

SENATE BILL No. 126

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2-15.5.

Synopsis: Worker classification and accountability. Establishes a presumption that individuals providing labor for certain government supported projects are employees. Specifies that the general contractor for these projects is jointly liable with any subcontractor or professional employer organization 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. Provides a procedure for an interested person to initiate an investigation of a violation.

Effective: Upon passage; July 1, 2021.

Bohacek

January 5, 2021, read first time and referred to Committee on Pensions and Labor.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 126

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-15.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]:

4 **Chapter 15.5. Regulation of General Contractors and**
5 **Subcontractors for Public Works and Tax Advantaged Projects**

6 **Sec. 1. This chapter applies to a covered construction project for**
7 **which a contract or an agreement is initially entered into after**
8 **June 30, 2021.**

9 **Sec. 2. As used in this chapter, "construction" includes altering,**
10 **building, constructing, reconstructing, renovating, expanding,**
11 **demolishing, improving, repairing, and maintenance.**

12 **Sec. 3. As used in this chapter, "covered construction" means**
13 **the following:**

- 14 (1) **A public work.**
- 15 (2) **Tax advantaged construction.**

16 **Sec. 4. As used in this chapter, "department" refers to the**
17 **department of labor.**



1 **Sec. 5.** As used in this chapter, "general contractor" means a
 2 person with the responsibility to oversee a covered construction
 3 project and who enters into the prime contract with the property
 4 owner, lessee, operator, or developer to carry out the covered
 5 construction project.

6 **Sec. 6.** As used in this chapter, "interested person" means the
 7 following:

8 (1) The attorney general.

9 (2) A state, city, town, county, or local agency or officer vested
 10 with the authority to seek judicial relief.

11 (3) An individual who is a citizen and resident of Indiana.

12 (4) A corporation, a limited liability company, a partnership,
 13 or an association maintaining an office in Indiana.

14 **Sec. 7.** As used in this chapter, "labor" includes the preparation
 15 of drawings, plans, and specifications for a covered construction
 16 project.

17 **Sec. 8.** As used in this chapter, "person" means an individual or
 18 entity. The term does not include a public entity.

19 **Sec. 9.** As used in this chapter, "political subdivision" has the
 20 meaning set forth in IC 36-1-2-13.

21 **Sec. 10.** As used in this chapter, "professional employer
 22 organization" means a professional employer organization (as
 23 defined in IC 27-16-2-13) that is used by a general contractor or
 24 subcontractor to provide labor for a covered construction project.

25 **Sec. 11.** As used in this chapter, "public entity" refers to the
 26 state, a political subdivision, an instrumentality of the state, or a
 27 political subdivision (including a nonprofit corporation), a body
 28 corporate and politic established by law, or an entity for a tax
 29 increment financing area described in section 15(1) of this chapter.

30 **Sec. 12.** As used in this chapter, "public funds" means any funds
 31 for which a public entity is accountable, whether or not impressed
 32 with a public interest.

33 **Sec. 13.** As used in this chapter, "public work" means
 34 construction paid for out of a public fund or special assessment and
 35 any:

36 (1) building or structure;

37 (2) bridge, road, highway, or public way;

38 (3) park or recreational facility;

39 (4) sanitary sewer system or wastewater treatment facility;

40 (5) drainage or flood control facility;

41 (6) water treatment, water storage, or water distribution
 42 facility;



1 (7) airport facility; or
 2 (8) other improvement or infrastructure;
 3 owned by, leased by, maintained by, or operated by or on behalf of
 4 a public entity.

5 Sec. 14. As used in this chapter, "subcontractor" means the
 6 following:

7 (1) Each person that has a contract with a general contractor
 8 to perform some part of the labor on a covered construction
 9 project.

10 (2) Each person that has a contract with a person described in
 11 subdivision (1) to perform some part of the labor on a covered
 12 construction project.

13 (3) Each person that has a contract with a person described in
 14 subdivision (2) or a lower tier subcontractor to perform some
 15 part of the labor on a covered construction project.

