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**SENATE JOINT RESOLUTION NO. 345**  
**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
(Proposed by the Senate Committee on Rules  
on February 4, 2011)

(Patron Prior to Substitute—Senator Puckett)

*Directing the Joint Legislative Audit and Review Commission to study the misclassification of employees as independent contractors. Report.*

WHEREAS, an employee is a person hired to provide services to an employer on a regular basis in exchange for compensation and who does not provide these services as part of an independent business; and

WHEREAS, an independent contractor is a person who performs services for another person under an express or implied agreement and who is not subject to expectation of future commitment to plans or services; and

WHEREAS, defining who is an employee is complex and involves understanding several laws, rules, and court cases and the regulations of many state and federal agencies; and

WHEREAS, employers must withhold income, Social Security, and Medicare taxes from an employee's wages; and

WHEREAS, employers must also pay Social Security, Medicare, and unemployment taxes and comply with state and federal labor laws, including those related to minimum wage and overtime compensation rates; and

WHEREAS, a worker who is considered to be an independent contractor is responsible for paying his own income and self-employment taxes and is not protected to the same degree by most state and federal employment laws, including the Fair Labor Standards Act; and

WHEREAS, a business can save up to 30 percent of labor costs by using independent contractors as opposed to employees; and

WHEREAS, this provides an incentive to classify workers as independent contractors; and

WHEREAS, while the misclassification of workers may not in every case be a deliberate attempt to avoid compliance with the law, the savings realized in misclassification may allow a business to gain a competitive advantage over other businesses; and

WHEREAS, misclassification of workers has serious consequences for state and federal governments by depriving them of revenue, including income, Social Security, Medicare, and unemployment taxes that support public services, such as unemployment benefits; and

WHEREAS, the United States Government Accountability Office estimated that in 2006 the federal government was deprived of approximately \$2.72 billion in Social Security, unemployment, and income taxes because of employee misclassification; and

WHEREAS, there is a need to determine the economic effect of employee misclassification on the state and local governments in Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission be directed to study the misclassification of employees as independent contractors in Virginia.

In conducting its study, the Joint Legislative Audit and Review Commission shall (i) review the status of employee misclassification in the state, (ii) review the consequences of misclassification to the workforce, (iii) estimate the amount of revenue potentially lost to the state and to local governments, and (iv) recommend strategies for alleviating misclassification or improper classification of employees.

Technical assistance shall be provided to the Joint Legislative Audit and Review Commission by the Board for Contractors within the Department of Professional and Occupational Regulation. All agencies of the Commonwealth shall provide assistance to the Department for this study, upon request.

The Joint Legislative Audit and Review Commission shall complete its meetings for the first year by November 30, 2011, and for the second year by November 30, 2012, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary and a report of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary and report shall state whether the Joint Legislative Audit and Review Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and shall be posted on the General Assembly's website.