Thursday, April 25, 2024

Chair Olson and Members of the House Ways & Means 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.**

Sincerely,

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

April 23, 2024

Dear Members of the House Ways and Means Committee:

Our organizations collectively represent tens of thousands of Minnesota businesses that provide jobs for hundreds of thousands of Minnesota employees and workers. Thank you for the opportunity to provide feedback on Article 9 of HF 5217 (Rep. Nelson), provisions seeking to address the issue of illegally misclassifying workers as independent contractors instead of employees.

We share the goal of preventing misclassification, and believe repeat, willful or deliberate misclassification should be thoroughly investigated and punished because it cheats workers and honest employers alike. At the same time, our members do not want more complex regulation in an area where clear and consistent guidance from regulators is often lacking. Well-rounded laws should make it easier for good actors to legally participate in our economy and harder for bad actors to engage in violative behavior.

We believe that progress can be made this session on creating a fairer and more level playing field. With that in mind, we would like to highlight the main areas in the underlying language where we believe progress still needs to be made:

First, many of our members identified interagency collaboration and knowledge sharing as a defect in state enforcement of worker classification rules. Unfortunately, the proposed Intergovernmental Misclassification Enforcement and Education Partnership fails to focus on a core concern of our members: consistent and uniform application of independent contractor regulations across state agencies. Employers want certainty just like complainants do when an investigation is started. Giving employers due notice, due process, and timely updates is valuable. The Office of Legislative Auditor (OLA) Report on Worker Misclassification recommends the establishment of standards for investigatory communications including communications to complainants and respondents. We remain concerned with a lack of safeguards as it relates to the Partnership as well. There's no data trail or means to understand how the Partnership uses private, confidential, and nonpublic data, particularly as this information could harm a business that is ultimately exonerated.

Second, we remain concerned with the expanded violations, the expanded civil penalties, and the overly broad nature of consequential damages that this bill will impose. We agree that misclassified workers should have appropriate remedies, many of which are provided under existing law. In particular, we are concerned that these penalties are not limited to intentional acts of misclassification. While we believe that those who intentionally misclassify their employees should be held accountable, the OLA report even acknowledges that some employers may genuinely mistakenly misclassify employees. In such instances, we believe that education and corrective actions are more appropriate than imposing thousands of dollars in civil penalties. We think that penalties should be scaled, with the harshest penalties reserved for willful and repeated violations. Finally, we are concerned that there is no reasonable limit on what might be claimed as damages in a misclassification case.

Third, within the context of the expanded scope of the commissioner's authority as whole, the provisions relating to the issuance of stop work orders are particularly troubling. Not only does this language expand the scope of violations for which the commissioner can issue stop work orders, but it also allows a single potential violation to empower the commissioner to shut down an entire business at all locations. In essence, if an employer has a single, isolated violation at one jobsite, they would be subject to the closure of all jobsites, which could have broadly negative consequences. This language should be limited to locations at which a violation of Minnesota state law has actually occurred and should also clearly provide for an opportunity for due process and to correct potential violations before being forced to halt work. The OLA report reaffirms that an investigation should occur before any action can be taken.

Finally, in the construction industry, revisions to the independent contractor test and contractor registration must not result in additional burdens to the business or contractor, must not disrupt the pace of work, and should allow for working arrangements to adapt to changing demands and unforeseen challenges. Legislation must come with robust lead times and an education campaign to allow affected individuals and entities to understand the new expectations.

As Minnesota's workforce and workplaces rapidly change and more workers choose entrepreneurship – choosing to work as independent contractors for the earning potential, control, and experience it provides – policymakers should commit to thoughtful, deliberative analysis and reform the existing regulatory landscape before seeking to impose rigid regulations or restrictions or adopt model legislation from other jurisdictions. Employers must be able to efficiently manage operational challenges the same way that individual workers should have the freedom to choose how they legally participate in the workforce. Balanced employment-related policy benefits both employers and workers as well as taxpayers while enabling our economy to grow.

Finally, in speaking with many of our members over the past several months, Minnesota businesses of all sizes are experiencing significant administrative, implementation, and compliance challenges with the state's suite of new labor laws – laws that in and of themselves seek to address some of issues being discussed within the context of this bill. Significant new rules, obligations, and penalty structures at this time only add to the confusion by employers and workers alike and increase the likelihood of honest mistakes and violations.

