A bill for an act

relating to railroads; prohibiting railroad company from obstructing treatment of railroad worker injured on the job or from disciplining or threatening to discipline injured railroad employee for requesting treatment or first aid; proposing coding for new law in Minnesota Statutes, chapter 219.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [219.552] [OBSTRUCTING TREATMENT OF INJURED WORKER.]

It is unlawful for a railroad company or person employed by a railroad company negligently or intentionally to:

(1) deny, unreasonably delay, or interfere with medical treatment or first aid treatment to an employee of a railroad who has been injured during employment; or

(2) discipline or threaten to discipline an employee who has been injured during employment for requesting medical treatment or first aid treatment.

Sec. 2. [219.553] [ENFORCEMENT.]

Subdivision 1. [PENALTY.] A person who believes that the person has been affected by a violation of section 1 may file a complaint with the commissioner of labor and industry who shall refer it to the Office of Administrative Hearings for consideration as a contested case. Upon finding a violation, the administrative law judge may assess a penalty to the violating railroad company of up to $10,000 for a violation of

section 219.552. In determining the amount of the penalty, the administrative law judge shall consider those factors that must be considered in determining a monetary penalty under section 221.036, subdivision 3. The contents of the order must include the provisions specified in section 221.036, subdivision 4.

Subd. 2. [ADMINISTRATIVE HEARING OR JUDICIAL REVIEW.] A railroad company against which a penalty is imposed under subdivision 1 may request judicial review in district court. Judicial review under this subdivision is as provided in section 221.036, subdivision 8.

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was re-referred**

**S.F. No. 1603:** A bill for an act relating to railroads; prohibiting railroad company from obstructing treatment of railroad worker injured on the job or from disciplining or threatening to discipline injured railroad employee for requesting treatment or first aid; proposing coding for new law in Minnesota Statutes, chapter 219.

Reports the same back with the recommendation that the bill do pass and be re-referred to the Committee on Finance. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

**Senate Counsel, Research, and Fiscal Analysis**

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**Senate**

**State of Minnesota**

# S.F. No. 1603 -Railroad Worker Injuries (Second Engrossment)

**Author:** Senator Mee Moua

**Prepared by:** Chris Turner, Senate Research (651/296-4350) CT

**Date:** April 4, 2005

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**Section 1** makes it unlawful for a railroad to delay treatment of an injured employee or to discipline an employee for requesting medical treatment.

**Section 2** grants aggrieved employees the right to file a complaint with the Commissioner of Labor and Industry who must refer it to the Office of Administrative Hearings. Allows an administrative law judge to impose a fine of up to $10,000 for a violation. Allows railroads to request judicial review of the decision.

CT:vs

To: Senator Anderson, Chair

Committee on Jobs, Energy and Community Development

Senator Kubly,

Chair of the Subcommittee on Energy, to which was referred

H.F. No. 218: A bill for an act relating to energy; extending eligibility to receive the renewable energy production incentive under certain circumstances; amending Minnesota Statutes 2004, section 216C.41, subdivisions 1, 5, 7.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 216C.41, subdivision 3, is amended to read:

Subd. 3. [ELIGIBILITY WINDOW.] Payments may be made under this section only for electricity generated:

(1) from a qualified hydroelectric facility that is operational and generating electricity before December 31, ~~2005~~ 2007;

(2) from a qualified wind energy conversion facility that is operational and generating electricity before January 1, 2007; or

(3) from a qualified on-farm biogas recovery facility from July 1, 2001, through December 31, 2017.

Sec. 2. [RENEWABLE DEVELOPMENT FUND; RENEWABLE ENERGY PRODUCTION INCENTIVE EXTENSION.]

Subdivision 1. [SCOPE.] This section applies to renewable energy production incentives funded by the renewable development account under Minnesota Statutes, section 116C.779. Minnesota Statutes, section 216C.41, governs the approval for and terms of the incentives except as modified by this section.

Subd. 2. [DEFINITION.] For the purpose of this section, "lapse period" means the period from January 1, 2004, to October 22, 2004.

