

Members

Rep. David Niezgodski, Chairperson
Rep. Ed DeLaney
Rep. Woody Burton
Rep. Suzanne Crouch
Sen. Phil Boots
Sen. Greg Walker
Sen. Lindel Hume
Sen. Karen Tallian
Matthew Buczolic
Randy Novak
Kip White
Steve Meno



PENSION MANAGEMENT OVERSIGHT COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
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LSA Staff:

James Sperlik, Fiscal Analyst for the Commission
Peggy Piety, Attorney for the Commission
Allen Morford, Attorney for the Commission

Authority: IC 2-5-12-1

MEETING MINUTES¹

Meeting Date: September 29, 2010
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
House Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. David Niezgodski, Chairperson; Rep. Woody Burton; Rep. Suzanne Crouch; Sen. Greg Walker; Sen. Lindel Hume; Sen. Karen Tallian; Matthew Buczolic; Randy Novak; Steve Meno.

Members Absent: Rep. Ed DeLaney; Sen. Phil Boots; Kip White.

The Chair, Representative David Niezgodski, called the Pension Management Oversight Commission (PMOC) meeting to order at 10:00 a.m. The Chair began the meeting with the Pledge of Allegiance.

1. Senate Enrolled Act 501 Retirement Medical Benefits Accounts 2010 Annual Update

Mr. Adam Horst, Budget Director, distributed Senate Enrolled Act (SEA) 501 Retirement Medical Benefits Accounts 2010 Annual Update (Exhibit 1). Mr. Horst said there were no changes in the program from last year. Mr. Horst introduced Mr. Greg Strack, Program Administrator for SEA 501. The program, established in 2007, consists of an active component and a retiree component. Only a retired participant and covered dependents are entitled to receive benefits from the account. SEA 501 establishes the account as a Health Reimbursement Arrangement. The account is funded with: (1) any annual contributions received from the state on behalf of an active participant, (2) if applicable, a "bonus contribution" from the state; and (3) investment earnings.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

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A. Fund Usage

Funds may be used to pay premiums for individual or group health, medical, dental, and vision coverage and long-term care premiums. The bonus contribution applies to a participant who: (1) retirees after June 30, 2007, and before July 1, 2017; (2) has 10 years of service as an elected officer or has 15 years of service as an employee of the legislative, judicial, or executive branch; and (3) is eligible for and has applied to receive a normal, unreduced retirement benefit from a public employee retirement fund. The bonus contribution equals the participant's years of service multiplied by \$1,000.

B. Communication and Outreach

As part of SEA 501 communication and outreach, Mr. Horst told the PMOC that State Budget Agency personnel have participated at State Department of Personnel retirement seminars, along with correspondence with over 23,000 state employees informing them of the annual contribution and directing them to resources for additional information on the program. Mr. Horst said that a section of the State Budget Agency website is dedicated to SEA 501. The website includes: (1) the Plan Document; (2) the contract with Key Benefits; (3) a copy of the presentation to employees at information sessions and frequently asked questions.

C. Third-Year Facts and Figures FY 2010

Mr. Horst next highlighted some facts and figures for SEA 501. There were 723 new retirees in 2010. The average contribution was \$29,322. Since the inception of SEA 501 (FY 2008), there are now 2,700 retired participants. The average contribution for the retirees is \$27,745. Claims to date have totaled \$11,707,000. As of June 30, 2010, 32,341 active employees received credit. The average credit was \$1,110. Due to historically low interest rates (\$200,000 in interest income vs. \$250,000 in claim expenses), there was no interest remaining to be credited to accounts this year after covering administrative expenses. Mr. Horst said that administrative expenses are currently less than 0.5% of the annual cost of the plan.

D. SEA 501 Fiscal Impact

SEA 501 receives 5.74% of Cigarette Tax revenues (\$27.4 M in FY 2010), which are deposited directly into the Retiree Health Trust Fund.

The actual cost in FY 2010 was for state annual contributions for 32,341 employees at an average credit of \$1,110, which equaled \$35.9 M, plus bonus contributions for retired participants (723 FY 2010 retirements only) at an average credit of \$29,322, which equaled \$21.2 M, less reversions of \$5 M due to individuals leaving state employment prior to full retirement. Total cost equaled \$52.1 M. The total claims paid in FY 2010 were \$7.7 M, while administrative costs totaled \$245,276 in FY 2010.

E. Implicit Subsidy

The state also incurs an actuarial unfunded liability that must be reported under the Governmental Accounting Standards Board (GASB) 45. The liability occurs due to the expansion by the General Assembly in 2008 which allows employees to purchase coverage in the state's self-insured plans (currently between 600 and 700 retirees are purchasing the state plan).

Claims expenses for retired participants in the state's medical plans are significantly greater than the premium charged, creating what actuaries define as an "implicit subsidy." The state and its employees fund this subsidy over time through higher premiums. The "implicit subsidy"

currently is estimated at a \$67.4 M unfunded liability, which would require an additional \$7.7 M per year to actuarially fund.

In response to a question from Senator Tallian on how the plan would look in 20 to 30 years, Mr. Horst said the state could move to actuarially funding the plan, which would reduce the annual cost to \$25 M to \$30 M. In response to a question from Senator Hume, Mr. Horst said that benefits are paid as a reimbursement of premiums.

2. Public Employees' Retirement Fund (PERF) Update - Section 401(h) account administered by PERF

Ms. Allison Murphy, Legislative Director of PERF, told the PMOC that PERF currently is waiting on Internal Revenue Service approval.

3. Public Employees' Retirement and Teachers' Retirement Fund (TRF) Board make-up

Mr. Steven Barley, Chief Operating Officer for PERF/TRF, distributed PERF/TRF Board Composition (Exhibit 2). Mr. Barley said that the TRF Board has six members, five appointed by the Governor. At least two of the five must be members of TRF. The sixth member is the Director of the Budget Agency or the director's designee. The five governor appointees of the TRF Board are the following:

- Ken Cochran (President)
- Gregory Hahn (Vice-President)
- Cari Whicker (Secretary & TRF member)
- Allen Clark (TRF member)
- Bret Swanson
- Director of the Budget Agency or designee Chris Ruhl, OMB Director

Mr. Barley said that the PERF Board has six members, five appointed by the Governor. One member must be a vested member of PERF. One member must be a member or retired member of the fund or a member of a collective bargaining unit or an officer of a labor union that represents state or university employees and is an Indiana resident. Not more than three may be members of the same political party. The sixth member is the Director of the Budget Agency or the director's designee. The five governor appointees to the PERF Board are:

- Ken Cochran (President) (R)
- Gregory Hahn (Vice-President) (R)
- Cari Whicker (I)
- Allen Clark (PERF member) (D)
- Bret Swanson (R)
- Director of the Budget Agency or designee Chris Ruhl, OMB Director

Mr. Barley told the PMOC that he would provide them with the backgrounds of the PERF/TRF Board members. In response to Senator Tallian's question, Mr. Barley said that this is the first time in his career at PERF (which began in 2006) that the respective boards have had the same members.

4. Employee Misclassification

Ms. Lori Torres, Commissioner, Department of Labor, distributed the Indiana Department of Labor (IDOL) Report to Pension Management Oversight Commission on Employee Misclassification (Exhibit 3). Ms. Torres said that the IDOL recommendations are as follows:

A. An interagency Memorandum of Understanding would document the initiative and the commitment of the agencies involved.

B. Each agency should be responsible for providing investigators and administrative staff sufficient to participate in the overall enforcement activities. This recommendation does not contemplate additional general fund resources being allocated to this initiative.

C. Changes should be adopted to allow the Worker Classification Board to impose monetary fines for failure to have coverage before a worker is injured.

D. Education, outreach, and compliance assistance should be enhanced.

5. The Economic Costs of Employee Misclassification in the State of Indiana

Dr. Michael Kelsay, Department of Economics, University of Missouri-Kansas City, distributed copies of the above study (Exhibit 4). Dr. Kelsay said that misclassification takes place when employers treat their workers as independent contractors, rather than waged or salaried employees. Designation as "independent contractor" means that workers, rather than their employers, must pay for health insurance, unemployment, Social Security and payroll-related taxes.

Dr. Kelsay said that his study estimates that Indiana is losing between \$250 M and \$400 M in income and payroll taxes annually. He said that the study is based on audit data from the Indiana Department of Workforce Development (DWD) and estimates that as many as 16.8% of all employees in the state are misclassified as independent contractors.

Dr. Kelsay said that the negative impact of misclassification includes a pricing edge for employers cheating the system by decreasing payroll costs by as much as 10% to 20%. Dr. Kelsay said that misclassification reduces the unemployment insurance trust fund and the worker's compensation fund. He said also that with misclassification all of the payroll and income taxes listed above are shifted to the individual worker.

Dr. Kelsay said that the worker who is being misclassified is not protected by minimum wage laws, overtime laws, or worker compensation laws. Dr. Kelsay said that between \$150 M and \$250 M in state income taxes are lost and between \$60 M and \$100 M in local income taxes are lost due to misclassification.

Dr. Kelsay's report recommended the following:

- A. DWD continue high-percentage audits;
- B. Establish meaningful penalties;
- C. Review state agency procedures and state law to streamline enforcement and coordinate efforts; and
- D. Expand outreach and education to employers and employees

In response to a question from Senator Tallian, Dr. Kelsay said that the major misclassification areas are health and social services, retail, construction, and certain manufacturing. He said that he would email a spreadsheet which shows the misclassification by NAIC sector.

In responding to Representative Crouch's question, Dr. Kelsay said that the Department of Economics, University of Missouri-Kansas City, did the study, and the study was paid for by the Indiana State Building and Construction Trades Council and the Indiana, Illinois, and Iowa Foundation for Fair Contracting.

In response to a question from Representative Burton, Dr. Kelsay said that the gross income tax is the largest tax that is unreported.

6. Report on Potential Savings Related to PERF/TRF Board Consolidation

Mr. Steven Barley, Chief Operating Officer of PERF/TRF, said that he was not able to put a specific number on the amount of savings, but estimates it would range between \$1 M and \$6 M if the boards are fully consolidated.

7. Administrative Costs Involved in Divestment for States that sponsor terror and Sudan

Mr. Steven Barley said that the administrative costs involved with divestment from states that sponsor terror included contractors, commissions, and PERF/TRF staff. The costs are listed below and are for the period of 2008 to date.

- A. PERF: \$239,000
- B. TRF: \$86,000

The costs for the Sudan divestiture are shown below.

Item	PERF	TRF
Contractors	\$46,000	\$27,000
Staff time	\$26,000	\$19,500
Commissions	\$104,000	\$6,000

8. Use of Proceeds from Civil Forfeitures

PMOC staff attorney, Peggy Piety, presented a report on the use of proceeds from civil forfeitures (Exhibit 5). For civil forfeitures prosecuted in circuit, superior, or county courts, any excess in the value of the proceeds or the money over the law enforcement costs are to be forfeited and transferred to the Treasurer of State for deposit in the Common School Fund.

For civil forfeitures transferred to federal authorities, the money received must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations

The Chair recessed the meeting at 11:50 a.m for lunch.

The Chair reconvened the meeting at 1:10 p.m.

9. Preliminary Draft (PD) 3165, Statute of Limitations for Occupational Disease Claims

Representative Dennis Tyler presented PD 3165 (Exhibit 6). Representative Tyler said that there is an inconsistency for statute of limitations for occupational diseases. Representative Tyler said that PD 3165 standardizes the statute of limitation claims for occupational diseases. He distributed Current Limitations - Occupational Diseases (Exhibit 7).

In response to a question from Senator Walker, Representative Tyler said that he did not know the history of the different statute of limitation claims.

10. Public Safety Legislative Proposals

- A. Partial Lump Sum Distribution
- B. Addition of a public safety member to the PERF Board of Trustees.
- C. Pre-1990 line-of-duty disability determinations.

Representative Tyler presented PD 3050 (Exhibit 8). PD 3050 adds a public safety member to the PERF Board of Trustees. A motion was made and seconded, and PD 3050 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

Representative Niezgodski told the members that the other two public safety proposals are works in progress.

11. PERF/TRF Legislative Proposals

Ms. Allison Murphy of PERF presented the PERF/TRF legislative proposals.

A. PD 3153 (Exhibit 9) makes technical corrections to the 1977 Police and Fire Funds. A motion was made and seconded, and PD 3153 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

B. PD 3298 (Exhibit 10) codifies P.L. 33-2006 concerning the Prosecuting Attorneys' Retirement Fund. A motion was made and seconded, and PD 3298 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

C. PD 3156 (Exhibit 11) removes a provision requiring the TRF to maintain separate accounts for each employer within the retirement allowance account. A motion was made and seconded, and PD 3156 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

D. PD 3157 (Exhibit 12) requires the PERF-managed funds to submit contributions, reports, and records electronically and authorizes the PERF Board of Trustees to establish due dates for the contributions, reports, and records. A motion was made and seconded, and PD 3157 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

E. PD 3231 (Exhibit 13) permits a member of PERF or TRF who is eligible for an early retirement to withdraw the member's annuity savings account without applying for a retirement benefit. A motion was made and seconded, and PD 3231 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

F. PD 3232 (Exhibit 14) permits an administrative law judge, for cause shown, to order the waiver or extension of the 180-day limit in which the Board of Trustees of PERF is required to issue a final order after the date the PERF Board of Trustees receives a local board's initial disability determination or the PERF Director initiates a review of a default award for a member of the 1977 Police and Fire Funds. A motion was made and seconded, and PD 3232 was recommended for introduction in the 2011 session of the General Assembly by a vote of 8-0.

12. PD 3212 (Exhibit 15) codifies certain noncode provisions relating to government employees and pensions

Peggy Piety distributed PD 3212 and asked for comments from the members.

13. Indiana State Employees Association

David Larson, Indiana State Employees Association, told the members he had a small problem with PD 3231. Mr. Larson also commented that state employees have not had a benefit improvement in many years and if there are any savings from fund consolidation it should go to helping state employees with health care. He also said that the problem of health care for laid-off state employees is that they can't qualify for the state health insurance and can't get SEA 501 benefits. Mr. Larson said that the legislature needs to take care of those who have served.

14. Other Business

Representative Niezgodski requested from PERF/TRF an in-depth report for the October 14th meeting addressing alternative investments with specific dollar amounts and percentages involved.

The Chair adjourned the meeting at 1:55 p.m.

Senate Enrolled Act 501
Retirement Medical Benefits Accounts
2010 Annual Update

Adam M. Horst
Director, Indiana State Budget Agency

SEA 501 Background

- SEA 501-2007 established a retirement medical benefits account for members of the general assembly, state elected officers and employees of the executive, legislative and judicial branches
 - Two components— active participants and retirees
 - Only a retired participant and covered dependents are entitled to receive benefits from the account
-

SEA 501– Active Participants

- Annual state contribution to each full time active employee's account based on age

<u>Age</u>	<u>Annual Contribution</u>
Less than 30	\$500
30-40	\$800
40-50	\$1,100
At least 50	\$1,400

SEA 501—Retired Participants

- SEA 501 establishes the account as a Health Reimbursement Arrangement
 - The account is funded with (1) any annual contributions received from the state on behalf of an active participant, (2) if applicable, a “bonus contribution” from the state and (3) investment earnings
 - Funds may be used to pay premiums for individual or group health, medical, dental and vision coverage and long-term care premiums
-

SEA 501—Retired Participants

- The bonus contribution applies to a participant who:
 - Retires after June 30, 2007 and before July 1, 2017; and
 - Has ten (10) years of service as an elected officer or has fifteen (15) years of service as an employee of the legislative, judicial or executive branch; and
 - Is eligible for and has applied to receive a normal, unreduced retirement benefit from a public employee retirement fund
 - The bonus contribution equals the participant's years of service multiplied by \$1,000
-

SEA 501-Communication/Outreach

- Additional information sessions held by the State Budget Agency
 - Participation by the State Budget Agency at State Personnel pre-retirement seminars
 - Correspondence with over 32,000 employees informing them of the annual contribution and directing them to resources for additional information about the program
 - Section of the State Budget Agency web-site dedicated to SEA 501
 - Includes the Plan Document, contract with Key Benefits, claim forms, a copy of the presentation to employees at the information sessions and frequently asked questions
-

SEA 501—Third Year Facts & Figures State Fiscal Year 2010

- 723 new retirees in 2010. Average contribution of \$29,322
 - Since inception (FY 08) there are now 2,700 retired participants. Average contribution \$27,745. Claims to date have totaled \$11,707,000

 - 32,341 active employees received a credit on June 30, 2010. Average credit was \$1,110.

 - Due to historically low interest rates, there was no interest remaining to be credited to accounts this year after covering administrative expenses. Note that administrative expenses are currently less than 0.5% of the annual cost of the plan.
- \$200,000 interest ; \$250,000 admin. expenses*

SEA 501—Fiscal Impact

- Receives 5.74% of cigarette tax revenues (\$27.4M in FY 10) deposited directly into the Retiree Health Trust Fund
 - Actual cost in FY 10
 - Annual state contributions—32,341 at an average credit of \$1,110 = \$35.9 million
 - Bonus contributions for retired participants—723 (FY 10 retirements only) at an average credit of \$29,322 = \$21.2 million
 - Less reversions of \$5.0 million due to individuals leaving state employment prior to full retirement
 - TOTAL COST = \$52.1M
 - Total claims paid in FY 10 were \$7.7M
 - Administrative costs totaled \$245,276 in FY 10
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SEA 501 – Implicit Subsidy

- The state also incurs an actuarial unfunded liability that must be reported under GASB 45. The liability occurs due to the expansion by the General Assembly in 2008 which allows employees to purchase coverage in the state's self insured plans. *600-700 retirees purchasing state plan*
- Claims expenses for retired participants in the state's medical plans are significantly greater than the premium charged, creating what actuaries define as an "implicit subsidy." The state and our employees fund this subsidy over time through higher premiums.
- The "implicit subsidy" is currently estimated at a \$67.4 million unfunded liability, which would require an additional \$7.7 million per year to actuarially fund.

PERF & TRF Board Composition

PMOC – September 29, 2010

PERF Board Composition

- Six Members
 - Five (5) appointed by the governor
 - At least two (2) of the five (5) must be members of the fund
 - Director of the Budget Agency or the director's designee

Current TRF Board Members

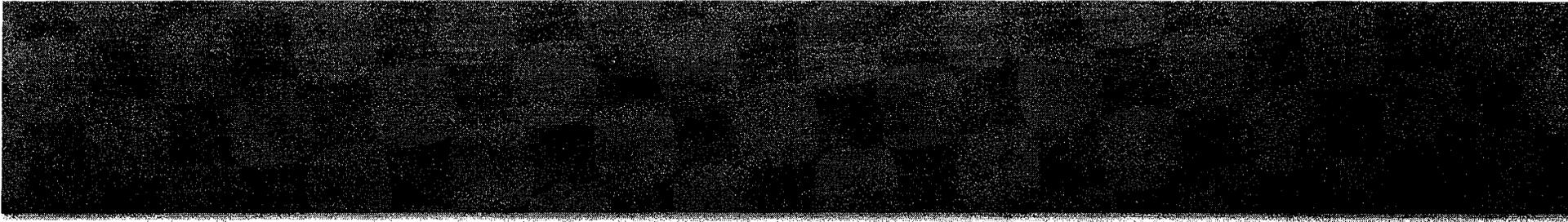
- Five (5) governor appointees
 - Ken Cochran (President)
 - Gregory Hahn (Vice President)
 - Cari Whicker (Secretary & TRF member)
 - Allen Clark (TRF member)
 - Bret Swanson
- Director of the Budget Agency or designee
 - Chris Ruhl, OMB Director

PERF Board Composition

- Six Members
 - Five (5) appointed by the governor
 - One (1) must be a vested member
 - One (1) must be
 - Member or retired member of the fund or
 - Member of a collective bargaining unit
 - or
 - Officer of a labor union that represents state or university employees and
 - Indiana resident
 - Not more than three (3) may be members of the same political party
- Director of the Budget Agency or the director's designee

Current PERF Board Members

- Five (5) governor appointees
 - Ken Cochran (President & vested member) (R)
 - Gregory Hahn (Vice President) (R)
 - Cari Whicker (I)
 - Allen Clark (PERF member) (D)
 - Bret Swanson (R)
- Director of the Budget Agency or designee
 - Chris Ruhl, OMB Director



Appendix – PERF & TRF Board Composition Statutes

TRF Board Composition Statute

- **IC 5-10.4-3-1**
Members

Sec. 1. (a) The board consists of six (6) trustees.

(b) Five (5) trustees shall be appointed by the governor. At least two (2) of the trustees appointed by the governor must be members of the fund. The governor shall make these appointments after June 30 and before July 16 of each year.

(c) The director of the budget agency or the director's designee is an ex officio voting member of the board. An individual appointed under this subsection to serve as the director of the budget agency's designee serves as a permanent designee until replaced by the director of the budget agency.

PERF Board Composition Statute

- **IC 5-10.3-3-1**

Composition; appointment; vacancies

Sec. 1. (a) The board is composed of six (6) trustees.

(b) Five (5) of the trustees shall be appointed by the governor, as follows:

(1) One (1) must be a member of the fund with at least ten (10) years of creditable service.

(2) Not more than three (3) may be members of the same political party.

(3) One (1) must be:

(A) a:

(i) member of the fund or retired member of the fund; or

(ii) member of a collective bargaining unit of state employees represented by a labor organization; or

(B) an individual who is:

(i) an officer or a member of a local, a national, or an international labor union that represents state or university employees; and

(ii) an Indiana resident.

(c) The director of the budget agency or the director's designee is an ex officio voting member of the board. An individual appointed under this subsection to serve as the director's designee:

(1) is subject to the provisions of section 3 of this chapter; and

(2) serves as a permanent designee until replaced by the director.

(d) The governor shall fill by appointment vacancies on the board in the manner described in subsection (b).

(e) In making the appointments under subsection (b)(1) or (b)(2), the governor may consider whether at least one (1) trustee is a retired member of the fund under subsection (b)(3)(A)(i).

Indiana Department of Labor Report to Pension Management Oversight Commission on Employee Misclassification

**Exhibit 3
Pension Management
Oversight Committee
September 29, 2010**



September 29, 2010

September 29, 2010

To: Members of the Pension Management Oversight Commission

Rep. David Niezgodski, *Chairperson*

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Employee Misclassification Report – What We Did

At the conclusion of the 2009 legislative session, the Indiana Department of Labor was tasked with the responsibility of recommending guidelines and procedures to address the problem of employee misclassification in the commercial construction industry. It was to be a comprehensive report within a set of parameters set by the legislature.

After nearly six months of information gathering, analysis and policy development, the Department of Labor is pleased to present the set of recommendations to the Pension Management Oversight Commission for review. After comments are provided, we will present a revised set of recommendations to the legislative council concerning any legislative changes needed to implement the proposal.

Many states have wrestled with this issue, and continue to struggle with a balanced solution. Our analysis was aided by many reports, review of statutes enacted elsewhere, and interviews with Department of Labor staff across the country. This report was prepared with the assistance of many individuals, but primarily by the undersigned, along with Rick Ruble, General Counsel for the IDOL, and Kathryn Wall, legislative liaison for the IDOL.

Respectfully submitted,

Lori A. Torres,
Commissioner
Indiana Department of Labor

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ABBREVIATIONS

AGI	Adjusted Gross Income
DOL	Department of Labor
DOR	Department of Revenue
DWD	Department of Workforce Development
GAO	General Accounting Office
IC	Independent Contractor
IDOA	Indiana Department of Administration
IDOL	Indiana Department of Labor
IRS	Internal Revenue Service
LLC	Limited Liability Company
MOU	Memorandum of Understanding
PMOC	Pension Management Oversight Commission
QETP	Questionable Employment Tax Practices
UI	Unemployment Insurance
WCB	Worker's Compensation Board
WHD	Wage & Hour Division of Department of Labor

I. Executive Summary of Recommendations

The IDOL has developed a set of recommendations to address the issue of employee misclassification. The agency has given due regard to the following factors:

- the charge of the general assembly
- the perceived size of the problem
- the potential return on investment
- the long common law history in Indiana between employers and employees
- the conservative nature of regulating the conduct of employers
- the state of Indiana's economy
- the relatively recent effective date of Ind. Code 22-1-1-22, 22-3-1-5, 6-8.1-3-21.2 and 22-4.1-4-4 (requiring confidential information sharing between the four primary agencies)
- the experience of other states in trying to administer large regulatory schemes
- the experience of other states utilizing a task force or interagency approach, and
- the response and potential preemption by the federal government

Accordingly, the recommendation of IDOL is that an interagency initiative be undertaken with representatives of DWD, DOR, the Indiana Attorney General's Office, WCB, the Indiana Secretary of State's Office and IDOL.

An interagency Memorandum of Understanding (MOU) would document the initiative and the commitment of the agencies. Each agency should designate a point of contact for the initiative. The efforts of the active participants would continue to be funded by each agency's traditional funding source, and the participants should jointly develop a strategy to investigate complaints and tips. Coordination and full cooperation need to be a hallmark of the investigative officers. Each agency needs to be prepared to allocate some human resource capital towards the goal of reducing misclassification. Each agency should keep accurate performance metrics individually and collectively they should be aggregated, in order to ascertain the success of the initiative.

Eliminating barriers to communication is critical to the success. With the recent passage of the information sharing statutes (effective January 1, 2010) and other initiatives listed herein, and with emphasis by the points of contact to all levels of the stakeholder agencies, it is believed that this can significantly impact the trend of misclassification.

Furthermore, it is clear that the penalties for failing to comply with the Worker's Compensation laws are insufficient. This report recommends that those penalties be substantially increased. No additional statutory penalties for failing to properly report or contribute to the Unemployment Insurance Trust Fund or to properly report or pay corporate, individual or withholding taxes were recommended.

Finally, a serious effort should be undertaken to educate employers about their respective obligations, and the serious consequences for failing to meet those obligations. While many employers consciously choose to avoid their obligations, a significant number of employers do not understand the complexities of misclassification. Many employers believe that they can choose at their discretion how to label their workers. Better communication tools and available information need to be developed for use by employers, particularly small businesses. Additionally, workers need to be empowered to understand their rights, and enabled to report suspected misclassification.

II. Legislative Authority

On March 13, 2010, a joint house and senate Conference Committee adopted Senate Bill 23. On March 25, 2010 Governor Daniels signed Senate Enrolled Act 23 which required the Indiana Department of Labor (“IDOL”) to develop guidelines and procedures for investigating questions and complaints concerning employee classification and a plan for implementation of those guidelines and procedures. SEA 23 required IDOL to make a presentation to the Pension Management Oversight Commission (“PMOC”) not later than October 1, 2010, and to make recommendations to the legislative council concerning any required legislative changes by November 1, 2010. IDOL was required to implement any adopted rule by August 1, 2011.

SEA 23 became effective July 1, 2010 and is codified at Ind. Code 22-2-15-1 to 6. The Act imposes strict parameters and required elements to which the IDOL must adhere in developing its guidelines and procedures, including the requirement to address who is eligible to file a complaint, appropriate penalties, a mechanism to share data among state agencies, recordkeeping requirements and investigative procedures. It also limits the application of guidelines and procedures to public and private construction and exempts residential construction and owner/operators that provide a motor vehicle and driver under certain conditions. The guidelines should address remedies for both employers and misclassified employees. The Act also specifies in some detail the precise elements of any test in determining who is an employee versus who qualifies as an independent contractor. The act also permits IDOL to include other elements in its recommendations.

III. Methodology of IDOL

As a result of the Act described above, in an effort to be responsive to all construction stakeholders, IDOL held two public sessions in Indianapolis on April 23 and April 28, 2010. All members of the public were invited with specific invitations sent to major stakeholders, including the Indiana State Building and Construction Trades Council, the Indiana Builders Association, Indiana Chamber of Commerce, Indiana Manufacturers Association, Indiana Construction Association, AFL-CIO, members of the General Assembly and other state agencies with a stake in this subject matter. In addition, written

comments and suggestions were invited for submission at any time prior to May 15, 2010 either electronically or by regular mail. Mass notices of the public sessions and the opportunity for public comments were sent electronically by the agency's departmental newsletter to more than 5000 subscribers, as well as placed on the home page of the agency's website.

Ten people appeared and provided public comments during the two sessions, and subsequent written comments were received on behalf of six entities. Additional stakeholders attended the public sessions but tendered no written or verbal comments.

After reviewing the input of the stakeholders affected by any legislative or administrative change, IDOL set out to understand how the issue had been addressed in other states. Following a comprehensive review of other states' proposed solutions, IDOL sought input from the DOR, WCB and the Unemployment Insurance Division of DWD.

Finally, this report was prepared for presentation to PMOC. Following this presentation, IDOL is required by statute to make recommendations in an electronic format to the legislative council concerning any legislative changes needed to implement the guidelines and procedures developed under Ind. Code 22-2-15, including a budgetary recommendation for the implementation of the guidelines and procedures and a funding mechanism.

IV. Definition of the Issue

States across the country have identified the misclassification of employees as independent contractors as a problem from multiple perspectives. Workers, businesses and government are all disadvantaged in varying degrees and ways by worker misclassification. Worker misclassification occurs when a worker who meets the statutory or common law definition of an employee is treated as a self employed worker or independent contractor. Whether by agreement, out of ignorance or misunderstanding, or intentionally, there are employers who fail to properly claim a worker as an employee. An employer does not avoid its obligation by failing to acknowledge a worker as an employee, but enforcing compliance with the law can be made more difficult.

Workers are disadvantaged when they are deprived of minimum wage or overtime pay and are forced to pay the employer's portion of withholding taxes. Furthermore, they are left with no recourse if they are injured on the job, as they have no worker's compensation coverage, and are not protected by occupational safety and health rules which also cover only employees. Those same workers have no access to the protection of the Americans with Disabilities Act, Age Discrimination in Employment Act and Family Medical Leave Act, among others. Some misclassification is discovered only when a worker is injured and seeks worker's compensation coverage, only to find that none exists. Other misclassification is an intentional act on behalf of both the employer

and the employee to avoid the reporting of wages and payment of tax obligations. Less sophisticated workers may not understand that despite an employer's attempt to characterize them as non-employees, if they meet the definition, the employer is required to meet its obligations for them.

Employers are disadvantaged when competitors misclassify employees and accordingly have lower labor costs. They lose work to these employers who are seemingly rewarded for their misclassification. These employers generally fail to keep records required of employers in Indiana. Additionally, those same employers avoid the need to document a worker's right to work legally in the U.S. and Indiana.

Governments are disadvantaged when employers fail to pay premiums to the Unemployment Insurance Trust Fund for individuals deemed employees by UI law. Governments also are harmed by the failure of an employer to withhold taxes on an employee, particularly due to the increased challenges of recovering taxes due directly from an individual. Furthermore, those individuals that are injured on the job without the workers compensation safety net to which they are entitled often becomes users of other social services as a result of those injuries and their inability to work.

Academic studies, surveys and other published reports vary on the extent of the problem, with some estimates varying from ten to thirty percent of all workers being misclassified.¹ In Indiana, with the statute only permitting this effort to include commercial construction, logically there will be a lower economic impact because only a segment of the business sector is subject to any additional regulation. The task of IDOL has been to balance the extent of the problem, the charge of the legislature and the additional regulation foisted upon construction businesses in the state of Indiana.

V. Survey of Other States

Information was gathered from across the country from states with both Republican and Democrat governors and legislatures. State responses have been varied. We reviewed state treatment of the issue from California, Colorado, Iowa, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, Nevada, New Hampshire, New Jersey, New Mexico and Ohio. We reviewed countless studies, reports and summaries estimating the dollar amount of the problem, alternatives for addressing it and compiling state statistics.

Some states have yet to address the issue in any way, other than through existing enforcement measures. Others have signed interagency Memoranda of Understanding, or formed task forces and/or are operating under some type of executive order. Still other

¹ See Independent Contactors: Prevalence and Implications for Unemployment Insurance Program (Rockville, Md: U.S. Department of Labor, February 2000).

states have enacted legislative changes, including an independent obligation not to misclassify employees as independent contractors. Legislative solutions also include a presumption that a worker is an employee, reconciliation of differing definitions of “employee,” or providing for additional fines over and above the fines issued for non-reporting or non-payment to the DOR or unemployment insurance division. Some states direct complaints to the labor department, whereas others receive complaints in similar divisions or through a joint task force comprised of representatives from various departments. In most states, any new legislation has been passed only within the last year or two, making evaluation of effectiveness difficult.

Illinois is one example of a state that enacted a completely new, comprehensive regulatory structure specifically addressing worker misclassification. The Illinois Classification Act (Public Act 095-0026) took effect on January 1, 2008.² The Illinois Department of Labor adopted administrative rules authorized by the Act.³ However, the future of the Illinois Classification Act is uncertain as the constitutionality of the Act is currently being challenged in the Illinois state courts.

The Illinois Classification Act establishes a presumption that a worker is an employee unless the worker meets the criteria laid out in Act. The Act provides for civil penalties, criminal penalties and enhanced penalties for willful violation. The Act also creates a private right of action for any aggrieved person or interested party.

Contractors are required to maintain certain records for each individual that performs services for the contractor, including their names, addresses, phone numbers, Social Security numbers, Individual Tax Identification Numbers and Federal Employer Identification Numbers; all invoices, billing statements or other payment records, including the dates of payments, and any miscellaneous income paid or deductions made; copies of all contracts, agreements, applications and policy or employment manuals; and federal and State tax documents.

The Illinois Classification Act is currently being challenged by a contractor on constitutional grounds in the Illinois state courts. Rhonda and Jack Bartlow are spouses and general partners in a partnership that has been doing business as Jack’s Roofing since 1977. The Illinois Department of Labor initiated an investigation of Jack’s Roofing and in April 2009 notified the Bartlows that Jack’s Roofing had failed to properly classify ten subcontractors in violation of the Act. The Department of Labor proposed a fine of more than \$1.5 million dollars. Jack’s Roofing sued, seeking to enjoin the Department of Labor from enforcing the Act against Jack’s Roofing. The trial court denied Jack’s request for a Temporary Restraining Order (“TRO”) and Jack sought interlocutory appeal. The appellate court reversed the trial court order denying the TRO and remanded

² 820 ILCS 185/1-999

³ 56 Ill. Adm. Code 240

the case back to the trial court, directing it to enter a TRO preventing the Department of Labor from enforcing the Act until the Court can conduct a hearing on Jack's motion for an injunction.⁴ The case is presently in the trial court awaiting further action. It appears that the future of the Illinois Classification Act may depend upon how this case progresses through the Illinois courts.

Like Illinois, state legislatures in **Delaware, Maryland, Colorado** and **Minnesota** also enacted bodies of law establishing new regulatory schemes specifically to address worker misclassification. Some of these new regulatory structures have had unanticipated or undesirable longer-term consequences.

In Illinois, passage of the Illinois Classification Act appears to have created a new market for consultants and advisors whose advertising offer seminars and advice to either help contractors understand the Illinois Act or restructure their business to avoid coverage of the Act. Utah is struggling with contractors forming LLCs to subvert the purposes of proper classification. Minnesota is also presently wrestling with trying to fix the Minnesota Legislature's apparently unsuccessful legislative attempt to address worker misclassification.

In **Minnesota**, in 2007, in response to a study commissioned by its Legislative Audit Commission, the legislature passed a law⁵ requiring all independent contractors working in the construction industry to secure an exemption certificate from the Department of Labor and Industry. This legislation created a presumption of employment, in which a worker was presumed to be an employee if no exemption certificate had been issued. A nine factor test determining IC status existed by law, but following the passage of the new legislation, the nine factors had to be proven before an Independent Contractor Exemption Certificate was issued by the DOL. Nine staff were hired in anticipation of 25,000 to 30,000 requests for independent contractor certificates, and funding was made available through a dedicated fund of application fees. Penalties were set at up to \$5,000 per violation, and the application fee was set at \$150. Additionally, the Minnesota Legislature, supported by the DOR, passed a law requiring that entities hiring independent contractors withhold 2% of each payment to cover some portion of the income tax owed.

Instead of working as anticipated, it was discovered that the application process was burdensome and intrusive, and few applications were received. Many contractors took the route of forming a Limited Liability Company (LLC) with fewer intrusive burdens of proof and even additional protections and favorable treatment (such as no proof of IC status and no 2% withholding on payments). All but two of the investigative staff were

⁴ Rhonda Bartlow and Jack Bartlow d/b/a Jack's Roofing v. Catherine M. Shannon as Director of Labor, 927 N.E. 2d 88, Ill App. (2010).

⁵ Minnesota Statutes 181.723

laid off, and the agency essentially now simply processes the applications, with few to no resources available for investigative efforts. In 2010, the state is now looking at trying to fix the unsuccessful enforcement attempt, and has set up a task force to try to address issues along the interagency model.

Several other states have taken both executive and legislative action within the past three years to address worker misclassification. **Iowa, Maine, Massachusetts and New Jersey** have all created task forces or study committees as well as enacting new legislation to address worker misclassification.

Among the states that took multiple approaches to addressing the issue is Maryland. The State of **Maryland** took both executive and legislative action to address worker misclassification in 2009. Governor O'Malley established the Joint Enforcement Task Force on Workplace Fraud by Executive Order on July 14, 2009 and the Maryland General Assembly passed the Workplace Fraud Act of 2009 which took effect October 1, 2009⁶.

The principal charge of the executive level task force is to coordinate agency efforts to address worker misclassification. At its first meeting, the task force created three workgroups of front-line staff dedicated to enforcement, education and outreach and information sharing. During its first few months of existence, the task force was able to break down or bridge many of the traditional barriers preventing agencies from sharing information. Maryland Deputy Commissioner of Labor Lowry described the information sharing as "essential" to the successful investigation of worker misclassification.

Maryland committed significant resources to investigating worker misclassification. The Maryland Department of Labor created ten (10) new staff positions devoted to worker misclassification, including three investigators, two auditors, one attorney, and four support staff, with an annual budget of approximately \$700,000. At present, nine of those ten positions are filled.

The Maryland Workplace Fraud Act created a separate new violation for worker misclassification in the construction and landscaping industries. The Act establishes a presumption that a worker is an employee, unless the employer proves otherwise. The Act requires employers to provide a "notice" to independent contractors explaining their classification and requires businesses to maintain records of all independent contractors with which they do business. The Act requires employers who are found to have "improperly misclassified" workers to pay restitution and come into compliance with all applicable laws within 45 days and provides for civil penalties of up to \$5,000 per worker

⁶ See Md. Code Ann., Lab. & Empl., § 3-901, et. seq.

for “knowing” misclassification. The Act also establishes a private right of action for workers and anti-retaliation provisions for workers who complain.

Some states have not passed new legislation, but have established task forces to study the issues, but other states have established task forces to undertake joint investigations and to coordinate state efforts. **California** has long had a task force that works joint investigations.

New York is one of the states that adopted the task force model. Colleen Gardner, New York Labor Commissioner, testified at a June 17, 2010 Senate committee hearing, and outlined the approach taken in New York. She provided a snapshot of the results of the New York State Joint Enforcement Task Force on Employee Misclassification. Her testimony highlighted the “unprecedented level of collaboration it has achieved among state agencies and local governments throughout New York. Beginning with its creation in September 2007 through the end of March 2010, the Task Force’s efforts have resulted in 67 enforcement sweeps in a dozen cities throughout the State, which identified nearly 35,000 instances of employee misclassification, discovered over \$457 million in unreported wages, identified more than \$13.2 million in unemployment insurance taxes due and discovered over \$14 million in unpaid wages.”

The New York Task Force consists of the state DOL, Workers’ Compensation, the Attorney General’s office, New York DOR and the New York City Comptroller’s Office. The Executive Order forming the Task Force charged the task force with:

- sharing information and referrals among agency partners about suspected employee misclassification violations, and pooling and targeting investigative and enforcement resources to address them;
- identifying significant cases of employee misclassification, which should be investigated jointly;
- developing strategies for systematically investigating employee misclassification in industries in which misclassification is most common;
- facilitating the filing of complaints;
- working cooperatively with business, labor and community groups to identify and prevent misclassification;
- soliciting the cooperation and participation of local District Attorneys and other law enforcement agencies and referring appropriate cases for criminal prosecution; and
- proposing appropriate administrative, legislative and regulatory changes to prevent employee misclassification from occurring

New York reports that some 5,600 tips or leads have been jointly investigated by task force agencies, and that the coordination has made a tremendous impact on its ability to track down, investigate and prosecute those employers who seek to avoid their legal responsibilities. A copy of the most recent task force report is included in the appendix.

Michigan is another example of a state that established an executive-level task force to study worker misclassification and make recommendations for legislative action. Michigan Governor Granholm established the Michigan Interagency Task Force on Employee Misclassification by executive order in February 2008. The executive order appointed representatives from the Michigan Department of Labor & Economic Growth, the Unemployment Insurance Agency, the Wage and Hour Division, the Workers Compensation Agency, the Business services Division within OMB, and the Discovery and Tax Enforcement Division within the Department of the Treasury.

The task force was directed to study worker misclassification, develop ways of improving communication and public awareness, coordinate enforcement mechanisms, and make recommendations for legislative action where needed. The major activity for the task force in 2008-2009 was a series of five public hearings held around the state.

