

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1001 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 6-3-7-5 IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) As used in this section,
- 5 "independent contractor" refers to a person described in
- 6 IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).
- 7 (b) As used in this section, "person" means an individual, a
- 8 proprietorship, a partnership, a joint venture, a firm, an association, a
- 9 corporation, or other legal entity.
- 10 (c) An independent contractor who does not make an election under:
- 11 (1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the
- 12 compensation provisions of IC 22-3-2 through IC 22-3-6; or
- 13 (2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the
- 14 compensation provisions of IC 22-3-7;
- 15 and must file a statement with the department with supporting
- 16 documentation of independent contractor status and obtain a certificate
- 17 of exemption under this section.
- 18 (d) An independent contractor shall file with the department, in the
- 19 form prescribed by the department, a statement providing the following
- 20 information:
- 21 (1) The independent contractor's name, trade name, address, and
- 22 telephone number.
- 23 (2) The independent contractor's federal identification number or

- 1 Social Security number.
- 2 (3) The name and:
- 3 (A) Social Security number;
- 4 (B) federal employer identification number (FEIN); or
- 5 (C) taxpayer identification number (TIN);
- 6 of each person or entity with whom the independent contractor
- 7 has contracted.
- 8 (e) Along with the statement required in subsection (d), an
- 9 independent contractor shall file annually with the department
- 10 documentation in support of independent contractor status before being
- 11 granted a certificate of exemption. The independent contractor must
- 12 obtain clearance from the department of state revenue before issuance
- 13 of the certificate.
- 14 (f) An independent contractor shall pay a filing fee of ~~five~~
- 15 **twenty-five** dollars (~~\$5~~) (**\$25**) with the statement required in
- 16 subsection (d). The fees collected under this subsection shall be
- 17 deposited into a special account in the state general fund known as the
- 18 independent contractor information account. Money in the independent
- 19 contractor information account is annually appropriated to the
- 20 department for its use in carrying out the purposes of this section.
- 21 (g) The department shall keep each statement and supporting
- 22 documentation received under this section on file and on request may
- 23 verify that a certificate of exemption is on file.
- 24 (h) The certificate of exemption required by this section must be on
- 25 a form prescribed and provided by the department. A certificate issued
- 26 under this section is valid for one (1) year. The department shall
- 27 maintain the original certificate on file.
- 28 (i) A certificate of exemption must certify the following
- 29 information:
- 30 (1) That the independent contractor has worker's compensation
- 31 coverage for the independent contractor's employees in
- 32 accordance with IC 22-3-2 through IC 22-3-7.
- 33 (2) That the independent contractor desires to be exempt from
- 34 being able to recover under the worker's compensation policy or
- 35 self-insurance of a person for whom the independent contractor
- 36 will perform work only as an independent contractor.
- 37 (j) The department shall provide the certificate of exemption to the
- 38 person requesting it not less than seven (7) business days after
- 39 verifying the accuracy of the supporting documentation. To be given
- 40 effect, a certificate of exemption must be filed with the worker's
- 41 compensation board of Indiana in accordance with IC 22-3-2-14.5(f)
- 42 and IC 22-3-7-34.5(g).
- 43 (k) Not more than thirty (30) days after the department receives an
- 44 independent contractor's statement and supporting documentation and
- 45 issues a certificate of exemption, the department shall provide the
- 46 independent contractor with an explanation of the department's tax

1 treatment of independent contractors and the duty of the independent
2 contractor to remit any taxes owed.

3 (l) The information received from an independent contractor's
4 statement and supporting documentation is to be treated as confidential
5 by the department and is to be used solely for the purposes of this
6 section.

7 (m) A contractor who knowingly or intentionally causes or assists
8 employees, including temporary employees, to file a false statement
9 and supporting documentation of independent contractor status
10 commits a Class D felony.

11 (m) If the department determines during an investigation that
12 a contractor or subcontractor improperly has classified an
13 employee as an independent contractor on a construction project,
14 the contractor or subcontractor may conform to the departmental
15 decision by properly classifying the employee found to be
16 misclassified as an independent contractor within seven (7)
17 business days after notification of the determination by the
18 department, making all necessary payments on behalf of the
19 employee, and no fee or penalty is due. In addition, the department
20 shall revoke the certificate of exemption provided under subsection
21 (j) to the employee who has not been properly classified. The filing
22 fee paid under subsection (f) shall not be returned to the individual
23 who had claimed to be an independent contractor.

