SB 22-230

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-1056	**Date:**	April 26, 2022
Prime Sponsors:	Sen. Fenberg; Moreno Rep. Esgar	**Bill Status:**	Senate Business
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Bill Topic: **COLLECTIVE BARGAINING FOR COUNTIES**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

The bill grants county employees the right to organize under a collective bargaining unit. The Department of Labor and Employment is required to manage petitions, elections, and enforcement related to county collective bargaining. Beginning in FY 2022-23, the bill increases state and local government expenditures on an ongoing basis, and may minimally increase state revenue.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $480,753 to the Department of Labor and Employment.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 22-230

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	$480,753	$445,518
	Centrally Appropriated	$120,625	$116,304
	Total Expenditures	**$601,378**	**$561,822**
	Total FTE	**4.0 FTE**	**4.0 FTE**
Transfers		-	-
Other Budget Impacts	General Fund Reserve	$72,113	$66,828

Summary of Legislation

The bill grants county employees the right to organize and engage in the collective bargaining process, as well as the right to refrain from these activities.

Applicability. The bill applies to 62 of the state's 64 counties. It excludes city and counties (Denver and Broomfield) as well as municipalities, special districts, school districts, county hospitals, and political subdivisions operating transit systems. County employees eligible to form bargaining units exclude confidential, managerial, executive, and temporary employees (who work less than 90 days in a calendar year). Exclusive representative is defined to mean the employee organization certified or recognized as the representative of county employees in a bargaining unit; the county and the exclusive representative have the authority and obligation to collectively bargain in good faith.

County employer requirements. County employers are required to:

- annually inform county employees in a bargaining unit who are represented by an exclusive representative of their rights;
- give the exclusive representative reasonable access to county employees at work;
- provide quarterly reporting of employee data to the exclusive representative; and
- make payroll deductions for membership dues and other authorized payments (with cancel or change requests managed by the exclusive representative).

Division of Labor Standards and Statistics. The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment (CDLE) is required to interpret, apply, and administer the collective bargaining process for county employers through rulemaking, hearings, and appeals. The CDLE must establish procedures for the designation of appropriate bargaining units; the selection, certification, and decertification of exclusive representatives; and the filing, hearing, and determination of complaints of unfair labor practices.

Bargaining units and determinations. The separate, appropriate bargaining units for counties must consist of county employees:

1) in labor, services, and trades positions;
2) in positions that are nonexempt from the federal Fair Labor Standards Act other than the positions described in (1) and (4);
3) in public safety positions, including certified and noncertified deputy sheriffs; and
4) assigned to positions in a county human or social services agency.

The minimum size of a bargaining unit of county employees is 50 positions. In determining the positions included in a bargaining unit to meet the minimum threshold, the CDLE must give appropriate weight to the desires of the county employees, the effectiveness of labor management relations, and the efficiency of the operation of the county.

Exclusive representatives—petition and election process. Beginning January 31, 2023, the CDLE must certify an employee organization as the exclusive representative of a county employee bargaining unit once majority support is established. Certification may occur through a showing of majority interest or through the establishment of majority interest through a secret ballot election.

Employee organizations in existence prior to January 31, 2023, that were established through majority support, must be deemed certified.

The bill outlines the process for elections, related timelines, and required hearings where disputes among exclusive representation petitioners exists. The bill also outlines timelines and procedures for objections to election conduct. Finally, the bill outlines the process for decertification of exclusive representation.

Collective bargaining agreements. An agreement negotiated between an exclusive representative and a public employer constitutes the collective bargaining agreement between the parties. Agreements must be for a term of at least 1 year and no more than 5 years. The bill details what disciplinary and grievance processes may and may not be included in an agreement.

Impasse resolution and fact finding. If an impasse arises on one or more issues during the negotiation of a collective bargaining agreement, the exclusive representative and the public employer shall engage in and share the costs for the dispute resolution process established in the bill or an alternative procedure established by mutual agreement. If the parties remain at an impasse following mediation, either party may request fact finding in accordance with rules promulgated by the CDLE. The CDLE is required to maintain a roster of qualified fact finders with credentials outlined in the bill. Unless the parties otherwise agree, the fact finder will make a recommendation to accept the final offer of the exclusive representative or the final offer of the public employer on each issue in dispute. In arriving at a recommendation, the fact finder must consider financial ability of the county employer to meet costs, public interest and welfare, comparable community's salary and benefits, and other factors outlined in the bill.