The Michigan Task Force issued its second report to Governor Granholm in July 2009. The 2009 Task Force report concluded by recommending that the following steps be taken to address worker misclassification in Michigan:

- Legislation should be introduced along the lines of that proposed in Pennsylvania that clearly identifies misclassification of employees in the construction and commercial carriers industries as conduct subject to civil and criminal sanction. In the future, Michigan should consider expanding coverage beyond these two industries.
- Legislation should be introduced to protect individuals making complaints regarding employee misclassification.
- Legislation should be introduced requiring that all employment-oriented training programs at the high school and post-high school levels in Michigan require mandatory training on employee rights and responsibilities.
- Create training courses and related materials.
- Introduce legislation removing any statutory or regulatory barriers to cross agency communication on misclassification efforts.
- Create and implement Memoranda of Understanding between the involved agencies facilitating information exchange.
- Create a central clearing house to:
 - a. Receive complaints or inquiries regarding employee misclassification from all communication sources.
 - b. Direct complaints to various state agencies that have appropriate subject jurisdiction.
 - c. Co-ordinate efforts by various agencies to investigate and pursue violations of employee classification.
 - d. Monitor the progress of investigations and make information public where appropriate.

Not every state that has considered the issue has found that the most reasoned approach is a full court press consisting of new regulatory requirements. Several states have found that simple efforts can produce big returns in combating misclassification.

Iowa established a task force to study the issue, and in 2008, it tendered a report to its governor with many of the recommendations reflecting action taken here in Indiana. It recommended improved public education (describing it as “critical”), information sharing between state agencies, execution of the data sharing agreement with the IRS, retaining the common law definition of “employee” across all agencies, and increased funding for the UI audits in its workforce development agency. It should be noted that the increased budget request was at a time before the current recession put serious limitations on the ability for any state to increase executive agencies’ budgets.

Kansas is an example of a state where minor changes facilitated more efficient and effective identification and investigation of worker misclassification. A minor legislative change enabled the Kansas Department of Labor (where its UI and WCB is housed) and the Kansas Department of Revenue to share information and enforce existing employment security, revenue, and worker’s compensation laws to combat worker misclassification. The agencies also partnered in a program of public outreach and education and jointly maintain an internet website devoted to worker misclassification where viewers can find information about worker misclassification and submit “tips” on suspected misclassification.

Like many other states, Kansas has existing laws concerning revenue, unemployment insurance, and worker’s compensation insurance. However, statutory barriers preventing the agencies from sharing information impeded the identification and investigation of worker misclassification.

In 2006 the Kansas Legislature amended the Kansas Employment Security Law to prohibit any person from knowingly and intentionally misclassifying an employee as an independent contractor for purpose of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements.⁷ More importantly, the Legislature also eliminated the statutory barrier preventing the Kansas Department of Labor and the Kansas Department of Revenue from sharing certain information.

The Kansas Department of Labor reports that the arrangement appears to be working, allowing the Department of Labor and the Department of Revenue to investigate, correct, and if necessary, punish employee misclassification with almost no new appropriations or funding and the addition of only 2 – 3 additional employees to investigate misclassification.

⁷ See K.S.A. 44-766

Ohio is a state that has undertaken a fair amount of research and study, and settled on using a Memorandum of Understanding to establish a task force like group in coordinating the efforts of various state agencies. Its efforts were led by the Ohio Attorney General, and the state hopes to recover more than \$20 million in UI payments, and \$36 million in forgone state income tax revenues.

Like Michigan, the states of **New Hampshire, Rhode Island, Washington** and **Nevada** all established some form of group to study the subject of worker misclassification. In Nevada, Senate Concurrent Resolution No. 26 established a subcommittee to study employee misclassification. The committee met three times during the 2009 – 2010 interim between legislative sessions and took anecdotal evidence on the subject of employee misclassification. The Nevada subcommittee plans to submit five (5) bill draft requests to the Nevada Legislature in 2011. In summary, those requests or recommendations are to: (1) create a task force on employee misclassification, (2) adopt a uniform definition or “test” to distinguish employees and contractors, (3) create civil penalties for anyone who advises an employer to misclassify, (4) create a private right of action for misclassified workers, and (5) implement specific fines for employers who misclassify employees.

VI. Federal Initiatives

The several states are not the only genesis of efforts on this front. Federal initiatives include both legislative and regulatory solutions, including simply providing more funding for certain investigatory and enforcement work. On the legislative front, a number of proposals have been advanced in the House and the Senate. Presently pending in Congress is the **Employee Misclassification Prevention Act** (S. 3254/H.R. 5107) sponsored by Sen. Sherrod Brown D-Ohio in the Senate and Rep. Lynn Woolsey D-California in the House. This bill would amend the Fair Labor Standards Act by tightening the reporting requirements for businesses that employ independent contractors, raising a presumption of a worker being an employee in the absence of such records and raising penalties for misclassification. It would require businesses to keep records on all independent contractors and provide written notification to them that includes the DOL web address for reporting misclassification, the phone number and address of the local DOL office, and a message encouraging employees to report misclassification to the DOL. Certain penalties for misclassification would be doubled, and civil penalties permitted up to \$1,100 per individual misclassified. Finally, the bill would require state UI audits to address misclassification, and require all DOL agencies to report misclassification to the WHD. The most recent hearing on the bill took place in the Senate on June 17, 2010 in the Health, Education, Labor and Pension Committee.

Federal DOL also developed a proposal sent over to Congress this past May entitled the **Unemployment Compensation Integrity Act**, which would enable states to retain a

percentage of delinquent employers' UI taxes to increase efforts to identify worker misclassification. It has not been introduced.

Finally, the **Taxpayer Responsibility Accountability Act of 2009** (S. 2882/H.R. 3408) would amend the IRS code by increasing misclassification penalties and requiring employers to presumptively classify a new hire as an employee, unless the company can demonstrate why the worker should be considered an independent contractor by referring to a written opinion or IRS finding about a similarly-situated employee. It also creates an appeals process for any independent contractor who would like to petition to be classified as an employee. Finally, the bill requires any payments of \$600 or more made to companies to be reported to the IRS. It is pending in the Ways and Means Committee.

Absent a congressional mandate, DOL has its own proposals to address employee misclassification. Deputy Secretary of Labor, Seth Harris, testifying in front of the Senate Committee on Health, Education, Labor and Pensions on June 17, 2010, outlined a number of agency wide initiatives and resources that would be dedicated to preventing employers from intentionally or inadvertently misclassifying employees as independent contractors. They included adoption by the WHD of new rules under the Fair Labor Standards Act, which would require each employer, before claiming to be using an independent contractor, to perform a written analysis and provide a copy of that written analysis to the affected independent contractor or employee. Similar rules are being developed for adoption by the Occupational Safety and Health Administration and the Office of Federal Contract Compliance Programs.

The President's Fiscal Year 2011 budget proposes \$25 million for a DOL initiative that will include close cooperation with the Treasury Department's Internal Revenue Service (IRS) to address worker misclassification.

Federal DOL is working with the Vice President's Middle Class Task Force and the Department of Treasury on a multi-agency initiative to develop strategies to address worker misclassification. The President's budget request for fiscal year 2011 included \$12 million for WHD's increased enforcement of wage and overtime laws in cases where employees have been misclassified, as well as for additional funding for the Office of the Solicitor and OSHA for their work in this area.

It also included \$10.95 million to provide grants to states to increase capacity to identify and address worker misclassification in Unemployment Insurance programs through targeted employer audits and enhanced information sharing to enable detection. States that are the most successful will receive high performance bonuses that can also be used to further reduce worker misclassification. WHD is currently considering how best to use its proposed funding for a targeted enforcement strategy, a decision primarily informed

by the agency's experience that misclassification is particularly prevalent in industries with large numbers of low-wage, vulnerable workers.

Deputy Secretary Harris' testimony also emphasized that more outreach and education would be undertaken to inform vulnerable employees of their rights regarding misclassification

The **“Questionable Employment Tax Practices” program** (QETP) of the IRS has enabled 39 states signing memorandums of understanding with the IRS to participate in a two-way exchange of information. Indiana has not yet signed such an agreement and is evaluating the steps necessary to enter into the agreement. Participating states are now able to receive tax information and audit leads from the IRS, which allows them to target their state UI employer audits via an alternative method.

While the success of federal legislative changes cannot be known, it shouldn't be underestimated the momentum the effort has, especially at federal DOL.

VII. Recommendations

Based upon the specific charge of Ind. Code 22-2-15 (see appendix), IDOL was required to develop guidelines and procedures for investigating questions and complaints concerning employee misclassification, and a plan for implementing such suggestions. This report has attempted to address each of the law's requirements to best addresses the issues in Indiana regarding commercial construction. As a result of some of the proscriptions in Ind. Code 22-2-15, no other industry is contemplated as being regulated under this report. Furthermore, the department is mindful of the specific requirements of Ind. Code 22-2-15-2 and 3, which require the department to address at least:

- a) allowing any aggrieved person to be able to file a complaint;
- b) appropriate penalties;
- c) collaborative information sharing and enforcement work among the various state agencies;
- d) recordkeeping by construction contractors;
- e) appropriate investigative procedures;
- f) providing a remedy for employers who are intentionally targeted for frivolous, harassing or retaliatory reasons;
- g) providing a remedy for employees against whom retaliatory, adverse action is taken as a result of a complaint or investigation;
- h) use of a certain 20 part IRS test (Section 3401(c)) for determinations of which workers are employees and which workers are independent contractors.

Several matters bear mentioning. First, the attempt to reconcile the differing definitions of “employee” is fraught with danger. The DWD, the agency which administers the Unemployment Insurance Trust Fund and makes unemployment insurance eligibility determinations, is closely regulated by the federal government, primarily DOL. Changes to definitions of who is an eligible employee, versus an independent contractor, should not be made casually, nor is it advisable to risk the millions of dollars by which the Indiana Unemployment Insurance Trust Fund is funded, simply to reconcile the various definitions of who is an “employee.” Narrowing the definition during this economic time to match the other agencies carries itself a burden on Indiana workers that no doubt wasn’t intended by the drafters of the legislation.

The DWD definitions are the most expansive, with Workers’ Compensation using common law definitions developed by the courts throughout Indiana’s long history. The IDOL and DOR have used the federal IRS definition listed in Ind. Code 22-2-15-3, as it is important for DOR to be aligned with the IRS in administering Indiana’s tax code. It should also be noted that the IRS also has to analyze the “safe harbor” provision of Section 530 of the Small Business Job Protection Act of 1996, further complicating a straight forward and identical test between these agencies. Any attempt to make these four agencies use a single, consistent definition will cause disruption in the other agencies, sufficient to alleviate the overall good that can come from enhanced enforcement and investigative efforts, despite differing technical definitions. Frankly, though expressed differently, only in a handful of cases will an employer be entitled to classify a worker as an independent contractor for one reason, but an employee for another reason. Despite slightly different definitions, the identification by one agency of a misclassification issue can still serve as a springboard for other agencies to review the submissions by a specific employer.

Second, as enumerated above, there are multiple efforts on the federal level, some of which may be binding on all Indiana employers and employees that would preempt expansive state legislation. Care should be taken not to duplicate the efforts and subsequently double the penalties upon employers against whom enforcement is envisioned.

Choices for how to best address the matters enumerated in the statute include a broad, independent set of statutes that make failing to appropriately treat workers as employees an independent offense, for which monetary and other penalties can be levied. These are in addition to penalties currently permitted under the UI, Revenue and WCB laws, all of which allow monetary penalties to be assessed. This avenue was not recommended by the department for the following reasons:

- monetary penalties already exist (and can be strengthened if need be) in these agencies’ statutory enabling laws

- Indiana has a long history of being an employment at will state, where autonomy is a hallmark of the employer/employee relationship
- the probability that congress or federal DOL will enact some type of legislation or regulatory scheme to address misclassification
- the interest in the relevant state agencies to work together to address these issues
- the carving out of only commercial construction companies subject to such burdensome regulatory language seems to suggest that the legislature intended for less draconian measures to be exhausted first
- the success demonstrated in other states by a coordinated approach
- the funding realities required of a new regulatory, enforcement and review scheme.

Found in the appendix is a compilation prepared by Matthew Capece of the United Brotherhood of Carpenters and Joiners. This was tendered at one of the public comment sessions, and has been found to be comprehensive in its approach at listing the various state solutions enacted. Additionally, links to a variety of executive orders have been attached in order for the reader to see a sampling of such orders.

The IDOL looked at many other states' actions in formulating its response. In reviewing the reports of task forces formed in other states in the last three years, it is clear that such interagency initiatives can be successful. The task force reports for New York and Iowa have been included in the appendix.

Who May File a Complaint

Under most interagency initiative models, any person can provide a tip or complaint. One need not be "aggrieved," or have a private right of action. In fact, one of the issues with imposing a new, independent violation for employee misclassification as a DOL violation is the debate that ensues over who can trigger a full out investigation. Particularly where legislation requires an investigation of some type, no matter the interest or lack of credible evidence that may exist, there is rightfully a concern over what indicia of reliability must be presented. The interagency initiative model allows each agency to receive all types of tips, complaints and evidence, and sort through it based upon prioritizing and assessing the evidence submitted. Additionally, the cumulative effect of multiple agencies and their resources enable a more effective investigation, whereas IDOL would need to be significantly funded with scarce general fund dollars if it were responsible for all of the investigation and enforcement activities.

The amount, type and source of the evidence forming the complaint should remain fluid from agency to agency. Clearly, DOR may choose not to institute an income tax audit, even with overwhelming evidence of misclassification, where an alleged independent contractor has paid its share of income tax. Despite the fact that WCB may commence an

investigation if it becomes apparent that workers compensation coverage has not and continues not to be carried by an employer on that same misclassified independent contractor. Part of the irreconcilable rhetoric in this discussion is how we protect honest contractors from disreputable third parties with ulterior motives of harassment, as well as protecting concerned and disadvantaged workers from retaliation for reporting such concerns. Allowing each agency to gauge for itself the return on investment, given its unique set of targets, on whether and how to respond to a given complaint gives both sides some comfort in knowing that overreaching will be minimized. The key, however, is to open up the dialogue between the agencies, so that investigative work by one agency need not be repeated by another.

The single most effective state agency at identifying and then having sufficient power to actually assess and collect unpaid dollars is DWD through its UI audits. Additionally, these positions are funded 100% by the federal government. The Indiana experience in uncovering misclassification in UI reporting has Indiana ranked among the highest in the nation at identifying and rooting out misclassification. DWD has received national recognition for its successes in this area. DWD invested about 26,000 hours of audit time in 2009, and added nearly 9,000 workers to the employment rolls of contributory employers.⁸ This clearly evidences success on the part of DWD in identifying misclassified employees, representing information and a skill set that can be shared with the other state agencies.

Finally, the experience of Minnesota demonstrates that the return on investment does not allow IDOL or another single agency alone to bring in sufficient revenue to fund the activities needed. Rather, that simply dilutes the strength of the enforcement activities.

Data and Information Sharing

With the passage of Ind. Code 22-1-1-22 (DOL), 22-3-1-5 (WCB), 6-8.1-3-21.2 (DOR) and 22-4.1-4-4 (DWD) (effective only since January 1, 2010) and the establishment of an interagency core working group, there are new channels for information sharing and data collection. Due to the large number of audits conducted by DWD, it would be helpful if DOL, WCB and DOR had access to the results for future targeting, as well as to document compliance with other state labor and revenue laws.

In each state that has seen success in identifying worker misclassification, a critical component has been the elimination of barriers to information sharing between state agencies. Indiana proactively addressed this in the 2009 session, but the laws are in their infancy, and it is clear that the four affected agencies have not reached their potential in

⁸ This data is across all industries, not just construction, which represents about 19% of workers identified.

this regard. For example, WCB judges each hear several cases a year involving suspected employee misclassification (estimated by the individual board members to be between two to ten per year), but none of those cases were referred to DWD, DOR or DOL from the board member. The formation of the working group and regular updates between representatives and the sharing of that information with those charged with investigating, auditing or adjudicating cases will lead to better results in the future.

A federal GAO report dated August 2009 addressing employee misclassification notes the difficulty with IRS information sharing, but reports that joint interagency initiatives and the free flow of information from federal agencies and among state agencies are highly recommended as contributing to the identification and control of employee misclassification.

Record Keeping

IDOL is not recommending that employers be required to create or retain additional records than that which is already required by DOR, UI, WCB or DOL existing laws (see Ind. Code 22-1-1-15 as an example).

Investigative and Enforcement Powers

Another issue addressed by the legislation passed last year is the requirement that IDOL maintain the same inspection, investigative and enforcement powers under a misclassification enforcement effort as it has in enforcing other labor laws. The commissioner of labor has broad powers to enter workplaces and conduct the necessary investigation to ensure that the employer is in compliance with the various labor laws of the state. See Ind. Code 22-1-1-8, 11, 15, 16 and 17. Nothing herein should be construed to limit those powers.

Likewise, DOR and DWD have substantial power and authority to conduct both their fact finding missions, and penalize noncompliant employers and taxpayers. DOR can assess a ten percent penalty for underpayment of tax and a one hundred percent penalty for not filing or for fraud. Interest, collection fees, sheriff's fees and attorney fees can all be added. DOR has a right to levy bank accounts and place liens on real and personal property to collect unpaid tax and assessments. It has subpoena power and broad authority to complete investigations and audits. DOR also has the authority to issue jeopardy assessments for taxpayers that are deemed to be at risk.

DOR also annually receives a list of the AGI for all Indiana Taxpayers from the IRS. IRS also receives every Form 1099 which it compares to taxpayers' federal returns. DOR receives from the IRS a list of all identified discrepancies. DOR simply bills the taxpayer if the taxpayer fails to report the 1099 on their Indiana return.

DWD likewise can impose ten percent penalty of the tax due (fifty percent in the case of fraud), and assess interest, as well as increase the rate of the taxpayer up to the maximum of 5.6%.⁹ Collection fees, attorney fees and the like can also be assessed and collected against the employer. Furthermore, there is already a check of UI tax liability by IDOA and DWD before awarding any contracts or grants. No employer with UI liabilities is eligible for grants or state contracts. DWD has consistently met or exceeded audit targets set by federal DOL.

Accordingly, Indiana state agencies already possess tools to enable effective inquiry and reduction of misclassification.

Remedies for Employers and Employees

A particularly difficult part of the mandate of Ind. Code 22-2-15 is to provide a remedy for an employer and a misclassified employee in response to retaliation or frivolous and harassing complaints. Historically, Indiana has been very reluctant to extend protections to employees. In fact, there are few instances, legislatively or judicially approved, where such protections exist. Of course, Indiana has adopted civil rights protections at the state level, mostly generated initially by federal protections. Additionally, Indiana provides for protection for an employee who reports or participates in an inspection for occupational health and safety violations.

In the wage and hour arena, however, few legislative protections have been adopted. One of those is found in Ind. Code 22-2-2-11. It provides that no employer can discriminate against an employee who institutes an action or participates in an action to recover payments constituting minimum wage. Additionally, Ind. Code 22-5-3-3 protects whistleblowers who report violations of municipal, state or federal law, or the misuse of public resources against or regarding any employer under a public contract. Nevertheless, the penalty for both such violations by the employer is a civil infraction, an action brought by the local county prosecutor. And while a private right of action can be maintained by the employee against the employer, a civil infraction is not a serious threat to most employers.

Judicially, courts have likewise imposed few restrictions on employers. In *Frederick H. Groce v. Eli Lilly & Company*, 193 F.3d 496; 1999, the federal court stated:

The Supreme Court of Indiana has carved out only two public policy exceptions [*503] to the "venerable at will employment doctrine." See *Campbell v. Eli Lilly & Co.*, 413 N.E.2d 1054, 1061 (Ind. Ct. App. 1980). It has held that an employee-at-will could bring a claim for retaliatory discharge

⁹ SB 23 changed the penalty rate to a statutory +2% that will be effective in 2011 without further delay. The change allows for a consistent penalty for late payers. (Right now if an employer is already at the 5.6% rate there is effectively no penalty while if an employer at 1.1 is late their tax rate would increase by 500%).

against his employer when he was discharged for (1) filing a [**18] worker's compensation claim, *see Frampton v. Central Ind. Gas Co.*, 260 Ind. 249, 297 N. E.2d 425, 427-28 (Ind. 1973), or (2) refusing to commit an illegal act for which he would be personally liable, *see McClanahan v. Remington Freight Lines, Inc.*, 517 N.E.2d 390, 392-93 (Ind. 1988); *see also Walt's Drive-A-Way Serv., Inc. v. Powell*, 638 N.E.2d 857, 858 (Ind. App. 1994). The Supreme Court of Indiana has expressed its reluctance to broaden exceptions to the doctrine. *See Wior*, 669 N.E.2d at 177 n.5 ("Generally, we are disinclined to adopt generalized exceptions to the employment-at-will doctrine in the absence of clear statutory expression of a right or duty that is contravened."). In *Orr*, 689 N.E.2d at 717, the state supreme court emphasized that "the presumption of at-will employment is strong, and this Court is disinclined to adopt broad and ill-defined exceptions to [it]." Indiana appellate courts reiterate that the public policy exception continues to be narrowly construed. *See, e.g., Dale v. J.G. Bowers, Inc.*, 709 N.E.2d 366, 368 (Ind. Ct. App. 1999); *Campbell*, 413 N.E.2d at 1061. Therefore, [**19] the vast body of Indiana law consistently has upheld the vitality of the employment-at-will doctrine, the narrowness of any public policy exception, and the conviction that revision of the long-standing at-will doctrine is best left to the Indiana legislature. *See Morgan Drive Away, Inc. v. Brant*, 489 N.E.2d 933, 934 (Ind. 1986).

Like the federal court, IDOL is loathe to propose statutory remedies not already approved by the legislature eroding the employment at will doctrine. Any employee working on a public project is protected by Ind. Code 22-5-3-3. For those commercial construction employees, misclassified as independent contractors (a very small segment out of the nearly three million working Hoosiers), the legislature should consider carefully whether a legislative change to title 22 is merited.

As indicated in the earlier discussion about the nature and type of evidence necessary to invoke an investigation, given the interagency cooperative model proposed by IDOL, and the lack of an independent statutory violation for misclassification, it is respectfully suggested that no separate remedy is required for an aggrieved employer.

Education, Outreach and Compliance Assistance

Finally, it is clear that insufficient education, outreach and training have been conducted on the topic of employee misclassification. Many employers don't even know that the law dictates who is an employer according to various factors. More work on this front will also aid in resolving this issue. Many states have engaged in a cooperative effort to bring attention to this issue. Most states, particularly with a task force, have a website and/or a tip line or hotline, where complaints can be made. Those tipsters or

complainants can be anonymous or identified. There should be continuity in the information presented on the agencies' various websites. The assistance of the secretary of state with respect to education of small business owners would also be helpful. Indiana has reached out to small businesses in a number of ways, and this effort should be added to the information given to them. Such an information campaign can only help stem the problem. Copies of various styles of "intake forms" in various media are attached in the appendix. It is suggested that the working group come to some consensus as to a uniform method to accept complaints.

Legislative Changes

Because the WCB is proscribed by statute in assessing penalties, it is necessary for its statutory authority be increased to include imposition of more than just nominal civil infraction penalties. Legislative changes to allow the Board to impose monetary fines for failure to have coverage before a worker is injured should be adopted. This would allow the Board to proactively combat misclassification (among other issues) and enable it to use the tips and complaints received from other agencies. Without this change, the Board may only sanction an employer once an employee is injured. A second subsequent violation for failure to have coverage should subject the employer to an enhanced penalty.

Ind. Code 22-3-4-13(a) limits the fine that can be imposed by the Board to Fifty Dollars against an employer who fails to send a written record of all injuries resulting in a lost work day, or a fatality, to its insurance carrier (or to the Board directly in the event of self insurance) within seven days. It is suggested that the statute should permit the Board to impose a more substantial penalty for failure to timely send notice of an injury.

Memorandum of Understanding

The recommendation of IDOL is that, in order to enhance and continue the evolving working relationship and coordination between state agencies, that a formal MOU be executed between the stakeholder agencies identified herein. The MOU should address the parties, the mission, the expectations of each agency, the specific performance metrics to be tracked, the confidentiality requirements or barriers and provide for regular meetings and updates between the signatories.

Administrative Rule Changes

None are suggested or identified at this time.

Funding (or Budgetary Recommendations)

The recommendation is that each agency be responsible for providing investigators and administrative staff sufficient to participate in the overall enforcement activities. This recommendation does not contemplate additional general fund resources be allocated to this initiative. The experience in other states has not consistently shown that penalty revenue (or certificate/application revenue in Minnesota) can support the activities required for one agency to take on the significant burdens of all investigation, enforcement and post enforcement (appeal, review, and collection) activities. Given the competing interests for state revenue, including education funding, the recommendation is for each agency to continue to allocate a portion of its budget to take on misclassification specific investigative and enforcement duties.

Additionally, if successful, it is anticipated that general fund revenue will increase through the expanded base of wages, taxes and assessed penalties. UI recoveries would go to the UI trust fund, not the general fund. No data to date is available on which to estimate the amount of potential additions to the general fund or UI trust fund as a result of the implementation of this initiative.

VIII. Conclusion

IDOL has conducted a six month long research and analysis effort in its attempt to meet the requirements of SEA 23, the pertinent part of which is codified at Ind. Code 22-2-15 et seq. We have reviewed reports from advocacy groups, task forces and other government entities and heard from several legislators. IDOL staff, as well as the commissioner of labor, interviewed many individuals from across the country in identifying recommendations to present to PMOC. We have presented a balanced, thorough and realistic report within the parameters given by law. We engaged many private sector stakeholders, and have been open and transparent with our progress. No conclusion was reached until we completed all of our fact finding. We used information and facts provided to us by our sister state agencies, and this communication has been, and will continue to be helpful as we address this issue.

APPENDIX

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IDOL statutes:

Indiana Code 22-2-15-1 to 6 - <http://www.in.gov/legislative/ic/code/title22/ar2/ch15.html>

Indiana Code 22-1-1-22 - <http://www.in.gov/legislative/ic/code/title22/ar1/ch1.html>

Indiana Code 22-1-1-8 - <http://www.in.gov/legislative/ic/code/title22/ar1/ch1.html>

Indiana Code 22-1-1-11 - <http://www.in.gov/legislative/ic/code/title22/ar1/ch1.html>

Indiana Code 22-1-1-15 to 17 - <http://www.in.gov/legislative/ic/code/title22/ar1/ch1.html>

Indiana Code 22-2-2-11 - <http://www.in.gov/legislative/ic/code/title22/ar2/ch2.html>

Indiana Code 22-5-3-3 - <http://www.in.gov/legislative/ic/code/title22/ar5/ch3.html>

WCB statutes:

Indiana Code 22-3-1-5 - <http://www.in.gov/legislative/ic/code/title22/ar3/ch1.html>

Indiana Code 22-3-4-13 - <http://www.in.gov/legislative/ic/code/title22/ar3/ch4.html>

DWD statutes:

Indiana Code 22-4.1-4-4 - <http://www.in.gov/legislative/ic/code/title22/ar4.1/ch4.html>

DOR statutes:

Indiana Code 6-8.1-3-21.2 - <http://www.in.gov/legislative/ic/code/title6/ar8.1/ch3.html>

Compilation of state by state activities addressing Employee Misclassification by the Carpenters and Joiners Union

Intake Questionnaires

Task Force Reports

New York 2010

http://www.labor.ny.gov/agencyinfo/PDFs/Misclassification_TaskForce_AnnualRpt_2008.pdf

Iowa 2008

www.iowaworkforce.org/misclassificationfinal.pdf

IC 22-2-15

Chapter 15. Guidelines and Procedures for Investigating Questions and Complaints Concerning Employee Classification

IC 22-2-15-1

"Department"

Sec. 1. As used in this chapter, "department" refers to the department of labor created by IC 22-1-1-1.

As added by P.L. 110-2010, SEC.22.

IC 22-2-15-2

Development of guidelines and procedures concerning employee classification; contents; exemptions; plan for implementation

Sec. 2. (a) The department shall develop guidelines and procedures for investigating questions and complaints concerning employee classification and a plan for implementation of those guidelines and procedures.

(b) The guidelines and procedures must do the following:

(1) Cover at least the following:

(A) Who is eligible to file a complaint. The guidelines and procedures must allow any aggrieved person to file a complaint and must indicate what evidence is needed to initiate an investigation.

(B) Applicable and appropriate penalties, taking into consideration:

(i) the financial impact on both employers and misclassified employees; and

(ii) whether the employer has previously misclassified employees.

(C) Mechanisms to share data with appropriate state agencies to assist those agencies in determining compliance with and enforcing state laws concerning misclassified employees and to recoup contributions owed, depending on the level of culpability.

(D) Record keeping requirements for contractors, including any records necessary for the department to investigate alleged violations concerning misclassification of employees.

(E) Investigative procedures.

(2) Apply to public works and private work projects for the construction industry (as described in IC 4-13.5-1-1(3)), including demolition.

(3) Apply to any contractor that engages in construction and is authorized to do business in Indiana.

(4) Provide a remedy for an employer or a misclassified employee in response to:

(A) any retaliation that occurs as the result of an investigation or a complaint; and

(B) any complaints that the department determines are frivolous or that are filed for the purpose of harassment.

(5) Provide that in carrying out this chapter the department has the same inspection, investigative, and enforcement powers that the department has in enforcing the labor laws of this state, including powers described in IC 22-1-1.

(c) The guidelines and procedures may include other elements as determined by the department.

(d) The department shall exempt the following from the guidelines and procedures developed under this chapter:

(1) Residential construction of a single family home or duplex if the builder builds less than twenty-five (25) units each year.

(2) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor carrier.

As added by P.L.110-2010, SEC.22.

IC 22-2-15-3

Use of Internal Revenue Code definitions; use of Internal Revenue Service factors

Sec. 3. In developing the guidelines and procedures under this chapter, the department shall use:

(1) the definition of "employee" used in Section 3401(c) of the Internal Revenue Code; and

(2) the following factors used by the Internal Revenue Service to determine whether a worker is an independent contractor:

(A) Instructions. A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

(B) Training. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. See Rev. Rul. 70-630, 1970-2 C.B. 229.

(C) Integration. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. See *United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167.

(D) Services rendered personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. See Rev. Rul. 55-695, 1955-2 C.B. 410.

(E) Hiring, supervising, and paying assistants. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one (1) worker hires, supervises, and pays the other assistants under a contract under which the worker agrees to provide materials and labor and

under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. Compare Rev. Rul. 63-115, 1963-1 C.B. 178, with Rev. Rul. 55-593 1955-2 C.B. 610.

(F) Continuing relationship. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals. See *United States v. Silk*.

(G) Set hours of work. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

(H) Full time required. If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor on the other hand, is free to work when and for whom he or she chooses. See Rev. Rul. 56-694, 1956-2 C.B. 694.

(I) Doing work on employer's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Rev. Rul. 56-660, 1956-2 C.B. 693. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. See Rev. Rul. 56-694.

(J) Order of sequence set. If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so. See Rev. Rul. 56-694.

(K) Oral or written reports. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

(L) Payment by hour, week, month. Payment by the hour, week, or month generally points to an employer-employee relationship, if this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor. See Rev.

Rul. 74-389, 1974-2 C.B. 330.

(M) Payment of business and traveling expenses. If the person or persons for whom the services are performed ordinarily pay the worker's business or traveling expenses or business and traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. See Rev. Rul. 55-144, 1955-1 C.B. 483.

(N) Furnishing of tools and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. See Rev. Rul. 71-524, 1971-2 C.B. 346.

(O) Significant investment. If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. See Rev. Rul. 71-524. Special scrutiny is required with respect to certain types of facilities, such as home offices.

(P) Realization of profit or loss. A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. See Rev. Rul. 70-309. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

(Q) Working for more than one (1) firm at a time. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. See Rev. Rul. 70-572, 1970-2 C.B. 221. However, a worker who performs services for more than one (1) person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(R) Making service available to general public. The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship. See Rev. Rul. 56-660.

(S) Right to discharge. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. Rev. Rul. 75-41, 1975-1 C.B. 323.

(T) Right to terminate. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. See Rev. Rul. 70-309.

(U) Any other guidelines under IC 22-3-6-1(b) and IC 22-3-7-9(b)(5).

As added by P.L.110-2010, SEC.22.

IC 22-2-15-4

Presentation to pension management oversight commission

Sec. 4. The department shall make a presentation to the pension management oversight commission not later than October 1, 2010, outlining the proposed guidelines and procedures.

As added by P.L.110-2010, SEC.22.

IC 22-2-15-5

Recommendations to legislative council

Sec. 5. The department shall before November 1, 2010, make recommendations in an electronic format under IC 5-14-6 to the legislative council concerning any legislative changes needed to implement the guidelines and procedures developed under this chapter, including a budgetary recommendation for the implementation of the guidelines and procedures and a funding mechanism, to the extent possible, which must include a fee.

As added by P.L.110-2010, SEC.22.

IC 22-2-15-6

Rule adoption and implementation

Sec. 6. After considering any recommendations by the pension management oversight commission, the department shall convert the guidelines and procedures to rules by adopting rules under IC 4-22-2 before August 1, 2011. The department shall implement the rules before August 1, 2011.

As added by P.L.110-2010, SEC.22.

IC 22-1-1-22

Information sharing concerning construction workers misclassified as independent contractors

Sec. 22. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;
- (2) a partnership;
- (3) a firm;
- (4) a corporation;
- (5) a limited liability company;
- (6) an association; or
- (7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department of labor shall cooperate with the:

- (1) department of workforce development established by IC 22-4.1-2-1;
- (2) department of state revenue established by IC 6-8.1-2-1; and
- (3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department of labor who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

As added by P.L.164-2009, SEC.2.

IC 22-1-1-8

Commissioner of labor; general powers and duties

Sec. 8. The commissioner of labor may do the following:

(1) Make or cause to be made all necessary inspections to see that all of the laws and rules enacted or adopted for that purpose and that the department is required to enforce are promptly and effectively administered and executed.

(2) Collect, collate, and publish statistical and other information relating to working conditions in this state and to the enforcement of this chapter and such rules as may be necessary to the advancement of the purposes of this chapter, but no publicity of any information involving the name or identity of any employer, employee, or other person, firm, limited liability company, or corporation shall be given. It shall be unlawful for the commissioner or any person to divulge, or to make known in any way not provided by law, to any person the operation, style of work, or apparatus of any employer, or the amount or sources of income, profits, losses, expenditures, or any part thereof obtained by him in the discharge of his official duties.

(3) Except as otherwise provided by law, employ, promote, and remove clerks, inspectors, and other employees as needed or as the service of the department of labor may require, and with the approval of the governor, within the appropriation therefor, fix their compensation and to assign to them their duties. Employees of the department are covered by IC 4-15-2.

(4) Promote the voluntary arbitration, mediation, and conciliation of disputes between employers and employees, for the purpose of avoiding strikes, lockouts, boycotts, blacklists, discrimination, and legal proceedings in matters of employment. The commissioner may appoint temporary boards of arbitration, provide for the payment of the necessary expenses of the boards, order reasonable compensation paid to each member engaged in arbitration, prescribe and adopt rules of procedure for arbitration boards, conduct investigations and hearings, publish reports and advertisements, and do all other things convenient and necessary to accomplish the purpose of this chapter. The commissioner may designate an employee of the department to act as chief mediator and may detail other employees, from time to time, to act as his assistants for the purpose of executing this chapter. Any employee of the department who may act on a temporary board shall serve without extra compensation.

(Formerly: Acts 1945, c.334, s.8.) As amended by P.L.37-1985, SEC.22; P.L.8-1993, SEC.269.

IC 22-1-1-11

Commissioner of labor; powers and duties

Sec. 11. The commissioner of labor is authorized and directed to do the following:

(1) To investigate and adopt rules under IC 4-22-2 prescribing what safety devices, safeguards, or other means of protection shall be adopted for the prevention of accidents in every employment or place of employment, to determine what suitable devices, safeguards, or other means of protection for the prevention of industrial accidents or occupational diseases shall be adopted or followed in any or all employments or places of employment, and to adopt rules under IC 4-22-2 applicable to either employers or employees, or both for the prevention of accidents and the prevention of industrial or occupational diseases.

(2) Whenever, in the judgment of the commissioner of labor, any place of employment is not being maintained in a sanitary manner or is being maintained in a manner detrimental to the health of the employees therein, to obtain any necessary technical or expert advice and assistance from the state department of health. The state department of health, upon the request of the commissioner of labor, shall furnish technical or expert advice and assistance to the commissioner and take the steps authorized or required by the health laws of the state.

(3) Annually forward the report received from the mining board under IC 22-10-1.5-5(a)(5) to the legislative council in an electronic format under IC 5-14-6 and request from the general assembly funding for necessary additional mine inspectors.

(4) Administer the mine safety fund established under IC 22-10-12-16.

(Formerly: Acts 1945, c.334, s.11.) As amended by P.L.37-1985,

SEC.24; P.L.2-1992, SEC.738; P.L.187-2003, SEC.1; P.L.28-2004, SEC.158; P.L.35-2007, SEC.2.

IC 22-1-1-15

Labor information; wages and hours; records

Sec. 15. (a) Every employer, employee, owner or other person shall furnish to the commissioner of labor any information which the commissioner of labor is authorized to require, and shall make true and specific answers to all questions, whether submitted orally or in writing, which are authorized to be put to him.

(b) Every employer shall keep a true and accurate record of the name, address or occupation of each person employed by him, and of the daily and weekly hours worked by each such person and of the wages paid each pay period to each such person. Provided however, That the record of the daily and weekly hours worked or of the wages paid shall not be required for any person employed in a bona fide executive, agricultural, domestic, administrative or professional capacity or in the capacity of an outside salesman. No employer shall make or cause to be made any false entries in any such record.

(Formerly: Acts 1945, c.334, s.15.)

IC 22-1-1-16

Investigations; right of entry

Sec. 16. The commissioner of labor and his authorized representative shall have the power and the authority to enter any place of employment for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all of the labor laws of this state, including IC 5-16-7. No employer or owner shall refuse to admit the commissioner of labor or his authorized representatives to his place of employment.

(Formerly: Acts 1945, c.334, s.16.) As amended by P.L.35-1990, SEC.41.

IC 22-1-1-17

Investigations; depositions; subpoenas; production of books and papers; contempt

Sec. 17. The commissioner of labor and any officer or employee of the department of labor designated by the commissioner, in the performance of any duty, or the execution of any power prescribed by law, may administer oaths, certify to official acts and records, and, where specifically ordered by the governor, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and the production of papers, books, accounts, payrolls relating to the employment of workers, documents, records, and testimony. In case of the failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of any circuit or superior court upon application of the commissioner or any officer or employee of the department of labor and a showing of the probable materiality of books, records, and papers, or, in the case of a witness, that he is believed to be possessed of information material to the examination, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements, of a subpoena issued from a court or a refusal to testify therein.

(Formerly: Acts 1945, c.334, s.17.) As amended by P.L.37-1985, SEC.26.

IC 22-2-2-11

Violations

Sec. 11. (a) An employer or his agent who:

(1) discharges or otherwise discriminates in regard to tenure or condition of employment against any employee because the employee has:

(A) instituted or participated in the institution of any action to recover wages under this chapter; or

(B) demanded the payment of wages under this chapter;

(2) pays or agrees to pay any employee less than the minimum wage prescribed by section 4 of this chapter; or

(3) fails to keep records required by section 8 of this chapter;
commits a Class C infraction.

(b) An employer or the employer's agent who knowingly or intentionally violates section 4 or 8 of this chapter commits a Class A infraction.

(c) An employer or the employer's agent who violates section 4 of this chapter, having a prior unrelated judgment for a violation of section 4 of this chapter, commits a Class B misdemeanor.

(d) An employer or the employer's agent who violates section 8 of this chapter, having a prior unrelated judgment for a violation of section 8 of this chapter, commits a Class B misdemeanor.
(Formerly: Acts 1965, c.134, s.11.) As amended by Acts 1978, P.L.2, SEC.2202; P.L.37-1985, SEC.28; P.L.133-1990, SEC.3.

IC 22-5-3-3

Protection of employees reporting violations of federal, state, or local laws; disciplinary actions; procedures

Sec. 3. (a) An employee of a private employer that is under public contract may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources;

concerning the execution of public contract first to the private employer, unless the private employer is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the private employer or to any official or agency entitled to receive a report from the state ethics commission under IC 4-2-6-4(b)(2)(G) or IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization.

(b) For having made a report under subsection (a), an employee may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion that the employee otherwise would have received; or
- (5) be demoted.

(c) Notwithstanding subsections (a) through (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employer. However, any employee disciplined under this subsection is entitled to process an appeal of the disciplinary action as a civil action in a court of general jurisdiction.

(d) An employer who violates this section commits a Class A infraction.

As added by P.L.32-1987, SEC.3. Amended by P.L.9-1990, SEC.14.

IC 22-3-1-5

Information sharing concerning construction workers misclassified as independent contractors

Sec. 5. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;
- (2) a partnership;
- (3) a firm;
- (4) a corporation;
- (5) a limited liability company;
- (6) an association; or
- (7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The worker's compensation board of Indiana shall cooperate with the:

- (1) department of state revenue established by IC 6-8.1-2-1;
- (2) department of labor created by IC 22-1-1-1; and
- (3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the worker's compensation board of Indiana who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

As added by P.L. 164-2009, SEC. 3.

