

# Preliminary

Fiscal Note

2021-2022 Legislative Session

## HF800 - 1A - Safe Workplaces for Meat and Poultry Processing

Chief Author: **Dan Wolgamott**  
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**  
 Date Completed:  
 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	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	344	147	147	147	147
<b>Total</b>	-	<b>344</b>	<b>147</b>	<b>147</b>	<b>147</b>	<b>147</b>
<b>Biennial Total</b>			<b>491</b>			<b>294</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	1	1	1	1
<b>Total</b>	-	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>

### LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Christian Larson    **Date:** 3/1/2021 9:12:19 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 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	344	147	147	147
<b>Total</b>	<b>-</b>	<b>344</b>	<b>147</b>	<b>147</b>	<b>147</b>
<b>Biennial Total</b>			<b>491</b>		<b>294</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
General Fund	-	344	147	147	147
<b>Total</b>	<b>-</b>	<b>344</b>	<b>147</b>	<b>147</b>	<b>147</b>
<b>Biennial Total</b>			<b>491</b>		<b>294</b>
<b>2 - Revenues, Transfers In*</b>					
General Fund	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>			<b>-</b>		<b>-</b>

## Bill Description

This bill establishes 179.87 to 179.8757 as the Safe Workplaces for Meat and Poultry Processing Workers Act (Act) providing for definitions; appointment of a worker-rights coordinator at the Department of Labor and Industry; worker safety and employment protections; worker unemployment insurance eligibility; enforcement and compliance of the Act; employer retaliation prohibitions; worker safety and training program requirements; employer and coordinator notification requirements; and appropriations. Sections 1 and 2 provide for the title of the Act and applicable definitions.

Section 3 [179.8715] directs the commissioner of the Department of Labor and Industry to appoint a meatpacking industry worker-rights coordinator and provide office support for that position to enforce the Act including: conducting inspections of and recommending improvements to meatpacking operations, practices and procedures in Minnesota; providing meatpacking industry employer notifications; and drafting and submitting a report to the governor and legislature on recommendations to promote better treatment of meat-processing workers.

Section 4 [179.872] creates a worker right for meat-processing workers to refuse to work under conditions the worker reasonably believes would expose themselves, other workers or the public to an unreasonable risk of illness or injury including exposure to COVID-19. The meat-processing employer cannot discriminate or take adverse action against the worker for the act of refusal and requirement that the hazardous condition be remedied. The employer can reassign other work, but the worker has a right to retain their continued employment and their pay for the hours they would have worked.

Section 5 [179.874] establishes unemployment insurance eligibility criteria related to meat-processing workers leaving employment. The Department of Employment and Economic Development (DEED) enforces and administers unemployment rights and benefits, and may enforce and administer this section.

Section 6 [179.875] establishes enforcement and compliance remedies including administrative enforcement, private civil action or other government enforcement through the attorney general, city, or county attorneys. The bill provides authority for the commissioner of the Department of Labor and Industry to issue a compliance order under section 177.27, subdivision 4, for violations of the Act. Section 177.27, subdivision 4, provides the process for service of a compliance order on an employer and the employer's right to object to an order within 15 days, initiating a contested case proceeding. The bill states that civil or administrative actions can result in an injunction to compel compliance or restrain further violations through stop-work orders or business closures; allows for employer payments to workers for reasonable costs, disbursements, and attorney fees; and a civil penalty payable to the state of not less than \$100 per day per worker affected by the employer's noncompliance with the Act. Further, for violations of section 4 of the bill, an employer may be required to reinstate the worker to the same or equivalent position; restore full seniority rights and fringe benefits; provide compensation for unpaid wages, benefits, and front pay; and pay compensatory damages payable to the aggrieved worker equal to the greater of \$5,000 or twice the actual damages, including unpaid wages, benefits or other remuneration, and punitive damages. Further, this section under subdivision 5 allows whistleblower enforcement and penalty assessment through private civil action brought on behalf of the commissioner by another individual (including an authorized employee

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representative) but requiring that the said individual provide written notice to the coordinator of the provision of the Act to have allegedly been violated. That civil action may commence if no enforcement action is taken by the coordinator within 30 days. Any civil penalties recovered pursuant to this subdivision of this section must be distributed at 70 percent to the Department of Labor and Industry for enforcement of sections 179.87 to 179.8757 and 30 percent to the individual or authorized employee representative that brought the action.

