

Colorado Legislative Council Staff Fiscal Note



STATE FISCAL IMPACT

Drafting Number: LLS 15-1118 **Date:** April 27, 2015
Prime Sponsor(s): Sen. Lambert; Carroll **Bill Status:** Senate Local Government
 Rep. Hulinghorst; Young **Fiscal Analyst:** Alex Schatz (303-866-4375)

BILL TOPIC: PROTECTIONS INFORMATION PROVIDED GENERAL ASSEMBLY

Fiscal Impact Summary*	FY 2014-2015 <i>current year</i>	FY 2015-2016	FY 2016-2017
State Revenue			
State Expenditures	Increased and decreased expenditures. See State Expenditures section.		
FTE Position Change			
Appropriation Required: None.			

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill creates a framework for the use by members of the General Assembly of confidential information in the custody of state agencies. Members of the General Assembly are encouraged to use confidential information when it is beneficial and necessary.

Members of the General Assembly are required to use any confidential information without compromising confidentiality, and may only use confidential information in their consideration of official legislative actions. To effectuate access to health-related information, the bill declares that the General Assembly is a health oversight agency, entitled to handle personal information under the federal HIPAA (health care information) statutes.

The bill also modifies the whistleblower statutes applicable to state employees. Under the bill, an appointing authority or supervisor of the state employee may no longer assert that disclosed information is false or confidential as justification for retaliatory action against the employee. The bill specifically prohibits retaliation against employees of a state agency who provide confidential information to a member of the General Assembly.

Background

Under current law, the employee of a state agency may be disciplined for disclosing certain information that they believe relates to actions of a state agency or agencies that are not in the public interest. In particular, the whistleblower statutes provide an exemption for retaliation against a state employee if information is disclosed that is confidential under any other provision of law.

The duties of various state agencies involve records with a person's medical and mental health information. This information is generally confidential, as exemplified in the federal Health Information Portability and Accountability Act (HIPAA). HIPAA restricts disclosure of personal

information without the consent of the affected person or persons. However, HIPAA allows the custodian of such personal information to make disclosures to a health oversight agency for designated policy and compliance oversight activities.

State Expenditures

The bill results in both increases and decreases to state agency expenditures related to personnel who disclose confidential or other information. Workload and costs associated with disciplinary actions against whistleblowers will be reduced, as the bill precludes retaliation for any disclosure. At the same time, state agencies with initial custody of a disclosed record may be liable for the consequences of a breach of confidentiality or potentially false information becoming public. The amount of expenditures affected by the bill depends on the facts of each disclosure and cannot be estimated.

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 additional disclosures relative to current law, particularly of confidential information, the whistleblower statutes continue to apply to actions of public agencies that are not in the public interest, as opposed to disclosures that serve the personal interests of the disclosing party. For these reasons, the overall impact of the bill is not anticipated to require a change in the resources or appropriations of any state agency.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. The bill applies to disclosures of information at any time before, on, or after the effective date.

State and Local Government Contacts

Office of Legislative Legal Services
Health Care Policy and Financing
Public Health and Environment
Human Services
Judicial Department
Labor and Employment

Legislative Council Staff
Colorado Health Benefit Exchange
Personnel and Administration
Corrections
PERA
Law