24 (n) A contractor or subcontractor who continues to improperly
25 classify an employee as an independent contractor on a
26 construction project more than seven (7) business days after
27 notification by the department of the determination of the
28 misclassification under subsection (m) is subject to a civil penalty
29 of five hundred dollars (\$500) per employee, to be paid to the
30 department. The penalties collected under this subsection shall be
31 deposited into the special account in the state general fund
32 established under subsection (f) and known as the independent
33 contractor information account. IC 6-8.1-3-12 applies to the
34 investigation, and IC 6-8.1-5-1 applies to the assessment of tax due
35 concerning the determination of the failure to properly classify an
36 employee under this section.

37 (o) If a contractor or a subcontractor claims to have conformed
38 to the department's decision under subsection (m), and upon
39 further investigation the contractor or subcontractor is found to
40 have continued the improper classification or has not remedied
41 fully the violation, the contractor or subcontractor is subject
42 immediately to double the civil penalty under subsection (n) per
43 employee who has been improperly classified.

44 (p) An independent contractor who fails to file a statement as
45 required by subsection (d) shall be assessed a civil penalty of five
46 hundred dollars (\$500) by the department. A civil penalty assessed
47 and paid under this subsection shall be deposited into the special

1 **account in the state general fund established under subsection (f)**
2 **and known as the independent contractor information account.**

3 SECTION 2. IC 6-8.1-9-14, AS AMENDED BY P.L.103-2007,
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2012]: Sec. 14. (a) Except as provided in subsection (n), the
6 department shall establish, administer, and make available a
7 centralized debt collection program for use by state agencies to collect
8 delinquent accounts, charges, fees, loans, taxes, **civil penalties**
9 **assessed by agencies**, or other indebtedness owed to or being collected
10 by state agencies. The department's collection facilities shall be
11 available for use by other state agencies only when resources are
12 available to the department.

13 (b) The commissioner shall prescribe the appropriate form and
14 manner in which collection information is to be submitted to the
15 department.

16 (c) The debt must be delinquent and not subject to litigation, claim,
17 appeal, or review under the appropriate remedies of a state agency.

18 (d) The department has the authority to collect for the state or
19 claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts,
20 charges, fees, loans, taxes, or other indebtedness due the state or
21 claimant agency that has a formal agreement with the department for
22 central debt collection.

23 (e) The formal agreement must provide that the information
24 provided to the department be sufficient to establish the obligation in
25 court and to render the agreement as a legal judgment on behalf of the
26 state. After transferring a file for collection to the department for
27 collection, the claimant agency shall terminate all collection procedures
28 and be available to provide assistance to the department. Upon receipt
29 of a file for collection, the department shall comply with all applicable
30 state and federal laws governing collection of the debt.

31 (f) The department may use a claimant agency's statutory authority
32 to collect the claimant agency's delinquent accounts, charges, fees,
33 loans, taxes, or other indebtedness owed to the claimant agency.

34 (g) The department's right to credit against taxes due may not be
35 impaired by any right granted the department or other state agency
36 under this section.

37 (h) The department of state revenue may charge the claimant agency
38 a fee not to exceed fifteen percent (15%) of any funds the department
39 collects for a claimant agency. Notwithstanding any law concerning
40 delinquent accounts, charges, fees, loans, taxes, or other indebtedness,
41 the fifteen percent (15%) fee shall be added to the amount due to the
42 state or claimant agency when the collection is made.

43 (i) Fees collected under subsection (h) shall be retained by the
44 department after the debt is collected for the claimant agency and are
45 appropriated to the department for use by the department in
46 administering this section.

1 (j) The department shall transfer any funds collected from a debtor
 2 to the claimant agency within thirty (30) days after the end of the
 3 month in which the funds were collected.

4 (k) When a claimant agency requests collection by the department,
 5 the claimant agency shall provide the department with:

6 (1) the full name;

7 (2) the Social Security number or federal identification number,
 8 or both;

9 (3) the last known mailing address; and

10 (4) additional information that the department may request;
 11 concerning the debtor.

12 (l) The department shall establish a minimum amount that the
 13 department will attempt to collect for the claimant agency.

14 (m) The commissioner shall report, not later than March 1 for the
 15 previous calendar year, to the governor, the budget director, and the
 16 legislative council concerning the implementation of the centralized
 17 debt collection program, the number of debts, the dollar amounts of
 18 debts collected, and an estimate of the future costs and benefits that
 19 may be associated with the collection program. A report to the
 20 legislative council under this subsection must be in an electronic
 21 format under IC 5-14-6.

22 (n) The department may not assess a fee to a state agency or a
 23 custodial parent for seeking a setoff to a state or federal income tax
 24 refund for past due child support.

25 SECTION 3. IC 22-1-1-16 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 16. The commissioner
 27 of labor and ~~his~~ **an** authorized representative **of the commissioner of**
 28 **labor** shall have the power and the authority to enter any place of
 29 employment for the purpose of collecting facts and statistics relating to
 30 the employment of workers and of making inspections for the proper
 31 enforcement of all of the labor laws of this state, including IC 5-16-7
 32 **and IC 22-2-16**. No employer or owner shall refuse to admit the
 33 commissioner of labor or ~~his~~ authorized representatives **of the**
 34 **commissioner of labor** to ~~his~~ **the employer's or owner's** place of
 35 employment.