Enforcement authority. The CDLE and hearing officers have the authority to enforce the bill through appropriate administrative remedies, actual damages related to employee organization dues, back pay, including benefits, reinstatement of the county employee, other remedies to address any loss suffered from unlawful county conduct, and declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. The CDLE may request the appropriate district court to enforce orders.

Publicly available information. The CDLE is required to post and maintain on its website the current versions of this bill (Article 3.3), rules, all hearing officer decisions and orders, all final judgments and written decisions of fact finders, and all administrative determinations of certification and decertification of exclusive representatives.

Unfair labor practices. The bill outlines unfair labor practices as they relate to county employers, including anti-discrimination provisions and precluding use of public funds to support or oppose an employee organization, among others. Employee organizations may not interfere in the selection process, nor fail to fairly represent a public employee, and must not threaten, facilitate, support, or cause a county employee to participate in a strike, work stoppage or slowdown, group sick out, or an action that widely disrupts day-to-day county functions. Aggrieved parties may file a claim with the CDLE.

Background

State collective bargaining. House Bill 20-1153 created the Colorado Partnership for Quality Jobs and Services Act which enabled the creation of a collective bargaining system between covered state employees and the executive branch, and required the state to establish a single partnership agreement, which it did with Colorado Workers for Innovative and New Solutions (CO-WINS). The resulting Colorado Partnership Agreement went into effect on November 18, 2021.

About 26,000 state employees are covered by the act, including some working for institutions of higher education as classified employees. The fiscal note for HB 20-1153 included $6.6 million for 47.2 FTE, including human resources (HR) staff and attorneys, both directly for large state agencies and centrally for the smaller state agencies, with legal services provided for State Personnel Board matters. Of this amount, 5.0 FTE was allocated to the CDLE to investigate and adjudicate claims assuming it would handle approximately 93 unfair practices disputes annually, with 84 appeals per year.

Since the passage of the HB 20-1153, an additional $8.8 million and 5.0 FTE has been appropriated or is in the pending FY 2022-23 Long Bill for costs stemming from the state's collective bargaining agreement, including:

- $1.0 million and 1.0 FTE for a pay equity study;
- $1.4 million and 4.0 FTE for an employee tuition reimbursement program and additional Colorado State Employee Assistance Program support staff;
- $5.5 million to increase to shift differentials and on-call pay; and
- $0.9 million to create a minimum wage standard.

In addition, a 3.0 percent across-the-board salary increase was negotiated for state employees for FY 2022-23 through the agreement at a cost of $75.3 million; however, this same percentage increase was paid to all state employees the prior year, prior to the agreement going into effect.

Assumptions

Similar to the fiscal note for HB 20-1153, this fiscal note has included only the initial administrative staff required by each public employer to engage in the collective bargaining process with an initial exclusive representative. This staff is shown for FY 2022-23, as the fiscal note assumes that county employees will immediately seek to engage in the collective bargaining process. It assumes that each county will require its own staff to support and engage in collective bargaining with their employees.

The fiscal note has not made assumptions about potential salary and benefit increases negotiated under future collective bargaining agreements since these amounts are speculative and may have been incurred without future agreements. County employers will be required to share public employee data with the exclusive representative, which also may require additional staff and information technology processes not currently included in the fiscal note. Finally, no assumption has been made about the funding source for these expenditures, as county employers will have differing resources available.

State Revenue

To the extent additional civil cases related to collective bargaining are filed with the trial courts, filing fee revenue to the Judicial Department will increase. This revenue is subject to TABOR.

State Expenditures

The bill increases state General Fund expenditures in the CDLE by about $600,000 in FY 2022-23 and $560,000 in FY 2023-24 and ongoing. Workload may minimally increase in the Judicial Department. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 22-230

	FY 2022-23	FY 2023-24
Department of Labor and Employment		
Personal Services	$253,312	$243,644
Operating Expenses	$4,455	$4,050
Capital Outlay Costs	$24,800	-
Legal Services	$177,426	$177,426
Travel Costs	$3,263	$2,900
Mailings	$3,108	$3,108
Software Licenses	$14,390	$14,390
Centrally Appropriated Costs[1]	$120,625	$116,304
FTE – Personal Services	3.0 FTE	3.0 FTE
FTE – Legal Services	1.0 FTE	1.0 FTE
Total Cost	**$601,378**	**$561,822**
Total FTE	**4.0 FTE**	**4.0 FTE**

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

Department of Labor and Employment. Costs will increase for the Division of Labor Standards and Statistics in CDLE to administer the collective bargaining process through rulemaking, elections, and hearings.