IC 22-3-4-13

Reports of injuries and deaths; violations of article

Sec. 13. (a) Every employer shall keep a record of all injuries, fatal or otherwise, received by or claimed to have been received by the employer's employees in the course of their employment. Within seven (7) days after the occurrence and knowledge thereof, as provided in IC 22-3-3-1, of any injury to an employee causing death or absence from work for more than one (1) day, a report thereof shall be made in writing and mailed to the employer's insurance carrier or, if the employer is self insured, delivered to the worker's compensation board in the manner provided in subsections (b) and (c). The insurance carrier shall deliver the report to the worker's compensation board in the manner provided in subsections (b) and (c) not later than seven (7) days after receipt of the report or fourteen (14) days after the employer's knowledge of the injury, whichever is later. An employer or insurance carrier that fails to comply with this subsection is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board. Civil penalties collected under this section shall be deposited in the state general fund.

(b) All insurance carriers, companies who carry risk without insurance, and third party administrators reporting accident information to the board in compliance with subsection (a) shall:

(1) report the information using electronic data interchange standards prescribed by the board no later than June 30, 1999; or

(2) in the alternative, the reporting entity shall have an implementation plan approved by the board no later than June 30, 2000, that provides for the ability to report the information using electronic data interchange standards prescribed by the board no later than December 31, 2000. Prior to the June 30, 2000, and December 31, 2000, deadlines, the reporting entity may continue to report accidents to the board by mail in compliance with subsection (a).

(c) The report shall contain the name, nature, and location of the business of the employer, the name, age, sex, wages, occupation of the injured employee, the date and hour of the accident causing the alleged injury, the nature and cause of the injury, and such other information as may be required by the board.

(d) A person who violates any provision of this article, except IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c), commits a Class C infraction. A person who violates IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c) commits a Class A infraction. The worker's compensation board in the name of the state may seek relief from any court of competent jurisdiction to enjoin any violation of this article.

(e) The venue of all actions under this section lies in the county in which the employee was injured. The prosecuting attorney of the county shall prosecute all such violations upon written request of the worker's compensation board. Such violations shall be prosecuted in the name of the state.

(f) In an action before the board against an employer who at the time of the injury to or occupational disease of an employee had failed to comply with IC 22-3-5-1, IC 22-3-7-34(b), or IC 22-3-7-34(c), the board may award to the employee or the dependents of a deceased employee:

(1) compensation not to exceed double the compensation provided by this article;

(2) medical expenses; and

(3) reasonable attorney fees in addition to the compensation and medical expenses.

(g) In an action under subsection (d), the court may:

(1) order the employer to cease doing business in Indiana until the employer furnishes proof

of insurance as required by IC 22-3-5-1 and IC 22-3-7-34(b) or IC 22-3-7-34(c);

(2) require satisfactory proof of the employer's financial ability to pay any compensation or medical expenses in the amount and manner and when due as provided for in IC 22-3, for any injuries which occurred during any period of noncompliance; and

(3) require the employer to deposit with the worker's compensation board an acceptable security, indemnity, or bond to secure the payment of such compensation and medical expense liabilities.

(h) The penalty provisions of subsection (d) shall apply only to the employer and shall not apply for a failure to exact a certificate of insurance under IC 22-3-2-14 or IC 22-3-7-34(i) or IC 22-3-7-34(j).

(Formerly: Acts 1929, c.172, s.66; Acts 1937, c.214, s.5; Acts 1943, c.136, s.6.) As amended by Acts 1978, P.L.2, SEC.2210; Acts 1982, P.L.135, SEC.1; P.L.145-1986, SEC.1; P.L.28-1988, SEC.40; P.L.170-1991, SEC.11; P.L.75-1993, SEC.3; P.L.1-1994, SEC.108; P.L.235-1999, SEC.4; P.L.1-2007, SEC.159; P.L.1-2010, SEC.85.

IC 22-4.1-4-4

Information sharing concerning construction workers misclassified as independent contractors

Sec. 4. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;
- (2) a partnership;
- (3) a firm;
- (4) a corporation;
- (5) a limited liability company;
- (6) an association; or
- (7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor,

and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department shall cooperate with the:

- (1) department of labor created by IC 22-1-1-1;
- (2) department of state revenue established by IC 6-8.1-2-1; and
- (3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

As added by P.L.164-2009, SEC. 4.

IC 6-8.1-3-21.2

Information sharing concerning construction workers misclassified as independent contractors

Sec. 21.2. (a) This section applies after December 31, 2009.

(b) As used in this section, "contractor" means:

- (1) a sole proprietor;
- (2) a partnership;
- (3) a firm;
- (4) a corporation;
- (5) a limited liability company;
- (6) an association; or
- (7) another legal entity;

that engages in construction and is authorized by law to do business in Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

(c) The department shall cooperate with the:

- (1) department of labor created by IC 22-1-1-1;
- (2) worker's compensation board of Indiana created by IC 22-3-1-1(a); and
- (3) department of workforce development established by IC 22-4.1-2-1;

by sharing information concerning any suspected improper classification by a contractor of an individual as an independent contractor (as defined in IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5)).

(d) For purposes of IC 5-14-3-4, information shared under this section is confidential, may not be published, and is not open to public inspection.

(e) An officer or employee of the department who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

As added by P.L.164-2009, SEC.1.

State Legislation and Executive Orders Regarding Misclassification Fraud

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State Legislation or Executive Order	Year Became Law	Description
<p>California <u>Unemp Ins. Code Sec. 329</u></p>	1995	Statute creates a joint enforcement task force on the underground economy composed of various state agencies .
<p><u>SB 869 An Act Relating to Enforcing the Requirement to Carry Workers' Compensation</u></p>	2007	Compares companies registered with unemployment and workers compensation records to identify employers without compensation coverage. Penalties from investigations reinvested in administration and enforcement
<p><u>SB 313 An act amending Labor Code Section 3722 increasing penalties for no workers compensation</u></p>	2009	This legislation applies to all industries. It increases the penalty for not having workers' compensation coverage from a minimum of \$1,000 per employee to \$1,500 per employee.
<p>Colorado <u>HB 1366 An Act Concerning Workers' Compensation Coverage for Workers in the Construction Industry</u></p>	2007	Requires all construction workers, including independent contractors, to have compensation coverage, unless the independent contractor is incorporated or an LLC or the work is being done by an owner/occupant of a residence. Penalty revenues go to enforcement
<p><u>HB 1310 An act concerning the misclassification of employees as independent contractors for purposes of the Colorado Employment Security Act</u></p>	2009	Punishes misclassification of employees as independent contractors in all industries. Employment is presumed as in the state unemployment code. Non-willful violators must pay back taxes and interest. Willful violators face fines per employee that increase for a subsequent violation.
<p>Connecticut <u>Sec. 52-57e Action for Damages From Violations of Workers Compensation or Unemployment Compensation Laws</u></p>	1990	The law provides a cause of action for companies that lose a bid due to their competitor violating knowingly workers compensation or unemployment compensation laws. Employment status is determined by the Internal Revenue Code.
<p><u>PA 7-89 An Act Concerning Penalties for Concealing Employment or Other Information Related to Workers' Compensation Premiums</u></p>	2007	Establishes stop work orders against employers for workers' compensation premium fraud due to misclassification or for not having compensation insurance. Makes not having compensation a felony. (Premium fraud had already been a felony.)

State Legislation or Executive Order	Year Became Law	Description
Connecticut cont. <u>PA 8-156 An Act Establishing a Joint Enforcement Commission on Employee Misclassification</u>	2008	An enforcement task force on misclassification for all industries is established that includes the labor commissioner, chair of the workers compensation commission, attorney general and the chief state's attorney. The law also creates an advisory board of employee and employer representatives.
Delaware <u>SS 1 for SB 68 An Act to Amend Workers' Compensation Code</u> <u>HB 230 Workplace Fraud Act</u>	2007 2009	<p>The law provides that independent contractors cannot be exempt from workers' compensation coverage.</p> <p>Prohibits the failure to properly classify an individual as an employee in the construction industry. The Act creates a presumption of employment. Punishment includes fines per employee which increase for willful and repeat violators, stop work orders, debarment and withholding of payments on public works projects. Co-conspirators are fined as well as the use of shell corporations. The Act allows private suits, and requires notice to workers classified as independent contractors in English and Spanish. Civil penalty money to be used for enforcing the Act.</p>
Florida <u>Sec. 440-140 Competitive Bidders Civil Actions</u> <u>S 50A Workers' Compensation Reform and Additional Penalties</u> <u>HB 561, Section 10 Forfeiture</u>	1993 2003 2006	<p>The statute allows a bidder on a construction project that loses a bid due to its competitor violating workers compensation laws to bring suit for liquidated damages and attorney fees.</p> <p>The law contains numerous revisions to workers compensation including: limiting exemptions to workers compensation coverage and extending coverage to independent contractors in the construction industry; increasing criminal penalties for employers committing premium fraud and who violate stop work orders. Civil penalties for violating stop work order are increased. An employer's second violation is a deemed a "knowing violation." Employers are fined \$5,000 for each employee misclassified as an independent contractor, and stop work orders are allowed for premium fraud as well as failure to secure coverage.</p> <p>Forfeiture assets to be deposited into a fund for the operations of the Insurance Fraud Division.</p>

State Legislation or Executive Order	Year Became Law	Description
Florida (cont.) <u>S 2158 An Act Tightening Regulation of Check Cashing Businesses</u>	2008	The law contains numerous provisions designed to crack down on use of check cashing stores in money laundering schemes. Check cashing stores have proven to play a central role in hiding unreported cash transactions to escape employment tax and workers compensation coverage laws.
Illinois <u>PA 95-0026 Employee Classification Act</u>	2007	The Act punishes the failure to properly classify a worker as an employee in the construction industry. A presumption of employment is created. It allows private suits. Provides for agency and private enforcement. Violations can result in restitution to the worker, criminal penalties, civil penalties per worker and debarment. Punishments increase for willful violations.
Indiana <u>SB 478 An act concerning cooperation among agencies on misclassification cases</u> <u>SB 23 An act concerning unemployment taxes and misclassification in the construction industry</u>	2009 2010	This act applies to the construction industry. It requires the departments of labor, workforce development, revenue and the workers' compensation board to on misclassification cases by sharing information. The bill creates guidelines for anti-misclassification regulations directed at the construction industry. The state labor department is directed to develop the regulations.
Iowa <u>Exec. Order 8 Independent Contractor Reform Task Force</u> <u>HA 1785 Budget funding of investigations</u>	2008 2009	The executive order creates a task force made of representatives from the governor's office, workforce development, revenue, economic development and the labor commissioner to study misclassification and make recommendations. The state budget provides up to \$750,000 for the fiscal year to "enhance efforts to investigate employers that misclassify workers.
Kansas <u>Sec. 44-766 Employer Misclassification of Employees</u>	2006	Prohibits employers from intentionally misclassifying employees as independent contractors in order to avoid requirements under state income tax and unemployment tax laws. The statute allows revenue to disclose tax-return information to the dept. of labor.

State Legislation or Executive Order	Year Became Law	Description
Louisiana <u>HB 554 An Act Relative to Discontinuance of Business Operations and Penalties for Failure to Carry Workers Compensation Insurance</u>	2008	Amends current law by requiring courts to order a non-compliant employer to secure workers compensation insurance and pay a fine up to \$10,000 within ninety days. If the employer fails to do either, the court will issue an order to the employer to cease business operations until the employer has insurance and has paid its fines in full.
Maine <u>EO 23 FY08/09 An order establishing the joint enforcement task force on employee misclassification</u> <u>LD 1456 An act to ensure construction workers are protected by workers' compensation insurance</u>	2009 2009	<p>The executive order creates an enforcement task force for misclassification cases in all industries. The task force includes: DOL agencies, workers comp. board, attorney general, administrative & financial services, revenue, professional & financial regulation and insurance.</p> <p>General contractors or construction managers on state college work must disclose to the contracting agency the names of all subcontractors and independent contractors. A construction worker is presumed to be an employee and must be covered by workers' compensation, unless the worker satisfies a definition of independent contractor or hauls materials in a vehicle weighing more than 7,000 pounds.</p>
Maryland <u>HB 819/SB 909 Workplace Fraud Act</u> <u>EO 01.01.2009.09 The Joint Enforcement Task Force on Workplace Fraud</u>	2009 2009	<p>Prohibits the failure to properly classify an individual as an employee in the construction and landscaping industries. The Act creates a presumption of employment. Punishment includes fines per employee which increase for willful and repeat violators. Co-conspirators are fined as well as the use of shell corporations. The Act allows private suits, and requires notice to workers classified as independent contractors in English and Spanish.</p> <p>The executive order creates an enforcement task force to investigate misclassification in all industries. The task force is comprised of the representatives of the following departments: labor, unemployment tax, workers compensation, the attorney general, comptroller, insurance and any other government agency that they want to add.</p>

State Legislation or Executive Order	Year Became Law	Description
<p>Massachusetts <u>GL 149 Sec. 148B Fair Competition for Bidders on Construction</u></p> <p><u>S 1059 An Act to Clarify the Law Protecting Employee Compensation</u></p> <p><u>Exec. Order 499 Establishing a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification</u></p>	<p>2004</p> <p>2008</p> <p>2008</p>	<p>The law prohibits the failure to properly classify an individual as an employee in the construction industry. It creates a presumption of employment and includes standards for independent contractor status. Violators face civil or criminal penalties and debarment.</p> <p>The law provides for private and class action suits regarding prevailing rate, overtime and minimum wage violations. Recovery includes treble damages, costs and attorney fees.</p> <p>The executive order creates an enforcement task force to investigate misclassification in all industries. It includes representatives from the labor department, revenue, industrial accidents, attorney general, occupational safety, public safety, licensing, apprenticeship and unemployment tax.</p>
<p>Michigan <u>Exec. Order 2008-1 Interagency Task Force on Employee Misclassification</u></p>	<p>2008</p>	<p>An executive order creating and enforcement task force to investigate misclassification in all industries. The task force is made of representative from the department of labor, workers compensation, unemployment, tax enforcement and business services.</p>
<p>Minnesota <u>Sec. 181.722 Misrepresentation of Employment Relationship Prohibited</u></p> <p><u>Chapt. 135, HF 122, Sec. 15 Defining Independent Contractor Status and Requiring Certification</u></p> <p><u>Chapter 154 HF 3201 Article 3 Income Taxes, Sec. 8 and 9</u></p>	<p>2005</p> <p>2007</p> <p>2008</p>	<p>This law prohibits employers from misrepresenting an employment relationship or from failing to report individuals as employees. Agreements to misclassify an employee as an independent contractor are prohibited. Employment is determined by unemployment and workers' compensation laws. A construction worker can bring a suit for damages against an employer who violates the law. A court finding a violation of the law must report it to the labor commissioner. The labor commissioner shall report to other state and federal agencies.</p> <p>This law creates a presumption of employment for workers compensation, unemployment and other labor laws in the construction industry. To be considered an independent contractor a worker must hold a certificate from the department of labor. Certificates can be cancelled by the individual or revoked by the state if the individual no longer meets the independent-contractor criteria. The depart. of revenue has to be notified of violations.</p> <p>The law requires a 2 percent withholding of state income taxes from compensation paid to unincorporated independent contractors in the construction industry.</p>

State Legislation or Executive Order	Year Became Law	Description
<p>Minnesota (cont.) <u>SF 1476 Sec. 11 Workers' compensation reform bill section regarding data sharing between agencies</u></p> <p><u>HF 2088 Provisions for funding of investigators and creation of a task force</u></p>	<p>2009</p> <p>2009</p>	<p>The section expands the information that can be shared between enforcement agencies and the workers compensation commissioner to determine employment status and compliance with workers' compensation laws. The law also allows the commissioner to request information pursuant to state agency agreements.</p> <p>The state budget provides for two years worth of funding for additional personnel to enforce the independent contractor certificate program. It also creates a misclassification advisory task force for the construction industry. The task force is composed of representatives of labor, employment and economic development, revenue, attorney general, county prosecuting attorneys, construction unions, construction employers, employees and independent contractors. A report is required to the legislation before its term expires.</p>
<p>Missouri <u>HB 1549T Addressing Immigration and Misclassification</u></p>	<p>2008</p>	<p>Misclassification provisions were added to this immigration bill. It requires every employer in the state with 5 or more employees to file 1099 forms with the state for its independent contractors. Failure to repeatedly and knowingly file the forms results in misdemeanor charges and fines. Employment is defined by the IRS twenty factor test. Violations can result in an injunction and fines per worker.</p>
<p>Montana <u>Secs. 39-71-415 to 419 Independent Contractor Certification for Workers Compensation</u></p> <p><u>HB 65 § 1 An Act Generally Revising Workers' Compensation Law</u></p>	<p>2005</p> <p>2007</p>	<p>To be free of the requirement to cover with workers compensation, a person must fall into an exempt category or be a certified independent contractor. Certifications can be revoked if the degree of direction and control creates employment status or if there was a misrepresentation in the application.</p> <p>Section 1 of the Act gives workers compensation investigators access to construction sites to investigate compliance with coverage requirements.</p>
<p>Nebraska <u>LB 208 An act relating to workers compensation premium fraud</u></p> <p><u>LB 563 Employee Classification Act</u></p>	<p>2009</p> <p>2010</p>	<p>This new law makes workers compensation premium fraud a fraudulent insurance act.</p> <p>Misclassification of employees is prohibited in the construction and delivery industries. It creates a presumption of employment. Violators face civil penalties per misclassified employee. Those penalties increase for subsequent offenses. Also, information on violations is shared with other departments, and violators must pay all state taxes owed. Posting of a notice about the Act is required.</p>

State Legislation or Executive Order	Year Became Law	Description
Nevada <u>SCR 26 Senate Concurrent Resolution providing for an interim study on employee misclassification</u>	2009	The resolution forms a legislative subcommittee that a member of the public, a non-union contractor and a union construction representative. They are charged with studying and reporting on the scope of misclassification, and finding a processes to identify misclassification and legal recourses for affected employees.
New Hampshire <u>SB 92 An Act Relative to the Definition of Employee and Clarifying the Criteria for Exempting Workers from Employee Status</u>	2007	The law creates a uniform definition of employment for workers compensation, workplace protections, whistleblower and minimum wage laws. Penalties are deposited into a dedicated enforcement fund.
<u>HB 336 An Act Requiring Notice of the Classification of Employee and Independent Contractor</u>	2007	Requires employers to post information about criteria for classifying workers as employees and independent contractors.
<u>HB 337 An Act Relative to Penalties for Failure to Have Workers' Compensation and Continually Appropriating a Special Fund</u>	2007	The Act increases civil penalties for failure to secure compensation coverage, and persons with responsibility to disburse funds or salaries are held personally liable. The penalties are deposited into a designated enforcement fund.
<u>HB 426 An Act relative to workers' compensation and resolution of disputes involving employment status</u>	2007	The insurance commissioner can investigate and hold hearings to resolve disputes between employers and their workers' compensation carriers about whether workers are employees or independent contractors.
<u>HB 471 An Act Relative to Workers' Compensation Compliance in the Construction Sector and Continually Appropriating a Special Fund</u>	2007	Officers, directors or LLC members of a construction company who do on-site construction work cannot be excluded from compensation coverage. Requires all contractors, sub-contractors and independent contractors on state projects to provide proof of workers' compensation coverage. The number of employees or independent contractors and their compensation classification codes on such projects also must be disclosed. Violations can result in civil penalties and debarment. Civil penalties go to a workers' compensation enforcement fund.
<u>HB 692 An Act Relative to Workers Compensation</u>	2008	The legislation amends HB 471 passed in 2007. HB 692 re-establishes exemptions from workers compensation coverage for up to three officers of a corporation or members of a limited liability company.
<u>SB 500 An Act Relative to Certain Insurance Fraud and Establishing a Task Force on Employee Misclassification</u>	2008	The Act increases the penalty for the failure to carry workers' compensation to a class B felony. It requires insurers to have written or electronic signatures on insurance, including workers' compensation, applications. A person convicted of insurance fraud will be debarred from public works projects ordered to pay restitution to the insurance carrier. A

State Legislation or Executive Order	Year Became Law	Description
<p>New Hampshire (cont.)</p> <p><u>SB 78 An act regarding contractor accountability and disclosure in public works construction procurement</u></p>	2009	<p>misclassification study task force is established that includes the labor commissioner, unemployment, insurance, revenue, attorney general, labor unions, construction contractors, other business owners and insurance carriers.</p> <p>General contractors on state college work must disclose to the contracting agency the names of all subcontractors and independent contractors. The disclosure must include workers compensation carriers, be posted on the project and must be updated.</p>
<p>New Jersey</p> <p><u>S 468 Withholding Taxes From Payments to Unincorporated Contractors</u></p> <p><u>C:34:20-1 et. seq. An Act Concerning the Classification of Construction Employees for Certain Purposes and Supplementing Title 34 of the Revised Statutes</u></p> <p><u>Exec. Order No 96 Governors Advisory Commission on Construction Industry Independent Contractor Reform</u></p> <p><u>A 3569, S 2498 An act concerning certain violations of workers' compensation requirements</u></p>	2006 2007 2008 2009	<p>Payments made to unincorporated contractor for improvements made to real property are subject to a 7 percent withholding. The requirement does not apply to a governmental entity, homeowner, tenant, or if a person receives from its unincorporated contractor proof of its registration with the division of revenue.</p> <p>The Act makes unlawful the failure to properly classify a worker as an employee in the construction industry. For construction work it creates a universal presumption of employment and a uniform definition under state law—with the exception of the workers compensation. Knowing violations result in criminal penalties. Other penalties include debarment, restitution, suspension of contractor registration, stop-work orders and fines. Fines go to an enforcement and administrative fund. The Act allows private-causes of action for workers.</p> <p>The order establishes an advisory commission of representatives from labor & workforce development, the attorney general, treasurer and eight public representatives from labor unions, developers and contractors. The purpose is to create make recommendations to enhance law enforcement and cooperation between state and federal agencies.</p> <p>An employer that fails to provide workers' compensation coverage, misrepresents workers as independent contractors otherwise commits premium fraud face stop work orders and criminal penalties that increase if the violation is willful.</p>
<p>New Mexico</p> <p><u>SB 657 Employer, Employee Relationship in the Construction Industry and Independent Contractors</u></p>	2005	<p>The law creates a presumption of employment in the construction industry and standards for independent contractor status. An employer violates the law if it intentionally treats or lists an employee as an independent contractor. Employers who violate the law face criminal penalties, suspension or revocation of licenses.</p>

State Legislation or Executive Order	Year Became Law	Description
<p>New York <u>Exec. Order 17 Misclassification Task Force</u></p> <p><u>A 6163 An Act to Amend the Workers' Compensation Law, §§52D, 141A</u></p>	<p>2007</p> <p>2007</p>	<p>The order forms an enforcement task force of all industries made of representatives from the labor department, attorney general, taxation and finance, workers compensation board, workers compensation fraud and New York City comptroller.</p> <p>Establishes stop work orders, debarment and criminal penalties for employers who don't have workers' compensation or who commit premium fraud.</p>
<p>Oregon <u>HB 2815 A bill for an act relating to compliance with laws-creating an enforcement task force</u></p>	<p>2009</p>	<p>The bill establishes an enforcement task force of all industries composed of: the departments of justice, revenue, employment, consumer and business services, labor and industries, the governor, the construction contractor board, and other agencies the governor designates.</p>
<p>Rhode Island <u>S 3099/H 7907B Creating a special joint commission to study the underground economy and employee misclassification</u></p>	<p>2008</p>	<p>The Act creates a study commission composed of legislators, industry representatives and the department of labor, workers' compensation, workers' compensation advisory board, business regulation and taxation. The purpose is to study the underground economy issue findings and recommendations to the General Assembly.</p>
<p>South Carolina <u>SB 332 An Act Reforming Workers Compensation, Sections 3, 4, 5</u></p>	<p>2007</p>	<p>The law clarifies that a false statement or misrepresentation to gain a lower insurance premium includes misclassification of employees. Penalties for workers compensation fraud increase with amount of money involved. The Attorney General can hire a forensic accountant.</p>
<p>Tennessee <u>SB 1784 An Act Regarding Contractor Licensing</u></p> <p><u>HB 1645 An Act Relative to Requiring Workers Compensation Coverage for Sole Proprietors</u></p>	<p>2007</p> <p>2008</p>	<p>Any applicant for a license or renewal of a license must supply an affidavit that the applicant maintains general liability and workers' compensation insurance coverage.</p> <p>The law requires workers' compensation coverage in the construction industry for sole proprietors and independent contractors. Contractors using independent subcontractors would have to cover them with workers compensation insurance. Some exemptions exist for work done for home owners.</p>
<p>Utah <u>SB 189 Independent Contractor Database Act</u></p>	<p>2008</p>	<p>The law creates an independent contractor enforcement council. The council is made of representatives from departments of commerce, labor, workforce services and technology</p>

State Legislation or Executive Order	Year Became Law	Description
Utah (cont.)		services. The purpose is to create a database that will track independent contractors and compare information between agencies. Also, to study cost of misclassification, and to coordinate enforcement efforts.
Vermont <u>S 196 An Act Relating to Failure to Insure for Workers' Compensation Coverage by Employers and Contractors</u> <u>S 345 An Act Related to Lowering the Cost of Workers' Compensation Insurance</u> <u>H 313 Vermont Recovery and Reinvestment Act of 2009</u>	 2007 2008 2009	<p>The Act gives the state the authority to require a contractor (other than residential), to submit a "compliance statement" with the number of employees, hours, classification codes and the name of the insurance carrier and agent. Failure to comply or filing false information results in fines and other penalties. Also the state will study establishing a proof-of-coverage website, the extent of misclassification and its cost and the effectiveness of state laws to counter misclassification.</p> <p>The law adds workers compensation fraud into the insurance fraud chapter and creates a joint enforcement task force that expires in 2010.</p> <p>In addition to many other things, this act addresses employment law enforcement. State transportation agencies are required to establish contract procedures to minimize misclassification of employment codes and employees as independent contractors by requiring contractors disclose information, such as, past compliance issues and lists subcontractors and workers. This information can be shared with other state agencies. Agencies are required to debar contractors that violate classification requirements. Employers committing premium fraud face fines up to \$20,000. The department of labor is required to refer violations to banking, insurance, securities and health care for enforcement. An employer, subcontractor or independent contractor can be required to provide a compliance statement, that includes such information as the number of employees, dates of workers compensation policies, hours worked and lists of independent contractors. Also, as an attachment, the insurance policy declaration pages are required. Failing to provide accurate information results in fines up to \$5,000 per week.</p>
Washington <u>HB 2010 An Act Relating to Bidder Responsibility</u> <u>SB 5373 An Act relating to unemployment coverage and obligations</u>	 2007 2007	<p>The Act states that bidders and bidders' subcontractors on public works contracts must comply with registration, tax and workers compensation laws. It also gives municipalities the power to adopt criteria to judge bidder responsibility.</p> <p>Sec. 4 defines who a bona fide officer is for exemption from unemployment. Sec. 8, et. seq. settles co-employment coverage for professional employer organizations and client employers and establishes reporting and registration requirements.</p>

State Legislation or Executive Order	Year Became Law	Description
Washington (cont.)		
<u>SB 5926 An Act Relating to Creating a Joint Legislative Task Force to Review the Underground Economy in the Construction Industry</u>	2007	A study task force of the underground economy in construction is created to formulate a state policy to address it. Members include legislators, contractor and employee representatives and representatives from the department of labor and industries.
<u>HB 3122 An Act Relating to Consolidating, Aligning, and Clarifying Exception Tests for Determination of Independent Contractor Status</u>	2008	This law applies a uniform definition of independent contractor in the unemployment and workers compensation codes. It also applies other recommendations of the underground economy task force.
<u>HB 1555/ SB 5614 Addressing the recommendations of the joint legislative task force on the underground economy in the construction industry</u>	2009	This bill addresses recommendations made by the underground economy task force. Among other items it requires contractors to have a list of subcontractors and their registrations available for the department of labor and industries (L&I). Towns an county may verify registration by a contractor seeking a business license. Retainage can be kept by a public body to pay unemployment taxes and workers' compensation premiums. The law also creates a task force to conduct a continuing study of the underground economy in all industries. L&I and employment security are required to report each year to the legislature on the effectiveness of laws passed to address the underground economy.
<u>HB 1554/ SB 5613 An act authorizing the department of labor and industries to issue stop work orders</u>	2009	The department of labor and industries is given the power to issue stop work orders against construction contractors for failing to carry workers' compensation.
<u>Sub SB 5904/HB 1786 An act defining independent contractor for purposes of prevailing wage</u>	2009	The bill creates a presumption that an individual is a laborer, worker or mechanic under the state's prevailing rate law with a modified/extended version of the ABC test.
Wisconsin		
<u>Act 28, Secs. 1778q and 2155m Budget act regarding misclassification and contractor registration</u>	2009	In Sec. 1778q, the state's withholding tax law is amended to provide that a construction employer that willfully provides false information to the department of revenue or misclassifies or tries to misclassify a worker as a non-employee is fined \$25,000 for each violation. Section 2155m states that a person, with some exceptions, can't hold himself out as a contractor without being registered with the department of commerce. Violators face forfeiture.

Index

Budget items for enforcement

Iowa HA 1785 (2009), HF 2088 (2009)

Certification required to be an independent contractor

Minnesota Chapt.135 § 15 (2007), Montana for workers compensation §39-71-419.

Conspirators, other than direct employer, specifically punished:

Florida §440.105, Delaware HB 230 (2009), Maryland SB 909 (2009)
A flaw of the Illinois bill is that it specifically says that contractors will not be liable for the actions of their subcontractors. PA95-0026 §10(f) (Ill. 2007) It may only mean that there isn't strict liability, so existing conspiracy laws will apply. It will take a judge to figure that one out.

Databases to be used to identify violators

All of the task forces are studying or requiring information sharing by agencies. Some, though, get technical and specifically require use or creation of databases. See Utah SB 189 (2008). Also, see California SB 869 (2007) which requires comparing companies registered with unemployment tax to those with workers' compensation coverage.

Disclosure of workers' compensation coverage

Maine LD 1456 (2009), New Hampshire HB 471 (2007) SB 78 (2009), Oklahoma SB 306 (2009), Vermont H 313 (2009), Washington HB 1555/SB 5614 (2009).

Failure to classify as an employee punished

Delaware HB 230(2009), Illinois PA95-0026 (2007), Maryland SB 909 (2009), Massachusetts GL 149-§148B, New Jersey C:34:20-1 et.seq. (2007).

Information on violations of the law must be shared by state agencies

See, task forces, and misclassification and failure to properly classify, also, Indiana SB 478 (2009), Minnesota SF 1476 (2009), Vermont H

313 (2009).

Misclassification as an independent contractor punished

Colorado HB1310(2009), Connecticut PA 7-89 (2007), Florida §440.107(7)(f) , Indiana SB23 (2010), Kansas §44-766 (2006), Minnesota Sec. 181.722 (2005), Missouri HB1549T (2008), Nebraska LB563 (2010), New Mexico SB657 (2005), Wisconsin Act 28 (2009).

Penalty revenue to enforcement

Again, there are many states that allow for penalty money to fund enforcement. This is a list of newer actions: Colorado HB 1366 (2007), Connecticut §31-69a (1994) also in PA 7-89 (2007), Delaware HB 230 (2009), Florida HB 561 §10 (2006), Illinois PA95-0026 (2007), New Hampshire SB 92 (2007), New Jersey A4009 (2007).

Penalties, in general

There are a variety of penalties, including criminal, civil, administrative, debarment, loss of licenses and stop work orders.

Presumptions of employment

Many states have presumptions of employment, especially in their unemployment codes, like Louisiana, Tennessee, Maryland and others. This is a list where the presumptions were either established or reaffirmed: Colorado HB 1310 (2009), Delaware HB 230 (2009), Illinois PA95-0026 (2007), Maine LD 1456 (2009), Maryland SB 909 (2009), Minnesota Chapt. 135 §15 (2007), Montana for workers compensation if no independent contractor certification §39-71-419 (2005), New Jersey A4009 (2007), Massachusetts §149-148B.

Private cause of action allowed for effects of misclassification or non-reporting

There are many states that, for instance, allow employees to bring private suits to collect unpaid wages. Below are statutes that apply more directly to the effects of misclassification fraud. Here are samples of laws that allow employers to bring suit for unfair competition: Connecticut §52-570e (1990), Delaware HB 230 (2009), Florida §440-140

(1993). Here are statutes that allow employees to bring suit: Illinois PA95-0026 (2007), Maryland SB 909 (2009), Minnesota §181.722 (2005), New Jersey A4009 (2007).

“Shell” company use to violate the law is prohibited
Delaware HB 230 (2009), Maryland SB 909 (2009).

Stop work orders

California Labor Code §3710.1, Connecticut PA 7-89 (2007), Delaware 230 (2009), Florida §440-107, Massachusetts GL 152§25C, New Jersey A4009 (2007) A 3569.S 2498 (2009), New York A 6163 (2007), Washington HB 1554/SB 5613.

Task Forces

California Unemp Ins Code §329 (1995), Connecticut PA 8-156 (2008), Iowa (study) EO 8 (2008), Maine EO 23FY08/09, Maryland SB 909 (2009), Massachusetts EO 499 (2008), Michigan EO 2008-1 (2008), Minnesota SF 1476 (2009), Nevada (study) SCR 26 (2009), New Hampshire (study) SB 500, New Jersey EO 96 (2008), New York EO 17 (2007), Oregon HB 2815 (2009), Rhode Island (study) S 3099/H 7907B (2008), Utah SB 189 (2008), Vermont S 345 (2008), Washington (study) SB 5926 (2007) (study) HB 1555/SB 5614 (2009) and Wisconsin (study, done by internal collaboration). There are other states, like Louisiana, West Virginia and Wisconsin that have assembled task forces without legislation or executive orders

Tax withholding from independent contractors in the construction industry

Minnesota Chapt. 154 HF 3201 (2008), New Jersey S 468 (2006).

“Universal” definitions of employment

New Hampshire SB 92 (2007), New Jersey A4009 (2007), Minnesota Chapt.135 § 15 (2007), Washington HB 3122 (2008).

Workers compensation coverage required, with some exceptions, for independent contractors

There are numerous states that require employers to have workers compensation insurance for independent contractors/sole proprietors, but then apply exemptions. Listed here are more recently created laws: Colorado HB 1366 (2007), Delaware SS1 (2007), Florida §440-02(15) (c)(3) or S 50A (2003), Montana (if not a certified independent contractor) §39-71-419, New Hampshire (on public construction work) HB 471 (2007), Tennessee HB 1645 (2008).

Workers’ compensation premium fraud

Many states punish workers-compensation premium fraud specifically or as an insurance fraud. These are newer state laws addressing the problem: Louisiana HB 554 (2008), Nebraska LB 208 (2009), New Hampshire SB 500 (2008), New Jersey A 3569/S 2498 (2009), South Carolina SB 332 (2007), Vermont S 345 (2008) H 313 (2009).

Workers’ compensation, no coverage penalties

All states have laws that punish employers with civil or criminal penalties for not having coverage. Other than through stop work orders, here are states that have increased penalties: California SB 313 (2009).

THE UNDERGROUND ECONOMY TASK FORCE
U.S. DEPARTMENT OF LABOR
100 WASHINGTON STREET, SUITE 1000
BOSTON, MA 02108
TEL: 617-725-7000
WWW.UETFBOSTON.DOL.STATE.MA.US

Thank you for contacting the Underground Economy Task Force. We take your allegation(s) of employer misclassification and other workplace fraud seriously. Take Force investigators will review the information provided to determine whether an investigation is warranted. You may be contacted if further information is needed.

Please help us by providing all known information about the company or entity you suspect of committing fraud or another violation.

1a. Company Name (Doing Business As Name if known)

* 1b. Type of Business
Areas (please select one):

2. Employer Name	3. Soc. Security/Fed ID#
4. Business Address/PO Box	* 5. City/State/Zip Code
6. Telephone Number	7. E-Mail Address or Company Website
8. Provide the location if known where this business may be conducting operations.	
9. What are the conditions/factors you believe to be fraudulent or in violation of the law, including work hours, wage violations, cash payments, etc.	

The Task Force will make every effort to protect your identity and will not reveal the source of these allegations to the employer in the course of any investigation. If you would like an investigator to contact you for additional information, please provide us with your contact information. **(This information will remain confidential).**

10. Name	11. Address
12. Telephone Number	13. E-Mail

14. Are you aware of others who may wish to speak to the Task Force regarding violations, fraud and abuse?

Yes No

15. If yes, please provide their contact information

mandatory fields

NOTE: Should you become aware of any information relating to this allegation that you believe provides further evidence of fraud and/or misclassification, please notify the Task Force either by e-mail at underground@dia.state.ma.us or send to: Underground Economy Task Force, Department of Industrial Accidents, 600 Washington St., Boston, MA 02111.

**Tel. # 877-96-LABOR
(877-965-2267)**

APCX_PUBLIC_USER

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Misclassification means treating workers as *independent contractors* when legally they should be employees. If you think an employer is violating the law by misclassifying workers we want to know about it. All allegations, including those filed anonymously, are taken seriously. This information will be shared with Task Force partner agencies for further action. Be as specific as possible.



Why do you suspect misclassification? Please be specific.

Form 1, Misclassification Tips

Misclassifying company's name: _____

Doing business as (DBA): _____

Name(s) of business owner(s): _____

Company's business address or PO Box: _____

Company's other locations or worksites: _____

Company's telephone (if known): _____

How did this come to your attention? Please be specific.

When are the worker(s) in question typically on the worksite?

How are the workers paid?

▼

Are the workers working more than forty (40) hours in a week?

- Yes
 No

If Yes, are they paid time-and-a-half for overtime work?

- Yes
 No

Are wages paid when due?

- Yes
 No

Are workers paid under the table?

- Yes
 No

Are unauthorized deductions being taken out of wages?

- Yes
 No

Are workers receiving a pay stub or record of deductions?

- Yes
 No

Company's Federal Employer ID number or Social Security number (appears on W-2 or 1099 form): _____

Is there anything else we should know?

Your contact information (you may leave blank to send form anonymously):

Full Name: _____

Mailing Address: _____

City: _____

State: Maine ▼

Phone: _____

Email: _____

If you prefer to mail this form rather than send it electronically, please print it and send it to:

Task Force on Employee Misclassification
47 State House Station
Augusta, ME 04333-0047

TASK FORCE COMPLAINT FORM

Please complete the following document, providing as much information as possible, and then mail or e-mail to one of the addresses below. Task Force members will review the information provided to determine if an investigation is warranted. You may be contacted if further information is needed.

1. **Company Name (include "doing business as" name if known)**

2. **Type of Business**
 (a) **Construction**
 (b) **Landscaping**
 (c) **Other** _____ (please specify)

3. **Employer Name:** _____

4. **Business Address/PO Box:**

5. **Business Telephone Number:** _____

6. **E-Mail Address or Company Website:** _____

7. **Provide the location(s) if known where this business may be conducting operations:**

8. **What are the conditions that you believe to be fraudulent or in violation of the law? (Including work hours, non-payment of wages, cash payments, etc.)**

Optional Information

If you would like to be contacted, please provide us with your contact information. The Task Force will make every effort to protect your identity and will not reveal the source of these allegations to the employer in the course of any investigation.

9. **Name:** _____

10. **Address:**

11. **Telephone Number(s):** _____

12. **E-Mail Address:** _____

13. **Are you aware of others who may wish to speak to the Task Force regarding the alleged violations or fraud?**
(a.) Yes
(b) No

If yes, please provide their names and contact information:

**Mail completed form to:
Joint Enforcement Task Force on Workplace Fraud
Maryland Department of Labor, Licensing and Regulation
500 N. Calvert Street, Suite 401
Baltimore, Maryland 21202**

OR e-mail to: fraudtaskforce@dllr.state.md.us

Employer is under reporting/concealing payroll or misclassifying worker(s) as independent contractors. If so, please provide:

- the occupation(s) involved:
- the number of workers:
- and how the payroll is being concealed:
- Explain / Other:

If you are an employee of the business you suspect of fraud, please indicate:

Date you started working there: _____ How many hours you work per week: _____

Your occupation with the business: _____

The date the fraudulent activity began: _____

Additional Comments: _____

I represent the following organization (if applicable):
(please provide name of organization) _____

Website address: _____

Submitter information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () - ext. _____ Cell phone: () - ext. _____

E-mail address: _____

This form may be faxed to (518) 485-6172 or mailed to:

New York State Department of Labor
Liability and Determination, Fraud Unit
State Office Campus, Building 12, Room 356
Albany, New York 12240-0001



ILLINOIS DEPARTMENT OF LABOR
 1 West Old State Capitol Plaza, 3rd Floor
 Springfield, Illinois 62701-1217
 Telephone: 217/782-1710

EMPLOYEE CLASSIFICATION ACT COMPLAINT FORM

820 ILCS 185/1-999

COMPLAINANT INFORMATION

NAME: _____ DAY PHONE # _____
 ADDRESS: _____ CELL PHONE # _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 ORGANIZATION (if appropriate): _____
 EMAIL ADDRESS: _____ FAX # _____

ARE YOU FILING THIS COMPLAINT ON YOUR OWN BEHALF? Yes No IF NO, LIST ON WHOSE BEHALF THE COMPLAINT IS BEING FILED:
 INDIVIDUAL/ORGANIZATION NAME: _____ DAY PHONE # _____
 ADDRESS: _____ CELL PHONE # _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 EMAIL ADDRESS: _____ FAX # _____
 HAVE YOU OR ANYONE ELSE FILED A CIVIL ACTION IN COURT REGARDING THIS MATTER? Yes No Unknown

CONTRACTOR INFORMATION

COMPANY/CONTRACTOR: _____ DOING BUSINESS AS: _____
 OWNER: _____ DAY PHONE # _____
 ADDRESS: _____ FAX # _____
 CITY: _____ COUNTY: _____ STATE: _____ ZIP CODE: _____
 NATURE OF BUSINESS: _____ FEIN NUMBER: _____
 TYPE OF BUSINESS ORGANIZATION OF CONTRACTOR? Sole Proprietorship Partnership Corporation Limited Liability Company (LLC) Unknown

NATURE OF COMPLAINT

LOCATION OF WORK/SERVICE PERFORMED:
 ADDRESS: _____
 CITY: _____ COUNTY: _____ STATE: _____ ZIP CODE: _____

DATE VIOLATION(S) OCCURRED: _____

TYPE OF WORK/SERVICES PERFORMED: Please be specific regarding the type of work or services performed, such as electrical, plumbing, carpentry, etc.