We appreciate the opportunity to share these recommendations and respectfully request that you strike Article 9 while we continue to work on modifications that align with them. Again, we are committed to holding bad actors accountable while protecting the employers and independent contractors that play by the rules and follow the laws.

University Education Association of UMD

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23 April 2024

Dear Chair Olson and Members of the Minnesota House Ways and Means Committee,

I write to convey the University Education Association-Duluth's support for articles in the Omnibus Budget bill that modify the definition of public employees and, in addition, modify bargaining unit determinations in the University of Minnesota System as they appear in the Minnesota Public Employment Labor Relations Act (PELRA).

I am the President of one of two chapters of the University Education Association, a union that has represented faculty in the University of Minnesota System since 1983. During my career at the University of Minnesota-Duluth, I have witnessed first-hand the power of my union to advocate for fair pay and good working conditions for faculty at UMD. By looking out for faculty, our union has made sure that students in Duluth and Crookston can obtain an excellent University of Minnesota education. Our union has consistently stood for a strong faculty voice in the management of the University, as well as for dignity in our academic workplace.

It is time for our colleagues on the Twin Cities campus and elsewhere in the University of Minnesota System to have the same right to collective bargaining, if they so choose, and to remove the barriers resulting from the manipulation of bargaining units by anti-union university administrators. The UEA-Duluth supports this legislation because we want bargaining unit determinations to be consistent with the type of work performed by our instructional colleagues, as opposed to the "catch-all" bargaining units that are currently in place actively preventing the organization of unions for the University's instructors.

PELRA, as it currently exists, has created a welcome space within which the UEA has been able to advocate for U of MN Faculty, and it is time to expand those protections through a timely update to the statute.

Sincerely,

John D. Schwetman
President
University Education Association-Duluth

April 23, 2024

Dear Members of the House Ways and Means Committee:

As the House works to finalize its 2024 Labor Supplemental Budget Bill, the Minnesota Chamber of Commerce, a statewide business organization representing over 6,300 business and over half a million employees throughout Minnesota, appreciates the opportunity to share our perspective on a number of provisions within HF 5217 (Rep. Nelson).

The cost of doing business in the state increased significantly as a result of the 2023 legislative session. After a record-setting number of new labor mandates, workplace restrictions, and business taxes, employers are very concerned about any additional policy proposals that further impede their ability to succeed and grow in Minnesota. Now is not the time to add additional costs and liabilities on Minnesota's employers, and yet HF 5217 contains more requirements, penalties, remedies, and employer obligations (Article 7; Article 8; Article 9).

Small and mid-sized businesses cannot simply absorb state-imposed cost-of-doing-business increases year after year. In order for our members to manage the cost of these state mandates, we see higher costs for goods and services, lower rates of reinvestment into businesses, and negative impacts on other employee benefits. Minnesota's Tax Incidence report regularly notes that business costs get passed onto consumers.

In particular, we have significant concerns with the provisions contained in Article 8. Minnesota businesses and workers require a robust, modern, secure and accessible broadband network throughout the state. The proposed mandates, including those on companies participating in the Border-to-Border Broadband Grant Program and the Broadband, Equity, Access, and Deployment Program, will increase the cost and complexity of deploying state and federal funds to reach our connectivity goals. We oppose the state leveraging grant programs that depend on successful public-private partnerships to dictate terms of employment for businesses.

We already have a dauting challenge to deploy the federal funds coming to Minnesota through the Infrastructure Investment and Jobs Act by the end of the next decade. Our state has an opportunity to make a major step towards reaching our connectivity goals to the benefit of Minnesota employers and employees, but mandates like those contained in Article 8 will only jeopardize our ability to succeed. Because of this, we recommend that you strike Article 8.

With regard to the provisions in Article 9 seeking to address the issue of illegally misclassifying workers as independent contractors instead of employees, the Chamber has submitted separate testimony with a coalition of other Minnesota-based business groups outlining a number of concerns and recommendations.

Briefly, while we share the goal of preventing misclassification, and believe repeat, willful or deliberate misclassification should be thoroughly investigated and punished, our members do not want more complex regulation in an area where clear and consistent guidance from regulators is often

lacking. Well-rounded laws should make it easier for good actors to legally participate in our economy and harder for bad actors to engage in violative behavior.