Subd. 3. [PREVIOUSLY APPROVED APPLICANT.] An applicant who received a letter of approval from the commissioner of commerce under Minnesota Statutes, section 216C.41, subdivision 7, may, if any part of the lapse period occurred within 18 months after receipt of the approval, seek to extend the 18-month eligibility

period by submitting to the commissioner the following:

(1) evidence that all required interconnection and delivery studies for the qualifying project have been completed and an interconnection agreement signed by all the parties has been executed. If the interconnection agreement requires improvements to be made to the transmission system, the applicant must provide evidence that equity and debt financing sufficient to pay the cost of those improvements is secured and that construction of the improvements can be expected to be completed by the date the proposed extension will expire; and

(2) documents demonstrating that the project has secured equity and debt financing sufficient to complete the project by the date the proposed extension will expire.

If the commissioner determines that the applicant has complied with clauses (1) and (2), the commissioner shall, within 30 days of receiving the submission, notify the applicant that the 18-month period is extended by the length of time of the lapse period occurring within the 18-month period, notwithstanding any provision making the credit retroactive. If the federal production credit has lapsed when the commissioner determines whether the applicant has made the submission required by clauses (1) and (2), the commissioner shall extend the 18-month eligibility period for 12 months.

If the commissioner determines that an applicant has failed to comply with the requirement for obtaining an extension, the commissioner shall notify the applicant that an extension of the 18-month eligibility period is denied.

Subd. 4. [PREVIOUSLY UNAPPROVED PROJECTS.] An applicant who filed an application prior to January 1, 2005, but who has not received a letter of approval may qualify to receive the incentive by making the submissions described in subdivision 3, clauses (1) and (2), to the commissioner by December 31, 2005. If the commissioner determines that an applicant has complied with subdivision 3, clauses (1) and (2), the commissioner shall, within 30 days of receiving the submission, notify the applicant that the project qualifies to receive the incentive and shall

provide the applicant with a letter of approval.

An applicant receiving a letter of approval dated January 1, 2005, or later, must first offer for sale to the public utility the electricity generated by the project and associated renewable energy credits. The parties shall negotiate a price within 120 days. The public utility shall provide its last best price offer to the applicant in writing, which is binding for no less than 120 days. The applicant may negotiate with any other utility and may accept a price higher than the binding price offered by the public utility. If another utility offers a price equal to or lower than the binding price offered by the public utility, the applicant must contract with the public utility at the binding price. For the purpose of this subdivision, "public utility" means any utility operating a nuclear power plant in this state.

Subd. 5. [INCENTIVE AMOUNT.] The incentive for a facility receiving an extension or a letter of approval under this section is one cent per kilowatt hour.

Subd. 6. [ADDITIONAL FUNDING.] If funds in the renewable development account, allocated under Minnesota Statutes, section 116C.779, subdivision 2, for wind energy incentives are insufficient to fully fund incentives under this section, other funds in the renewable development account must be allocated to make up the insufficiency.

Subd. 7. [NOTICE.] The commissioner must, within 30 days of the effective date of this act, notify persons eligible to apply for an extension or a letter of approval under this section of the provisions of this act.

Sec. 3. [EFFECTIVE DATE.]

Sections 1 and 2 are effective the day following final enactment."

Amend the title as follows:

Page 1, line 5, delete everything after the second comma and insert "subdivision 3."

And when so amended that the bill be recommended to pass and be referred to the full committee.

.....
(Subcommittee Chair)

March 9, 2005.....

**Senators Rosen, Gaither, Anderson and Kubly introduced--**

**S.F. No. 817:** Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy; extending eligibility to receive the renewable energy production incentive under certain circumstances; amending Minnesota Statutes 2004, section 216C.41, subdivision 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 216C.41, subdivision 7, is amended to read:

Subd. 7. [ELIGIBILITY PROCESS.] (a) A qualifying project is eligible for the incentive on the date the commissioner receives:

(1) an application for payment of the incentive;

(2) one of the following:

(i) a copy of a signed power purchase agreement;

(ii) a copy of a binding agreement other than a power purchase agreement to sell electricity generated by the project to a third person; or

(iii) if the project developer or owner will sell electricity to its own members or customers, a copy of the purchase order for equipment to construct the project with a delivery date and a copy of a signed receipt for a nonrefundable deposit; and

(3) any other information the commissioner deems necessary to determine whether the proposed project qualifies for the incentive under this section.

