

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

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| Drafting Number: LLS 14-0175 | Date: August 11, 2014 |
| Prime Sponsor(s): Sen. Ulibarri | Bill Status: Signed into Law |
| Rep. Singer | Fiscal Analyst: Erin Vanderberg (303-866-4146) |

SHORT TITLE: WAGE PROTECTION ACT

| Fiscal Impact Summary* | FY 2014-2015 | FY 2015-2016 |
|--|---------------------------|---------------------------|
| State Revenue | less than \$15,000 | less than \$30,000 |
| Cash Funds | less than \$15,000 | less than \$30,000 |
| State Expenditures | <u>\$460,907</u> | <u>\$655,639</u> |
| General Fund | \$320,903 | \$418,295 |
| Cash Funds | \$12,500 | \$25,000 |
| Centrally Appropriated Costs** | \$127,504 | \$212,344 |
| FTE Position Change | 4.4 FTE | 7.0 FTE |
| Appropriation Required: \$333,403 – CDLE (FY 2014-15) | | |

* This summary shows changes from current law under the bill for each fiscal year. Transfers and diversions result in no net change to state revenue.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

The bill authorizes the Division of Labor (division) in the Colorado Department of Labor and Employment (CDLE) to establish an administrative process to handle wage claim cases. After January 1, 2015, the division is required to investigate and adjudicate all wage claim cases up to \$7,500 per employee.

Under the new administrative procedure outlined in the bill, the division will exercise its authority to levy penalties against employers that it has determined to have withheld compensation from their employees. The division has 90 days to investigate a wage complaint and make a determination, unless it notifies parties in writing of an extension. In cases where no violation is found, the division will issue a notice of dismissal; in cases where a violation is found, the division will issue a citation and notice of assessment. An employee can elect to terminate the administrative procedure within 35 days and preserve any private right of action. Upon receipt of such notice, the division will discontinue its action and revoke any citation or notice of assessment sent.

An employer issued a notice of assessment is required to pay penalties to their employee of 125 percent of wages under \$7,500, and 50 percent of wages over \$7,500, for each day of nonpayment. An employer's failure to respond within 14 days to a written demand for payment from its employee creates a rebuttable presumption of willful intent, and incurs an additional 50

percent penalty payable to the employee and a \$250 fine to be deposited into the newly created Wage Theft Enforcement Fund, which is intended to offset the division's costs. The division may also assess a fine of up to \$50 per day of a wage violation; however, except in the cases of repeat willful violators, all fines may be waived by the division to encourage employer compliance and are capped at \$7,500. If an employer reimburses its employee for the full amount claimed and the employee accepts the payment, the employee must dismiss any further action against the employer.

Either party may challenge the division's determination in a wage theft claim within 35 days of the notice by requesting a hearing. A hearings officer in the division will have the authority to issue subpoenas, and an employer's failure to obey a subpoena is a new misdemeanor offense punishable by a \$200 fine, imprisonment in a county jail for up to 60 days, or both. The division is responsible to keep a complete record of all proceedings in connection with a wage complaint.

The hearing officer's decision may be appealed through judicial review within 35 days of the mailing of the decision in the district court of competent jurisdiction. Judicial review is limited to appeal briefs and the record designated on appeal.

Finally, under the bill, employers have new requirements to maintain employee wage records for three years, or be assessed a fine of up to \$250 per employee per month. Employers must also make an employee's wages available at the work site. If the employee has not received the wages within 60 days, the employer is required to mail a check to an employee's last known address.

Background

The division currently receives around 4,000 wage complaints each year and attempts to resolve disputes between employers and employees through mediation. In practice, the division does not levy any penalties. If mediation fails, the division refers those involved in unresolved wage claim matters to small claims court.

State Revenue

The bill increases state cash fund revenue by no more than **\$15,000** in FY 2014-15, and no more than **\$30,000** in FY 2015-16.

CDLE. Newly-created administrative fines imposed by the CDLE will be deposited in the Wage Theft Enforcement Fund. While the bill does not increase the maximum fine, based on mandatory investigation of all wage complaints under \$7,500—which represents the maximum sum in nearly all wage claim cases the department receives currently—the number of cases subject to fines is assumed to increase. An estimated 1,000 cases per year will provide sufficient grounds for the CDLE to issue a citation and assess at least \$50 in administrative fines. However, the CDLE may waive fines in those cases to incentivize settlement by employers, and the total amount of fines collected in any year is estimated to be \$25,000 or less. Because the program will go online January 1, 2015, that sum is half, or \$12,500, in the first fiscal year.

Judicial Department. Under current law, individuals who are convicted of criminal wage theft may be required to pay a fine. These fines range from \$250 to \$5,000 for misdemeanor offenses and from \$2,000 to \$750,000 for felony offenses. Fines imposed in state courts are paid to the Fines Collection Cash Fund in the Judicial Department. To the extent that the bill increases the number of convictions for wage theft and judges determine, in their discretion, to impose fines, state revenue to the fund will increase. This amount is estimated to be less than \$5,000 per year, and less than \$2,500 in FY 2014-15 due to the January 1, 2015, effective date, and an assumed delay in obtaining convictions or plea agreements after that effective date.

State Expenditures

The bill is expected to increase General Fund expenditures by **\$460,907** and **4.4 FTE** in FY 2014-15, and **\$655,639** and **7.0 FTE** per year thereafter.

