SB 440

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 440 (Senator Giannetti)
Judicial Proceedings

Criminal Penalty - Coercing or Assisting a False Declaration

This bill establishes that it is a misdemeanor for a contractor to knowingly coerce or assist a person earning wages to falsely declare that the person is an independent contractor with the intent to evade a federal or State law. Contractors found guilty are subject to a fine not exceeding $10,000 or imprisonment not exceeding three months or both.

Fiscal Summary

State Effect: Potential minimal increases in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Potential minimal increase in revenues due to the bill's penalty provision.

Small Business Effect: Potential minimal.

Analysis

Current Law: The following violations of tax withholding requirements are misdemeanors and a person found guilty is subject to a fine not to exceed $5,000, imprisonment not to exceed five years, or both: (1) willful failure to file income tax withholding return; (2) willful failure to withhold income tax; and (3) willful failure to pay income tax withheld.

The following violations of tax withholding requirements are misdemeanors and a person found guilty is subject to a fine not to exceed $500, imprisonment not to exceed six months, or both: (1) willful failure to provide copies of withholding tax statement or willfully providing false income tax withholding statements; (2) willful failure to provide information on income tax withholding certificate or willfully filing false income tax withholding certificate; and (3) failure to comply with a wage lien.

It is also a misdemeanor for a person to willfully, or with the intent to evade payment of a tax, or to prevent the collection of a tax, fail to provide information or provide false or misleading information. Upon conviction, a person is subject to a fine not to exceed $5,000, imprisonment not to exceed 18 months, or both.

Background: The Michigan House Legislative Analysis Section analysis of an identical bill introduced in Michigan in September 2002 indicates that contractors frequently pay workers in cash and avoid payment of federal and state taxes by claiming the workers are independent contractors. Workers may also hesitate to report income if employers are not willing to withhold proper local, state, and federal taxes.

Social Security and Medicare taxes pay for benefits workers and their families receive under the Federal Insurance Contributions Act (FICA). Social Security taxes pay for benefits under the old age, survivors, and disability insurance part of FICA. Medicare taxes pay for hospital benefits. Each employee contributes part of these taxes and the employer contributes a matching amount. Self-employed taxpayers must also pay Social Security and Medicare taxes in the form of self-employment taxes. The Federal Unemployment Tax is another tax that pays unemployment compensation to workers who lose their jobs. Employers may be subject to criminal and civil sanctions for willfully failing to pay employment taxes. Employees suffer when they do not pay these taxes because they may not qualify for Social Security, Medicare, and unemployment benefits.

According to the Internal Revenue Service (IRS), the difference between an independent contractor and an employee is that an employee is available to someone and told by that person when and where to work. In addition, an employee is trained in particulars and receives expenses, travel, and tools required to do a job. An independent contractor is paid a flat rate with no taxes withheld and is required to file a form 1099 with the IRS.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2004 are estimated to range from $14 to $59 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at $1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is $350 per month. Excluding medical care, the average cost of housing a new DOC inmate is $120 per month.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from $28 to $84 per inmate in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Internal Revenue Service; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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