Bill as Introduced

HB 108 – AS INTRODUCED

2009 SESSION

09-0466
01/03

HOUSE BILL ***108***

AN ACT establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

SPONSORS: Rep. Long, Hills 10; Rep. Buco, Carr 1

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill establishes procedures for a private right of action to recover workers' compensation coverage payments.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

09-0466
01/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Private Right of Action to Recover Workers' Compensation Coverage Payments. Amend RSA 281-A by inserting after section 5-f the following new section:

281-A:5-g Employers' Private Report of Action to Enforce Payment of Workers' Compensation Coverage Premiums.

I. Any employer may file in superior court a civil action against any other employer engaged in generally the same trade, business, occupation, field, or industry to recover amounts that should have been paid as premiums by the defending employer pursuant to this chapter to provide workers' compensation coverage to the defending employer's employees who engaged in employment in New Hampshire.

II. Within 20 days of filing a civil action under this section, the plaintiff employer shall serve a copy of the writ on the insurance carrier, if any, that was or is at the time of entry of the writ entitled to collect amounts not paid and sought by way of the action. Any insurer that failed to intervene or seek arbitration against the defending employer within 60 days of notice of the writ to recover or collect amounts sought in the action and which would have been owed to the insurer from a defendant in such action shall be prohibited from attempting to recover or collect such amounts sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains the written and voluntary consent of the plaintiff that has initiated the suit under this section. When the plaintiff employer provides such written and voluntary consent, a court may substitute the insurer as the plaintiff. When the insurer is substituted as the plaintiff, then the case shall proceed without further regard to this section, except as provided in paragraph III, and any award in favor of the insurer, if any, shall be the property of such insurer. If the insurer intervenes or seeks arbitration to collect amounts sought in the action, then the court may upon motion, but need not, stay the action as to the plaintiff employer, pending the adjudication of the insurer's claims, after which the court may act in its discretion. The insurer shall notify the court of any decision or award within 20 days of the same.

III. No settlement made between any insured and any insurer shall be deemed to prohibit or limit an action under this section to recover other amounts that should have been paid to cover employees under this chapter and which the insurer did not recover by such settlement or otherwise. The parties to any settlement or arbitration award shall upon demand and without condition fully

disclose any settlement or arbitration award to the original plaintiff employer that filed the original civil action.

IV. Unless the insurer has been substituted in the action, all amounts recovered by the plaintiff employer, except an award of attorney's fees and costs if any, shall be forwarded to the state treasurer for deposit into the general fund.

V. Nothing contained in this section shall be deemed as limiting or prohibiting any political subdivision, public entity, or office, for example, any division, commission, commissioner, director, attorney general, and law enforcement entity or office, entitled to bring any action, criminal or civil, against a defendant to an action under this section from proceeding against such defendant in any appropriate forum. The forum, court, or agency, however, may consider and offset the amounts recovered, or likely recoverable, by an action pursuant to this section in imposing a verdict or judgment, or deciding against imposing a fine or other penalty.

VI. This section shall not affect, or apply to, insurance contracts that were made before the effective date of this section. In addition, any action filed under this section may be filed only after 90 days following the expiration of the then-present term of the workers' compensation policy affected by the action, if one existed.

2 Effective Date. This act shall take effect January 1, 2010.

Amendments

Rep. Craig, Hills. 9
March 17, 2009
2009-0849h
01/04

Amendment to HB 108

Amend RSA 281-A:5-g, II as inserted by section 1 of the bill by replacing it with the following:

II. Within 20 days of filing a civil action under this section, the plaintiff employer shall serve a copy of the writ on the insurance carrier, if any, that was or is at the time of entry of the writ entitled to collect amounts not paid and sought by way of the action. Any insurer that failed to intervene or seek arbitration, if applicable, against the defending employer within 60 days of notice of the writ to recover or collect amounts sought in the action and which would have been owed to the insurer from a defendant in such action shall be prohibited from attempting to recover or collect such amounts sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains the written and voluntary consent of the plaintiff that has initiated the suit under this section. When the plaintiff employer provides such written and voluntary consent, a court may substitute the insurer as the plaintiff. When the insurer is substituted as the plaintiff, then the case shall proceed without further regard to this section, except as provided in paragraph III, and any award in favor of the insurer, if any, shall be the property of such insurer. If the insurer intervenes or seeks arbitration to collect amounts sought in the action, then the court may upon motion, but need not, stay the action as to the plaintiff employer, pending the adjudication of the insurer's claims, after which the court may act in its discretion. In the event of arbitration, the insurer shall notify the court of any decision or award within 20 days of the same.

Amend RSA 281-A:5-g, VI as inserted by section 1 of the bill by replacing it with the following:

VI. This section shall not affect, or apply to, insurance contracts that were made before the effective date of this section. In addition, any action filed under this section may be filed only after 120 days following the expiration of the then-present term of the workers' compensation policy affected by the action, if one existed.

VII. Any employer found by a court or arbitrator to have brought an action under this section solely to harass, intimidate, or gain an unfair business advantage against fellow employers shall be subject to payment of the prevailing party's reasonable attorneys' fees.

Rep. Craig, Hills. 9
March 17, 2009
2009-0849h
01/04

Amendment to HB 108

Amend RSA 281-A:5-g, II as inserted by section 1 of the bill by replacing it with the following:

II. Within 20 days of filing a civil action under this section, the plaintiff employer shall serve a copy of the writ on the insurance carrier, if any, that was or is at the time of entry of the writ entitled to collect amounts not paid and sought by way of the action. Any insurer that failed to intervene or seek arbitration, if applicable, against the defending employer within 60 days of notice of the writ to recover or collect amounts sought in the action and which would have been owed to the insurer from a defendant in such action shall be prohibited from attempting to recover or collect such amounts sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains the written and voluntary consent of the plaintiff that has initiated the suit under this section. When the plaintiff employer provides such written and voluntary consent, a court may substitute the insurer as the plaintiff. When the insurer is substituted as the plaintiff, then the case shall proceed without further regard to this section, except as provided in paragraph III, and any award in favor of the insurer, if any, shall be the property of such insurer. If the insurer intervenes or seeks arbitration to collect amounts sought in the action, then the court may upon motion, but need not, stay the action as to the plaintiff employer, pending the adjudication of the insurer's claims, after which the court may act in its discretion. In the event of arbitration, the insurer shall notify the court of any decision or award within 20 days of the same.

Amend RSA 281-A:5-g, VI as inserted by section 1 of the bill by replacing it with the following:

VI. This section shall not affect, or apply to, insurance contracts that were made before the effective date of this section. In addition, any action filed under this section may be filed only after 120 days following the expiration of the then-present term of the workers' compensation policy affected by the action, if one existed.

VII. Any employer found by a court or arbitrator to have brought an action under this section solely to harass, intimidate, or gain an unfair business advantage against fellow employers shall be subject to payment of the prevailing party's reasonable attorneys' fees.

Committee Minutes

STATE OF NEW HAMPSHIRE

HOUSE OF REPRESENTATIVES

Office of the Speaker

MEMORANDUM

TO: Karen O. Wadsworth, House Clerk

FROM: Speaker Terie Norelli

DATE: October 13, 2010

RE: Temporary Committee Assignment

Please be advised that Rep. Raymond Gagnon will be assigned to the Labor, Industrial and Rehabilitative Services Committee for the day of October 13, 2010, due to the absence of Rep. John Knowles.

TN/bll

cc: House Majority Leader Mary Jane Wallner
House Republican Leader Sherman A. Packard
Rep. Jeff Goley, Chairman, Labor Industrial & Rehabilitative Services Committee
Rep. Raymond Gagnon
Rep. John Knowles

State House • Concord, New Hampshire 03301-4988 • Telephone: (603) 271-3661 • FAX: (603) 271-3309
TDD Access: Relay NH 1-800-735-2964

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 108 Date 1/29/09

Committee Labor

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep Steve Packard	House Republican Office	271-2665			X
BOB NASH	INDEPENDENT INSURANCE AGENTS OF NH				X
RICK NEWMAN	NEW ENGLAND GAS WORKERS ASSOCIATION			X	
MIKE MCLAUGHLIN	CONCORD NH	226-9600			V
David C Paquette	Hooksett, NH	231-7297	Self	V	
DANIEL R. CROWLEY	28-F HAMPSHIRE DR. NASHUA, NH 03063		C&C Repair	X	
DAVID PELLETIER	68 JEWETT RD DUNBARTON NH		Self	X	
Mark Hylden	Assoc. BSPR Contr				X
[illegible]	125 E Main St		EDM Const	X	

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 108

BILL TITLE: establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

DATE: January 29, 2009

LOB ROOM: 307 **Time Public Hearing Called to Order:** 1:00 p.m.

Time Adjourned: 1:45 p.m.

(please circle if present)

Committee Members: Reps. Goley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky.

Bill Sponsors: Rep. Long, Hills 10; Rep. Buco, Carr 1

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

*** Rep. Pat Long** - Prime sponsor of the bill. Supports the bill. Referenced studies pertaining to Worker's Compensation Fraud, that established the existence of fraud. (HB 157). Good contractors are unfairly punished through their bid process. Seventy cents per $100 goes to Worker's Compensation. This bill allows for an employer's private right to enforce payment of worker's compensation. Provides a protective mechanism to avoid frivolous actions. No cost to state to enforce.

Mickey Long - New Hampshire Attorney and lobbyist who drafted the bill.

Question: What would be damages if contractor brought suit?

Response: Damage can be that he cannot afford to do business in state, and must move elsewhere. Profound harm to businesses. (You can only sue if carrier doesn't collect.) Could be a revenue – generator. Why isn't Attorney General enforcing law? Lack of resources. Other states have had the same problem.

Question: "Can you convince me that companies will take this on?"

Response: "I think you'll see companies taking out policies and following worker's compensation laws. You'll knock out the cheating." Question about money going to the General fund: Can plaintiff go back and file to collect other amounts?

Response: That could be possible. The bill says, go ahead and settle – get everything you're entitled to.

Question: Is this the time to initiate this when this committee has recently passed several bills to tighten up worker's compensation.

Pat Long Response: Now, with the economic downturn, there may be more fraud than ever. This bill piggybacks on the others.

Question: Willing for on amendment to penalize person who brings suit if it turns out to be frivolous?

Mickey Long Response: If that means getting committee support, yes.

Question: Wouldn't it help to put a requirement in the bill to have the complainant pay attorney's fees?

Response: Yes, if it helps to get support.

*** Peter McArdle, ACADIA Insurance** - Opposes the bill. There hasn't been time to see results from recent legislation and the ongoing task force (there will be a report in July). If there's a financial reward for fraud, people will do it. Will the state be on the hook for trying to collect? There are a myriad of issues that he doesn't think will solve the problem.

George Roussos, American Insurance Association - Opposes the bill. Cited Insurance fraud division to prosecute insurance fraud. They have a very good prosecutor, Assistant Attorney General Catherine Tucker. Might be a better solution under current law.

Gary Abbott, Associated General Contractor of New Hampshire - Opposes the bill. Has problem with line 6 of bill. Represents highway contractors, and reads the bill as "opening the door." There are other mechanisms now. Isn't sure standards are set in bill to set proper procedures and actions. There isn't a reasonable trigger mechanism. Every time a company bids, they are open to trouble. Fraud units must investigate now if they get a complaint.

Question and comment on line 6: Doesn't think it refers to employees.

Question: Is cheating going on, and would clear language to prevent frivolous action help?

Response: Doesn't want incentives for lawyers to have a "legal free-for-all." They would have to look at the language.

Respectfully submitted,

Mary Ann Knowles

Rep. Mary Ann Knowles
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 108

BILL TITLE: establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

DATE: 1/29/09

LOB ROOM: 307 **Time Public Hearing Called to Order:** 1:05

Time Adjourned: 1:45

(please circle if present)

Committee Members: Reps. Goley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky.

Bill Sponsors: Rep. Long, Hills 10; Rep. Buco, Carr 1

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

*Rep Pat Long (sponsor) + Mickey Long

Referenced studies pertaining to Workers Compensation Fraud, that established the existence of fraud. (HB 157)

Good contractors are unfairly punished through their bid process. Seventy cents per $100 goes to workers' compensation. This bill allows for an employers private right to enforce payment of workers compensation. Provides a protective mechanism to avoid frivolous actions. No cost to state to enforce.

