

## Department of Planning and Budget 2010 Fiscal Impact Statement

**1. Bill Number:** SB34

House of Origin      X     Introduced                 Substitute                 Engrossed  
Second House                In Committee             Substitute                 Enrolled

**2. Patron:** Lucas

**3. Committee:** Commerce and Labor

**4. Title:** Worker Misclassification Act; created.

**5. Summary:** This bill prohibits an employer from classifying an individual as an independent contractor if he is an employee. An individual shall be considered an employee of the party which pays that remuneration, for purposes of Titles 40.1 (Labor and Employment), 60.2 (Unemployment Compensation), and 65.2 (Workers' Compensation) unless and until it is shown to the satisfaction of the Department of Labor and Industry (DOLI) that (i) the individual has been and will continue to be free from direction and control of the employer, both under his contract of service and in fact, (ii) the service is outside the usual course of the business of the employer, and (iii) the individual is customarily engaged in an independently established trade, occupation, profession, or business, both under his contract of service and in fact. Discrimination or taking adverse action against any person in retaliation for exercising rights protected under this measure is also prohibited. Violators are subject to criminal penalties, civil penalties, debarment from public contracts, private actions, and stop-work orders.

**6. Fiscal Impact Estimates:** Preliminary.

**6a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2010	\$0	n/a	n/a
2011	\$616,090	9.00	GF
2012	\$616,090	9.00	GF
2013	\$616,090	9.00	GF
2014	\$616,090	9.00	GF
2015	\$616,090	9.00	GF
2016	\$616,090	9.00	GF

**7. Budget Amendment Necessary:** Yes, Item 116.

**8. Fiscal Implications:** The Department of Labor and Industry (DOLI) estimates that this bill may result in approximately 500 additional cases a year that its Labor Law division will be responsible for investigating. DOLI has averaged 100 cases a year that it currently does not investigate that would need to be examined under the new definition of the law. The Virginia Employment Commission reports that 20 unemployment cases are fully litigated on the issue of 'employee v. independent contractor' each year, but at least 2,000 more cases are resolved prior to litigation, DOLI anticipates receiving an unknown amount of these cases based on this bill.

The Worker's Compensation Commission estimates that approximately 120 cases are fully litigated each year, with as many cases being resolved prior to the trial stage.

In order to manage this increased workload, DOLI anticipates needing nine additional positions. DOLI estimates needing five new investigators; this is based on the current caseload for labor law investigators of 100 cases per year and an additional caseload created by this bill of 500 additional cases. In addition, DOLI anticipates needing an additional lawyer/investigator to manage the appeals according to the Administrative Process Act and the potential discrimination cases that may result from the bill. Based on the current support staff-to-investigator ratio, DOLI would need three additional administrative staff positions to support the six additional investigators. Total personnel costs estimated by DOLI total an estimated \$616,090 per year for the nine positions. This is based on a salary/benefit costs of \$492,872 and additional support costs of \$123,218. DOLI states that these employees will be needed to start on July 1, 2010, to begin enforcement of the statute. DOLI also anticipates an additional cost to produce the posters required under the bill.

Additionally, this bill stipulates that any employer, or any officer or agent of the employer who *knowingly* fails to properly classify an individual as an employee and fails to pay benefits or other contributions due to employees, as mandated by this bill, are convicted of a Class 2 misdemeanor for a first offense or a class 1 misdemeanor for subsequent offenses. If the employer *unintentionally* fails to properly classify an individual and fails to pay benefits, they are convicted of a Class 3 misdemeanor for a first offense or a Class 2 misdemeanor for subsequent offenses.

The estimated fiscal impacts from the creation of these misdemeanor offenses are as follows:

Class 1: Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$8.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail. It also funds most of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2009), the estimated total state support for local jails averaged \$32.66 per inmate, per day in FY 2008.

Class 2: Anyone convicted of a Class 2 misdemeanor is subject to a sentence of up to six months in jail. There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$8.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail. It also funds most of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2009), the estimated total state support for local jails averaged \$32.66 per inmate, per day in FY 2008.

Class 3: Anyone convicted of a Class 3 misdemeanor is subject to a fine of up to \$500. There is not enough information available to reliably project the amount of revenue that would be

collected from fines as a result of this proposal. Any revenue from fines must be deposited into the Literary Fund.

**9. Specific Agency or Political Subdivisions Affected:** Department of Labor and Industry, Workers' Compensation Commission, Virginia Employment Commission, local jails and courts.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** SB377 is similar to the introduced version of this bill.

**Date:** 1/25/2010 dpbaek

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