(b) The commissioner shall determine whether a project qualifies for the incentive and respond in writing to the applicant approving or denying the application within 15 working days of receipt of the information required in paragraph (a). A project that is not operational within 18 months of receipt of a letter of approval is no longer approved for the incentive, except as provided in paragraphs (c) to (e). The commissioner shall notify an applicant of potential loss of approval not less than 60 days prior to the end of the 18-month period. Eligibility for a project that loses approval may be reestablished as of the date the commissioner receives a new completed application.

(c) Applicants who received a letter of approval dated December 31, 2003, or earlier may seek to extend the 18-month eligibility period by submitting to the commissioner the following:

(1) evidence that all necessary interconnection studies have been completed and that the results indicate that interconnection of the project is feasible; and

(2) a valid signed wind turbine supply agreement indicating that delivery will take place no later than December 15, 2005.

(d) If the commissioner determines that the applicant has complied with paragraph (c), the commissioner shall notify the applicant that the 18-month eligibility period is extended until December 31, 2005.

(e) If the commissioner determines that the applicant has failed to comply with paragraph (c), the commissioner shall notify the applicant that an extension of the 18-month eligibility period is denied.

**[EFFECTIVE DATE.]** This section is effective the day following final enactment.

State of Minnesota



# HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH SESSION

## HOUSE FILE NO. 218

January 13, 2005
Authored by Cornish, Smith, Gunther and Hamilton
The bill was read for the first time and referred to the Committee on Regulated Industries
February 21, 2005
Committee Recommendation and Adoption of Report:
To Pass as Amended
Read Second Time

A bill for an act

relating to energy; extending eligibility to receive the renewable energy production incentive under certain circumstances; amending Minnesota Statutes 2004, section 216C.41, subdivisions 1, 5, 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 216C.41, subdivision 1, is amended to read:

Subdivision 1. [DEFINITIONS.] (a) The definitions in this subdivision apply to this section.

(b) "Qualified hydroelectric facility" means a hydroelectric generating facility in this state that:

(1) is located at the site of a dam, if the dam was in existence as of March 31, 1994; and

(2) begins generating electricity after July 1, 1994, or generates electricity after substantial refurbishing of a facility that begins after July 1, 2001.

(c) "Qualified wind energy conversion facility" means a wind energy conversion system in this state that:

(1) produces two megawatts or less of electricity as measured by nameplate rating and begins generating electricity after December 31, 1996, and before July 1, 1999;

(2) begins generating electricity after June 30, 1999, produces two megawatts or less of electricity as measured by nameplate rating, and is:

(i) owned by a resident of Minnesota or an entity that is organized under the laws of this state, is not prohibited from owning agricultural land under section 500.24, and owns the land where the facility is sited;

(ii) owned by a Minnesota small business as defined in section 645.445;

(iii) owned by a Minnesota nonprofit organization;

(iv) owned by a tribal council if the facility is located within the boundaries of the reservation;

(v) owned by a Minnesota municipal utility or a Minnesota cooperative electric association and filed an application prior to January 1, 2005; or

(vi) owned by a Minnesota political subdivision or local government, including, but not limited to, a county, statutory or home rule charter city, town, school district, or any other local or regional governmental organization such as a board, commission, or association; or

(3) begins generating electricity after June 30, 1999, produces seven megawatts or less of electricity as measured by nameplate rating, and:

(i) is owned by a cooperative organized under chapter 308A other than a Minnesota cooperative electric association; and

(ii) all shares and membership in the cooperative are held by an entity that is not prohibited from owning agricultural land under section 500.24.

(d) "Qualified on-farm biogas recovery facility" means an anaerobic digester system that:

(1) is located at the site of an agricultural operation;

(2) is owned by an entity that is not prohibited from owning agricultural land under section 500.24 and that owns or rents the land where the facility is located; and

(3) begins generating electricity after July 1, 2001.

(e) "Anaerobic digester system" means a system of components that processes animal waste based on the absence of oxygen and produces gas used to generate electricity.

Sec. 2. Minnesota Statutes 2004, section 216C.41,

subdivision 5, is amended to read:

Subd. 5. [AMOUNT OF PAYMENT; WIND FACILITIES LIMIT.] (a) An incentive payment is based on the number of kilowatt hours of electricity generated. The amount of the payment is:

(1) for a facility described under subdivision 2, paragraph (a), clause (4), 1.0 cent per kilowatt hour; ~~and~~

(2) for all other facilities, except as provided in clause (3), 1.5 cents per kilowatt hour; and

(3) for a facility that receives, after January 1, 2005, an extension or a letter of approval under subdivision 7, 1.0 cent per kilowatt hour.