We believe that progress can be made this session on creating a fairer and more level playing field. With that in mind, we would like to highlight the main areas in Article 9 where we believe progress still needs to be made:

- giving employers due notice, due process, and timely updates;
- the lack of safeguards as it relates to the new Misclassification Enforcement and Education Partnership;
- the expanded violations, the expanded civil penalties, and the overly broad nature of consequential damages;
- that penalties are not limited to intentional acts of misclassification;
- the provisions relating to the issuance of stop work orders;
- the revisions to the independent contractor test and contractor registration in the construction industry; and
- the lack of robust lead times and an education campaign to allow affected individuals and entities to understand the new expectations.

The Chamber is committed to holding bad actors accountable while protecting the employers and independent contractors that play by the rules and follow the laws. We appreciate the opportunity to share these concerns and recommendations with the committee and respectfully request that you strike Article 9 while you continue to work on modifications that align with them.

In speaking with many of our members over the past several months, Minnesota businesses of all sizes are experiencing significant administrative, implementation, and compliance challenges with the state's suite of new labor laws – laws that in and of themselves seek to address some of issues being discussed within the context of this bill. Significant new rules, obligations, and penalty structures at this time only add to the confusion by employers and workers alike and increase the likelihood of honest mistakes and violations.

The Minnesota Chamber believes that balanced employment-related policy benefits both employers and workers as well as taxpayers while enabling our economy to grow. It is for these reasons that the Chamber encourages members to oppose HF5217.

Sincerely
Lauryn Schothorst
Director, Workplace Management and Workforce Development Policy

DEPARTMENT OF LABOR AND INDUSTRY

April 25, 2024

Representative Liz Olson
Chair, House Ways and Means Committee
479 State Office Building
St. Paul, MN, 55155

Re: HF5217

Dear Chair Olson,

Thank you for the opportunity to comment on House File 5217. This bill includes the department's supplemental budget priorities, including modifications to the Contractor Recovery Fund, the Office of Combative Sports statutes, and important measures to help combat employer misclassification fraud.

The Contractor Recovery Fund, which is funded by a fee on residential building contractor licenses, compensates owners or lessees of residential property in Minnesota who have suffered an actual and direct out-of-pocket loss due to a licensed contractor's fraudulent, deceptive, or dishonest practices. Increasing the maximum amount a homeowner can receive from the fund from $75,000 to $100,000 will allow homeowners to recover more of their out-of-pocket loss when a licensee fails to perform their contractual obligation. DLI projects this change will result in an additional $228,000 being paid out of the Contractor Recovery Fund each year. The Contractor Recovery Fund carries a balance of $9.4 million and the projected increased expenditures from this change are not expected to negatively impact the health of the fund.

The combative sports changes in House File 5217 are intended to better protect combatant safety and health. Proposed changes include technical fixes to the law that passed last year, clarifications of regulatory authority for youth events, the addition of basic experience requirements for individuals looking to be licensed as a combatant, and fee calculation adjustments to accommodate promoters who pay a flat venue fee but do not sell any tickets. This budget neutral change in the fee schedule will ensure that promoters are paying the same amount based on a percentage of the revenue they make either through the sale of tickets, or through flat-rate contractual agreements.

Finally, the bill includes measures to combat employer misclassification fraud. When employers misclassify workers as independent contractors, workers miss out on basic workplace protections, such as the right to unemployment insurance, workers' compensation coverage, overtime, minimum wage, earned sick and safe time, and more. The provisions in this bill will give the department the tools necessary to combat employer misclassification fraud and require the agencies responsible for misclassification enforcement, as well as the attorney general's office, to coordinate their efforts.

The department does have concerns with the inclusion of House File 5338 in the omnibus, which modifies eligibility for compensation from the contractor recovery fund to include faulty work or negligence related to private residential swimming pool installations. While we see the benefit to licensure for pool installers, we have concerns about broadening the definition of residential real estate to include pools. As the agency responsible for the health and solvency of the Contractor Recovery Fund, DLI thinks it is important to preserve use and access to the fund for its current purpose – compensating homeowners who are harmed by a licensed contractor's fraudulent or deceptive practices related to home construction or improvement – supporting housing stability and consumer protection.

In closing, I want to thank Chair Nelson and the members of the labor committee for their work on this bill.

Sincerely,

Nicole Blissenbach,
Commissioner