

HF6 - 1A - "Prohibit Wage Theft"

Chief Author: **Tim Mahoney**
 Committee: **Jobs & Economic Development Finance Division**
 Date Completed: **03/22/2019**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Administration Dept Administrative Hearings
 Attorney General Supreme Court

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
Administrative Hearings	-	-	-	-	-	-
Administrative Hearings	-	-	-	-	-	-
Attorney General						
General Fund	-	654	654	654	654	654
Labor and Industry Dept						
General Fund	-	1,546	1,546	1,546	1,546	1,546
State Total						
Administrative Hearings	-	-	-	-	-	-
General Fund	-	2,200	2,200	2,200	2,200	2,200
Total	-	2,200	2,200	2,200	2,200	2,200
Biennial Total			4,400			4,400

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Attorney General					
General Fund	-	5	5	5	5
Labor and Industry Dept					
General Fund	-	13.7	13.7	13.7	13.7
Total	-	18.7	18.7	18.7	18.7

Lead Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Laurena Schlottach-Ratcliff Date: 03/22/2019
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2019	FY2020	FY2021	FY2022	FY2023
Administrative Hearings		-	-	-	-	-
Administrative Hearings		-	-	-	-	-
Attorney General						
General Fund		-	654	654	654	654
Labor and Industry Dept						
General Fund		-	1,546	1,546	1,546	1,546
	Total	-	2,200	2,200	2,200	2,200
	Biennial Total			4,400		4,400
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings		-	-	-	-	-
Administrative Hearings		-	147	147	147	147
Attorney General						
General Fund		-	654	654	654	654
Labor and Industry Dept						
General Fund		-	1,814	1,814	1,814	1,814
	Total	-	2,615	2,615	2,615	2,615
	Biennial Total			5,230		5,230
2 - Revenues, Transfers In*						
Administrative Hearings		-	-	-	-	-
Administrative Hearings		-	147	147	147	147
Attorney General						
General Fund		-	-	-	-	-
Labor and Industry Dept						
General Fund		-	268	268	268	268
	Total	-	415	415	415	415
	Biennial Total			830		830

HF6 - 1A - "Prohibit Wage Theft"

Chief Author: **Tim Mahoney**
 Committee: **Jobs & Economic Development Finance Division**
 Date Completed: **03/22/2019**
 Agency: **Labor and Industry Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	1,546	1,546	1,546	1,546	1,546
Total	-	1,546	1,546	1,546	1,546	1,546
Biennial Total			3,092			3,092

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	13.7	13.7	13.7	13.7
Total	-	13.7	13.7	13.7	13.7

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Laurena Schlottach-Ratcliff Date: 3/21/2019 4:44:50 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023	
General Fund	-	1,546	1,546	1,546	1,546	1,546
Total	-	1,546	1,546	1,546	1,546	1,546
			3,092			3,092
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	1,814	1,814	1,814	1,814	1,814
Total	-	1,814	1,814	1,814	1,814	1,814
			3,628			3,628
2 - Revenues, Transfers In*						
General Fund	-	268	268	268	268	268
Total	-	268	268	268	268	268
			536			536

Bill Description

This bill relates to the Minnesota Fair Labor Standards Act (MFLSA) and the Minnesota Payment of Wages laws. This bill:

Establishes a violation of 16C.285 regarding the responsible bidder law if an employer has been convicted of a violation of criminal wage theft under 609.52.

Increases penalties from \$1,000 to \$10,000 for an employer’s repeated failure to submit employment records to the Department of Labor & Industry (DLI) to aid in investigations of state wage and hour violations. It also increases penalties from \$1,000 to \$10,000 on employers that repeatedly fail to maintain required employment records.

Provides the Labor Standards Unit at DLI under chapter 177, subpoena power to require persons to appear before the commissioner to give testimony and produce and permit inspection of evidence.

Expands and clarifies record-keeping requirements to include requiring employers to keep copies of personnel policies that are provided to employees.

Requires employers to keep records available for inspection on the premises of employment during reasonable office hours.

Establishes committing wage theft under 181.03 as a misdemeanor.