For electricity generated by qualified wind energy conversion facilities, the incentive payment under this section is limited to no more than 100 megawatts of nameplate capacity.

(b) For wind energy conversion systems installed and contracted for after January 1, 2002, the total size of a wind energy conversion system under this section must be determined according to this paragraph. Unless the systems are interconnected with different distribution systems, the nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that is:

(1) located within five miles of the wind energy conversion system;

(2) constructed within the same calendar year as the wind energy conversion system; and

(3) under common ownership.

In the case of a dispute, the commissioner of commerce shall determine the total size of the system, and shall draw all reasonable inferences in favor of combining the systems.

(c) In making a determination under paragraph (b), the commissioner of commerce may determine that two wind energy conversion systems are under common ownership when the underlying ownership structure contains similar persons or entities, even if the ownership shares differ between the two systems. Wind energy conversion systems are not under common

ownership solely because the same person or entity provided equity financing for the systems.

Sec. 3. Minnesota Statutes 2004, section 216C.41, subdivision 7, is amended to read:

Subd. 7. [ELIGIBILITY PROCESS.] (a) A qualifying project is eligible for the incentive on the date the commissioner receives:

(1) an application for payment of the incentive;

(2) one of the following:

(i) a copy of a signed power purchase agreement;

(ii) a copy of a binding agreement other than a power purchase agreement to sell electricity generated by the project to a third person; or

(iii) if the project developer or owner will sell electricity to its own members or customers, a copy of the purchase order for equipment to construct the project with a delivery date and a copy of a signed receipt for a nonrefundable deposit; and

(3) any other information the commissioner deems necessary to determine whether the proposed project qualifies for the incentive under this section.

(b) The commissioner shall determine whether a project qualifies for the incentive and respond in writing to the applicant approving or denying the application within 15 working days of receipt of the information required in paragraph (a). A project that is not operational within 18 months of receipt of a letter of approval is no longer approved for the incentive, except as provided in paragraphs (c) to (i). The commissioner shall notify an applicant of potential loss of approval not less than 60 days prior to the end of the 18-month period, and shall advise the applicant of the mechanism available to extend the eligibility period under paragraph (c), if applicable. Eligibility for a project that loses approval may be reestablished as of the date the commissioner receives a new completed application.

(c) If the federal production tax credit, as provided by

United States Code, title 26, section 45, as amended through December 31, 2004, is unavailable during a portion of the 18-month eligibility period, an applicant may seek to extend the 18-month eligibility period by submitting to the commissioner the following:

(1) evidence that all required interconnection and delivery studies for the qualifying project have been completed and an interconnection agreement signed by all the parties has been executed. If the interconnection agreement requires improvements to be made to the transmission system, the applicant must provide evidence that equity and debt financing sufficient to pay the cost of those improvements is secured and that construction of the improvements will be completed by the date the proposed extension will expire, as determined under paragraph (d); and

(2) documents demonstrating that the qualifying project has secured equity and debt financing sufficient to complete the project by the date the proposed extension will expire, as determined under paragraph (d).

(d) If the commissioner determines that the applicant has submitted the documents listed in paragraph (c), clauses (1) and (2), the commissioner shall, within 30 days of receiving the documents, notify the applicant that the 18-month period is extended by the length of time the credit was unavailable during the 18-month period, notwithstanding any provision making the credit retroactive. If the credit is not available when the commissioner determines whether the applicant has submitted the documents listed in paragraph (c), clauses (1) and (2), the commissioner shall extend the 18-month eligibility period for 12 months.

(e) If the commissioner determines that an applicant has failed to comply with paragraph (c), the commissioner shall notify the applicant that an extension of the 18-month eligibility period is denied.

(f) An applicant who filed an application prior to January 1, 2005, but who has not received a letter of approval may

qualify to receive the incentive by submitting the documents described in paragraph (c), clauses (1) and (2), to the commissioner. If the commissioner determines that an applicant has submitted the documents listed in paragraph (c), clauses (1) and (2), the commissioner shall, within 30 days of receiving the documents, notify the applicant that the project qualifies to receive the incentive and shall provide the applicant with a letter of approval.

