

**LEGISLATIVE FISCAL OFFICE**  
**Fiscal Note**



Fiscal Note On: **SB 76** SLS 202ES 256  
 Bill Text Version: **ORIGINAL**  
 Opp. Chamb. Action:  
 Proposed Amd.:  
 Sub. Bill For.:

<b>Date:</b> October 13, 2020 5:26 PM	<b>Author:</b> LUNEAU
<b>Dept./Agy.:</b> Revenue	<b>Analyst:</b> Tanesha Morgan
<b>Subject:</b> Misclassification of employees	

REVENUE DEPARTMENT OR INCREASE GF RV See Note Page 1 of 2  
 Provides for penalties for employers who fail to withhold due to misclassification of employees. (2/3 - CA7s2.1(A)) (1/1/21) (Item #24)

Proposed law provides for a penalty for employers who fail to withhold the amounts required to be withheld due to the misclassification of an employee. The penalty is determined by multiplying the highest LA individual income tax rate by the total wages paid to the misclassified employee during the period. However, the penalty may be reduced if the misclassified employee paid LA income tax on these wages. Proposed law provides for a penalty for contractors who knew that amounts paid to its subcontractor included labor costs of misclassified employees equal to 25% of the penalty for employers who fail to withhold due to employee misclassification. Proposed law increases the late filing penalty for quarterly withholding return and an annual reconciliation report for employees from \$5 to \$25 for each late return, report, or receipt and increases the maximum penalty from \$7,500 to \$37,500. Proposed law provides a penalty of 25% of the amount of withholding tax that should have been remitted for nonfiling of withholding returns, reports, and receipts or failure to remit withholding where the failure to file or remit is due to employee misclassification. Effective January 1, 2021.

<b>EXPENDITURES</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b>\$0</b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>REVENUES</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b>\$0</b>
<b>Annual Total</b>						

**EXPENDITURE EXPLANATION**

The LA Dept. of Revenue (LDR) anticipates a one-time expenditure of \$51,360 in FY 21 for staff time to program and test changes to the Department's tax systems associated with the proposed measure's revised penalties.

**REVENUE EXPLANATION**

The proposed bill works to increase state general fund withholding tax and self-generated penalty revenue for the Revenue Dept associated with the assessment of tax liability for misclassified employees, penalties for misclassifying employees, and increased late fees. While the bill works to facilitate the discovery of employment misclassification by the Revenue Dept, and may improve withholding compliance, potential revenue gains are indeterminable, as the extent of employee misclassification and especially the associated wages is unknown.

**Tax Liability for Employers**

The bill provides for the assessment of tax liability for employers who fail to withhold the amounts required to be withheld due to the misclassification of an employee. The amount assessed is determined by multiplying the highest Louisiana individual income tax rate (currently 6%) by the total wages paid to the misclassified employee during the period. However, the liability may be reduced if the misclassified employee filed their Louisiana income tax return and paid the tax on these wages prior to the assessment.

For informational purposes, in FY 19, the Louisiana Workforce Commission issued 367 warning letters to employers that appeared to misclassify 3,768 employees. The Department does not capture the amount of wages associated with these warnings.

**Additional Late Fees due to Employee Misclassification**

The bill provides a specific penalty for non-filing of withholding returns, reports, and receipts or failure to remit withholding where the failure to file or remit is due to the misclassification of an employee. This penalty is equal to 25% of the amount of withholding tax that should have been remitted.

**REVENUE EXPLANATION CONTINUED ON PAGE 2**

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

**Gregory V. Albrecht**  
**Chief Economist**

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CONTINUED EXPLANATION from page one:

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**REVENUE EXPLANATION CONTINUED FROM PAGE 1**

**Penalty for Contractors**

The bill provides for a penalty for contractors who knew or had reason to know that amounts paid to its subcontractor included labor costs of misclassified employees. This penalty is equal to 25% of the amount of withholding tax that should have been remitted by the subcontractor.

**Late Fees**

Currently, the department assesses a penalty of \$5 per quarterly return, annual reconciliation report and receipt (W-2, 1099, etc.) for late filing or failure to file the required returns, reports, or receipts, limited to \$7,500 annually. The bill increases this penalty from \$5 to \$25 for each late return, report, or receipt and increases the annual maximum penalty from \$7,500 to \$37,500.

For informational purposes, LDR states that 24,537 late quarterly returns were submitted in 2017, 21,069 in 2018, and 17,316 in 2019. LDR was not able to provide the number of late annual reconciliation reports and receipts. The Dept indicates that it does not generally assess the current \$5 penalty. However, the proposed \$25 penalty is significantly higher and more cost effective to implement, but would also likely encourage fewer late reports.

Senate      Dual Referral Rules

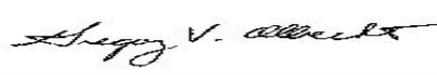
13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}

13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House

6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

  
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**Gregory V. Albrecht**  
 Chief Economist