

*Colorado Legislative Council Staff Fiscal Note*  
**STATE and LOCAL**  
**FISCAL IMPACT**

**Drafting Number:** LS 08-0607  
**Prime Sponsor(s):** Rep. Looper  
 Sen. Tapia

**Date:** February 18, 2008  
**Bill Status:** House SVMA  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**TITLE:** CONCERNING THE COLORADO NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT PROGRAM.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
<b>State Revenue</b>		
General Fund	<\$5,000	<\$5,000
Cash Funds - Background Check Fees	38,500	77,000
<b>State Expenditures*</b>		
Total	<u>\$229,253</u>	<u>\$162,376</u>
General Fund	185,017	92,813
Cash Funds - Background Check Fees	26,986	35,063
Cash Funds - Background Check Pass-through to FBI	17,250	34,500
<b>FTE Position Change</b>	2.4 FTE	2.2 FTE
<b>Effective Date:</b> Upon signature of the Governor or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2008-2009:</b> See State Appropriations section of fiscal note.		
<b>Local Government Impact:</b> See Local Impact section of fiscal note.		

*Of this amount, \$1,752 may be funded by line item in the FY 2008-09 Long bill for programming costs in the Department of Revenue for 2008 legislation.*

**Summary of Legislation**

This bill creates the “Nonimmigrant Agricultural Seasonal Worker Pilot Program” in the Department of Labor and Employment. The purpose of the program is to expedite the federal H-2A visa certification process so that eligible workers can come to Colorado legally to meet the staffing needs of Colorado farmers and ranchers. The department is required to apply to the federal government for any waivers necessary to implement a separate H-2A certification process.

The commissioner of the Department of Agriculture, executive director of the Department of Labor and Employment, and the director of the Governor’s Office of Economic Development and International Trade, are required to seek agreements between Colorado and foreign countries to assist in the recruitment and selection of eligible H-2A workers. The Department of Labor and Employment is authorized to establish offices in foreign countries and retain local agents to aid in the application process, medical screening, travel, and documentation of employee returns. The program is limited to 1,000 employees in the first year with increases of 1,000 employees annually for 4 years.

The bill establishes requirements for employers and employees participating in the pilot program. Employers are required to:

- ▶ pay for employees' H-2A application fees and costs of transportation, recoverable up to \$500;
- ▶ provide housing, meals, tools, and workers' compensation insurance;
- ▶ provide U.S. workers the same wage and working conditions; and
- ▶ guarantee a minimum number of hours of work.

Employees are required to:

- ▶ submit fingerprints and pay costs of background checks (as applicants);
- ▶ allow 20 percent of wages to be held until returning to their countries of origin;
- ▶ apply for an identification card within 2 weeks of arrival in Colorado; and
- ▶ return to their country of origin after their employment is terminated or their visas expire.

The Department of Labor and Employment is required to administer an account to hold 20 percent of each worker's wages until the workers return to their home countries. The department will maintain a database of workers and contracts. It will also investigate and mediate controversies between employers and employees. HB08-1325 makes the violation of any provision a misdemeanor criminal offense and allows the Department of Labor and Employment to assess civil penalties for violations. On or before February 2, 2010, the department is required to report to the General Assembly regarding the progress of the program and any recommended legislative changes.

**State Revenue**

This bill is expected to increase cash funds to the Department of Public Safety, Colorado Bureau of Investigation (CBI), by \$38,500 in FY 2008-09 and \$77,000 in FY 2009-10. Applicants to the program are required to pay for fingerprint-based civil background checks through the CBI at a cost of \$38.50 each.

**Fee Impact on H2-A Applicants.** Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill.

<b>Table 1. Fee Impact on H2-A Applicants</b>					
<b>Type of Fee</b>	<b>Fee</b>	<b>Number Affected</b>		<b>Total Fee Impact</b>	
		<b>2008-09</b>	<b>2009-10</b>	<b>2008-09</b>	<b>2009-10</b>
Fingerprint-Based Civil Background Check	\$38.50	1,000	2,000	\$38,500	\$77,000
<b>TOTAL</b>				<b>\$38,500</b>	<b>\$77,000</b>

**Penalties.** Per HB08-1325, the penalty for a misdemeanor violation is up to 6 months imprisonment in a county jail, a fine of up to \$5,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< \$5,000 per year) is assumed under the bill.

