

# HOUSE BILL No. 1245

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-16-13-12.5; IC 22-2; IC 22-5-3-3.

**Synopsis:** Worker classification on public projects. Requires a contractor in any contractor tier except for tier 1 (a general or prime contractor) on a: (1) public works project; or (2) tax advantaged construction project; to complete a weekly report of wages and hours of the contractor's employees who work on the project. Requires the department of labor to employ an investigator to investigate complaints of employee misclassification. Provides that the investigator shall be located at the Marion County prosecutor's office. Extends certain protections to an employee who reports, complains, or testifies about employee misclassification.

**Effective:** July 1, 2024.

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## Moseley

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January 9, 2024, read first time and referred to Committee on Employment, Labor and Pensions.

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Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.  
Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.  
Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

# HOUSE BILL No. 1245

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 5-16-13-12.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2024]: **Sec. 12.5. (a) This section applies to a**  
4 **contractor in a contractor tier on a public works project, not**  
5 **including a tier 1 contractor.**  
6 **(b) This section applies only to a public works contract entered**  
7 **into after June 30, 2024.**  
8 **(c) As used in this section, "department" refers to the**  
9 **department of labor created by IC 22-1-1-1.**  
10 **(d) As used in this section, "Form WH-347" refers to the weekly**  
11 **report of wages and hours of individuals employed on construction**  
12 **projects prescribed by the Wage and Hour Division of the United**  
13 **States Department of Labor.**  
14 **(e) As used in this section, "report" refers to either of the**  
15 **following:**  
16 **(1) Form WH-347.**  
17 **(2) A form prescribed by the department that is the equivalent**



- 1           of Form WH-347.
- 2           (f) Each week, a contractor shall complete and maintain in its
- 3 files a report.
- 4           (g) At the request of any of the following, a contractor shall
- 5 produce the report for inspection and verification:
- 6           (1) The public agency that has contracted for the public works
- 7 project.
- 8           (2) The department.
- 9           (h) The department shall prescribe a form that is the equivalent
- 10 of Form WH-347. The form must require that an agent of the
- 11 contractor completing the form certify the information on the form
- 12 under the penalties for perjury. The department may provide that
- 13 payroll records normally maintained by a contractor satisfy the
- 14 requirement of this section if those records contain the information
- 15 required under this section.
- 16           SECTION 2. IC 22-2-15-2.5 IS ADDED TO THE INDIANA CODE
- 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 18 1, 2024]: **Sec. 2.5. (a) The department shall employ an investigator**
- 19 **to conduct investigations into questions and complaints concerning**
- 20 **employee misclassification as described in this chapter. The**
- 21 **investigator has the same inspection and enforcement powers that**
- 22 **the department has in enforcing the labor laws of Indiana, and**
- 23 **shall report to the department concerning the investigations**
- 24 **described in this section.**
- 25           (b) The investigator's office shall be located at the office of the
- 26 prosecuting attorney in Marion County and shall assist prosecutors
- 27 with the investigation of complaints described in subsection (a).
- 28           (c) The department and the office of the prosecuting attorney in
- 29 Marion County shall coordinate in the implementation of this
- 30 section.
- 31           (d) The investigator shall keep any information obtained during
- 32 the course of an investigation under this section confidential, if
- 33 required under Indiana law.
- 34           (e) The department may adopt rules under IC 4-22-2 to
- 35 implement this section.
- 36           SECTION 3. IC 22-2-19 IS ADDED TO THE INDIANA CODE AS
- 37 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 38 1, 2024]:
- 39           **Chapter 19. Wage Reporting on Tax Advantaged Construction**
- 40 **Projects**
- 41           **Sec. 1. This chapter applies to a tax advantaged construction**
- 42 **project funded in whole or in part through a tax advantage granted**



1 after June 30, 2024.

2 **Sec. 2.** As used in this chapter, "construction" includes any of  
3 the following:

- 4 (1) The alteration of a structure.  
5 (2) The building of a structure.  
6 (3) The reconstruction of a structure.  
7 (4) The renovation of a structure.  
8 (5) The expansion of a structure.  
9 (6) The demolition of a structure.  
10 (7) The improvement of a structure.  
11 (8) The repair of a structure.  
12 (9) The maintenance of a structure.

13 **Sec. 3.** As used in this chapter, "contractor" refers generally to  
14 a contractor in a contractor tier, not including a tier 1 contractor.

15 **Sec. 4.** As used in this chapter, "contractor tier" has the  
16 meaning set forth in IC 5-16-13-4.

17 **Sec. 5.** As used in this chapter, "department" refers to the  
18 department of labor created by IC 22-1-1-1.

19 **Sec. 6.** As used in this chapter, "Form WH-347" refers to the  
20 weekly report of wages and hours of individuals employed on  
21 construction projects prescribed by the Wage and Hour Division  
22 of the United States Department of Labor.

23 **Sec. 7.** As used in this chapter, "political subdivision" has the  
24 meaning set forth in IC 36-1-2-13.

25 **Sec. 8.** As used in this chapter, "public entity" refers to any of  
26 the following:

- 27 (1) The state.  
28 (2) A political subdivision.  
29 (3) An instrumentality of the state or a political subdivision  
30 (including a nonprofit corporation).  
31 (4) A body corporate and politic established by law.  
32 (5) An entity for a tax increment financing area described in  
33 section 11(1) of this chapter.

34 **Sec. 9.** As used in this chapter, "report" refers to either of the  
35 following:

- 36 (1) Form WH-347.  
37 (2) A form prescribed by the department that is the equivalent  
38 of Form WH-347.