16 Sec. 15. As used in this chapter, "tax advantaged construction"
 17 refers to the following:

18 (1) Construction in a geographic area designated by the state
 19 or a political subdivision as an allocation area or in which tax
 20 increment property tax, adjusted gross income tax, or gross
 21 retail and use tax revenue is dedicated to provide
 22 improvements or to retire bonds issued to pay for
 23 improvements. The term refers to economic or sports
 24 development areas, community revitalization areas, certified
 25 technology parks, tax increment financing districts, and other
 26 similar areas or districts.

27 (2) Construction for which an exemption, deduction, credit,
 28 preferential rate, or other tax benefit granted under
 29 IC 6-1.1-12.1, I IC 6-1.1-12.4, IC 6-1.1-12.5, IC 6-1.1-12.6, or
 30 IC 6-3.1.

31 (3) Construction financed in any part with the proceeds of
 32 bonds exempt from state taxation or issued by a public entity.

33 (4) Construction in an enterprise zone (IC 5-28-15 or
 34 IC 4-4-6.1 (repealed)).

35 (5) A rail project (as defined in IC 5-1.3-2-14 or IC 8-5-15-1).

36 Sec. 16. A general contractor, a subcontractor, and any agent of
 37 a general contractor or subcontractor:

38 (1) may not perform work on a covered construction project
 39 unless the general contractor or subcontractor and each
 40 individual providing labor for the covered construction
 41 project are licensing, bonded, and possess insurance or
 42 self-insurance as required by law, regulation, ordinance, or



- 1 contract;
- 2 (2) may not misrepresent to a public entity or federal
- 3 governmental entity that an individual providing labor for a
- 4 covered construction project is an independent contractor
- 5 when the individual is an employee;
- 6 (3) shall provide for the timely withholding for, payment to,
- 7 and depositing with the appropriate public entity or federal
- 8 governmental entity, fund, or account either directly or
- 9 through an intermediary all wage related employer and
- 10 employee taxes due from the general contractor or
- 11 subcontractor (or a professional employer organization used
- 12 by the general contractor or subcontractor) under any law,
- 13 regulation, ordinance, or contract for labor related to a
- 14 covered construction project;
- 15 (4) shall provide for the timely withholding for, payment to,
- 16 and depositing with the appropriate local, state, or federal
- 17 governmental entities, funds, and accounts (including an
- 18 employer experience account under IC 22-4) either directly or
- 19 through an intermediary any assessment, contribution, and
- 20 payments in lieu of contributions due from the general
- 21 contractor or subcontractor (or a professional employer
- 22 organization used by the general contractor or subcontractor)
- 23 under any law, regulation, ordinance, or contract for labor
- 24 related to a covered construction project;
- 25 (5) maintain records as required by section 18 of this chapter;
- 26 and
- 27 (6) comply with section 23 of this chapter prohibiting
- 28 retaliation.
- 29 **Sec. 17. (a) For purpose of applying this chapter and any other**
- 30 **law, regulation, ordinance, or contract provision related to**
- 31 **classifying an individual providing labor on a covered construction**
- 32 **project as an employee or an independent contractor (including**
- 33 **IC 6, IC 22-3, IC 22-4, IC 22-4.1, and IC 22-8), the individual is**
- 34 **presumed to be acting as an employee of the general contractor or**
- 35 **a subcontractor. The presumption is rebuttable. A general**
- 36 **contractor, a subcontractor, a professional employer organization,**
- 37 **or another person that has an obligation described in section 16 of**
- 38 **this chapter has the burden of proof to demonstrate that the**
- 39 **individual is not an employee.**
- 40 **Sec. 18. (a) Each general contractor and subcontractor shall**
- 41 **maintain records for a period as required in IC 6-3-6-10 and**
- 42 **IC 6-8.1-5-4 for an individual performing labor for the general**



1 contractor or subcontractor on a covered construction project,
2 regardless of whether the individual is classified as:

- 3 (1) an employee;
4 (2) an independent contractor;
5 (3) a sole proprietor; or
6 (4) a partnership.

