

Department of Planning and Budget 2010 Fiscal Impact Statement

1. Bill Number: SB377

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

2. Patron: Puckett

3. Committee: Commerce and Labor

4. Title: **Workplace Fraud Act.**

5. Summary: This bill establishes penalties for employers providing construction services that wrongly classify their employees as independent contractors. A person that receives pay for services for an employer is an employee unless the individual is free from the direction and control of the employer by contract and in fact; the service is outside the employer's normal course of business and the individual is customarily engaged in an independently established occupation or profession. An employer and person providing the work may by contract agree that the person is an independent contractor. The measure authorizes the Commissioner of the Department of Labor and Industry to initiate an investigation under specified circumstances to determine whether specified violations occurred, requires the Commissioner to enforce specified provisions by issuing citations, requires the Commissioner to report violations of this law to the Virginia Employment Commission, Department of Taxation and Workers' Compensation Commission, and establishes the method of determining whether an employer-employee relationship exists for purposes of proper classification under specified circumstances. The measure imposes civil penalties on employers who violate its provisions. There is an anti-discrimination provision in the bill.

6. Fiscal Impact Estimates: Preliminary.

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2010	\$0	0.00	n/a
2011	\$486,788	7.00	GF
2012	\$486,788	7.00	GF
2013	\$486,788	7.00	GF
2014	\$486,788	7.00	GF
2015	\$486,788	7.00	GF
2016	\$486,788	7.00	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 400 additional cases a year that its Labor Law division will be responsible for investigating. DOLI has averaged 80 cases a year that it currently does not investigate that would need to be examined under the new definition of this bill. The Virginia

Employment Commission reports that 20 unemployment cases are fully litigated on the issue of 'employee v. independent contractor' each year and at least 2,000 more cases are resolved prior to litigation, with approximately 20 percent of these cases dealing with construction matters (a ratio of approximately 440 cases overall). DOLI anticipates receiving an unknown amount of these cases. The Worker's Compensation Commission estimates that approximately 96 cases related to the construction field are fully litigated each year, with as many cases being resolved prior to the trial stage; all of these cases may be redirected to DOLI as a result of this bill.

In order to manage this increased workload, DOLI anticipates needing seven additional positions. These positions include four new investigators; is based on the current caseload for labor law investigators of 100 cases per year and an additional caseload created by this bill of approximately 400 additional cases. In addition, DOLI anticipates needing one additional lawyer/investigator to manage the appeals according to the Administrative Process Act and the potential discrimination cases that may result from the bill. Finally, based on the current DOLI support staff-to-investigator ratio, DOLI would need two additional administrative staff positions to support the six additional investigators. Total personnel costs estimated by DOLI as result of this bill would total \$486,788 per year for the seven positions. This is based on a salary/benefit costs of \$389,430 and additional support costs of \$97,358. DOLI states that these employees would need to start on July 1, 2010, to begin enforcement of the statute.

Additionally, this bill set-out several civil and administrative penalties, and stipulates that all civil penalties collected under the provisions of this article are to be paid into the general fund. It is unclear where the administrative penalties are to be paid:

- § 40.1-28.17 E. Any employer who fails to produce records or written statement within 15 business days after the Commissioner's request shall be subject to a civil penalty not exceeding \$500 per day for each day the records are not produced.
- § 40.1-28.20 B. Any employer who fails to come into timely compliance with all applicable labor laws of subsection B of § 40.1-28.19 of this bill shall be assessed a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance.
- § 40.1-28.21 A. Any employer found to have knowingly failed to properly classify an individual in violation of § 40.1-28.19 of this bill shall be assessed a civil penalty of up to \$5,000 for each employee not properly classified.
- § 40.1-28.21 E. Any employer is found by a final order of a court to have violated § 40.1-28.16 three or more times may be assessed an administrative penalty of up to \$20,000 for each employee.
- § 40.1-28.27 C. Any person that violates the provisions of this section shall be subject to a civil penalty not exceeding \$20,000.
- § 40.1-28.28 C. Any person who violates the provisions of this section may be subject to an administrative penalty of up to \$1,000.

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: SB34 is similar to the introduced version of this bill.

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