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FISCAL IMPACT STATEMENT

LS 7005

BILL NUMBER: HB 1269

NOTE PREPARED: Jan 29, 2008

BILL AMENDED: Jan 28, 2008

SUBJECT: Employee Classification.

FIRST AUTHOR: Rep. Niezgodski

FIRST SPONSOR: Sen. Dillon

BILL STATUS: As Passed House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that an individual performing services for a contractor is considered to be an employee of the contractor, with certain exceptions. It provides for investigations of the employment relationship between an individual and a contractor by the Department of Labor, procedures to be followed for investigations, and for various civil penalties to be assessed by the Department of Labor for: (1) the failure to properly classify the individual; and (2) retaliation against certain persons. This bill provides that certain information pertaining to employee classification shared between several state agencies is confidential and may not be published or open to public inspection. The bill provides that a contractor or an agent of the contractor that intentionally fails to properly classify an individual as an employee commits a Class C misdemeanor, and that the second or subsequent intentional violation within five years is a Class D felony.

Effective Date: July 1, 2008.

Explanation of State Expenditures: The impact on the Department of Labor will depend on the number of complaints filed. Assuming two additional investigators would be needed at \$36,557 and an assistant at \$24,715, then the increase in cost would be about \$147,750 for FY 2009 and \$144,432 for FY 2010.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The Department of Labor as of January 7, 2008, had

nine vacant positions valued at about \$290,732. None of the nine positions had been vacant for more than 6 months. The department reverted \$673,428 to the state General Fund on June 30, 2007.

Penalty Provisions: The bill provides for criminal penalties for intentionally failing to properly classify an individual as an employee. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Employee Classification Fund:* The bill establishes the nonreverting Employee Classification Fund for the purposes of administering these provisions, investigating contractors and agents of contractors, and for funding other expenses incurred in carrying out the duties of the department regarding employee classification. The fund consists of civil penalties collected for employee classification violations.

Civil penalties may be assessed of up to \$1,500 for each offense in the first audit of the contractor and up to \$2,500 for each repeated violation found by the department within 5 years of the first violation. The revenue will depend on the number of violations found by the department.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C misdemeanor is \$500 and \$10,000 for a Class D felony. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalty Provisions:* A Class C misdemeanor is punishable by up to 60 days in jail. And if more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Provisions:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Labor, DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, DOC.

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