

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 18, 2008)

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

**Date:** March 28, 2008  
**Bill Status:** House Appropriations  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

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

<b>Fiscal Impact Summary</b>	<b>FY 2008-2009</b>	<b>FY 2009-2010</b>
<b>State Revenue</b>		
Cash Funds		
Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund*	\$102,000	\$108,000
<b>State Expenditures</b>		
Cash Funds		
Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund	\$82,047	\$85,940
<b>FTE Position Change</b>	1.0 FTE	1.3 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.		

\* Fees are set to cover both the direct and indirect costs of a program's implementation. Pursuant to JBC policy, the fiscal note does not include all costs incurred under the bill. See **Expenditures Not Included** section of the fiscal note for these costs.

**Summary of Legislation**

This bill, as amended by the House State, Veterans, and Military Affairs Committee, 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 pilot program is limited to 1,000 employees in the first year, with annual increases of 1,000 each year for 4 years. The Nonimmigrant Agricultural Seasonal Worker Pilot Program Advisory Council, made up of legislators, agency executives and stakeholders, is created to make recommendations for the adoption of rules and to assist in the preparation of reports to the General Assembly. The department may retain agents to:

- ▶ assist employers with labor certification application materials;
- ▶ recruit workers;
- ▶ assist workers with their H-2A visas;
- ▶ coordinate medical screening prior to departure to the U.S.; and
- ▶ coordinate travel to Colorado.

The bill establishes requirements for employers and employees who participate in the program. Employees are required to apply for an identification card within 2 weeks of arrival in Colorado. Employers are required to:

- ▶ reimburse employees for transportation and subsistence costs from the site of recruitment, and pay return expenses;
- ▶ provide free transportation to the worksite, free housing, low-cost meals, and workers' compensation insurance;
- ▶ pay wages in compliance with the Immigration Reform and Control Act of 1986;
- ▶ not displace a U.S. worker;
- ▶ notify the department if an employee cannot be located; and
- ▶ pay fees associated with the program.

HB08-1325 makes the violation of any provision a misdemeanor criminal offense and allows the department 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**

The program will generate cash funds revenue of \$102,000 for FY 2008-09 and \$108,000 for FY 2009-10 to the Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund from fees paid by employers.

**Fee Impact on Individuals, Families or Business.** 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. Fees are based on the direct and indirect costs to implement the program. Table 2 below identifies the fee impact of this bill.

<b>Table 2. Fee Impact on Employers</b>			
<b>Administrative Fee</b>	<b>Proposed Fee</b>	<b>Number of Employees</b>	<b>Total Fee Impact</b>
FY 2008-09	\$102	1,000	\$102,000
FY 2009-10	\$54	2,000	\$108,000

**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 is deposited into the Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined and no fine revenue is assumed under the bill.

**State Expenditures**

This bill has an expected fiscal impact of \$82,047 and 1.0 FTE in FY 2008-09 and \$85,940 and 1.3 FTE in FY 2009-10 as described below and shown in Table 2.

*Department of Labor and Employment* — will require \$82,047 and 1.0 FTE for FY 2008-09 and \$85,940 and 1.3 FTE for FY 2009-10. The cost and staffing increase in FY 2009-10 is due to the increase in H-2A employees from 1,000 to 2,000. The department is expected to retain agents who specialize in handling the processing, recruitment and governmental approvals required for employment of nonimmigrant workers. Employers will pay the agent fees directly. The department will require additional staff to:

- ▶ oversee the program;
- ▶ qualify potential agents;
- ▶ educate prospective employers;
- ▶ review and monitor employer and agent compliance in the field; and
- ▶ enforce the provisions of the bill.

*Department of Law* — will provide legal services to the Department of Labor and Employment for rulemaking. These are estimated at \$4,322 in FY 2008-09 and \$2,161 in FY 2009-10.

<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	\$70,100	\$75,068
FTE	1.0	1.3
Operating Expenses	7,625	8,712
Legal Services	4,322	2,161
<b>TOTAL</b>	<b>\$82,047</b>	<b>\$85,940</b>

*Nonimmigrant Agricultural Seasonal Worker Pilot Program Advisory Council* — The bill does not address payment of expenses for members so none are included in the fiscal note.

**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 \$19,807 for FY 2008-09.

- group health, life and dental insurance (\$6,299)
- short-term disability (\$70)
- amortization equalization disbursements (\$862)
- indirect costs (\$12,307)
- supplemental amortization equalization disbursements (\$269)

**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 - Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund - \$82,047 and 1.0 FTE
- ▶ Department of Law - Reappropriated Funds - \$4,322

**Departments Contacted**

Agriculture	Corrections	Governor's Office
Judicial Branch	Law	Labor and Employment
Public Safety	Revenue	Legislative Council