

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 13-0128  
**Prime Sponsor(s):** Rep. Singer  
 Sen. Ulibarri

**Date:** February 13, 2013  
**Bill Status:** House Business, Labor, Economic and  
 Workforce Development  
**Fiscal Analyst:** Alex Schatz (303-866-4375)

**TITLE:** CONCERNING ACTIONS RELATED TO WAGES.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>		
Cash Funds		
Wage Theft Enforcement Fund	less than \$12,000	less than \$25,000
Fines Collection Cash Fund	less than \$3,000	less than \$5,000
<b>State Expenditures</b>		
General Fund		\$20,816
Cash Funds		
Employment Support Fund	\$250,752	\$437,593
<b>FTE Position Change</b>	3.6 FTE	7.2 FTE
<b>Effective Date:</b> If no referendum petition is filed, provisions amending the Criminal Code take effect September 1, 2013, and provisions amending the Wage Claim Act and minimum wage statutes take effect January 1, 2014.		
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Summary of Legislation**

This bill amends the Colorado Criminal Code to add the crime of wage theft. The bill also establishes an administrative process to investigate and enforce wage claim cases in the Colorado Department of Labor and Employment (CDLE).

A person commits one offense of wage theft for each calendar month and each employee that:

- the person, or an entity under the person's financial control, is under a duty to pay wages or compensation; and
- the person fails to pay those wages or compensation, or falsely denies the amount of wages owed.

An employer is presumed to have committed wage theft if the amount of wages was available to the employer at the time of the offense. An employer will not be convicted if he or she believed in good faith that he or she would pay when the employee was hired but do not have the ability to pay at the time of the offense.

Wage theft is classified based on the amount of wages wrongly withheld, ranging from a class 2 misdemeanor to a class 3 felony. The offense is:

- a class 2 misdemeanor if the amount is less than \$500;
- a class 1 misdemeanor if the amount is between \$500 and \$999;
- a class 4 felony if the amount is between \$1,000 and \$19,999; or
- a class 3 felony if the amount is \$20,000 or more.

The bill requires CDLE to investigate complaints that an employer has failed to pay wages in an amount up to \$7,500. Within 90 days, unless extended, the CDLE must determine whether the employer has violated wage statutes. In cases where the wage complaint is found valid, the hearing officer issues a citation and notice of assessment. In addition to current fines, the bill establishes new fines and criminal penalties for employers that fail to respond to a complaint and for any person that refuses to provide evidence in a wage complaint case. The bill authorizes CDLE to conduct rulemaking and develop an administrative hearing process to consider initial appeals. Appeals from the hearing officer's decision are first to the Industrial Claims Appeals Office (ICAO) in CDLE, then to the Colorado Court of Appeals.

The Wage Theft Enforcement Fund is created for the use of the CDLE, and fines collected in the administrative enforcement process are deposited into this fund. The bill also establishes duties for employers to mail a final payment of wages (after 60 days overdue), retain records for 3 years, and pay penalties in addition to assessed wages. The bill preserves an employee's right to civil action under certain circumstances.

## **Background**

The Colorado Wage Claim Act (Article 4, Title 8, C.R.S.), minimum wage law, and other wage-related laws are enforced by the Division of Labor (division) in CDLE. Under current law, the division receives approximately 4,000 wage complaints each year, and, at its discretion, investigates complaints and imposes fines of up to \$50 per day and other penalties for violations of wage law. In practice, the division mediates disputes between employers and employees; if this process is unsuccessful, an employee must pursue unpaid wages in, typically, small claims court. The division is funded primarily through the Employment Support Fund.

## **State Revenue**

**For FY 2013-14, state cash funds revenue is estimated to increase by up to \$15,000. Beginning in FY 2014-15 and each year thereafter, state cash funds revenue will increase by up to \$30,000.**

*CDLE.* 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. Based on a January 1, 2014, starting date for complaints subject to the bill, administrative fines collected in FY 2013-14 are estimated at less than \$12,000.

**Judicial Branch.** 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 Branch. 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 \$3,000 in FY 2013-14 with a September 1, 2013, effective date and an assumed delay in obtaining convictions or plea agreements after that effective date.

**State Expenditures**

**Implementation of this bill results in increased costs of \$250,752 and 3.6 FTE in FY 2013-14, and \$458,395 and 7.2 FTE in FY 2014-15. Of this amount, increased costs in the CDLE total \$250,752 and 3.5 FTE in FY 2013-14, and \$437,593 and 7.0 FTE in FY 2014-15. The bill also increases expenditures in the Department of Corrections by \$20,802 beginning in FY 2014-15.**

Table 1 summarizes increased costs in the CDLE. All costs in FY 2013-14 are prorated for the bill's effective date.

<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$184,688	\$369,379
FTE - CDLE	3.5	7.0
Operating Expenses and Capital Outlay	38,774	30,210
Legal Services (400 hrs. * \$77.25/hr)	15,540	30,900
FTE - Dept. of Law	0.1	0.2
OIT - Programming Costs (\$74.00/hr)	11,840	7,104
<b>TOTAL</b>	<b>\$250,752</b>	<b>\$437,593</b>

**CDLE - workload.** Investigation of 4,000 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 1,000 cases will request hearings, both in cases resulting in a citation and in cases resulting in dismissal by the division. Following a hearing, and based on a 10 percent appeal rate from unemployment benefit cases, an estimated 100 cases will be appealed each year to the ICAO.