36 SECTION 4. IC 22-2-15 IS REPEALED [EFFECTIVE JULY 1,
 37 2012]. (Guidelines and Procedures for Investigating Questions and
 38 Complaints Concerning Employee Classification).

39 SECTION 5. IC 22-2-16 IS ADDED TO THE INDIANA CODE AS
 40 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2012]:

42 **Chapter 16. Employee Classification Act**

43 **Sec. 1. This chapter applies after December 31, 2012.**

44 **Sec. 2. This chapter is intended to address the proper**
 45 **classification of employees and independent contractors.**

46 **Sec. 3. As used in this chapter, "agent of the contractor" means:**

1 (1) an individual having management authority or
2 enforcement powers with respect to a practice or policy of the
3 contractor regarding the classification of an employee of the
4 contractor;

5 (2) a corporate officer of the contractor; or

6 (3) a member of the board of directors of the contractor.

7 Sec. 4. (a) As used in this chapter, "board" refers to the
8 worker's compensation board of Indiana created by IC 22-3-1-1(a).

9 (b) The term includes the board, the secretary of the board,
10 employees of the board, and agents authorized by the board to act
11 on behalf of the board.

12 Sec. 5. (a) As used in this chapter, "construction" means any
13 constructing, altering, reconstructing, repairing, rehabilitating,
14 refinishing, refurbishing, remodeling, remediating, renovating,
15 custom fabricating, maintaining, landscaping, improving,
16 wrecking, painting, decorating, demolishing, and adding to or
17 subtracting from any building, structure, airport facility, highway,
18 roadway, street, bridge, alley, sewer, drain, ditch, sewage disposal
19 plant, waterworks, parking facility, railroad, excavation, or other
20 project, development, real property, or improvement, or doing any
21 part of these actions.

22 (b) For purposes of subsection (a), it is immaterial whether or
23 not the performance of the work described involves the addition of
24 any material or article of merchandise to, or fabrication into, a
25 structure, project, development, real property, or improvement
26 described in this section.

27 (c) The term defined in subsection (a) includes moving
28 construction related materials to or from the job site.

29 Sec. 6. (a) As used in this chapter, "contractor" means any sole
30 proprietor, partnership, firm, corporation, limited liability
31 company, association, or other legal entity that engages in
32 construction authorized by law to do business within Indiana.

33 (b) The term includes a general contractor, a subcontractor, and
34 a lower tiered contractor.

35 (c) The term does not include the state, the federal government,
36 or a political subdivision.

37 Sec. 7. (a) As used in this chapter, "department" refers to the
38 department of labor created by IC 22-1-1-1.

39 (b) The term includes the commissioner, employees of the
40 department of labor, and agents authorized by the commissioner
41 to act on behalf of the department of labor.

42 Sec. 8. (a) As used in this chapter, "department of revenue"
43 refers to the department of state revenue established by
44 IC 6-8.1-2-1.

45 (b) The term includes the commissioner, employees of the
46 department of revenue, and agents authorized by the commissioner
47 to act on behalf of the department of revenue.

1 **Sec. 9. (a)** As used in this chapter, "department of workforce
2 development" refers to the department of workforce development
3 established by IC 22-4.1-2-1.

4 **(b)** The term includes the commissioner, employees of the
5 department of workforce development, and agents authorized by
6 the commissioner to act on behalf of the department of workforce
7 development.

8 **Sec. 10. (a)** As used in this chapter, "interested party" means a
9 person with an interest in compliance with this chapter, including
10 the state or a political subdivision.

11 **(b)** This section does not require that a person be aggrieved in
12 order to be considered an interested party.

13 **Sec. 11.** As used in this chapter, "performing services" means
14 performing construction services.

15 **Sec. 12.** As used in this chapter, "political subdivision" has the
16 meaning set forth in IC 36-1-2-13.

17 **Sec. 13.** As used in this chapter, "subcontractor" has the
18 meaning set forth in IC 36-1-12-1.2(3).