## **State Expenditures**

This bill has an expected fiscal impact of \$229,253 and 2.4 FTE in FY 2008-09 and \$162,376 and 2.2 FTE in FY 2009-10 as described below and shown in Table 2.

***Department of Labor and Employment*** — will require \$183,266 and 1.8 FTE for FY 2008-09 and \$92,813 and 1.8 FTE for FY 2009-10. The department is expected to contract with a vendor that specializes in handling the processing, recruitment and governmental approvals required for employment of nonimmigrant workers. The costs of the contractor will be paid by employers directly to the vendor. The department will require additional staff to:

- ▶ negotiate and monitor the vendor contract;
- ▶ develop and maintain a database of employee identification cards;
- ▶ investigate and mediate controversies between employers and employees;
- ▶ enforce the bill provisions; and
- ▶ administer the nonimmigrant agricultural seasonal worker pilot program account.

The department will require legal services from the Department of Law for international agreements, rule promulgation, federal waiver application, and contract negotiation.

***Department of Public Safety, Colorado Bureau of Investigation (CBI)*** — will perform fingerprint-based civil background checks on program applicants. Additional staff will be required to conduct the fingerprint analysis and related administrative functions. The CBI will require \$44,236 and 0.3 FTE in FY 2008-09 and \$69,563 and 0.4 FTE in FY 2009-10. Of this, \$17,250 will be passed through to the FBI in FY 2008-09 and \$34,500 in FY 2009-10.

***Department of Law*** — will provide legal services to the Department of Labor and Employment. These are estimated at \$21,609 and 0.3 FTE in FY 2008-09 and \$7,203 in FY 2009-10.

***Department of Revenue*** — will modify the identification card issued to guest workers to include the employer identification number. This will require a one-time programming cost of \$1,752.

<b>Table 2. Expenditures for State Agencies Under HB08-1325</b>		
<b>Cost Components</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>
<b>Department of Labor and Employment</b>		
Personal Services	\$153,948	\$83,948
FTE	1.8	1.8
Operating Expenses	7,709	1,663
Legal Services	21,609	7,203
Subtotal	\$183,266	\$92,814
<b>Department of Public Safety</b>		
Personal Services	\$13,914	\$17,573
FTE	0.3	0.4
Operating Expenses	13,072	17,490
FBI Background Check Pass-through	17,250	34,500
Subtotal	\$44,236	\$69,563
<b>TOTAL</b>	<b>\$229,253</b>	<b>\$162,376</b>

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated to reflect the total direct and indirect costs required to support a particular program. The sum of these expenditures for this program are \$16,469 for FY 2008-09.

- group health, life and dental insurance (\$12,913)
- short-term disability (\$144)
- amortization equalization disbursements (\$1,403)
- indirect costs (\$1,571)
- supplemental amortization equalization disbursements (\$438)

**Local Government Impact**

The penalty for a misdemeanor under this bill is up to 6 months imprisonment in a county jail, a fine of up to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$49.69 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

**State Appropriations**

For FY 2008-09, the following appropriations are required to implement HB08-1325:

- ▶ Department of Labor and Employment - General Fund - \$183,266 and 1.8 FTE
- ▶ Department of Public Safety - \$44,236 Total - 0.3 FTE
  - Cash Funds from Fees - \$29,986
  - Cash Funds Passed through to FBI - \$17,250
- ▶ Department of Law - Reappropriated Funds - \$21,609 and 0.3 FTE

**Departments Contacted**

Agriculture  
Judicial Branch  
Public Safety

Corrections  
Law  
Revenue

Governor's Office  
Labor and Employment