(g) An applicant receiving a letter of approval dated January 1, 2005, or later shall be required to demonstrate that the electricity generated by the project and associated renewable energy credits have first been offered for sale to the public utility transferring funds to the renewable development account under section 116C.779, subdivision 1. The parties shall negotiate a price within 120 days. The public utility transferring funds to the renewable development account shall provide its last best price offer to the applicant in writing, which is binding for no less than 120 days. The applicant may negotiate with any other utility and may accept a price higher than the binding price offered by the public utility transferring funds to the renewable development account. If another utility offers a price equal to or lower than the binding price offered by the public utility transferring funds to the renewable development account, the applicant must contract with the public utility transferring funds to the renewable development account at the binding price.

(h) If funds in the renewable development account, as provided in section 116C.779, subdivision 2, are insufficient to fully fund renewable energy production incentives under this subdivision, the amounts required to eliminate the deficiency must be paid for that purpose from the balance of the renewable development account, as provided in section 116C.779, subdivision 1.

(i) The commissioner shall not accept applications to receive a renewable energy production incentive after January 1, 2005.

Sec. 4. [EFFECTIVE DATE.]

Sections 1 to 3 are effective the day following final enactment.

Senator ..... moves to amend the Report of the Subcommittee on Energy (SH0218SUB) to H.F. No. 218 as follows:

Page 3, after line 28, insert:

"Subd. 8. [ADDITIONAL INCENTIVE PAYMENT.] This subdivision governs the allocation of the $4,500,000 allocated annually to fund incentives for up to 100 megawatts of wind power under Minnesota Statutes, section 116C.779, subdivision 2. If the commissioner of commerce determines that the wind incentive payments at 1.5 cents per kilowatt hour for some projects and at one cent per kilowatt hour for applicants either extended or receiving a letter of approval under this section does not fully spend the $4,500,000 due to any reason, then the commissioner shall make the incentive payment adjustment provided for in this subdivision unless the commissioner finds that to do so would be contrary to the public interest to encourage wind development.

The incentive adjustment is payable only for those wind projects that received an extension under subdivision 3 and is not payable for projects receiving a letter of approval under subdivision 4.

The commissioner shall determine the unspent balance and distribute it as incentive payments on the basis of the percentage of a project's kilowatt-hours energy generation of the total kilowatt-hours energy generation of all projects receiving an extension under subdivision 3.

A project may not receive a total of incentive payments that exceeds 1.5 cents per kilowatt hour.

The commissioner may recalculate incentive payments more than once under this subdivision."

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was referred**

**H.F. No. 218:** A bill for an act relating to energy; extending eligibility to receive the renewable energy production incentive under certain circumstances; amending Minnesota Statutes 2004, section 216C.41, subdivisions 1, 5, 7.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2004, section 216C.41, subdivision 3, is amended to read:

Subd. 3. [ELIGIBILITY WINDOW.] Payments may be made under this section only for electricity generated:

(1) from a qualified hydroelectric facility that is operational and generating electricity before December 31, ~~2005~~ 2007;

(2) from a qualified wind energy conversion facility that is operational and generating electricity before January 1, 2007; or

(3) from a qualified on-farm biogas recovery facility from July 1, 2001, through December 31, 2017.

Sec. 2. [RENEWABLE DEVELOPMENT FUND; RENEWABLE ENERGY PRODUCTION INCENTIVE EXTENSION.]

Subdivision 1. [SCOPE.] This section applies to renewable energy production incentives funded by the renewable development account under Minnesota Statutes, section 116C.779. Minnesota Statutes, section 216C.41, governs the approval for and terms of the incentives except as modified by this section.

Subd. 2. [DEFINITION.] For the purpose of this section, "lapse period" means the period from January 1, 2004, to October 22, 2004.