Mickey Long - NH attorney and lobbyist who drafted the bill.

Question; What would be damages if contractor brought suit?

Response: Damage can be that he cannot afford to do business in State, and must move elsewhere. Profound harm to businesses.

(You can only sue if carrier doesn't collect.)

Could be a revenue-generator.

Mickey Long cont'd.

Why isn't Attorney General enforcing law?
Lack of resources. Other states have had the same problem.
Question: "Can you convince me that companies will take this on?"
Answer: "I think you'll see companies taking out policies and following Workers' Comp laws. You'll knock out the cheating."
Question about money going to the General fund: Can plaintiff go back and file to collect other amounts?
Response: That could be possible. The bill says, go ahead and settle - get everything you're entitled to.
Question: Is this the time to initiate this when this committee has recently passed several bills to tighten up Workers' Comp?
Pat Long response: Now, with the economic downturn, there may be more fraud than ever. This bill piggybacks on the others.
Question - willing for an amendment to penalize person who brings suit if it turns out to be frivolous?
Mickey Long Response - If that means getting committee support, yes.
Question: wouldn't it help to put a requirement in the bill to have the complainant pay attorney's fees?
Response: yes, if it helps to get support.

Orr and Reno

* Peter McArdle - Acadia Insurance - opposed
there hasn't been time to see results from recent legislation and the ongoing task force (there will be a report in July).
If there's a financial reward for fraud, people will do it.

McArdle cont'd.

will the state be on the hook for trying to collect? There are a myriad of issues that he doesn't think will solve the problem.

George Roussos - American Insurance Association - opposed
Cited Insurance fraud Division to prosecute insurance fraud. They have a very good prosecutor. Asst Attorney Gen. Catherine Tucker. Might be a better solution under current law.

Gary Abbott - Associated General Contractors of NH
Has problem with line 6 of bill. Represents highway contractors and reads the bill as "opening the door."
There are other mechanisms now.
Isn't sure standards are set in bill to set proper ~~standards~~ procedures and actions. There isn't a reasonable trigger mechanism.
Every time a company bids, they are open to trouble.
Fraud units must investigate now if they get a complaint.
Question and comment on line 6: Doesn't think it refers to employees.
Question: Is cheating going on, and would clear language to prevent frivolous action help?
Response: Doesn't want incentives for lawyers to have a "legal free-for-all." They would have to look at the language.

~~Subcommittee~~
Craig
Bishop
Mears

Sub-Committee Actions

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 108

BILL TITLE: establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

DATE: February 4, 2009, February 12, 2009, and March 17, 2009

Subcommittee Members: Reps. Craig, Bishop, and Mears

Comments and Recommendations:

Amendments:

Sponsor: Rep. Craig	OLS Document #:	2009	0849h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: OTP, OTP(A), ITL, Retained (Please circle one.)

Moved by Rep. Bishop

Seconded by Rep. Mears

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Bishop

Seconded by Rep. Mears

Vote: 3-0

Respectfully submitted,

Rep. Jim Craig
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 108

BILL TITLE: establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

DATE: 2/4/09 + 2/12/09 + 3/17/09

Subcommittee Members: Reps. Craig, Bishop, + Mears

Comments and Recommendations: Meet again after 3/9.

Amendments:

Sponsor: Rep. CRAIG — OLS Document #:

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: OTP, ~~OTP/A~~, ITL, Retained (Please circle one.)

Moved by Rep. BISHOP

Seconded by Rep. MEARS

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. BISHOP

Seconded by Rep. MEARS

Vote: 3-0

Respectfully submitted,

Rep.

~~Subcommittee~~ Chairman/~~Clerk~~

T. M CRAIG

Rep. Craig, Hills. 9
March 17, 2009
2009-0849h
01/04

Amendment to HB 108

Amend RSA 281-A:5-g, II as inserted by section 1 of the bill by replacing it with the following:

II. Within 20 days of filing a civil action under this section, the plaintiff employer shall serve a copy of the writ on the insurance carrier, if any, that was or is at the time of entry of the writ entitled to collect amounts not paid and sought by way of the action. Any insurer that failed to intervene or seek arbitration, if applicable, against the defending employer within 60 days of notice of the writ to recover or collect amounts sought in the action and which would have been owed to the insurer from a defendant in such action shall be prohibited from attempting to recover or collect such amounts sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains the written and voluntary consent of the plaintiff that has initiated the suit under this section. When the plaintiff employer provides such written and voluntary consent, a court may substitute the insurer as the plaintiff. When the insurer is substituted as the plaintiff, then the case shall proceed without further regard to this section, except as provided in paragraph III, and any award in favor of the insurer, if any, shall be the property of such insurer. If the insurer intervenes or seeks arbitration to collect amounts sought in the action, then the court may upon motion, but need not, stay the action as to the plaintiff employer, pending the adjudication of the insurer's claims, after which the court may act in its discretion. In the event of arbitration, the insurer shall notify the court of any decision or award within 20 days of the same.

Amend RSA 281-A:5-g, VI as inserted by section 1 of the bill by replacing it with the following:

VI. This section shall not affect, or apply to, insurance contracts that were made before the effective date of this section. In addition, any action filed under this section may be filed only after 120 days following the expiration of the then-present term of the workers' compensation policy affected by the action, if one existed.

VII. Any employer found by a court or arbitrator to have brought an action under this section solely to harass, intimidate, or gain an unfair business advantage against fellow employers shall be subject to payment of the prevailing party's reasonable attorneys' fees.

Associated Builders and Contractors, Inc.

New Hampshire/
Vermont Chapter

WORKER COMPENSATION REGULATIONS IMPACTED BY LEGISLATIVE ACTION

During the 2007 and 2008 legislative sessions several bills passed the NH House and Senate that impact Workers Compensation regulations and the classification of employees and independent contractors. It is important for all contractors to understand the regulations now in effect. For further clarification contractors should contact their insurance agent or contact the ABC Chapter office.

Senate Bill 92 (2007) creates a new definition of employee that provides a revised outline of criteria that must be met for an individual to be exempted and qualify as an independent contractor (RSA 275:4 II). The new criteria will be included in the state statutes regulating employment, payment of wages, whistleblower protection, minimum wage, and workers compensation. House Bill 471 (2007), House Bill 692 (2008) and Senate Bill 501 (2008) changes the corporate exclusion for workers compensation coverage on projects administered by the state (RSA 228:4-b). House Bill 471 also creates a certification requirement of current workers compensation coverage for all contractors on state projects (RSA 228:4-b). House Bill 337 (2007) was passed to dramatically increase the liability of employers failing to comply with workers compensation regulations, including a provision for who is personally liable for payment of penalties (RSA 281-A:2VI(c)). House Bill 336 (2007) creates a requirement that employers post information about the criteria for classifying an employee as an employee or an independent contractor (RSA 275:49V). Senate Bill 500 (2008) increases penalties for insurance fraud and for employers who purposely fail to secure workers compensation coverage (RSA 281-A:7), changes information that insurance companies are required to verify on insurance applications (RSA 402:82), creates requirements for information that will be required to appear on certificates of insurance (RSA 412:37-a) and creates a task force to study employee misclassification.

HIGHLIGHTED REGULATIONS

RSA 275:49 V.
Every employer shall keep posted in a place accessible to his or her employees.....information about the criteria for classifying an employee as an employee or as an independent contractor...

RSA 281-A:7 I.(a)(1)
An employer who fails to comply with the provisions of RSA 281-A:5 (Workers Compensation Coverage requirements) by not securing payment of compensation may be assessed a civil penalty of up to $2500; in addition, such an employer may be assessed a civil penalty of up to $100 per employee for each day of noncompliance. The penalties shall be assessed from the first day of the infraction not to exceed one year. Notwithstanding any provision of law to the contrary, any person with control or responsibility over decisions to dispurse funds and salaries and who knowingly failed to

secure payment of workers compensation under this chapter shall be held personally liable for the payment of penalties under this chapter.

RSA 228:4-b I
Prior to any work being done by an individual contractor on any state transportation/Administrative Services project....such contractor, including all subcontractors and independent contractors, working on a construction, reconstruction, alteration, or maintenance project, excluding routine maintenance operations conducted utilizing the contract rental agreement process and excluding deliveries to and removals from a project administered by the departments shall provide to the commissioner:
(a) A certification of insurance of his or her current workers compensation coverage in New Hampshire for the classification of work to be completed on the project;
(b) A sworn statement that coverage shall remain in effect for the duration of his or her anticipated work on the project;
(c) A completed work certificate.....that shall include the total number of employees anticipated to be employed by such contractor, subcontractor, or independent contractor on the project during the contract period, delineated by the National Council on Compensation Insurance classification code applicable to the scope of work to be performed;
(d) A copy of the contractors compliance with a current written safety program, if applicable, as filed with the commissioner of labor under RSA 281-A:64 II and proof of an existing joint loss management committee as required under RSA 281-A:64, III, if applicable.
(e) The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project by project basis.
II. If any .... Contractor, subcontractor, or independent contractor who might otherwise claim an exclusion under RSA 281-A:18-a is directly performing the work on a project covered under this section, such contractor, subcontractor, or independent contractor shall comply with the provisions of this section.
III. The commissioner of labor may assess any contactor.....who falsifies information or fails to comply with this section a civil penalty of up $2500 and in addition such employer shall be assessed a civil penalty of up to $100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to dispurse funds and salaries and who knowingly falsifies information or knowingly failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor.....shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.
281-A:4-b – The commissioner of labor shall provide a work certificate form to meet the requirements of.....(this act)

RSA 275:4 II

(for the regulation of employment, payment of wages, whistle blower protection, minimum wage and workers compensation) "employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person.....who meets all the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person.....

(d) The person hires and pays the persons assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the persons business depends on the relationship of business receipts to expenditures.

(h) The person receives compensation for work or services performed and remuneration is not determined unilaterally by the hiring party.

(i) The person is responsible in the first instance for the main expenses related to the service or work performed. However, this shall not prohibit the employer or person offering work from providing the supplies or materials necessary to perform the work.

(j) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(k) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employers special requirements or are located on the employers premises.

(l) The person is not required to work exclusively for the employer.

RSA 281-A:2 VI (c)

Prima facie evidence that the criteria prescribed ....have been met may be established by a written agreement signed by the employer and the person providing services, on or about the date such person was engaged.....If the commissioner finds that the employers use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to $2500; in addition, such employer shall be assessed a civil penalty of $100 per employee for each day of noncompliance. The fines shall be assessed from the first day of the infraction but not to exceed one year. Notwithstanding any provision of law to the contrary, any person with control or responsibility over decisions to disburse funds and salaries and who knowingly violates the provisions of this subparagraph shall be held personally liable for payments of fines.

RSA 281-A:7, VI

Any employer, individual, or corporate officer required to secure payment of compensation under this chapter who purposely, as defined in RSA 626:2, II(a), fails to secure such payment shall be guilty of a class B felony.

RSA 402:82
Claims Forms and Applications
I. All insurance claim forms shall contain a statement that clearly states in substance the following: "Any person who, with a purpose to injure, defraud, or deceive an insurance company, files a statement of claim containing any false, incomplete, or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA:20"
II. No insurance company or producer shall accept an application for workers compensation or property or casualty insurance, unless the application includes:
(a) A written or electronic signature of the producer, unless the transaction does not involve a producer; and
(b) A written or electronic signature of the applicant.
III. The lack of the information required by paragraphs I and II shall not constitute a defense against prosecution under RSA:20 or any other criminal statute.
IV. "Electronic signature" shall have the same definition as under RSA 294-E:2
V. "Written signature" means an original signature or a duplicate copy made by photocopying, facsimile, or other means similar and does not include stamped signatures.

RSA 412:37-a
Certificates of Insurance
Every certificate of insurance issued or presented in this state pursuant to a workers compensation insurance policy shall contain the following information:
I. All states for which such statutory coverage is provided;
II. Names of all executive officers or members who are excluded, if any, pursuant to RSA 281-A:18-a, or a notation that no executive officers or members are excluded; and
III. Names of all sole proprietors or partners who have elected to be covered under the policy or a notation that no sole proprietors or partners are covered.

