



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1267

FISCAL NOTE

Drafting Number:	LLS 19-0930	Date:	March 26, 2019
Prime Sponsors:	Rep. Singer; Froelich Sen. Danielson	Bill Status:	House Judiciary
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Bill Topic: PENALTIES FOR FAILURE TO PAY WAGES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure (<i>minimal</i>)	<input checked="" type="checkbox"/> Local Government (<i>minimal</i>)
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill reclassifies the crime of failing to pay wages or paying less than the minimum wage as a theft crime which could be a petty offense, misdemeanor, or felony. This bill minimally increases state and local government revenue and expenditures.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

Under current law, an employer convicted of intentionally refusing to pay a wage claim, falsely denying a wage claim with the intent to not pay, or underpaying the claim to harass or defraud the person owed the wage is guilty of an unclassified misdemeanor. An employer convicted of paying less than the minimum wage is also guilty of an unclassified misdemeanor. This bill classifies these crimes as theft which can be a petty offense, misdemeanor, or felony depending on the amount of wages withheld or underpaid.

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 changes an element of 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 offenses of failure to pay wages and failure to pay the minimum wage as theft. From 2016 to 2018, two cases of failure to pay wages were filed with the courts and one conviction occurred. The amount of pay withheld or under paid is unknown for either case and no demographic data is available.

This fiscal note assumes that criminal case filings or convictions will continue to be minimal for these offenses under the bill. Because the theft petty offense is only for thefts of less than \$50, future criminal filings are expected to be either a misdemeanor or felony.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Beginning in FY 2019-20, this bill increases state cash fund revenue by a minimal amount as discussed below.

Criminal fines and court fees. By reclassifying failure to pay wages or the minimum wage as theft, this bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The current fine penalty for these offenses is \$300 for failure to pay wages and \$500 for failure to pay the minimum wage. The fine penalty for theft ranges from \$50 to \$1 million depending on the circumstance of the crime and the value stolen. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR, however under the March 2019 Legislative Council Staff forecast a TABOR surplus is not expected in FY 2019-20 or FY 2020-21.

State Expenditures

Beginning in FY 2019-20, this bill minimally increases costs and workload in the Judicial Department and agencies that provide representation to indigent persons. It may also increase state General Fund expenditures in the Department of Corrections, as discussed below.

Judicial Department. Under current law, failure to pay wages or the minimum wage cases are filed in county court. This bill will increase costs and workload for the trial courts in the Judicial Department to process additional criminal case filings and for any felony failure to pay wages or the minimum wage cases which will instead be heard in district court. To the extent that additional offenders are sentenced to probation, costs and workload in the Division of Probation will increase, however this will be offset by a decrease in workload for the supervision of offenders convicted of a felony instead of a misdemeanor. Costs and workload may also increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Corrections. To the extent that offenders convicted of failure to pay wages or the minimum wage in an amount over \$2,000, which is a felony under the bill, and are sentenced to the Department of Corrections (DOC), costs will increase. However, at this time it is assumed that the likelihood of persons being sentenced to the custody of the DOC is minimal and that any increase in costs will be addressed through the annual budget process, if necessary.

Local Government Impact

Beginning in FY 2019-20, this bill is expected to both increase and decrease local government revenue, costs, and workload as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

District attorneys. The bill will increase workload and costs for district attorneys to prosecute additional failure to pay wages or the minimal wage cases. Workload will further increase to review the facts of the case and determine the appropriate charges based on the amount withheld or underpaid. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population. Overall, this increase is expected to be minimal.

County jails. Based on the assumptions listed in the Comparable Crime Analysis section, the bill may increase county jail costs. Costs will increase if more offenders are sentenced to county jail or sentenced to a longer term in county jail under the new classification. Future costs will decrease to the extent that offenders that would have been sent to jail for a misdemeanor conviction are instead sentenced to the DOC. Because the courts have the discretion of incarceration or imposing a fine and the amount withheld or underpaid in future cases is unknown, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Denver County Court. The bill increases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload to supervise persons convicted under the bill within Denver County. Costs are decreased if offenders are charged with felony failure to pay wages or the minimum wage as these cases would instead be heard in state-run district court and offenders sentenced to probation would be supervised by the Judicial Department.

Effective Date

The bill takes effect on January 1, 2020. It applies to offenses committed on or after this date.

State and Local Government Contacts

Corrections
Labor

District Attorneys
Law

Judicial
Personnel