



Legislative  
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**HB 20-1287**

# FINAL FISCAL NOTE

**Drafting Number:** LLS 20-0723  
**Prime Sponsors:** Rep. Soper  
Sen. Marble; Lee

**Date:** August 19, 2020  
**Bill Status:** Postponed Indefinitely  
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**Bill Topic:** **COLORADO RIGHTS ACT**

**Summary of Fiscal Impact:**

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

The bill would have allowed a person who has a right, privilege, or immunity secured under the Colorado Constitution to bring a civil action for any violations. The bill would have increased state revenue and state and local government expenditures on an ongoing basis.

**Appropriation Summary:** In FY 2020-21, the bill required an appropriation of \$2.0 million to several state agencies. See State Appropriations Section.

**Fiscal Note Status:** The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1**  
**State Fiscal Impacts Under HB 20-1287**

		<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$1,961,440	\$3,145,766
	Total FTE	10.3 FTE	16.5 FTE
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## Summary of Legislation

The bill allows a person who has a right, privilege, or immunity secured under the Colorado Constitution to bring a civil action for violation if injured. The Attorney General may also bring a civil action under the same circumstances. A prevailing plaintiff is entitled to attorney fees and costs. If the judgement is for the defendant, the defendant is entitled to attorney fees and costs only if the courts find that the claim is frivolous.

Statutory immunities and limitations do not apply to claims under this bill, except limitations related to prisoner-related lawsuits. The bill requires a public entity, including the state and local entities, to indemnify its employees in a claim unless the employee is convicted of a crime related to the claim.

## Background and Assumptions

Federal law provides persons an avenue for redress for federal constitutional violations against government actions committed under the color of law, commonly referred to as Section 1983 claims. In 2019, there were approximately 65 Section 1983 claims filed in federal court. This fiscal note assumes that a similar number of cases will be filed in state courts. Also, under current law, prisoner litigation is limited based on provisions in the federal Prisoner Litigation Reform Act. The fiscal note assumes that the bill will increase prisoner-related cases by approximately 70 percent, or 120 cases in FY 2020-21.

In addition, in 2019, the State Claims Board approved 11 non-employment claim settlements for a total of \$4.2 million. The Department of Personnel and Administration (DPA) also has reserve funding for approximately 62 prisoner-related claims each year, totally \$1.2 million in 2019.

## State Revenue

The bill may increase civil case filings in the Judicial Department. For informational purposes, the current civil case filing fee is \$235. In addition, to the extent that the state is awarded reasonable costs and attorneys fees for frivolous claims, revenue will increase. Fee revenue is subject to TABOR; however, judicial awards are not subject to TABOR.

## State Expenditures

The bill will increase state General Fund expenditures by \$2.0 million and 10.3 FTE in FY 2020-21 and \$3.1 million and 16.5 FTE in FY 2021-22. The bill will also increase expenditures and workload for the DPA and the Judicial Department. These costs are shown in Table 2 and discussed below.

**Table 2**  
**Expenditures Under HB 20-1287**

	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Department of Law</b>		
Legal Services - State Risk Management	\$784,576	\$1,569,152
Legal Services - Prisoner-related Cases	\$399,750	\$799,500
Legal Services - Other Claims	\$777,114	\$777,114
FTE – Legal Services	10.3 FTE	16.5 FTE
<b>Total Cost</b>	<b>\$1,961,440</b>	<b>\$3,145,766</b>
<b>Total FTE</b>	<b>10.3 FTE</b>	<b>16.5 FTE</b>

**Department of Law.** The Department of Law requires additional legal service hours to handle the increase in claims against the state and to handle prisoner-related cases. These impacts are described below.

- *Risk management.* The bill increases expenditures in the Department of Law to handle an additional 40 cases related to claims against rights under the Colorado Constitution. Similar cases require 460 hours of work over an average of 2.5 years. Legal service hours are calculated at a rate of \$106.60 per hour for an additional 7,360 hours in legal services for \$784,576 and 4.1 FTE in FY 2020-21 and 14,720 hours in legal services for \$1,569,152 and 8.2 FTE in FY 2021-22.
- *Additional civil right and tort claims.* The bill will increase workload for the Department of Law's Tort Unit handle an increase in workload. Legal service hours are calculated at a rate of \$106.60 per hour for an additional 7,290 hours in workload for \$777,114 and 4.1 FTE beginning in FY 2021-22.

**Department of Corrections.** The bill increases expenditures in the Department of Corrections for legal services in an additional 120 cases. Legal services will be provided by the Department of Law and, on average, require 62.5 hours of work. Legal service hours are calculated at a rate of \$106.60 per hour for an additional 3,750 hours in legal services for \$399,750 and 2.1 FTE in FY 2020-21 and 7,500 in legal service for \$799,500 and 4.2 FTE in FY 2021-22. In addition, current law and Department of Corrections regulations require that inmates are allowed reasonable, but not unlimited access, to law libraries, loan materials, and/or law library personnel consistent with applicable statutes of limitations. Any increase in cases may result in the need for additional law library resources and this fiscal note assumes it will be addressed through the annual budget process.

**Department of Personnel and Administration.** The bill will increase expenditures and workload for DPA to handle settlement claims and assess the state's level of exposure for risk management purposes. Due to the case-by-case nature of the specific claims, costs to the state are indeterminate. The fiscal note assumes once the increase in cases and settlement claims is known, the DPA will request additional funding through the annual budget process. This fiscal note assumes that while the number of prisoner-related cases will increase, it may not lead an increase in claim costs due to the limitations on prisoner-related lawsuits preserved under the bill.

**Judicial Department.** The bill will increase workload for the trial courts in the Judicial Department to handle the increase in cases. This workload increase can be accomplished within existing resources. Should an increase in cases require additional resources, this fiscal note assumes it will be addressed through the annual budget process.

**TABOR refunds.** The bill is expected to increase state General Fund obligations for TABOR refunds by in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

## Local Government

The bill will increase legal costs and liability insurance premiums for local governments, school district, special districts, and statutory public entities. These costs will vary by jurisdiction and have not been estimated.

## Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on March 5, 2020.

## State Appropriations

In FY 2020-21, the bill required a General Fund appropriation of \$1,561,690 to the Department of Law, and 8.2 FTE. The bill also required a General Fund appropriation of \$399,750 to the Department of Corrections, of which the whole amount is reappropriated to the Department of Law with an additional 2.1 FTE

## Departmental Difference

The Department of Law estimates total costs for legal services of \$3.0 million and 15.4 FTE to implement this bill. Of the total amount, the Department of Law estimates \$997,776 and 5.2 FTE is needed in order to handle additional claims related to the State Personnel Board. This fiscal note assumes that state personnel matters will continue to be handled by the State Personnel Board and that any increase in state personnel cases arising under this bill will be addressed through the annual budget process.

In addition, the DPA estimates \$5,922,817 to handle both tort and prisoner litigation claims and settlements. The fiscal note assumes once the actual increase in cases and settlement claims is known and with the limitation on prisoner-related lawsuits preserved in the bill, the DPA will request additional funding through the annual budget process.

**State and Local Government Contacts**

Corrections  
Municipalities  
Special Districts

Judicial  
Personnel and Administration

Law  
School Districts