- ***Staff.*** The division requires 1.2 FTE Program Management, 0.7 FTE Compliance Investigator, 0.4 FTE Administrative Law Judge, and 0.7 FTE Program Assistant on an ongoing basis beginning in FY 2022-23. Staffing costs are prorated for the General Fund pay date shift, assume the Program Manager will begin July 1, 2022, and the remainder of staff will begin September 1, 2022; see Technical Note. Standard capital outlay costs are included.

- ***Legal services.*** The CDLE will have costs for 1,800 hours of legal services provided by the Department of Law at a rate of $98.57 per hour. This is equivalent to 1.0 FTE per year in the Department of Law.

- ***Travel, mailing, and licenses.*** Travel costs assume four overnight trips and four day trips related to investigations. Mailing costs assume 1,554 mailings per year at a cost of $2.00 per mailing. All staff requires computer licenses at $2,878 per year.

Judicial Department. The bill may increase workload in the trial courts of the Judicial Department to the extent that agency actions are appealed through judicial review. Additionally, workload will increase to the extent that the CDLE or any party requests a district court to enforce orders, or seek temporary relief and restraining orders. No change in appropriations is required.

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 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 will increase the General Fund reserve by the amounts shown in Table 1.

Local Governments

The bill will increase staffing costs to 61 counties by up to $32.9 million starting in FY 2022-23. These costs are shown in Table 3 and detailed below.

Applicable counties. The bill applies to 62 counties. Adams County is excluded from this analysis as it has authorized collective bargaining matching the scope of the bill. While Pueblo and Las Animas counties have authorized collective bargaining to an extent, the bill permits variations from current agreements.

Table 3
Collective Bargaining Administrative Costs for Counties

County Size	Number of Counties	Per County Staffing Costs	Total Staffing Costs by County Size
Large Counties	9	$2,144,950	$19,304,550
Medium Counties	25	$436,892	$10,922,300
Small Counties	27	$100,000	$2,700,000
		All County Total	**$32,926,850**

Administrative costs. The fiscal note assumes that all counties will begin hiring legal and human resources staff with expertise in labor law and benefit plan administration to prepare for, negotiate, manage, and renew collective bargaining agreements. However, some counties may delay hiring until employee interest in organizing a collective bargaining unit is expressed.

Per county staffing costs represent the average cost for all counties depending on their size as follows:

- large counties include the 10 urban counties that have over 150,000 in population, excluding Adams County;
- medium counties include 25 counties with a population between 10,000 and 150,000; and
- small counties include the 27 remaining counties with populations under 10,000.

Mediation and fact finding. Costs for mediation and fact finding may occur in future years during collective bargaining negotiations, to be shared by the county and the exclusive representative. These costs are initially estimated at $100,000 for large counties and $50,000 for small counties.

Salary and benefits. As discussed in the Assumptions section, the fiscal note does not estimate potential salary or benefit increases resulting from collective bargaining agreements. For informational purposes, the fiscal note includes the total FTE and total salary for a sample of counties in Table 4.

Table 4
Sample of County Public Employees' Total Salaries

	Sheriff's Departments		Human Services Departments		Public Works Departments	
County (Population)	**FTE**	**Total Salaries FY 21-22**	**FTE**	**Total Salaries FY 21-22**	**FTE**	**Total Salaries FY 21-22**
Larimer (356,938)	514	$54,934,580	464	$37,133,217	119	$12,267,668
Weld (323,763)	463	$49,082,729	374	$30,712,000	171	$16,914,820
Montrose (42,765)	99	$8,374,165	84	$5,555,985	62	$5,013,579
Summit (30,983)	109	$10,853,510	22	$2,129,779	73	$7,008,615
Yuma (10,063)	23	$1,401,533	17	$1,112,374	50	$2,940,489
Huerfano (6,584)	38	$2,051,780	28	$1,525,063	28	$1,654,135

Technical Note

The provisions of the bill take effect on January 1, 2023, but work is required prior to this date for rulemaking and other tasks in the CDLE beginning July 1, 2022. The effective date should be amended to give the CDLE the authority to begin the work and use funding appropriated in the bill prior to the main provisions of the bill taking effect.

Effective Date

The bill takes effect January 31, 2023.

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of $480,753 to the Department of Labor and Employment, and 4.0 FTE. Of this amount, $177,426 is reappropriated to the Department of Law with 1.0 FTE.

State and Local Government Contacts

Counties	Higher Education	Judicial
Labor and Employment	Law	