

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0099H.02C
Bill No.: HCS for HB 214
Subject: Labor and Management; Employees - Employers; Business and Commerce;
Contracts and Contractors
Type: Original
Date: March 11, 2021

Bill Summary: This proposal modifies provisions relating to the classification of workers.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

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ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

- ☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- ☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the proposal would not have a direct fiscal impact on their organization.

This proposal will preclude the Division of Employment Security from applying the common law of agency right to control test for determination of an employment relationship as provided in Section 288.034.5 RSMo. The classification of an independent contractor relationship in this bill could result in the exclusion of coverage under the Missouri UI law. However, if the IRS determines that an employer-employee relationship exists using the common law test, the company, as the employer, would be liable for the full FUTA tax of 6.0% without the benefit of any credit as no state contributions would have been paid with respect to the services.

Oversight notes that DOLIR, through additional correspondence note:

If enacted, it is unknown how many employers would use this language to change their workers' classification from employees to independent contractors. However, if an employer changes its workers' classification from employees to independent contractors, that would lead to no contributions (tax), which would be paid into the trust fund on the workers' salaries. It also means the workers would not be entitled to unemployment benefits based on those wages, should the employer end the employment relationship.

Oversight notes that this proposal removes the federal conformity issues contained in the original bill and added new language in Sections 285.517.4. Moreover, it removes the stipulation of adherence to the “common law of agency right” which was the usual way to determine employer-employee relationship test, and instead promulgates new rules that are included in Section 285.517 defining the employer-employee relationship test in future determinations.

Based on DOLIR’s response, **Oversight** will note zero impact for purpose of this fiscal note.

Officials from the **Missouri Department of Conservation, Office of Administration, City of Springfield, City of O’Fallon, City of Claycomo, City of Saint Louis – Budget Division, and Boon County Commissioner** each assume the proposal will have no direct fiscal impact on their respective organizations.

Officials from the above organizations assume the proposal will have no fiscal impact on their organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed

legislation but did not. A general listing of political subdivisions in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small businesses that have employees and/or hire independent contractors could be impacted by this proposal.

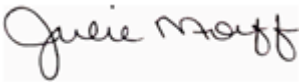
FISCAL DESCRIPTION

This bill establishes the criteria of a worker to be considered as an independent contractor. The bill states that independent contractors shall have a written contract that states the person is an independent contractor, not an employee, and that the person is responsible for all costs, fees, and taxes as an independent contractor. In addition, the person must have the right to control the manner and means by which the work is accomplished, and satisfies at least five out of nine listed requirements of an independent contractor. This bill also changes the definition of "employee" by removing the reference to the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296 and stating that an individual who meets the requirements for an independent contractor as specified in this bill is not an employee.

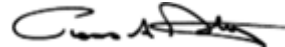
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Missouri Department of Conservation
Office of Administration
City of Springfield
City of O'Fallon
City of Claycomo
City of Corder
City of Saint Louis – Budget Division
Boone County



Julie Morff
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March 11, 2021



Ross Strobe
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March 11, 2021