Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Natwar M. Gandhi** **Chief Financial Officer**
DATE:	**November 26, 2012**
SUBJECT:	**Fiscal Impact Statement – "Workplace Fraud Amendment Act of 2010"**
REFERENCE:	**Bill 19-169 – As Introduced**

Conclusion

Funds are not sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill. The bill will cost approximately $752,000 in FY 2013 and $2,242,000 over the four-year financial plan period.

Background

This bill defines the employer-employee relationship for the construction industry in the District, and details the conditions under which a construction industry worker must be classified as an employee as opposed to an independent contractor. The bill then establishes regulations[1] barring construction industry employers from improperly classifying employees as independent contractors. Under the bill, the Mayor has the responsibility to investigate claims by employees who believe their employer violates this statue, and to hold hearings if requested by the employer. An employer found in violation is subject to a civil penalty of up to $5,000 per violation (each aggrieved worker represents a separate violation), and may also be subject to a stop work order and payment of restitution plus interest to aggrieved workers. Such an employer must also come into compliance within 30 days with all applicable labor laws, including income tax withholdings, unemployment insurance, wage and hour laws, and workers' compensation payments. If the employer is engaged in contract work for the District, the Mayor may, upon a determination of violation, withhold payment to the employer to cover the costs of restitution to the aggrieved employees and other requirements on the employer. The bill includes provisions to protect whistle-blowers from retribution by employers.

[1] By amending "An Act to provide for the payment and collection of wages in the District of Columbia," approved August 3, 1956 (70 Stat. 978; D.C. Official Code § 32-1301 *et seq.*)

Financial Plan Impact

Funds are not sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill. The bill will cost approximately $752,000 in FY 2013 and $2,242,000 over the four-year financial plan period.

The Department of Employment Services (DOES) will be the primary implementing agency for the bill's requirements. According to DOES, the agency would create a Worker Misclassification Unit in its Office of Wage and Hours, within its Labor Standards Division. Upon receipt of a complaint, the new unit would conduct the "economic reality test" to evaluate the dependency of the worker on the principal for the contract, the nature and degree of control the principal maintains over how the worker should perform, the control of materials used for the contract, and other pertinent issues. The unit would include investigative staff, an auditor, an attorney for first-level determinations, an Administrative Law Judge for second-level determinations, and the information technology capacity to conduct business outreach and build the business data infrastructure needed to implement the law. The table below outlines the estimated costs of implementation in more detail.

Estimated Fiscal Impact of Bill 19-169, "Workplace Fraud Amendment Act of 2011" -- FY 2013 - FY 2016					
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**4-Yr Total**
Worker Misclassification Unit Personnel, including salary and fringe	$461,422	$472,846	$484,757	$497,184	**$1,916,209**
IT Hardware	$100,000	-	-	-	**$100,000**
IT Personnel	$170,924	$6,469	$6,632	$6,802	**$190,826**
Employer Outreach	$20,000	$5,000	$5,000	$5,000	**$35,000**
Total	**$752,345**	**$484,315**	**$496,389**	**$508,986**	**$2,242,035**

Because worker misclassification issues cut across DOES offices and agency jurisdictions, other states with similar laws, such as Connecticut, New York, and Maryland, have interagency taskforces that include representatives from, at a minimum, their tax agencies, unemployment agencies, workers' compensation offices, and the offices of Attorneys General. DOES recommends such an approach in the District as well, and the DOES staff included in the above cost estimate could play the coordinating role for such a task force. However, given that the bill does not require such an interagency approach, any potential fiscal impacts to agencies other than DOES are not included in this estimate. It is possible that if required, other agencies could participate in a task force using existing resources.