



**Colorado
Legislative
Council
Staff**

HB16-1078

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 2, 2016)

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

Drafting Number: LLS 16-0755

Date: March 11, 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
State Revenue	<u>up to \$29,120</u>	<u>up to \$29,120</u>
Cash Funds	up to 29,120	up to 29,120
State Expenditures	Potential increase. See State Expenditures section.	
Cash Funds		
TABOR Impact	up to \$29,120	up to \$29,120
Appropriation Required: None.		
Future Year Impacts: Ongoing revenue and potential 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 disclosure 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. 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.

Assumptions

The fiscal note assumes that whistleblower cases are relatively uncommon and that legitimate grounds exist for disclosures in most cases. While the bill may encourage some additional disclosures relative to current law, the bill only applies to individuals who have been subject to discipline because of a disclosure and who wish to file a complaint. As a result, the fiscal note assumes less than 10 complaints per year will be filed with the Office of Administrative Courts in DPA.

State Revenue

The bill is expected to increase state cash fund revenue up to \$29,120 per year beginning in FY 2016-17. The DPA charges \$182 per hour for administrative law judge services. The average amount of time an administrative law judge spends on a case is 16 hours. Assuming that at least 10 whistleblower retaliation cases are heard each year, the bill will result in a revenue increase up to \$29,120 each year, credited to the Administrative Hearings Cash Fund in DPA.

TABOR Impact

This bill increases state cash fund revenue, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

The bill will increase workload in the DPA and the Judicial Department. These increases, which are described below, are expected to be minimal and require no change in appropriations.

Department of Personnel and Administration. Local governments and school districts are not included in the state government system. As a result, these cases will result in new casework for administrative law judges in the Office of Administrative Courts in DPA. The fiscal note assumes 10 filings per year at 16 hours per case, which can be accomplished within existing appropriations. If caseload warrants additional appropriations, the fiscal note assumes this will be addressed through the annual budget process.

Judicial Department. To the extent that an employee is unsuccessful in the complaint process under the bill, he or she may bring a civil action in district court. Because the number of complaints is expected to be less than 10 per year, even fewer actions are expected to be filed with district courts. Therefore, this workload can be accomplished within existing appropriations.

Local Government and School District Impact

To the extent that local government employers have employee complaints filed against them in the Office of Administrative Courts, workload and costs will increase for those entities to respond to the complaint.

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 the state's 553,900 local government 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 those complaints that resulted in disciplinary action, which are assumed to be equal to 10 per year.

State and Local Government Contacts

Counties	Education	Local Affairs
Municipalities	Personnel and Administration	

Research Note Available

An LCS Research Note for HB16-1078 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.