19 **Sec. 14.** An individual performing services for a contractor is
20 considered to be an employee of the contractor unless:

21 **(1)** the:

22 **(A)** individual has been and will continue to be free from
23 control or direction over the performance of the service for
24 the contractor, both under the individual's contract of
25 service and in fact; and

26 **(B)** individual is engaged in an independently established
27 trade, occupation, profession, or business;

28 **(2)** the individual is determined to be a legitimate sole
29 proprietor or partnership because:

30 **(A)** the sole proprietor or partnership is performing the
31 service without substantial direction and control as to the
32 means and manner of providing the services, subject only
33 to the right of the contractor, for whom the service is
34 provided, to specify the desired result;

35 **(B)** the sole proprietor or partnership has a substantial
36 investment of capital in the sole proprietorship;

37 **(C)** the sole proprietor or partnership owns the capital
38 goods, gains the profits, and bears the losses of the sole
39 proprietorship or partnership;

40 **(D)** the sole proprietor or partnership makes its services
41 available to the general public or the business community
42 on a continuing basis;

43 **(E)** the sole proprietor or partnership includes services
44 rendered on a federal income tax schedule as an
45 independent business or profession;

46 **(F)** the sole proprietor or partnership performs services
47 for the contractor under the sole proprietor's or

- 1 partnership's name, and the contractor pays the sole
 2 proprietor or partnership a flat fee or other agreed
 3 amount of compensation that is not based on an established
 4 rate for any time period of work;
- 5 (G) the sole proprietor or partnership obtains and pays for
 6 the license or permit in the sole proprietor's or
 7 partnership's name when the services being provided
 8 require a license or permit;
- 9 (H) the sole proprietor or partnership furnishes the tools
 10 and equipment necessary to provide the service;
- 11 (I) if necessary, the sole proprietor or partnership hires its
 12 own employees, pays the employees without
 13 reimbursement from the contractor, and reports the
 14 employees' income to the Internal Revenue Service;
- 15 (J) the contractor does not:
- 16 (i) represent the sole proprietor or partnership as an
 17 employee of the contractor to its customers; or
- 18 (ii) reimburse the sole proprietor or partnership for its
 19 business expenses;
- 20 (K) the sole proprietor or partnership has the right to
 21 choose to perform similar services for others; and
- 22 (L) the sole proprietorship or partnership has a written
 23 agreement with the contractor describing the intended
 24 business relationship; or
- 25 (3) the individual is an owner-operator that provides a motor
 26 vehicle and the services of a driver under a written contract
 27 that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR
 28 376, to a motor carrier.
- 29 **Sec. 15. (a)** It is a violation of this chapter for a contractor, an
 30 agent of a contractor, or a subcontractor to classify an individual
 31 as an independent contractor unless the relationship between the
 32 individual and the contractor or subcontractor is excluded under
 33 section 14 of this chapter.
- 34 (b) A contractor is jointly liable under this chapter for the
 35 failure of a subcontractor or a lower tiered subcontractor to
 36 properly classify persons performing services as employees.
- 37 **Sec. 16. (a)** A contractor or subcontractor shall maintain
 38 records for a period as required in IC 6-3-6-10 and IC 6-8.1-5-4 for
 39 an individual performing services for the contractor or
 40 subcontractor, regardless whether the individual is classified as:
- 41 (1) an employee;
- 42 (2) an independent contractor;
- 43 (3) a sole proprietor; or
- 44 (4) a partnership.
- 45 (b) Records to be maintained by the contractor or subcontractor
 46 must include all documents related to, or tending to establish the
 47 nature of, the relationship between the contractor or subcontractor

1 and an individual performing services for the contractor or
 2 subcontractor. Records that must be maintained under this section
 3 for an individual performing services for the contractor or
 4 subcontractor include, but are not limited to:

5 (1) the:

6 (A) name;

7 (B) address;

8 (C) phone number; and

9 (D) Social Security number, individual taxpayer
 10 identification number, or federal tax identification
 11 number;

12 (2) the type of work performed and the total number of days
 13 and hours worked;

14 (3) the method, frequency, and basis on which wages were
 15 paid or payments were made;

16 (4) all invoices, billing statements, or other payment records,
 17 including the dates of payments, and any miscellaneous
 18 income paid or deductions made;

19 (5) copies of all contracts with the individual, agreements with
 20 the individual, applications for employment by the individual
 21 with the contractor or subcontractor, and policy or
 22 employment manuals of the employer for the period that the
 23 individual performed services for the contractor or
 24 subcontractor; and

25 (6) any federal and state tax documents or other information
 26 the department considers relevant or necessary.

27 Sec. 17. (a) An interested party may file a complaint with the
 28 department against a contractor or a subcontractor if the
 29 interested party has a reasonable belief that the contractor or
 30 subcontractor is in violation of this chapter. The department may
 31 not investigate a complaint for a violation alleged to have occurred
 32 before January 1, 2013.

33 (b) Upon receiving a complaint under subsection (a), the
 34 department immediately shall commence an investigation to
 35 ascertain the facts relating to the violation alleged in the complaint
 36 and determine whether a violation under this chapter has
 37 occurred. The investigation may be made by written or oral
 38 inquiry, field visit, conference, or any method or combination of
 39 methods the department considers suitable. The department:

40 (1) shall conduct investigations, including random inspections,
 41 in connection with the administration and enforcement of this
 42 chapter;

43 (2) shall enforce this chapter; and

44 (3) may hire investigators and other personnel necessary to
 45 carry out the purpose of this chapter.

