

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated January 21, 2014)

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<b>Drafting Number:</b> LLS 14-0175	<b>Date:</b> January 30, 2014
<b>Prime Sponsor(s):</b> Sen. Ulibarri	<b>Bill Status:</b> Senate Finance
Rep. Singer	<b>Fiscal Analyst:</b> Erin Vanderberg (303-866-4146)

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**SHORT TITLE:** WAGE PROTECTION ACT

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

\* 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**

Under current law, employers are required by law to compensate their employees what they are owed for work performance or face civil penalties. To recover wages and penalties from an employer, an employee must submit a written demand to the employer. The Division of Labor (division) in the Colorado Department of Labor and Employment (CDLE) may assess a penalty, payable to the employee, of 125 percent of wages under \$7,500 and 50 percent of wages over \$7,500 owed for each day of nonpayment. Proof of an employer's willful nonpayment incurs an additional 50 percent penalty.

The bill, **as amended by the Senate Judiciary Committee**, authorizes the division to establish an administrative process to handle wage claim cases received and requires the division to investigate and adjudicate all wage claim cases up to \$7,500 per employee—which represents the maximum sum in nearly all wage claim cases—after January 1, 2015. The bill outlines a series of required notices the division must send in writing and response deadlines for those notices. Upon a determination of a wage violation, the division is required to issue a citation and notice of assessment to the employer. An employer's failure to respond within 14 days creates a rebuttable presumption of willful intent and makes the employer subject to increased penalties, payable to the employee.

The bill creates a fine of up to \$50 per day of a wage violation, to be deposited into the newly created Wage Theft Enforcement Fund, which offsets the division's costs. In addition, employers are required to maintain employee wage records for three years, or be assessed a fine of up to \$250 per employee per month. These fines can 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.

The bill includes an appeals process to be conducted by a hearings officer in the division. An employer's failure to obey a subpoena issued by a hearings officer is a new misdemeanor offense punishable by a \$200 fine, imprisonment in a county jail for up to 60 days, or both. A civil action can be filed in district court to dispute a hearings officer's decision.

The bill requires employers to mail a check to an employee's last known address within 60 days after the check was due if the employee has not received his or her compensation. Finally, the bill allows for the recovery of reasonable attorney's fees in actions to recover the minimum wage.

## **Background**

Under current law, the CDLE has the authority to levy penalties against employers that withhold compensation from their employees. The division receives approximately 4,000 wage complaints each year and attempts to mediate disputes between employers and employees, but does not levy any penalties. If the division does not resolve the matter, employees may pursue their wage issue in 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, 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.

<b>Table 1. CDLE Expenditures Under SB 14-005</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
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
<b>TOTAL</b>	<b>\$460,907</b>	<b>\$655,639</b>

\* 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, 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.

<b>Table 2. Centrally Appropriated Costs Under SB 14-005*</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
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
<b>TOTAL</b>	<b>\$127,504</b>	<b>\$212,344</b>

\*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 of Labor in the CDLE is responsible for civil enforcement of Colorado wage statutes, and the division occasionally refers cases to prosecution. 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**

Sections 2 through 4, 7, and 8 of the bill take effect January 1, 2015, if no referendum petition is filed. Sections 1, 5, 6, and 9 take effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

### **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