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Section 7 [179.8755] prohibits discrimination or adverse actions taken against any employee or whistleblower who reports to anyone concerns about meatpacking operation health and safety concerns. The law creates a rebuttable presumption that any adverse action against a worker within 90 days of the worker's engagement in activities protected by the Act is retaliatory. This section bans any attempt to require a worker sign a contract or agreement to limit the worker's right to disclose workplace health and safety hazards and practices and defines any such an attempt as an adverse action. Further, reporting or threatening to report a meat-processing worker or a worker's family member suspected immigration status constitutes an adverse action and violation. If a worker brings a complaint of a violation of the Act and has been retaliated against, they are entitled to treble damages, lost pay, and attorney costs. A company found to have retaliated against a food processing worker must pay a fine (not articulated in the bill) to the Department.

Section 8 [179.8756] requires meat-processing employers to establish a worker-safety program as part of their work accident and injury reduction program to minimize and prevent musculoskeletal disorders. It requires the program establish a committee to administer and the employer deliver training to workers and that it records and keep record of worker-safety training completion. The commissioner must adopt rules requiring employers to maintain accurate records of meat-processing worker exposure to ergonomic hazards and the coordinator may access and publish a summary of employer records.

In subdivision 8 of this section, it's prescribed safety measures required in meatpacking operations during a pandemic and public health emergency and reporting of illness and injuries. Included with safety and sanitation, this section requires the accrual, utilization, banking, and transferability of paid sick leave for workers and requiring employers provide written notice in the language fluent to the worker. Paid sick leave rights provided (1 hour per 30 worked [11.22]) for illness or injury or care for a family member compensated at the worker's same hourly rate or benefits. Employer can advance the sick leave at the "beginning of the year" or start of worker's employment. Meatpacking employers must carry over workers' paid sick leave balance into the next year. Workers may opt to receive a pay out of the benefit. Employer must keep records of leave accrual and use for 3 years. Paid sick leave accruals survive operation ownership change [12.30]. Employers are prohibited from requiring workers to disclose the details that give rise to utilizing the paid leave. Employers must provide notice to workers about their rights to leave at the beginning of employment in the language the worker speaks fluently. In addition, there is a posting requirement of these rights in each facility in a conspicuous place in English, or a language of fluency read or spoken by at least 5 percent of the employer's workforce. An employer may adopt a paid sick leave benefit more generous than those benefits outlined in this bill.

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Section 9 [179.8757] states that meat-processing employers must provide written information and notifications about employee rights under section 179.86 and sections 179.87 to 179.8757 to workers in their language of fluency at least annually and requires the Department's worker-rights coordinator inform covered employers under 179.87 to 179.8757 about any updates at least annually. Further, the law instructs the Department to post information to its website explaining the law and that the posting must be accessible and in at least English and Spanish and any other language that at least 10 percent of meat-processing workers communicate in fluently.

Section 10 is a placeholder for undetermined appropriations to the Department for implementation of the bill for state fiscal years 2022 and 2023.

## **Assumptions**

The Department's role and requirements are expanded in this bill. To perform the work outlined in the bill for this Department, it anticipates the need for resources to field inquiries; perform complaint intake; conduct in-person inspections to investigate and resolve violations; develop, publish and disseminate communications resources; perform outreach and engagement; and compile and submit reports.