HBRANH

Home Builders & Remodelers Association of New Hampshire
"Building New Hampshire's Future"
The Housing Center • 119 Airport Road • Concord, New Hampshire 03301
603-228-0351 • F: 603-228-1877 • E: info@hbranh.com • W: www.hbranh.com

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National Director

Ron Robichaud
NAHB State Representative

Dianne Beaton, CGA, CAPS
Associate National Director

Roger Bouchard,
GMB, CGB, CAPS, CGP
Immediate Past President

Kendall Buck, CAE
Executive Vice President

Dave Bowman
Director of Member Services

Sharon Wayman
Accounting Manager

Denise Barous
Administrative Assistant

February 4, 2009

Members of the HB 108 Subcommittee:

As a member of the Task Force to Study Employee Misclassification created by SB 500 in 2008, I am opposed to HB 108 establishing an employer's private right of action to enforce workers compensation coverage. The Task Force is made up of a diverse group representing the various stakeholders and government agencies involved with workers compensation insurance. We are specifically charged with recommending legislation based on our findings. It would be premature to move forward with HB 108 until the Task Force has reported its findings to the Legislature. Our next interim report is due by October 1, 2009. I urge you to recommend ITL on HB 108 and await the report of the Task Force.

Very truly yours,

Paul Morin

Paul Morin
Tarkka Homes, Inc.
Chairman, Legislative Committee, Home Builders & Remodelers Association of New Hampshire

NAHB
National Association of Home Builders

Builders & Associates
Do Business with a Member

NSMC
National Sales & Marketing Council

Remodelers Council

Women's Council

Sub-Committee Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 108

BILL TITLE: establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

DATE: September 22, 2009

Subcommittee Members: Reps. Kelly, Gorman, and Bishop

Comments and Recommendations: We retained the bill to wait and hear what recommendations were to be made by SB 500 Task Force. Their report will be available after October 1. We invited the Chair of that Task Force, Deb Stone along with Chairman Goley to update us on the Task Force. We also invited Rep. Long to speak. We will reconvene after the report is released.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Sally Kelly
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 108

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Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Sally Kelly
Subcommittee Chairman/Clerk

Rep. Sara "Sally" Kelly

Testimony

S 2375

Chapter 285

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Ten

AN ACT FURTHER REGULATING WORKERS' COMPENSATION INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 25C of chapter 152 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following subsection:-

(11) Whenever facts exist showing that an employer has failed to comply with this chapter, then any 3 persons may bring a civil action and that civil action shall be deemed a private attorney's general action. Before bringing a civil action under this subsection, the 3 persons shall provide notice, by certified mail, return receipt requested, of what might become the substance of a complaint to the employer and any insurer that was or is entitled to collect amounts not paid. The notice shall include a statement of intent to file suit under this subsection. After the expiration of 90 days after delivery of the notice to the employer and the insurer, the 3 persons may file a civil action under this subsection, but they shall not be bound by the notice provided to the employer and the insurer.

Plaintiffs shall prove a violation of this chapter by a preponderance of the evidence. An employer shall be liable for all amounts which should have been paid by the employer. Upon establishing that a violation occurred, plaintiffs shall be collectively entitled to recover 25 per cent of the amount not paid or $25,000, whichever is less, plus costs and reasonable attorneys' fees, and an additional amount from the employer as compensatory and liquidated damages which shall be equal to 25 per cent of the amount that should have been paid or $25,000, whichever is less.

After a civil action is commenced under this subsection, any insurer that has failed to file a complaint or seek arbitration to recover or collect all of the amounts which would have been due to the insurer from an employer in the action shall be barred from recovering, attempting to recover or collect any amounts sought in the action unless the insurer obtains the voluntary, written consent of the plaintiffs. When such written consent is provided, a court may substitute the insurer as the plaintiff and, upon substitution, the case shall proceed without further regard to this subsection or to the Workers' Compensation Trust Fund.

No settlement between an insured and an insurer shall prohibit or limit an action under this subsection to recover other amounts that should have been paid under this chapter. The insurer shall, upon demand, provide a copy of any settlement to the 3 persons who sent notice under this subsection. Except as provided herein and unless the insurer has been substituted in the action, any amounts recovered by the plaintiffs under this subsection shall be deposited into the Workers' Compensation Trust Fund established in section 65, except those amounts payable to those plaintiffs in accordance with this subsection. An insurer who has been served with notice under this subsection and who pays a claim may recover from the amounts that are deposited into the trust fund any premium that should have been paid to that insurer which would have provided coverage for that specific claimant and claim.

Nothing in this subsection shall limit or prohibit a political subdivision, public entity or office, division, commission, commissioner, director, attorney general or a law enforcement agency or office entitled to bring a civil or criminal action against a defendant to an action under this subsection from proceeding against such defendant in an appropriate forum. The judge or other hearing officer in that forum may consider and offset the amounts recovered, or likely recoverable, by an action pursuant to this subsection in imposing a verdict or judgment or against imposing a fine or other penalty.

Any action filed under this subsection shall be filed only after 90 days following the expiration of a workers' compensation policy affected by the action, if such policy existed.

Actions under this subsection shall be commenced within 6 years after the cause of action accrues.

SECTION 2. Subsection (11) of section 25C of chapter 152 of the General Laws shall not affect, or apply to insurance contracts in effect on the effective date of this act.

House of Representatives, July 31, 2010.

Passed to be enacted, , Speaker.

In Senate, July 31, 2010.

Passed to be enacted, , President.

9 August, 2010.

Approved

Governor.

Mr. Chairman and members of the Labor Committee:

I write to request your support to recommend HB 108 Ought to Pass.

The underlying need for this bill arises because there are some contractors, particularly in the construction industry, who are under-bidding legitimate contractors by not including the cost of worker's compensation premiums in their contract bids.
The result is that responsible contractors who do provide worker's compensation insurance, as the law requires, are losing contracts. These responsible contractors cannot compete on price with the irresponsible contractors who under-bid and then do not provide worker's compensation insurance for their employees.
This situation not only provides unfair advantage to contractors who disregard the law, but leaves employees exposed to a highly dangerous industry with no insurance coverage.

HB 108 would allow the industry to police itself by allowing contractors damaged by these tactics to file suit against the contractors who under-bid and do not provide worker's compensation insurance for their employees.
Allowing this private action would be a quicker and more efficient way to resolve this situation than the current process allows, and at no cost to the state. In fact, any settlements would actually provide revenue to the state.

Please consider recommending that HB 108 Ought to Pass.

Thank you.

Representative Tom Buco

November 21, 2009

Copy

Orr&Reno
Professional Association

One Eagle Square, P.O. Box 3550
Concord, NH 03302-3550
Telephone 603.224.2381
Facsimile 603.224.2318
www.orr-reno.com

January 29, 2009

William L. Chapman
George W. Roussos
Howard M. Moffett
James E. Morris
John A. Malmberg
Martha Van Oot
Douglas L. Patch
James P. Bassett
Emily Gray Rice
Steven L. Winer
Peter F. Burger
Lisa Snow Wade
Susan S. Geiger
Richard Y. Uchida
Jennifer A. Eber
Jeffrey C. Spear
Connie Boyles Lane
Judith A. Fairclough
Todd C. Fahey
Vera B. Buck
James F. Laboe
Robert S. Carey
John M. Zaremba
Courtney Curran Vore
Justin M. Boothby
Heidi S. Cole
Jeremy D. Eggleton
Rachel A. Goldwasser
Joshua M. Pantesco

Maureen D. Smith
(Of Counsel)

VIA HAND DELIVERY

The Honorable Jeffrey P. Goley, Chairman
House Labor, Industrial & Rehabilitative Services
Legislative Office Building, Room 307
Concord, New Hampshire 03301

Re: **Testimony in Opposition to HB 108**

Dear Representative Goley:

On behalf of the American Insurance Association ("AIA"), I am writing to state our opposition to this proposal. AIA is a trade organization composed of about 350 insurance companies that write property and casualty insurance business, including workers' compensation, in New Hampshire and nationally. We appreciate the opportunity to testify.

AIA agrees with the goal of this bill to make sure that employers comply with their obligation to maintain workers' compensation coverage for their employees. However, we cannot agree with the methods proposed in this bill to accomplish that goal. We do not believe it is sound policy to create a vigilante-style system which encourages competing businesses to sue each other, as this bill does.

Also, from the standpoint of insurance companies, who would forfeit rights to premiums, the timing set up in the bill is not advisable, as an employer could bring a lawsuit even before an insurer calculated any premium due on audit.

We hope the Committee will agree that more litigation is not the answer, and that you will recommend this bill as inexpedient to legislate.

Very truly yours,

George W. Roussos

GWR/dlc
cc: Hon. Sally H. Kelly
Hon. Mary J. Gorman
Hon. Roland P. Hofemann
Hon. John Knowles
Hon. Mary Ann Knowles
Hon. William P. Brennan
Hon. James W. Craig
Hon. Charles F. Weed
Hon. Chip L. Rice
Hon. Lucy E. Mears
Hon. William J. Infantine
Hon. Gary L. Daniels
Hon. Franklin C. Bishop
Hon. Russell D. Bridle
Hon. John Gleason
Hon. Dudley D. Dumaine
Hon. Herbert D. Richardson
Hon. Tony J. Pellegrino
Hon. John B. Sedensky

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Public Works Procurement Study Committee

Established by HB 157 – Laws of 2005

HB 157 Committee Members:

Rep. Bernard L. Benn, Chair

Rep. Saghir A. Tahir, Clerk

Senator Lou D'Allesandro

Senator Robert E. Clegg, Jr.

Report Submitted: 31 October 2006

Public Works Procurement Study Committee

Established by HB 157 – Laws of 2005

HB157 – An Act establishing a committee to study procurement methods for public works projects by state and local government agencies

132:3 Duties. The committee shall study contracting practices for public works projects by state agencies, municipalities, counties, school districts, and all other political subdivisions. The goal of such study shall be to recommend the public procurement policies that promote the best economic and work quality value from public construction and infrastructure investment. The committee shall base its recommendation on consideration of the following:

A. labor law enforcement,
B. workplace safety compliance,
C. workers' compensation compliance,
D. access to workforce and apprenticeship training,
E. in-state job creation and community economic development,
F. communities' uncompensated care burdens and other social welfare costs, and
G. such additional criteria as the committee deems appropriate.

Note: The lettering (A-G) did not appear in the original legislation but is added here to in order to align with sections in the report below.

Overview

This four-person study committee included Rep. Bernard Benn (Chairman), Rep. Saghir Tahir, Sen. Robert Clegg, and Sen. Lou D'Allesandro. The committee organized late, on 6/21/06, and met 10 times to hear testimony and deliberate. (See Appendix B, Meetings of the Committee) The committee reached consensus in some areas of inquiry, but in others, a diversity of opinion remained as to both the definition of the problem and solutions. While a separate "Minority Report" from one member is being submitted, our belief is that we did achieve important areas of agreement that can be a basis for policy improvements and legislative action.

The committee heard testimony regarding the current procurement methods for public works projects and related topics. It is important to note that even though we had discussion of a broad base of issues, the focus of this study is on the construction of public buildings, roads, and bridges. From the testimony, it quickly became clear that not all contractors play by the same rules, therefore creating an "unlevel playing field" for responsible NH contractors bidding for State

work. The testimony before the committee also made clear that various state entities procure construction contracts very differently and exercise differing degrees of oversight of their construction sites. It was learned that these problems affect both Union and Non-union contractors in basically the same way.

Testimony and discussion was heard that described the need in the bidding process to balance the need of the State to protect the public's interests and the contractors to make profits. The committee recognizes the importance of designing procurement methods that protect both parties and that assure the highest quality construction at the most economical cost for the taxpayer, protect worker well being, and provide the responsible contractor a level playing field from which he can make a reasonable profit commensurate with the considerable financial risks associated with construction.

The committee recognizes that the duties clause contained in HB 157 is an extremely broad one. However, due to the shorter study period than envisioned in the legislation, it was simply not possible to thoroughly consider all topics listed or to closely examine public procurement practices at other than the state level. Nonetheless, the committee hopes the work accomplished and the material compiled will provide a foundation for continued scrutiny of public procurement practices and how they can be improved or enhanced in order to protect the public interest and serve the public good.

