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Revised Fiscal Note

(replaces fiscal note dated April 13, 2021)

Drafting Number: LLS 21-0538 Date: May 25, 2021
Prime Sponsors: Sen. Danielson; Moreno Bill Status: House SCMVA
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Bill Topic: AGRICULTURAL WORKERS' RIGHTS

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [X] Local Government
[ ] State Transfer [ ] Statutory Public Entity

This bill removes the agricultural worker exemption from the Colorado Labor and Peace Act. Beginning in FY 2021-22, the bill increases state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: In FY 2021-22, this bill requires an appropriation of \$409,949 to the Department of Labor and Employment.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 21-087

Table with 3 columns: Category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

## **Summary of Legislation**

The Colorado Labor Peace Act currently exempts agricultural workers and their employers from certain rights and obligations. This bill removes that exemption, granting agricultural workers new rights and protections, and instituting new requirements for employers.

**Agricultural worker rights and protections.** This bill grants agricultural workers the right to organize and join labor unions, engage in collective bargaining and strike. They are entitled to have meal breaks and rest periods, and have visitors at employer-provided housing. It provides aggrieved employees, whistleblowers, and service providers ways to seek remedies and enforcement actions. Most agricultural workers are currently exempt from state and local minimum wage laws and overtime pay. This bill removes that exemption, and requires that wages be adjusted annually for cost of living, and that overtime pay be established.

**Employer requirements.** The bill requires that agricultural worker employers provide some workers access and transportation to key service providers, provide overwork and health protections, and increase protections and safety precautions during public health emergencies.

**Agricultural Work Advisory Committee.** The bill creates a committee to analyze agricultural worker wages and working conditions, and write an annual report with findings and recommendations for the General Assembly.

## **Background**

According to the United States Department of Agriculture, 23 percent of Colorado farms hire labor, totaling about 9,000 farms statewide. There are currently an estimated 39,764 agricultural workers in the state.

## **Assumptions**

The new rights granted to agricultural workers are expected to result in an increase in claims filed with the Department of Labor and Employment (CDLE). CDLE currently receives about 26 wage right claims per year from agricultural workers, and the fiscal note assumes an additional 32 claims will be filed. This fiscal note also assumes there will be at least 6 union election filings per year and 21 charges of unfair labor practices per year. It is assumed that as employers adjust to the bill after the first few years, these filings will decrease.

## **State Revenue**

To the extent the bill increases civil and criminal case filings and fees, state revenue to multiple cash funds will increase beginning in FY 2021-22. This fee revenue is subject to TABOR.

**State Expenditures**

This bill will increase state expenditures in CDLE by \$482,191 and 4.6 FTE in FY 2021-22 and \$429,389 and 4.4 FTE in FY 2022-23, paid from the Employment Support Cash Fund. The bill may also increase workload in the Judicial Department. Costs are displayed in Table 2 and described below.

**Table 2  
 Expenditures Under SB 21-087**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Labor and Employment</b>		
Personal Services	\$312,127	\$288,531
Operating Expenses	\$5,940	\$5,670
Capital Outlay Costs	\$24,800	-
Legal Services	\$38,282	38,282
Technology and Licenses	\$16,560	\$16,560
Union Elections	\$9,540	\$9,540
Travel Expenses	\$2,700	\$2,700
Centrally Appropriated Costs <sup>1</sup>	\$72,242	\$68,106
FTE – Personal Services	4.4 FTE	4.2 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE
<b>Total</b>	<b>\$482,191</b>	<b>\$429,389,</b>
<b>Total FTE</b>	<b>4.6 FTE</b>	<b>4.4 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Labor and Employment.** The Division of Labor Standards and Statistics requires 4.4 FTE in FY 2021-22 to fulfill the requirements in this bill. An administrative law judge is needed to promulgate rules on wage rights, unfair labor practices, access to key service providers, protections from heat related illness or injury, and unions. A program manager will amend current rules to accommodate new procedures and protections for a heavily rural, non-English speaking population, speak for the department on matters such as labor disputes and strike discussions, and manage the advisory committee. Investigators will investigate, adjudicate, and issue written decisions on claims and appeals and an administrative assistant will provide support for the program and the advisory committee. Staffing will be reduced in FY 2022-23 to 4.2 FTE after rulemaking is complete. The division requires 360 hours of legal services annually provided by the Department of Law at a rate of \$106.34 per hour to support rulemaking and legal actions. In addition, travel expenses will be required for a compliance investigator to make at least three trips a year to rural areas to investigate claims.

**Judicial Department.** To the extent that more cases are filed, workload for the trial courts and the Division of Probation will increase. This workload increase can be accomplished within existing appropriations.

**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, which include employee insurance and supplemental employee retirement payments, are estimated to be \$72,242 in FY 2021-22 and \$68,106 in FY 2022-23.

**TABOR refunds.** The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

**Federal ARPA funds.** This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

## **Local Government**

Similar to the state, beginning in FY 2021-22 this bill is expected to increase local government revenue, expenditures. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

## **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## **State Appropriations**

For FY 2021-22, the Department of Labor and Employment requires an appropriation of \$409,949 from the Employment Support Cash Fund and 4.6 FTE, of which \$38,282 is reappropriated to the Department of Law. The Department of Law requires an allocation of 0.2 FTE.

## **Departmental Difference**

The Department of Labor and Employment estimates that it requires a General Fund appropriation, rather than an appropriation from the Employment Support Cash Fund, due to changes in its workload and intended uses of that fund. The fiscal note indicates that the Employment Support Cash Fund is an appropriate source of funding for the bill since it fits within the allowable uses of the fund in statute and there does not appear to be any solvency issues with the cash fund.

**State and Local Government Contacts**

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