46 (c) The department has authority to visit and inspect, at all
 47 reasonable times, a worksite subject to the provisions of this

1 chapter and has authority to inspect, at all reasonable times,
 2 documents related to the determination of whether an individual
 3 is an independent contractor under section 14 of this chapter.

4 (d) The department may:

- 5 (1) compel, by subpoena, the attendance and testimony of
- 6 witnesses and the production of books, payrolls, records,
- 7 papers, and other evidence in an investigation; and
- 8 (2) administer oaths to witnesses.

9 Sec. 18. The department, the department of workforce
 10 development, the department of revenue, and the board shall
 11 cooperate under this chapter by sharing information concerning
 12 suspected failure to properly classify an independent contractor as
 13 an employee by a contractor, an agent of a contractor, or a
 14 subcontractor as required by the following:

- 15 (1) IC 6-8.1-3-21.2.
- 16 (2) IC 22-1-1-22.
- 17 (3) IC 22-3-1-5.
- 18 (4) IC 22-4.1-4-4.

19 Sec. 19. (a) Whenever the department determines, after
 20 investigation, that a violation of this chapter has occurred, the
 21 department shall issue and cause to be served on the contractor or
 22 the subcontractor, by posting at the site in a location visible to the
 23 workers, if construction is still occurring, an order to cease and
 24 desist from further violation of this chapter. If construction has
 25 ceased, the notice shall be sent by first class mail to the business
 26 address of the contractor as shown in the records of the secretary
 27 of state. If a subcontractor has committed the violation, the
 28 department shall notify the contractor either at the job site or by
 29 first class mail sent to the business address of the contractor as
 30 shown in the records of the secretary of state, and to the
 31 subcontractor, either at the job site or by first class mail sent to the
 32 business address of the subcontractor as shown in the records of
 33 the secretary of state. An order issued under this section is a
 34 matter of public record.

35 (b) Upon determining that a contractor, an agent of a
 36 contractor, or a subcontractor has classified an employee as an
 37 independent contractor in violation of this chapter, the department
 38 shall notify:

- 39 (1) the department of workforce development, which shall
- 40 investigate the contractor's compliance with laws under
- 41 IC 22-4 and IC 22-4.1;
- 42 (2) the department of revenue, which shall investigate the
- 43 contractor's compliance with laws under IC 6; and
- 44 (3) the board, which shall investigate the contractor's
- 45 compliance with laws under IC 22-3.

46 The department of workforce development, the department of
 47 revenue, and the board have the option to join in the investigation

1 with the department or to commence a separate investigation.

2 **Sec. 20. (a)** Seven (7) business days after the department serves
 3 a cease and desist order upon a violator under section 19 of this
 4 chapter, if services are continuing to be performed, the
 5 investigating department shall return to the job site and continue
 6 investigation of the classification of employees. If the department
 7 concludes that the improper classification of employees is
 8 continuing, the department shall impose a civil penalty of five
 9 hundred dollars (\$500) per improperly classified employee against
 10 the contractor, and at the discretion of the department also on the
 11 contractor if a subcontractor has committed the violation. The civil
 12 penalty shall be deposited in the employee classification fund
 13 established by section 23 of this chapter. A civil penalty imposed
 14 under this section is a matter of public record.

15 **(b)** Fifteen (15) days after the investigating department has
 16 made an investigation at a job site under subsection (a), if services
 17 are continuing to be performed, the department shall return to the
 18 job site and continue the investigation of the proper classification
 19 of employees. If the department concludes that improper
 20 classification of employees is continuing to occur, the department
 21 shall impose a civil penalty of:

22 (1) one thousand dollars (\$1,000) per improperly classified
 23 employee against the contractor or against both the
 24 contractor and the subcontractor, if the subcontractor has
 25 committed the violation, in cases in which the contractor or
 26 subcontractor has employed five (5) or fewer improperly
 27 classified employees;

28 (2) two thousand five hundred dollars (\$2,500) per improperly
 29 classified employee against the contractor or against both the
 30 contractor and the subcontractor, if the subcontractor has
 31 committed the violation, in cases in which the contractor or
 32 subcontractor has employed six (6) to ten (10) improperly
 33 classified employees; and

34 (3) five thousand dollars (\$5,000) per improperly classified
 35 employee against the contractor or against both the
 36 subcontractor and contractor, if the subcontractor has
 37 committed the violation, in cases in which the contractor or
 38 subcontractor has employed more than ten (10) improperly
 39 classified employees.