Key Committee Finding and Recommendation

The Committee approached its work with the basic premise that public entities have an obligation to get the best value for public construction spending, including ensuring that the people we pay to construct public buildings play by the rules and have the training and qualifications to do the work.

However, what we heard is that there are not adequate procedures in place for making these assurances, particularly when it comes to evaluating or monitoring the many sub-contractors and sub-sub-contractors who are actually doing much of the work on public construction jobs.

A key finding that touches on all areas of committee inquiry and is important to all levels of government is that the public sector is not doing a good job of tracking, monitoring, and imposing accountability standards on the many levels of subcontractors working on taxpayer-funded construction projects. It appears, in some instances, that public overseers don't even know who is working on the construction site. This gap came up repeatedly and may be a systemic weakness that makes it easier for contractors to violate labor laws and cut other corners to the detriment of the public interest. (See the 8/9/06 transcript.)

Therefore, the committee recommends that we should make clear, through legislation or rule making, that we expect state agencies, the University System, and the Community-Technical College System to monitor and track every contractor and sub-contractor, including every independent contractor, who is working on a public construction job. Otherwise, there is no way at the beginning of the construction process to certify that all layers of contractors are in compliance with labor, insurance, and tax laws and have the qualifications to do the work.

Discussion and Recommendations By Topic Area (as listed in the "Duties Clause")

A. Labor Law Enforcement

The Committee was called upon to look at both "labor law enforcement" and "workers' compensation compliance." While workers' compensation compliance can be considered a part of labor law enforcement, this report addresses workers' compensation issues separately in Section C.

Worker Misclassification: The committee recognizes that the issue of worker misclassification transcends the construction sector, but this committee's duty was to focus solely on public works construction (including infrastructure – i.e. transportation). The misclassification of workers contributes to the un-level playing field for contractors. This is also tied to workers' compensation coverage violations and has implications for tax collections. For example, Joe Cullen, President and Chief Executive Officer of the Charles P. Blouin Company of Seabrook, NH, told the committee on September 27, 2006:

> "One of the issues in New Hampshire is the misclassification of workers. With respect to sheet metal workers there are two classes in New Hampshire. There is the 5537 class which is applicable to shop labor and there is also a 5538 class which is applicable to sheet metal workers who work in the field. Currently the [workers' compensation] rate for a 5537 shop worker per hundred hours of payroll is $10.78. The for a field man, who has more risk obviously – he is exposed to more hazards, that cost is $18.85 per hundred dollars. That will, just the misclassification of sheet metal workers per se whether he works in the shop or works outside, alone could put us at a distinct disadvantage."

Recommendation: Looking particularly at public works construction, the committee recommends that contracting authorities set up procedures that require all contractors and subcontractors on public construction jobs to provide verification that they are in compliance with worker classification law and workers' compensation laws and further requiring that contractors provide certification of proper workers' compensation coverage and compliance with

Title XXXVII Section 412:32 of the state's insurance law before any contractor, subcontractor, or independent contractor can work on a state-funded public works or transportation construction site. (See Appendix C-24 for a draft of suggested legislation focused on workers compensation.)

Contractor and Subcontractor Certification/Prequalification: The committee heard testimony that the state pre-qualifies general contractors only and not subcontractors. This area deserves further attention and procedural improvements to ensure that the state exercises much greater scrutiny over all subcontractors on public construction jobs. The following approaches were mentioned in testimony heard by the committee. These approaches, among others, deserve closer scrutiny as solutions are developed to more closely monitor the many subcontractors on public jobs:

- Project by project prequalification of subcontractors as well as general contractors.
- Annual state certification of general contractors and subcontractors. This would also help other levels of government that could then require that their major construction projects be completed by state certified contractors.
- Establishing a licensing requirement for additional skilled crafts. Within the construction trades, currently the state licenses only plumbers and electricians.

Bid Shopping: The committee received information that bid shopping after the general contract has been awarded may add to the problem of subcontractors being motivated to cut corners to compensate for lower bids. Competent inspection of projects is essential to controlling the quality of construction. More frequent inspections and sub-contractor replacement may be required if bid shopping results in inadequate funds to meet the specifications of the project. The committee also heard that bid shopping, under normal practices, does not lower the cost of the project to the taxpayer, often does not benefit NH workers, and may affect the quality of construction. The University System testified that they have bidding requirements, including filed and sealed sub-bids, that eliminate bid shopping in most instances (see 8/9/06 transcript pages 29-30). This topic deserves further consideration in order to ensure that policies and procedures are put in place for all public construction jobs to prevent the detrimental effects of bid shopping.

Accountability and Disclosure: Procurement officials from The University System were quite forthright in their testimony regarding their procedures for controlling their worksite, and the committee recognizes that the University System is not alone how it exercises or doesn't exercise worksite control. It is the committee's conclusion that many public contracting authorities do not provide for strict control that would allow for the identification and authorization of all workers on the worksite at all times, and this must be rectified in order to best serve the

public interest. As indicated in the "Key Committee Finding" section above, taxpayers must be assured that public contracting authorities know who is doing public construction work and can confirm that all contractors on public jobs are qualified and are in compliance with all applicable laws.

Recommendation: The committee recommends that public contracting authorities examine what works in the private sector in order to ensure that all workers on public construction sites are properly authorized and that proper construction worksite control is exercised. For example, the committee was told that entities such as Seabrook Station have excellent control procedures. While Seabrook may not be the typical public works project, its tight control procedures should be studied for their application to other projects.

Recommendation: The committee recommends that every general contractor and subcontractor be required to disclose to the public contracting authority the name of each contractor working on the project and for whom that contractor is directly working. The list of all contractors on a public project and for whom they are working should be posted electronically and on the job site as public information. All such contractors should be authorized by the public contracting authority to be on the worksite. This disclosure requirement should help substantially with labor law enforcement. For example, if one drywall subcontractor then lists 10 additional drywall subcontractors as working on the project, that may be an immediate red flag that these sub-sub contractors may be misclassified as independent contractors when they should be listed as employees of the subcontractor.

Recommendation: The committee recommends that public contracting authorities develop contract documents that require trade-specific qualifications for the work to be performed. This should include specific criteria to ensure that taxpayer-funded projects are completed in a high quality manner.

Fines and Debarment: The committee did not collect comprehensive information about the extent to which public contracting authorities use debarment as a means for dealing with contractors who violate the law or perform substandard work. In its discussion of imposing fines on labor law violators in the construction sector, the committee consensus was that the fines must be significant enough to serve as a meaningful deterrent.

Recommendation: Fines for worker misclassification or workers' compensation noncompliance should significantly exceed the cost of compliance (so there is a punitive element). Further, fines should be assessed from the first day of the infraction, and the Chief Executive Officer, Chief Financial Officer, and members of limited liability companies should be held personally liable for payment of fines. Fines should follow the named principles of a construction entity even if they shut down one company and reemerge under a new corporate name.

Improved Enforcement and Fraud Prevention Capacity

Recommendation: The committee supports the concept of a Task Force to address enforcement and fraud prevention issues in the construction sector currently being formed by the Insurance Department and Department of Labor, however recommends that it be codified by legislation. This Task Force should be made up of representatives of the Departments of Justice, Labor, Insurance, Employment Security, Transportation, and Administrative Services (Public Works Division). Its duties should include, but not be limited to, the enforcement, through construction site monitoring and compliance checks, of workers' compensation statutes, proper payment of employment security taxes and other taxes and fees required to be paid by businesses in New Hampshire, and adherence to apprenticeship requirements under RSA 278 as well as development of procurement procedures that will screen for violators during the bidding process.

Recommendation: All contractors, subcontractors, and independent contractors should be required to provide a certificate of good standing from the New Hampshire Secretary of State prior to being allowed on a public construction site.

B. Workplace Safety Compliance

The committee heard testimony that safety training provides many benefits on construction projects, including fewer workers' compensation claims and lower workers' compensation costs. Therefore, the committee believes it is in the public interest and the taxpayer interest to articulate clear safety training standards for public construction jobs.

Recommendation: The committee recommends that public contracting authorities require that all contractors, including all subcontractors, on a public construction job certify their compliance with all provisions of RSA 281-A:64 (the "Safety Provisions" section of the Workers' Compensation statute). This should include certifications that workers are properly furnished with, and provided training in proper use of, personal protective equipment and safety appliances and that the contractor (if required under RSA 281-A:64) has a current and properly filed written safety program and a functioning joint loss management committee. These certifications can be part of the contractor and subcontractor pre-qualification process.

C. Workers' Compensation Compliance

The committee spent a great deal of time discussing and hearing testimony about workers' compensation insurance and the significant problem of contractors' noncompliance with current law. To close the current loopholes that lead to noncompliance, the committee recommends the following:

1. Workers' Compensation Coverage Certification: The committee recommends that all contractors and subcontractors be required to certify their compliance with the New Hampshire's workers' compensation law before they can begin work on a public construction project. As workers' compensation requirements are tightened, the committee believes that cost thresholds for applying the law should be avoided so that there are no incentives to break a contract into smaller and smaller pieces to skirt these requirements.

   Note: The committee received specific legislative proposals which deserve further scrutiny as legislation is being developed to address this recommendation. (See Appendix C-24)

2. Ensuring That All Workers on a Construction Site Are Covered: The committee believes it is in the best interest of the State of New Hampshire to require all persons engaged in on-site work on a construction site to have workers' compensation insurance. **Recommendation:** The committee recommends that RSA 281-A:18-a that states, "Any corporation or limited liability company may elect to exclude up to 3 executive officers or members from the compulsive coverage requirements under this chapter," be modified to indicate that any exemption from the workers' compensation requirement in the construction sector is for a construction contractor's off-site administrative personnel only and that there is to be no exemption for any worker engaged in on-site work on a construction job site.

3. Enhanced Fraud Enforcement: See the recommendation above under "Improved Enforcement and Fraud Prevention Capacity."

4. The Issue of the Named Insured: As part of furthering the state's workers' compensation goals, the committee discussed the concept of requiring all contractors and subcontractors on public works projects to name the state, or other appropriate public body, as an additional named insured on their workers' compensation policies for the purposes of working on a specific public project. By doing so, this allows the contracting authority to be notified that all persons on site have proper workers' compensation coverage. However, in the time available, the committee was unable to bring in legal or workers' compensation insurance experts to evaluate any unanticipated legal consequences of such a requirement.

Recommendation: The committee recommends that, unless legal considerations dictate otherwise, contractors be required to list the public contracting entity as an additional named insured on the contractor's workers compensation policy covering the work performed under a public construction contract. In implementing this policy, the "Termination Notices" provision in the Workers' Compensation statute (281-A:9) would need to be amended to require that "all other named insured" also be notified of any policy termination..

D. Access to Workforce and Apprenticeship Training

To provide a good construction work product for the taxpayer, construction workers on public projects should be highly skilled and well trained. The committee did not delve into worker training or skill requirements other than to briefly discuss the role of apprenticeship programs in the construction sector to training skilled workers for this sector. In this regard, the committee heard testimony that it is existing state policy that the state should encourage and promote registered apprenticeship (RSA 278:1) and the committee believes this policy deserves consideration in the procurement process. As part of ensuring the continued availability of a highly trained workforce in the construction sector, the committee also hopes that the NH Community-Technical Colleges will maintain a commitment to the training needs of workers in this field.

E. In-state Job Creation and Community Economic Development

The Committee was unable, in the time available, to research or solicit testimony on this topic.

F. Communities' Uncompensated Care Burdens and Other Social Welfare Costs

The committee received substantial testimony on the issue of uncompensated care and health care cost-shifting and how public contracting decisions are connected to this problem. It is not the purview of this committee to grapple with the overall problem of health care access or health care cost-shifting in New Hampshire. However, the state has an obligation to investigate how its bidding process and contracting practices may encourage construction contractors to cut back or eliminate their worker health insurance benefits in order to maintain their competitive edge in the public works bidding process. The committee heard testimony that when employers cut back or eliminate workers' health insurance, health care costs and insurance rates increases for everyone else. It was also explained that when public contracting authorities give no recognition to a contractor's effort to provide health insurance for workers, the competitive bidding process may actually impose a "cost and competition penalty" on

contractors who provide health insurance. The committee also heard testimony that such cost shifting, in all sectors and not just construction, amounts to a hidden surcharge or tax on consumers, and such cost-shifting now accounts for 26.5% of hospital billings.

