



Wes Retherford

State Representative

**Sponsor Testimony of Representative Wes Retherford
Regarding House Bill 355
Before the House State Government Committee
Wednesday, November 4, 2015**

Chairman Maag, Ranking Member Curtin and members of the House State Government Committee, thank you for the opportunity to offer sponsor testimony on behalf of House Bill 355. I introduced this legislation in order to streamline, clarify, and enforce our tax code with regard to employees and independent contractors in the construction industry. Similar to HB 5 in the last G.A., this bill establishes more uniform rules and clarifies the distinction between employees and independent contractors. It also sets up an enforcement mechanism for those who commit payroll fraud, allowing the state to recoup back taxes, as well as penalties.

Payroll fraud, also known as employee misclassification, is the practice of labeling workers as independent contractors rather than employees to artificially lower project costs by illegally evading tax requirements. For example, a sub-contractor that installs plumbing for a general contractor may hire plumbers to work under supervision and instruction of the sub-contractor and during the sub-contractor's expected hours. These are employees of the subcontractor because they do not work independently at their own instruction or hours. Yet, the sub-contractor labels these employees as "independent contractors" in order to evade expenses such as Workers' Compensation and Unemployment Insurance.

Ohio loses annually up to half a billion dollars in uncollected Workers' Compensation premiums. In addition, businesses committing payroll fraud skip out on \$100 million in Unemployment Insurance payments, \$258 million in income taxes, and untold payments on the local level. Losing this amount of tax revenue from existing law forces tax hikes at all levels of government to make up the difference. By committing this fraud, unscrupulous contractors have an illegal advantage over honest businesses in the competitive bidding process by allowing them to quote artificially low bids, thereby edging out the honest job creators and damaging our economy.

An employee is anyone working under the supervision, instruction, and expected hours of an employer. It also sets up a process for the Bureau of Workers' Compensation (BWC) to receive reports of fraud and conduct investigations. This is completely funded by fines paid by violators and requires no new tax dollars. The process also allows work to continue on projects during the investigation and hearing process, with work being stopped only for the sub-contractor suspected of fraud.

The Departments of Job & Family Services and Taxation are also given the power to act on a BWC determination of fraud in order to recoup losses. These measures give state agencies tools to collect back taxes, a function already carried out form

This will also serve as a tool to counter illegal immigration in Ohio. We can stand here and discuss the issues involved in immigration reform, amnesty, etc. However, those issues are ultimately a federal issue. What we can do as a state is make it harder for employers to hire individuals who are here illegally. One of the bigger problems, in my opinion, with employee misclassification is the way it is used by some to be able to hire illegal immigrants, pay them under the table, take advantage of their situation and skirt the law. By making stronger enforcement measures, and streamlining our process, we can make it harder for employers to hire those who do not have the proper documentation or authority to be working here in Ohio. As I already stated, there is a lot of work to be done on reforming our immigration code, and that all belongs in the hands of Congress, however, what we must do is start going after the employers who disobey the law. By doing so, we can put them in positions where the risk is not worth the profit of hiring somebody under the table, both documented and/or undocumented. This will, in and of itself, slow the rate of illegal immigrants working and even coming to Ohio. We can then ensure that more Ohioans are being hired, and hired fairly by these contractors and employers. We can promote legal immigration and a system that is not only fair, but easily enforceable, and easily complied with.

I believe we have a bill that will make it more complicated to take advantage of our broken immigration system, clarify our tax code, ease the process for businesses while giving state agencies the tools they need to collect back taxes and punish those who willfully and blatantly commit payroll fraud. I ask you for your favorable support of this legislation. Thank you and I will be happy to answer any questions.

A handwritten signature in black ink, appearing to read 'Wes Retherford', with a stylized flourish at the end.

Wes Retherford
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Ohio House District 51