40 The civil penalty shall be deposited in the employee classification
 41 fund established by section 23 of this chapter. A civil penalty
 42 imposed under this section is a matter of public record.

43 **Sec. 21.** At the time of the imposition of the civil penalty under
 44 section 20(a) and 20(b) of this chapter, the department shall inform
 45 the contractor by written notice, sent by first class mail to the
 46 business address of the contractor as shown in the records of the
 47 secretary of state, that a further investigation by the department

1 will be made thirty (30) business days after the imposition of the
 2 civil penalty. The notice also must inform the contractor that if
 3 further investigation reveals the continuing failure to properly
 4 classify employees, the department will take the action set forth in
 5 section 25(b) of this chapter, which shall deny the contractor a
 6 contract for a public work project (as defined in IC 36-1-12-2), a
 7 state public works project under IC 4-13.6, or an Indiana
 8 department of transportation public works project under IC 8-23
 9 for four (4) years after the posting of the name of the contractor on
 10 a list kept by the department and posted on the department's
 11 Internet web site.

12 **Sec. 22. (a)** A contractor, an agent of a contractor, or a
 13 subcontractor that receives:

- 14 (1) a cease and desist order;
- 15 (2) a civil penalty assessment; or
- 16 (3) both an order under subdivision (1) and a civil penalty
 17 under subdivision (2);

18 from the department may seek a hearing on the determination by
 19 filing a written petition for review with the department within ten
 20 (10) business days after receipt of the determination and in
 21 accordance with IC 4-21.5-3-2. The petition for review must
 22 contain a statement of the basis for contesting the determination of
 23 the department. The department shall mail a copy of the petition
 24 for review to the complainant and to any interested party
 25 designated on the complaint. The contractor or subcontractor shall
 26 post a copy of the petition for review contemporaneously with the
 27 filing of the petition at or near the place where the alleged violation
 28 occurred or, if the contractor or subcontractor is no longer
 29 performing services at the place where the alleged violation
 30 occurred, at the contractor's or subcontractor's principal place of
 31 business in a conspicuous place where labor notices regularly are
 32 posted. Further, the contractor or subcontractor, when filing the
 33 petition, shall post a bond in an amount sufficient to pay wages,
 34 salary, employment benefits, or other compensation lost or denied
 35 to the individual as determined by the department and civil
 36 penalties assessed by the department. If the contractor, agent of the
 37 contractor, or subcontractor does not file a petition for review and
 38 post a bond within the ten (10) business day period, the
 39 department's determination is final.

40 (b) If the contractor, agent of the contractor, or subcontractor
 41 files a petition for review of an action under section 25(b) of this
 42 chapter within ten (10) business days after notification of the
 43 proposed action by the department, the commissioner shall set a
 44 hearing on the proposed action. The hearing must take place not
 45 more than forty-five (45) calendar days after the receipt of the
 46 request for the hearing by the department. The hearing must be
 47 held in accordance with IC 4-21.5.

1 **Sec. 23. (a) The employee classification fund is established to**
 2 **provide funds for:**

- 3 **(1) administering this chapter;**
- 4 **(2) investigating contractors, agents of contractors, and**
 5 **subcontractors;**
- 6 **(3) determining whether there is proof to substantiate**
 7 **allegations of failure to properly classify employees; and**
- 8 **(4) meeting other expenses incurred in carrying out the duties**
 9 **of the department under this chapter.**

10 **The fund consists of civil penalties collected by the department**
 11 **under this chapter. The fund shall be administered by the**
 12 **department.**

13 **(b) The expenses of administering the fund shall be paid from**
 14 **money in the fund.**

15 **(c) The treasurer of state shall invest the money in the fund not**
 16 **currently needed to meet the obligations of the fund in the same**
 17 **manner as other public money may be invested. The interest that**
 18 **accrues from these investments shall be deposited in the fund.**

19 **(d) Money in the fund at the end of a state fiscal year does not**
 20 **revert to the state general fund.**

21 **Sec. 24. IC 22-1-1-18 applies to a violation of this chapter. If it**
 22 **appears to the department that a contractor, an agent of a**
 23 **contractor, or a subcontractor has violated a valid order of the**
 24 **department issued under this chapter, the department may:**

- 25 **(1) commence an action through the attorney general; and**
- 26 **(2) seek an order from the superior or circuit court in the**
 27 **county in which the contractor or subcontractor does**
 28 **business;**

29 **mandating the contractor or the subcontractor to obey the order**
 30 **of the department. The failure of the contractor or the**
 31 **subcontractor to obey a court order obtained under this section is**
 32 **contempt of court.**

33 **Sec. 25. (a) The department shall post a summary of the**
 34 **requirements of this chapter on the department's Internet web site.**