Establishes intentionally retaliating against an employee for asserting their rights under MFLSA or the new wage theft section as a gross misdemeanor.

Establishes a definition of wage theft and provides DLI the authority to enforce it.

Creates a citation and expedited hearing process for wage claims under \$1,000 per employee per pay period.

Prohibits an employer from retaliating against an employee for asserting rights under this law, and adds a rebuttable presumption of retaliation for the first 90 days after an employee asserts their rights.

Requires employers to give employees notice of certain employment-related information, such as the employee’s rate of

pay, the legal name of the employer and the employer's address and phone number.

Requires employers to pay employees on a regularly scheduled payday that occurs at least every 16 days rather than every 31 days.

Establishes that violations of sections 181.01 to 181.172 are also unlawful practices under 8.31, subd. 1 (giving the Attorney General authority to investigate violations of these sections).

Establishes enforcement authority for the Attorney General over sections 181.01 to 181.172, which includes wage theft.

States that remedies in sections 181.01 to 181.172 can be in addition to remedies provided under 8.31 (attorney general's investigative authority) or any other rights, remedies or penalties provided by law.

Creates definition of 'value' under criminal wage theft provision to mean difference between wages legally required to be reported or paid to an employee and the amount actually reported or paid to the employee.

Creates a criminal penalty for wage theft under Ch. 609, if intentional.

Establishes a sentence guideline for criminal wage theft of not more than 20 years or a fine of not work of \$100,000 or both when violation is more \$35,000 in services stolen.

The bill currently has a carve-out for appropriations with no dollar amount attached.

Directs the Department to administer community grants to educate and provide technical assistance to employees and employers.

Assumptions

Minnesota has an estimated 167,500 employers and a workforce of an estimated 2.9 million. The Department's Labor Standards unit currently enforces the Minnesota Fair Labor Standards Act (MFLSA) (Minn. Stat. §§ 177.21 177.35); the Child Labor Standards Act (Minn. Stat. § 181A.01 181A.12); and various provisions of Chapter 181, including provisions related to the payment of wages and the Women's Economic Security Act. Labor Standards responds to 20,000 inquiries annually, and addresses an average of 1,300 claims by workers for wages they believe they are owed.

This bill increases penalties for repeat failures to keep and maintain records and for failure to submit records, allowing the Department to penalize up to \$10,000 for each repeated failure. Currently the Department does not issue multiple penalties for failure to submit or maintain records. DLI assumes that 2.5% of investigations in the 80 and 120 hour tiers ($108 \times 2.5\% = 3$) will result in a collection of a second penalty, or \$30,000.

This bill gives the Department subpoena power under chapter 177, to require persons to appear before the commissioner to give testimony and produce and permit inspection of evidence. The Department estimates that for 14 cases per year it will be necessary to enforce a commissioner subpoena in district court, based on the number of employers who fail to produce records each year in response to a Commissioner's request for records. Obtaining a district court order will require a \$16 court fee per filing. The total cost annually for obtaining a court order is therefore estimated at \$224 in court fees plus 420 hours of attorney time (0.20 FTE).

This bill expands enforcement authority to the Department as well as scope and complexity of its enforcement actions, specifically as it relates to investigating worker complaints for wages owed, enforcing wage theft as defined in Minnesota Statutes §181.03, and investigating complaints of employer retaliation by workers asserting rights under Minnesota Statutes §181.03.

We assume at a minimum, 1.5 percent of 167,500 enterprises in Minnesota, or 2,512 enterprises are operating in violation of the provisions of 181.03 as amended in this bill and require inspection. Of those 2,512 enterprises, the Department anticipates it would receive an estimated 920 employee complaints each year related to retaliation.

The Department bases its assumption that it would receive 920 complaints of retaliation on Equal Employment Opportunity Commission (EEOC) statistics on retaliation complaints it receives. It averages 460 retaliation complaints in Minnesota per

year but this is only for employees with a protected status (such as race, religion, sex, etc.). Retaliation here would apply to the entire Minnesota workforce, so we double this number in an attempt to account for that difference.