The bill does not specifically state an enactment date, so the Department assumes that this Act's effective date to be August 1, 2021. The Department cannot predict the end of the peacetime emergency related to COVID-19. However, for

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purposes of this fiscal note, the Department assumes the end of the peacetime emergency related to COVID-19 to occur on or before June 30, 2021. Because this assumption date precedes the August 1, 2021 bill effective date, compliance with rights during a peacetime emergency period are not applicable and therefore not addressed in this fiscal note. In addition, the bill establishes unemployment insurance eligibility criteria related to meat-processing worker leaving employment. As indicated above in the description, DEED enforces and administers unemployment rights and benefits. The bill provides that DEED will maintain its oversight in that area.

## Coordinator Appointed:

As instructed by the bill, the commissioner of DLI will appoint a worker-rights coordinator to perform compliance and communication work. DLI anticipates creating and hiring a new position as the coordinator beginning in FY2022 to be housed within the Labor Standards and Apprenticeship Division. The coordinator position's time will be divided between intake, compliance, reporting, and outreach work explained below as they relate to the provisions of the Act. DLI expects this position to be hired as a State Program Admin Coordinator (MAPE 18L).

## Outreach & Engagement:

The number of meatpacking and poultry processing facilities in Minnesota is estimated to be 117 with nearly 17,000 workers associated. This bill requires outreach and engagement to make workers as well as employers impacted by the Act aware of their rights and responsibilities. This will require development of informative resources and dissemination of that information throughout the year on an ongoing basis. The Department will disseminate information related to the Act and the responsibilities of employers at least once annually. Outreach costs include development, design, printing, translation of materials, mail-fulfillment, travel, event fees and associated costs, and marketing efforts. DLI estimates this cost to be \$50,000 for these activities. The Department will also update its Website as appropriate with resources in multiple languages consistent with the provisions of this bill. The coordinator will work in concert with the existing Department communications staff to develop materials and to perform outreach and engagement related activities annually. DLI estimates this overall effort equates to 0.30 FTE.

## Inquiries:

The Department anticipates it will receive inquiries about the provisions of the Act because it is new and due to greater awareness of the Act. However, it is likely that the number of inquiries will represent a small number of workers impacted. For the purposes of this note, the Department estimates that it will receive 170 inquiries annually, a figure which represents 1% of total workers in that sector. The Department estimates the coordinator will commit an estimated .02 FTE (170 inquiries x 15 minutes per inquiry = 42.5 hours or .02 FTE) to this work.

## Compliance:

The Department will receive complaint allegations of workplace safety or labor standards violations related to the Act. It is assumed that if a worker-safety issue is reported to or identified by the coordinator, it will be referred to DLI's OSHA Compliance program for further investigation and abatement of the safety hazard. The OSHA Compliance program would take these issues as referrals and apply and enforce its own regulatory standards. DLI assumes these referrals would not result in additional costs to the OSHA Compliance program because it currently has jurisdiction to enforce existing OSHA standards in these workplaces. OSHA data shows that it completed 9 inspections of meat-processing operations in FFY2020. Based upon this data, we estimate that the coordinator will inspect a higher number due to outreach visibility. We expect we will do double resulting in 18 total inspection investigations annually. The coordinator position will utilize inspections, subpoenas of records and worker and witness interviews to identify and address violations of the Act. Approximately 10 of these investigative inspections will have complexity requiring planning, logistics, records review and analysis, employer and witness interviews and statements, calculations, findings, and case dispute resolution. Similarly, 7 inspection/investigations will have the same elements as those of the previous group but require additional time due to number of workers involved, as well as added complexity in accessing, gathering and securing information to aid in proving a violation and efforts to bringing about compliance and amicable resolution. It is assumed most investigative inspections will be addressed and ultimately resolved informally due to the breath of relief possible.

10 inspections / investigations x 60 hours = 600 hours

7 inspections / investigations x 80 hours = 560 hours

1 inspection / investigation x 120 hours = 120 hours

Total inspection / investigative Hours = 1,280 hours (0.62 FTE)

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To gain compliance from the employer, the Department assumes one complaint investigation annually would require action at the Office of Administrative Hearings (OAH). The Department would be represented by the state attorney general's office in such actions. DLI assumes only one case every four years would go to hearing and require 55 hours of administrative law judge (ALJ) time at the currently approved billable rate of \$215 per hour. The other three years appealed to OAH are resolved before hearing and average 3 hours of ALJ time. The total annual estimated costs for OAH is \$3,440.

