



Tuesday, March 26, 2024

Chair Gomez and Members of the House Taxes Committee –

On behalf of the Associated Builders and Contractors of Minnesota, a statewide organization that represents 340 merit shop construction industry members and their 20,000+ employees, we request a **NO** vote on HF 4444. While we appreciate the recent amendment that made modifications to the proposed 14-factor test for independent contractors in the construction industry, we remain concerned with the overly punitive nature of this bill and the impact that it will have on the construction industry.

First, we are concerned that the expanded civil penalties that are imposed in this bill are not limited to intentional acts of misclassification and that no grace is provided for honest mistakes. While we agree that those who intentionally misclassify their employees should be held accountable, we don't believe that it is appropriate to impose these penalties on unintentional acts or honest mistakes. The recently released OLA Report on Worker Misclassification acknowledges that some employers genuinely mistakenly misclassify employees and, in such instances, we believe that education and corrective actions are more appropriate than imposing tens of thousands of dollars in civil penalties. We respectfully request that consideration be given to limiting the civil penalties to intentional acts of misclassification.

Second, we are concerned with the expanded scope of the Commissioner of Labor & Industry's authority, including the authority to issue stop work orders in Section 21. Not only does this language expand the scope of violations for which the Commissioner may issue stop work orders, but it also allows for a single potential violation to empower the Commissioner to shut down an entire business at all locations. For example, in the construction industry, a single isolated violation at one jobsite could subject a contractor to the closure of all its jobsites, which could have broad negative consequences. At a bare minimum, this language should be amended to limit these orders to locations at which a violation has actually occurred and should also clearly provide for an opportunity to correct potential violations before being forced to halt work.

Third, we are concerned with the language on lines 12:4-12:9 which would prohibit an employer from requesting an individual to register as a construction contractor. General contractors routinely request registration documentation to protect themselves and to ensure that individuals are properly registered. In the absence of a required showing of knowledge or intent, we are concerned that an employer who requests registration documentation for the purpose of protecting themselves would be held liable for a violation if it later turns out that the individual fails the proposed 14-factor test and is considered an employee. We fear that this will serve as a bar to employers requesting such information due to the risk of incurring expensive liabilities.

Fourth, and in a similar manner, we are concerned with the language on lines 12:21-12:25 that would prohibit an employer from requesting or requiring that an individual enter into any agreement that treats the individual as an independent contractor. Contractors often have business entities sign independent contractor agreements before work commences, which confirm that the business entity meets all of the criteria necessary to be an independent contractor and to avoid legal mistakes. This bill would essentially discourage such actions and exposes employers to penalties for being proactive.

Finally, we remain concerned with a lack of safeguards as it relates to the Intergovernmental Misclassification Enforcement and Education Partnership. As written, this bill creates a private, closed-to-the-public group made up of four Commissioners and the Attorney General to meet and share private information and investigate hardworking Minnesotans. While we understand, and can appreciate, the need for increased interagency collaboration, we are concerned with a lack of guardrails to transparency or to prevent abuses. While a recent amendment provides clarification that data shared or created by the Partnership be subject to Chapter 13, we remain concerned that the Partnership will not be subject to open meeting law under Chapter 13D.

We respectfully request that lawmakers consider these concerns as this bill moves forward. However, as currently written, we respectfully request that you **oppose HF 4444**.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Boesche', with a stylized, cursive flourish at the end.

Jon Boesche
Director of Government & Public Affairs
Associated Builders and Contractors MN/ND Chapter