STATEMENT OF FACTS OF ALLEGED VIOLATIONS: Please attach additional sheets as necessary. Also include any documentation relevant to the alleged violations.

I hereby certify that the above information is true and accurate to the best of my knowledge and belief.
 Signature: _____ Date: _____

Are workers classified as independent contractors? Yes No Unknown

How are workers paid? Check one or more.

- Cash
- Personal Check
- Payroll Check
- Combination
- Other _____

Do workers receive a pay stub? Yes No Unknown

Are workers paid all wages owed? Yes No Unknown

Are you aware of others we should contact? Yes No Unknown If yes, complete contact information below.

Please enter name(s) and contact information

Do you want this information to be kept confidential? Yes No Unknown

How may we contact you if we have questions?

Name _____

Address _____

City _____ State _____ Zip Code _____

Email _____

Phone _____ Cell Phone _____

Print Form



REPORT MISCLASSIFICATION

Business Information

To report a misclassification issue, please complete the following form. The required fields are marked with an asterisk (*). These fields must be completed in order to submit your misclassification issue.

Business Name:

Business Address:

Business City:

Business State:

Business Telephone #:

Business Type:

Business Contact Name (e.g. Owner, Boss, Supervisor):

Job Site Address (Street/Location):

Job Site City:

Job Site State:

When did you observe this or when did it occur?

Explain what occurred:

Contact Information

Providing this contact information will assist in completing a more thorough investigation. It is our policy to keep such information confidential to the maximum extent allowed by law.

Your First Name:

Your Last Name:

Your Street Address:

Your City:

Your State:

Your Telephone #:

Your Email Address:

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Iowa Workforce Development (IWD) Misclassification Report Form

If you think you or someone else is treated as an independent contractor instead of an employee, you can report this to IWD's Misclassification Unit.

Do you perform services for this company? Yes No

Individual/Company: _____ Doing Business As: _____

Day Phone # _____

Owner: _____

Cell Phone # _____

Address: _____

Fax # _____

City: _____ County: _____ State: _____ Zip Code: _____

Email Address _____

Location of Work Site(s): Same as Above

Address: _____

City: _____ County: _____ State: _____ Zip Code: _____

Date Problem Occurred: _____ Is the worksite active now? Yes No How many workers at this site? _____

Type of Work/Services Performed: Be clear about the type of work or services performed, such as carpentry, construction, food service, delivery, trucking, etc.

Statement of Facts of Alleged Violations: Describe what is going on at this workplace. Tell us the facts.

**Exhibit 4
Pension Management
Oversight Committee
September 29, 2010**

**The Economic Costs
of
Employee Misclassification in
the State of Indiana**

**Michael P. Kelsay, Ph.D.
James I. Sturgeon, Ph.D.**

A Report by the

**Department of Economics
University of Missouri-Kansas City**

September 16, 2010

This research project received funding from
The Indiana State Building & Construction Trades Council
and
The Indiana, Illinois, Iowa Foundation for Fair Contracting

I. Summary Findings

This report is a first step in analyzing the economic implications of employee misclassification for both the public and private sectors in the State of Indiana. It is based upon 1) aggregate audit data for the five-year period 2004-2008 and 2) detailed audit data for the two-year period 2007-2008, both provided by the Indiana Department of Workforce Development (IDWD). It also utilizes the results of similar studies on misclassification previously developed in other states. In this report, we analyze the scope and trends of misclassification in Indiana. We provide estimates of the impact of misclassification in Indiana for state and local tax revenues, the unemployment insurance fund, and worker's compensation.

Misclassification negatively impacts the citizens of Indiana in a number of ways. First, the conditions for a fair and competitive marketplace are sabotaged. Employers who misclassify their workers have a pricing edge over their counterparts which results in unfair competition in the marketplace. Firms that misclassify workers can bid for work without having to account for many normal payroll-related costs. This illegal practice can decrease payroll costs by as much as 10% to 20%.

Secondly, misclassifying workers negatively impact the public sector in Indiana by: (1) reducing the unemployment insurance taxes the state would collect if these employees were properly classified; (2) reducing the worker's compensation fund because Indiana does not collect the insurance premiums due, and (3) reducing the amount of income taxes collected by both state and local governments.

While state laws vary with respect to who is an employee and who is classified as an independent contractor, each state uses some defined criteria. Indiana General Assembly Statute, IC 22-3-6-1(b) (7) states:

"A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service."

Because the State of Indiana has adopted the same guideline as the Internal Revenue Code, the IRS definitions apply at the state level in Indiana. Previously, the IRS used a "Twenty Factor Test" for the determination of

independent contractor status. It has recently simplified the test and now employs a multi-factor common law test that consolidates the twenty factors into eleven main tests, and organizes them into three main categories: (1) behavioral control, (2) financial control, and (3) the type of relationship between the parties.¹

Misclassification arises from two potential sources. First, an employer may claim that a worker meets the common law standard as defined by the Internal Revenue Service and is, in fact, an independent contractor. This may simply be an error or the employer may be attempting to avoid the legal and financial responsibilities they would incur if the worker was classified an employee rather than as an independent contractor. The second source of misclassification may be a situation of an unreported worker, i.e., a worker whose employment either as an employee or as an independent contractor is simply not reported in order to avoid the legal and financial responsibilities for the worker.

If an employee is classified as an independent contractor, the "employer" is not required to pay and/or withhold a variety of payroll-related taxes, fees and benefits (e.g., social security and medicare taxes, local, state and federal income taxes, unemployment insurance, workers compensation, pension and health benefits, etc.). Not only are these costs shifted to the individual worker, the "independent contractor" is also not fully protected by various employment laws (e.g., minimum wage and overtime requirements, workers compensation protection, the right to form a union and bargain collectively, etc.) and may, incorrectly, believe that he or she is protected by Indiana unemployment laws. If a person is classified as an independent contractor, "employers" are required to issue a 1099-MISC for payments for work in excess of \$600 or more.

The issue of misclassifying employees as independent contractors is a growing problem for the unemployment insurance system and state and local revenues in Indiana and other states, as well as the federal government. This occurs because employers remit their unemployment taxes and other tax streams based upon their payroll. Recent studies have shown that misclassification by employers is increasing. For example, the rate of misclassification by employers in Illinois was shown to be 22.8% in 2001 and had increased to 31.9% and 27.6%

¹ Department of the Treasury. Internal Revenue Service. Publication 15-A. Employer's Supplemental Tax Guide. (Supplement to Publication 15 [Circular E], Employer's Tax Guide). Pages 6-7.

in 2004 and 2005, respectively.^{2,3} In a report by the Ohio Attorney General on February 18, 2009, the number of workers who were reclassified in 2009 increased 53.5% over the total number reclassified in 2008.⁴ Note, the “underground economy” (workers paid in cash) is outside the scope of our study and, thus, the estimates we provide may underestimate the full extent of the problems associated with the employer practice of misclassification in Indiana.

A number of studies have shown that the problem of misclassification to be particularly acute in the construction sector. In three state level studies (Massachusetts, Maine, and New York), the incidence of misclassification in the construction sector is higher than other industries in those states. For Massachusetts, the moderate statewide rate is 19%, while the rate of misclassification in the construction sector is 24%⁵; for Maine, the low statewide estimate is 11% compared to 14% in the construction sector.⁶ In New York, the statewide rate of misclassification for 2005-2008 was 10%, while the rate of misclassification in the construction sector for this same time period was 15%.⁷ The United States Government Accounting Office [GAO] reported that the percentage of misclassified workers in all industries was 15%, while the percentage of misclassified workers in the construction sector was 20%.⁸

² Kelsay, Michael P., PhD, James I. Sturgeon, PhD., and Kelly D. Pinkham, M.S. *The Economic Costs of Employee Misclassification in the State of Illinois*. A Report by the Department of Economics. University of Missouri – Kansas City. December 6, 2006. Page 16.

³ Carre, Françoise, Ph.D. and Randall Wilson. *The Social and Economic Costs of Employee Misclassification in Construction*. A Report for the Construction Policy Research Center and Labor and Worklife Program. Harvard Law School and Harvard School of Public Health. Elaine Bernard, Ph.D. and Robert Herrick, ScD, Principal Investigators. December 17, 2004. Pages 12-13.

⁴ Cordray, Richard. Ohio Attorney General. *Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio*. February 18, 2010.

⁵ Carre, Françoise, Ph.D. and Randall Wilson. *The Social and Economic Costs of Employee Misclassification in Construction*. A Report for the Construction Policy Research Center and Labor and Worklife Program. Harvard Law School and Harvard School of Public Health. Elaine Bernard, Ph.D. and Robert Herrick, ScD, Principal Investigators. December 17, 2004.

⁶ Carre, Françoise, Ph.D. and Randall Wilson. *The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry*. A Report for the Construction Policy Research Center and Labor and Worklife Program. Harvard Law School and Harvard School of Public Health. Elaine Bernard, Ph.D. and Robert Herrick, ScD, Principal Investigators. April 25, 2005.

⁷ Donahue, Linda H., James Ryan Lamare, and Fred B. Kotler, J.D. *The Cost of Worker Misclassification in New York State*. ILR Collection. Research Studies and Reports. Cornell University ILR School. Year 2007.

⁸ United States General Accounting Office. *Tax Administration: Issues in Classifying Workers as Employees or Independent Contractors*. GOA/T-GGD-96-130.

A U.S. Census Bureau analysis of projected nonfarm wage and salary employment by major industry division for the period 2008-2018 shows that the growth in overall employment is projected to increase 10.6%, or at an annual rate of increase of 1.0%; and, in construction, the growth in employment is projected to increase 18.5%, or at an annual rate of increase of 1.7%.⁹ Given the projected growth in the construction sector, the impacts of misclassification will worsen.

Specific Findings for Indiana Employee Misclassification

- For the years 2007-2008, state audits found that 47.5% of audited employers had misclassified workers as independent contractors. This translates into approximately 73,629 employers statewide of which 8,200 were in construction. In 2008, the rate of misclassification was slightly lower at 46.6%. This translates into 72,299 employers statewide of which 8,052 employers in construction.¹⁰ Based upon the fact that 35.5% of the total audits were industry targeted, **the rate of misclassification in Indiana would be higher than in those states with a low level of targeted or non-random audits.**
- **When an employer practices misclassification in Indiana, the results show that this behavior is pervasive.** An analysis of the percentage of employees that are misclassified indicates that it is a common occurrence rather than a random one in those companies that do misclassify. According to the data provided by the IDWD, 29.5% of workers were misclassified by employers that were found to be misclassifying for the period 2007-2008. In 2007, 31.6% of workers were misclassified by employers who were found to be misclassifying; this rate of misclassification was 27.4% in 2008.
- **From our analysis of the labor force of all employers in Indiana (those that misclassify and those that don't), we estimate that 16.8% of employees in Indiana were misclassified as independent contractors for the period 2007-2008.** For the year ending 2008, we estimate that 15.3% of employees were misclassified.

⁹ Bartsch, Kristina J. *Occupational Employment Projections for 2008-2018*. Monthly Labor Review. November 2009. Pages 3-10.

¹⁰ Based upon data from the United States Bureau of Labor Statistics, Quarterly Census of Employment and Wages, the average number of all employers over the period 2007-2008 was 17,264 in construction and 154,155 in all industries. <http://www.bls.gov/data/>.

- The number of employees statewide that were affected by improper misclassification is estimated to have averaged 418,086 annually for the period 2007-2008. For 2008, the estimated number of employees affected by misclassification was 377,742. Within the construction sector for the period 2007-2008, the number of employees affected by misclassification is estimated to have averaged 24,891. In 2008, the estimated number of misclassified employees in the construction sector was 24,323.
- **Misclassification of employees has a negative financial impact on individual workers, Indiana state and local governments, and the private sector in Indiana.** The workers are directly impacted by being denied the protection of various employment laws and by being forced to pay costs normally borne by employers. State and local income tax revenues, the unemployment insurance system, and worker's compensation in Indiana are adversely affected as well. Misclassification also imposes other costs on employers who play by the rules, the general health delivery system, taxpayers, and the public at large.
- **We estimate that the unemployment insurance system lost an average of \$36.7 million each year for the period 2007-2008 in unemployment insurance taxes that were not levied as a result of misclassification. In 2008, we estimate that the unemployment insurance system in Indiana lost \$30.4 million in unemployment insurance taxes.** A portion of this lost revenue may be recaptured when an audit reveals a misclassified worker where contributions are due. In 2008, for example, the amount of net contributions recaptured from IDWD audits was approximately \$1.02 million; equaling 2.8% of the total amount that we project was not collected in 2008.
- **For the construction sector, we estimate that the unemployment insurance system lost an average of \$2.2 million annually for the period 2007-2008 in unemployment insurance taxes that were not levied as a result of misclassification.** For 2008, we estimate that the unemployment insurance system in Indiana lost \$2.0 million in unemployment insurance taxes in the construction sector.
- According to published data, workers misclassified as independent contractors are known to underreport their personal income as well. As a result, state and local governments in Indiana suffer a loss of income tax

revenue. According to IRS reports, wage earners report 99% of their wages, whereas **non-wage earners (such as independent contractors) report approximately only 68% of their income. This represents a gap of 31%.** Other studies estimate the gap to be as high as 50%.

- Based upon IRS estimates that 30% of the income of misclassified workers in Indiana is not reported, **we estimate that \$147.5 million annually of state income tax revenues were lost in Indiana for the years 2007-2008. In 2008, we estimate that \$134.8 million of state income tax revenues were not collected in Indiana.** For the construction sector, we estimate that \$10.7 million annually of state income tax revenues were lost in Indiana for the years 2007-2008. For 2008, we estimate that \$10.6 million of state income tax revenues were lost in the construction sector in Indiana.
- Based upon the higher estimate that up to 50% of the income of misclassified workers is not reported, **an estimated \$245.8 million annually of state income tax revenues were lost, on average, in Indiana for the years 2007-2008. For 2008, we estimate that \$224.6 million of state income tax revenues were lost in Indiana.** For the construction sector, we estimate that an average of \$17.7 million annually of state income tax revenues were lost in Indiana for the years 2007-2008. For 2008, we estimate that \$17.8 million of state income tax revenues were lost in the construction sector in Indiana.
- Based upon an estimate that 30% of the income of misclassified workers is not reported, **we estimate that an average of \$59.9 million of Indiana local government income tax revenues were lost annually during the period 2007-2008 due to unreported income. For 2008, we estimate that \$54.7 million of Indiana local income tax revenues were lost.** In the construction sector, we estimate that \$4.3 million of Indiana local government income tax revenues were lost during the period 2007-2008. For 2008, we estimate that \$4.3 million of Indiana local government income tax revenues were lost from construction sector income.
- Based upon an estimate that 50% of the income of misclassified workers is not reported, **we estimate that an average of \$99.8 million of Indiana local government income tax revenues were lost annually during the period 2007-2008 due to unreported income. For 2008, we estimate that \$91.2 million of Indiana local government income tax revenues was lost.** In the construction sector, we estimate that \$7.2 million of Indiana local government

income tax revenues were lost during the period 2007-2008. For 2008, we estimate that \$7.2 million of Indiana local government income tax revenues were lost from construction sector income.

- Misclassification also impacts worker's compensation insurance. Among other effects, costs are higher for employers that follow the rules placing them at a distinct competitive disadvantage. A large, national study conducted for the U.S. Department of Labor reported that **the cost of worker's compensation premiums is the single most dominant reason why employers misclassify.**¹¹ Employers who misclassify can underbid the legitimate employers who provide coverage for their employees. **The practice of misclassification shifts the burden of paying worker's compensation insurance premiums onto those employers who properly classify their employees. It has the further effect of destroying the fairness and legitimacy of the bidding process.** The same national study reported that many previously misclassified workers were later added to their company's worker's compensation policy by their employer after they were injured, resulting in the payment of benefits even though premiums had not been collected.
- **Based upon statewide average worker's compensation insurance premium rates for 2008, we estimate that, for the period 2007-2008, \$24.1 million annually of worker's compensation premiums were not properly paid for misclassified workers.** For 2008, we estimate that \$26.3 million of worker's compensation premiums were not properly paid due to misclassification.
- **Worker's compensation premiums are much higher in the construction industry.** In Indiana, the statewide rate for all industries averaged \$2.06 in 2008 (per \$100 of payroll).¹² However, within construction, rates are substantially higher. For example, the workman compensation rate for Carpentry (Class 5403) was \$7.29 per \$100 of payroll and Roofing-All Kinds (Class 5551) was \$10.88 per \$100 of payroll.¹³

¹¹ Planmatics, Inc. For the U.S. Department of Labor – Employment and Training Administration. *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*. February, 2000.

¹² One Southern Indiana. Chamber & Economic Development. Worker's Comp Rates. http://www.1si.org/taxes_workers_comp_rates.asp.

¹³ Oregon Department of Consumer & Business Services. *Oregon Workers' Compensation Premium Rate Ranking, Calendar Year 2008*. March 2009.

- Using an average premium rate of \$5 per \$100 of payroll, we estimate that for the period 2007-2008 an annual average of \$4.2 million of worker's compensation premiums were not properly paid by construction employers in Indiana. For 2008, \$4.6 million of worker's compensation premiums were not properly paid by construction employers in Indiana.
- Using a higher average premium rate of \$10 per \$100 of payroll, we estimate this average annual amount for the period 2007-2008 to be \$8.4 million. For 2008, \$9.2 million of worker's compensation premiums were not properly paid by construction employers in Indiana.

Summary of Losses to Indiana as a Result of Misclassification of Employees

State of Indiana	Option 1 ¹		Option 2 ²	
	2007-2008 Average	2008	2007-2008 Average	2008
1. Lost Unemployment Insurance Taxes	\$36,700,000	\$30,400,000	\$36,700,000	\$30,400,000
2. Lost State Income Taxes	\$147,500,000	\$134,800,000	\$245,800,000	\$224,600,000
3. Lost Local Income Taxes	\$59,900,000	\$54,700,000	\$99,800,000	\$91,200,000
4. Lost Worker's Compensation Premiums	\$24,100,000	\$26,300,000	\$24,100,000	\$26,300,000
Total Economic Losses: State of Indiana	\$268,200,000	\$246,200,000	\$406,400,000	\$372,500,000
State of Indiana: Construction Industry				
1. Lost Unemployment Insurance Taxes	\$2,200,000	\$2,000,000	\$2,200,000	\$2,000,000
2. Lost State Income Taxes	\$10,700,000	\$10,600,000	\$17,700,000	\$17,800,000
3. Lost Local Income Taxes	\$4,300,000	\$4,300,000	\$7,200,000	\$7,200,000
4. Lost Worker's Compensation Premiums	\$4,200,000	\$4,600,000	\$8,400,000	\$9,200,000
Total Economic Losses: State of Indiana Construction Industry	\$21,400,000	\$21,500,000	\$35,500,000	\$36,200,000

NOTES:

¹ Option 1 assumes that 30% of income is unreported and that the worker's compensation rate for construction is \$5 per \$100 of payroll.

² Option 2 assumes that 50% of income is unreported and that the worker's compensation rate for construction is \$10 per \$100 of payroll.

In Indiana, as well as in other states, the unemployment insurance trust fund has been experiencing increasing deficits. Since 2008, the primary contributing factor to this growing deficit has been the steep downturn in the Indiana and United States economies. In January, 2008, the unemployment rate in Indiana was 4.6%; the unemployment rate peaked in May and June, 2009 at 10.6% and was 10.1% in June, 2010. In January, 2008, 149,637 Indiana workers were officially classified as unemployed; in June, 2010, this reached 315,162, an increase of 110.6% in the number of unemployed workers in Indiana.

A review of the yearend balance in the Indiana Trust Fund for the public and private sector highlights the problems of the unemployment insurance in the state. The Trust Fund balance in Indiana was \$1.124 billion on December 31,

2002 and had decreased to about \$376 million on December 31, 2006. The Trust Fund balance on December 31, 2008 was a little less than \$13 million and the fund is now insolvent. This means that in eight years, through a combination of higher unemployment rates, misclassification, and other factors, the Trust Fund has gone from over \$1.1 billion to insolvency.

Indiana began receiving Title XII Advances from the Department of the Treasury in December, 2008. As of July 23, 2010, there were 34 states (and Virgin Islands) receiving Title XII advances. Indiana has the 8th largest amount of these advances; as of July 23, 2010, the balance for Indiana was \$1.7 billion.¹⁴ It is clear from our study that misclassification contributes to Indiana's shortfall, as those unemployment insurance revenues would be collected but for the misclassification of workers.

States, including Indiana, perform both random and non-random unemployment insurance audits. The IDWD (IDWD) conducts its random audits based upon criteria and guidelines provided by the U.S. Department of Labor. Indiana is required by the United State Department of Labor (USDOL) to perform UI tax compliance audits at a penetration rate equal to or greater than 2% of all active employers in the State of Indiana. Additionally USDOL requires that at least 10% of employer audits be random audits.

IDWD also conducts industry targeted audits with the purpose of auditing employers with a high probability of misclassification based upon past findings and records. Each year in the 3rd quarter of the year prior to building target audit universe file, the North American Industry Classification System (NAICS) is examined by audit supervision in order to determine what industries will be targeted to build target audit universe file.¹⁵ Examples of these targeted audit situations include industries that have been shown to exhibit a high degree of misclassified workers or non-compliance with state law (e.g. the delinquent filing of reports, late registration, past violations of state law, etc.)

Based upon data provided by the IDWD, the auditing department conducted 16,016 audits for the five-year period, 2004-2008. For the period 2007-2008 where we have detailed audit results, the IDWD conducted 5,695 audits

¹⁴ http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiesched.htm

¹⁵ Indiana Workforce Development. Response to Request for Misclassification Information.

August 30, 2010.

over the two year period. Of those audits, 3,408 or 59.8% were randomly selected audits: 2,021 or 35.5% were industry targeted audits. These two audit types accounted for 95.3% of the total audits for the period 2007-2008. The remaining 4.7% were (1) blocked claim related, (2) anonymous tips, and (3) federal certification (see definitions in Table 5, Page 38). The percentage of random audits conducted by IDWD provides a moderate estimate on the prevalence of misclassification in Indiana.

Thus, we conclude that misclassification is an increasing problem in Indiana. The effects of increasing misclassification negatively impact workers, employers, small businesses, insurers, taxpayers and tax authorities. **Furthermore, the operation of fair, competitive markets is compromised when the bidding process is undermined by the practice of misclassification.** Indiana will stand to benefit from better documentation of misclassification, from adopting measures that help to improve compliance with state statutes and from targeting employers who intentionally and repeatedly misclassify their employees.

Acknowledgements

This project received funding from the Indiana State Building & Construction Trades Council and the Indiana, Illinois, Iowa Foundation for Fair Contracting. According to the website of the Indiana State Building & Construction Trades Council, it "coordinates activities of common interest to its affiliated building trades unions and provides resources to Indiana's 13 local Building and Construction Trades Councils (BCTCs)." In this capacity, the council works "to promote economic development, work site safety, and apprenticeship and journey-level training" (<http://www.inbctc.org>).

According to the website of the Indiana, Illinois, Iowa Foundation for Fair Contracting, they are a "labor-management organization, funded solely through participating contractors, established to support, promote and encourage fair contracting. We provide a 'level playing field' in the public construction arena for both contractors and workers" (<http://www.iiifc.org>).

The authors wish to especially thank the Indiana Department of Workforce Development (IDWD) for their assistance in providing summary-level data to us, without which this study could not have been completed.

Note: Studies such as ours that project economic costs to a given state due to the employer practice of misclassification should not be taken as report cards, so to speak, on the departments in those states responsible for collecting various revenues. In fact, the IDWD ranks at or near the top for all states in the U.S. for identifying and recovering unreported wages and in other measures of best practices and performance.

II. The Problem of Misclassification – Detailed Findings

Misclassification arises from two potential sources. First, an employer may claim that a worker meets the common law standard as defined by the Internal Revenue Service and is, in fact, an independent contractor. This may simply be an error or the employer may be attempting to avoid the legal and financial responsibilities they would incur if a person was classified as an employee rather than as an independent contractor. The second source of misclassification may be a situation of an unreported worker, i.e., a worker whose employment either as an employee or as an independent contractor is simply not reported in order to avoid the legal and financial responsibilities for the worker.

If an employee is classified as an independent contractor, the “employer” is not required to pay and/or withhold a variety of payroll-related taxes, fees and benefits (e.g., social security and medicare taxes, local, state and federal income taxes, unemployment insurance, workers compensation, pension and health benefits, etc.). Not only are these costs shifted to the individual worker, the “independent contractor” is also not fully protected by various employment laws (minimum wage and overtime requirements, workers compensation protection, the right to form a union and bargain collectively, etc.) and may, incorrectly, believe he or she is protected by Indiana unemployment laws. If a person is classified as an independent contractor, “employers” are required to issue a 1099-MISC for payments for work in excess of \$600 or more.

Workers with alternative work arrangements are making up an increasing percentage of the workforce.¹⁶ According to the United States Bureau of Labor Statistics, workers with alternative work arrangements accounted for 12.0% of the total workforce in February, 2005. Of the total amount of workers with alternative work arrangements, independent contractors accounted for 70% of workers with alternative work arrangements. An examination of independent contractors by industry showed that the construction sector accounted for 22.0% of all independent contractors, the highest level of concentration of independent contractors in all industries.

¹⁶ The Bureau of Labor Statistics defines workers with alternative work arrangements as (1) independent contractors, (2) on-call workers, (3) temporary help agency workers, and (4) workers provided by contract firms. <http://www.bls.gov/news.release/conemp.t08.htm>.

The issue of misclassifying employees as independent contractor is a growing problem for the unemployment insurance system and state and local revenues in Indiana and other states, as well as the federal government. This occurs because employers remit their unemployment taxes and other tax streams based upon their payroll. Recent studies have shown that misclassification by employers is increasing. For example, the rate of misclassification by employers in Illinois was shown to be 22.8% in 2001 and had increased to 31.9% and 27.6% in 2004 and 2005, respectively.^{17,18} In a report by the Ohio Attorney General on February 18, 2009, the number of workers reclassified in 2009 increased 53.5% over the total number reclassified in 2008.¹⁹ Note, the "underground economy" (workers paid in cash) is outside the scope of our study and thus, the estimates we provide may underestimate the full extent of the problems associated with the employer practice of misclassification in Indiana.

There are a number of different practices whereby misclassification is accomplished. First, many employers may hire labor as self-employed independent contractors and provide them with a 1099-Miscellaneous Income for tax purposes. An emerging problem takes the form of simply paying labor with cash with no trail of the independent contractor agreement. State and federal revenue bases are significantly impacted when employees are improperly classified as independent contractors. The IRS reports that voluntary compliance in reporting income varies significantly across groups of individual taxpayers. Among those filing tax returns, wage earners report 99% of their wages; self-employed individuals who receive a 1099, report 68% of their business income; and "informal suppliers" - self-employed individuals who operate informally on a cash basis - report just 19% of such income on their tax returns. Informal

¹⁷ Kelsay, Michael P., PhD, James I. Sturgeon, PhD., and Kelly D. Pinkham, M.S. *The Economic Costs of Employee Misclassification in the State of Illinois*. A Report by the Department of Economics. University of Missouri – Kansas City. December 6, 2006. Page 16.

¹⁸ Carre, Françoise, Ph.D. and Randall Wilson. *The Social and Economic Costs of Employee Misclassification in Construction*. A Report for the Construction Policy Research Center and Labor and Worklife Program. Harvard Law School and Harvard School of Public Health. Elaine Bernard, Ph.D. and Robert Herrick, ScD, Principal Investigators. December 17, 2004. Pages 12-13.

¹⁹ Cordray, Richard. Ohio Attorney General. *Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio*.

suppliers accounted for almost 17% of all unpaid individual income and employment taxes in 1992.²⁰

Misclassification negatively impacts the citizens of Indiana in a number of ways. First, the conditions for a fair and competitive marketplace are sabotaged. Employers who misclassify their workers have a pricing edge over their counterparts which results in unfair competition in the marketplace. Firms that misclassify workers can bid for work without having to account for many normal payroll-related costs. This illegal practice can decrease payroll costs by as much as 10% to 20%.²¹

Secondly, misclassifying workers negatively impact the public sector in Indiana by: (1) reducing the unemployment insurance taxes the state would collect if these employees were properly classified; (2) reducing the worker's compensation fund because Indiana does not collect the insurance premiums due, and (3) reducing the amount of income taxes collected by both state and local governments.

A number of studies have shown the problem of misclassification to be particularly acute in the construction sector. In three state level studies (Massachusetts, Maine, and New York), the incidence of misclassification in the construction sector is higher than other industries in those states. For Massachusetts, the moderate statewide rate is 19%, while the rate of misclassification in the construction sector is 24%²²; for Maine, the low statewide estimate is 11% compared to 14% in the construction sector.²³ In New York, the statewide rate of misclassification for 2005-2008 was 9.9% while the statewide

²⁰ United States General Accounting Office. Taxpayer Compliance: Analyzing the Nature of the Income Tax Gap. GAO/T-GGD-97-35.

²¹ These avoided payroll-related taxes are (1) old age, survivors, and disability insurance [6.20%], (2) medicare basic hospital insurance [1.45%], (3) unemployment insurance [2% or greater], (4) workers compensation costs [2.06% or greater] as well as any pension and medical insurance. Workers compensation costs would be substantially higher in certain industries such as construction would could push payroll costs savings higher.

²² Carre, Françoise, Ph.D. and Randall Wilson. *The Social and Economic Costs of Employee Misclassification in Construction*. A Report for the Construction Policy Research Center and Labor and Worklife Program. Harvard Law School and Harvard School of Public Health. Elaine Bernard, Ph.D. and Robert Herrick, ScD, Principal Investigators. December 17, 2004.

²³ Carre, Françoise, Ph.D. and Randall Wilson. A Report for the Construction Policy Research Center and Labor and Worklife Program. Harvard Law School and Harvard School of Public Health. Elaine Bernard, Ph.D. and Robert Herrick, ScD, Principal Investigators. April 25, 2005.

rate of misclassification in the construction sector was 14.9%.²⁴ In a report by the United States Government Accounting Office [GAO] in 1996, it was reported that the percentage of employers with misclassified workers was 13.4% in 1984, while the percentage of employers with misclassified workers in the construction sector was 19.9%.²⁵

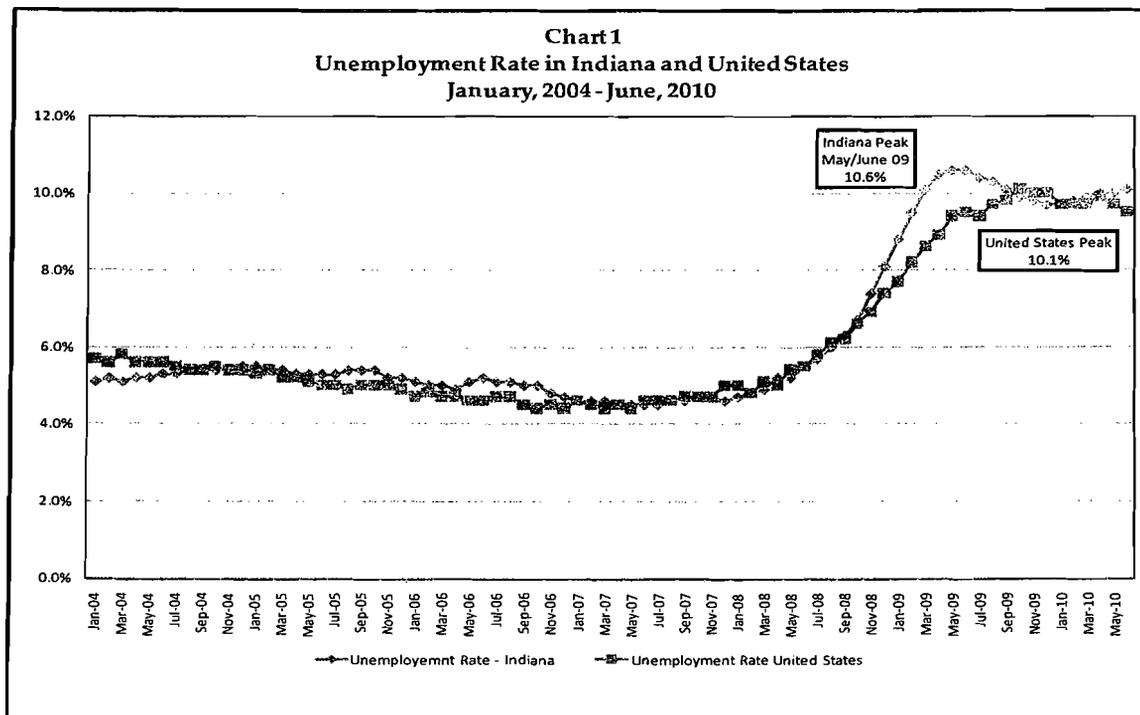
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In Indiana, as well as in other states, the unemployment insurance trust fund has been experiencing increasing deficits. Since 2008, the primary contributing factor to this growing deficit has been the steep downturn in the Indiana and United States economies. In January, 2008, the unemployment rate in Indiana was 4.6%; the unemployment rate in Indiana peaked in May and June, 2009 at 10.6% and was 10.1% in June, 2010 (Chart 1). In January, 2008, 149,637 Indiana workers were officially classified as unemployed; in June, 2010, this reached 315,162, an increase of 110.6% in the number of unemployed in Indiana.

²⁴ Donahue, Linda H., James Ryan Lamare, and Fred B. Kotler, J.D. *The Cost of Worker Misclassification in New York State*. ILR Collection. Research Studies and Reports. Cornell University ILR School. Year 2007.

²⁵ General Accounting Office. *Tax Administration: Issues in Classifying Workers as Employees or independent Contractors*. GOA-GGD-96-130.

²⁶ Bureau of Labor Statistics. "The Employment Projections for 2008-2018." *Monthly Labor Review*. November, 2009. Pages 3-10.



Source: <http://www.bls.gov>.

Employers who correctly classify their employees are at a distinct competitive disadvantage over those employers who misclassify their employees. This practice also has distinct budgetary implications for the unemployment insurance fund and state and local income tax revenues in Indiana. This may be particularly acute in the construction sector.²⁷ It was reported by Planmatics that the construction industry had the highest rate of incidence of misclassification, and the one that lures workers into becoming independent contractors.²⁸

Misclassification also presents societal costs to workers and the private and public sectors in Indiana. Although these costs are not quantified in this report, the societal costs are substantial. For example, workers that are misclassified do not receive health insurance benefits. The lack of health

²⁷ The General Accounting Office (1996) reported that the estimated percentage of employees with misclassified workers was 13.4%, while the estimated percentage in the construction sector was the highest of all industry groups at 19.8%.

²⁸ Planmatics, Inc. For the U.S. Department of Labor – Employment and Training Administration. *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*. February, 2000.

insurance coverage exacts a large toll on the uninsured – avoidable deaths, poorly managed chronic conditions, and underutilizes life-savings medical procedures. In addition to the direct toll the lack of health insurance coverage takes on the uninsured, there are other substantial social and economic costs as well. The economic costs of being uninsured or under-insured are borne by individual workers and private sector employers, the health delivery system, taxpayers, and the public at large. The costs borne by the uninsured include a greater probability of death, reduced preventive care, and a smaller likelihood of early detection of medical problems.²⁹ The health system also bears an economic cost as well. It is reported that the total medical care received by the uninsured in 2001 was \$98.9 billion.³⁰ Of this amount, \$35 billion was uncompensated care, or care paid out-of-pocket by the public and private sector.

There are a number of reasons why employers engage in misclassification. It is reported that the cost of workers' compensation premiums is the single most dominant reason for misclassification.³¹ Employers also engage in misclassification in order to avoid the economic costs associated with litigation against employees alleging discrimination, sexual harassment, and putting in place the regulations and reporting procedures required for employees.³² Additionally, if an employee is classified as an independent contractor, the employer is not required to pay a variety of payroll taxes (i.e., social security, unemployment insurance) and the independent contractor is not fully protected by employment laws. This allows employers to underbid the legitimate employers who provide coverage for their employees. In the construction sector, workers compensation misclassification penalizes legitimate contractors in the bidding process. It has been reported that many workers are added after an injury to a company's worker's compensation policy, resulting in payment of benefits even though premiums were not paid.³³

²⁹ The Commonwealth Fund reports that the lack of health insurance leads to 18,000 deaths per year. The Commonwealth Fund. *The Costs and Consequences of Being Uninsured*. Commonwealth Fund Publication #663.

³⁰ American College of Physicians. A White Paper. *The Cost of Lack of Health Insurance*. 2004.

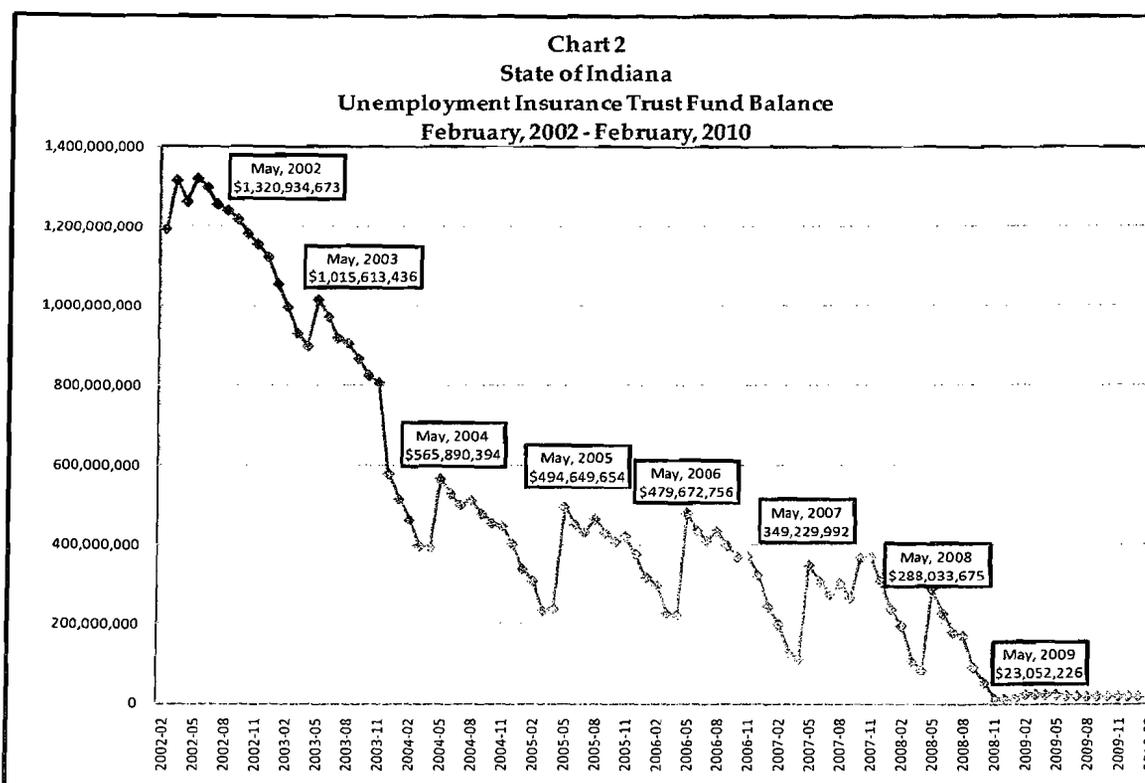
³¹ Planmatics, Inc. For the U.S. Department of Labor – Employment and Training Administration. *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*. February, 2000.

³² Ibid.

³³ Ibid.