35 **(b) After the imposition of a civil penalty under section 20(b) of**
 36 **this chapter, thirty (30) business days after the initiation of the**
 37 **investigation, the department shall place the contractor's or**
 38 **subcontractor's name on a list maintained on the department's**
 39 **Internet web site. A contract for a public work may not be**
 40 **awarded by a department of the state listed in section 21 of this**
 41 **chapter or a political subdivision to:**

- 42 **(1) a contractor or subcontractor whose name appears on the**
 43 **list; or**
- 44 **(2) a firm, a corporation, a partnership, or an association in**
 45 **which the contractor or subcontractor has an interest;**

46 **until four (4) years after the posting of the contractor's or**
 47 **subcontractor's name on the list. If a contractor, agent of the**

1 contractor, or subcontractor files a timely petition for review
2 under section 22(b) of this chapter, the contractor's or
3 subcontractor's name may not be added to the list until the
4 department's determination that the contractor or subcontractor
5 has violated this chapter is final.

6 Sec. 26. (a) It is a violation of this chapter for a contractor, an
7 agent of a contractor, or a subcontractor to retaliate through
8 discharge or in any other manner against a person for exercising
9 a right granted under this chapter.

10 (b) It is a violation of this chapter for a contractor, an agent of
11 a contractor, or a subcontractor to retaliate against a person for:

12 (1) making a complaint to a contractor or an agent of a
13 contractor, to a coworker, to a community organization, to a
14 state or federal agency, or within a public hearing that rights
15 guaranteed under this chapter have been violated;

16 (2) causing a proceeding under or related to this chapter to be
17 instituted; or

18 (3) testifying or preparing to testify in an investigation or
19 proceeding under this chapter.

20 (c) Retaliation through discharge or in any other manner
21 subjects a contractor, an agent of a contractor, or a subcontractor
22 to a private civil action brought by the aggrieved person.

23 (d) In a civil action for unlawful retaliation, the court may
24 award:

25 (1) all legal or equitable relief, or both, as appropriate; and

26 (2) attorney's fees and costs.

27 (e) The right of an aggrieved person to bring a civil action under
28 this section terminates three (3) years after the final date of
29 performing services for the contractor or subcontractor by the
30 affected employee. However, the period of limitation established by
31 this subsection is tolled if the contractor, an agent of the
32 contractor, or a subcontractor has deterred a person's exercise of
33 rights under this chapter.

34 Sec. 27. A person may not waive any provision of this chapter.

35 Sec. 28. This chapter does not affect or alter any statutory
36 provisions and penalties existing before July 1, 2012, including
37 fines, that apply to the improper classification of employees as
38 independent contractors.

39 Sec. 29. A finding made under this chapter:

40 (1) is for the purpose of enforcing this chapter; and

41 (2) is not admissible or binding against a party in a
42 proceeding other than a proceeding under this chapter.

43 SECTION 6. IC 22-3-5-5.7 IS ADDED TO THE INDIANA CODE
44 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
45 1, 2012]: Sec. 5.7. (a) If the worker's compensation board of
46 Indiana discovers that a contractor or subcontractor failed to
47 carry worker's compensation insurance or is unable to furnish to

1 the worker's compensation board satisfactory proof of the
2 contractor's or subcontractor's financial ability to pay the
3 compensation as required under IC 22-3-2-5, section 1 of this
4 chapter, and IC 22-3-7-34, the contractor or subcontractor is
5 subject to a civil penalty of five hundred dollars (\$500), to be
6 assessed and collected by the board.

7 (b) The worker's compensation board may investigate an
8 allegation of improper classification of an employee as an
9 independent contractor in violation of IC 22-2-16.

10 (c) If the worker's compensation board, during its investigation
11 under subsection (b), determines that a contractor or
12 subcontractor has failed to properly classify an independent
13 contractor as an employee on a construction project and the
14 contractor or subcontractor fully conforms to the decision of the
15 worker's compensation board, either by:

- 16 (1) properly classifying all employees found to be improperly
- 17 classified as an independent contractor within seven (7)
- 18 business days after notification by the worker's compensation
- 19 board of the determination; or
- 20 (2) ceasing all work on the construction project within seven
- 21 (7) business days after notification;

22 the contractor or subcontractor shall be found to be in
23 conformance with the decision of the worker's compensation
24 board, and no fee or penalty is due.

25 (d) If the worker's compensation board discovers, more than
26 seven (7) business days after notification by the worker's
27 compensation board of the determination under subsection (c), that
28 the contractor or subcontractor continues to improperly classify an
29 employee as an independent contractor, the contractor or
30 subcontractor is subject to a civil penalty of five hundred dollars
31 (\$500) per improperly classified employee, to be assessed and
32 collected by the board.