This Act empowers the coordinator to assess penalties as part of the position's compliance work. The penalties authorized in this bill are new and are different than existing records penalties the unit assesses for employer violations of failing to maintain or failure to submit records to the Department. DLI assumes a \$1,000 for the average civil penalty payable to the State and \$1,000 for the retaliation penalty amount. On average, DLI collects a penalty in 1.9% of investigations annually. Therefore, DLI assumes the collection of \$342 annually in penalties. (18 investigations X 1.9% = 0.342. \$1,000 x 0.342 = \$342 collected annually)

## Case Management / IT:

DLI anticipates the worker-rights coordinator will require case-management technology to perform the work of recording, routing, and tracking complaints and inspections as well as producing reports. DLI assumes it will integrate these capabilities into the existing solution currently under development. However, because this Act has new provisions, the Department estimates a one-time \$13,000 for vendor contracting to scope, develop, test, and build capability and sufficient data-capture for reporting, routing, and case-management purposes. Further, DLI anticipates \$600 annually for one user license.

## Reporting:

This bill requires an annual report to be researched, drafted, and delivered to the governor and legislative branch. The worker-rights coordinator will take the lead role in managing and preparing the annual report. The coordinator position will commit an estimated .05 FTE to this work. DLI's Research and Statistics (R&S) unit will assist the worker-rights coordinator in studying materials, analyzing data, and reviewing the final report. R&S expects this effort to take approximately 100 hours. This function is minimal and will be funded through the agencies indirect general support budget.

## Rulemaking:

DLI assumes rulemaking to clarify how it will enforce the Act. DLI assumes one medium rulemaking at \$133,376 in FY2022.

## Expenditure and/or Revenue Formula

State Prog Admin Coord - MAPE 18L	2022	2023	2024	2025
FTE	1	1	1	1
Salary per FTE (midpoint)	81,954	81,954	81,954	81,954
Fringe Benefits (35% of Salary)	28,684	28,684	28,684	28,684
Indirect (22.5% of Salary/Fringe)	24,894	24,894	24,894	24,894
<b>Salary / Fringe / Indirect</b>	135,531	135,531	135,531	135,531
<b>Non-Personnel Services</b>	7,804	7,804	7,804	7,804
<b>Cumulative Cost</b>	143,336	143,336	143,336	143,336

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Cumulative Expenditures	2022	2023	2024	2025
State Prog Admin Coordinator	143,336	143,336	143,336	143,336
Outreach	50,000	-	-	-
OAH	3,440	3,440	3,440	3,440
IT Case Mgmt Build	13,000	-	-	-
IT Case Mgmt User Licenses	600	600	600	600
Rulemaking	133,376	-	-	-
<b>Cumulative Expenditures</b>	<b>343,752</b>	<b>147,376</b>	<b>147,376</b>	<b>147,376</b>

## Long-Term Fiscal Considerations

### Local Fiscal Impact

This bill provides city or county attorneys enforcement authority of sections 179.87 to 179.8757 including inspection of meatpacking operations and subpoena records and witnesses and bringing civil actions when violations are found. It is assumed that some local jurisdictions may incur costs related to enforcement activities.

### References/Sources

#### DLI Research & Statistics Unit

Sourced: Quarterly Census on Employment and Wage

Annual averages for 2019 (2020 not available yet)

Number of meatpacking and poultry operations in MN

· Other than poultry	99
· Poultry	18
· Total	<b>117</b>

Number of workers that are working in these operations in MN

· Other than poultry	10,657
· Poultry	6,338
· Total	<b>16,995</b>

MNOSHA Data:	Federal fiscal year 2019	Federal fiscal year 2020
# of inspections by OSHA of meat-processing operations:	7	9

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