Based upon the Department's experience, it estimates that 65% of the 920 complaints would require 24 hours of investigator time to resolve. The Department anticipates that it will be able to more readily investigate and resolve findings of non-compliance due to the bill's inclusion of additional employer record keeping and employee notification requirements; the Commissioner's authority to issue subpoenas enforceable in District Court that require individuals to give testimony and provide access to evidence; and additional penalties for employers' failure to maintain records and submit records upon request to the commissioner. It is anticipated that these provisions of the bill will allow the department to more effectively and efficiently investigate and resolve complaints of retaliation at this early stage.

The Department believes that 25% of 920 complaints would require an average of 40 hours of investigator time to resolve. For these complaints the Department anticipates it would require a full investigation including intake of the complaint; complainant interview; interviews of workers and other witnesses identified by the complainant; the collection and review of documents provided by the complainant and other workers and witnesses identified by the complainant; preparation for onsite workplace investigation; interviews of employer and management employees; review of payroll records and other documents and evidence; determination of violations; calculation of back wages and compensatory damages and determination of penalties; preparation of investigation documentation and communications; and engagement in efforts to informally resolve the violations found.

The Department believes that 7.5% of the 920 complaints would require 80 investigator hours per investigation. These cases would require additional time because they involve larger employers; larger numbers of workers and witnesses, multiple places of work; failure of the employer to maintain required records; and actions by the employer to obstruct the investigation.

The Department estimates that 2.5% of retaliation investigations would require 120 hours of investigator time due to the need to initiate litigation to resolve them.

The 1,592 enterprises for which retaliation complaints were not received, the Department would investigate those enterprises over a period of 5 years, or 318 annually. Assumptions related to the complexity of cases would parallel those mentioned above.

Formula Assumptions for retaliation cases:

65% Cases at 24 hours of investigative time.	(598 x 24 = 14,352 hours)
25% Cases at 40 hours of investigative time	(230 x 40 = 9,200 hours)
7.5% Cases at 80 hours of investigative time	(69 x 80 = 5,520 hours)
2.5% Cases at 120 hours of investigative time	(23 x 120 = 2,760 hours)
Total investigative hours = 31,832 divided by 2,088 hours = 15 FTE investigators	

Formula Assumptions for investigations that are not initiated due to a retaliation complaint:

65% Cases at 24 hours investigator time	(207 x 24 = 4,968 hours)
30% Cases at 40 hours investigator time	(95 x 40 = 3,800 hours)
3.5% Cases at 80 hours investigator time	(11 x 80 = 880 hours)
1.5% Cases at 120 hours investigation time	(5 x 120 = 600 hours)
Total investigative hours = 10,248 divided by 2,088 hours = 5 FTE investigators	

The Department currently has approximately 8.5 FTE focused on addressing wage violations with 3 FTE conducting outreach and administration. To respond to the 920 complaints alleging employer retaliation annually and to proactively investigate the additional 1,592 workplaces on a five-year cycle, the Department would need 11.5 FTE additional investigators ($15 + 5 - 8.5 = 11.5$) and 2.0 FTE outreach and administrative staff to provide investigative support, do data collection analysis, education and awareness raising, payment processing of back wages to workers, and administer grants.

In addition to increased revenue from existing penalties, the Department would collect new penalties for the additional investigations. In CY2018, the Department assessed and collected a penalty in 1.2% of all investigations. For the additional penalties, DLI estimates the average collected penalty amount will be \$5,000. This would result in new revenues in the amount of \$75,000 ($920 + 318$ investigations \times 1.2% = 15 penalties collected \times \$5,000 = \$75,000)

