal note assumes that whistleblower cases are relatively uncommon and that legitimate grounds exist for disclosures in most affected cases. While the bill may encourage some additional disclosures relative to current law, the overall number of filings with the DPA will remain low. The bill only applies to whistleblower individuals who have been subject to discipline and who wish to file a complaint. Due to the low number of whistleblower cases, the number of complaints for disciplinary action will likely be even lower. As a result, the fiscal note assumes 10 cases per year filed with the Office of Administrative Courts.

If 10 complaints are filed each year, the result will be 1.3 FTE for administrative law judges and 0.1 FTE for technicians. Therefore, personnel costs in the DPA will increase by \$134,839 in FY 2016-17 and \$147,097 for FY 2017-18.

**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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$11,586	\$11,586
Supplemental Employee Retirement Payments	\$12,588	\$13,181
<b>TOTAL</b>	<b>\$24,174</b>	<b>\$24,767</b>

**Judicial Department.** The bill will have a minimal increase in workload for district courts. The number of claims filed with district courts is expected to be low, and all workload can be absorbed with existing appropriations.

### Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

### Departmental Difference

The DPA estimated costs of about \$3.3 million and 27.4 FTE per year. This estimate assumed 0.5 percent of all employees will file complaints each year, resulting in 2,770 cases per year with administrative law judges. The fiscal note does not include this estimate because the bill only applies to disciplinary actions for whistleblower cases which are assumed to be equal to 10 per year. The fiscal note also assumes that if caseload warrants additional appropriations, this can be adjusted through the annual budget process.

### State Appropriations

In FY 2016-17, the Department of Personnel and Administration requires an appropriation of \$146,294 for the Administrative Hearings Cash Fund and an allocation of 1.4 FTE.

### State and Local Government Contacts

Colorado Counties  
Local Affairs

Colorado Municipal League  
Personnel

Education