



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 22-0764 Date: April 13, 2022
Prime Sponsors: Sen. Lee; Gardner Bill Status: Senate Judiciary
Rep. Weissman Fiscal Analyst: Will Clark | 303-866-4720
Will.Clark@state.co.us

Bill Topic: COMMISSION ON JUDICIAL DISCIPLINE

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [] Local Government
[X] State Transfer [] Statutory Public Entity

The bill establishes the Office of Judicial Discipline and creates the Legislative Interim Committee on Judicial Discipline. Starting in FY 2022-23, the bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$613,250 to multiple agencies. In addition, the bill continuously appropriates money from the Commission on Judicial Discipline Special Cash Fund to the Commission on Judicial Discipline.

Fiscal Note Status: This fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under SB 22-201

Table with 3 columns: Category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

1 This transfer is made through an appropriation of General Fund to a cash fund. While the bill specifies a \$400,000 transfer, the fiscal note assumes the General Assembly will transfer the amounts required to cover the costs of the Office of Judicial Discipline.

Summary of Legislation

The bill establishes the Office of Judicial Discipline (OJD) as an independent office in the Judicial Department and creates the Legislative Interim Committee on Judicial Discipline.

Office of Judicial Discipline. The OJD is created to investigate and address allegations of misconduct against justices and judges in the Judicial Department. As part of its duties, the OJD must staff and support the operations of the Colorado Commission on Judicial Discipline (CCJD), including assisting with preparation of its budget and an annual report of its activities. The OJD is also required to receive requests for evaluation of judges and justices, conduct public outreach concerning the judicial discipline process and recommendations from the CCJD, and provide related education information.

The bill also:

- provides commissioners on the CCJD with legal immunity in carrying out their official duties;
- directs the Judicial Department to provide the OJD and CCJD with office space and administrative and technological support;
- establishes requirements for confidential information sharing between the CCJD and judicial oversight agencies, including disciplinary records of a judge or justice;
- requires complaints or facts about potential misconduct of a justice or judge be documented for as long as the subject of the complaint is a justice or judge, plus three years, along with the department's handling of the complaint;
- requires the CCJD to gather and maintain annual data and statistics about judicial complaints and investigations related to judicial misconduct, and to report these annually during its annual SMART Act hearings; and
- creates the continuously appropriated Commission on Judicial Discipline Special Cash Fund, appropriates \$400,000 to the fund in FY 2022-23, and requires the General Assembly to make annual appropriations so that the fund begins each fiscal year with at least \$400,000.

Legislative Interim Committee on Judicial Discipline. The bill creates a legislative interim committee that must meet during the interim between the 2022 and 2023 legislative sessions to study the effectiveness of Colorado's system of judicial discipline and related best practices.

Background

The CCJD is composed of 10 uncompensated members, including two district court judges, two county court judges, two attorneys, and four non-lawyer/non-judge citizens. The judicial members of the CCJD are selected by the Colorado Supreme Court. The attorney and other members of the CCJD are selected by the Governor and confirmed by the Senate. The CCJD is authorized to discipline and remove judges for willful misconduct in office; willful or persistent failure to perform duties; intemperance; and violation of the Colorado Code of Judicial Conduct.

In 2020, the CCJD processed 199 requests for evaluation of judicial conduct. Of those, two cases resulted in public discipline, three cases resulted in private sanctions, and two cases resulted in dismissal with concerns. In 2021, the CCJD experienced similar case volumes with two cases resulting in public discipline, one case resulting in private sanctions, and four cases dismissed with concerns.

State Revenue

Starting in FY 2022-23, state cash fund revenue will increase to the extent that expenses, attorney fees and other costs are recovered pursuant to the operations of the OJD. Some of this revenue is subject to TABOR.

State Transfers

Beginning in FY 2022-23, the bill annually transfers at least \$400,000 from the General Fund to the Commission on Judicial Discipline Special Cash Fund. The fiscal note assumes that the bill requires a transfer of \$620,107 in FY 2022-23 and \$615,307 in FY 2023-24 and ongoing.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department by \$559,787 in FY 2022-23 and \$315,329 in FY 2023-24 and ongoing. It increases state cash fund expenditures in the Judicial Department by \$620,107 in FY 2022-23 and \$615,307 in FY 2023-24 and ongoing from the Commission on Judicial Discipline Special Cash Fund. Finally, it increases state General Fund expenditures in the Legislative Department by \$53,463 in FY 2022-23 only. Costs are detailed below and shown in Table 2.