7 (b) Records to be maintained by the general contractor or
8 subcontractor must include all documents related to, or tending to
9 establish the nature of, the relationship between the general
10 contractor or subcontractor and an individual performing services
11 for the general contractor or subcontractor. Records that must be
12 maintained under this section for an individual performing
13 services for the general contractor or subcontractor include, but
14 are not limited to:

- 15 (1) the:
16 (A) name;
17 (B) address;
18 (C) phone number; and
19 (D) Social Security number, individual taxpayer
20 identification number, or federal tax identification
21 number;
22 (2) the type of work performed and the total number of days
23 and hours worked;
24 (3) the method, frequency, and basis on which wages were
25 paid or payments were made;
26 (4) all invoices, billing statements, or other payment records,
27 including the dates of payments, and any miscellaneous
28 income paid or deductions made;
29 (5) copies of all contracts with the individual, agreements with
30 the individual, applications for employment by the individual
31 with the general contractor or subcontractor, and policy or
32 employment manuals of the employer for the period that the
33 individual performed services for the general contractor or
34 subcontractor; and
35 (6) any federal and state tax documents or other information
36 the department considers relevant or necessary.

37 Sec. 19. (a) A general contractor shall implement adequate
38 internal controls to assure compliance with section 16 of this
39 chapter related to a covered construction project.

40 (b) The general contractor is jointly and severally liable with a
41 subcontractor (and any professional employer organization used
42 by the general contractor or subcontractor) for any:



1 (1) fines and civil penalties resulting from a violation
2 described in section 16 of this chapter; and

3 (2) unpaid taxes, assessments, contributions, and payments in
4 lieu of contributions accruing for an employment relationship
5 or labor related to a covered construction project.

6 Sec. 20. Sections 21 through 22 of this chapter provide an
7 additional procedure for remedying a violation described in section
8 16 of this chapter. The procedure supplements any other applicable
9 procedure established by law, regulation, ordinance, or contract.

10 Sec. 21. (a) An interested party may file a complaint with the
11 department against a general contractor or a subcontractor (or
12 both) if the interested party has a reasonable belief that the general
13 contractor or the subcontractor has violated this chapter or is
14 jointly liable for the violation.

15 (b) Upon receiving a complaint under subsection (a), the
16 department immediately shall commence an investigation to
17 ascertain the facts relating to the violation alleged in the complaint
18 and determine whether a violation under this chapter has
19 occurred. Consistent with IC 4-21.5-4, the investigation may be
20 made by written or oral inquiry, field visit, conference, or any
21 method or combination of methods the department considers
22 suitable. The department:

23 (1) may conduct investigations in connection with the
24 administration and enforcement of this chapter;

25 (2) shall enforce the provisions of this chapter; and

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

28 (c) The department may visit and inspect, at all reasonable
29 times, a worksite subject to this chapter and may inspect, at all
30 reasonable times, documents related to the subject of a complaint.

31 (d) The department may:

32 (1) compel, by subpoena, the attendance and testimony of
33 witnesses and the production of books, payrolls, records,
34 papers, and other evidence in an investigation; and

35 (2) administer oaths to witnesses.

36 Sec. 22. (a) This section applies if the department determines,
37 after investigation, that a violation of this chapter has occurred.

38 (b) The department shall issue one (1) or more emergency or
39 temporary orders under IC 4-21.5-4 pending final resolution of the
40 matter. The order shall be served on the general contractor or the
41 subcontractor (or both) by posting at the site in a location visible
42 to the workers, if construction is still occurring, an order to cease



1 and desist from further violation of this chapter. If construction
2 has ceased, the notice shall be sent by first class mail to the
3 business address of the general contractor as shown in the records
4 of the secretary of state. If a subcontractor has committed the
5 violation, the department shall notify the contractor, either at the
6 site or by first class mail sent to the business address of the
7 contractor as shown in the records of the secretary of state, and to
8 the subcontractor, either at the site or by first class mail sent to the
9 business address of the subcontractor as shown in the records of
10 the secretary of state. An order issued under this section is a
11 matter of public record.

12 (c) The department may:

- 13 (1) conduct a joint proceeding under IC 4-21.5-3 with some or
14 all other entities with civil jurisdiction over the subject of a
15 violation to adjudicate all matters within their jurisdiction; or
16 (2) conduct an adjudication under IC 4-21.5-3 of any matter
17 that is within the jurisdiction of the department and notify
18 any other entity with jurisdiction over a violation that has not
19 joined in an adjudication with the department under
20 subdivision (1) of the department's findings.