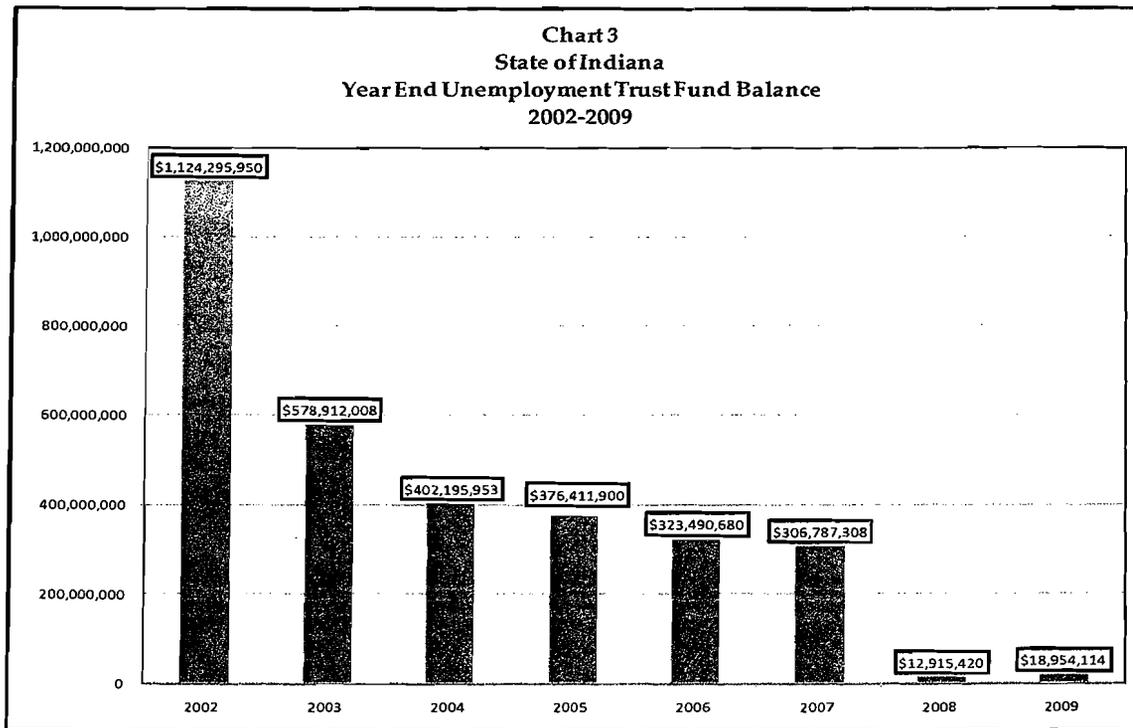
A review of the yearend balance in the Indiana Trust Fund for the public and private sector highlights the problems of the unemployment insurance in the state (Charts 2 and 3). The Trust Fund balance in Indiana was \$1.124 billion on December 31, 2002 and had decreased to about \$376 million on December 31, 2006. The trust fund balance on December 31, 2008 was a little less than \$13 million and the fund is now insolvent. This means that in eight years, through a combination of higher unemployment rates, misclassification, and other factors, the Trust Fund has gone from over \$1.1 billion to insolvency.

Indiana began receiving Title XII Advances from the Department of the Treasury in December, 2008. As of July 23, 2010, there were 34 states (and Virgin Islands) receiving Title XII advances. Indiana has the 8th largest amount of Title XII advances; as of July 23, 2010, the balance for Indiana was \$1.7 billion.³⁴ It is clear from our study that misclassification contributes to Indiana's shortfall since unemployment insurance revenues would be collected but for the misclassification of workers.



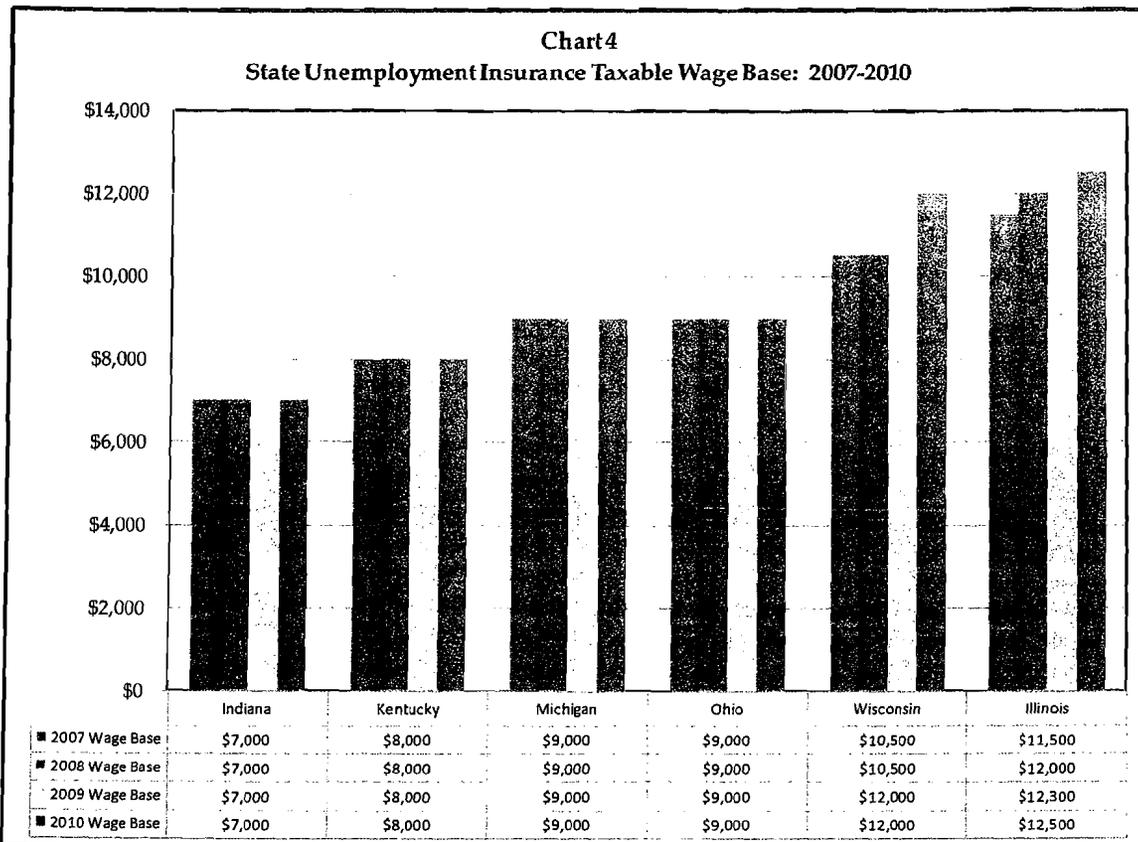
Source: Treasury Direct. Unemployment Trust Fund Report

³⁴ http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiesched.htm and http://www.treasurydirect.gov/govt/tfmp/tfmp_utf.htm.



Source: Treasury Direct. Unemployment Trust Fund Report

In the State of Indiana, the state unemployment insurance taxable wage base for the period 2007-2010 has remained constant at 7.0%. Chart 4 depicts the taxable wage base in surrounding states, which illustrates that Indiana has the lowest taxable wage base in the region. For 2010, the taxable wage base in Kentucky is 8.0%, while in Michigan and Ohio it is 9.0%. In Wisconsin and Illinois, the taxable wage base is \$12,000 and \$12,500, respectively.



Source: State Unemployment Insurance Departments of Above States

Table 1 provides estimates from a number of studies and analyses undertaken to determine the extent of employer misclassification in a number of states. For the 16 states where studies have been conducted, the moderate rate of misclassification was from 13-24%. In three state-level studies (Massachusetts, Maine, and New York), the incidence of misclassification in the construction industry is higher than all industries in their states. For Massachusetts, the moderate statewide rate is 19%, while the rate of misclassification in the construction sector is 24%; the low statewide estimate is 9% in New Jersey and Pennsylvania. In New York, the statewide rate was 10% while the incidence of misclassification in the construction sector was 15%. In a report by the United States General Accounting Office (1996), it was reported that the percentage of misclassified workers in all industries was 13%, while the percentage of misclassified workers in the construction sector was 20%.

TABLE 1
Prevalence of Employer Misclassification in All Industries
and the Construction Sector

	Low	Moderate	High
All Industries (9 States) ¹			
California			29%
Colorado			34%
Connecticut			42%
Maryland		20%	
Minnesota		14%	
Nebraska	10%		
New Jersey	9%		
Wisconsin		23%	
Washington	10%		
All Industries (United States) ²		13%	
All Industries (Massachusetts ³)	13%	19%	
All Industries (Maine ⁴)	11%		
All Industries (Illinois ⁵)		18%	
All Industries (New York ⁶)	10%		
All Industries (Minnesota ⁷)		15%	
All Industries (Pennsylvania ⁸)	9%		
All Industries (Michigan ⁹)			30%
All Industries (Ohio ¹⁰)			
All Industries (Wisconsin ¹¹)			44%
Construction Sector (New York ¹²)	15%		
Construction Sector (Massachusetts ¹³)	14%	24%	
Construction Sector (Maine ¹⁴)	14%		
Construction Sector (United States ¹⁵)		20%	

SOURCE

- ¹ Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs. February, 2000.
- ² United States General Accounting Office, GAO/T-GGD-96-130, pg. 13. 1996.
- ³ The Social and Economic Costs of Employee Misclassification in Construction. December 17, 2004.
- ⁴ The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry. April 25, 2005.
- ⁵ The Economic Costs of Employee Misclassification in the State of Illinois. December 6, 2006.
- ⁶ The Cost of Worker Misclassification in New York State. February, 2007.
- ⁷ Misclassification of Employees as Independent Contractors. November, 2007.
- ⁸ Testimony of the Pennsylvania Deputy Secretary for Unemployment Compensation Programs. April 23, 2008.
- ⁹ Informing the Debate: The Social and Economic Costs of Employee Misclassification in Michigan. 2009.
- ¹⁰ Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers. February 18, 2009.
- ¹¹ Report of the Worker Misclassification Task Force, Wisconsin Department of Workforce Development. June, 2009.
- ¹² Misclassification of Employees as Independent Contractors. November, 2007.
- ¹³ The Social and Economic Costs of Employee Misclassification in Construction. December 17, 2004.
- ¹⁴ The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry. April 25, 2005.
- ¹⁵ United States General Accounting Office, GAO/T-GGD-96-130, pg. 13. 1996.

States, including Indiana, perform both random and non-random unemployment insurance audits. The IDWD conducts its random audits based upon criteria and guidelines provided by the U.S. Department of Labor. Indiana is required by the United State Department of Labor (USDOL) to perform

Unemployment Insurance tax compliance audits at a penetration rate equal to or greater than 2% of all active employers in the State of Indiana. Additionally USDOL requires that at least 10% of employer audits be randomly selected.

IDWD also conducts industry targeted audits with the purpose of auditing employers with a high probability of misclassification based upon past findings and records. Each year in the 3rd quarter of the year prior to building target audit universe file, the North American Industry Classification System (NAICS) is examined by audit supervision in order to determine what industries will be targeted to build target audit universe file.³⁵ Examples of these targeted audit situations include industries that have been shown to exhibit a high degree of misclassified workers or non-compliance with state law (e.g. the delinquent filing of reports, late registration, past violations of state law, etc.)

For the years 2007 and 2008, the highest number of audits was in the construction industry (Table 2). Of the total amount of 2,955 audits in 2007, 409 or 13.8% of audits were in the construction industry; in 2008, 474 or 17.3% of all audits were performed in the construction industry. In 2007, IDWD found 14,757 misclassified workers of which 2,182 were in the construction industry; this represents 14.8% of all misclassified workers. In 2008, IDWD found 10,493 misclassified workers of which 2,812 were in the construction industry; this represented 26.8% of all misclassified workers in the state.

For the years 2007 and 2008, the 2nd highest number of audits was in the retail sector. Of the total amount of 2,955 audits in 2007, 350 or 11.8% of audits were in the retail sector; in 2008, 399 or 14.6% of all audits were performed in the retail sector. In 2007, IDWD found 14,757 misclassified workers of which 1,658 were in the retail; this represents 11.2% of all misclassified workers. In 2008, IDWD found 10,493 misclassified workers of which 914 were in the retail sector; this represented 8.7% of all misclassified workers in the state.

In 2007, the five highest number of target industries (construction, retail, other services, health care & social assistance, and manufacturing) account for 54% of all audits and 49.6% of all misclassified workers. In 2008, the five highest number of target industries (construction, retail, other services, health care &

³⁵ Indiana Workforce Development. Response to Request for Misclassification Information. August 30, 2010.

social assistance, and manufacturing) account for 56.2% of all audits and 52.4% of all misclassified workers.

Table 2
Analysis of Audits Conducted: 2007-2008

NAICS Category	2007			
	Number of Audits Performed	Number of Misclassified Workers	Percent of Audits Performed	Percent of Misclassified Workers
Construction	409	2,182	13.8%	14.8%
Retail	350	1,658	11.8%	11.2%
Other Services	328	1,129	11.1%	7.7%
Manufacturing	255	1,364	8.6%	9.2%
Health Care & Social Assistance	253	985	8.6%	6.7%
Total of Five Highest Industry Targets	1,595	7,318	54.0%	49.6%
Other Audits	1,360	7,439	46.0%	50.4%
Total of Audits	2,955	14,757	100.0%	100.0%
NAICS Category	2008			
	Number of Audits Performed	Number of Misclassified Workers	Percent of Audits Performed	Percent of Misclassified Workers
Construction	474	2,812	17.3%	26.8%
Retail	399	914	14.6%	8.7%
Health Care & Social Assistance	230	495	8.4%	4.7%
Manufacturing	229	498	8.4%	4.7%
Other Services	208	775	7.6%	7.4%
Total Five Highest Industry Targets	1,540	5,494	56.2%	52.4%
Other Audits	1,200	4,999	43.8%	47.6%
Total of Audits	2,740	10,493	100.0%	100.0%

Source: Indiana Department of Workforce Development. 2007-2008 Results

The IDWD reported five types of unemployment insurance audits (Table 5, Page 38). The IDWD conducted 16,016 audits from 2004 through 2008. For the period 2007-2008, for which we have detailed audit data, 5,695 audits were conducted. The largest category of audits was audit type "randomly selected". The number of random audits was 3,408 or 59.8% of the total number of audits. For the period 2007-2008, the 2nd largest category was audit type "industry targeted." The number of industry targeted audits was 2,021 or 35.5% of the total number of audits. These two audit types accounted for 95.3% of the total number of audits. The other types of audits were "blocked claim related", "anonymous tip", and "federal certification" (see definitions in Table 5, Page 38).

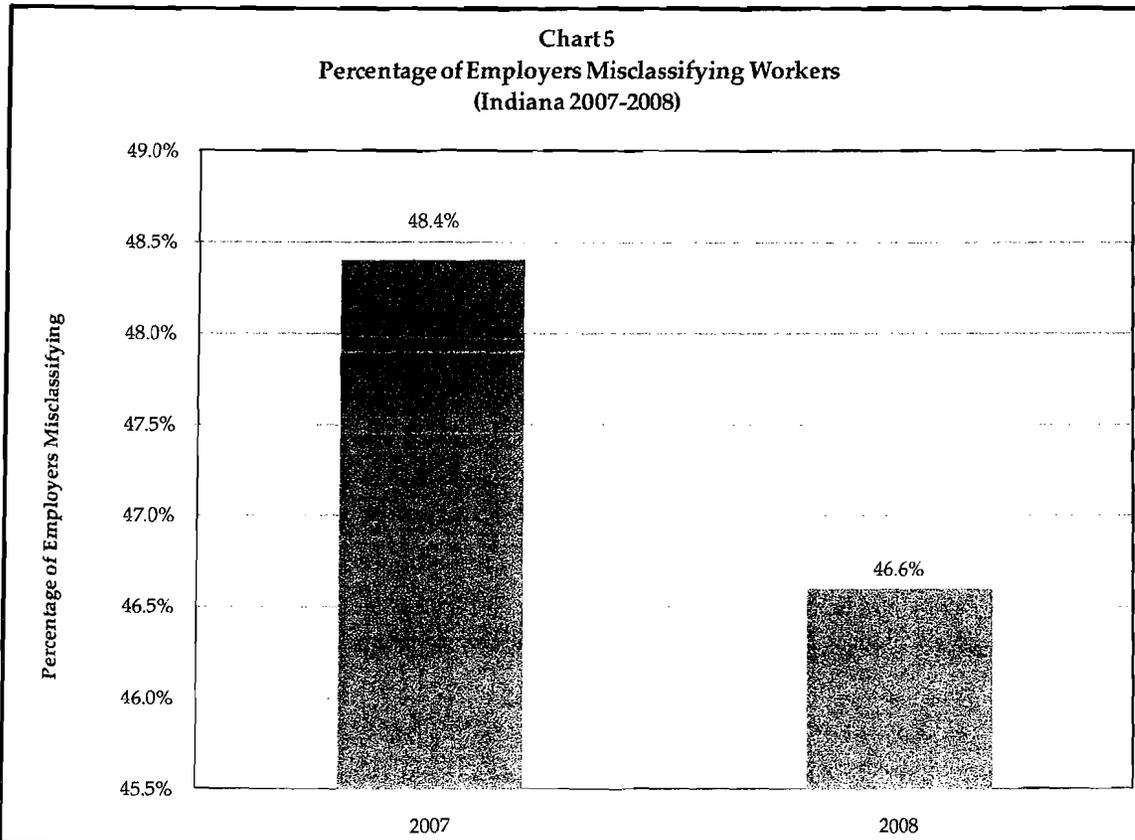
Using aggregate level data on unemployment insurance tax audits provided by the IDWD, we have developed reliable estimates of statewide misclassification. Using methodologies developed in earlier studies, we present projections of the economic costs of misclassification for unemployment insurance, income taxes (state and local), and the worker compensation system in Indiana.

Some studies of misclassification in other states have been able to obtain de-identified data from unemployment insurance tax audits from which to derive estimates of misclassification. De-identified data is data that does not identify an individual or company and from which there is no reasonable basis to believe that the information provided can be used to identify an individual or a company. We were provided with aggregate level data for 2007-2008. From this data we have been able to reliably estimate the overall rate of misclassification in Indiana.

III. Extent of Misclassification in Indiana

When Employers Engage in Misclassification

For the years 2007-2008, state audits found that, on average, 47.5% of Indiana employers that were audited were found to have misclassified workers as independent contractors (Chart 5). The Wisconsin Unemployment Division found that 44% of the workers they investigated during the employer audits were misclassified.³⁶ In the Planmatics, Inc. study conducted for the U.S. Department of Labor, they reported misclassification rates in Colorado and Connecticut of 34% and 42%, respectively.³⁷



³⁶ Report of the Worker Misclassification Task Force, Submitted to Secretary Roberta Gassman, Wisconsin Department of Workforce Development (June 2009).

³⁷ Planmatics, Inc. For the U.S. Department of Labor – Employment and Training Administration. *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*. February, 2000.

Targeted audits accounted for 35.5% of total audits in Indiana for 2007-2008. Because misclassification has a higher likelihood of occurring in these targeted industry sectors based upon past studies, this represents a moderate-upper bound of the overall misclassification rate in Indiana.

This estimate of misclassification in Indiana translates into an estimate of approximately 73,629 employers statewide annually for 2007-2008, of which 8,200 were estimated to be in the construction sector. The rate of misclassification decreased from 2007 to 2008 from 48.4% to 46.6%, respectively. For 2008, this translates into an estimate of approximately 72,299 employers statewide in 2008, of which 8,052 were estimated to be in the construction sector.

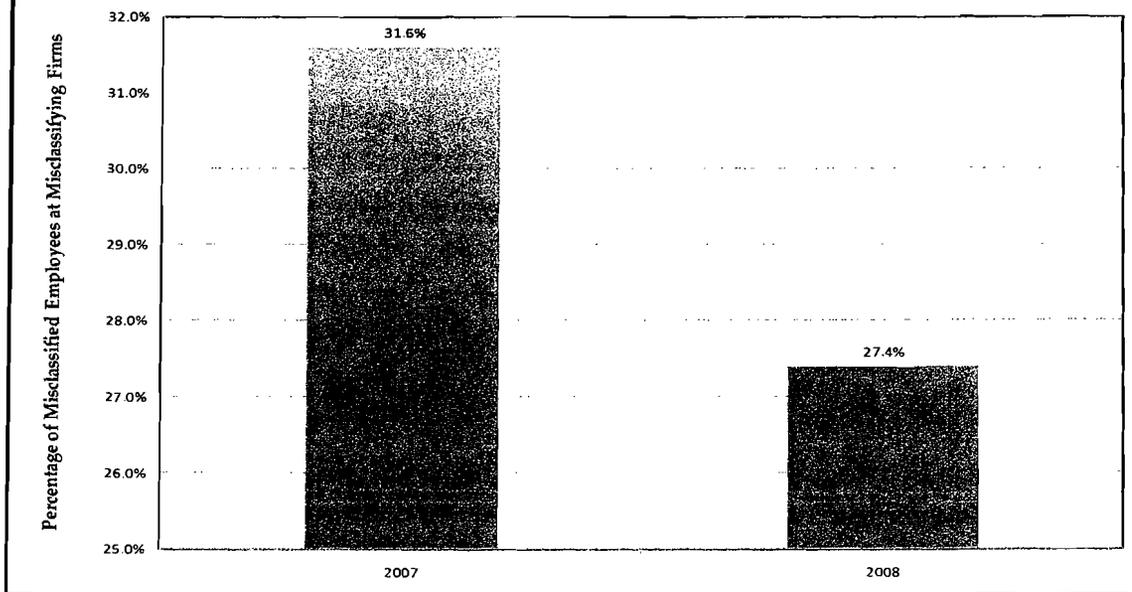
Workers Impacted by Misclassification

To assess the impact of workers impacted by misclassification, we use the methodology used in earlier studies (See Carre and Wilson, 2004; Kelsay, Sturgeon, Pinkham, 2006). First, in order to determine the *severity* of the impact of misclassification we determine the percent of workers misclassified *within employers found to have misclassified workers*. In order to estimate the *extent* of misclassification, we determine the percentage of workers that are misclassified among *all workers in the state*.

Severity of the Impact of Misclassification

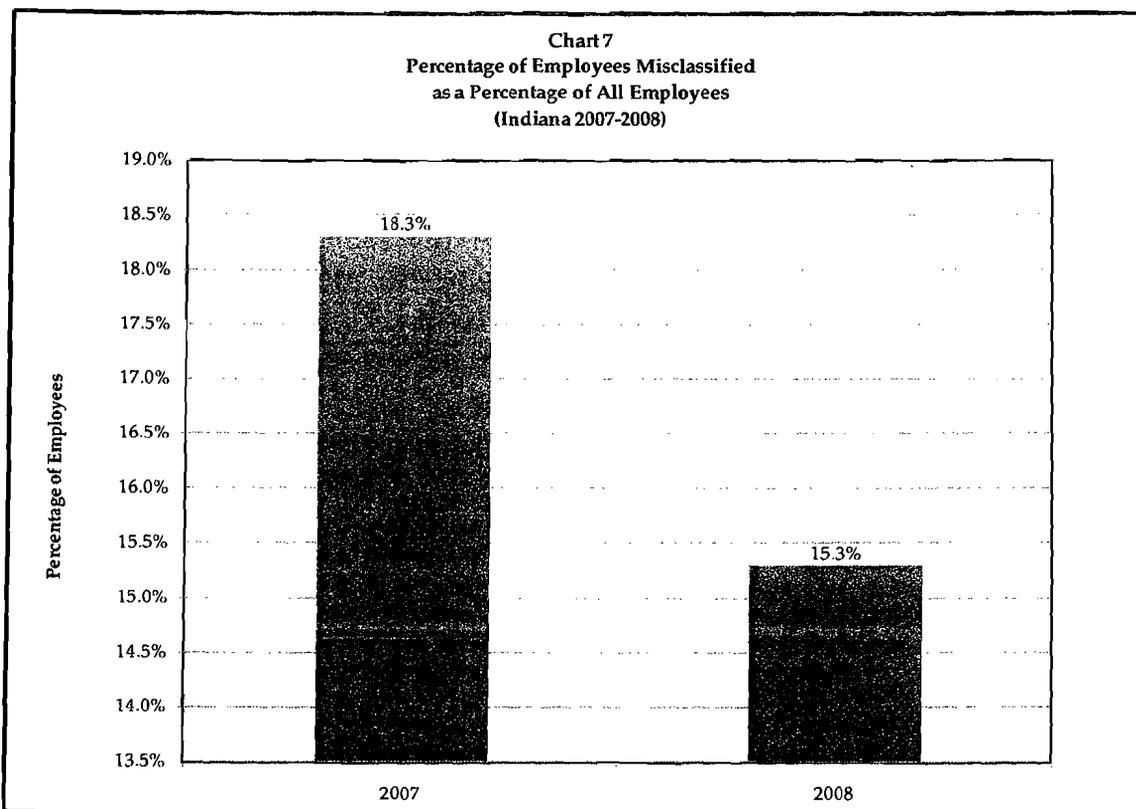
When employers misclassify in Indiana, the results show that this behavior is pervasive. An analysis of the percentage of employees that are misclassified indicates that misclassification is a common occurrence rather than a random event in those companies that do misclassify. According to our estimates, 31.6% of workers are misclassified by employers that were found to be misclassifying for 2007; for 2008, 27.4% of workers are misclassified by employers that were found to be misclassifying (Chart 6).

Chart 6
Percentage of Misclassified Workers
as a Percentage of Workforce at Misclassifying Employers
(Indiana 2007-2008)



Extent of Misclassification

From our analysis of the labor force of all employers in Indiana (those that misclassify and those that do not), we estimate that 16.8% of employees in Indiana are misclassified as independent contractors for the period 2007-2008; for 2007 and 2008, we found that 18.3% and 15.3%, respectively, of employees in Indiana are misclassified as independent contractors (Chart 7).



The estimated number of employees statewide that are affected by the improper misclassification is estimated at 418,086 annually for the period 2007-2008. For 2008, the estimated number of employees affected by misclassification was 377,742. For the construction sector the estimated number of employees affected by misclassification was 24,891 annually for the period 2007-2008. The estimated number of employees in the construction sector affected by misclassification was 24,323 in 2008.

IV. Implications of Employee Misclassification in Indiana

Misclassification of employees has a negative financial impact on individual workers, Indiana state and local governments, and the private sector in Indiana. In addition, the integrity of the bidding process, upon which a merit-based free-market economy relies, is sabotaged by unscrupulous employers seeking an illegal competitive advantage. Here, we estimate the economic implications of employee misclassification with respect to (1) the unemployment insurance tax revenues, (2) state and local income tax revenues, and (3) the amount of worker' compensation insurance premiums not properly paid due to misclassification.

Implications of Employee Misclassification for Unemployment Insurance Tax

As stated earlier, the problem of misclassification has implications for the unemployment insurance system in several ways. Firms that misclassify employees as independent contractors pay no unemployment insurance on those workers. The violating employer saves additional money because the large majority of laid-off employees are never charged to their unemployment insurance account. This places those employers who are correctly classifying their employees at a distinct competitive disadvantage over those employers who are misclassifying their employees. This behavior has distinct budgetary implications for the unemployment insurance fund in Indiana.

We estimate that the unemployment insurance system has lost an average of \$36.7 million annually for the period 2007-2008 in unemployment insurance taxes that are not levied on the payroll of misclassified workers as they should be. For 2008, we estimate that the unemployment insurance system in Indiana lost \$30.4 million in unemployment insurance taxes. A portion of this lost revenue may be recaptured when an audit reveals a misclassified worker where contributions are due. In 2008, for example, the amount of net contributions recaptured from their audits was approximately \$1.02 million; equaling 2.8% of the total amount that we project was not collected in 2008.³⁸

³⁸ In Illinois, our study found that the net amount recaptured from their audits was approximately 2.0% of the total amount we projected was not collected (Kelsay, Sturgeon, and Pinkham, 2006).

employers misclassify.⁴⁴ Misclassification offers employers an opportunity to avoid paying the high cost of these insurance premiums. This allows those employers who misclassify employees as independent contractors to underbid employers who correctly classify workers as employees. Therefore, in the construction sector, workers compensation premium costs have increasingly fallen on those contractors who classify their employees appropriately. It has also been reported that after an injury has occurred many independent contractors are simply converted to employee status in order to obtain coverage under the company's worker's compensation policy, resulting in payment of benefits even though premiums were not collected.⁴⁵

According to a report on worker's compensation rates in Indiana, the 2008 average worker's compensation rate statewide was \$2.06 per \$100 of payroll. Based upon this workman's compensation rate, we estimate that for the period 2007-2008, an annual average of \$24.1 million of premiums were not properly paid for misclassified workers. For 2008, we estimate that \$26.3 million of worker's compensation insurance premiums were not properly paid for misclassified workers. When these annual premiums are not paid by those employers who misclassify, it results in raising the premiums that are charged to those employers who do correctly classify their employees.

Worker's compensation premiums are much higher in the construction industry. As reported, the statewide rate for all industries averaged \$2.06 in 2008 (per \$100 in payroll). However, within construction, rates are substantially higher. For example, the workman compensation rate for Carpentry (Class 5403) was \$7.29 per \$100 of payroll and Roofing-All Kinds (Class 5551) was \$10.88 per \$100 of payroll.⁴⁶

We present two estimates for worker's compensation premiums in construction trades in Indiana based upon (1) a rate of \$5 per \$100 of payroll and (2) a rate of \$10 per \$100 of payroll. Based upon a rate of \$5 per \$100, we

⁴⁴ Planmatics, Inc. For the U.S. Department of Labor – Employment and Training Administration. *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*. February, 2000

⁴⁵ "Reconversion from IC [Independent Contractor] to employee status also occurs in order to avoid paying high worker's compensation premiums...[in California]...This practice was prevalent in the other states also." (p. 30); and "...the retroactive use of workers' compensation [when they are injured]...The insurers have to pay benefits for workers they never received premiums for." (p. 76). Planmatics (2000)

⁴⁶ Oregon Department of Consumer & Business Services. *Oregon Workers' Compensation Premium rate Ranking, Calendar Year 2008*. March 2009.

For the construction sector, we estimate that the unemployment insurance system in Indiana has lost an average of \$2.2 million annually for the period 2007-2008 in unemployment insurance taxes that were not levied on the payroll of misclassified workers in construction as they should have been. For 2008, we estimate that the unemployment insurance system in Indiana lost \$2.0 million in unemployment insurance taxes in the construction sector.

Implications of Employee Misclassification for State Income Tax Revenue

According to published data workers misclassified as independent contractors are known to under-report their personal income because they do not have their taxes withheld. Also employees misclassified as independent contractors can reduce their tax liability by deducting certain expenses that employees are not entitled to deduct. For example, independent contractors can deduct expenses for automobiles, homes, medical insurance, retirement plans, and business trips. As a result Indiana suffers a loss of state income tax revenue. According to published IRS figures, wage earners report 99% of their wages. Non-wage earners report approximately 68% of their income. This represents a gap of 31% in reported income. Other estimates report the gap as high as 50%. The IRS reports that when informational returns (e.g., 1099 Miscellaneous Income) are examined, misclassified workers reported 77% of that income on their tax returns, but reported only 29% of the income not covered by informational returns (e.g., wages paid in cash).³⁹

The State of Indiana imposes a flat 3.4% income tax on income. We assume that personal exemptions and federal exemptions are fully incorporated into their reported tax returns and we do not apply these exemptions to unreported income. We also do not report the loss in federal tax revenue as a result of misclassification. The Internal Revenue Service reported that in its last comprehensive study on misclassification in 1984, about 15% of employers misclassified a total of 3.4 million employees as independent contractors, resulting in an estimated revenue loss of \$1.6 billion (in 1984 dollars)⁴⁰ According to a 2009 report by the Treasury Inspector General for Tax Administration, the IRS's most recent estimate of the cost of misclassification is \$54 billion in the

³⁹ Tax Administration: Issues in Classifying Workers as Employees or Independent Contractors. United States General Accounting Office. GAO/T-GGD-96-130.

⁴⁰ Employee Misclassification. Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention. United States General Accounting Office. GAO-09-717.

underreporting of employment tax and losses of \$15 billion in unpaid FICA taxes and UI taxes.⁴¹ The \$15 billion estimate is based on 1984 data that has not been updated and, according to the IRS, may be substantially higher.

We present two estimates for lost income taxes. The first estimate is based upon the assumption that 30% of the income of misclassified workers is not reported; our second estimate is based upon the assumption that 50% of the income of misclassified workers is not reported. For our calculations with respect to lost state revenues, we derive the annual earnings of all workers in the State of Indiana and the annual earnings of construction workers in the State of Indiana.⁴²

Based upon an estimate that 30% of the income of misclassified workers is not reported, we estimate that an average of \$147.5 million of Indiana state income tax revenues were lost annually during the period 2007-2008 due to unreported income. For 2008, we estimate that \$134.8 million of Indiana state income tax revenues were lost. In the construction sector we estimate that an average of \$10.7 million of Indiana state income tax revenues were lost annually for 2007-2008. For the year 2008, we estimate that \$10.6 million of Indiana state income tax revenues were lost from construction sector income not reported.

Based upon an estimate that 50% of the income of misclassified workers is not reported, we estimate that an average of \$245.8 million of Indiana state income tax revenues were lost annually during the period 2007-2008 due to unreported income. For 2008, we estimate that \$224.6 million of Indiana state income tax revenues were lost. In the construction sector we estimate that \$17.7 million of Indiana state income tax revenues were lost during the period 2007-2008. For 2008, we estimate that \$17.8 million of Indiana state income tax revenues were lost from construction sector income not reported.

⁴¹ Treasury Inspector General for Tax Administration. *While Actions have been Taken to Address Worker Misclassification, an Agency-Wide Employment Tax Program and Better Data are Needed*. February 4, 2009. Reference Number: 2009-30-035.

⁴² We obtained the average annual earnings for all private sector employees and annual earnings for the construction sector from the United States Bureau of Labor Statistics. Local Area Unemployment Statistics. Series ID: LASST183000003, LASST183000004, LASST183000005, LASST183000006. For all private sector employees in Indiana, the average annual salary for 2007-2008 was \$48,026; for the construction sector, the average annual earnings for 2007-2008 were \$45,948.

Implications of Employee Misclassification for Local Income Tax Revenue

Indiana has allowed local governments to adopt local income taxes since 1974. The three forms of local income taxes are the County Adjusted Gross Income tax (CAGIT), the County Option Income Tax (COIT), and the County Economic Development Tax (EDIT or CEDIT). As of 2009, 91 counties have adopted local income taxes, and local governments receive about \$1.5 billion in local income tax revenues. The average tax rate of CAGIT, COIT, and CEDIT revenue bases for local governments in Indiana was 1.38% for the 91 counties.⁴³

Based upon an estimate that 30% of the income of misclassified workers is not reported, we estimate that an average of \$59.9 million of Indiana local government income tax revenues were lost annually during the period 2007-2008 due to unreported income. For 2008, we estimate that \$54.7 million of Indiana local income tax revenues were lost. In the construction sector, we estimate that \$4.3 million of Indiana local government income tax revenues were lost during the period 2007-2008. For 2008, we estimate that \$4.3 million of Indiana local government income tax revenues were lost from construction sector income not reported.

Based upon an estimate that 50% of the income of misclassified workers is not reported, we estimate that an average of \$99.8 million of Indiana local government tax revenues were lost annually during the period 2007-2008 due to unreported income. For 2008, we estimate that \$91.2 million of Indiana local government income tax revenues were lost. In the construction sector, we estimate that \$7.2 million of Indiana local government income tax revenues were lost during the period 2007-2008. For 2008, we estimate that \$7.2 million of Indiana local government income tax revenues were lost from construction sector income not reported.

Implications of Employee Misclassification for Worker Compensation

Misclassification also impacts worker's compensation insurance. Among other effects the costs are higher for employers that follow the rules, placing them at a distinct disadvantage. It was reported by Planmatics (2000) that the cost of worker's compensation insurance premiums is the primary reason why

⁴³ State of Indiana. Department of Revenue. Departmental Notice #1. Effective Dec 1, 2009. (R11 /12-09)

estimate the annual cost shift of premiums to be \$4.2 million for the period 2007-2008. For 2008, we estimate the annual cost shift of premiums to be \$4.6 million. Based upon a rate of \$10 per \$100 of payroll, we estimate the annual cost shift in premiums to be \$8.4 million. For 2008, we estimate the annual cost shift of premiums to be \$9.2 million.

Again, annual premiums not paid by misclassifying employers may result in an increase of premiums paid by employers who classify their employees correctly.

V. Comparison of Indiana Estimates with Other States

The low estimates presented in Table 1 are generally based upon random audits where the rate of misclassification is lowest. With high levels of random audits, it is reported that from 90%-100% of the audit group was randomly sampled. This places the estimates of misclassification in this group in a range from 5-14%. The moderate estimates presented in Table 1 are based upon a range of audit types ranging from random to non-random. With moderate levels of random audits, it was reported that from 50%-56% of the audit group was randomly audited. The estimates of misclassification in this group range from 12%-23%. The high estimates presented in Table 1 are based primarily upon non-random audits. With low levels of random audits, it was report than from 1%-18% of the audit group was randomly audited. For all industries reported in Indiana, the rate of employee misclassification was 16.8% for the period 2007-2008, with 59.8% random audits and 35.5% targeted audits.

VI. Conclusions

Our study is a first step toward illustrating the dimensions of and the negative economic impacts associated with the problem of employer misclassification in the State of Indiana. Our study has confirmed the fact that misclassification is a severe problem which impacts the public and private sectors in Indiana. We have shown that misclassification has direct and significant impacts on workers, employers, taxpayers and markets. Table 3 summarizes the losses to the State of Indiana. Under Option 1, the estimated annual economic loss for the period 2007-2008 to Indiana is \$268,200,000; under option 2, the estimated annual economic loss for the period 2007-2008 to Indiana is \$406,400,000.

Table 3
Summary of Losses to Indiana as a Result of Misclassification of Employees

State of Indiana	Option 1 ¹		Option 2 ²	
	2007-2008 Average	2008	2007-2008 Average	2008
1. Lost Unemployment Insurance Taxes	\$36,700,000	\$30,400,000	\$36,700,000	\$30,400,000
2. Lost State Income Taxes	\$147,500,000	\$134,800,000	\$245,800,000	\$224,600,000
3. Lost Local Income Taxes	\$59,900,000	\$54,700,000	\$99,800,000	\$91,200,000
4. Lost Worker's Compensation Premiums	\$24,100,000	\$26,300,000	\$24,100,000	\$26,300,000
Total Economic Losses: State of Indiana	\$268,200,000	\$246,200,000	\$406,400,000	\$372,500,000
State of Indiana: Construction Industry				
1. Lost Unemployment Insurance Taxes	\$2,200,000	\$2,000,000	\$2,200,000	\$2,000,000
2. Lost State Income Taxes	\$10,700,000	\$10,600,000	\$17,700,000	\$17,800,000
3. Lost Local Income Taxes	\$4,300,000	\$4,300,000	\$7,200,000	\$7,200,000
4. Lost Worker's Compensation Premiums	\$4,200,000	\$4,600,000	\$8,400,000	\$9,200,000
Total Economic Losses: State of Indiana Construction Industry	\$21,400,000	\$21,500,000	\$35,500,000	\$36,200,000

NOTES:

¹ Option 1 assumes that 30% of income is unreported and that the worker's compensation rate for construction is \$5 per \$100 of payroll.

² Option 2 assumes that 50% of income is unreported and that the worker's compensation rate for construction is \$10 per \$100 of payroll.

The Office of the Inspector General for the U.S. Department of Labor reported on best practices to improve identification of noncompliant employers for state UI field audits.⁴⁷ The IDWD should be lauded for the implementation of certain of these best practices. This has resulted in Indiana ranking in the top tier of states for return per audit hour. Among these best practices that Indiana uses are a selective process based upon NAICS code for determining targeted industries and employers and the implementation of blacked claim audits. As a result, IDWD is allocating the department's scarce resources toward those

⁴⁷U.S. Department of Labor, Office of Inspector General. *Adopting Best Practices Can Improve Identification of Noncompliant Employers for State UI Field Audits*. Final Report No. 03-99-006-03-315.

industries and/or employers where the problem of misclassification has been shown to be most acute. Certain efficiency measures derived from the audit data reveal that the Indiana Department of Workforce is utilizing its scare resources efficiently (Table 4)

Table 4 Efficiency Measures for Indiana Department of Workforce Development					
	2004	2005	2006	2007	2008
Misclassified Per Audit Hour	0.282	0.331	0.398	0.389	0.344
Net Underreported Taxable Wages for Misclassified Per Audit Hour	\$362.49	\$647.96	\$631.78	\$464.81	\$652.93
Net Underreported Contributions Per Audit Hour	\$11.67	\$18.98	\$26.59	\$24.87	\$33.39

Misclassified per audit hour has increased from 0.282 in 2004 to .344 in 2008, a 21.9% increase; net underreported taxable wages for misclassified per audit hour has increased from \$362.49 in 2004 to \$653.93 in 2008, a 80.1% increase; and net underreported contributions per audit hour has increased from \$11.67 in 2004 to \$33.39 in 2008, a 186.2% increase.

We believe we have shown that workers, businesses, revenue collection agencies, and policy analysts in Indiana will benefit from better documentation of misclassification in Indiana. Furthermore, it seems reasonable to suggest that public officials devote special attention to those employers who intentionally and/or repeatedly violate state statutes regarding misclassification.

