

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 562
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: FEBRUARY 5, 2020

SUMMARY

- Synopsis:** Increases certain penalties for violations of wage and hour law.
- Type of Impact:** Potential annual expenditure and revenue increases to the State General Fund. Potential annual expenditure decrease to municipal governments.
- Agencies Affected:** Department of Labor and Workforce Development; Department of Law and Public Safety; Judiciary; Department of Corrections; State Parole Board; Municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
Potential State Revenue Increase	Indeterminate
Potential State Expenditure Increase	Indeterminate
Potential Local Expenditure Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill may result in an indeterminate annual increase in revenue to the State due to the collection of increased fines under the New Jersey State Wage and Hour Law (WHL). The OLS is unable to quantify the potential revenue increase because it cannot determine: 1) the number and nature of violations that may be committed by employers; 2) the specific penalty amount that will be applied within the statutory ranges as proposed under the bill for any violation; and 3) if and when the Department of Labor and Workforce Development (DOLWD) will assess existing administrative penalties as an alternative or in addition to the increased criminal penalties established under the bill.
- The OLS anticipates that the bill may also reduce the annual operating expenditures of local governments and increase annual State operating expenditures as the bill would shift to State courts certain violations that, absent the bill, would be adjudicated in municipal courts. Under the bill, the following State agencies may incur workload and expenditure increases as a result of the shift in jurisdiction: a) the Department of Law and Public Safety would have to prosecute additional cases; b) the Department of Corrections would have to house and care for more individuals, possibly for longer periods of time; and c) the State Parole Board would have to supervise the return to society of additional convicts. Additionally, the Judiciary would

have to adjudicate additional cases. The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies.

BILL DESCRIPTION

This bill revises certain criminal penalties and fines for violations of the WHL. Current law states that for a first violation an employer is guilty of a disorderly persons offense and shall be punished by a fine of not less than \$100 and not more than \$1,000 or by imprisonment for not less than 10 days and not more than 90 days, or by both the fine and imprisonment. The bill increases the minimum fine to \$500 while maintaining the \$1,000 maximum fine and the potential 10 to 90 day period of incarceration.

Current law also states that for a second or subsequent violation an employer is guilty of a disorderly persons offense and shall be punished by a fine of not less than \$500 and not more than \$1,000, or by imprisonment for not less than 10 and not more than 100 days, or by both the fine and imprisonment. For a second violation only, the bill increases the fine to a range of \$1,000 to \$2,000 and maintains the potential 10 to 90 day period of incarceration.

In addition, the bill newly establishes that a third or subsequent violation constitutes a crime of the fourth degree, punishable by a fine of not less than \$2,000 and not more than \$10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment. Current law punishes third and subsequent violations like a second violation.

Furthermore, current law authorizes the DOLWD to assess and collect administrative penalties, up to \$250 for a first violation and up to \$500 for each subsequent violation, as an alternative or in addition to any other penalty provided under the law. The bill does not change these provisions.

The penalties apply to any employer who violates existing statutory provisions of the WHL, such as: willfully hindering or delaying the enforcement of the WHL; failing to make, keep, and preserve any records as required under the WHL; falsifying any such record or refusing to make any such record accessible to the DOLWD; refusing to furnish a sworn statement of such record or any other information required for the proper enforcement of the WHL; or paying or agreeing to pay wages at a rate less than the rate applicable under the WHL.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill may result in an indeterminate annual increase in revenue to the State General Fund due to the collection of increased WHL fine amounts. The OLS is unable to quantify the potential revenue increase because it cannot determine: 1) the number and nature of violations that may be committed by employers; 2) the specific penalty amount that will be applied within the statutory ranges as proposed under the bill for any violation; and 3) if and when the DOLWD will assess existing administrative penalties as an alternative or in addition to the increased criminal penalties established under the bill.

Currently, the Division of Wage and Hour Compliance in the DOLWD enforces the WHL, including the collection of fees and penalties. According to the department, under the existing penalty scheme, the division assessed \$3,460,830 in WHL fees and administrative penalties in FY 2018.

Furthermore, the OLS anticipates that the bill may also reduce the annual workloads and operating expenditures of municipal courts and prosecutor offices, while increasing the annual workloads and operating expenditures of State courts and State agencies with a role in the criminal justice system. This is because the bill upgrades third and subsequent employer violations of the WHL from disorderly persons offenses to crimes of the fourth degree. Disorderly persons offenses are adjudicated in municipal courts, while crimes of the fourth degree are adjudicated in State courts. Consequently, any third or subsequent violation that would be a disorderly persons offense under current law would no longer be adjudicated in municipal court but would instead be transferred to a State court.

As a result, the following State agencies may incur workload and expenditure increases: a) the Department of Law and Public Safety would have to prosecute additional cases; b) the Judiciary would have to adjudicate additional cases; c) the Department of Corrections would have to house and care for more individuals, possibly for longer periods of time; and d) the State Parole Board would have to supervise the return to society of additional convicts.

The OLS has no information on the additional workload and expenditures that the bill may impose on affected State departments and agencies. However, regarding incarceration, the OLS notes that data obtained from the Department of Corrections indicate that the average annual per capita cost to house an inmate in a State prison facility in FY 2019 totaled about \$50,190 and that the marginal cost of doing so in FY 2018 totaled \$8.60 per day, amounting to \$3,140 annually per inmate for food, wages and clothing.

The OLS notes that the bill increases penalties only for criminal convictions in trial courts without altering the range of permissible administrative penalties. Therefore, the OLS analysis applies only to cases in which criminal convictions for WHL violations are sought in trial court.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).