21 If a final order under subdivision (1) involves a tax matter any
22 appeal is under IC 4-21.5-5, not to the tax court. The department
23 of workforce development, the department of state revenue, the
24 worker's compensation board of Indiana, and other public agencies
25 have the option to join in an adjudication by the department or
26 commence a separate investigation. A finding made under this
27 chapter is not admissible or binding against a party in a separate
28 proceeding.

29 (d) If notified under this subsection:

- 30 (1) the department of workforce development shall investigate
31 compliance with laws under IC 22-4 and IC 22-4.1;
32 (2) the department of revenue shall investigate compliance
33 with laws under IC 6; and
34 (3) the worker's compensation board of Indiana shall
35 investigate compliance with laws under IC 22-3 and IC 22-8.

36 (e) The department may assess the direct costs to the
37 department related to an investigation, an adjudication, or
38 enforcing its orders under this chapter against the general
39 contractor or subcontractor that is determined to be a violator or
40 that is jointly liable under this chapter for the violation.

41 Sec. 23. (a) A person may not retaliate in any manner against
42 another person for exercising a right granted under this chapter.



1 **(b) It is a violation of this chapter for a person to retaliate**
 2 **against a person for:**

3 **(1) making a complaint to a general contractor, a**
 4 **subcontractor, an agent of a general contractor or**
 5 **subcontractor, a coworker, a community organization, a**
 6 **public agency, or a federal agency, or within a public hearing**
 7 **that rights guaranteed under this chapter have been violated;**

8 **(2) causing a proceeding under or related to this chapter to be**
 9 **instituted; or**

10 **(3) testifying or preparing to testify in an investigation or**
 11 **proceeding related to a violation described in this chapter.**

12 **(c) Retaliation through discharge or in any other manner**
 13 **subjects a general contractor, a subcontractor, and any other**
 14 **person participating in the retaliation to a private civil action**
 15 **brought by the aggrieved person.**

16 **(d) In a civil action for unlawful retaliation, the court may**
 17 **award:**

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

19 **(2) attorney's fees and costs.**

20 **(e) The right of an aggrieved person to bring a civil action under**
 21 **this section terminates with respect to another person three (3)**
 22 **years after the last occurrence of retaliation by the other person.**
 23 **However, the period of limitation established by this subsection is**
 24 **tolled if the other person has deterred a person's exercise of rights**
 25 **under this chapter.**

26 **Sec. 24. If the department finds that a request for an**
 27 **investigation under this chapter by a nongovernmental person has**
 28 **been groundless, the department of labor may assess the**
 29 **complainant with a civil penalty of not more than five hundred**
 30 **dollars (\$500) per requested, groundless investigation.**

31 **Sec. 25. (a) Beginning January 2, 2022, the:**

32 **(1) department of state revenue;**

33 **(2) department of labor;**

34 **(3) worker's compensation board of Indiana; and**

35 **(4) department of workforce development;**

36 **shall, not later than June 30 and before January 2 of each year,**
 37 **report to the legislative council on the activities of each agency**
 38 **under this chapter concerning any suspected improper**
 39 **classification of an employee as an independent contractor by a**
 40 **contractor, an agent of a contractor, or a subcontractor. The**
 41 **agencies may collaborate on the report.**

42 **(b) A report to the legislative council under this section must be**



1 to the executive director of the legislative services agency in an
2 electronic format under IC 5-14-6.
3 **Sec. 26. A person may not waive any provision of this chapter.**
4 SECTION 2. [EFFECTIVE UPON PASSAGE] (a) Before July 1,
5 2021, a state agency shall bring any rules, policies, or guidelines
6 into conformity with IC 22-2-15.5, as added by this act.
7 (b) A state agency may adopt emergency rules under
8 IC 4-22-2-37.1 to comply with this SECTION. The state agency
9 shall replace the emergency rules with permanent rules under
10 IC 4-22-2 as soon as practicable.
11 (c) This SECTION expires January 1, 2023.
12 SECTION 3. An emergency is declared for this act.