As a beginning, we recommend the following steps for consideration by policy makers and public officials in Indiana: (1) the State of Indiana should continue to perform a high degree of "targeted" audits on problem employers like those done in other states,⁴⁸ (2) develop meaningful penalties to deter those employers who intentionally and/or repeatedly violate state laws on misclassification, (3) review current authorities and procedures for the collaboration among revenue, labor, and enforcement agencies so that violations of state statutes will receive a comprehensive and coordinated response with the intent of recovering all payroll-related funds that are due and of deterring future

⁴⁸ Targeted audits are those audits identified where a higher degree of misclassification may be observed. For example, targeted audits might be audits of employers with (1) delinquent filings or (2) multiple delinquent quarters of unemployment insurance due. Planmatics (2000) encouraged states to maintain audit selection criteria that reflect potential noncompliance (e.g. high employee turnover, type of industry, and prior reporting history).

willful violations, and (4) expand outreach to educate employers and employees about classification rules.

Table 5					
Unemployment Insurance Audit Statistics and Audit Definitions for Indiana *					
Audit Activity	2004	2005	2006	2007	2008
Total Audits	3,484	3,481	3,313	2,955	2,270
Total Employers	123,609	123,394	125,955	128,195	128,997
Gross Payroll (Pre Audit)	3,231,025,873	2,013,068,562	2,132,062,272	1,526,285,133	1,294,951,684
Gross Payroll (Post Audit)	3,263,712,198	2,022,003,054	2,193,712,198	1,568,023,579	1,354,796,447
Hours Spent Auditing	46,126	47,095	44,415	38,229	30,487
Audit Types:(1)					
1. Random	NA	NA	NA	1,627	1,781
2. Industry Targeted	NA	NA	NA	1,171	850
3. Blocked Claim Related	NA	NA	NA	80	55
4. Anonymous Tip	NA	NA	NA	65	27
5. Federal Certification	NA	NA	NA	12	27
Audit Results					
Total Employers Misclassifying Workers	NA	NA	NA	1,429	1,278
Total Workers Employers Misclassified	13,023	15,595	17,697	14,866	10,496
Total Employees at Audited Firms	NA	NA	NA	81,074	68,450
Total Employees at Employers Found to be Misclassifying	NA	NA	NA	47,106	38,262
Revenue Data from Audited Employers					
Underreported Taxable Wages for Misclassified	\$24,878,501	\$35,712,138	\$33,257,033	\$23,961,333	\$24,476,600
Contributions for Underreported	\$679,095	\$1,001,965	\$1,289,953	\$1,068,499	\$1,136,984
Overreported Taxable Wages for Misclassified	\$8,158,086	\$5,196,682	\$5,196,682	\$6,192,195	\$4,570,610
Contributions for Overreported	140,897	107,934	108,943	117,853	118,934

* NOTE: Audit statistics in Indiana for the period 2004-2008 provided by the Indiana Department of Workforce Development (IDWD).

(1) Audit definitions [per Indiana Department of Workforce Development]:

1. Random -- Any account that is not selected from the target universe file is placed in the random audit universe file. A random audit sample list is then derived from that universe file.
2. Industry targeted -- Each year in the 3rd quarter prior to building the target audit universe file, the North American Industry Classification System (NAICS) categories are examined in detail by audit supervision to determine what industries will be targeted in order to build the target audit universe file. Historically, these industries have been those which have high incidence of misclassified workers or non-compliance with Indiana law.
3. Blocked Claim -- Field auditors are to request audits of employers from blocked claim investigations, the following situations:
 - a) the employer is not voluntarily complying with the reporting requirements because multiple claimants are missing.
 - b) the employer appears to have misclassified the majority of the employees.
 - c) the employer has been inactive for a period of two or more years, but had employees during that time.
 - d) the employer has been in business for many years, but did not report to the Agency and did not send in reports to the Agency.
4. Anonymous Tip -- Tax Administration or field auditors receive tips from other employers, claimants, or from Benefit Payment Control (BPC) investigators of employers that may be non-compliant or have misclassified workers.
5. Federal Certification -- Discrepancies in wages reported by an employer to IDWD versus those reported to the Federal Government (FUTA).

ESTIMATION METHODS

- I. Calculating the Extent of Employee Misclassification (Percentage of Workers with Misclassified Workers).

We calculated the percentage of all audited employers who were found to be misclassifying, and applied that rate to the total number of UI-covered employees in Indiana. Thus, we assumed that the sample of employers selected for auditing was representative of all UI-covered employers in Indiana.

- II. Calculating the Severity of the Impact of Employee Misclassification (Percentage of Misclassified Workers within Employers Found to be Misclassifying Workers as Independent Contractors).

To estimate the severity of misclassification among employers who would otherwise be covered by unemployment insurance, we assume that the audited employers found to be misclassifying can represent all misclassifying employers in Indiana. We calculated the percentage of workers among those audited employers who were misclassifying workers and applied that result to derive an estimate of the severity of misclassification among all Indiana employers that misclassify workers.

- III. Calculating the Extent of Worker Misclassification (Percentage of all Workers Misclassified as Independent Contractors).

We assumed that the total number of workers employed by audited firms can represent all UI-covered workers in Indiana. In order to estimate the extent of worker misclassification, we calculated the percentage of workers misclassified as a percentage of all workers at the audited firms. We applied this percentage to the total number of UI-covered workers in Indiana.

- IV. Calculating Economic Loss in Unemployment Insurance Taxes

We calculated an estimated average tax loss per worker as a result of misclassification in the audit results and assumed that these workers

could stand as a proxy for all workers in Indiana. This result was multiplied by the estimated number of workers misclassified in Indiana.

Most of these figures are taken from the information provided by the IDWD (Table 5, Page 38). For example, divide audited "Total Workers Employers Misclassified" in 2008 (10,496) by "Total Employees" audited in 2008 (68,450) to obtain a 15.3% rate of misclassification. Then, multiply total Indiana private sector employment for 2008 (2,463,458) times the 15.3% misclassification rate to determine that 377,742 statewide private sector employees were misclassified in 2008. This figure will be multiplied by the average unpaid unemployment insurance tax per employee. To determine that figure, we divide the 2008 "UI Taxes (net underreported contributions) for Misclassified" (\$1,019,131) by "Total Workers Employers Misclassified" in 2005 (10,496). For 2008, this results in an average unpaid unemployment insurance tax per employee of \$97.10. We next multiply 377,742 times \$97.10 for the total estimated loss of uncollected unemployment insurance taxes for Indiana in 2008 of \$36.7 million.

V. Calculating the Loss in Indiana Income Tax

In order to calculate the loss in state income taxes for the construction sector and statewide, we multiplied the estimated number of construction workers and statewide workers by an estimated average annual earnings for construction workers and workers statewide.

For the construction sector, we estimated the number of misclassified construction workers in Indiana annually for 2007-2008 (24,891 workers) and multiplied that by the estimated annual earnings of construction workers in Indiana from 2007-2008 (\$45,948). For workers statewide, we estimated the number of misclassified workers in Indiana annually for 2007-2008 (418,056) and multiplied that by the estimated annual earnings for worker in Indiana from 2007-2008 (\$38,026)

For the construction sector in 2008, we estimated the number of misclassified construction workers in Indiana in 2008 (24,323) and multiplied that by the estimated annual earnings of construction workers in Indiana in 2008 (\$47,198). For workers statewide in 2008, we estimated the number of misclassified in Indiana in 2008 (377,742) and multiplied

that by the estimated annual earnings for workers in Indiana in 2008 (\$38,454).

We then provided two estimates of ("income not reported"), using alternative assumptions regarding the amount of income not reported (30% and 50%). Multiply these results by 3.4% (Indiana State Income Tax Rate) yielded a range of two estimates for loss state income tax revenues for the construction sector and all workers in Indiana.

VI. Calculating the Loss in Indiana Local Government Income Tax

We provide two estimates of ("income not reported"), using alternative assumptions regarding the amount of income not reported (30% and 50%) as we did in calculating lost state income tax revenue. We multiply these results by 1.38% (Average Local Indiana Income Tax for 91 counties). These results yield a range of two estimates for loss state income tax revenues for the construction sector and all workers in Indiana.

VII. Calculating the Revenue Losses on Workers' Compensation Premiums

We present two estimates for lost workers' compensation premiums. Our first estimate is for lost workers' compensation premiums statewide. Using the quarterly census of employment and wages for Indiana, we calculated gross private sector payroll reported in Indiana. We then calculated the unreported wages as percentage of gross payroll reported in the audit results and applied this percentage to total wages reported for private sector wages by Indiana. We then multiplied this by the \$2.06 workers' compensation premium per \$100 of payroll (2008 statewide average).

For workers in the construction sector, we provided two estimates of lost workers compensation premiums. Workers' compensation premiums are substantially higher than in other sectors and we, therefore, present estimates based upon (1) \$5 per \$100 of payroll and (2) \$10 per \$100 of payroll.

We then calculated the unreported wages as percentage of gross payroll in construction reported in the audit results and applied this percentage to total construction wages reported for Indiana. We then multiplied this by

workers' compensation premiums per \$100 of payroll of \$5 and \$10, respectively.

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Summary of the Use of Proceeds from Civil Forfeitures
Prepared for the Pension Management Oversight Commission
Margaret (Peggy) Piety, Staff Attorney, Indiana Legislative Services Agency
September 29, 2010

I. Civil Forfeitures Prosecuted in Circuit, Superior, or County Court (IC 34-24-1-4(d))
(Attachment 1)

(d) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall . . . :

- (1) determine the amount of law enforcement costs; and
- (2) order that:

(A) the property, if it is not money or real property, be sold under [IC 34-24-1-6] by the sheriff of the county in which the property was seized, and if the property is a vehicle, this sale must occur after any period of use specified in [IC 34-24-1-4 (c)];

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be:

- (i) deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; or
- (ii) deposited in the general fund of a unit if the property was seized by a local law enforcement agency of the unit for an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism; and

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.

**Exhibit 5
Pension Management
Oversight Committee
September 29, 2010**

II. Civil Forfeitures Transferred to Federal Authorities (IC 34-24-1-9) (Attachment 2)

(a) Upon motion of a prosecuting attorney under IC 35-33-5-5(j), property seized under this chapter must be transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

(b) Money received by a law enforcement agency as a result of a forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice must be deposited into a nonreverting fund and may be expended only with the approval of:

- (1) the executive (as defined in IC 36-1-2-5), if the money is received by a local law enforcement agency; or
- (2) the governor, if the money is received by a law enforcement agency in the executive branch.

The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations.

III. Common School Fund (Art. 8 of the Constitution of the State of Indiana and IC 20-49)
(Attachments 3-5)

A. Civil forfeiture amounts are only one source of funding for the common school fund. See Article 8, Section 2, of the Constitution of the State of Indiana.

B. Article 8, Section 3 of the Constitution of the State of Indiana

Section 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and **the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.**

C. Uses for the Common School Fund:

- (1) Assist local school corporations and school townships in financing school building construction and educational technology programs through school loans (IC 20-49-3; IC 20-49-4; IC 20-49-6)
- (2) Make advances to school corporations and to school townships in order to aid in disaster loss (IC 20-49-3; IC 20-49-4)
- (3) Make advances to school corporations and to school townships for certain anticipated transfer tuition costs (IC 20-49-5)
- (4) Make advances to charter schools for certain operational costs (IC 20-49-7)
- (5) Assist through loans certain school corporations that experience a shortfall of at least 5% in the collection of property tax levies because of certain reassessment errors or changes (IC 20-49-8.2; this chapter expires December 31, 2010)

Chapter 3. State Administration of Common School Fund

20-49-3

20-49-3-1

Sec. 1. This chapter applies only to money in the fund that is not being held in trust by the several counties under IC 20-42.

As added by P.L.2-2006, SEC.172.

20-49-3-2

Sec. 2. This chapter is in furtherance of the duties that are imposed exclusively upon the general assembly by the Constitution of the State of Indiana in connection with the:

- (1) maintenance of a general and uniform system of common schools; and
- (2) investment and reinvestment of the common school fund.

This chapter shall be liberally construed to carry out the purposes of the Constitution of the State of Indiana.

As added by P.L.2-2006, SEC.172.

20-49-3-3

Sec. 3. As used in this chapter, "fund" refers to the common school fund in the custody of the treasurer of state.

As added by P.L.2-2006, SEC.172.

20-49-3-4

Sec. 4. (a) The treasurer of state is the exclusive custodian of the fund not held in trust by the several counties under IC 20-42-1.

(b) The state board of finance has full and complete management and control of the fund. The state board of finance shall invest the fund as provided in this title.

As added by P.L.2-2006, SEC.172.

20-49-3-5

Sec. 5. The state board shall administer the fund and this chapter.

As added by P.L.2-2006, SEC.172.

20-49-3-6

Sec. 6. The state board may adopt rules under IC 4-22-2 necessary to administer the fund to carry out this chapter and IC 20-49-4.

As added by P.L.2-2006, SEC.172.

20-49-3-7

Sec. 7. The fund interest balance is annually appropriated for the support of the common schools.

As added by P.L.2-2006, SEC.172.

20-49-3-8

Sec. 8. The fund may be used to make advances:

- (1) to school corporations, including school townships, under IC 20-49-4 and IC 20-49-5;
- (2) under IC 20-49-6; and
- (3) to charter schools under IC 20-24-7-3(c) and IC 20-49-7.

As added by P.L.2-2006, SEC.172. Amended by P.L.146-2008, SEC.529.

20-49-3-9

Sec. 9. The state board shall consider and accept or reject, in its discretion, applications of school building corporations created under IC 21-5-11 (before its repeal) or IC 20-47-2 for the purchase of first mortgage bonds issued by the corporation under IC 21-5-11 (before its repeal) or IC 20-47-2.

As added by P.L.2-2006, SEC.172.

ATTACHMENT 4

20-49-3-10

Sec. 10. Except as provided in this chapter, the fund shall be invested in:

- (1) bonds, notes, certificates, and other valid obligations of the United States;
- (2) bonds, notes, debentures, and other securities issued by any federal instrumentality and fully guaranteed by the United States;
- (3) bonds, notes, certificates, and other valid obligations of any state of the United States or any county, township, city, town, or other political subdivision in Indiana that are issued under law, the issuers of which, for five (5) years before the date of the investment, have promptly paid the principal and interest on the bonds and other legal obligations in lawful money of the United States; or
- (4) bonds, notes, or other securities issued by the Indiana bond bank and described in IC 5-13-10.5-11(3).

As added by P.L.2-2006, SEC.172.

20-49-3-11

Sec. 11. (a) This section applies to a county that:

- (1) has not elected to surrender custody of any part of the fund to the state; and
- (2) has an insufficient amount of unloaned money in the fund when added to the amount of unloaned money in the congressional township school fund, as shown by a report of the county auditor and county treasurer, to make all loans for which the county auditor has applications.

(b) Upon petition of the board of commissioners of the county, the state board of finance may allocate to the county making the application the amount that the state board of finance determines is necessary.

As added by P.L.2-2006, SEC.172.

20-49-3-12

Sec. 12. (a) The state board of finance shall direct all disbursement from the fund. The auditor of state shall draw the auditor of state's warrant on the treasurer of state, on a properly itemized voucher officially approved by:

- (1) the president of the state board of finance; or
- (2) in the absence of the president, any member of the state board of finance.

(b) Except as otherwise provided by this chapter, all securities purchased for the fund shall be deposited with and remain in the custody of the state board of finance. The state board of finance shall collect all interest or other income accruing on the securities, when due, together with the principal of the securities when the principal matures and is due. Except as provided by subsection (c), all money collected under this subsection shall be:

- (1) credited to the proper fund account on the records of the auditor of state;
- (2) deposited with the treasurer of state; and
- (3) reported to the state board of finance.

(c) All money collected under an agreement that is sold, transferred, or liquidated under IC 20-49-4-23 shall be immediately transferred to the purchaser, transferee, or assignee of the agreement.

As added by P.L.2-2006, SEC.172.

20-49-3-13

Sec. 13. (a) The state board of finance may:

- (1) make all rules;
- (2) employ all help;
- (3) purchase all supplies and equipment; and
- (4) incur all expense;

necessary to properly carry out this chapter.

(b) The expense incident to the administration of this chapter shall be paid from any money in the state treasury not otherwise appropriated upon the warrant of the auditor of state issued on a properly itemized voucher approved by the president of the state board of finance.

As added by P.L.2-2006, SEC.172.

20-49-3-14

Sec. 14. A field examiner assigned by the state examiner shall annually examine the status of the fund. Upon

completion of the examination, the examiner performing the duty shall prepare a report of the examination. The report must show:

- (1) all necessary pertinent information;
- (2) the balance of the fund's principal at the close of the previous examination;
- (3) the amount of interest and principal paid by each county to the state board of finance since the close of the previous examination;
- (4) the balance of principal due at the date of the closing of the report;
- (5) a statement of receipts and disbursements by the state board of finance;
- (6) a list of the securities found to be in the possession of the state board of finance;
- (7) the amount of each security; and
- (8) the total amount of all the securities held in custody.

The appropriate officer of the state board of finance shall sign the list described in subdivision (6) in duplicate. The original signed list shall be deposited with the state board of accounts, and the duplicate of the signed list shall be kept in the files of the treasurer of state.

As added by P.L.2-2006, SEC.172.

20-49-3-15

Sec. 15. This chapter may not be construed to relieve the county auditor of any county or any other county officer of any liability fixed by law not specifically changed by this chapter.

As added by P.L.2-2006, SEC.172.

20-49-3-16

Sec. 16. (a) All fines, forfeitures, and other revenue that, by law, accrue to the fund shall be collected as provided by law. The money shall be paid into the state treasury and becomes a part of the fund in the custody of the treasurer of state. The county auditor shall keep a record of all fines and forfeitures and all other revenue that, by law, accrues to the fund. Semiannually on May 1 and November 1, the county auditor shall issue the county auditor's warrant payable to the treasurer of state in an amount equal to the total collections in the six (6) months preceding of fines and forfeitures and all other revenue that, by law, accrues to the fund or to the permanent endowment fund.

(b) At the time of payment of principal, interest, or accretions to the treasurer of state, the county auditor shall file a report with the auditor of state. The report must set forth the amount of the following:

- (1) The county's common school fund.
- (2) Interest on the county's common school fund.
- (3) Fines and forfeitures from the county.
- (4) All other accretions included in a payment from the county to the treasurer of state.

Forms for making the report shall be furnished by the auditor of state.

(c) All money collected as interest on the fund shall be paid into the state treasury and shall be distributed for the uses and purposes provided by law.

As added by P.L.2-2006, SEC.172.

Chapter 4. Advancement From Common School Fund; Buildings; Technology Programs

20-49-4

20-49-4-1

Sec. 1. This chapter applies to school corporations organized and formed through reorganization under IC 20-23-4, IC 20-23-6, or IC 20-23-7 and school townships under IC 20-23-3.

As added by P.L.2-2006, SEC.172.

20-49-4-2

Sec. 2. Sections 9, 12, and 13 of this chapter do not apply if a school corporation sustains loss from a disaster.

As added by P.L.2-2006, SEC.172.

20-49-4-3

Sec. 3. As used in this chapter, "advance" means an advance under this chapter from the fund.
As added by P.L.2-2006, SEC.172.

20-49-4-4

Sec. 4. As used in this chapter, "disaster" refers to loss by:
(1) fire;
(2) wind;
(3) cyclone; or
(4) other disaster;
of all or a major part of a school building or school buildings.
As added by P.L.2-2006, SEC.172.

20-49-4-5

Sec. 5. As used in this chapter, "educational technology program" means the:
(1) purchase, lease, or financing of educational technology equipment;
(2) operation of the educational technology equipment; and
(3) training of teachers in the use of the educational technology equipment.
As added by P.L.2-2006, SEC.172.

20-49-4-6

Sec. 6. As used in this chapter, "fund" refers to the common school fund in the custody of the treasurer of state.
As added by P.L.2-2006, SEC.172.

20-49-4-7

Sec. 7. As used in this chapter, "school building construction program" means the purchase, lease, or financing of land, the construction and equipping of school buildings, and the remodeling, repairing, or improving of school buildings by a school corporation:
(1) that sustained a loss from a disaster;
(2) whose adjusted assessed valuation (as determined under IC 6-1.1-34-8) per ADM is within the lowest forty percent (40%) of the assessed valuation per ADM when compared with all school corporation adjusted assessed valuation (as adjusted (if applicable) under IC 6-1.1-34-8) per ADM; or
(3) with an advance under this chapter outstanding on July 1, 1993, that bears interest of at least seven and one-half percent (7.5%).
The term does not include facilities used or to be used primarily for interscholastic or extracurricular activities.
As added by P.L.2-2006, SEC.172. Amended by P.L.113-2010, SEC.99.

20-49-4-8

Sec. 8. The state board may advance money to school corporations to be used for:
(1) school building construction programs; and
(2) educational technology programs;
as provided in this chapter.
As added by P.L.2-2006, SEC.172.

20-49-4-9

Sec. 9. Priority of advances for school building construction programs shall be made to school corporations that have the least amount of adjusted assessed valuation (as determined under IC 6-1.1-34-8) per student in ADM.
As added by P.L.2-2006, SEC.172.

20-49-4-10

Sec. 10. Priority of advances for educational technology programs shall be on whatever basis the state board, after consulting with the department and the budget agency, periodically determines.
As added by P.L.2-2006, SEC.172.

20-49-4-11

Sec. 11. A school corporation desiring to obtain an advance must submit an application to the state board in the form established by the state board, after consulting with the department and the budget agency.
As added by P.L.2-2006, SEC.172.

20-49-4-12

Sec. 12. To qualify for an advance under this chapter, a school corporation must establish a capital projects fund under IC 20-40-8. The state board, after consulting with the department and the budget agency, may waive or modify this requirement upon a showing of good cause by the school corporation.
As added by P.L.2-2006, SEC.172.

20-49-4-13

Sec. 13. An advance to a school corporation for any school building construction program may not exceed the greater of the following:

- (1) Fifteen million dollars (\$15,000,000).
- (2) The product of fifteen thousand dollars (\$15,000) multiplied by the number of students accommodated as a result of the school building construction program.

However, if a school corporation has sustained loss by disaster, this limitation may be waived by the state board after consulting with the department and the budget agency.

As added by P.L.2-2006, SEC.172.

20-49-4-14

Sec. 14. An advance for an educational technology program is without limitation in amount other than the availability of funds in the fund for this purpose and the ability of the school corporation desiring an advance to pay the advance according to the terms of the advance.

As added by P.L.2-2006, SEC.172.

20-49-4-15

Sec. 15. (a) Money advanced to a school corporation for a school building construction program may be advanced for a period not exceeding twenty-five (25) years. The school corporation to which money is advanced must pay interest on the advance. For advances made before July 1, 1993, the state board may provide, either before an advance is made or before an advance is fully paid, that the payment of the advance may not be prepaid by more than six (6) months. For advances made after June 30, 1993, for school building construction programs, the state board may provide that the advances are prepayable at any time.

(b) The state board of finance shall periodically establish the rate or rates of interest payable on advances for school building construction programs as long as:

- (1) the established interest rate or rates do not exceed seven and one-half percent (7.5%); and
- (2) the interest rate or rates on advances made to school corporations with advances outstanding on July 1, 1993, bearing interest at seven and one-half percent (7.5%) or more shall not exceed four percent (4%).

As added by P.L.2-2006, SEC.172.

20-49-4-16

Sec. 16. (a) Money advanced to a school corporation for an educational technology program may be for a period not exceeding five (5) years. The school corporation to which an advance is made shall pay interest on the advance. Advances for educational technology programs may be prepaid at any time.

(b) The state board of finance shall periodically establish the rate or rates of interest payable on advances for educational technology programs as long as the established interest rate or rates:

- (1) are not less than one percent (1%); and
- (2) do not exceed four percent (4%).

As added by P.L.2-2006, SEC.172.

20-49-4-17

Sec. 17. An advance is not an obligation of the school corporation within the meaning of the limitation on or prohibition against indebtedness under the Constitution of the State of Indiana. Nothing in this chapter relieves the governing body of a school corporation receiving an advance of any obligation under Indiana law to qualify the school corporation for state tuition support. The school corporation shall continue to perform all acts necessary to obtain these funds.

As added by P.L.2-2006, SEC.172.

20-49-4-18

Sec. 18. To ensure timely payment of advances according to the terms, the state may in its sole discretion withhold from funds due to school corporations to which advances are made amounts necessary to pay the advances and the interest on the advances in accordance with their respective terms. The terms of the advances shall be established by the state board after consulting with the department and upon the approval of the budget agency in advance of the time the respective advances are made. However, in the case of school corporations with advances outstanding on July 1, 1993, the withholding may be adjusted to conform with this chapter. To the extent available, funds shall first be withheld from the distribution of state tuition support. However, if this distribution is not available or is inadequate, funds may be withheld from the distribution of other state funds to the school corporation to which the advance is made.

As added by P.L.2-2006, SEC.172.

20-49-4-19

Sec. 19. A school corporation receiving an advance shall agree to have the money advanced, together with the interest on the advance, deducted from the distribution of state tuition support until all the money advanced, together with the interest on the advance, has been paid. The state board and the state board of finance shall reduce each distribution of state tuition support to each school corporation to which an advance is made in an amount to be agreed upon by the state and the school corporation.

As added by P.L.2-2006, SEC.172.

20-49-4-20

Sec. 20. An agreement with the state board or state board of finance under section 23 of this chapter to collect and pay over amounts deducted from state tuition support for the benefit of another party is not a debt of the state within the meaning of the limitation on or prohibition against state indebtedness under the Constitution of the State of Indiana.

As added by P.L.2-2006, SEC.172.

20-49-4-21

Sec. 21. A school corporation to which an advance is made for a school building construction program may annually levy a property tax in the debt service fund to replace the amount deducted under this chapter in the current year from the distribution of state tuition support. The amount received from the tax must be transferred from the debt service fund to the general fund.

As added by P.L.2-2006, SEC.172.

20-49-4-22

Sec. 22. A school corporation to which an advance is made for an educational technology program may annually levy a property tax in the capital projects fund or the debt service fund to replace the amount deducted under this chapter in the current year from the distribution of state tuition support. The amount received from the tax must be transferred from the capital projects fund or the debt service fund, as applicable, to the general fund.

As added by P.L.2-2006, SEC.172.

20-49-4-23

Sec. 23. (a) Upon request of the state board, acting upon the advice of the department, the state board of finance may periodically sell, transfer, or liquidate agreements, in whole or in part, including without limitation the sale, transfer, or liquidation of all or any part of the principal or interest to be received at any time under one (1) or more agreements that evidence the right of the state to make deductions from state tuition support to pay advances

under this chapter under the terms and conditions that the state board of finance considers necessary and appropriate.

(b) Each sale, transfer, or liquidation under this section is subject to the following conditions:

- (1) Each sale, transfer, or liquidation may be made only to a department, an agency, a commission, an instrumentality, or a public body of the state, including the Indiana bond bank.
- (2) Each sale, transfer, or liquidation of agreements may be made only for cash.
- (3) Payments under the sale, transfer, or liquidation must be made to the treasurer of state for the fund and reported to the state board of finance.
- (4) The total amount of cash received by the fund from the sale may not be less than the outstanding principal amount of all or a part of the agreements sold plus accrued interest owed.
- (5) If necessary to facilitate a sale, transfer, or liquidation, the state board or the state board of finance may agree to act on behalf of an entity described in subdivision (1) by collecting payment on advances that are:
 - (A) received directly from a school corporation, if any direct payments are received; or
 - (B) deducted from amounts appropriated and made available for state tuition support.An agreement by the state board or the state board of finance under this subdivision is a valid and enforceable contractual obligation but is not a debt of the state within the meaning of the limitation against indebtedness under the Constitution of the State of Indiana.
- (6) Each proposed sale, transfer, or liquidation must be reviewed by the budget committee and approved by the budget agency.

As added by P.L.2-2006, SEC.172.

Chapter 5. Advancement From the Common School Fund for Transfer Tuition Costs

20-49-5

20-49-5-1

Sec. 1. As used in this chapter, "advance" refers to an advance from the fund under this chapter.

As added by P.L.2-2006, SEC.172.

20-49-5-2

Sec. 2. As used in this chapter, "fund" refers to the common school fund in the custody of the treasurer of state.

As added by P.L.2-2006, SEC.172.

20-49-5-3

Sec. 3. To assist a school corporation in providing the school corporation's educational program to a student placed in a facility or home as described in IC 20-26-11-8(a) or IC 20-26-11-8(b) and not later than October 1 of each school year, the state board may advance money to a school corporation in anticipation of the school corporation's receipt of transfer tuition for students described in IC 20-26-11-8(a) or IC 20-26-11-8(b). The amount of the advance may not exceed the amount determined under STEP TWO of the following formula:

STEP ONE: Estimate for the current school year the number of students described in IC 20-26-11-8(a) or IC 20-26-11-8(b) that are transferred to the school corporation.

STEP TWO: Multiply the STEP ONE amount by the school corporation's prior year per student transfer tuition amount.

As added by P.L.2-2006, SEC.172.

20-49-5-4

Sec. 4. (a) To qualify for an advance, a school corporation shall do the following:

- (1) Certify to the state board the information described in section 3 of this chapter.
- (2) Request from the state board the anticipated amount of transfer tuition not to exceed the amount described in section 3 of this chapter.
- (3) Guarantee full repayment of the advance by agreeing to have:
 - (A) one-half (1/2) of the amount of the advance deducted from the monthly distribution of state tuition

support received by the school corporation six (6) months after the advancement is made, with interest at the rate of four percent (4%); and

(B) the balance of the amount of the advancement deducted from the monthly distribution of state tuition support received by the school corporation twelve (12) months after the advancement is made, with interest at the rate of four percent (4%).

(b) The deducted amounts shall be transferred by the state board to the fund.

As added by P.L.2-2006, SEC.172.

20-49-5-5

Sec. 5. A school corporation receiving an advance shall notify the school corporation or auditor of state from which the school corporation receives transfer tuition under IC 20-26-11 for students described in IC 20-26-11-8(a) or IC 20-26-11-8(b) of the amount of interest withheld under section 4 of this chapter. The school corporation or auditor of state shall reimburse the school corporation for the interest expense at the same time the transfer tuition is paid.

As added by P.L.2-2006, SEC.172.

20-49-5-6

Sec. 6. (a) A school corporation's obligation to repay the advancement may not be construed to be diminished or otherwise affected if the school corporation in which the student has legal settlement fails to pay the transfer tuition as required under IC 20-26-11 to the transferee school corporation in a timely manner.

(b) An advance may not be construed to be an obligation of the school corporation within the meaning of the limitation against indebtedness under the Constitution of the State of Indiana.

As added by P.L.2-2006, SEC.172.

Chapter 6. School Technology Advancement Account

20-49-6

20-49-6-1

Sec. 1. As used in this chapter, "advance" refers to an advance from the advancement account under this chapter.

As added by P.L.2-2006, SEC.172.

20-49-6-2

Sec. 2. As used in this chapter, "advancement account" refers to the school technology advancement account established by section 3 of this chapter.

As added by P.L.2-2006, SEC.172.

20-49-6-3

Sec. 3. The school technology advancement account is established within the common school fund.

As added by P.L.2-2006, SEC.172.

20-49-6-4

Sec. 4. On July 1 of each year, there is appropriated to the advancement account:

- (1) five million dollars (\$5,000,000); minus
- (2) the amount of money in the account on June 30 of the same year.

As added by P.L.2-2006, SEC.172.

20-49-6-5

Sec. 5. Advancements of money from the advancement account may be made to a school corporation to:

- (1) purchase computer hardware and software used primarily for student instruction; and
- (2) develop and implement innovative technology projects.

As added by P.L.2-2006, SEC.172.

20-49-6-6

Sec. 6. Money must be advanced under this chapter in accordance with IC 20-49-4-15 through IC 20-49-4-21.
As added by P.L.2-2006, SEC.172.

20-49-6-7

Sec. 7. The state board shall adopt rules under IC 4-22-2 concerning:

- (1) the criteria and priorities for awarding grants and advancements under this chapter;
- (2) the terms and conditions of advancements made under this chapter; and
- (3) any additional matters necessary for the implementation of this chapter.

As added by P.L.2-2006, SEC.172.

Chapter 7. Charter School Advancement Account

20-49-7

20-49-7-1

Sec. 1. As used in this chapter, "account" refers to the charter school advancement account established within the common school fund under section 5 of this chapter.

As added by P.L.2-2006, SEC.172.

20-49-7-2

Sec. 2. As used in this chapter, "advance" refers to an advance from the account under this chapter.

As added by P.L.2-2006, SEC.172.

20-49-7-3

Sec. 3. As used in this chapter, "charter school" refers to a school established under IC 20-24.

As added by P.L.2-2006, SEC.172.

20-49-7-4

Sec. 4. As used in this chapter, "operational costs" means costs other than construction costs incurred by:

- (1) a charter school other than a conversion charter school during the second six (6) months of the calendar year in which the charter school begins its initial operation; or
- (2) a charter school, including a conversion charter school, during the second six (6) months of a calendar year in which the charter school's most recent enrollment reported under IC 20-24-7-2(a) divided by the charter school's previous year's ADM is at least one and fifteen-hundredths (1.15).

As added by P.L.2-2006, SEC.172.

20-49-7-5

Sec. 5. The charter school advancement account is established within the common school fund.

As added by P.L.2-2006, SEC.172.

20-49-7-6

Sec. 6. The state board shall advance money to charter schools from the account to be used for operational costs.

As added by P.L.2-2006, SEC.172.

20-49-7-7

Sec. 7. A charter school that desires to obtain an advance must submit an application to the state board on a form prescribed by the state board after the state board consults with the department and the budget agency to determine the amount of the advance.

As added by P.L.2-2006, SEC.172.

20-49-7-8

Sec. 8. Priority of advances for operational costs must be on a basis determined by the state board after consulting with the department and the budget agency.

As added by P.L.2-2006, SEC.172.

20-49-7-9

Sec. 9. The state board, after consulting with the department and upon approval of the budget agency, shall establish the terms of an advance before the date on which the advance is made.

As added by P.L.2-2006, SEC.172.

20-49-7-10

Sec. 10. The amount of an advance for operational costs may not exceed the amount determined under STEP THREE of the following formula:

STEP ONE: Determine the product of:

- (A) the charter school's enrollment reported under IC 20-24-7-2(a); multiplied by
- (B) the charter school's transition to foundation amount.

STEP TWO: Determine the quotient of:

- (A) the STEP ONE amount; divided by
- (B) two (2).

STEP THREE: Determine the product of:

- (A) the STEP TWO amount; multiplied by
- (B) one and fifteen-hundredths (1.15).

As added by P.L.2-2006, SEC.172. Amended by P.L.234-2007, SEC.266; P.L.182-2009(ss), SEC.361.

20-49-7-11

Sec. 11. The amount of an advance for operational costs may not exceed the amount determined under STEP FOUR of the following formula:

STEP ONE: Determine the quotient of:

- (A) the charter school's transition to foundation amount; divided by
- (B) two (2).

STEP TWO: Determine the difference between:

- (A) the charter school's current ADM; minus
- (B) the charter school's ADM of the previous year.

STEP THREE: Determine the product of:

- (A) the STEP ONE amount; multiplied by
- (B) the STEP TWO amount.

STEP FOUR: Determine the product of:

- (A) the STEP THREE amount; multiplied by
- (B) one and fifteen-hundredths (1.15).

As added by P.L.2-2006, SEC.172. Amended by P.L.234-2007, SEC.267; P.L.182-2009(ss), SEC.362.

20-49-7-12

Sec. 12. Money advanced to a charter school under this chapter may be advanced for a period not to exceed twenty (20) years.

As added by P.L.2-2006, SEC.172.

20-49-7-13

Sec. 13. A charter school to which money is advanced under this chapter must pay interest on the advance at the rate determined under section 14 of this chapter. The state board shall provide that the advances are repayable by the:

- (1) charter school; or
- (2) general assembly;

at any time.

As added by P.L.2-2006, SEC.172.

20-49-7-14

Sec. 14. The state board of finance shall establish periodically the rate of interest payable on advances under this chapter. An interest rate established under this section may not:

- (1) be less than one percent (1%); or
- (2) exceed four percent (4%).

As added by P.L.2-2006, SEC.172.

20-49-7-15

Sec. 15. To ensure timely payment of an advance according to the terms of the advance, the state may withhold from funds due to the charter school to which the advance is made an amount necessary to pay the advance and the interest on the advance.

As added by P.L.2-2006, SEC.172.

20-49-7-16

Sec. 16. (a) This section applies if the general assembly prepays an advance under section 13 of this chapter.

(b) A prepayment must be deducted from the amount appropriated for distributions of state tuition support.

As added by P.L.2-2006, SEC.172.

20-49-7-17

Sec. 17. The terms of an advance must include a provision allowing the state to withhold funds due to a charter school to which an advance is made until the advance, including interest accrued on the advance, is paid.

As added by P.L.2-2006, SEC.172.

20-49-7-18

Sec. 18. If the state withholds funds under this chapter, the state first shall withhold funds from the distribution of state tuition support to the charter school to which the advance is made. If the state tuition support distribution is unavailable or inadequate, the state may withhold funds from any other distribution of state funds to the charter school.

As added by P.L.2-2006, SEC.172.

20-49-7-19

Sec. 19. An advance under this chapter to a charter school is not an obligation of the charter school within the meaning of a constitutional limitation on or prohibition against indebtedness. This chapter does not relieve the organizer of the charter school of the duty to qualify the charter school for state tuition support.

As added by P.L.2-2006, SEC.172.

20-49-7-20

Sec. 20. An agreement with the state board to collect and pay over amounts deducted from state tuition support for the benefit of another party is not a debt of the state within the meaning of the limitation against state indebtedness under the Constitution of the State of Indiana.

As added by P.L.2-2006, SEC.172.

20-49-7-21

Sec. 21. (a) A charter school, including a conversion charter school, that has received an advance for operational costs from the common school fund under this chapter does not have to make principal or interest payments during the state fiscal years beginning:

- (1) July 1, 2009; and
- (2) July 1, 2010;

notwithstanding contrary terms in the charter school and state board advance agreement.

(b) The repayment term of the advance shall be extended by two (2) years to provide for the waiver described in subsection (a) even though it may make the repayment term for the advance longer than twenty (20) years.

As added by P.L.182-2009(ss), SEC.363.

Chapter 8.2. Shortfall Loan

20-49-8.2

20-49-8.2-1

Sec. 1. As used in this chapter, "eligible school corporation" refers to a school corporation located in a county that has been reassessed under IC 6-1.1-4-32 (before its repeal).

As added by P.L.211-2007, SEC.46. Amended by P.L.131-2008, SEC.52.

20-49-8.2-2

Sec. 2. As used in this chapter, "fund" refers to the common school fund in the custody of the treasurer of state.

As added by P.L.211-2007, SEC.46.

20-49-8.2-3

Sec. 3. As used in this chapter, "loan" means a loan made from the fund under the provisions this chapter.

As added by P.L.211-2007, SEC.46.

20-49-8.2-4

Sec. 4. The state board may loan money to an eligible school corporation that has experienced a shortfall of at least five percent (5%) in the collection of property tax levies in the current year or the preceding years for the eligible school corporation's general fund as a result of any of the following:

- (1) Erroneous assessed valuation amounts provided to the eligible school corporation.
- (2) Erroneous figures used to determine the eligible school corporation's general fund property tax rate.
- (3) A change in the assessed valuation of property as the result of appeals under IC 6-1.1 or IC 6-1.5.
- (4) The payment of refunds that resulted from appeals under IC 6-1.1 or IC 6-1.5.

As added by P.L.211-2007, SEC.46.

20-49-8.2-5

Sec. 5. An eligible school corporation that desires to obtain a loan under this chapter must submit an application to the state board on forms prescribed by the state board after consulting with the department and the state budget agency.

As added by P.L.211-2007, SEC.46.

20-49-8.2-6

Sec. 6. (a) Subject to subsection (b), the state board shall determine the terms of a loan after consulting with the department. The state budget agency must approve the terms of a loan before the loan is made.

(b) An eligible school corporation receiving a loan under this chapter must repay the loan within thirty-six (36) months of the date on which the loan is made.

As added by P.L.211-2007, SEC.46.

20-49-8.2-7

Sec. 7. An eligible school corporation that obtains a loan under this chapter may annually levy a tax in the debt service fund to repay the loan.

As added by P.L.211-2007, SEC.46.

20-49-8.2-8

Sec. 8. If the state board recommends that an eligible school corporation receive a loan under this chapter, the eligible school corporation may not request an excessive tax levy for the same amount.

As added by P.L.211-2007, SEC.46.

20-49-8.2-9

Sec. 9. This chapter may not be construed to prohibit an eligible school corporation from repaying a loan under this chapter before the date specified in section 6(b) of this chapter.

As added by P.L.211-2007, SEC.46.

20-49-8.2-10

Sec. 10. This chapter expires December 31, 2010.
As added by P.L.211-2007, SEC.46.

34-24-1-4

Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. The court's order may permit the agency to use the property for a period not to exceed three (3) years. However, the order must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

(d) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

(1) determine the amount of law enforcement costs; and

(2) order that:

(A) the property, if it is not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized, and if the property is a vehicle, this sale must occur after any period of use specified in subsection (c);

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be:

(i) deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; or

(ii) deposited in the general fund of a unit if the property was seized by a local law enforcement agency of the unit for an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism; and

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.

(e) If property that is seized under this chapter (or IC 34-4-30.1-4 before its repeal) is transferred:

(1) after its seizure, but before an action is filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal); or

(2) when an action filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal) is pending; the person to whom the property is transferred must establish an ownership interest of record as a bona fide purchaser for value. A person is a bona fide purchaser for value under this section if the person, at the time of the transfer, did not have reasonable cause to believe that the property was subject to forfeiture under this chapter.