33 (e) Civil penalties assessed and collected under this section shall
34 be deposited in the worker's compensation supplemental
35 administrative fund established by section 6 of this chapter.

36 SECTION 7. IC 22-3-5-6, AS AMENDED BY P.L.168-2011,
37 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2012]: Sec. 6. (a) The worker's compensation supplemental
39 administrative fund is established for the purpose of carrying out the
40 administrative purposes and functions of the worker's compensation
41 board.

- 42 (b) The fund consists of:
- 43 (1) fees collected from employers under sections 1 through 2 of
- 44 this chapter;
- 45 (2) fees collected under IC 22-3-2-14.5, IC 22-3-3-5(d),
- 46 IC 22-3-7-17(g), and IC 22-3-7-34.5; and
- 47 (3) civil penalties assessed under IC 22-3-4-15, ~~section~~ **sections**

1 2.5 and 5.7 of this chapter, and IC 22-3-7-34.3.
2 (c) The fund shall be administered by the worker's compensation
3 board. Money in the fund is annually appropriated to the worker's
4 compensation board and shall be used for all expenses incurred by the
5 worker's compensation board.
6 (d) The money in the fund is not to be used to replace funds
7 otherwise appropriated to the board. Money in the fund at the end of
8 the state fiscal year does not revert to the state general fund.
9 SECTION 8. IC 22-4.1-4-6 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2012]: **Sec. 6. (a) The department may investigate an allegation
12 of improper classification of an employee as an independent
13 contractor in violation of IC 22-2-16.**
14 **(b) If the department, during its investigation, determines that
15 a contractor or subcontractor has improperly classified an
16 employee as an independent contractor on a construction project
17 and the contractor or subcontractor fully conforms to the decision
18 of the department, either by:**
19 **(1) properly classifying all employees found to be improperly
20 classified as an independent contractor within seven (7)
21 business days after notification by the department; or**
22 **(2) ceasing all work on the construction project within seven
23 (7) business days after the notification;**
24 **the contractor or subcontractor shall be found to be in
25 conformance with the decision of the department, and no fee or
26 penalty is due.**
27 **(c) If the department discovers, more than seven (7) business
28 days after notification by the department of the determination
29 under subsection (b) that the contractor or subcontractor
30 continues to improperly classify an employee as an independent
31 contractor, the contractor or subcontractor is subject to a civil
32 penalty of five hundred dollars (\$500) per improperly classified
33 employee, to be assessed and collected by the board.**
34 **(d) Civil penalties assessed and collected under this section shall
35 be deposited in the fund."**
36 Page 4, between lines 4 and 5, begin a new paragraph and insert:
37 "SECTION 10. IC 34-11-2-14 IS ADDED TO THE INDIANA
38 CODE AS A NEW SECTION TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2012]: **Sec. 14. (a) This section applies
40 beginning January 1, 2013.**
41 **(b) The definitions in IC 22-2-16 apply throughout this section.**
42 **(c) A civil action brought by an aggrieved person under
43 IC 22-2-16 must be commenced not later than three (3) years after
44 the final date of performing services for the contractor, as
45 provided in IC 22-2-16-26(e).**
46 SECTION 11. IC 36-1-12-1, AS AMENDED BY P.L.1-2010,

1 SECTION 145, IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) Except as provided in this
3 section, this chapter applies to all public work performed or contracted
4 for by:

- 5 (1) political subdivisions; and
 - 6 (2) their agencies;
- 7 regardless of whether it is performed on property owned or leased by
8 the political subdivision or agency.

9 (b) This chapter does not apply to an officer or agent who, on behalf
10 of a municipal utility, maintains, extends, and installs services of the
11 utility if the necessary work is done by the employees of the utility.

12 (c) This chapter does not apply to hospitals organized or operated
13 under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public
14 work is financed in whole or in part with cumulative building fund
15 revenue.

16 (d) This chapter does not apply to tax exempt Indiana nonprofit
17 corporations leasing and operating a city market owned by a political
18 subdivision.

19 (e) As an alternative to this chapter, the governing body of a
20 political subdivision or its agencies may do the following:

- 21 (1) Enter into a design-build contract as permitted under IC 5-30.
- 22 (2) Participate in a utility efficiency program or enter into a
23 guaranteed savings contract as permitted under IC 36-1-12.5.

24 **(3) Enter into a project labor agreement.**

25 (f) This chapter does not apply to a person that has entered into an
26 operating agreement with a political subdivision or an agency of a
27 political subdivision under IC 5-23.

28 **(g) In addition to this chapter, IC 22-2-16 applies to contractors,
29 subcontractors, employees, and independent contractors with
30 respect to construction services performed on public work
31 projects."**

32 Renumber all SECTIONS consecutively.
(Reference is to HB 1001 as printed January 12, 2012.)

Representative Niezgodski