The bill creates a DLI enforcement citation process to address those instances when workers have not been paid wages up to \$1,000. The citation provides an employer 15 days to pay any back wages, gratuities and compensatory damages owed to the employee. The bill provides that DLI may impose the citation up to a \$1,000 monetary penalty but must vacate the citation in instances where the employer pays the amounts specified in the citation within 5 days of the citation issue date and provides evidence acceptable to the commissioner that proper payment was made. Over the last six calendar years, the average wage claim paid was approximately \$1,000 or less. A wage claim is a request for assistance by a worker to DLI to help them get their final paycheck from their former employer. In that same period, the Department successfully resolved an average of 50% of claims per year. However, for 40% of the claims, the department was not successful in resolving the claim and claimants were referred to court and informed of their private right of action to resolve their wage dispute. Of those claimants referred to court, approximately 40% were for individual claims of less than \$1,000. The Division estimates that the approximate number of unsuccessfully resolved wage claims valued at less than \$1,000 in any given year is approximately 272. To determine amount that will be collected in penalties under this provision, it is assumed that not all of unresolved claims will result in the assessment of a monetary penalty. In addition, this bill directs DLI to vacate a citation and penalty when employers pay the claim. Assuming a citation is issued and paid in 60% of these cases, the result would be 163 citations issued and \$163,000 in penalty revenues to the general fund annually.

On average, DLI estimates it would refer 29 claims annually to the Office of Administrative Hearings (OAH). Of the 29 cases, OAH estimates that 15 may require a hearing. Averaging the number of administrative law judge (ALJ) hours in similar matters referred from DLI that ultimately go to hearing, it is assumed that each of the 15 hearings will require an estimated 55 hours of ALJ time at the currently approved billable rate of \$170 per hour. The remaining 14 cases appealed to OAH are resolved before hearing and average 3 hours of ALJ time. Total estimated costs for OAH is \$147,390.

The bill instructs the commissioner to administer grants to community-based groups for the purpose of outreach, education and technical assistance for employees and employers. The amount of grants is unspecified in the bill but it appears the amount will be subject to a percentage of the entire appropriation granted under this bill. The Department anticipates one of the outreach and administrative staff will be a liaison with grantees to administer and monitor grant process and performance including annual publications, evaluations, contracting, reporting, and compliance related activities.

Each new FTE would need a user license for the labor standards case management system "On Base". One user license is \$1,000 per person per year.

Expenditure and/or Revenue Formula

Labor Investigator Sr - MAPE 12L	2020	2021	2022	2023
FTE	11.5	11.5	11.5	11.5
Salary / Fringe / Indirect	1,318,765	1,318,765	1,318,765	1,318,765
Non-Personnel Services	143,360	143,360	143,360	143,360
Cumulative Cost	1,462,125	1,462,125	1,462,125	1,462,125

Office & Admin Spec Sr - AFSCME 64L	2020	2021	2022	2023
FTE	2	2	2	2

Salary / Fringe / Indirect	149,230	149,230	149,230	149,230
Non-Personnel Services	14,432	14,432	14,432	14,432
Cumulative Cost	163,662	163,662	163,662	163,662

Compensation Attorney Principal	2020	2021	2022	2023
FTE	0.2	0.2	0.2	0.2
Salary / Fringe	25,220	25,220	25,220	25,220
Non-Personnel Services	1,193	1,193	1,193	1,193
Cumulative Cost	26,413	26,413	26,413	26,413

Cumulative Expenditures	2020	2021	2022	2023
Labor Investigator Sr - 11.5 FTE	1,462,125	1,462,125	1,462,125	1,462,125
Office & Admin Spec Sr - 2 FTE	163,662	163,662	163,662	163,662
Comp Attorney Principal - 0.2 FTE	26,413	26,413	26,413	26,413
OAH Legal Fees	147,390	147,390	147,390	147,390
Case Management User License	14,000	14,000	14,000	14,000
Subpoena Filing Fees	224	224	224	224
Cumulative Expenditures	1,813,813	1,813,813	1,813,813	1,813,813

Revenues	2020	2021	2022	2023
Citation Penalties (163 Assessments x \$1,000)	163,000	163,000	163,000	163,000
Repeat Records Penalties	30,000	30,000	30,000	30,000
Records Penalties	75,000	75,000	75,000	75,000
Cumulative Revenues	268,000	268,000	268,000	268,000

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

EEOC data: https://www1.eeoc.gov/eeoc/statistics/enforcement/charges_by_state.cfm#centercol

Agency Contact: John Aiken (651-284-5285)

Agency Fiscal Note Coordinator Signature: Jacob Gaub

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HF6 - 1A - "Prohibit Wage Theft"

Chief Author: **Tim Mahoney**
 Committee: **Jobs & Economic Development Finance Division**
 Date Completed: **03/22/2019**
 Agency: **Administration Dept**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2019	FY2020	FY2021	FY2022	FY2023
Total	-	-	-	-	-	-

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Shawn Kremer Date: 3/14/2019 2:11:55 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

The bill contains provisions relating to employment; prohibiting wage theft; modifying payment of wages; increasing civil and criminal penalties; allowing for administrative review; and, appropriates unspecified funding to the Commissioner of Labor and Industry to address wage theft.

