

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington St., Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
iga.in.gov

**FISCAL IMPACT STATEMENT**

**LS 6707**

**BILL NUMBER: SB 126**

**NOTE PREPARED: Dec 18, 2020**

**BILL AMENDED:**

**SUBJECT:** Worker Classification and Accountability.

**FIRST AUTHOR:** Sen. Bohacek

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill establishes a presumption that individuals providing labor for certain government supported projects are employees. It specifies that the general contractor for these projects is jointly liable with any subcontractor or professional employer organization (PEO) for penalties and unpaid taxes or deposits with a governmental entity resulting from failure to comply with any law, regulation, ordinance, or contract provision requiring licensing, bonding, insurance or self-insurance, or misclassification of an employee as an independent contractor. The bill also provides a procedure for an interested person to initiate an investigation of a violation.

**Effective Date:** Upon passage; July 1, 2021.

**Explanation of State Expenditures:** *Department of Labor (DOL):* The bill's requirements will increase workload for the DOL depending on the number and nature of complaints received for violations under this bill. It requires the DOL to enforce the provisions of the bill, adopt rules, and report on suspected improper worker classification to the Legislative Council. In addition, the bill allows the DOL to conduct investigations and hire investigators and other necessary personnel needed to carry out their regulatory responsibilities. The DOL is allowed to assess the direct costs related to an investigation and enforcement to the general contractor or subcontractor determined to have violated provisions of the bill. Ultimately, however, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

*Department of Workforce Development (DWD), Department of Revenue (DOR), Worker's Compensation Board (WCB):* The bill allows the agencies to join an adjudication with the DOL or to commence their own investigation into violations. It also requires the agencies to report to the Legislative Council on any

suspected improper classification of employees. While these agencies currently investigate issues of employee misclassification with regards to unemployment insurance (DWD), income tax (DOR), and worker's compensation (WCB), this bill adds a presumption that contractors and subcontractors on certain projects are employees, which may result in increased workload by the agencies to meet requirements of the bill. Existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

*Unemployment Insurance Benefit Fund:* The bill could increase expenditures from the Unemployment Insurance Benefit Fund by an indeterminate amount. The presumption that construction workers are employees could increase the number of construction workers who are eligible for unemployment insurance benefits.

*Agencies Involved in Construction Projects:* The bill could increase the cost of construction for state agencies. The presumption that construction contractors and subcontractors are employees may result in higher labor costs due to more workers on public projects being covered for worker's compensation and unemployment insurance benefits. [The bill has the potential to impact all agencies involved in construction projects, thus impacting all funds that provide operating funds to agency staff.]

*Additional Information -* The bill includes the presumption that a contractor and subcontractor are employees on certain construction projects including public works projects, projects built with public funds, and projects that receive tax incentives.

Employee misclassification is the practice of labeling workers as independent contractors rather than employees. The practice sometimes allows employers to avoid paying certain employee-related expenses, including various taxes on workers as well as the expense of covering them for the purposes of worker's compensation and unemployment insurance.

**Explanation of State Revenues:** *Unemployment Insurance Benefit Fund:* If the bill results in more individuals being considered employees rather than independent contractors with regards to the unemployment compensation system, revenues to the Unemployment Insurance Benefit Fund may increase. [Employers pay state unemployment tax (SUTA) for employees, but independent contractors are not covered by regular state unemployment benefits, and no SUTA taxes are paid in their behalf.]

*State Income Tax:* The bill could increase state income tax collections if more individuals pay income taxes due to this bill. The bill could potentially reduce instances where workers are paid off the record in cash for work done and no taxes are paid.

*Civil Penalties:* The DOL may assess a civil penalty up to \$500 for individuals who make baseless claims that violations have occurred.

*Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana, and proceeds from the automated record keeping fee (\$20) are deposited into the State User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:** *Local Units Involved in Construction Projects:* The bill could increase the cost of construction for local units. The presumption that construction contractors and subcontractors are employees may result in higher labor costs due to more workers on public projects being covered for worker's compensation and unemployment insurance benefits.

**Explanation of Local Revenues:** *Local Income Tax:* The bill could increase local income tax collections if more individuals pay income taxes due to this bill. The bill could potentially reduce instances where workers are paid off the record in cash for work done and no taxes are paid.

*Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs 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. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$5) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per page) are charged for preparing transcripts or copies of record or certificate under seal.
- A civil garnishee defendant service fee (\$10) is collected from the filing party for each defendant beyond the first three garnishee defendants cited in the lawsuit.

**State Agencies Affected:** Department of Labor; Department of Workforce Development; Department of State Revenue; Worker's Compensation Board; State agencies involved in construction projects.

**Local Agencies Affected:** Trial courts, city and town courts, local units involved in construction projects.

**Information Sources:**

**Fiscal Analyst:** Camille Tesch, 317-232-5293.