The committee recognizes that the issue of health care cost shifting is far bigger than a study of public works procurement practices and that public works construction makes up only a portion of construction spending. Therefore, addressing cost-shifting in the context of public works procurement policies would make only a small dent in a much larger problem. At the same time, the question should be asked if it is, or should be, public policy to encourage NH employers to provide a health insurance for workers and to encourage employers who already provide such a benefit to keep that benefit and not cut back on coverage. If this is an important policy goal, public officials then have an obligation to examine how public works procurement policies further this goal or conflict with it.

NH procurement officials expressed a reluctance to adopt any kind of point system for construction bid evaluations (through which contractors and subcontractors who provide health insurance could be given extra points), so it is an open question as to how to give recognition to contractors for health insurance participation. This is a complex issue that deserves additional attention, and NH is not alone in grappling with this problem. The information received by this committee on the topic of uncompensated care should be forwarded to other entities for further examination.

G. Such Additional Criteria the Committee Deems Appropriate

The committee heard testimony regarding problems with the state standard P37 indemnification language as it pertains to Information Technology Procurement. Although the issue is outside the scope of our study, the committee believes the issue should be addressed by an appropriate body. We have included a memo that summarizing the testimony of Erle Pierce of Verizon in the Appendices. (See 10/6/06 Memo from Rick Bailey).

APPENDIX - A

Historical Review of HB-157

2004 Session

- SB-429 Introduced in response to a proposed "Responsible Employer Ordinance" in the City of Manchester
- Marathon hearing held in House Public Works Committee
- Public Works recommended the bill for Interim Study.
- Passed the full House and a cursory study (2 meetings) with little testimony and deliberation was undertaken
- Study Committee recommended that the issues needed additional study and that a bill be introduced in the next session to form a study commission

2005-2006 Session

- As recommended, HB157 was introduced and heard again in Public Works
- Dubbed "the son of SB-429" the bill, HB157, as introduced was amended by Tahir and Benn to include a comprehensive study to be carried out by a study commission consisting of members of the diverse interests involved in these procurement issues.
- HB157 passed the House and was amended by the Senate to delete the commission and establish a legislative study committee consisting of 2 House and 2 Senate members to carry out the work outlined in the bill.
- The study was to convene within 45 days from passage in the spring of 2005 and conclude with a report on November 1, 2006 (approximately 16 months).
- The committee was not convened on time. Several attempts were made to organize the committee starting in April 2006, but failed due to a lack of a quorum (three members).
- The committee did not meet and formally organize until June 21, 2006, thereby allowing just over 4 months to complete the study.

APPENDIX - B

Meetings of the Committee

The committee convened a total of 10 times to hear and discuss testimony and to prepare the recommendations contained in this report:

1. 6/21/06
After numerous false attempts to organize, the committee met with all members present to organize and hear initial testimony. The proceedings of this meeting were not recorded or transcribed, and at the conclusion of this meeting it was decided to record all future meetings for the record.

Rep. Benn elected Chair
Rep. Tahir elected Clerk
Sen. Clegg
Sen. D'Allesandro

Testimony heard from the following persons:
- **Gail Kinney**, High Road Economic Consultant
- **David C. May**, ScD, Workplace Safety and Health Consultant
- **Mark Holden**, President of Associated Builders and Contractors (ABC)
- **Gary Abbott**, Associated General Contractors (AGC)
- **Joe Casey**, IBEW
- **Cordell Johnston**, NHMA Government Affairs Attorney
- **Edward R. Murdough**, P.E. Bureau of School Approval & Facilities Mgmt
- **Dennis Adams**, Apprenticeship Council & Sect. NH Bldg. Trades Council
- **Kevin Cash**, Pres. NH Building Trades Council
- **Patrick Long**, Ironworkers
- **Chris Tucker**, Laborers Union; Maine Housing Contractors Standards
- **David Paquette**, Steel Erection
- **Pete Desrocher**, Operating Engineers

2. 7/5/06 (see transcript)
Present: Benn, Tahir, Clegg, D'Allesandro
Testimony heard from the following persons:
- **Roger Sevigny**, Commissioner of Insurance
- **Matt Moore**, Director of Planning for the Technical Colleges

Submissions received from last meeting (see Appendices)

- **Cordell Johnston** of NHMA as requested by Sen. Clegg "2005 Wage, Salary, and Benefits Survey" (one copy)
- **Mark Holden** of ABC sent the following; (1) "Quality Public Construction for the Best Price: A White Paper on Negotiating Effective Procurement Policy", and (2) a Report of 2005 Construction Contract Values.
- **Chris Tucker**, Laborers Union; Maine Housing Contractors Standards
- **David Paquette**, Steel Erection; Summary plus of his testimony
- **Gail Kinney** email with answers re focus groups
- **Dennis Adams** email summarizing his testimony

3. 7/12/06 (see transcript)

Present: Benn, Tahir, Clegg

Testimony heard from the following persons:

- **Steve Norton**, Executive Director NH Centr for Public Policy
- **George Copadis**, Commissioner of Labor
- **Mike Connor** and **Jim Marshall**, Public Works
- **Jack Jarvis**, U.S. Dep't of Labor, apprentice programs

4. 8/9/06 (see transcript)

Present: Benn, Tahir, Clegg, D'Allesandro

Testimony heard from the following persons:

- **Ed McKay**, Vice Chancellor of University System
- **David Withers**, Actuary, Dep't of Insurance
- **Gail Kinney**, Recommendations re Workers Comp

5. 9/6/06 (see transcript)

Present: Benn, Tahir

Testimony heard from the following persons:

- **Gail Kinney**, continuation of last testimony
- **David Withers**, explain information he submitted

6. 9/27/06 (see transcript)

Present: Benn, Clegg, D'Allesandro

Testimony heard from the following persons:

- **Joe Cullens**, Charles P. Blouin Contractors (HVAC)
- **Edward Foley**, Business Agent Sheet Metal Workers

7. 10/3/06 (see transcript)

Present: Benn, Tahir, Clegg, D'Allesandro

Testimony heard from the following persons:

- **Erle Pierce**, Verizon Gov't Relations

8. 10/10/06 (see transcript)
Present: Benn, Tahir, Clegg
Testimony heard from the following persons:

- **Wynn Arnold**, Senior Assistant Attorney General
- **Lynmarie Cusack**, Assistant AG (Justice, Transportation, Construction)

9. 10/17/06 (see transcript)
Present: Benn, Tahir, Clegg, D'Allesandro
Testimony heard from the following persons:

- **Cordel Johnston**, NHMA Govt Affairs Attorney
- **David Withers**, Actuary, NH Dep't of Insurance
  Lorette Jendron, NH Dept of Insurance
- **Wynn Arnold**, Senior Assistant Attorney General
- **Catherine Tucker,** AG Office (fraud division)

10. 10/26/06
Present: Benn, Tahir, D'Allesandro
No testimony was heard:

- Reviewed Final Report
- Vote to Adopt the Final Report was 3-0
  Motion to Adopt made by Rep. Tahir
  Seconded by Sen. D'Allesandro
- Minority Report
  (Sen.Clegg was not present but intends to submit a Minority Report)

APPENDIX – C

Reports and Information submitted to the Committee

1. Report and Testimony by Kinney and May
   a. Uncompensated Care and Health Care Access in the Construction Sector
   b. Focus Group Results on Contractor and Workforce Input on Procurement Practices

2. The Municipal Association Annual Survey of Wage, Salary, and Benefits of Municipal Employees is not included in this appendix because of its large size. A copy can be obtained from NHMA

3. 6/27/06 Submission Mark Holden, Associated Builders and Contractors:
   - ABC Report 2005: "Quality Public Construction for the Best Price: A White Paper on Negotiating Effective Procurement Policy"
   - Statistics of NH Construction Contracts on Public projects for 2005

4. Testimony of David Paquette 6/21/06 includes submission of 2004 and 2006 NCCI Assigned Risk Codes

5. Testimony of Dennis Adams at 6/21/06 Committee meeting.

6. Contractor Standards for MSHA-Financed Multifamily Housing (Maine)

7. The Problem of Bid shopping in Public Construction

8. Effects of Safety and Health Training on Work-Related Injury Among Construction Workers

9. Safety Training for Loggers Reduces Workers' Compensation Rates

10. 7/4/06 Email Letter from Gail Kinney in response to questions regarding the methodology and participants in the surveys she spoke about in her testimony and included in her submission #1 above.

11. 7/7/06 email letter from Roger A. Sevigny, Insurance Commissioner regarding average costs of health insurance and percentage of contractors with coverage

12. 7/24/06 David May Letter; responses to questions from 6/21 hearing

13. 7/24/06 submission from David Withers, Actuary NH Dept of Insurance;
    - Workers Compensation Loss Information Comparisons NH, ME, VT for leading construction/contractor classifications
    - 2006 Cost Comparisons for Selected Construction Trades
    - Comparison of Workers Compensation Benefits NH, ME, VT
    - Statute re who must carry Workers Compensation RSA 412:32-V

14. An Overview of Healthcare Costs, Hospital Finances, and Cost Shifting by Steve Norton, Executive Director 7/12/06 Endowment for Health, NH Center for Public Studies,

15. 7/25/06 Letter from Dep't of Education, Ed Murdough, PE with list of recent major school construction projects which did not employ a clerk of the works

16. NH Dept of Transportation - Prequalification Regulations for Contractors, Standard Prequalification Forms, and a list of pre-qualified contractors dated 7/11/06

17. 8/10/06 University of NH Letter and submission of their procurement documents including examples of a Request for Qualifications (RFQ), Modified AIA Contract, Insurance Requirements, and a list of major projects begun since July 2005.

18. 9/1/06 submission from David Withers, Actuary NH Dept of Insurance i
    - Workers Compensation Assigned Risk Rates Comparing NH vs VT;
    - State of NH Workers Compensation Loss Cost Mutipliers

19. 2001 Article by David L. Grenier, Consultant in Risk Management:
    - Owner Controlled Insurance Programs
    - Wrap-Up Construction Project- Insurance Procurement Option

20. 10/2/06 Letter from David C. May of Concord Cymorth, LLC

21. 10/6/06 Memo from Rick Bailey, Information Technology Procurement

22. 10/16/06 Letter from Cordell Johnston, NHMA Govt Affairs Attorney

23. 10/16/06 Letter from Wynn Arnold, Senior Assistant Attorney General

24. Proposed Legislation Related to Workers' Compensation Coverage is designed to make clear that all construction workers engaged in on-site work on state construction projects are expected to be covered by workers' compensation insurance and that certification of such coverage will be required, up-front, by the public contracting authority.

copy

Public Works Procurement Study Committee

Established by HB 157 – Laws of 2005

HB 157 – An Act establishing a committee to study procurement methods for public works projects by state and local government agencies

132:3 Duties. The committee shall study contracting practices for public works projects by state agencies, municipalities, counties, school districts, and all other political subdivisions. The goal of such study shall be to recommend the public procurement policies that promote the best economic and work quality value from public construction and infrastructure investment. The committee shall base its recommendation on consideration of the following: labor law enforcement, workplace safety compliance, worker's compensation compliance, access to workforce and apprenticeship training, in-state job creation and community economic development, communities' uncompensated care burdens and other social welfare costs, and such additional criteria as the committee deems appropriate.

Overview

This four-person study committee included Rep. Bernard Benn (chairman), Rep. Saghir Tahir, Sen. Robert Clegg, and Sen. Lou D'Allesandro. The committee organized late, on 6/21/06, and met 10 times to hear testimony and deliberate. The committee heard testimony on a number of issues regarding the current procurement methods for public works projects. From the testimony it was clear that various state agencies and local governments procure contracts differently and have varying degrees of responsibilities and oversights during construction projects.

The general kinds of concerns that were discussed included:

- Worker's Compensation laws not being followed
- Worker misclassification to avoid paying taxes and avoid providing benefits and Worker's Compensation insurance
- Bid-shopping of sub-bids after the general contract has been awarded
- Minimal oversight and tracking of subcontractors on public jobs
- Control of the work site to strictly identify and authorize workers and to assure that the work is being performed by qualified and approved workers

- Impact of uncompensated care costs and health care cost-shifting when contracts are awarded to contractors who do not provide health insurance for their workers
- Contractor Evaluation System: point system versus requirements
- Enforcement of current regulations

The committee considered all of the duties described in the legislation, but due to the shorter study period than envisioned by the legislation, focused primarily on state-level procurement and on the items for which the most detailed testimony or information was given.