Subd. 3. [PREVIOUSLY APPROVED APPLICANT.] An applicant who received a letter of approval from the commissioner of commerce under Minnesota Statutes, section 216C.41, subdivision 7, may, if any part of the lapse period occurred within 18 months after receipt of the approval, seek to extend the 18-month eligibility period by submitting to the commissioner the following:

(1) evidence that all required interconnection and delivery

studies for the qualifying project have been completed and an interconnection agreement signed by all the parties has been executed. If the interconnection agreement requires improvements to be made to the transmission system, the applicant must provide evidence that equity and debt financing sufficient to pay the cost of those improvements is secured and that construction of the improvements can be expected to be completed by the date the proposed extension will expire; and

(2) documents demonstrating that the project has secured equity and debt financing sufficient to complete the project by the date the proposed extension will expire.

If the commissioner determines that the applicant has complied with clauses (1) and (2), the commissioner shall, within 30 days of receiving the submission, notify the applicant that the 18-month period is extended by the length of time of the lapse period occurring within the 18-month period, notwithstanding any provision making the credit retroactive. If the federal production credit has lapsed when the commissioner determines whether the applicant has made the submission required by clauses (1) and (2), the commissioner shall extend the 18-month eligibility period for 12 months.

If the commissioner determines that an applicant has failed to comply with the requirement for obtaining an extension, the commissioner shall notify the applicant that an extension of the 18-month eligibility period is denied.

Subd. 4. [PREVIOUSLY UNAPPROVED PROJECTS.] An applicant who filed an application prior to January 1, 2005, but who has not received a letter of approval may qualify to receive the incentive by making the submissions described in subdivision 3, clauses (1) and (2), to the commissioner by December 31, 2005. If the commissioner determines that an applicant has complied with subdivision 3, clauses (1) and (2), the commissioner shall, within 30 days of receiving the submission, notify the applicant that the project qualifies to receive the incentive and shall provide the applicant with a letter of approval.

An applicant receiving a letter of approval dated January

1, 2005, or later, must first offer for sale to the public utility the electricity generated by the project and associated renewable energy credits. The parties shall negotiate a price within 120 days. The public utility shall provide its last best price offer to the applicant in writing, which is binding for no less than 120 days. The applicant may negotiate with any other utility and may accept a price higher than the binding price offered by the public utility. If another utility offers a price equal to or lower than the binding price offered by the public utility, the applicant must contract with the public utility at the binding price. For the purpose of this subdivision, "public utility" means any utility operating a nuclear power plant in this state.

Subd. 5. [INCENTIVE AMOUNT.] The incentive for a facility receiving an extension or a letter of approval under this section is one cent per kilowatt hour.

Subd. 6. [ADDITIONAL FUNDING.] If funds in the renewable development account, allocated under Minnesota Statutes, section 116C.779, subdivision 2, for wind energy incentives are insufficient to fully fund incentives under this section, other funds in the renewable development account must be allocated to make up the insufficiency.

Subd. 7. [NOTICE.] The commissioner must, within 30 days of the effective date of this act, notify persons eligible to apply for an extension or a letter of approval under this section of the provisions of this act.

Subd. 8. [ADDITIONAL INCENTIVE PAYMENT.] This subdivision governs the allocation of the $4,500,000 allocated annually to fund incentives for up to 100 megawatts of wind power under Minnesota Statutes, section 116C.779, subdivision 2. If the commissioner of commerce determines that the wind incentive payments at 1.5 cents per kilowatt hour for some projects and at one cent per kilowatt hour for applicants either extended or receiving a letter of approval under this section does not fully spend the $4,500,000 due to any reason, then the commissioner shall make the incentive payment adjustment provided for in this

subdivision unless the commissioner finds that to do so would be contrary to the public interest to encourage wind development.

The incentive adjustment is payable only for those wind projects that received an extension under subdivision 3 and for projects receiving a letter of approval under subdivision 4.

The commissioner shall determine the unspent balance and distribute it as incentive payments on the basis of the percentage of a project's kilowatt-hours energy generation of the total kilowatt-hours energy generation of all projects receiving an extension under subdivision 3 or a letter of approval under subdivision 4.

A project may not receive a total of incentive payments that exceeds 1.5 cents per kilowatt hour.

The commissioner may recalculate incentive payments more than once under this subdivision.

Sec. 3. [EFFECTIVE DATE.]

Sections 1 and 2 are effective the day following final enactment."

Amend the title as follows:

Page 1, line 5, delete everything after the second comma and insert "subdivision 3."

