Tuesday, April 16, 2024

Chair Nelson and Members of the House Labor & Industry 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. There are several provisions included in the proposed DE amendment that will have a direct and adverse impact on the construction industry, and we request a **NO** vote on HF 5217.

Independent Contractor Misclassification

First, we remain deeply concerned with the provisions in Article 9, which would make extensive changes to the state's laws regarding independent contractors. We are concerned with the broad scope of this bill, particularly its overly punitive nature. The numerous violations and civil penalties imposed in this bill are not limited to intentional acts of misclassification and 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 excessive penalties on unintentional acts or honest mistakes. The recently released OLA Report on Worker Misclassifcation acknowledges that some employers genuinely mistakenly misclassly 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.

We also remain concerned with the expanded scope of the Commisioner of Labor & Industry's authority, including the authority to issue stop work orders in Article 9, 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 50.32-51.4, which would prohibit an employer from requesting an individual to register as a construction contractor. General contractors routinely request registration documententation 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.

Finally, and in a similar manner, we are concerned with the language on lines 51:15-51:19 which 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.

Prevailing Wage Mandates

Second, we remain fundamentally opposed to the drastic expansion of prevailing wage mandates that are included in Article 7, Sec. 1-2, particularly the expansion that includes certain projects funded with TIF assistance, which consists solely of local property taxes and do not include funding from the State. These mandates will have the unintended consequence of limiting competition and increasing the costs of construction, which will result in overall higher project costs which, in some cases, will be passed onto consumers and taxpayers.

The increased costs resulting from these mandates will be imposed without any increase in quality or value, and no guarantee that the work will be performed by local contractors. Despite claims made by proponents of prevailing wage mandates, our local, Minnesota contractor members have routinely reported increased costs due to various prevailing wage mandates. We have members who have bid projects both based on prevailing wage and market-based wages. Oftentimes, our contractor members have reported a cost increase of at least 10-15% - with an even higher impact in Greater Minnesota. This is not conjecture, but the lived experience of the folks who are actually bidding the projects.

The narrative that the absence of prevailing wage equates to “lower labor standards” or “lower quality work” is shameful and without merit. Such insinuations are an insult to both local contractors who do great work in their communities, as well as, the thousands of employees who proudly perform high-quality work day after day, regardless of whether prevailing wage is paid. Regardless of the project requirements, our members and their highly-skilled craft professionals take pride in their work and get the job done. Rather than enacting policies that increase costs and make it more difficult for high-quality contractors to compete, the State should be encouraging policies that promote fair and open competition in the construction industry and obtain the best value for taxpayers.

Broadband Workforce Mandates

Finally, we remain concerned with the provisions in Article 8, Sec. 1 & 9 that allocate certain percentages of border-to-border broadband grant funds to applicants who commit to implementing certain workforce practices and repeals the prevailing wage exemption for last-mile broadband projects. In particular, we are concerned with the subjectiveness of the requirement that there be “credible evidence of support from one or more labor, labor-management, or other workforce organizations” to receive priority consideration for a grant. We are concerned that this requirement will be used to favor certain segments of the industry over others and that, in practice,

it will result in the requirement that labor union approval be obtained to receive priority consideration. We hope that this is not the intent of the language and we believe that fair and open competition should govern the allocation of these grants.

We also remain perplexed as to why a contractor can opt to either pay (1) prevailing wage or (2) provide 80 hours of skills training annually, employer-paid family health insurance coverage, and employer-paid retirement benefit payments. If this bill is about safety and quality of training, a contractor should not be able to opt out of the annual skills training requirements simply by paying prevailing wage. The payment of prevailing wage is not synonymous with quality or safety, nor does it require that an employee receive health benefits and retirement benefits. It appears as though this provision provides a carveout for a certain segment of the construction industry, while imposing additional mandates on the remainder of the industry.

In conclusion, we respectfully request that lawmakers execise restraint and consider the unintended consequences of these provisions before rushing to include them in an omnibus bill. We urge you to **oppose HF 5217** as amended by the DE amendment.

Sincerely,

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