

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: SB838

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Ebbin

3. Committee: Finance and Appropriations

4. Title: Nonpayment of wages; private action; liability for payment of wages due.

5. Summary: This bill provides that an employee has a private cause of action against an employer who fails to pay wages to recover the amount of wages due plus interest at eight percent annually from the date the wages were due. If the court finds that the employer knowingly failed to pay wages to an employee, the court shall award the employee (i) reasonable attorney fees and other costs and (ii) unless the court finds that the employer's failure to pay was because of a bona fide dispute between the employer and employee, an amount equal to triple the amount of wages due. The measure provides that an employer that knowingly fails or refuses to pay wages, unless the failure to pay was because of a bona fide dispute between the employer and its employee, is guilty of a Class 1 misdemeanor if the value of the wages earned and not paid by the employer is less than \$10,000 or a Class 6 felony if the value of the wages earned and not paid is \$10,000 or more or if the conviction is a second or subsequent conviction. Currently, criminal liability attaches if an employer's nonpayment of wages is willful and with intent to defraud. The measure also provides that construction contracts entered into on or after July 1, 2020, shall be deemed to include a provision under which the general contractor and subcontractor at any tier are jointly and severally liable to pay the wages due to any subcontractor's employees. If the wages due to the subcontractor's employees are not paid, the general contractor is subject to criminal and civil penalties for which an employer is liable for failing or refusing to pay wages. The measure requires the subcontractor to indemnify the general contractor for wages, damages, interest, penalties, or attorney fees owed as a result of the subcontractor's failure to pay the wages unless the subcontractor's failure to pay wages was because of the general contractor's failure to pay moneys due to the subcontractor. The measure also provides that the lack of privity between the general contractor and the employees of the subcontractor is not a defense in an action against the general contractor arising from nonpayment of wages to the subcontractor's employees.

6. Budget Amendment Necessary: Yes, Item 402, HB/SB30 as Introduced.

7. Fiscal Impact Estimates: Preliminary, see item 8.

7a. Expenditure Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2020 | N/A | N/A | N/A |

- 8. Fiscal Implications:** The Department of Labor and Industry (DOLI) indicates that the agency's payment of wage collections are mostly for small claims that average about \$150. While a small amount of these claimants will pursue the wage claim on their own, DOLI anticipates that the agency will still receive and enforce the same number of complaints for collection. Larger claims for which DOLI has limited resources to pursue would be pursued by private attorneys directly on behalf of the affected employee, which will have little or no impact on DOLI's Labor Law division. The provisions pertaining to general contractor liability do not require action by the DOLI, with the exception of fielding calls. As such, the agency does not anticipate a fiscal impact to the agency as a result of those provisions.

This bill provides that an employer that knowingly fails or refuses to pay wages, unless the failure to pay was because of a bona fide dispute between the employer and its employee, is guilty of a Class 1 misdemeanor if the value of the wages earned and not paid by the employer is less than \$10,000. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Additionally, the bill provides that that an employer that knowingly fails or refuses to pay wages, unless the failure to pay was because of a bona fide dispute between the employer and its employee, is guilty of a Class 6 felony if the value of the wages earned and not paid by the employer is \$10,000 or more or if the conviction is a second or subsequent conviction. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry; courts.

10. Technical Amendment Necessary: No.

11. Other Comments: None.