



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

| | | | |
|-------------------------|--|------------------------|---|
| Drafting Number: | LLS 22-0835 | Date: | September 13, 2022 |
| Prime Sponsors: | Sen. Danielson; Jaquez Lewis Rep. Duran; Froelich | Bill Status: | Signed into Law |
| | | Fiscal Analyst: | Erin Reynolds 303-866-4146 Erin.Reynolds@state.co.us |

Bill Topic: WAGE THEFT EMPLOYEE MISCLASSIFICATION ENFORCEMENT

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 |

The bill changes laws and enforcement procedures pertaining to wage payments, employee misclassification, and workplace safety, and creates a new enforcement unit in the Department of Law. It increases state expenditures on an ongoing basis and may increase state revenue.

Appropriation Summary: For FY 2022-23, the bill includes appropriations totaling \$440,269 to multiple state agencies, and requires appropriations of \$534,149.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under SB 22-161**

| | | Budget Year FY 2022-23 | Out Year FY 2023-24 |
|-----------------------------|---------------------------|---------------------------|------------------------|
| Revenue | | - | - |
| Expenditures | General Fund | \$534,149 | \$668,162 |
| | Centrally Appropriated | \$146,228 | \$198,071 |
| | Total Expenditures | \$680,377 | \$866,233 |
| | Total FTE | 5.2 FTE | 7.0 FTE |
| Transfers | | - | - |
| Other Budget Impacts | General Fund Reserve | \$80,122 | \$100,224 |

Summary of Legislation

The bill changes laws and enforcement procedures pertaining to wage claims, to be enforced by the Department of Labor and Employment (CDLE). It also establishes the Worker and Employee Unit in the Department of Law (DOL) to investigate and enforce wage theft, unemployment insurance, and misclassification of employees, and workplace safety claims under specified circumstances.

Comparable Crime Analysis

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 creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill reclassifies the existing misdemeanor offense of failing to furnish information to the Industrial Claim Appeals Office in CDLE by making it a daily penalty of at least \$50 per day to fail or refuse to furnish information. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for this offense.

Background

House Bill 17-1021 created the Wage Theft Transparency Act, which requires the CDLE to treat certain information pertaining to a wage law violation as public records available on request pursuant to the Colorado Open Records Act (CORA). House Bill 19-1267 classified certain unclassified misdemeanors related to wage theft as crimes of theft punishable as a petty offense, misdemeanor, or felony depending on the amount of wages withheld or underpaid.

State Revenue

Beginning in FY 2022-23, the bill will increase state revenue to the Wage Theft Enforcement Fund from penalty assessments made by the Division of Labor Standards and Statistics (DLSS) in the CDLE, as well as to Judicial Department cash funds from court filing fees resulting from employee actions against employers accused of wage theft. This revenue is subject to TABOR; however, the overall impact is expected to be minimal.

State Expenditures

The bill increases state expenditures in the CDLE and the DOL by about \$680,000 in FY 2022-23 and \$825,000 in FY 2023-24 from the General Fund. Expenditures are shown in Table 2 and detailed below.

Department of Labor and Employment. The CDLE requires 4.8 FTE to implement the bill, including 2.0 FTE compliance investigator, 1.7 FTE policy advisor, and 0.8 FTE legal assistant starting in FY 2022-23, and 0.3 FTE administrative law judge beginning FY 2023-24. Standard operating and capital outlay costs are included for staff, as well as agency specific software licenses. First-year costs are prorated for the General Fund pay date shift and a September 1, 2022, start date. Additionally,

external appeals are expected to require 315 hours of legal services per year from the DOL at a rate of \$98.57 per hour and 0.2 FTE.

Department of Law. The Department of Law will create a new unit within its Consumer Protection Section to investigate and enforce employee misclassifications and worker safety and protection with 1.0 FTE Senior Assistant Attorney General and 1.0 FTE Criminal Investigator hired at the salary midpoints. Costs assume a September 1, 2022, start date and are prorated for the General Fund pay date shift and standard operating and capital outlay costs are included. If actual caseload necessitates additional staff, the DOL will seek resources through the annual budget process.

Table 2
Expenditures Under SB 22-161

| Cost Components | FY 2022-23 | FY 2023-24 |
|---|-------------------|-------------------|
| Department of Labor and Employment | | |
| Personal Services | \$263,499 | \$381,289 |
| Operating Expenses | \$5,130 | \$6,480 |
| Capital Outlay Costs | \$31,000 | - |
| Licenses and Software | \$14,390 | \$14,390 |
| Legal Services | \$31,050 | \$31,050 |
| Centrally Appropriated Costs ¹ | \$114,649 | \$157,298 |
| FTE – Personal Services | 3.4 FTE | 4.8 FTE |
| FTE – Legal Services | 0.2 FTE | 0.2 FTE |
| CDLE Subtotal | \$459,718 | \$590,507 |
| Department of Law² | | |
| Personal Services | \$173,200 | \$230,933 |
| Operating Expenses | \$2,160 | \$2,700 |
| Capital Outlay Costs | \$12,400 | - |
| Mileage | \$1,320 | \$1,320 |
| Centrally Appropriated Costs ¹ | \$31,579 | \$40,773 |
| FTE – Personal Services | 1.6 FTE | 2.0 FTE |
| DOL Subtotal | \$220,659 | \$275,726 |
| Total | \$680,377 | \$866,233 |
| Total FTE | 5.2 FTE | 7.0 FTE |

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

² The current appropriation reflects a 50 percent reduction in costs for the Department of Law, while the fiscal note continues to include these costs with the assumption they remain necessary for program implementation.

Department of Personnel and Administration. The state's Division of Risk Management may see an increase in cases related to workplace safety complaints. The fiscal note assumes the state will comply with all applicable laws and that these cases will be rare.

Judicial Department. Any impact on trial courts is expected to be minimal and no change in appropriations is required.

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 shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, which decreases the amount of General Fund available for other purposes.

Local Government

Similar to the state, local government employers are expected to comply with the provisions of the bill and any increases in cases related to workplace safety complaints are expected to be minimal.

Effective Date

The bill was signed into law by the Governor on June 3, 2022, and it took effect on August 10, 2022. Sections 6, 7, 8, and 9 take effect on January 1, 2023.

State Appropriations

The bill requires and includes a General Fund appropriation of \$345,069 to the Department of Labor and Employment and 3.4 FTE; of this amount, \$31,050 is reappropriated to the Department of Law with an additional 0.2 FTE.

The bill also requires a General Fund appropriation of \$189,080 to the Department of Law and 1.6 FTE; however, the bill includes an appropriation of \$95,200 to the department.

State and Local Government Contacts

Alternate Defense Counsel
Information Technology
Law
Property Tax Division

Counties
Judicial
Municipalities
Public Defender

District Attorneys
Labor
Personnel