Assumptions

This bill adds a provision to Minn. Stat. §16C.285 known as the Responsible Contractor law. Specifically, it adds to a list of items a contractor must meet to be considered a responsible contractor, namely that they have not been convicted of wage theft as described in Minn. Stat. §181.03, subd. 1. This item can be added to existing forms utilized in the Office of State Procurement’s contracting process without significant cost. It is assumed that any alleged violation of this new provision would be investigated and determined by the Department of Labor and Industry or other appropriate authority.

Expenditure and/or Revenue Formula

N/A

Long-Term Fiscal Considerations

N/A

Local Fiscal Impact

References/Sources

Betsy Hayes
 Director, Office of State Procurement
 (651) 201-2400

Agency Contact: Betsy Hayes (651) 201-2400

Agency Fiscal Note Coordinator Signature: Stewart McMullan

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HF6 - 1A - "Prohibit Wage Theft"

Chief Author: **Tim Mahoney**
 Committee: **Jobs & Economic Development Finance Division**
 Date Completed: **03/22/2019**
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
Administrative Hearings	-	-	-	-	-
Total	-	-	-	-	-

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Marianne Conboy Date: 3/22/2019 9:32:09 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2019	FY2020	FY2021	FY2022	FY2023
Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings	-	147	147	147	147	147
Total	-	147	147	147	147	147
Biennial Total			294			294
2 - Revenues, Transfers In*						
Administrative Hearings	-	147	147	147	147	147
Total	-	147	147	147	147	147
Biennial Total			294			294

Bill Description

HF6-1A, Sec. 9, provides that the commissioner of the Department of Labor and Industry (DLI) may issue a citation to an employer for failure to pay wages of up to \$1,000.

Section 10 of this bill sets out a provision for an employer who has been issued such a citation to request an expedited hearing before an administrative law judge (ALJ).

Assumptions

OAH has used DLI’s estimate to project that 29 wage theft matters will be appealed to OAH annually. Of these 29 matters referred to OAH from DLI, OAH estimates that half (15) may require a hearing.

Averaging the number of ALJ hours in similar matters referred from DLI that ultimately go to hearing, OAH assumes that each of the 15 hearings will require an estimated 55 hours of ALJ time at the currently approved billable rate of \$170 per hour (see Minn. Stat. § 16A.126, subd. 1 (2018)). The remaining 14 matters appealed to OAH, but that are resolved before hearing average 3 hours of ALJ time.

Expenditure and/or Revenue Formula

Estimated 55 hours of ALJ time at \$170/hr = \$9,350
 \$9,350 x 15 hearings/year = \$140,250

Appeals resolved without hearing Estimated 3 hours of ALJ time at \$170/hr = \$510

\$510 x 14 matters resolved without hearing per year = \$7,140

Total Expenditures - \$140,250 + 7,140 = \$147,390

Long-Term Fiscal Considerations

The estimated costs would continue in future years.

Local Fiscal Impact

References/Sources

Agency Contact: Denise Collins

Agency Fiscal Note Coordinator Signature: Tammy Pust

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HF6 - 1A - "Prohibit Wage Theft"

Chief Author: **Tim Mahoney**
 Committee: **Jobs & Economic Development Finance Division**
 Date Completed: **03/22/2019**
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	654	654	654	654
Total	-	654	654	654	654
Biennial Total			1,308		1,308

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
General Fund	-	5	5	5	5
Total	-	5	5	5	5

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Marianne Conboy Date: 3/22/2019 9:28:41 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023	
General Fund	-	654	654	654	654	654
Total	-	654	654	654	654	654
	Biennial Total		1,308			1,308
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	654	654	654	654	654
Total	-	654	654	654	654	654
	Biennial Total		1,308			1,308
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
	Biennial Total		-			-

Bill Description

H.F. 6-1A amends Minnesota’s Fair Labor Standards Act, Payment of Wages Act, and criminal code.