Throughout the drafting of the final report, it became apparent that there was much disagreement on the various issues that were studied. As a result, I felt it appropriate to submit a minority report reflecting dissenting views and positions. The following is a reflection of the minority position.

Respectfully submitted,

Robert E. Clegg, Jr.
Senate Majority Leader
District 14

Findings and Recommendations:

The Committee approached its work with the basic premise that public entities have an obligation to get the best value for public construction spending, including ensuring that the people we pay to construct public buildings have appropriate qualifications and follow state laws.

The committee recognized that the public sector agencies may need to review and develop additional project tracking, monitoring, and imposing accountability standards on taxpayer-funded construction projects. However, the committee did no research as to the extent of the problems for public sector agencies. Most of the discussions revolved around issues that are currently governed by regulatory agencies such as the Labor Department. Also, some agencies, such as DOT, already have high standards and accountability methods in place to monitor projects.

Below are the committee findings regarding the mandated duties in legislation under House Bill 157.

Findings:

1. Worker's Compensation Coverage

It is known that worker's compensation rules and statutes in the State of New Hampshire do not require all persons working on State, County and Municipal construction sites to have a worker's compensation policy. It is in the best interest of the State, however, to require every person on the job have their own worker's compensation policy.

2. Supervision of Worksites

Based on trade practices and testimony received, more supervision over worker's compensation is necessary. Procurement officials from the University System were quite forthright in their testimony regarding their procedures for controlling their worksite, and the committee recognizes that the University System is not alone in how it exercises or doesn't exercise worksite control. It is the committee's conclusion that many public contracting authorities should consider control procedures for the identification of workers on their worksite. Mr. Bill Haverly, Director of Capital Planning and Development for the University System on August 9, 2006 testified the following before this committee:

> "It (sic) think it is during the job as well because one of my managers of construction said to me yesterday, they have enough trouble just keeping track the welders with the welding certificates that they have to have. You keep getting, the welders, they come in and they give you their certificate that they are certified to weld. Then the next day, the clerk comes in and sees somebody two stories up welding under a mask. Is it the same guy that they had the certificate for yesterday? So, just tracking everything, so I don't know. I honestly don't know what the burden would be to make sure that every single person that walked on the sight (sic) because I think it is checking them everyday at a gate, checking them in every day. The labor for a subcontractor could change on a daily basis."

3. Misclassification of Workers

The misclassification of workers, also contributes to the un-level playing field for contractors. For example, if a contractor classifies a roofer as office staff the savings in workers compensation is substantial. There are also less evident examples, such as Mr. Cullen, President and Chief Executive Officer of the Charles P. Blouin Company of Seabrook, NH who testified the following to the committee on September 27, 2006:

> "One of the other issues in New Hampshire is the misclassification of workers. With respect to sheet metal workers there are two classes in New Hampshire. There is the 5537 class which is applicable to shop labor and there is also a 5538 class which is applicable to sheet metal workers who work in the field. Currently the rate for a 5537 shop worker per hundred hours of payroll is $10.78. Then for a field man who has more risk obviously from, he is exposed to more hazards, that cost is $18.85 per hundred dollars. That will, just the misclassification of sheet metal workers per sea (sic) whether he works in the shop or he works outside alone could put us at a distinct disadvantage."

4. Lack of Enforcement for Existing Regulations and Statutes

There is a lack of enforcement of existing worker's compensation statues, due, in part, to inadequate staffing at the Department of Labor and Department of Insurance. According to RSA 281-A: 5, it is required that employees carry worker's compensation coverage for the State of New Hampshire. However, the committee received testimony that provided an example of the contrary. Mr. David Paquette submitted a letter dated June 22, 2006 to the committee noting the following:

> "One company in particular called American Aerial Services from Maine had a temporary policy when they worked on the Verizon Arena in Manchester in 2000. The insurance company Aon Risk Services never cancelled the WC policy up at the NHDOL, therefore it was still on the books and valid. American Aerial Services ran around the state doing work on hospitals (Wentworth Douglas) and other projects some with $11.6 million dollars of BIA money (Measured Progress Processing Center phase I & II, Dover, NH) that was approved thru (sic) G & C on December 15, 2004. All the while, according the NH DOL having WC with an Elm St. Manchester address."

5. Contractor and Subcontractor Certification/ Prequalification

The minority disagrees with the committee findings regarding contractor and subcontractor certification/ pre-qualification. The prequalification of subcontractors would prohibit new companies from competing. The process to be pre-qualified is expensive and prohibitive. Most small companies would not spend such massive amounts of time and money towards prequalification without a guarantee of some kind.

6. Safety Training

The committee heard that safety training provides many benefits on construction projects, including fewer workers' compensation claims and lower workers compensation costs. The committee believes it is in the public interest and the taxpayer interest for workers on public construction jobs to have safety training. This issue has been raised many times before in various forms and no one disagrees that jobsite safety is important. The issue is how to ensure

appropriate safety training for all trades and whether or not state government should be responsible for certifying compliance.

There is no single training program that will meet the needs of every variety of construction trade; the OSHA 10-Hour course is broken into 10 elements covering a wide variety of construction applications. Furthermore, requiring that an employee complete a specific training program before stepping on the jobsite will limit the industry's supply of new employees. The committee observed that ongoing, job-specific training programs are the norm in the construction industry and serve its needs adequately without hindering the development and placement of future workers in the industry.

7. The Increasing Cost of Health Care

The committee received testimony that the uninsured and underinsured drive up the cost of health care. While a number of contracts don't provide health insurance, large corporations such as Wal-Mart, don't provide any health insurance for employees. Therefore, the effect of the uninsured and under insured is spread across a wide variety of businesses and cannot be traced to any one group exclusively.

8. Use of Personal Health Insurance Versus Worker's Compensation

Taxpayer funded projects are unlike residential construction sites, where contractors don't carry worker's compensation because homeowners are required to under statute. Contractors tend to rely on personal health insurance to cover injuries sustained on the job site. The statute was never meant to replace traditional workers compensation insurance but the legislature has yet to come to agreement on how to remedy this; however the construction numbers are mixed to include both categories.

9. Health Care Cost Shifting

The committee received statistics demonstrating how public contracting decisions are connected to the issue of uncompensated care and health care cost shifting. It was reported that cost-shifting accounts for 26.5% of hospital billings. This statistic however, does not separate out contractors that may use undocumented workers for portions of their contract or work, nor does it separate the large companies that do the majority of work. Typically, large municipal projects do not fall under this category.

Note: The committee requested the Department of Insurance to ask the health insurance companies how much personal coverage is used that they believe should have been covered by worker's compensation coverage. To date, this information has not been received.

10. Health Insurance and Various Benefits to Be Provided

While companies may negotiate various benefit packages, they do so willingly. The minority does not feel it appropriate to mandate the same benefits to be required for all contractors wishing to participate in taxpayer funded projects. The requirement that all public projects require contractors to have health insurance, retirement packages and vacation mandates opens the door to discrimination by enticing companies to hire employees who are young and have no spouse or children that may require insurance coverage, in order to keep costs down. This furthers the probability that older workers would be left behind.

If the requirement that all public projects require contractors and their employees have health insurance is adopted, this requirement must also be applied to those providing materials on the worksite. If the requirement is not applied equally, contractors and their employees will potentially benefit from low bids obtained on site materials that were produced at substandard wages with no benefits; at a minimum if the requirement is adopted it should be adopted for all.

All companies have the right to negotiate with their own employees and vice versa. The following is testimony received by Mr. Cullen, President and Chief Executive Officer of the Charles P. Blouin Company of Seabrook, NH to the committee on September 27, 2006:

> "We've been in New Hampshire for approximately 11 years and we have found that it has been very, very difficult to be competitive in the marketplace up here given the fact that we're signatory to a collective bargaining agreement which allows for health insurance, pension annuity and things of that nature for my employees. Typically we find that in the market up here most folks don't offer any benefits whatsoever."
>
> "...Suffice to say, we'd like to level the playing field and given the fact that at the very least, these folks should have access to health care in some way, shape or form. In my particular case I'm a larger company. We pay everything. Many of the folks that I bid against have no health insurance access for their employees whatsoever."

11. Bid Shopping

Bid shopping is a perceived problem that takes place when the contractor that has been awarded the bid and then goes to subcontractors seeking the best possible price that falls within his or her budget. The perception exists that a lesser quality is achieved through a low bid. The reality is the quality of a job is reliant upon supervision that is provided by the general contractor and also those that oversee the job on behalf of the contracting entity (State, County or Municipal). The alternatives to bid shopping, the posting of all bids, or the requirement that all trades include the bid prior to an award the costs or contracts of all sub contractors, do not reward good contractors. It allows poor performing contractors to request similar bids/contracts as those awarded to good contractors, despite their past performances. No contractor would feel comfortable bidding the job for two contractors using different pricing, even though one contractor may make a job run smoothly and on time and the other may be a chronic problem with late delivery of the area, or no materials available on the site. While one deserves a price based on quality of services the other may take punitive actions for the slight.

12. The Point System

A point system, similar to that adopted by the State of Maine, has been suggested for the State of New Hampshire. This system awards points for various levels of benefits. New Hampshire, however, is entrepreneurial in nature. The adoption of this point system will discourage smaller, risk taking individuals from participating in the market. A start up company may well decide to forgo insurance coverage and rely on their spouse's insurance coverage; while this is permissible, it would penalize them for frugality. The same company may wish to continue to invest in its needs for the first 5 years rather than start a retirement pension program, again they will be penalized. This results in larger, wealthier companies attaining points, while smaller

companies are unable to do so, thus denying the entrepreneurial spirit a right start down the road to independence.

13. Access to Workforce and Apprenticeship Training

The committee was unable, in the time available, to research or solicit testimony on this topic. The committee recognizes the benefits and encourages all types of construction training programs, including but not limited to the state-registered apprenticeship programs.

Recommendations:

1. Installation of Fines for Infractions

The minority recommends that legislation be filed instating fines for contractors without worker's compensation or for the misclassification of employees. The contractor shall be fined 2 times what the cost would have been, if employees were accurately classified and worker's compensation coverage was provided. The fines shall be assessed from the first day of the infraction(s) or one year, whichever is greater. The Chief Executive Officer, Chief Financial Officer and members of limited liability companies shall be held personally liable for the payment of fines.

2. Creation of a Task Force for the Purposes of Enforcement

The minority recommends that legislation be filed for the purposes of creating a Task Force to be made up of representatives from the Department of Labor, Department of Insurance and Department of Employment Security. Duties will include but not be limited to the enforcement of worker's compensation statutes, employment security taxes and other taxes and fees required to be paid by businesses in New Hampshire, by visiting work sites and to ensure that on site workers are compliant with apprenticeship requirements, in accordance with RSA 278.

3. Requirement of Trade Specific Criteria

The committee recognizes that trade specific certifications enhance the contracting entity's ability to receive the best project quality. Contract documents should require trade specific qualifications which constitute a certification that workers are able to perform respective trade operations. This may include industry standards and education obtained from classroom instruction or onsite work experience, which demonstrates proof of capabilities.

4. Modify RSA 281-A:9 – Worker's Compensation Statute (Termination Notice Section)

Note: The committee recommends that contractors and subcontractors be required to list the public contracting entity as an additional named insured on the contractor's workers' compensation policy covering the work performed under a public construction contract. ***By doing so, this allows the onsite supervisor to be notified who is on the worksite and that all persons on site have proper worker's compensation coverage.*** If such a requirement is found to be legally workable, a modification of the workers' compensation stature would be required, as follows:

281-A:9 Termination Notices. In all instances in which an insurance carrier is to cease providing workers' compensation insurance to an employer, whether by reason of cancellation or otherwise, such insurance carrier shall file a written termination notice with the commissioner and shall send a copy of the notice to the employer ***and to all others named insured on the terminated policy***. Terminations shall take effect no sooner than the earliest of the following:

I. In case of termination for nonpayment of premium, 30 days after the date the termination notice is filed.

II. In case of termination for reasons other than nonpayment of premium, 45 days after the date the termination notice is filed.

