

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 665** HLS 16RS 1180
 Bill Text Version: **ENGROSSED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: April 11, 2016 12:38 PM	Author: SMITH, P.
Dept./Agy.: Workforce Commission	Analyst: Patrice Thomas
Subject: Increases Penalties for Misclassification of Employees	

UNEMPLOYMENT COMP EG +\$3,250,000 SG RV See Note Page 1 of 1
 Provides for an increase in the administrative penalties assessed for the misclassification of employees

Present law: (1) if an employer fails to properly classify employees and does not pay unemployment insurance (UI) contributions and if it was not knowing or willful, they receive a written warning; (2) second offense up to \$250 per misclassified employee plus contributions, interest, and penalties owed; (3) third and subsequent offense up to \$500 for each misclassified employee, plus contributions, interest, and penalties owed; and (4) subsequent offense of misclassification, a penalty between \$100 - \$1,000 or imprisonment between 30 - 90 days or both, for each for each misclassified employee plus contributions, interest, and penalties owed. Proposed law: (1) removes the written warning and provides a first offense misclassification penalty not more than \$5,000 per employee plus contributions, interest, and penalties owed; (2) second offense up to \$10,000 per misclassified employee; (3) subsequent offense up to \$25,000 per misclassified employee; and (4) two or more offenses up to \$50,000 additional fine and/or imprisonment up to 90 days per misclassified employee plus contributions, interest, penalties owed and prohibits any state tax rebate.

EXPENDITURES	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	\$0	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	\$0
Agy. Self-Gen.	\$0	\$3,250,000	INCREASE	INCREASE	INCREASE	\$3,250,000
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$0					\$0

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on expenditures in LA Workforce Commission (LWC) or Department of Revenue as a result of this measure. Presently, on an annual basis, the Office of Unemployment Insurance Administration within LWC selects approximately 1,000 employers to audit their employee wage records. This measure does not impact the number of annual audits performed by LWC or the audit process. Presumably, some coordination between LWC and Revenue will be required to implement the disallowance of tax rebates. Both department will use existing resources and staff.

REVENUE EXPLANATION

Based on an annual reporting and auditing process, the proposed legislation is anticipated to increase administrative penalties assessed to employers that misclassify employees as independent contractors by approximately \$3.25 M in FY 18. The proposed legislation removes the provision for a written warning on first offenses and instead requires a \$5,000 penalty. In FY 15, LWC issued 650 warning letters to employers considered first time offenders. Based on FY 15 data and essentially steady noncompliance behavior at first, the proposed legislation is anticipated to generate \$3.25 M in penalties (650 employers x \$5,000) in FY 18. In subsequent fiscal years, employers become aware of these increased penalties and become compliant, it is anticipated that the number of first time offenders will decrease. It is speculative as to the number of employers that will be assessed a first, second or third offense in future fiscal years as the penalties under this measure are anticipated to increase compliance.

After the second or subsequent offense, the proposed legislation prohibits the employer from receiving any state tax rebates. To the extent that employers are assessed a second or subsequent offense and are prohibited from receiving any tax rebates, state tax revenues may increase by an indeterminable amount.

Note: The LFO assumes that all revenue generated from administrative penalties collected pursuant to this measure is deposited into the LWC Penalty and Interest statutory dedication fund.

<u>Senate</u>	<u>Dual Referral Rules</u>	<u>House</u>
<input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}	<input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}	
<input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}	<input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}	

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