The bill establishes a definition of wage theft in Minn. Stat. § 181.03, prohibiting failure to pay wages to which an employee is entitled and retaliation against an employee asserting rights under the section. It also expands the definition of acts constituting “theft” in Minn. Stat. § 609.52 to include intentional wage theft Minn. Stat. § 181.03. The bill requires employers to pay wages at more frequent intervals (at least every 16 days instead of 31 days) and requires employers to provide specific employment-related information, such as the rate of pay, what will be deducted from pay, and whether the employee will receive paid sick leave and vacation pay.

The bill provides increased enforcement authority to the Minnesota Department of Labor and Industry (DLI), including the authority to subpoena documents and testimony. It also increases the maximum penalty DLI can impose (from \$1,000 to \$10,000) when an employer fails to maintain required employment records and/or fails to submit records when requested by DLI. The bill allows for expedited administrative review at the Office of Administrative Hearings for some wage claims.

With regard to the Minnesota Attorney General’s Office, H.F. 6-1A codifies the Attorney General’s authority, in addition to enforcement by DLI, to enforce chapter 177 and Minn. Stat. §§ 181.01-.172, as unlawful practices in business, commerce, or trade, pursuant to Minn. Stat. § 8.31, and for which the Attorney General can obtain remedies under Minn. Stat. § 8.31.

Assumptions

In its February 4, 2019 Fiscal Note, DLI noted that its Labor Standards Unit responds to more than 20,000 inquiries each year, including complaints regarding violations of minimum wage, overtime, and child labor laws. DLI noted that Minnesota has a workforce of approximately 2.9 million persons, with 167,500 employers. DLI estimated that more than 39,000 Minnesota workers are victims of wage theft each year, suffering a loss of an estimated \$11.9 million annually. DLI anticipates that the strengthened laws in this Bill will lead to an increase in worker complaints.

Expenditure and/or Revenue Formula

It is assumed that 2.0 FTE investigators will be necessary to investigate employees' complaints submitted to the AGO under the statute. It is estimated that 2.0 FTE attorneys would be necessary to litigate violations of chapter 177 and Minn. Stat. §§ 181.01-.172, and a 1.0 FTE clerical employee would be necessary to support the investigator and attorney. The AGO will also incur litigation expenses in any lawsuit it brings under the statutes. Those costs will necessarily include filing fees, discovery costs, and ADR expenses. Depending on the nature of cases, it may also be necessary to retain expert witnesses.

It is more likely that the AGO will seek injunctive relief, ordering employers to cease and desist unlawful practices and seek wages owed to employees. It is difficult to predict the number of cases and types of relief the AGO would seek.

Long-Term Fiscal Considerations

It is assumed that the increased staff will be needed on an ongoing basis, including into fiscal years 2022 and 2023: 2.0 FTE investigators, 2.0 FTE attorneys, and a 1.0 FTE clerical employee.

Local Fiscal Impact

No local government fiscal impact is anticipated

References/Sources

February 4, 2019 Fiscal Note submitted by the Minnesota Department of Labor and Industry.

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HF6 - 1A - "Prohibit Wage Theft"

Chief Author: **Tim Mahoney**
 Committee: **Jobs & Economic Development Finance Division**
 Date Completed: **03/22/2019**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2019	FY2020	FY2021	FY2022	FY2023
Total	-	-	-	-	-

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Jim King Date: 3/19/2019 4:19:16 PM
 Phone: 651 201-8033 Email: jim.king@state.mn.us