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

**Senator Sparks introduced--**

**S.F. No. 1485:** Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to labor; requiring the certification and regulation of crane operators; authorizing civil penalties; proposing coding for new law as Minnesota Statutes, chapter 184C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [184C.01] [CERTIFICATION REQUIRED.]

No individual may operate a crane with a lifting capacity of five tons or more on a construction site unless the individual has a valid crane operator certificate received from a crane operator certification program approved by the National Commission for the Certification of Crane Operators. No employer, and no person who is under a contract to construct an improvement to land, may permit any employee, agent, or independent contractor to perform work in violation of this section.

Sec. 2. [184C.02] [EXCEPTIONS.]

The requirements of section 184C.01 do not apply to:

(1) an individual who is receiving training as a crane operator, if the individual is under the supervision of a crane operator who holds a valid crane operator certificate received from a crane operator certification program approved under section 184C.01;

(2) a person engaged in the occupation of crane operator on or within one year of the effective date of sections 184C.01 to

184C.03, provided that the person obtains a license within one year of the effective date of sections 184C.01 to 184C.03;

(3) an individual directly employed by a class 1 or 2 railroad who holds seniority as, and is qualified by the employing railroad as, a crane operator or boom truck operator while that individual is performing work on property owned, leased, or controlled by the employing railroad;

(4) an engineer or operator employed by public utilities or industrial manufacturing plants, or who is subject to inspection and regulation under the provisions of the Mine Safety and Health Act, United States Code, title 30, sections 801 to 962;

(5) a person engaged in boating, fishing, agriculture, or arboriculture;

(6) an individual who is a member of a uniformed service or who is a member of the United States Merchant Marine, if the individual is performing work for the uniformed service or for the United States Merchant Marine, respectively;

(7) an individual who is operating a crane for personal use on premises owned or leased by the individual; and

(8) an individual who is operating a crane in an attempt to remedy an emergency.

Sec. 3. [184C.03] [PENALTIES.]

Any person who violates the provisions of sections 184C.01 and 184C.02 may be fined not more than $5,000.

Sec. 4. [EFFECTIVE DATE.]

Sections 1 to 3 are effective August 1, 2005.

**Senate Counsel, Research, and Fiscal Analysis**

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**Senate**

**State of Minnesota**

# S.F. No. 1485 -Crane Operators Certification

**Author:** Senator Dan Sparks

**Prepared by:** Chris Turner, Senate Research (651/296-4350) CT

**Date:** April 4, 2005

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**Section 1** requires a valid crane operator certificate for the operation of cranes on construction sites with a lifting capacity of five tons or more. Prohibits employers from permitting any employee or independent contractor from violating this section.

**Section 2** provides the following exceptions:

- persons receiving training from a certified operator;
- persons operating a crane within one year of August 1, 2005, provided they become certified by that date;
- persons directly employed by a class 1 or 2 railroad as a crane operator while working on property owned, leased, or controlled by the employing railroad;
- persons engaged in boating, fishing, agriculture, or arboriculture;
- person in the a uniformed service or the U.S. Merchant Marine while performing their official duties;
- persons operating a crane for personal use on their own property; and
- persons operating a crane in an attempt to remedy an emergency.

**Section 3** provides a fine of not more than $5,000 for a violation of this section.

**Section 4** provides an August 1, 2005 effective date.

CT:vs

Senator ..... moves to amend S.F. No. 1485 as follows:

Delete everything after the enacting clause and insert:

"Section 1. [182.6525] [CRANE OPERATION.]

Subdivision 1. [CERTIFICATION REQUIRED.] An individual may not operate a crane with a lifting capacity of five tons or more on a construction site unless the individual has a valid crane operator certificate received from a nationally recognized and accredited certification program. No employer, and no person who is under a contract to construct an improvement to land, may permit any employee, agent, or independent contractor to perform work in violation of this section. A crane operator certification required under this subdivision must be renewed by an accredited certification program every five years.