III. In any case, the date on which the employer has obtained new coverage from another insurance carrier or on which the employer has qualified as a self-insurer under RSA 281-A:5, III.

5. Contracting Entity As Additional Insured

All contractors, sub contractors and independent contractors must file with the contracting entity (Municipal, County or State) a worker's compensation policy naming the entity as additionally insured. All contractors, sub contractors and independent contractors shall provide a certificate of good standing from the New Hampshire Secretary of State prior to being allowed to work.

6. Disclosure

The committee recommends that every general contractor and subcontractor be required to disclose to the public contracting authority the name of each contractor working on the project and for whom that contractor is directly working. The list of all contractors on a public project and for whom they are working should be posted electronically and on the job site as public information. All such contractors should be authorized by the public contracting authority to be on the worksite. This disclosure requirement should help substantially with labor law enforcement. For example, if one drywall subcontractor then lists 10 additional drywall subcontractors as working on the project, that may be an immediate red flag that these sub-sub contractors may be misclassified as independent contractors when they should be listed as employees of the subcontractor.

7. Supervision of Worksites

It is recommended that public contracting authorities examine what works in the private sector in order to ensure that workers on public construction sites are properly authorized and that proper construction worksite control is exercised. For example, the committee was told that entities such as Seabrook Station have procedures for exercising tight worksite control. The committee recognizes that not all state projects need to maintain the same procedures as Seabrook Station.

It is recommended that state contracting agencies consider requiring contractors and subcontractors disclose to them, who each contractor is directly working for. The authorized public contracting authority should consider maintaining a list of all contractors on a public project.

Rescue Welding and Fabrication
27 Interstate Drive
Somersworth NH 03878
603-692-2349

January 26, 2009

Representative Jeffrey Goley, Chair

Labor, Industrial and Rehabilitative Services Committee, LOB 307
107 N. Main St.
Concord, NH 03301

Re: HB 108
Support

Dear Representative Goley and Members of the Committee:

Rescue Welding and Fabrication writes in favor of HB 108. Rescue Welding and Fabrication is a small business in the steel installation industry, an industry where workers compensation premiums can exceed 70% of Rescue's payroll. Rescue Welding and Fabrication has performed work in NH, and continues to bid work in this area.

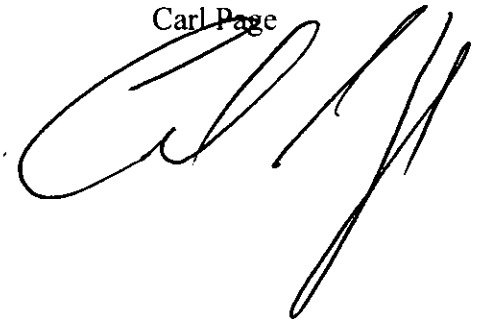
Unfortunately, however, Rescue Welding and Fabrication continues to experience the crushing affect of cheating in the steel installation industry, a serious barrier to honest competition in New Hampshire. When cheaters win, honest employers have to lay-off good workers; who then are forced to seek work as employees of the cheaters. This Bill stops this spiral downward. It provides a no-taxpayer-cost solution by allowing honest competitors to ferret out and correct illegal conduct in our own industry, all at our own cost. It provides a free market-based solution relieving businesses and government from this infectious disease, i.e., business-based insurance fraud. It promotes robust competition and reduces taxpayer costs expended by government to chase cheaters.

The best efforts of state and federal government entities cannot eliminate or substantially curtail the pervasive cheating we experience. Cheating provides big money. Accordingly, allowing honest employers to police their own industry seems cost effective. As an owner of a small business, I can assure you that the last thing I want is to become mired in litigation. When a dishonest employer seeks to underbid me, however, and other competitors I, and they, should be empowered to freely choose whether we need to intervene, at our own expense, to stop this criminal conduct. This Bill eliminates the advantages gained by cheaters that win by illegally deflated prices and bids.

For those reasons, I urge your support of HB 108. Thank you for your attention to this important matter.

Respectfully,

Carl Page



Universal Steel Erectors, Inc.
149 Reservoir Drive
Weare, NH 03281
603-231-7597

January 26, 2009

Representative Jeffrey Goley, Chair

Labor, Industrial and Rehabilitative Services Committee, LOB 307
107 N. Main St.
Concord, NH 03301

Re: HB 108
Support

Dear Representative Goley and Members of the Committee:

Universal Steel Erectors, Inc. writes in favor of HB 108. Universal Steel is a small business in the steel installation industry, an industry where workers compensation premiums can exceed 70% of Universal Steel's payroll. Universal Steel has performed work in NH, and continues to bid work in this area.

Unfortunately, however, Universal Steel continues to experience the crushing affect of cheating in the steel installation industry, a serious barrier to honest competition in New Hampshire. When cheaters win, honest employers have to lay-off good workers; who then are forced to seek work as employees of the cheaters. This Bill stops this spiral downward. It provides a no-taxpayer-cost solution by allowing honest competitors to ferret out and correct illegal conduct in our own industry, all at our own cost. It provides a free market-based solution relieving businesses and government from this infectious disease, i.e., business-based insurance fraud. It promotes robust competition and reduces taxpayer costs expended by government to chase cheaters.

The best efforts of state and federal government entities cannot eliminate or substantially curtail the pervasive cheating we experience. Cheating provides big money. Accordingly, allowing honest employers to police their own industry seems cost effective. As an owner of a small business, I can assure you that the last thing I want is to become mired in litigation. When a dishonest employer seeks to underbid me, however, and other competitors I, and they, should be empowered to freely choose whether we need to intervene, at our own expense, to stop this criminal conduct. This Bill eliminates the advantages gained by cheaters that win by illegally deflated prices and bids.

For those reasons, I urge your support of HB 108. Thank you for your attention to this important matter.

Respectfully,

Randy Belliveau, President

Dakota Welding & Fabrication LLC
61 Milford Street
Brookline NH 03033
603-670-8602

January 26, 2009

Representative Jeffrey Goley, Chair

Labor, Industrial and Rehabilitative Services Committee, LOB 307
107 N. Main St.
Concord, NH 03301

Re: HB 108
Support

Dear Representative Goley and Members of the Committee:

Dakota Welding and Fabrication writes in favor of HB 108. Dakota is a small business in the steel installation industry, an industry where workers compensation premiums can exceed 70% of Dakota's payroll. Dakota has performed work in NH, and continues to bid work in this area.

Unfortunately, however, Dakota continues to experience the crushing affect of cheating in the steel installation industry, a serious barrier to honest competition in New Hampshire. When cheaters win, honest employers have to lay-off good workers; who then are forced to seek work as employees of the cheaters. This Bill stops this spiral downward. It provides a no-taxpayer-cost solution by allowing honest competitors to ferret out and correct illegal conduct in our own industry, all at our own cost. It provides a free market-based solution relieving businesses and government from this infectious disease, i.e., business-based insurance fraud. It promotes robust competition and reduces taxpayer costs expended by government to chase cheaters.

The best efforts of state and federal government entities cannot eliminate or substantially curtail the pervasive cheating we experience. Cheating provides big money. Accordingly, allowing honest employers to police their own industry seems cost effective. As an owner of a small business, I can assure you that the last thing I want is to become mired in litigation. When a dishonest employer seeks to underbid me, however, and other competitors I, and they, should be empowered to freely choose whether we need to intervene, at our own expense, to stop this criminal conduct. This Bill eliminates the advantages gained by cheaters that win by illegally deflated prices and bids.

For those reasons, I urge your support of HB 108. Thank you for your attention to this important matter.

Respectfully,

James Parker, President

C&C Reinforcing
PO Box 6132
Nashua NH 03603
603-438-4388

January 26, 2009

Representative Jeffrey Goley, Chair

Labor, Industrial and Rehabilitative Services Committee, LOB 307
107 N. Main St.
Concord, NH 03301

Re: HB 108
Support

Dear Representative Goley and Members of the Committee:

C&C Reinforcing writes in favor of HB 108. C&C is a small business in the steel installation industry, an industry where workers compensation premiums can exceed 70% of C&C's payroll. C&C has performed work in NH, and continues to bid work in this area.

Unfortunately, however, C&C continues to experience the crushing affect of cheating in the steel installation industry, a serious barrier to honest competition in New Hampshire. When cheaters win, honest employers have to lay-off good workers; who then are forced to seek work as employees of the cheaters. This Bill stops this spiral downward. It provides a no-taxpayer-cost solution by allowing honest competitors to ferret out and correct illegal conduct in our own industry, all at our own cost. It provides a free market-based solution relieving businesses and government from this infectious disease, i.e., business-based insurance fraud. It promotes robust competition and reduces taxpayer costs expended by government to chase cheaters.

The best efforts of state and federal government entities cannot eliminate or substantially curtail the pervasive cheating we experience. Cheating provides big money. Accordingly, allowing honest employers to police their own industry seems cost effective. As an owner of a small business, I can assure you that the last thing I want is to become mired in litigation. When a dishonest employer seeks to underbid me, however, and other competitors I, and they, should be empowered to freely choose whether we need to intervene, at our own expense, to stop this criminal conduct. This Bill eliminates the advantages gained by cheaters that win by illegally deflated prices and bids.

For those reasons, I urge your support of HB 108. Thank you for your attention to this important matter.

Respectfully,

Dan Crowley, President

JACQUELYN MAGILL
PRESIDENT

Phone 978.346.9898
Fax 978.346.9833
edmconstruction@verizon.net
125 East Main St
Merrimac, MA 01860

EDM CONSTRUCTION Inc.

DBE/WBE Certified

She has
Business
in N.H.
on the 29th
AND will TRY
TO MAKE the
hearing

EDM Construction, Inc.
125 East Main Street
Merrimac, Ma 01860
978-346-9898

January 26, 2009

Representative Jeffrey Goley, Chair

Labor, Industrial and Rehabilitative Services Committee, LOB 307
107 N. Main St.
Concord, NH 03301

Re: HB 108
Support

Dear Representative Goley and Members of the Committee:

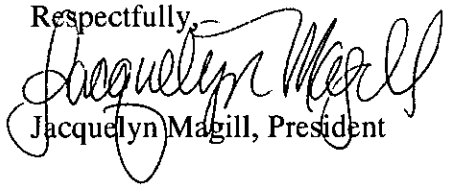
EDM writes in favor of HB 108. EDM is a small business in the steel installation industry, an industry where workers compensation premiums can exceed 70% of EDM's payroll. EDM has performed work in NH, and continues to bid work in this area.

Unfortunately, however, EDM continues to experience the crushing affect of cheating in the steel installation industry, a serious barrier to honest competition in New Hampshire. When cheaters win, honest employers have to lay-off good workers; who then are forced to seek work as employees of the cheaters. This Bill stops this spiral downward. It provides a no-taxpayer-cost solution by allowing honest competitors to ferret out and correct illegal conduct in our own industry, all at our own cost. It provides a free market-based solution relieving businesses and government from this infectious disease, i.e., business-based insurance fraud. It promotes robust competition and reduces taxpayer costs expended by government to chase cheaters.

The best efforts of state and federal government entities cannot eliminate or substantially curtail the pervasive cheating we experience. Cheating provides big money. Accordingly, allowing honest employers to police their own industry seems cost effective. As an owner of a small business, I can assure you that the last thing I want is to become mired in litigation. When a dishonest employer seeks to underbid me, however, and other competitors I, and they, should be empowered to freely choose whether we need to intervene, at our own expense, to stop this criminal conduct. This Bill eliminates the advantages gained by cheaters that win by illegally deflated prices and bids.

For those reasons, I urge your support of HB 108. Thank you for your attention to this important matter.

Respectfully,



Jacquelyn Magill, President

HB 108 (2009 Session)
Summary Sheet
for an
Act Establishing Employers' Right of Action to Enforce Payment of Workers' Compensation Premiums

Problem/Current Situation:

Honest employers currently must compete against too many unscrupulous employers who create for themselves a competitive advantage by evading their responsibilities to pay workers compensation premiums to insurance carriers. For decades, NH RSA 281 has mandated that all employers provide such insurance coverage. Evading that mandate constitutes illegal conduct and hurts honest employers who follow the law. Current laws have not succeeded in fully protecting honest business against this illegal deflation of service prices and contract bids, for example, in janitorial service contracts at public and private buildings, construction projects, health care facilities' staffing, garbage collection, and etc.