(f) If the property seized was an unlawful telecommunications device (as defined in IC 35-45-13-6) or plans, instructions, or publications used to commit an offense under IC 35-45-13, the court may order the sheriff of the county in which the person was convicted of an offense under IC 35-45-13 to destroy as contraband or to otherwise lawfully dispose of the property.

As added by P.L.1-1998, SEC.19. Amended by P.L.123-2002, SEC.31.

ATTACHMENT 1

34-24-1-9

Sec. 9. (a) Upon motion of a prosecuting attorney under IC 35-33-5-5(j), property seized under this chapter must be transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

(b) Money received by a law enforcement agency as a result of a forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice must be deposited into a nonreverting fund and may be expended only with the approval of:

- (1) the executive (as defined in IC 36-1-2-5), if the money is received by a local law enforcement agency; or
- (2) the governor, if the money is received by a law enforcement agency in the executive branch.

The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations.

As added by P.L.174-1999, SEC.1. Amended by P.L.97-2004, SEC.115.

ATTACHMENT 2

8-2

Common school fund

Section 2. The Common School fund shall consist of the Congressional Township fund, and the lands belonging thereto;

The Surplus Revenue fund;

The Saline fund and the lands belonging thereto;

The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of County Seminaries, and the moneys and property heretofore held for such Seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the Swamp Lands, granted to the State of Indiana by the act of Congress of the twenty eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.

8-3

Principal and income of fund

Section 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

ATTACHMENT 3

COMMON SCHOOL FUND

IC 20-49

ACCT. NO. 72410

Article 8 of the Constitution of Indiana specifies that in come from the Common School Fund shall be inviolably appropriated to the support of common schools and to no other purpose.

The Common School Fund may be used to:

- assist local school corporations and school townships in financing school building construction and educational technology programs through school loans.
- make advances to school corporations and to school townships in order to aid in disaster loss.
- make advances to school corporations and to school townships for certain anticipated transfer tuition costs.
- make advances to charter schools for certain operational costs (IC 20-49-7)
- assist certain school corporations that experience a shortfall of at least 5% in the collection of property tax levies because of certain reassessment errors or changes (IC 20-49-8.2; this chapter expires December 31, 2010)

The outstanding loan balances as of August 1, 2010, were about \$474.8 M for construction loans, \$59.1 M for technology loans, and \$56.3 M for charter school loans.

Currently, revenue collections are deposited into the Common School Fund from the following sources: (a) various fines and forfeitures (IC 21-1-3-7); (b) balances exceeding \$500,000 from the Abandoned Property Fund (IC 32-9-1.5-34); (c) unclaimed funds (IC 32-9-8-4); and (d) escheated estates (IC 21-1-1-1).

Revenues (other than collection revenues) include but are not limited to loan repayments from school corporations and school townships as well as investments made from the Treasurer's Office.

REVENUE:

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Fines & Forfeitures	\$6,335,485	\$6,240,202	\$6,350,821	\$6,854,799	\$8,074,669
Escheated Estates	109,830	(109,830)*	0*	0	591,232
Total Rev. Collections	\$6,445,315	\$6,130,372	\$6,350,821	\$6,854,799	\$8,665,901
Loan Repayment	33,495,972	37,868,638	37,082,899	41,157,898	53,159,686
Total Collections	\$39,941,287	\$43,999,010	\$43,433,720	\$48,012,697	\$61,825,587

*Revenue from FY 2008, FY 2009, and FY 2010 was to be deposited in the General Fund.
Source: Treasurer of State

	<u>Unobligated Reserves</u>	<u>Total Fund Equity</u>	<u>Year-End Percentage</u>
FY 2006	\$14,550,103	\$517,586,586	2.8%
FY 2007	\$15,436,562	\$523,716,958	2.9%
FY 2008	\$34,261,241	\$530,067,779	6.5%
FY 2009	\$35,640,372	\$536,974,089	7.6%
FY 2010	\$83,843,416	\$545,639,991	15.4%

Source: Treasurer of State

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*Revenue from FY 2008, FY 2009, and FY 2010 was to be deposited in the General Fund.
Source: Treasurer of State

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FY 2009	\$35,640,372	\$536,974,089	7.6%
FY 2010	\$83,843,416	\$545,639,991	15.4%

Source: Treasurer of State



**Exhibit 6
Pension Management
Oversight Committee
September 29, 2010**

**PRELIMINARY DRAFT
No. 3165**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 22-3-7.

Synopsis: Statute of limitations for occupational disease claim. Provides for a statute of limitations for making a claim for compensation equal to two years after the later of: (1) a diagnosis of; or (2) death or disablement from; an occupational disease. Provides a one year period, ending on July 1, 2012, to file a claim for compensation for an occupational disease in which disablement or death occurred before July 1, 2011, and the claim for compensation payable for or on account of the occupational disease was previously barred. Makes a technical correction.

Effective: July 1, 2011.



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 22-3-7-9, AS AMENDED BY P.L.180-2009,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 9. (a) As used in this chapter, "employer" includes
4 the state and any political subdivision, any municipal corporation
5 within the state, any individual or the legal representative of a deceased
6 individual, firm, association, limited liability company, or corporation
7 or the receiver or trustee of the same, using the services of another for
8 pay. A parent corporation and its subsidiaries shall each be considered
9 joint employers of the corporation's, the parent's, or the subsidiaries'
10 employees for purposes of sections 6 and 33 of this chapter. Both a
11 lessor and a lessee of employees shall each be considered joint
12 employers of the employees provided by the lessor to the lessee for
13 purposes of sections 6 and 33 of this chapter. The term also includes an
14 employer that provides on-the-job training under the federal School to
15 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth
16 under section 2.5 of this chapter. If the employer is insured, the term
17 includes the employer's insurer so far as applicable. However, the
18 inclusion of an employer's insurer within this definition does not allow
19 an employer's insurer to avoid payment for services rendered to an
20 employee with the approval of the employer. The term does not include
21 a nonprofit corporation that is recognized as tax exempt under Section
22 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))
23 to the extent the corporation enters into an independent contractor
24 agreement with a person for the performance of youth coaching
25 services on a part-time basis.
26 (b) As used in this chapter, "employee" means every person,
27 including a minor, in the service of another, under any contract of hire
28 or apprenticeship written or implied, except one whose employment is
29 both casual and not in the usual course of the trade, business,
30 occupation, or profession of the employer. For purposes of this chapter
31 the following apply:



- 1 (1) Any reference to an employee who has suffered disablement,
 2 when the employee is dead, also includes the employee's legal
 3 representative, dependents, and other persons to whom
 4 compensation may be payable.
- 5 (2) An owner of a sole proprietorship may elect to include the
 6 owner as an employee under this chapter if the owner is actually
 7 engaged in the proprietorship business. If the owner makes this
 8 election, the owner must serve upon the owner's insurance carrier
 9 and upon the board written notice of the election. No owner of a
 10 sole proprietorship may be considered an employee under this
 11 chapter unless the notice has been received. If the owner of a sole
 12 proprietorship is an independent contractor in the construction
 13 trades and does not make the election provided under this
 14 subdivision, the owner must obtain ~~an affidavit~~ **a certificate** of
 15 exemption under section 34.5 of this chapter.
- 16 (3) A partner in a partnership may elect to include the partner as
 17 an employee under this chapter if the partner is actually engaged
 18 in the partnership business. If a partner makes this election, the
 19 partner must serve upon the partner's insurance carrier and upon
 20 the board written notice of the election. No partner may be
 21 considered an employee under this chapter until the notice has
 22 been received. If a partner in a partnership is an independent
 23 contractor in the construction trades and does not make the
 24 election provided under this subdivision, the partner must obtain
 25 ~~an affidavit~~ **a certificate** of exemption under section 34.5 of this
 26 chapter.
- 27 (4) Real estate professionals are not employees under this chapter
 28 if:
- 29 (A) they are licensed real estate agents;
 - 30 (B) substantially all their remuneration is directly related to
 - 31 sales volume and not the number of hours worked; and
 - 32 (C) they have written agreements with real estate brokers
 - 33 stating that they are not to be treated as employees for tax
 - 34 purposes.
- 35 (5) A person is an independent contractor in the construction
 36 trades and not an employee under this chapter if the person is an
 37 independent contractor under the guidelines of the United States
 38 Internal Revenue Service.
- 39 (6) An owner-operator that provides a motor vehicle and the
 40 services of a driver under a written contract that is subject to
 41 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor
 42 carrier is not an employee of the motor carrier for purposes of this
 43 chapter. The owner-operator may elect to be covered and have the
 44 owner-operator's drivers covered under a worker's compensation
 45 insurance policy or authorized self-insurance that insures the
 46 motor carrier if the owner-operator pays the premiums as



1 death.

2 (e) No limitation of time provided in this chapter shall run against
3 any person who is mentally incompetent or a minor dependent, so long
4 as the person has no guardian or trustee.



CURRENT LIMITATIONS - IC 22-3-7-9 - OCCUPATIONAL DISEASE ACT

<u>Disease caused by</u>	<u>Time limitation to bring claim</u>
Radiation	2 years from date worker knew or should have known they had disease caused by workplace exposure
Silica	3 years from date of last exposure
Coal	3 years from date of last exposure
Asbestos	3 years from date of last exposure if exposure before 7/1/85 20 years from date of last exposure if exposure before 7/1/88 35 years from date of last exposure if exposure after 7/1/88
Any Other Toxic Substance	2 years from date of last exposure

**Exhibit 7
Pension Management
Oversight Committee
September 29, 2010**

AMENDMENT

1. Makes all times to bring a claim the same as now in place for radiation – 2 years from date the worker knew or should have know they had a disease caused by workplace exposure to a toxic substance, or dies from the disease.
2. Gives any workers denied the ability to bring claim by current statute 1 year to file a claim.

WHY

1. Many occupational diseases take more than 3 years to develop, precluding most workers who contract disease from workplace exposures from filing any claim for compensation.
2. Disease can be terrible and costly for workers and their families. When a disease is caused from exposures at work, the law shouldn't impose an impossible standard for the worker to meet to obtain the limited relief provided by workers compensation.
3. Families are too often driven by illness, disability and death into relying on social welfare (Medicaid/Medicare/poor relief) to pay for huge medical costs and living expenses.

4. Eliminates arbitrary, illogical and confusing time deadlines that involve an analysis of the “last date of exposure” to determine when workers have become disabled and file their claims under the current statute.
5. Modern medicine has taught us that occupation disease caused by exposure to workplace toxins have latency periods – time that passed from the date of exposure until the date of diagnosis/disablement – that can be well over the time limits imposed by the current statute.
6. There is no valid public policy basis to allow some workers to file claims for disease, while denying other workers the same rights and remedies, based only on which toxin caused their disease. Workers sick from workplace exposures deserve to be treated equally, no matter what caused the disease.

ISSUES

1. There is no evidence that this will result in a flood of claims against employers. For instance, in Indiana less than 60 people a year die from mesothelioma, a fatal cancer caused by exposure to asbestos. Only a portion of those deaths could be attributed to workplace exposures, giving rise to possible claims.
2. Employers are protected by the current statutes in several ways.
 - A. Employers face very limited financial liability for workplace injuries or disease.
 - B. Employers are paid back for any payments, dollar for dollar, for any payment they make for workplace disease if the employee recovers for the disease from any third parties through civil litigation or claims.
 - C. Employers can generally choose the medical providers that diagnose and treat the employees.
 - D. Employers can't be sued in court. Even for intentionally exposing employees to toxic substances that cause disease.

(9)



PRELIMINARY DRAFT
No. 3165

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 22-3-7.

Synopsis: Statute of limitations for occupational disease claim. Provides for a statute of limitations for making a claim for compensation equal to two years after the later of: (1) a diagnosis of; or (2) death or disablement from; an occupational disease. Provides a one year period, ending on July 1, 2012, to file a claim for compensation for an occupational disease in which disablement or death occurred before July 1, 2011, and the claim for compensation payable for or on account of the occupational disease was previously barred. Makes a technical correction.

Effective: July 1, 2011.



1 requested by the motor carrier. An election by an owner-operator
2 under this subdivision does not terminate the independent
3 contractor status of the owner-operator for any purpose other than
4 the purpose of this subdivision.

5 (7) An unpaid participant under the federal School to Work
6 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
7 extent set forth under section 2.5 of this chapter.

8 (8) A person who enters into an independent contractor agreement
9 with a nonprofit corporation that is recognized as tax exempt
10 under Section 501(c)(3) of the Internal Revenue Code (as defined
11 in IC 6-3-1-11(a)) to perform youth coaching services on a
12 part-time basis is not an employee for purposes of this chapter.

13 (9) An officer of a corporation who is the sole officer of the
14 corporation is an employee of the corporation under this chapter.
15 An officer of a corporation who is the sole officer of the
16 corporation may elect not to be an employee of the corporation
17 under this chapter. If an officer makes this election, the officer
18 must serve written notice of the election on the corporation's
19 insurance carrier and the board. An officer of a corporation who
20 is the sole officer of the corporation may not be considered to be
21 excluded as an employee under this chapter until the notice is
22 received by the insurance carrier and the board.

23 (c) As used in this chapter, "minor" means an individual who has
24 not reached seventeen (17) years of age. A minor employee shall be
25 considered as being of full age for all purposes of this chapter.
26 However, if the employee is a minor who, at the time of the last
27 exposure, is employed, required, suffered, or permitted to work in
28 violation of the child labor laws of this state, the amount of
29 compensation and death benefits, as provided in this chapter, shall be
30 double the amount which would otherwise be recoverable. The
31 insurance carrier shall be liable on its policy for one-half (1/2) of the
32 compensation or benefits that may be payable on account of the
33 disability or death of the minor, and the employer shall be wholly liable
34 for the other one-half (1/2) of the compensation or benefits. If the
35 employee is a minor who is not less than sixteen (16) years of age and
36 who has not reached seventeen (17) years of age, and who at the time
37 of the last exposure is employed, suffered, or permitted to work at any
38 occupation which is not prohibited by law, the provisions of this
39 subsection prescribing double the amount otherwise recoverable do not
40 apply. The rights and remedies granted to a minor under this chapter on
41 account of disease shall exclude all rights and remedies of the minor,
42 the minor's parents, the minor's personal representatives, dependents,
43 or next of kin at common law, statutory or otherwise, on account of any
44 disease.

45 (d) This chapter does not apply to casual laborers as defined in
46 subsection (b), nor to farm or agricultural employees, nor to household



1 employees, nor to railroad employees engaged in train service as
2 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
3 foremen in charge of yard engines and helpers assigned thereto, nor to
4 their employers with respect to these employees. Also, this chapter
5 does not apply to employees or their employers with respect to
6 employments in which the laws of the United States provide for
7 compensation or liability for injury to the health, disability, or death by
8 reason of diseases suffered by these employees.

9 (e) As used in this chapter, "disablement" means the event of
10 becoming disabled from earning full wages at the work in which the
11 employee was engaged when last exposed to the hazards of the
12 occupational disease by the employer from whom the employee claims
13 compensation or equal wages in other suitable employment, and
14 "disability" means the state of being so incapacitated.

15 (f) For the purposes of this chapter, no compensation shall be
16 payable for or on account of any occupational diseases unless an
17 **employee makes a claim for compensation not later than two (2)**
18 **years after the date of the diagnosis of, or the disablement as defined**
19 **in subsection (e) occurs within two (2) years after the last day of the**
20 **last exposure to the hazards of the disease except for the following:**

21 (1) In all cases of occupational diseases caused by the inhalation
22 of silica dust or coal dust; no compensation shall be payable
23 unless disablement; as defined in subsection (e); occurs within
24 three (3) years after the last day of the last exposure to the hazards
25 of the disease.

26 (2) In all cases of occupational disease caused by the exposure to
27 radiation; no compensation shall be payable unless disablement;
28 as defined in subsection (e); occurs within two (2) years from the
29 date on which the employee had knowledge of the nature of the
30 employee's occupational disease or; by exercise of reasonable
31 diligence; should have known of the existence of such disease and
32 its causal relationship to the employee's employment.

33 (3) In all cases of occupational diseases caused by the inhalation
34 of asbestos dust; no compensation shall be payable unless
35 disablement; as defined in subsection (e); occurs within three (3)
36 years after the last day of the last exposure to the hazards of the
37 disease if the last day of the last exposure was before July 1, 1985.

38 (4) In all cases of occupational disease caused by the inhalation
39 of asbestos dust in which the last date of the last exposure occurs
40 on or after July 1, 1985; and before July 1, 1988; no compensation
41 shall be payable unless disablement; as defined in subsection (e);
42 occurs within twenty (20) years after the last day of the last
43 exposure.

44 (5) In all cases of occupational disease caused by the inhalation
45 of asbestos dust in which the last date of the last exposure occurs
46 on or after July 1, 1988; no compensation shall be payable unless



1 disablement (as defined in subsection (c)) occurs within
2 thirty-five (35) years after the last day of the last exposure.

3 (g) For the purposes of this chapter, no compensation shall be
4 payable for or on account of death resulting from any occupational
5 disease unless death occurs within two (2) years after the date of
6 disablement. However, this subsection does not bar compensation for
7 death:

8 (1) where death occurs during the pendency of a claim filed by an
9 employee within two (2) years after the date of disablement and
10 which claim has not resulted in a decision or has resulted in a
11 decision which is in process of review or appeal; or

12 (2) where, by agreement filed or decision rendered, a
13 compensable period of disability has been fixed and death occurs
14 within two (2) years after the end of such fixed period, but in no
15 event later than three hundred (300) weeks after the date of
16 disablement:

17 or death from, an occupational disease, whichever is later.

18 (g) In all cases of an occupational disease in which disablement
19 or death occurred before July 1, 2011, and a claim for
20 compensation payable for or on account of the occupational disease
21 was barred by this section (before the section was amended in 2011
22 by the first regular session of the 117th General Assembly), the
23 claim for compensation may be filed after June 30, 2011, and
24 before July 2, 2012.

25 (h) As used in this chapter, "billing review service" refers to a
26 person or an entity that reviews a medical service provider's bills or
27 statements for the purpose of determining pecuniary liability. The term
28 includes an employer's worker's compensation insurance carrier if the
29 insurance carrier performs such a review.

30 (i) As used in this chapter, "billing review standard" means the data
31 used by a billing review service to determine pecuniary liability.

32 (j) As used in this chapter, "community" means a geographic service
33 area based on ZIP code districts defined by the United States Postal
34 Service according to the following groupings:

35 (1) The geographic service area served by ZIP codes with the first
36 three (3) digits 463 and 464.

37 (2) The geographic service area served by ZIP codes with the first
38 three (3) digits 465 and 466.

39 (3) The geographic service area served by ZIP codes with the first
40 three (3) digits 467 and 468.

41 (4) The geographic service area served by ZIP codes with the first
42 three (3) digits 469 and 479.

43 (5) The geographic service area served by ZIP codes with the first
44 three (3) digits 460, 461 (except 46107), and 473.

45 (6) The geographic service area served by the 46107 ZIP code and
46 ZIP codes with the first three (3) digits 462.



1 (7) The geographic service area served by ZIP codes with the first
2 three (3) digits 470, 471, 472, 474, and 478.

3 (8) The geographic service area served by ZIP codes with the first
4 three (3) digits 475, 476, and 477.

5 (k) As used in this chapter, "medical service provider" refers to a
6 person or an entity that provides medical services, treatment, or
7 supplies to an employee under this chapter.

8 (l) As used in this chapter, "pecuniary liability" means the
9 responsibility of an employer or the employer's insurance carrier for the
10 payment of the charges for each specific service or product for human
11 medical treatment provided under this chapter in a defined community,
12 equal to or less than the charges made by medical service providers at
13 the eightieth percentile in the same community for like services or
14 products.

15 SECTION 2. IC 22-3-7-32, AS AMENDED BY P.L.99-2007,
16 SECTION 184, IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2011]: Sec. 32. (a) No proceedings for
18 compensation under this chapter shall be maintained unless notice has
19 been given to the employer of **the diagnosis of, or the disablement or**
20 **death** arising from, an occupational disease as soon as practicable after
21 the date of **diagnosis, disablement, or death**. No defect or inaccuracy
22 of such notices shall be a bar to compensation unless the employer
23 proves that he is unduly prejudiced in such proceedings by such defect
24 or inaccuracy.

25 (b) The notice provided for in subsection (a) shall state the name
26 and address of the employee and the nature and cause of the
27 occupational disease and disablement or death therefrom, and shall be
28 signed by the employee with a disability or by someone in the
29 employee's behalf, or by one (1) or more of the dependents, in case of
30 death, or by some person in their behalf. Such notice may be served
31 personally upon the employer or upon any foreman, superintendent, or
32 manager of the employer to whose orders the employee with a
33 disability or deceased employee was required to conform or upon any
34 agent of the employer upon whom a summons in a civil action may be
35 served under the laws of the state or may be sent to the employer by
36 registered letter, addressed to the employer's last known residence or
37 place of business.

38 (c) No proceedings by an employee for compensation under this
39 chapter shall be maintained unless claim for compensation shall be
40 filed by the employee with the worker's compensation board within two
41 (2) years after the date of the **diagnosis of, or disablement or death**
42 **from, an occupational disease, whichever is later**.

43 (d) No proceedings by dependents of a deceased employee for
44 compensation for death under this chapter shall be maintained unless
45 claim for compensation shall be filed by the dependents with the
46 worker's compensation board within two (2) years after the date of



1 death.
2 (e) No limitation of time provided in this chapter shall run against
3 any person who is mentally incompetent or a minor dependent, so long
4 as the person has no guardian or trustee.





PRELIMINARY DRAFT
No. 3050

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10.3-3-1.

Synopsis: PERF board membership. Adds a police officer or firefighter as a member of the board of trustees of the public employees' retirement fund (PERF).

Effective: Upon passage; July 1, 2011.

Exhibit 8
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 5-10.3-3-1, AS AMENDED BY P.L.62-2005,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 1. (a) The board is composed of ~~six (6)~~ **seven (7)**
4 trustees.

5 (b) ~~Five (5)~~ **Six (6)** of the trustees shall be appointed by the
6 governor, as follows:

7 (1) One (1) must be a member of the fund with at least ten (10)
8 years of creditable service.

9 (2) Not more than three (3) may be members of the same political
10 party.

11 (3) One (1) must be:

12 (A) a:

13 (i) member of the fund or retired member of the fund; or

14 (ii) member of a collective bargaining unit of state
15 employees represented by a labor organization; or

16 (B) an individual who is:

17 (i) an officer or a member of a local, a national, or an
18 international labor union that represents state or university
19 employees; and

20 (ii) an Indiana resident.

21 **(4) One (1) must be an active or retired police officer or**
22 **firefighter who is a member of one (1) of the following:**

23 **(A) 1925 police pension fund.**

24 **(B) 1937 firefighters' pension fund.**

25 **(C) 1953 police pension fund.**

26 **(D) 1977 police officers' and firefighters' pension and**
27 **disability fund.**

28 (c) The director of the budget agency or the director's designee is an
29 ex officio voting member of the board. An individual appointed under
30 this subsection to serve as the director's designee:

31 (1) is subject to the provisions of section 3 of this chapter; and



1 (2) serves as a permanent designee until replaced by the director.
2 (d) The governor shall fill by appointment vacancies on the board
3 in the manner described in subsection (b).
4 (e) In making the appointments under subsection (b)(1) or (b)(2),
5 the governor may consider whether at least one (1) trustee is a retired
6 member of the fund under subsection (b)(3)(A)(i).
7 SECTION 2. [EFFECTIVE UPON PASSAGE] (a) **The definitions**
8 **in IC 5-10.3-1 apply to this SECTION.**
9 (b) **Not later than July 1, 2011, the governor shall appoint a**
10 **person under IC 5-10.3-3-1(b)(4), as amended by this act, to serve**
11 **as a member of the board. The term of the person appointed under**
12 **IC 5-10.3-3-1(b)(4), as amended by this act, begins July 1, 2011,**
13 **and ends June 30, 2015.**
14 (c) **This SECTION expires July 1, 2015.**
15 SECTION 3. **An emergency is declared for this act.**





PRELIMINARY DRAFT

No. 3153

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 36-8-8.

Synopsis: PERF and TRF administrative matters. PERF/TRF proposal #1. Makes technical corrections in conformity with amendments in P.L.22-1998 to the 1977 police officers' and firefighters' pension and disability fund (fund) that reduced from 55 to 52 the age at which a fund member reaches regular retirement status.

Effective: July 1, 2011.

**Exhibit 9
Pension Management
Oversight Committee
September 29, 2010**



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 36-8-8-12, AS AMENDED BY P.L.34-2009,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 12. (a) Benefits paid under this section are subject
4 to sections 2.5 and 2.6 of this chapter.

5 (b) If an active fund member has a covered impairment, as
6 determined under sections 12.3 through 13.1 of this chapter, the
7 member is entitled to receive the benefit prescribed by section 13.3 or
8 13.5 of this chapter. A member who has had a covered impairment and
9 returns to active duty with the department shall not be treated as a new
10 applicant seeking to become a member of the 1977 fund.

11 (c) If a retired fund member who has not yet reached the member's
12 fifty-second birthday is found by the PERF board to be permanently or
13 temporarily unable to perform all suitable work for which the member
14 is or may be capable of becoming qualified, the member is entitled to
15 receive during the disability the retirement benefit payments payable
16 at fifty-two (52) years of age. During a reasonable period in which a
17 fund member with a disability is becoming qualified for suitable work,
18 the member may continue to receive disability benefit payments.
19 However, benefits payable for disability under this subsection are
20 reduced by amounts for which the fund member is eligible from:

21 (1) a plan or policy of insurance providing benefits for loss of
22 time because of disability;

23 (2) a plan, fund, or other arrangement to which the fund member's
24 employer has contributed or for which the fund member's
25 employer has made payroll deductions, including a group life
26 policy providing installment payments for disability, a group
27 annuity contract, or a pension or retirement annuity plan other
28 than the fund established by this chapter;

29 (3) the federal Social Security Act (42 U.S.C. 401 et seq.), the
30 Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States
31 Department of Veterans Affairs, or another federal, state, local, or



- 1 other governmental agency;
 2 (4) worker's compensation payable under IC 22-3; and
 3 (5) a salary or wage, including overtime and bonus pay and extra
 4 or additional remuneration of any kind, the fund member receives
 5 or is entitled to receive from the member's employer.

6 For the purposes of this subsection, a retired fund member is
 7 considered eligible for benefits from subdivisions (1) through (5)
 8 whether or not the member has made application for the benefits.

9 (d) Notwithstanding any other law, a plan, policy of insurance, fund,
 10 or other arrangement:

11 (1) delivered, issued for delivery, amended, or renewed after
 12 April 9, 1979; and

13 (2) described in subsection (c)(1) or (c)(2);

14 may not provide for a reduction or alteration of benefits as a result of
 15 benefits for which a fund member may be eligible from the 1977 fund
 16 under subsection (c).

17 (e) Time spent receiving disability benefits, not to exceed twenty
 18 (20) years, is considered active service for the purpose of determining
 19 retirement benefits. A fund member's retirement benefit shall be based
 20 on:

21 (1) the member's years of active service; plus

22 (2) if applicable, the period, not to exceed twenty (20) years,
 23 during which the member received disability benefits.

24 (f) A fund member who is receiving disability benefits:

25 (1) under section 13.3(d) of this chapter; or

26 (2) based on a determination under this chapter that the fund
 27 member has a Class 3 impairment;

28 shall be transferred from disability to regular retirement status when the
 29 member becomes ~~fifty-five (55)~~ **fifty-two (52)** years of age.

30 (g) A fund member who is receiving disability benefits:

31 (1) under section 13.3(c) of this chapter; or

32 (2) based on a determination under this chapter that the fund
 33 member has a Class 1 or Class 2 impairment;

34 is entitled to receive a disability benefit for the remainder of the fund
 35 member's life in the amount determined under the applicable sections
 36 of this chapter.

37 SECTION 2. IC 36-8-8-18, AS AMENDED BY P.L.148-2007,
 38 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2011]: Sec. 18. (a) Except as provided in subsection (b), if a
 40 unit becomes a participant in the 1977 fund, credit for prior service by
 41 police officers (including prior service as a full-time, fully paid town
 42 marshal or full-time, fully paid deputy town marshal by a police officer
 43 employed by a metropolitan board of police commissioners) or by
 44 firefighters before the date of participation may be given by the PERF
 45 board only if:

46 (1) the unit contributes to the 1977 fund the amount necessary to



1 applicable regulations, the 1977 fund may accept, on behalf of a fund
2 member who is purchasing permissive service credit under this chapter,
3 a rollover of a distribution from any of the following:

4 (1) A qualified plan described in Section 401(a) or Section 403(a)
5 of the Internal Revenue Code.

6 (2) An annuity contract or account described in Section 403(b) of
7 the Internal Revenue Code.

8 (3) An eligible plan that is maintained by a state, a political
9 subdivision of a state, or an agency or instrumentality of a state or
10 political subdivision of a state under Section 457(b) of the
11 Internal Revenue Code.

12 (4) An individual retirement account or annuity described in
13 Section 408(a) or Section 408(b) of the Internal Revenue Code.

14 (g) To the extent permitted by the Internal Revenue Code and the
15 applicable regulations, the 1977 fund may accept, on behalf of a fund
16 member who is purchasing permissive service credit under this chapter,
17 a trustee to trustee transfer from any of the following:

18 (1) An annuity contract or account described in Section 403(b) of
19 the Internal Revenue Code.

20 (2) An eligible deferred compensation plan under Section 457(b)
21 of the Internal Revenue Code.

22 SECTION 3. IC 36-8-8-18.1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18.1. (a) As used in this
24 section, "police officer" includes a former full-time, fully paid town
25 marshal or full-time, fully paid deputy town marshal who is employed
26 as a police officer by a metropolitan board of police commissioners.

27 (b) If a unit becomes a participant in the 1977 fund and the unit
28 previously covered police officers, firefighters, or emergency medical
29 technicians in PERF, or if the employees of the unit become members
30 of the 1977 fund under section 7(g) of this chapter, the following
31 provisions apply:

32 (1) A minimum benefit applies to members electing to transfer or
33 being transferred to the 1977 fund from PERF. The minimum
34 benefit, payable at age ~~fifty-five (55)~~ **fifty-two (52)**, for such a
35 member equals the actuarial equivalent of the vested retirement
36 benefit payable to the member upon normal retirement under
37 IC 5-10.2-4-1 as of the day before the transfer, based solely on:

- 38 (A) creditable service;
 - 39 (B) the average of the annual compensation; and
 - 40 (C) the amount credited to the annuity savings account;
- 41 of the transferring member as of the day before the transfer under
42 IC 5-10.2 and IC 5-10.3.

43 (2) The PERF board shall transfer from PERF to the 1977 fund
44 the amount credited to the annuity savings accounts and the
45 present value of the retirement benefits payable at age sixty-five
46 (65) attributable to the transferring members.



1 (3) The amount the unit and the member must contribute to the
2 1977 fund under section 18 of this chapter, if any service credit
3 is to be given under that section, will be reduced by the amounts
4 transferred to the 1977 fund by the PERF board under subdivision
5 (2).
6 (4) Credit for prior service in PERF of a member as a police
7 officer, a firefighter, or an emergency medical technician is
8 waived in PERF. Any credit for that service under the 1977 fund
9 shall only be given in accordance with section 18 of this chapter.
10 (5) Credit for prior service in PERF of a member, other than as a
11 police officer, a firefighter, or an emergency medical technician,
12 remains in PERF and may not be credited under the 1977 fund.





PRELIMINARY DRAFT
No. 3298

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-39-7-0.1.

Synopsis: PERF and TRF administrative matters. PERF/TRF proposal #4. Codifies P.L.33-2006, Section 4, concerning the prosecuting attorneys retirement fund. Repeals the noncode provision.

Effective: Upon passage.

Exhibit 10
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 33-39-7-0.1 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 0.1. The amendments made to sections 15,
4 16, and 19 of this chapter by P.L.33-2006 apply to a participant in
5 the fund who:**
6 **(1) is serving on July 1, 2006; or**
7 **(2) begins service after July 1, 2006;**
8 **in a position described in section 8 of this chapter.**
9 SECTION 2. P.L.33-2006, SECTION 4, IS REPEALED
10 [EFFECTIVE UPON PASSAGE].
11 SECTION 3. **An emergency is declared for this act.**





PRELIMINARY DRAFT
No. 3156

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10.2-2-6.

Synopsis: TRF administrative matters. PERF/TRF Proposal #6. Removes a provision requiring the teachers' retirement fund (TRF) to maintain separate accounts for each employer within the retirement allowance account of the 1996 account.

Effective: July 1, 2011.

Exhibit 11
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 5-10.2-2-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) The retirement
3 allowance account of the public employees' retirement fund consists of
4 the retirement fund, exclusive of the annuity savings account. For the
5 public employees' retirement fund, separate accounts within the
6 retirement allowance account shall be maintained for contributions
7 made by the state and by each political subdivision.
8 (b) The retirement allowance account of the pre-1996 account
9 consists of the pre-1996 account, exclusive of the annuity savings
10 account.
11 (c) The retirement allowance account of the 1996 account consists
12 of the 1996 account, exclusive of the annuity savings account. For the
13 1996 account, separate accounts within the retirement allowance
14 account shall be maintained for contributions made by the state, by
15 each school corporation, and by each institution.





PRELIMINARY DRAFT
No. 3157

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10-5.5; IC 33-38; IC 33-39-7; IC 36-8-8.

Synopsis: PERF and TRF administrative matters. PERF/TRF proposal #7. Requires, after December 31, 2011, that an employer of participants in: (1) the state excise police, gaming agent, gaming control officer, and conservation enforcement officers' retirement fund; (2) the judges' retirement system; (3) the prosecuting attorneys' retirement fund; and (4) the 1977 police officers' and firefighters' pension and disability fund; submit contributions, reports, and records electronically. Authorizes the board of trustees of the public employees' retirement fund (PERF) to establish due dates for contributions, reports, and records submitted by an employer. Makes technical corrections to remove references to the auditor of state in connection with the administration of the PERF.

Effective: July 1, 2011.

Exhibit 12
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 5-10-5.5-8, AS AMENDED BY P.L.180-2007,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 8. (a) Except as provided in subsection (c), every
4 participant shall contribute four percent (4%) of the participant's annual
5 salary to the participants' savings fund.

6 (b) Contributions shall be made in the form of payroll deductions
7 from each and every payment of salary received by the participant.
8 Every participant shall, as a condition precedent to becoming a
9 participant, consent to the payroll deductions.

10 (c) An employer may pay all or a part of the contributions for the
11 participant. All contributions made by an employer under this
12 subsection shall be treated as pick-up contributions under Section
13 414(h)(2) of the Internal Revenue Code.

14 (d) **After December 31, 2011, an employer shall submit the**
15 **contributions paid by or on behalf of a participant under this**
16 **section by electronic funds transfer in accordance with section 8.5**
17 **of this chapter.**

18 SECTION 2. IC 5-10-5.5-8.5 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) This section applies to**
21 **reports, records, and contributions submitted after December 31,**
22 **2011.**

23 (b) **As used in this section, "electronic funds transfer" has the**
24 **meaning set forth in IC 4-8.1-2-7(f).**

25 (c) **An employer shall submit through the use of electronic funds**
26 **transfer:**

27 (1) **employer contributions, determined by the board, to fund**
28 **the retirement, disability, and survivor benefits described in**
29 **this chapter; and**

30 (2) **contributions paid by or on behalf of a participant under**
31 **section 8 of this chapter.**



1 (d) An employer shall submit in a uniform format through a
 2 secure connection over the Internet or through other electronic
 3 means specified by the board the reports and records required by
 4 the board under this chapter.

5 (e) The board shall establish by rule the due dates for all
 6 reports, records, and contributions required under this chapter.

7 SECTION 3. IC 33-38-6-2.5 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2011]: Sec. 2.5. As used in this chapter, IC 33-38-7, and
 10 IC 33-38-8, "electronic funds transfer" has the meaning set forth
 11 in IC 4-8.1-2-7(f).

12 SECTION 4. IC 33-38-6-21 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 21. (a) When drawing
 14 a salary warrant for a participant, the auditor of state and the county
 15 auditor shall deduct from the amount of the warrant the participant's
 16 contribution, if any, to the fund in the amount certified in the vouchers
 17 or an order issued by the director.

18 (b) The auditor of state and the county auditor shall draw a warrant
 19 to the fund for the total contributions withheld from the participants
 20 each month. The warrant drawn to the fund together with a list of
 21 participants and the amount withheld from each participant shall be
 22 transmitted immediately to the director.

23 (c) The auditor of state shall draw warrants upon the treasurer of
 24 state, payable from the fund, for purposes provided for in this chapter,
 25 upon the presentation of vouchers or an order signed by the director of
 26 the board in accordance with resolutions of the board.

27 (c) After December 31, 2011, the auditor of state and the county
 28 auditor shall submit the contributions paid by or on behalf of a
 29 participant under this section by electronic funds transfer in
 30 accordance with section 21.5 of this chapter.

31 SECTION 5. IC 33-38-6-21.5 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2011]: Sec. 21.5. (a) This section applies to
 34 reports, records, and contributions submitted after December 31,
 35 2011, under this chapter, IC 33-38-7, and IC 33-38-8.

36 (b) An employer shall submit through the use of electronic funds
 37 transfer:

38 (1) employer payments made to fund the retirement,
 39 disability, and survivor benefits described in this chapter,
 40 IC 33-38-7, and IC 33-38-8; and

41 (2) contributions paid by or on behalf of a participant under
 42 section 21 of this chapter, IC 33-38-7-10, or IC 33-38-8-11.

43 (c) An employer shall submit in a uniform format through a
 44 secure connection over the Internet or through other electronic
 45 means specified by the board the reports and records required by
 46 the board under this chapter, IC 33-38-7, or IC 33-38-8.



1 (d) The board shall establish by rule the due dates for all
 2 reports, records, and contributions required under this chapter,
 3 IC 33-38-7, or IC 33-38-8.

4 SECTION 6. IC 33-38-6-23, AS AMENDED BY P.L.99-2010,
 5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 23. (a) The board of trustees of the public
 7 employees' retirement fund shall administer the fund, which may be
 8 commingled with the public employees' retirement fund for investment
 9 purposes.

10 (b) The board shall do the following:

11 (1) Determine eligibility for and make payments of benefits under
 12 IC 33-38-7 and IC 33-38-8.

13 (2) In accordance with the powers and duties granted it in
 14 IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3
 15 through IC 5-10.3-5-6, administer the fund.

16 (3) Provide by rule for the implementation of this chapter and
 17 IC 33-38-7 and IC 33-38-8.

18 (4) Authorize deposits.

19 (c) A determination by the board may be appealed under the
 20 procedures in IC 4-21.5.

21 (d) The powers and duties of:

22 (1) the director and the actuary of the board; and

23 (2) the attorney general; and

24 ~~(3) the auditor of state;~~

25 with respect to the fund are those specified in IC 5-10.3-3 and
 26 IC 5-10.3-4.

27 (e) The board may hire additional personnel, including hearing
 28 officers, to assist it in the implementation of this chapter.

29 (f) Fund records of individual participants and participants'
 30 information are confidential, except for the name and years of service
 31 of a fund participant.

32 SECTION 7. IC 33-38-7-10 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) A person who
 34 completed at least eight (8) years of service as a judge before July 1,
 35 1953, may become a participant in the fund and be subject to this
 36 chapter if the person qualifies for benefits under section 11 of this
 37 chapter. A person who is a judge on July 1, 1953, shall become a
 38 participant in the fund and be subject to this chapter, beginning on July
 39 1, 1953, unless twenty (20) days before July 1, 1953, the judge files
 40 with the board a written notice of election not to participate in the fund.

41 (b) A person who:

42 (1) becomes a judge after July 1, 1953, and before September 1,
 43 1985; and

44 (2) is not a participant in the fund;

45 becomes a participant in the fund and is subject to this chapter,
 46 beginning on the date the person becomes a judge, unless within twenty



1 (20) days after that date the judge files with the board a written notice
 2 of election not to participate in the fund. An election filed under this
 3 subsection is irrevocable.

4 (c) A person who irrevocably:

5 (1) elects not to participate in the fund; or

6 (2) withdraws from the fund under section 13 of this chapter;

7 is ineligible to participate and to receive benefits under this chapter.

8 (d) Participation of a judge in the fund continues until the date on
 9 which the judge:

10 (1) becomes an annuitant;

11 (2) dies; or

12 (3) accepts a refund;

13 but a person is not required to pay into the fund during any period that
 14 the person is not serving as a judge, except as otherwise provided in
 15 this chapter.

16 (e) A participant is considered to have made a one (1) time
 17 irrevocable salary reduction agreement of six percent (6%) of each
 18 payment of salary that a participant would otherwise have received for
 19 services as a judge.

20 (f) The auditor of state and the county auditor shall pay and credit
 21 to the fund the amounts described in subsection (e) as provided in
 22 IC 33-38-6-21 and IC 33-38-6-22. **After December 31, 2011, the**
 23 **auditor of state and the county auditor shall submit the**
 24 **contributions paid by or on behalf of a participant under**
 25 **subsection (e) by electronic funds transfer in accordance with**
 26 **IC 33-38-6-21.5.** However, no amounts shall be paid on behalf of a
 27 participant for more than twenty-two (22) years.