Table 1 summarizes increased costs in the CDLE.

| Table 1. CDLE Expenditures Under SB 14-005 | | |
|---|-------------------|-------------------|
| Cost Components | FY 2014-15 | FY 2015-16 |
| Personal Services | \$255,097 | \$377,306 |
| FTE | 4.4 | 7.0 |
| Operating Expenses and Capital Outlay Costs | 38,601 | 9,650 |
| Legal Services | 23,225 | 46,451 |
| Computer Programming | 16,480 | 9,888 |
| Centrally Appropriated Costs* | 127,504 | 212,344 |
| TOTAL | \$460,907 | \$655,639 |

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

CDLE – workload. The division will investigate wage issues, perform audits, analyze company records, impose fees, and promulgate rules. The fiscal note assumes that investigation of the division's approximate 4,000 annual wage complaints will result in 1,000 cases that warrant a citation and notice of assessment. After review by compliance officers, it is assumed that interested parties in an estimated 200 cases will request hearings, both in cases resulting in a citation and in cases resulting in dismissal by the division.

The CDLE's workload will increase for all stages of the wage complaint process. To make a determination regarding every complaint under \$7,500, compliance officers will spend substantially more time investigating and documenting each wage complaint received, contacting parties, and performing other administrative functions within the time frames established by the bill. Division staff will also require legal services from the Department of Law in a significant number of cases, accounting for 510 hours of legal services per year at \$91.08 per hour for a total of \$23,225 in FY 2014-15, and \$46,451 in FY 2015-16. The caseload of wage hearings will require a new hearings officer. In addition, to track the complaint process, reprogramming of CDLE computer systems (eComp) will require 160 hours by the Governor's Office of Information Technology (OIT) in FY 2014-15 at a rate of \$103 per hour for a total of \$16,480, and 96 hours for system maintenance in FY 2015-16 for a total of \$9,888.

CDLE – funding. The bill creates the Wage Theft Enforcement Fund to collect fine revenue intended to offset costs associated with wage claim enforcement. Revenues generated from fines are estimated to be up to \$12,500 in FY 2014-15, and up to \$25,000 per year thereafter. Fine revenue is not expected to fully cover the costs of administering the expansion of wage claim enforcement, therefore the fiscal note assumes that the remaining costs will require General Fund appropriation.

Judicial Department. The Judicial Department is expected to be minimally impacted by the bill, which creates a misdemeanor crime for individuals who fail to respond to subpoenas from a hearings officer. If there are 4,000 wage claim cases per year, the assumption is that a quarter of those, or 1,000, will go through the appeals process with the division's hearings officer. From those, 5 percent, or 50, may incur misdemeanor charges for failures to respond. Additionally, the resolution of claims by the division will likely reduce the workload of small claims courts.

The Office of the State Public Defender (OSPD) serves as legal defense counsel for indigent persons. The increase in OSPD workload due to new wage theft cases prosecuted under the bill is anticipated to be minimal and will not require an increase in appropriations. This minimal impact, requiring no additional appropriations, also applies to the Office of Alternative Defense Counsel, which represents indigent clients in cases where the OSPD has a conflict.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2 below.

| Cost Components | FY 2014-15 | FY 2015-16 |
|--|-------------------|-------------------|
| Employee Insurance (Health, Life, Dental, and Short-Term Disability) | \$37,746 | \$62,638 |
| Supplemental Employee Retirement Payments | 16,239 | 29,245 |
| Indirect Costs | 51,019 | 75,461 |
| Leased Space | 22,500 | 45,000 |
| TOTAL | \$127,504 | \$212,344 |

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

This bill impacts local governments by creating the new misdemeanor crime for failure to respond to a written notice from the division or hearings officer. The penalty is up to 6 months in a county jail, a fine of up to \$200, 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 at a daily rate of \$51.45 to house state inmates.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense.

Senate Bill 14-005 creates a new crime which is similar to refusal to pay wages under the Wage Claim Act. Under existing Section 8-4-114 (2), C.R.S., an employer is guilty of a misdemeanor if that employer is "able to pay wages or other compensation and being under a duty to pay, willfully refuses to pay as provided in this article [Colorado's wage statutes], or falsely denies the amount of a wage claim, or the validity thereof." The division is responsible for civil enforcement of Colorado wage statutes, and the division occasionally refers cases to prosecution; however, Judicial Department records show no cases prosecuted under this statute in recent years.

In practice, the offense specified by this bill may also be charged under the existing crime of theft, Section 18-4-401, C.R.S., which broadly encompasses crimes related to the conversion of property (e.g., theft, embezzlement, larceny). According to the CDLE, cases referred to prosecution are typically pursued under the theft statute due to the availability of enhanced penalties. However, conviction under the theft statute requires the prosecution to establish the employer's intent to "deprive permanently" the employee of his or her wages. Colorado's theft statute includes various classifications of the crime, which are identical to the amounts by which the crime of wage theft is classified under the bill.

Effective Date

The bill was signed into law by the Governor on May 29, 2014. Sections 1, 5, 6, 9, and 10 of the bill are effective immediately, while Sections 2 through 4, 7, and 8 of the bill will take effect January 1, 2015.

State Appropriations

For FY 2014-15, CDLE requires a General Fund appropriation of \$320,903, a Wage Theft Enforcement Fund appropriation of \$12,500, and 4.4 FTE. Of this amount, \$16,480 is reappropriated to the Governor's Office of Information Technology; and \$23,225 is reappropriated to the Department of Law.

State and Local Government Contacts

Corrections
Labor & Employment
Personnel & Administration

Higher Education
Law
Public Safety

Judicial
Local Affairs