



Legislative Council Staff

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Final Fiscal Note

Drafting Number: LLS 21-0538 **Date:** September 7, 2021
Prime Sponsors: Sen. Danielson; Moreno **Bill Status:** Signed into Law
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Bill Topic: **AGRICULTURAL WORKERS' RIGHTS**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> 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 includes appropriations of \$668,539 to multiple departments.

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

Table 1
State Fiscal Impacts Under SB 21-087

	Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	-	-
Expenditures		
Cash Funds	\$474,657	\$434,416
General Fund	\$193,882	\$127,567
Centrally Appropriated	\$141,769	\$128,969
Total Expenditures	\$810,307	\$690,952
Total FTE	6.1 FTE	6.2 FTE
Transfers	-	-
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 by allowing them to file claims in court and with the Department of Labor and Employment (CDLE). 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.

Certificate of Variance. The bill requires some farmers to apply to the Department of Agriculture (CDA) for a certificate of variance that would allow for more frequent hand weeding or use of certain agricultural tools under specific circumstances.

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). The 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 multiple agencies by \$810,307 and 6.1 FTE in FY 2021-22 and \$690,952 and 6.2 FTE in FY 2022-23, paid from the General Fund and the Employment Support Cash Fund. Costs are displayed in Table 2 and described below.

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

Cost Components	FY 2021-22	FY 2022-23
Department of Labor and Employment		
Personal Services	\$369,554	\$360,314
Operating Expenses	\$7,020	\$7,020
Capital Outlay Costs	\$31,000	-
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 ¹	\$85,438	\$84,601
FTE – Personal Services	5.2 FTE	5.2 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE
CDLE Subtotal	\$560,094	\$519,018
Department of Agriculture		
Personal Services	\$82,332	\$89,817
Operating Expenses	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-
Travel Mileage	\$2,600	\$2,600
Tracking System Development and Maintenance	\$101,400	\$33,800
Centrally Appropriated Costs ¹	\$56,331	\$44,367
FTE – Personal Services	0.9 FTE	1.0 FTE
CDA Subtotal	\$250,213	\$171,934
Total	\$810,307	\$690,952
Total FTE	6.3 FTE	6.4 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Labor and Employment. The Division of Labor Standards and Statistics requires 5.2 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. 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.

Department of Agriculture. The CDA will be required to promulgate rules, review applications, and issue certificates of variance to some farms. This fiscal note estimates 18,000 farms will apply for certificates, therefore 1.0 administrator FTE will be required to review applications, process certificates, conduct site visits when necessary, and work with the Department of Law on appeals. In addition, the CDA will need to contract with a developer to build and maintain a tracking system for certificates and applications.

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 \$141,769 in FY 2021-22 and \$128,969 in FY 2022-23.

TABOR refunds. The bill may increase the amount of state revenue required to be refunded to taxpayers by the amount discussed in the State Revenue section above. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

Federal ARPA funds. This bill may increase 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

This bill was signed into law by the Governor and took effect on June 25, 2021.

State Appropriations

For FY 2021-22, the bill requires and includes an appropriation of \$474,657 to the Colorado Department of Labor and Employment from the Employment Support Cash Fund and 5.2 FTE, of which \$38,282 is reappropriated to the Department of Law. The Department of Law requires an allocation of 0.2 FTE.

For FY 2021-22, the bill requires and includes a General Fund appropriation to the Department of Agriculture of \$193,882 and 0.9 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

Agriculture	Governor	Information Technology
Judicial	Labor	Law
Legislature	Regulatory Agencies	Public Health and Environment