Judicial Department. The Judicial Department will incur costs for staff, computer programming, and outreach to create the new Office of Judicial Discipline. Staff costs include standard operating and capital outlay costs, and assume a July 1 start date. The fiscal note assumes that central Judicial Department costs will be paid for by General Fund and that OJD costs will be paid from the Commission on Judicial Discipline Special Cash Fund.

- **Judicial Department—Centralized support.** The Judicial Department will require 1.0 FTE to ensure that judicial oversight agencies and all Judicial Department staff meet requirements of the bill concerning reporting and documentation of judge or justice misconduct complaints.

When the Supreme Court adopts rules, guidelines, and procedures related to judicial discipline, they must provide the OJD with an opportunity to object and engage in efforts to resolve any differences. The Judicial Department must post each new rule, guideline and procedure on their website, allow for public comment and include an opportunity for the public to address the Supreme Court. These costs are indeterminate, and the fiscal note assumes the Judicial Department will address any additional costs through the annual budget process as needed.

- **IT System Development.** The Judicial Department will require additional IT programming to add new intake processes for filing and documenting complaints, as well as modifications to add retention, data management, reporting and search capabilities to existing systems. The fiscal note assumes the Judicial Department will require \$350,000 and 1.0 FTE for these purposes in FY 2022-23, and \$100,000 and 1.0 FTE in FY 2023-24 and future years.

- **Office of Judicial Discipline—Staff.** The OJD will require 4.0 FTE executive director, assistant, attorney, and investigator staff to investigate and address allegations of misconduct against judges and justices in the Judicial Department. The executive director is required to be paid the same salary as a district judge. The Judicial Department must provide the OJD with office space, as well as technological and administrative support. The fiscal note assumes most of these costs will be covered through indirect costs recoveries from the new office and do not require an appropriation in the bill.
- **Education and Outreach.** The bill requires the new OJD to conduct public outreach concerning the judicial discipline process and recommendations from the CCJD, and provide related education information. The fiscal note assumes the office will require \$100,000 for these purposes annually, including informational and educational materials, and making materials available on the web. Actual outreach and education efforts and related costs will be determined by the CCJD.

Legislative Department. The standard costs for Legislative Council Staff and the Office of Legislative Legal Services to staff an interim committee includes 0.3 FTE of a researcher, 0.1 FTE of an attorney, and 0.1 FTE of a legislative editor. Standard operating and capital outlay costs are included. Because staff are part-time, the General Fund pay date shift has not been applied.

- **Member reimbursements.** Reimbursement for judicial discipline committee members assumes 5 meetings with per diem of \$111.82 and \$124.00 travel for 8 legislative members.

**Table 2
 Expenditures Under SB 22-201**

Cost Components	FY 2022-23	FY 2023-24
Judicial Department		
Personal Services	\$193,077	\$210,629
Operating Expenses	\$3,510	\$3,900
Capital Outlay Costs	\$13,200	\$800
IT System Development	\$350,000	\$100,000
Centrally Appropriated Costs ¹	\$62,965	\$54,492
FTE – Personal Services	1.8 FTE	2.0 FTE
Judicial Subtotal	\$622,752	\$369,821
Office of Judicial Discipline		
Personal Services	\$484,907	\$484,907
Operating Expenses	\$3,800	\$3,800
Capital Outlay Costs	\$6,400	\$1,600
Travel and Training	\$25,000	\$25,000
Education and Outreach	\$100,000	\$100,000
Centrally Appropriated Costs ¹	\$114,189	\$113,953
FTE – Personal Services	4.0 FTE	4.0 FTE
OJD Subtotal	\$734,296	\$729,260
Legislative Department		
Personal Services	\$37,156	\$0
Operating Expenses	\$675	\$0
Capital Outlay Costs	\$6,200	\$0
Member Travel and Per Diem	\$9,433	\$0
Centrally Appropriated Costs ¹	\$8,742	\$0
FTE – Personal Services	0.5 FTE	0.0 FTE
Legislative Subtotal	\$62,205	\$0
Total	\$1,419,253	\$1,099,881
Total FTE	6.3 FTE	6.0 FTE

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

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 upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2022-23, the bill requires total appropriations of \$613,250 including:

- \$559,787 to the Judicial Department from the General Fund, with 1.8 FTE; and
- \$53,463 to the Legislative Department from the General Fund, with 0.5 FTE, of which \$24,456 is to Legislative Council Staff, \$19,574 is to the Office of Legislative Legal Services and \$9,433 is to the General Assembly.

The bill continuously appropriates money from the Commission on Judicial Discipline Special Cash Fund to the Commission on Judicial Discipline, therefore no appropriation is required.

State and Local Government Contacts

Counties	District Attorneys
Information Technology	Judicial
Law	Legislative Council Staff
Office of Legislative Legal Services	State Auditor
Treasury	