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2019	FY2020	FY2021	FY2022	FY2023	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF6-1A at section 1 amends the definition of “responsible contractor” in Minn. Stat. § 16C.285, subd. 3, the state procurement provisions a number of provisions, to exclude one convicted of a violation of section 609.52, subdivision 2, clause (19); at sections 2-5 amends provisions in the Fair Labor Standards Act, including 1) amendments to Minn. Stat. §§ 177.27, subd. 2, and 177.30 establishing record-keeping requirements and civil penalties for records violations; 2) a new subdivision 11 in Minn. Stat. § 177.27, which gives the commissioner of labor and industry subpoena power and provides that “Upon the application of the commissioner, a district court shall treat the failure of any person to obey a subpoena lawfully issued by the commissioner under this subdivision as a contempt of court;” and 3) an amendment to Minn. Stat. § 177.32, subd. 1, which adds a new misdemeanor offense if an employer hinders or delays the commissioner in the performance of duties under chapter 181, pays or agrees to pay wages at a rate described and provided under section 181.032, or commits wage theft under section 181.03, subdivision 1; and a new gross misdemeanor offense if an employer retaliates against an employee for asserting rights or remedies under sections 177.21-177.44 or section 181.03.

The bill at section 6 adds a new Minn. Stat. § 177.45 providing for commissioner of labor and industry and attorney general enforcement of any violation of chapter 177 as unlawful practices in business, commerce, or trade. Sections 7-12 amend Minn. Stat. § 181.03, subd. 1, to define and prohibit wage theft and add new subdivisions 4-8 to authorize the commissioner to enforce section 181.03, to outline the process for the issuance of a commissioner’s citation for failure to pay wages and administrative review of a citation, to provide that the commissioner’s final order is appealable to the Court of Appeals, and to prohibit employer retaliation against an employee for asserting rights under this section.

The bill at section 13 amends Minn. Stat. § 181.032 requiring certain earning statement information and notices to employees, at section 14 amends Minn. Stat. § 181.101 shortening the required pay periods, and at section 15 adds a new Minn. Stat. § 181.1721 providing for attorney general enforcement of any violation of sections 181.01 to 181.172 as unlawful practices in business, commerce, or trade.

The bill at sections 16-18 amends the definition of “value” in Minn. Stat. § 609.52, subd. 1; the acts constituting theft in subd. 2 to prohibit intentionally engaging in or authorizing a prohibited wage theft practice under section 181.03, subd. 1; and the penalties in subd. 3 to make wage theft over \$35,000 a felony punishable by 20 years.

Assumptions

It is assumed that the provisions of this bill may result in additional criminal case filings under sections 177.32 and 609.52, and that the criminal case filings will be at a rate comparable to the existing rate of criminal case filings under section 177.32 and chapter 181. It is assumed that most new criminal case filings under the provisions of this bill would be misdemeanor or gross misdemeanor cases, and that there would not be a significant number of felony cases under section 609.52. Non-felony cases require fewer judicial branch resources than felony cases.

It is assumed that the provisions of this bill may result in district court actions to enforce commissioner subpoenas under Minn. Stat. § 177.27. The Department of Labor and Industry (DLI) estimates that 14 such cases per year will be filed in district court, which would not have a significant fiscal impact on the judicial branch.

The number of Court of Appeals filings that may result from the provisions of this bill cannot be estimated based on existing judicial branch data. DLI estimates that it would refer 29 claims annually to the Office of Administrative Hearings and of those, OAH estimates that 15 may require a hearing. It is assumed that a percentage of those cases will result in an appeal to the Court of Appeals; the percentage cannot be estimated.

Expenditure and/or Revenue Formula

According to Judicial Branch data, there were 9 criminal cases filed from 2014-2018 under the existing provisions of section 177.32 and chapter 181. If the provisions of this bill resulted in a 100% increase in criminal case filings, an additional 1 or 2 criminal cases statewide per year would not have a significant fiscal impact on the Judicial Branch.

According to current judicial branch data, 225 appeals must be filed and briefed per year to require an additional 3-judge panel. Based on the estimates of DLI and OAH, if the provisions of this bill resulted in 29 claims being referred to OAH, even if all of those cases resulted in an appeal, 29 new appeals per year would not require a new 3-judge panel.

The provisions of this bill are not anticipated to have a significant impact on the Judicial Branch.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

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