39 **Sec. 10.** As used in this chapter, "tax advantage" refers to any  
40 of the benefits described in section 11 of this chapter granted by a  
41 public entity.

42 **Sec. 11.** As used in this chapter, "tax advantaged construction"



- 1 refers to the following:
- 2 (1) Construction in a geographic area including:
- 3 (A) an economic development area;
- 4 (B) a sports development area;
- 5 (C) a community revitalization area;
- 6 (D) a certified technology park;
- 7 (E) a tax increment financing district; and
- 8 (F) other similar areas or districts;
- 9 designated by a public entity as an allocation area or in which
- 10 tax increment property tax, adjusted gross income tax, or
- 11 gross retail and use tax revenue is dedicated to provide
- 12 improvements or to retire bonds issued to pay for
- 13 improvements.
- 14 (2) Construction for which an exemption, deduction, credit,
- 15 preferential rate, or other tax benefit is granted under
- 16 IC 6-1.1-12.1, IC 6-1.1-12.4, IC 6-1.1-12.5, IC 6-1.1-12.6, or
- 17 IC 6-3.1.
- 18 (3) Construction financed in any part with the proceeds of
- 19 bonds exempt from state taxation or issued by a public entity.
- 20 (4) Construction in an enterprise zone (IC 5-28-15).
- 21 (5) A rail project or project (as defined in IC 5-1.3-2-14 or
- 22 IC 8-5-15-1).
- 23 **Sec. 12. Any agreement between a person and public entity**
- 24 **granting a tax advantage must provide that:**
- 25 (1) the tax advantage is conditioned on and subject to the
- 26 provisions of this chapter; and
- 27 (2) all construction contracts at every contractor tier:
- 28 (A) entered into; and
- 29 (B) financed in whole or in part through the tax advantage;
- 30 must provide that the provisions and requirements of this
- 31 chapter are incorporated into the contract.
- 32 **Sec. 13. Each week, a contractor shall complete and maintain in**
- 33 **its files a report.**
- 34 **Sec. 14. At the request of any of the following, a contractor shall**
- 35 **produce the report for inspection and verification:**
- 36 (1) The public entity that has:
- 37 (A) contracted directly for the tax advantaged
- 38 construction; or
- 39 (B) granted the tax advantage through which the tax
- 40 advantaged construction is financed in whole or in part.
- 41 (2) The department.
- 42 **Sec. 15. (a) If a public entity suspects that a violation of section**



1 **13 of this chapter has occurred, the public entity shall require the**  
 2 **contractor to remedy the violation not later than thirty (30) days**  
 3 **after the public entity notifies the contractor of the violation. The**  
 4 **notification to the contractor must be signed by the chief executive**  
 5 **officer of the public entity and sent by a method that enables the**  
 6 **public entity to verify receipt of the notice by the contractor.**

7 **(b) During the thirty (30) day period described in subsection (a),**  
 8 **the contractor may continue to work on the construction project.**  
 9 **If the contractor fails to remedy the violation within the thirty (30)**  
 10 **day period, the public entity shall find the contractor not**  
 11 **responsible and determine the length of time the contractor is**  
 12 **considered not responsible by the public entity.**

13 **(c) In making the determination of the length of time a**  
 14 **contractor is not responsible under subsection (b), the public entity**  
 15 **shall consider the severity of the violation. The period during**  
 16 **which a contractor is considered not responsible:**

17 **(1) may not exceed forty-eight (48) months; and**

18 **(2) begins on the date of substantial completion of the**  
 19 **construction project.**

20 **Sec. 16. The department shall prescribe a form that is the**  
 21 **equivalent of Form WH-347. The form must require that an agent**  
 22 **of the contractor completing the form certify the information on**  
 23 **the form under the penalties for perjury. The department may**  
 24 **provide that payroll records normally maintained by a contractor**  
 25 **satisfy the requirement of this chapter if those records contain the**  
 26 **information required under this chapter.**

27 SECTION 4. IC 22-5-3-3, AS AMENDED BY P.L.149-2016,  
 28 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2024]: Sec. 3. (a) An employee of a private employer that is  
 30 under public contract may report in writing the existence of:

31 (1) a violation of a federal law or regulation;

32 (2) a violation of a state law or rule;

33 (3) a violation of an ordinance of a political subdivision (as  
 34 defined in IC 36-1-2-13); or

35 (4) the misuse of public resources;

36 concerning the execution of public contract first to the private  
 37 employer, unless the private employer is the person whom the  
 38 employee believes is committing the violation or misuse of public  
 39 resources. In that case, the employee may report the violation or misuse  
 40 of public resources in writing to either the private employer or to any  
 41 official or agency entitled to receive a report from the state ethics  
 42 commission under IC 4-2-6-4(b)(2)(J) or IC 4-2-6-4(b)(2)(K). If a good



1 faith effort is not made to correct the problem within a reasonable time,  
 2 the employee may submit a written report of the incident to any person,  
 3 agency, or organization.

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

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

13 **(c) An employee of a private employer may report the existence**  
 14 **of employee misclassification by the private employer to any**  
 15 **official or agency entitled to receive a report concerning possible**  
 16 **employee misclassification.**

17 **(d) An employee who:**

- 18 **(1) reports the existence of employee misclassification;**
- 19 **(2) files a complaint concerning employee misclassification;**
- 20 **(3) institutes or causes to be instituted any proceeding related**  
 21 **to employee misclassification; or**
- 22 **(4) testifies or will testify in a proceeding concerning employee**  
 23 **misclassification;**

24 **may not be discharged or discriminated against in the manner**  
 25 **described in subsection (b).**

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

34 ~~(d)~~ **(f)** An employer who violates this section commits a Class A  
 35 infraction.