This Bill:

- Allows an employer in the same industry to have standing to recover payments that a competitor evaded illegally. This ensures that the cheating employer pays the same premiums all other employers must pay. It also hinders the cheaters' ability to benefit from its illegally deflated pricing achieved by premium evasion.
- Applies where payments were not paid 90 days after the then current policy expired.
- Requires notice to the insurance carrier that a suit is in progress, if the carrier chooses (for whatever reason(s)) to collect the premium. Often, where no carrier exists it allows immediate suit.
- Allows that anytime before suit ends, an insurance carrier may seek to enter the suit and where it's allowed, the carrier may recover the full amount of the award and avoid the amount going to the General Fund.
- Otherwise, requires that the entire award obtained be deposited directly into the State's General Fund. Nothing to the plaintiff. This provides a protective mechanism that avoids frivolous actions, i.e., no incentive exists and the plaintiff must finance the entire action. Note also the current frivolous or bad faith claims statutes and rules. For example, NH RSA 507:15 Frivolous Lawsuits Statue (punishing litigants for bad faith, unsupported claims) and NH Rules of Professional Conduct, at Rule 3.1 (prohibiting lawyers from filing frivolous claims).
-

Benefits to NH Taxpayers:

- No cost to enforce to end a serious problem. Encourages small government and low taxes.
- Avoids and reduces the expensive expenditure of tax dollars spent to chase cheaters, while preserving the right of government to continue its current efforts. That is, the bill supplements government's effort in this fight again fraud, and does not reduce its power.
- Notably: This Does not create a "new" cause of action (carriers or the State may currently sue). It only creates by a small margin (via standing) the ability of a competitor to also enforce, especially as the competitor incurs harm by the illegal conduct they witness daily, i.e., they can't under bid against the dishonest competitor. Accordingly, it utilizes free market-based solutions to end serious illegal conduct.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 108

BILL TITLE: **establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**

DATE: March 18, 2009

LOB ROOM: 307

Amendments:

Sponsor: Rep. Craig	OLS Document #:	2009	0849h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Craig
Seconded by Rep. Rice
Vote: 11-6 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Craig
Seconded by Rep. J. Knowles
Vote: 4-14 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) **RETAIN**

Moved by Rep. Bridle
Seconded by Rep. Kelly
Vote: 17-1 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Mary Ann Knowles
Rep. Mary Ann Knowles, Clerk

NO ACTION

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 108

BILL TITLE: **establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**

DATE: ~~2/19/09~~ - 3/18/09

LOB ROOM: 307

Amendments:

Sponsor: Rep. Craig — OLS Document #: 2009-0849h

Sponsor: Rep. ~~Rice~~ — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: ~~OTP~~ OTP/A, ITL, Interim Study (Please circle one.) amend

Moved by Rep. Craig

Seconded by Rep. Rice

Vote: (Please attach record of roll call vote.) 11-6

Motions: OTP OTP/A ITL, Interim Study (Please circle one.)

Moved by Rep. Craig

Seconded by Rep. John Knowles

Vote: (Please attach record of roll call vote.) 4-14

motion: Retain moved Bridle vote 17-1
seconded Kelly **CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Mary Ann Knowles
Rep. Mary Ann Knowles, Clerk

OFFICE OF THE HOUSE CLERK 2009 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 108 Title: establishing an employer's private right of action to enforce the payment of workers' compensation coverage

PH Date: 1/29/09 Exec Session Date: 3/18/09

Motion: OTP Amendment #: 2009-0849h

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J	✓	
Hofemann, Roland P	✓	
Knowles, John	✓	
Knowles, Mary Ann, Clerk	✓	
Brennan, William P	✓	
Craig, James W	✓	
Weed, Charles F	absent	
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J		✓
Daniels, Gary L		✓
Bishop, Franklin C		✓
Bridle, Russell D	✓	
Gleason, John P	absent	
Dumaine, Dudley D	absent	
Richardson, Herbert D		✓
Pellegrino, Tony J		✓
Sedensky, John B		✓
	11	6
TOTAL VOTE: 11-6		

Printed: 1/12/2009

OFFICE OF THE HOUSE CLERK 2009 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 108 Title: establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

PH Date: 1/29/09 Exec Session Date: 3/18/09

Motion: OTP/A Amendment #:

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman		✓
Kelly, Sally H, V Chairman		✓
Gorman, Mary J		✓
Hofemann, Roland P		✓
Knowles, John		✓
Knowles, Mary Ann, Clerk		✓
Brennan, William P	✓	
Craig, James W	✓	
Weed, Charles F	absent	
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J		✓
Daniels, Gary L		✓
Bishop, Franklin C		✓
Bridle, Russell D		✓
Gleason, John P		✓
Dumaine, Dudley D	absent	
Richardson, Herbert D		✓
Pellegrino, Tony J		✓
Sedensky, John B		✓
	4	14

TOTAL VOTE: 4-14
Printed: 1/12/2009

OFFICE OF THE HOUSE CLERK 2009 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 108 Title: establishing an employee's private right of action to enforce the payment of workers compensation coverage.

PH Date: 1/29/09 Exec Session Date: 3/18/09

Motion: Retain Amendment #:

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J	✓	
Hofemann, Roland P	✓	
Knowles, John	✓	
Knowles, Mary Ann, Clerk	✓	
Brennan, William P		✓
Craig, James W	✓	
Weed, Charles F	absent	
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J	✓	
Daniels, Gary L	✓	
Bishop, Franklin C	✓	
Bridle, Russell D	✓	
Gleason, John P	✓	
Dumaine, Dudley D	absent	
Richardson, Herbert D	✓	
Pellegrino, Tony J	✓	
Sedensky, John B	✓	
	17	1

TOTAL VOTE: 17-1
Printed: 1/12/2009

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 108

BILL TITLE: **establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**

DATE: November 24, 2009

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kelly

Seconded by Rep. Infantine

Vote: 14-3 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: No

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 108

BILL TITLE: **establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**

DATE: November 24, 2009

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kelly

Seconded by Rep. Infantine

Vote: (Please attach record of roll call vote.) 14-3

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

OFFICE OF THE HOUSE CLERK 2009 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 108 Title: establishing an employers' private right of action to enforce the payment of workers' compensation coverage

PH Date: 1/29/09 Exec Session Date: 11/24/09

Motion: Interim Study Amendment #:

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J		✓
Hofemann, Roland P	✓	
Knowles, John	✓	
Knowles, Mary Ann, Clerk	✓	
Brennan, William P		✓
Craig, James W		✓
Weed, Charles F		
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J	✓	
Daniels, Gary L	✓	
Bishop, Franklin C	✓	
Bridle, Russell D		
Gleason, John P	✓	
Dumaine, Dudley D		
Richardson, Herbert D	✓	
Pellegrino, Tony J	✓	
Sedensky, John B	✓	
	14	3
TOTAL VOTE:		

Printed: 1/12/2009

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

INTERIM STUDY

EXECUTIVE SESSION on HB 108

BILL TITLE: **establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**

DATE: October 13, 2010

LOB ROOM: 307

☒ RECOMMENDED FOR FUTURE LEGISLATION

LSR No._____
(If legislation is already filed, list LSR No.)

☐ NOT RECOMMENDED FOR FUTURE LEGISLATION

Moved by Rep. Weed

Seconded by Rep. Mary Ann Knowles

Vote: 6-5 (Please attach record of roll call vote.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

INTERIM STUDY

EXECUTIVE SESSION on HB 108

BILL TITLE: **establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**

DATE: October 13, 2010

LOB ROOM: 307

☑ **RECOMMENDED FOR FUTURE LEGISLATION**

LSR No._____
(If legislation is already filed, list LSR No.)

☐ **NOT RECOMMENDED FOR FUTURE LEGISLATION**

Moved by Rep. Rep. Weed

Seconded by Rep. Mary Ann Knowles

Vote: (Please attach record of roll call vote.) 6 – 5

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

OFFICE OF THE HOUSE CLERK 2010 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 108 Title: establishing an employers' private right of action to enforce the payment of workers' compensation coverage

PH Date: 1/29/10 Exec Session Date: 10/13/10

Motion: Recommend for Future Legislation Amendment #:

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J	✓	
Hofemann, Roland P		
Knowles, John		
Knowles, Mary Ann, Clerk	✓	
Brennan, William P		
Craig, James W		
Weed, Charles F	✓	
Rice, Chip L		
Mears, Lucy E		
Infantine, William J		✓
Daniels, Gary L		✓
Bishop, Franklin C		
Bridle, Russell D		
Gleason, John P		
Dumaine, Dudley D		
Richardson, Herbert D		✓
Pellegrino, Tony J		✓
Sedensky, John B		✓
Gagnon	✓	
	6	5

TOTAL VOTE:

Printed: 9/16/2010

Committee Report

REGULAR CALENDAR

November 25, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES to which was referred HB108,

AN ACT establishing an employers' private right of action to enforce the payment of workers' compensation coverage. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

Rep. Sally H Kelly

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES**
Bill Number:	**HB108**
Title:	**establishing an employers' private right of action to enforce the payment of workers' compensation coverage.**
Date:	**November 25, 2009**
Consent Calendar:	**NO**
Recommendation:	**REFER TO COMMITTEE FOR INTERIM STUDY**

STATEMENT OF INTENT

This bill would create an employers private right of action to enforce payment of workers compensation coverage premiums. It would have allowed employers to file civil action in court against other employers who are misclassifying employees. While the committee believes it is the state departments job to enforce our law, it also believes the idea of private sector enforcement deserves further study.

Vote 14-3.

Rep. Sally H Kelly
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB108, establishing an employers' private right of action to enforce the payment of workers' compensation coverage. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. Sally H Kelly for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. This bill would create an employers private right of action to enforce payment of workers compensation coverage premiums. It would have allowed employers to file civil action in court against other employers who are misclassifying employees. While the committee believes it is the state departments job to enforce our law, it also believes the idea of private sector enforcement deserves further study. **Vote 14-3.**

Original: House Clerk
Cc: Committee Bill File

HB 108

INTERIM STUDY

This bill would create an employers private right of action to enforce payment of workers compensation coverage premiums. It would have allowed employers to file civil action in court against other employers who are misclassifying employees. While the committee believes it is the state departments job to enforce our law, it also believes the idea of private sector enforcement deserves further study.

Sally Kelly



COMMITTEE REPORT

COMMITTEE: Labor

BILL NUMBER: HB 108

TITLE: Establishing an employers private right of action to enforce the payment of workers Compensation Coverage

DATE: CONSENT CALENDAR: YES ☐ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☒ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

This bill would ~~have~~ created an employers private right of action to enforce payment of workers compensation coverage premiums. It would have allowed employers to file civil action in court against other employers who are misclassifying employees. While the Committee ~~feels~~ believes it is the state departments job to ~~who should be the ones~~ enforcing our laws, it also believes the idea of private sector enforcement deserves further study.

COMMITTEE VOTE: 14-3

RESPECTFULLY SUBMITTED,

Rep. _____
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rev. 02/01/07 - Yellow

INTERIM STUDY
COMMITTEE REPORT

COMMITTEE: Labor and Industrial Relations

BILL NUMBER: HB 108

TITLE: an act establishing an employer's private right of action to enforce the payment of workers' compensation coverage.

DATE: Oct 13, 2010

☒ **RECOMMENDED FOR FUTURE LEGISLATION**

LSR No._____ **(If legislation is already filed, please list LSR no.)**

☐ **NOT RECOMMENDED FOR FUTURE LEGISLATION**

STATEMENT OF INTENT: (May be handwritten) The majority believes that the concept of private right of action to discover whether or not some contractors may be making bids on projects that are inequitably low by misclassifying employees as independent contractors has merit. Employers who chose private right of action against other employers would not do so frivolously because of cost, both financial and reputational. This is not "vigilantism" as the action happens in the judiciary. Cases emerging from private actions will provide information and the preponderance of evidence will provide empirical knowledge for future public policy development.

COMMITTEE VOTE: 6Y, 5N (Attach Committee Voting Sheet)

Rep. Charles F. Weed
For the Committee

Rev. 7/98