

- SUBJECT:** Proper classification of public contract workers, providing a penalty
- COMMITTEE:** Economic and Small Business Development — committee substitute recommended
- VOTE:** 7 ayes — J. Davis, Vo, Y. Davis, Murphy, Perez, E. Rodriguez, Workman
0 nays
2 absent — Bell, Isaac
- WITNESSES:** For — None
Against — Cathy Dewitt, Texas Association of Business
On — Steve Riley, Texas Workforce Commission; (*Registered, but did not testify*: Rick Levy, Texas AFL-CIO; Leigh Pursell, Texas Workforce Commission)
- BACKGROUND:** In determining whether a worker is an independent contractor or an employee, the Labor Code, ch. 201 provides a definition for what constitutes employment.
- DIGEST:** CSHB 2015 would amend Labor Code, ch. 214 to add a penalty for the misclassification of certain workers. The bill would require a person contracting to provide a service to a government entity to properly classify a person compensated to perform the service as an employee or independent contractor. The classification would have to be in accordance with Labor Code, ch. 201. Subcontractors on a government contract also would have to properly classify individuals they directly retained and compensated for services performed.

A contractor or subcontractor that failed to properly classify an individual retained for services on a public contract would be penalized by the Texas Workforce Commission (TWC) \$200 for each individual improperly classified. TWC would not be able to collect a penalty three years after the date on which the violation occurred.

The bill would take effect on January 1, 2014.

**SUPPORTERS
SAY:**

This bill seeks to deter the incentive to misclassify workers – in particular, for services performed under public works contracts. The Texas Workforce Commission is currently limited in its ability to respond to misclassification of employees under the Texas Unemployment Compensation Act. If an employer is found to have not properly classified employees, that employer must pay any retroactive unemployment insurance taxes but is not subject to a fine.

By allowing the imposition of a penalty in addition to retroactive unemployment insurance taxes, TWC would be better able to enforce its policy on the proper classification of workers. By serving as a deterrent to misclassification, the bill would also reduce the imposition of a tax burden on certain employers that may bear the costs of improper classification by others. The bill would be limited to public works contracts, an appropriate area to begin addressing this issue.

**OPPONENTS
SAY:**

The bill would rely on the Labor Code's definition used for determining whether an individual was classified as an employee or independent contractor. The test used by TWC to classify workers should be the test used by the Internal Revenue Service (IRS). Companies need to know that they are going to have the same standard at the federal level as at the state level. If the IRS says an individual qualifies as an independent contractor and the state says otherwise, confusion results.