The CDLE's workload increases 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 timeframes established by the bill. Division staff will also require legal services from the Department of Law in a significant number of cases, accounting for 400 hours of legal services per year. The caseload of wage hearings will require a new hearing officer, and additional workload of the ICAO is assessed at 200 hours each year to assemble records, hear 100 new cases, issue orders, and other workload increases. In addition, to track the complaint process, reprogramming of CDLE computer systems (eComp) will require one-time efforts of 160 hours by the Office of Information Technology (OIT) in FY 2013-14 as well as periodic updates (8 hours per month) starting in FY 2014-15.

**CDLE - funding.** The bill creates the Wage Theft Enforcement Fund to pay for costs associated with wage claim enforcement, but funds will not be available until annual appropriation in future fiscal years. This fiscal note assumes costs are paid from the Employment Support Fund, consistent with current practice related to the division's wage claim duties and the statutory purposes of the fund. However, the bill provides no new revenue to the Employment Support Fund, and, in future fiscal years, the fund balance may be depleted by new cash fund appropriations. Alternatively, the General Assembly may provide a General Fund appropriation to the CDLE.

**Judicial Branch.** A small increase in the number of criminal cases filed in Colorado courts is anticipated under the bill. The expected increase in court workload is minimal and can be absorbed within existing appropriations.

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.

**Department of Corrections.** To cover the costs of incarceration, costs in the Department of Corrections increase by \$37,636 every 4 years. Specifically, operating costs for the Department of Corrections are unaffected by the bill in FY 2013-14 and then increase by \$20,816 in FY 2014-15 and by \$16,820 in FY 2015-16.

This fiscal note assumes that the classification of wage theft as a crime will increase prosecutions and convictions of offenders. However, the increase in felony convictions relative to current law will be small due to: the applicability of current theft statutes (see the Comparable Crimes section below), the bill's potential deterrent effect on employers, and the infrequency of \$1,000 or more in unpaid wages accumulating in one month. In addition to the above considerations, courts may opt to impose fines instead of incarcerating employers, which may minimize the impact of the bill on jails and prisons.

For the reasons stated above, this analysis finds that wage theft violations reaching the felony threshold and resulting in a prison sentence will be relatively unusual. One class 4 felony conviction under the bill will result in a new Department of Corrections (DOC) inmate once every four years.

Due to the \$20,000 threshold for a single violation (converted wages of one employee in one month), no class 3 felony convictions are anticipated. Based on the length of time necessary to adjudicate new criminal cases, the first class 4 felony conviction is anticipated in FY 2014-15.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. As state-run facilities are currently at or near capacity, any offenders that must be housed in a state-run prison will likely shift other inmates in that facility to private contract prisons. This fiscal note assumes, therefore, that the impact of this bill is accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state \$57.03 per offender per day, which includes a daily bed rate of \$52.69 and \$4.34 per day for medical care. Table 2 shows the estimated cost of the bill over the next five fiscal years, based on an average length of stay of 660 days (21.7 months) for inmates convicted under current law for the class 4 felony crime of theft.

<b>Table 2. Five-Year Fiscal Impact On Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2013-14</b>	0.0	\$0	\$0	\$0
<b>FY 2014-15</b>	1.0	-	20,816	20,816
<b>FY 2015-16</b>	0.8	-	16,820	16,820
<b>FY 2016-17</b>	0.0	-	0	0
<b>FY 2017-18</b>	0.0	-	0	0
<b>Total</b>		\$0	\$37,636	\$37,636

**Expenditures Not Included**

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. This includes costs to lease additional space in the CDLE's current downtown Denver location. The centrally appropriated costs subject to this policy are summarized in Table 3.

<b>Table 3. Expenditures Not Included Under HB 13-1227*</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$23,498	\$46,997
Supplemental Employee Retirement Payments	11,336	25,651
<b>TOTAL</b>	<b>\$34,834</b>	<b>\$72,648</b>

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

### **Local Government Impact**

The bill's impact on local governments is minimal. The penalty provisions of the bill may increase costs for county jails by increasing the number of persons convicted of misdemeanor wage theft and violations of the Wage Claim Act. Misdemeanor and other unclassified penalties under the bill include fines or incarceration in a county jail in a range from 3 months to 18 months. Because 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 a daily rate of \$50.44 to house state inmates.

### **Comparable Crimes**

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.

House Bill 13-1227 creates a new crime, which crime 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 Branch 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.

### **State Appropriations**

For FY 2013-14, the Department of Labor and Employment requires a cash funds appropriation of \$250,752 and 3.5 FTE from the Employment Support Fund. Of this amount, \$11,840 is reappropriated to the Office of Information Technology; and \$15,540 is reappropriated to the Department of Law, and 0.1 FTE.

As noted in Section 14 of the bill, the Department of Corrections will require the five-year costs detailed in Table 2, to be appropriated through the annual budget process.

**Departments Contacted**

Judicial  
Personnel and Administration  
Higher Education

Corrections  
Law  
Labor and Employment

Local Affairs  
Public Safety