28 SECTION 8. IC 33-38-8-11, AS AMENDED BY P.L.122-2008,
 29 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2011]: Sec. 11. (a) A participant shall make contributions to
 31 this fund of six percent (6%) of each payment of salary received for
 32 services as judge or, after December 31, 2010, as a judge or full-time
 33 magistrate. However, the employer may elect to pay the contribution
 34 for the participant as a pickup under Section 414(h) of the Internal
 35 Revenue Code.

36 (b) Participants' contributions, other than participants' contributions
 37 paid by the employer, shall be deducted from the monthly salary of
 38 each participant by the auditor of state and by the county auditor and
 39 credited to the fund as provided in IC 33-38-6-21 and IC 33-38-6-22.
 40 **After December 31, 2011, the auditor of state and the county**
 41 **auditor shall submit the contributions paid by or on behalf of a**
 42 **participant under subsection (a) by electronic funds transfer in**
 43 **accordance with IC 33-38-6-21.5.** However, a contribution is not
 44 required:

45 (1) because of any salary received after the participant has
 46 contributed to the fund for twenty-two (22) years; or



1 (2) during any period that the participant is not serving as judge
2 or, after December 31, 2010, as a judge or full-time magistrate.

3 SECTION 9. IC 33-39-7-11, AS AMENDED BY P.L.99-2010,
4 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]: Sec. 11. (a) The board shall administer the fund, which
6 may be commingled with the public employees' retirement fund for
7 investment purposes.

8 (b) The board shall do the following:

9 (1) Determine eligibility for and make payments of benefits under
10 this chapter.

11 (2) In accordance with the powers and duties granted the board in
12 IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3
13 through IC 5-10.3-5-6, administer the fund.

14 (3) Provide by rule for the implementation of this chapter.

15 (4) Authorize deposits.

16 (c) A determination by the board may be appealed under IC 4-21.5.

17 (d) The powers and duties of:

18 (1) the director and the actuary of the board; **and**

19 (2) the attorney general; **and**

20 ~~(3) the auditor of state;~~

21 with respect to the fund are those specified in IC 5-10.3-3 and
22 IC 5-10.3-4.

23 (e) The board may hire additional personnel, including hearing
24 officers, to assist in the implementation of this chapter.

25 (f) Fund records of individual participants and participants'
26 information are confidential, except for the name and years of service
27 of a fund participant.

28 SECTION 10. IC 33-39-7-12 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) Except as
30 provided in subsection (b), each participant shall make contributions
31 to the fund as follows:

32 (1) A participant described in section 8(a)(1) of this chapter shall
33 make contributions of six percent (6%) of each payment of salary
34 received for services after December 31, 1989.

35 (2) A participant described in section 8(a)(2) or 8(a)(3) of this
36 chapter shall make contributions of six percent (6%) of each
37 payment of salary received for services after June 30, 1994.

38 A participant's contributions shall be deducted from the participant's
39 monthly salary by the auditor of state and credited to the fund.

40 (b) The state may pay the contributions for a participant.

41 **(c) After December 31, 2011, the auditor of state shall submit**
42 **the contributions paid by or on behalf of a participant under this**
43 **section by electronic funds transfer in accordance with section 12.5**
44 **of this chapter.**

45 SECTION 11. IC 33-39-7-12.5 IS ADDED TO THE INDIANA
46 CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2011]: **Sec. 12.5. (a) This section applies to**
2 **reports, records, and contributions submitted after December 31,**
3 **2011, under this chapter.**

4 (b) As used in this section, "electronic funds transfer" has the
5 meaning set forth in IC 4-8.1-2-7(f).

6 (c) The state shall submit through the use of electronic funds
7 transfer contributions paid by or on behalf of a participant under
8 section 12 of this chapter.

9 (d) The state shall submit in a uniform format through a secure
10 connection over the Internet or through other electronic means
11 specified by the board the reports and records required by the
12 board under this chapter.

13 (e) The board shall establish by rule the due dates for all
14 reports, records, and contributions required under this chapter.

15 SECTION 12. IC 36-8-8-1.5 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2011]: **Sec. 1.5. As used in this chapter, "electronic funds**
18 **transfer" has the meaning set forth in IC 4-8.1-2-7(f).**

19 SECTION 13. IC 36-8-8-6 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 6. (a) Each employer**
21 **shall annually on March 31, June 30, September 30, and December 31,**
22 **for the calendar quarters ending on those dates, or an alternate date**
23 **established by the rules of the PERF board, pay into the 1977 fund**
24 **an amount determined by the PERF board:**

- 25 (1) for administration expenses; and
- 26 (2) sufficient to maintain level cost funding during the period of
- 27 employment on an actuarial basis for members hired after April
- 28 30, 1977.

29 (b) **After December 31, 2011, each employer shall submit the**
30 **payments required by subsection (a) by electronic funds transfer.**

31 (c) If an employer fails to make the payments required by
32 subsection (a) or fails to send the fund members' contributions required
33 by section 8(a) of this chapter, the amount payable, on request of the
34 PERF board, may be withheld by the auditor of state from money
35 payable to the employer and transferred to the fund. In the alternative,
36 the amount payable may be recovered in the circuit or superior court of
37 the county in which the employer is located, in an action by the state on
38 the relation of the PERF board, prosecuted by the attorney general.

39 SECTION 14. IC 36-8-8-8, AS AMENDED BY P.L.180-2007,
40 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2011]: **Sec. 8. (a) Each fund member shall contribute during**
42 **the period of the fund member's employment or for thirty-two (32)**
43 **years, whichever is shorter, an amount equal to six percent (6%) of the**
44 **salary of a first class patrolman or firefighter. However, the employer**
45 **may pay all or a part of the contribution for the member. The amount**
46 **of the contribution, other than contributions paid on behalf of a**



1 member, shall be deducted each pay period from each fund member's
2 salary by the disbursing officer of the employer. The employer shall
3 send to the PERF board each year on March 31, June 30, September
4 30, and December 31, for the calendar quarters ending on those dates,
5 **or an alternate date established by the rules of the PERF board**, a
6 certified list of fund members and a warrant issued by the employer for
7 the total amount deducted for fund members' contributions.

8 **(b) After December 31, 2011, an employer shall submit:**

9 **(1) the list described in subsection (a) in a uniform format**
10 **through a secure connection over the Internet or through**
11 **other electronic means specified by the PERF board; and**

12 **(2) the contributions paid by or on behalf of a member under**
13 **subsection (a) by electronic funds transfer.**

14 ~~(b)~~ (c) Except as provided in section 7.2 of this chapter, if a fund
15 member ends the fund member's employment other than by death or
16 disability before the fund member completes twenty (20) years of
17 active service, the PERF board shall return to the fund member in a
18 lump sum the fund member's contributions plus interest as determined
19 by the PERF board. If the fund member returns to service, the fund
20 member is entitled to credit for the years of service for which the fund
21 member's contributions were refunded if the fund member repays the
22 amount refunded to the fund member in either a lump sum or a series
23 of payments determined by the PERF board.





PRELIMINARY DRAFT
No. 3231

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10.2-3-6.5.

Synopsis: PERF and TRF administrative matters. PERF/TRF proposal #8. Permits a member of the public employees' retirement fund (PERF) or the teachers' retirement fund (TRF) who is eligible for an early retirement to withdraw the member's annuity savings account without applying for a retirement benefit.

Effective: July 1, 2011.

Exhibit 13
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 5-10.2-3-6.5, AS AMENDED BY P.L.99-2010,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 6.5. (a) A member who meets all of the following
4 requirements may elect to withdraw the entire amount in the member's
5 annuity savings account: ~~before the member is eligible to do so at~~
6 ~~retirement under IC 5-10.2-4-2:~~

7 (1) The member has attained vested status in the fund.

8 (2) The member has terminated employment with the applicable
9 fund and is not currently employed in a covered position.

10 (3) The member has not performed any service in a position
11 covered by the fund for at least thirty (30) days after the date the
12 member terminates employment.

13 (4) The member makes the election described in this subsection:

14 (A) after December 31, 2008, if the member is a member of
15 the public employees' retirement fund; or

16 (B) after June 30, 2009, if the member is a member of the
17 Indiana state teachers' retirement fund.

18 (5) Except as provided in subsection (b), the member is not
19 eligible for:

20 (A) **before July 1, 2011**, a reduced or unreduced retirement;
21 or

22 (B) **after June 30, 2011, an unreduced retirement;**

23 **under IC 5-10.2-4** on the date the fund receives notice of the
24 election described in this subsection.

25 (b) The requirement described in subsection (a)(5) does not apply
26 to a member of the public employees' retirement fund who:

27 (1) was eligible for a reduced or unreduced retirement; and

28 (2) received a distribution under this section;

29 after December 31, 2008, and before January 1, 2010.

30 (c) A member who elects to withdraw the entire amount in the
31 member's annuity savings account under subsection (a) shall provide



1 notice of the election on a form provided by the board.
2 (d) The election to withdraw the entire amount in the member's
3 annuity savings account is irrevocable.
4 (e) The board shall pay the amount in the member's annuity savings
5 account as a lump sum.
6 (f) Except as provided in subsection (g), a member who makes a
7 withdrawal under this section is entitled to receive, when the member
8 becomes eligible to receive **and applies for** a retirement benefit under
9 IC 5-10.2-4, a retirement benefit equal to the pension provided by
10 employer contributions computed under IC 5-10.2-4.
11 (g) A member who:
12 (1) transfers creditable service earned under the fund to another
13 governmental retirement plan under section 1(i) of this chapter;
14 and
15 (2) withdraws the member's annuity savings account under this
16 section to purchase the service;
17 may not use the transferred service in the computation of a retirement
18 benefit payable under subsection (f).





PRELIMINARY DRAFT
No. 3232

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 36-8-8-13.1.

Synopsis: PERF administrative matters. PERF proposal #10. Permits an administrative law judge, for cause shown, to order the waiver or extension of the 180-day limit in which the board of trustees of the public employees' retirement fund (PERF) is required to issue a final order after the date the PERF board receives a local board's initial disability determination or the PERF director initiates a review of a default disability award for a member of the 1977 police officers' and firefighters' pension and disability fund.

Effective: July 1, 2011.

Exhibit 14
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 36-8-8-13.1, AS AMENDED BY P.L.29-2006,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 13.1. (a) If:

4 (1) the local board has determined under this chapter that a
5 covered impairment exists and the safety board has determined
6 that there is no suitable and available work within the department,
7 considering reasonable accommodation to the extent required by
8 the Americans with Disabilities Act; or

9 (2) the fund member has filed an appeal under section 12.7(o) of
10 this chapter;

11 the local board shall submit the local board's determinations and the
12 safety board's determinations to the PERF board's director.

13 (b) Whenever a fund member is determined to have an impairment
14 under section 12.7(i) of this chapter, the PERF board's director shall
15 initiate a review of the default award not later than sixty (60) days after
16 the director learns of the default award.

17 (c) After the PERF board's director receives the determinations
18 under subsection (a) or initiates a review under subsection (b), the fund
19 member must submit to an examination by a medical authority selected
20 by the PERF board. The authority shall determine if there is a covered
21 impairment. With respect to a fund member who is covered by sections
22 12.5 and 13.5 of this chapter, the authority shall determine the degree
23 of impairment. The PERF board shall adopt rules under IC 4-22-2 to
24 establish impairment standards, such as the impairment standards
25 contained in the United States Department of Veterans Affairs
26 Schedule for Rating Disabilities. The report of the examination shall be
27 submitted to the PERF board's director. If a fund member refuses to
28 submit to an examination, the authority may find that no impairment
29 exists.

30 (d) The PERF board's director shall review the medical authority's
31 report and the local board's determinations and issue an initial



1 determination within sixty (60) days after receipt of the local board's
 2 determinations. The PERF board's director shall notify the local board,
 3 the safety board, and the fund member of the initial determination. The
 4 following provisions apply if the PERF board's director does not issue
 5 an initial determination within sixty (60) days and if the delay is not
 6 attributable to the fund member or the safety board:

7 (1) In the case of a review initiated under subsection (a)(1):

8 (A) the determinations of the local board and the chief of the
 9 police or fire department are considered to be the initial
 10 determination; and

11 (B) for purposes of section 13.5(d) of this chapter, the fund
 12 member is considered to be totally impaired.

13 (2) In the case of an appeal submitted under subsection (a)(2), the
 14 statements made by the fund member under section 12.7(o) of this
 15 chapter are considered to be the initial determination.

16 (3) In the case of a review initiated under subsection (b), the
 17 initial determination is the impairment determined under section
 18 12.7(i) of this chapter.

19 (e) The fund member, the safety board, or the local board may
 20 object in writing to the director's initial determination within fifteen
 21 (15) days after the determination is issued. If no written objection is
 22 filed, the initial determination becomes the final order of the PERF
 23 board. If a timely written objection is filed, the PERF board shall issue
 24 the final order after a hearing. **Unless an administrative law judge**
 25 **orders a waiver or an extension of the period for cause shown,** the
 26 final order shall be issued not later than one hundred eighty (180) days
 27 after the date of receipt of the local board's determination or the date
 28 the PERF board's director initiates a review under subsection (b). The
 29 following provisions apply if a final order is not issued within ~~one~~
 30 ~~hundred eighty (180) days~~ **the time limit described in this subsection**
 31 and if the delay is not attributable to the fund member or the chief of
 32 the police or fire department:

33 (1) In the case of a review initiated under subsection (a)(1):

34 (A) the determinations of the local board and the chief of the
 35 police or fire department are considered to be the final order;
 36 and

37 (B) for purposes of section 13.5(d) of this chapter, the fund
 38 member is considered to be totally impaired.

39 (2) In the case of an appeal submitted under subsection (a)(2), the
 40 statements made by the fund member under section 12.7(o) of this
 41 chapter are considered to be the final order.

42 (3) In the case of a review initiated under subsection (b), the
 43 impairment determined under section 12.7(i) of this chapter is
 44 considered to be the final order.

45 (f) If the PERF board approves the director's initial determination,
 46 then the PERF board shall issue a final order adopting the initial



1 determination. The local board and the chief of the police or fire
2 department shall comply with the initial determination. If the PERF
3 board does not approve the initial determination, the PERF board may
4 receive additional evidence on the matter before issuing a final order.

5 (g) Appeals of the PERF board's final order may be made under
6 IC 4-21.5.

7 (h) The transcripts, records, reports, and other materials compiled
8 under this section must be retained in accordance with the procedures
9 specified in section 12.7(p) of this chapter.





PRELIMINARY DRAFT
No. 3212

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-10; IC 5-10.2; IC 5-10.3; IC 5-10.4;
IC 9-31-1-7; IC 10-12; IC 10-17-1-0.1; IC 10-19-6-4; IC 14-9-7-5;
IC 16-19-1-4; IC 16-20-1; IC 20-28-9-0.2; IC 21-14-7-0.2;
IC 22-4-18-8; IC 33-38; IC 33-39-7-0.1; IC 36-8.

Synopsis: Noncode statutes. Codifies certain noncode provisions relating to government employees and pensions. Repeals the corresponding noncode provisions. Repeals without codification the following noncode statutes: (1) A 1985 statute, a 1987 statute, and a 1988 statute relating to the ability of public employees to be candidates for and to hold a public office. (2) A 1987 statute stating when salary increases for state officers become effective. (3) A 1989 statute providing for an additional subsistence allowance for certain officers of the house of representatives. (4) A 1990 statute providing for an additional subsistence allowance for certain officers of the senate. (5) A 2001 statute relating to appointment of members of the PERF board of trustees.

Effective: July 1, 2011.

Exhibit 15
Pension Management
Oversight Committee
September 29, 2010



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 5-10-1.1-0.3 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. The actions taken by a school**
4 **corporation before January 1, 1988, to:**

5 (1) establish an employee savings plan that is a defined
6 contribution plan qualified under Section 401(a) of the
7 Internal Revenue Code; and

8 (2) contribute amounts to the employee savings plan on behalf
9 of the employee, with those amounts to be credited and
10 allocated to the employee;

11 are legalized.

12 SECTION 2. IC 5-10-5.5-0.1 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2011]: **Sec. 0.1. (a) As used in this section,**
15 **"plan" refers to the state excise police, gaming agent, gaming**
16 **control officer, and conservation enforcement officers' retirement**
17 **plan established by section 2 of this chapter.**

18 (b) The following amendments to this chapter apply as follows:

19 (1) The addition of section 7.5 of this chapter by P.L.180-2007
20 applies after June 30, 2007, to active participants of the plan.

21 (2) The amendments made to section 8 of this chapter by
22 P.L.180-2007 apply after June 30, 2007, to active participants
23 of the plan.

24 (3) The amendments made to sections 10, 11, and 12 of this
25 chapter by P.L.180-2007 apply to participants of the plan who
26 retire after June 30, 2007.

27 (4) The amendments made to sections 7 and 13.5 of this
28 chapter by P.L.180-2007 apply to participants of the plan who
29 become disabled after June 30, 2007.

30 (5) The addition of section 22 of this chapter by P.L.128-2008
31 applies only to a participant in the plan who is in active



1 service after June 30, 2008.

2 (6) The amendments made to sections 9 and 10 of this chapter
3 by P.L.128-2008 apply only to a participant in the plan who is
4 in active service after June 30, 2008.

5 SECTION 3. IC 5-10-8-0.1 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2011]: **Sec. 0.1. The following amendments to this chapter apply
8 as follows:**

9 (1) The amendments made to section 2 of this chapter (before
10 its repeal) and section 3 of this chapter (before its repeal) by
11 P.L.46-1985 do not affect contracts:

12 (A) entered into before; and

13 (B) in effect on;

14 July 1, 1986.

15 (2) The addition of section 7.2 of this chapter by P.L.35-1992
16 applies to a contract between the state and a prepaid health
17 care delivery plan that is entered into or renewed after June
18 30, 1992.

19 SECTION 4. IC 5-10-8-0.3 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2011]: **Sec. 0.3. The benefits accrued by an employee under 31
22 IAC 1-9-5 (before its repeal) or 31 IAC 2-11-6 (before its repeal)
23 that are unused after June 30, 1989, may be used by the employee
24 after June 30, 1989, in accordance with the rules required by
25 section 7(d) of this chapter, as amended by P.L.27-1988. The rules
26 required by section 7(d) of this chapter, as amended by
27 P.L.27-1988, must provide that an employee who:**

28 (1) is subject to section 7(d) of this chapter; and

29 (2) has less than five (5) years of continuous full-time
30 employment after June 30, 1989;

31 will be credited with special sick leave on a pro rata basis after
32 June 30, 1989.

33 SECTION 5. IC 5-10-8-0.4 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
35 1, 2011]: **Sec. 0.4. Payment of the deductible portion of group
36 health insurance by a public employer before July 1, 1989, is
37 legalized.**

38 SECTION 6. IC 5-10-8.5-0.1 IS ADDED TO THE INDIANA
39 CODE AS A NEW SECTION TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 2011]: **Sec. 0.1. The amendments made to
41 section 18 of this chapter by P.L.124-2008 apply to premiums paid
42 after July 31, 2007, for individual or group health coverage for a
43 retired participant and the spouse and dependents of a retired
44 participant.**

45 SECTION 7. IC 5-10-10-6.5 IS ADDED TO THE INDIANA CODE
46 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1 1, 2011]: Sec. 6.5. Notwithstanding section 6 of this chapter, the
2 amount of the special death benefit payable under this chapter, as
3 amended by P.L.66-2000, to the surviving spouse of a probation
4 officer who died in the line of duty after April 27, 1997, and before
5 January 1, 1998, is one hundred fifty thousand dollars (\$150,000).

6 SECTION 8. IC 5-10.2-2-0.1 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2011]: Sec. 0.1. The addition of section 18 of
9 this chapter by P.L.224-2003 applies only to investments made
10 after June 30, 2003.

11 SECTION 9. IC 5-10.2-4-0.1 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2011]: Sec. 0.1. The following amendments
14 to this chapter apply as follows:

15 (1) The amendments made by P.L.45-1988 to STEP TWO of
16 section 4(b) of this chapter (formerly section 4(a) of this
17 chapter):

18 (A) apply only to retirement benefits paid after March 3,
19 1988; and

20 (B) do not require retroactive increases in any benefits
21 paid before March 3, 1988.

22 (2) The amendments made to section 3 of this chapter by
23 P.L.95-2004 apply only to members of the Indiana state
24 teachers' retirement fund who retire after May 31, 2004.

25 (3) The amendments made to section 8 of this chapter by
26 P.L.62-2005 apply to:

27 (A) fiscal years that begin after June 30, 2005, for teachers'
28 retirement fund members; and

29 (B) calendar years that begin after December 31, 2005, for
30 public employees' retirement fund members.

31 (4) The amendments made to section 6 of this chapter by
32 P.L.124-2008 apply to disability retirement benefits payable
33 by the Indiana state teachers' retirement fund and the public
34 employees' retirement fund after December 31, 2007.

35 SECTION 10. IC 5-10.2-4-0.3 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2011]: Sec. 0.3. The board may consider a
38 claim for benefits under section 6(a) of this chapter, as amended by
39 P.L.22-1998, even if the disability of the member making the claim
40 arose from events occurring after March 31, 1994, and before
41 April 2, 1998. A benefit claim approved by the board under this
42 section is payable after the later of April 1, 1998, or the date of the
43 member's claim.

44 SECTION 11. IC 5-10.3-2-0.3 IS ADDED TO THE INDIANA
45 CODE AS A NEW SECTION TO READ AS FOLLOWS
46 [EFFECTIVE JULY 1, 2011]: Sec. 0.3. If before June 1, 1985, the



1 board approved a member's choice of retirement date that
 2 preceded the member's application for benefits, payments made as
 3 a result of the choice of retirement date are legalized.

4 SECTION 12. IC 5-10.3-2-0.4 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2011]: Sec. 0.4. (a) If the board, the state, or
 7 a political subdivision denied, after December 31, 1986, an
 8 employee of the state or the political subdivision who was sixty (60)
 9 years of age or older the option not to join the fund, the denial is
 10 validated.

11 (b) Actions taken by the board before March 5, 1988, that would
 12 have been valid under IC 5-10.3-7-3(a), as amended by
 13 P.L.46-1988, are validated.

14 SECTION 13. IC 5-10.3-7-0.1 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2011]: Sec. 0.1. The amendments made to
 17 section 5 of this chapter by P.L.184-2001 apply only to members of
 18 the public employees' retirement fund or the Indiana state
 19 teachers' retirement fund who retire after June 30, 2001.

20 SECTION 14. IC 5-10.3-7-0.3 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2011]: Sec. 0.3. Actions taken before April
 23 16, 1987, that would have been valid under section 2 of this
 24 chapter, as amended by P.L.62-1987, are legalized and validated.

25 SECTION 15. IC 5-10.3-7-9.6 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2011]: Sec. 9.6. (a) The state shall initiate the
 28 contributions required by section 9 of this chapter, as amended by
 29 P.L.35-1985, as part of salary and fringe benefit adjustments
 30 provided for state employees after June 30, 1986.

31 (b) The state shall initiate the contributions required by section
 32 9 of this chapter for each governor, lieutenant governor, attorney
 33 general, and state superintendent of public instruction elected or
 34 appointed to office after November 7, 1988.

35 (c) The state shall initiate, for compensation paid after June 30,
 36 1987, the contributions required under section 9 of this chapter for
 37 the following persons whose compensation is paid in whole or in
 38 part from state funds:

39 (1) Prosecuting attorneys.

40 (2) Deputy prosecuting attorneys.

41 (3) Juvenile court referees and full-time magistrates
 42 appointed under IC 31-6-9-2 (before its repeal, now codified
 43 at IC 31-31-3).

44 (4) The master commissioners and full-time magistrates
 45 appointed under IC 33-4-1-2.1 (before its repeal, now codified
 46 at IC 33-33-2-3), IC 33-4-1-74.3 (before its repeal, now



1 codified at IC 33-33-75-2), IC 33-4-1-75.1 (as amended by
 2 P.L.378-1987(ss), before its repeal, now codified at
 3 IC 33-33-71-3), and IC 33-4-1-82.1 (before its repeal, now
 4 codified at IC 33-33-82-3).

5 (5) The court commissioner and a full-time magistrate
 6 appointed under IC 33-5-29.5-7.1 (as amended by
 7 P.L.378-1987(ss), before its repeal, now codified at
 8 IC 33-33-45-10).

9 SECTION 16. IC 5-10.3-8-0.1 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2011]: **Sec. 0.1. The addition of section 13 of**
 12 **this chapter by P.L.191-2002 applies to monthly benefits payable**
 13 **by the public employees' retirement fund after December 31, 2002.**

14 SECTION 17. IC 5-10.4-1-0.3 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. If before June 1, 1985, the**
 17 **board approved a member's choice of retirement date that**
 18 **preceded the member's application for benefits, payments made as**
 19 **a result of the choice of retirement date are legalized.**

20 SECTION 18. IC 5-10.4-1-0.4 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2011]: **Sec. 0.4. (a) The definitions in**
 23 **IC 21-6.1-1 (before its repeal, now codified in this chapter) apply**
 24 **throughout this section.**

25 (b) **Notwithstanding IC 21-6.1-4-5 (as amended by P.L.214-1995,**
 26 **before its repeal, now codified at IC 5-10.4-4-7) and**
 27 **IC 21-6.1-4-13(a) (as added by P.L.214-1995, before its repeal, now**
 28 **codified at IC 5-10.4-4-14), and subject to IC 21-6.1-4-13(b) (as**
 29 **added by P.L.214-1995, before its repeal, now codified at**
 30 **IC 5-10.4-4-14), a member who accrued creditable service before**
 31 **January 1, 1995, for leave for other educational employment**
 32 **approved by the board:**

33 (1) **retains the creditable service accrued before January 1,**
 34 **1995, resulting from the leave for other educational**
 35 **employment that was approved by the board; and**

36 (2) **continues to accrue creditable service after December 31,**
 37 **1994, resulting from the leave for other educational**
 38 **employment that was approved before January 1, 1995, by the**
 39 **board.**

40 SECTION 19. IC 5-10.4-2-2.5 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: **Sec. 2.5. The board shall adjust the**
 43 **employer contribution rate for the Indiana state teachers'**
 44 **retirement fund to take into account any actuarial savings resulting**
 45 **from the amendment to IC 21-6.1-2-2 (before its repeal, now**
 46 **codified at section 2 of this chapter) by P.L.291-2001.**



1 SECTION 20. IC 5-10.4-2-5.5 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. The board shall allocate from**
 4 **the pension stabilization fund (IC 21-6.1-2-8, before its repeal, now**
 5 **codified at section 5 of this chapter) to the fund's 1996 account an**
 6 **amount equal to the unfunded liability for individuals who were**
 7 **members of the fund's pre-1996 account before July 1, 1995, (and**
 8 **survivors and beneficiaries of these members) who after June 30,**
 9 **1995, became members of the Indiana state teachers' retirement**
 10 **fund's 1996 account.**

11 SECTION 21. IC 5-10.4-4-0.1 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2011]: **Sec. 0.1. The amendments made to**
 14 **section 8 of this chapter by P.L.201-2007 apply to members of the**
 15 **Indiana state teachers' retirement fund who retire after June 30,**
 16 **2007.**

17 SECTION 22. IC 5-10.4-4-0.2 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2011]: **Sec. 0.2. The amendments made to**
 20 **IC 21-6.1-4-6.1 (before its repeal, now codified at section 8 of this**
 21 **chapter) by P.L.184-2001 apply only to members of the public**
 22 **employees' retirement fund or the Indiana state teachers'**
 23 **retirement fund who retire after June 30, 2001.**

24 SECTION 23. IC 5-10.4-5-0.2 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2011]: **Sec. 0.2. The amendments made to**
 27 **IC 21-6.1-5-9 (before its repeal, now codified at section 9 of this**
 28 **chapter) by P.L.190-2003 apply to retirement benefits payable by**
 29 **the Indiana state teachers' retirement fund after June 30, 2003.**

30 SECTION 24. IC 5-10.4-5-0.3 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. Actions taken by the public**
 33 **schools after December 31, 1986, and before March 5, 1988, that**
 34 **would have been valid under IC 21-6.1-5-6 (before its repeal), as**
 35 **amended by P.L.46-1988, are validated.**

36 SECTION 25. IC 9-31-1-7 IS ADDED TO THE INDIANA CODE
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 38 1, 2011]: **Sec. 7. (a) On January 1, 1992, the employees of the**
 39 **department of natural resources who administer the watercraft**
 40 **registration and title programs are transferred to the bureau of**
 41 **motor vehicles.**

42 **(b) The employees who are transferred under subsection (a) are**
 43 **entitled to have the employees' service with the department of**
 44 **natural resources included for the purpose of computing all**
 45 **applicable employment benefits and will not be adversely affected**
 46 **by the transfer.**



1 SECTION 26. IC 10-12-2-0.2 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: **Sec. 0.2. IC 10-1-2-11 (before its**
4 **repeal, now codified at section 11 of this chapter), as added by**
5 **P.L.69-2002, applies to the child or spouse of a regular, paid police**
6 **employee of the state police department if the regular police**
7 **employee of the state police department was permanently and**
8 **totally disabled by a catastrophic personal injury that:**

9 (1) was sustained in the line of duty; and

10 (2) permanently prevents the employee from performing any
11 gainful work;

12 before, on, or after July 1, 2002.

13 SECTION 27. IC 10-12-5-0.3 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. (a) The amendments made to**
16 **sections 3 and 4 of this chapter by P.L.5-2008 apply to**
17 **supplemental benefits payable after June 30, 2007, to retired**
18 **employee beneficiaries of the state police pre-1987 retirement**
19 **system established under IC 10-12-3.**

20 (b) The payment of a supplemental benefit recomputed under
21 sections 3 and 4 of this chapter, as amended by P.L.5-2008, for the
22 period after June 30, 2007, and before the date on which the
23 recomputed supplemental benefit is first paid, must be reduced by
24 the amount of any supplemental benefit computed and paid after
25 June 30, 2007, under sections 3 and 4 of this chapter before those
26 sections were amended by P.L.5-2008.

27 SECTION 28. IC 10-17-1-0.1 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2011]: **Sec. 0.1. The amendments made to**
30 **sections 5 and 9 of this chapter and the addition of section 11 of**
31 **this chapter by P.L.144-2007 apply to employees who begin**
32 **employment with the Indiana department of veterans' affairs or a**
33 **county or a city under section 9 of this chapter as amended by**
34 **P.L.144-2007, as applicable, after June 30, 2007.**

35 SECTION 29. IC 10-19-6-4 IS ADDED TO THE INDIANA CODE
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
37 1, 2011]: **Sec. 4. (a) On July 1, 1990, the employees of the state**
38 **emergency management agency established under IC 10-8-2-1**
39 **(before its repeal, later codified at IC 10-14-2-1, (before its**
40 **repeal)), shall initially be composed of the employees of the**
41 **department of civil defense created under IC 10-4-1-5(a) (before its**
42 **repeal) and the Indiana emergency medical services commission**
43 **created under IC 16-1-39-3 (before its repeal) who are employed**
44 **on June 30, 1990, by those two (2) agencies.**

45 (b) The employees of the department of civil defense who are
46 transferred to the state emergency management agency under



1 subsection (a) are entitled to have the employee's service under the
2 department of civil defense included for the purpose of computing:

3 (1) retention points under IC 4-15-2-32 in the event of a
4 layoff; and

5 (2) all other applicable employment benefits.

6 SECTION 30. IC 14-9-7-5 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2011]: Sec. 5. (a) This section applies only to salaries paid for pay
9 periods beginning after June 30, 2008.

10 (b) As used in this section, "district forester" means any position
11 on the state staffing table with a job code of "001LE2" and a
12 description of "Forester Specialist 2".

13 (c) As used in this section, "natural sciences manager" means
14 any position on the state staffing table with a job code of
15 "00ENS7" and a description of "Natural Sciences Manager E7".

16 (d) As used in this section, "state staffing table" means a
17 position classification plan and salary and wage schedule adopted
18 by the state personnel department (established by IC 4-15-1.8-2)
19 under IC 4-15-1.8-7.

20 (e) For pay periods beginning after June 30, 2008, the state
21 personnel department shall equalize the salary and wage schedules
22 for the positions of district forester and natural sciences manager
23 so that both positions share the higher of the two (2) wage and
24 salary schedules for these positions existing on April 1, 2008. For
25 pay periods beginning after June 30, 2008, the department shall
26 increase the wages and salaries of all district foresters and natural
27 sciences managers to bring the wages and salaries into conformity
28 with the salary and wage schedules required by this section.

29 SECTION 31. IC 16-19-1-4 IS ADDED TO THE INDIANA CODE
30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
31 1, 2011]: Sec. 4. Employees of the division of services for crippled
32 children of the state department of public welfare who are
33 employed on June 30, 1990, and who become employees of the state
34 board of health under P.L.344-1989 are entitled to have their
35 service under the division of services for crippled children of the
36 state department of public welfare included for the purposes of
37 computing:

38 (1) retention points under IC 4-15-2-32 in the event of a
39 layoff; and

40 (2) all other applicable employment and retirement benefits.

41 SECTION 32. IC 16-20-1-29 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS
43 [EFFECTIVE JULY 1, 2011]: Sec. 29. (a) The employees of a local
44 health department under IC 16-1-5 (before its repeal), IC 16-1-6
45 (before its repeal), or IC 16-1-7 (before its repeal) become
46 employees of the local health department established under



1 sections 15, 16, and 19 of this chapter by P.L.33-2006 apply to a
2 participant in the fund who:

- 3 (1) is serving on July 1, 2006; or
4 (2) begins service after July 1, 2006;

5 in a position described in section 8 of this chapter.

6 SECTION 40. IC 36-8-6-0.1 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2011]: Sec. 0.1. The following amendments to this chapter apply
9 as follows:

- 10 (1) The addition of section 20 of this chapter by P.L.223-1986
11 applies only to fund members who die after March 10, 1986.
12 (2) The amendments made to section 8 of this chapter by
13 P.L.171-1990 apply to all benefits paid after March 15, 1990.
14 (3) The amendments made to section 9.8 of this chapter by
15 P.L.28-2008 apply only to benefits payable with respect to a
16 member of the 1925 police pension fund who dies after June
17 30, 2008.

18 SECTION 41. IC 36-8-7-0.1 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2011]: Sec. 0.1. The following amendments to this chapter apply
21 as follows:

- 22 (1) The addition of section 26 of this chapter by P.L.223-1986
23 applies only to fund members who die after March 10, 1986.
24 (2) The addition of section 12.1 of this chapter by
25 P.L.171-1990 applies to all benefits paid after March 15, 1990.
26 (3) The amendments made to section 13 of this chapter by
27 P.L.28-2008 apply only to benefits payable with respect to a
28 member of the 1937 firefighters' pension fund who dies after
29 June 30, 2008.

30 SECTION 42. IC 36-8-7.5-0.1 IS ADDED TO THE INDIANA
31 CODE AS A NEW SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2011]: Sec. 0.1. The following amendments
33 to this chapter apply as follows:

- 34 (1) The addition of section 22 of this chapter by P.L.223-1986
35 applies only to fund members who die after March 10, 1986.
36 (2) The amendments made to this section 13.8 of this chapter
37 by P.L.28-2008 apply only to benefits payable with respect to
38 a member of the 1953 police pension fund who dies after June
39 30, 2008.

40 SECTION 43. IC 36-8-8-0.1 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2011]: Sec. 0.1. The following amendments to this chapter apply
43 as follows:

- 44 (1) The addition of section 20 of this chapter by P.L.223-1986
45 applies only to fund members who die after March 10, 1986.
46 (2) The amendments made to section 10 of this chapter by



1 P.L.232-1997 apply only to members of the 1977 fund who
2 initially:

3 (A) become fifty-five (55) years of age; or

4 (B) retire;

5 after June 30, 1997.

6 (3) The amendments made to section 16 of this chapter by
7 P.L.28-2008 apply only to benefits payable with respect to a
8 member of the 1977 police officers' and firefighters' pension
9 and disability fund who dies after June 30, 2008.

10 (4) The amendments made to sections 12 and 13.5 of this
11 chapter by P.L.32-2009 and by P.L.34-2009 apply to a
12 member of the 1977 police officers' and firefighters' pension
13 and disability fund who:

14 (A) after June 30, 2009, receives a benefit based on a
15 determination that the member has a Class 1 or Class 2
16 impairment, regardless of whether the determination was
17 made before, on, or after June 30, 2009; and

18 (B) before July 1, 2009, has not had the member's
19 disability benefit recalculated under section 13.5 of this
20 chapter (as the section read before amendment by
21 P.L.32-2009 and by P.L.34-2009).

22 SECTION 44. IC 36-8-10-0.1 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2011]: Sec. 0.1. The following amendments
25 to this chapter apply as follows:

26 (1) The addition of section 11.5 of this chapter by
27 P.L.228-1991 applies only to county police officers and jail
28 employees who suffer an injury or contract an illness after
29 June 30, 1991.

30 (2) The amendments made to section 12.2 of this chapter by
31 P.L.51-2006 apply to an employee beneficiary of a county
32 retirement plan established under section 12 of this chapter
33 who dies in the line of duty after December 31, 2005.

34 SECTION 45. IC 36-8-10-16.3 IS ADDED TO THE INDIANA
35 CODE AS A NEW SECTION TO READ AS FOLLOWS
36 [EFFECTIVE JULY 1, 2011]: Sec. 16.3. (a) This section applies to a
37 surviving spouse of an employee beneficiary who:

38 (1) died before July 1, 2005; and

39 (2) was a member of a retirement plan established under
40 section 12 of this chapter.

41 (b) A monthly pension paid under section 16(c) of this chapter,
42 before its amendment by P.L.97-2005, to a surviving spouse after
43 the date the surviving spouse remarried and before July 1, 2005,
44 shall be treated as properly paid.

45 (c) The monthly pension of a surviving spouse:

46 (1) who remarried after December 31, 1989; and



1 **(2) whose monthly pension paid under section 16(c) of this**
 2 **chapter, before its amendment by P.L.97-2005, ceased on the**
 3 **date of remarriage;**
 4 **shall be reinstated on July 1, 2005, under section 16 of this chapter,**
 5 **as amended by P.L.97-2005, and continue during the life of the**
 6 **surviving spouse.**

7 SECTION 46. IC 36-8-12-0.1 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2011]: **Sec. 0.1. The formula added to section**
 10 **6 of this chapter by P.L.70-1995 applies to insurance policies that**
 11 **are entered into or renewed after December 31, 1995.**

12 SECTION 47. THE FOLLOWING ARE REPEALED [EFFECTIVE
 13 JULY 1, 2011]: P.L.35-1985, SECTION 35; P.L.46-1985, SECTION
 14 4; P.L.48-1985, SECTION 3; P.L.376-1985, SECTION 2;
 15 P.L.223-1986, SECTION 5; P.L.18-1987, SECTION 117; P.L.18-1987,
 16 SECTION 118; P.L.62-1987, SECTION 2; P.L.347-1987, SECTION
 17 2; P.L.378-1987, SECTION 14; P.L.378-1987, SECTION 15;
 18 P.L.27-1988, SECTION 6; P.L.42-1988, SECTION 5; P.L.45-1988,
 19 SECTION 4; P.L.46-1988, SECTION 15; P.L.197-1988, SECTION 2;
 20 P.L.40-1989, SECTION 51; P.L.40-1989, SECTION 52; P.L.57-1989,
 21 SECTION 2; P.L.334-1989, SECTION 41; P.L.344-1989, SECTION
 22 27; P.L.357-1989, SECTION 37; P.L.171-1990, SECTION 3;
 23 P.L.185-1990, SECTION 11; P.L.71-1991, SECTION 19;
 24 P.L.228-1991, SECTION 2; P.L.35-1992, SECTION 2; P.L.70-1995,
 25 SECTION 13; P.L.214-1995, SECTION 3; P.L.282-1995, SECTION
 26 6; P.L.232-1997, SECTION 2; P.L.22-1998, SECTION 27;
 27 P.L.66-2000, SECTION 2; P.L.184-2001, SECTION 10; P.L.246-2001,
 28 SECTION 19; P.L.291-2001, SECTION 127; P.L.69-2002, SECTION
 29 4; P.L.191-2002, SECTION 3; P.L.190-2003, SECTION 6;
 30 P.L.224-2003, SECTION 189; P.L.95-2004, SECTION 18;
 31 P.L.28-2005, SECTION 3; P.L.28-2005, SECTION 4; P.L.62-2005,
 32 SECTION 10; P.L.157-2005, SECTION 3; P.L.159-2005, SECTION
 33 4; P.L.220-2005, SECTION 11; P.L.246-2005, SECTION 235;
 34 P.L.33-2006, SECTION 4; P.L.51-2006, SECTION 6; P.L.144-2007,
 35 SECTION 28; P.L.180-2007, SECTION 14; P.L.180-2007, SECTION
 36 15; P.L.180-2007, SECTION 16; P.L.201-2007, SECTION 2;
 37 P.L.5-2008, SECTION 3; P.L.28-2008, SECTION 5; P.L.124-2008,
 38 SECTION 4; P.L.124-2008, SECTION 6; P.L.128-2008, SECTION 10;
 39 P.L.131-2008, SECTION 70; P.L.32-2009, SECTION 4; P.L.34-2009,
 40 SECTION 4.