Subd. 2. [EXCEPTIONS.] The requirements of subdivision 1 do not apply to:

(1) a crane operator trainee or apprentice, if the individual is under the direct supervision of a crane operator who holds a valid crane operator certificate as required in subdivision 1;

(2) a person directly employed by a class 1 or 2 railroad who is qualified by the employing railroad as a crane operator or boom truck operator while performing work on property owned, leased, or controlled by the employing railroad;

(3) a person who is employed by or performing work for a public utility, rural electric cooperative, municipality, telephone company, or industrial manufacturing plant;

(4) a person who is subject to inspection and regulation under the Mine Safety and Health Act, United States Code, title 30, sections 801 through 962;

(5) a person engaged in boating, fishing, agriculture, or arboriculture;

(6) a person who is a member of and performing work for a uniformed service or who is a member of and performing work for the United States Merchant Marines;

(7) a person who is operating a crane for personal use on premises owned or leased by that person; and

(8) a person who is operating a crane in an emergency situation.

Subd. 3. [PENALTIES.] An employer or general contractor may be cited by the commissioner for a violation of the certification requirements in this section. A citation is punishable as a serious violation under section 182.666.

Sec. 2. Minnesota Statutes 2004, section 182.659, is amended by adding a subdivision to read:

Subd. 1a. [PROOF OF CRANE OPERATOR CERTIFICATION.] An individual who is operating a crane on a worksite shall provide proof of certification required under section 182.6525 upon request by an investigator.

Sec. 3. [EFFECTIVE DATE.]

Sections 1 and 2 are effective July 1, 2007."

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was referred**

**S.F. No. 1485:** A bill for an act relating to labor; requiring the certification and regulation of crane operators; authorizing civil penalties; proposing coding for new law as Minnesota Statutes, chapter 184C.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. [182.6525] [CRANE OPERATION.]

Subdivision 1. [CERTIFICATION REQUIRED.] An individual may not operate a crane with a lifting capacity of five tons or more on a construction site unless the individual has a valid crane operator certificate received from a nationally recognized and accredited certification program. No employer, and no person who is under a contract to construct an improvement to land, may permit any employee, agent, or independent contractor to perform work in violation of this section. A crane operator certification required under this subdivision must be renewed by an accredited certification program every five years.

Subd. 2. [EXCEPTIONS.] The requirements of subdivision 1 do not apply to:

(1) a crane operator trainee or apprentice, if the individual is under the direct supervision of a crane operator who holds a valid crane operator certificate as required in subdivision 1;

(2) a person directly employed by a class 1 or 2 railroad who is qualified by the employing railroad as a crane operator or boom truck operator while performing work on property owned, leased, or controlled by the employing railroad;

(3) a person who is employed by or performing work for a public utility, rural electric cooperative, municipality, telephone company, or industrial manufacturing plant;

(4) a person who is subject to inspection and regulation under the Mine Safety and Health Act, United States Code, title 30, sections 801 through 962;

(5) a person engaged in boating, fishing, agriculture, or arboriculture;

(6) a person who is a member of and performing work for a uniformed service or who is a member of and performing work for the United States Merchant Marines;

(7) a person who is operating a crane for personal use on premises owned or leased by that person; and

(8) a person who is operating a crane in an emergency situation.

Subd. 3. [PENALTIES.] An employer or general contractor may be cited by the commissioner for a violation of the certification requirements in this section. A citation is punishable as a serious violation under section 182.666.

Sec. 2. Minnesota Statutes 2004, section 182.659, is amended by adding a subdivision to read:

Subd. 1a. [PROOF OF CRANE OPERATOR CERTIFICATION.] An individual who is operating a crane on a worksite shall provide proof of certification required under section 182.6525 upon request by an investigator.

Sec. 3. [EFFECTIVE DATE.]

Sections 1 and 2 are effective July 1, 2007."

Amend the title as follows:

Page 1, line 4, after the semicolon, insert "amending Minnesota Statutes 2004, section 182.659, by adding a subdivision;" and delete "as" and insert "in"

Page 1, line 5, delete "184C" and insert "182"

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

To: Senator Anderson, Chair

Committee on Jobs, Energy and Community Development

Senator Kubly,

Chair of the Subcommittee on Energy, to which was referred

S.F. No. 1385: A bill for an act relating to agriculturally derived fuels; authorizing a study by the reliability administrator in the Department of Commerce to determine technical and economic aspects of using biodiesel fuel as a home heating fuel; requiring a report to the legislature.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 17, after "home" insert ", industrial, and commerical"

Amend the title as follows:

Page 1, line 5, after "home" insert ", industrial, and commercial"

And when so amended that the bill be recommended to pass and be referred to the full committee.

.....
(Subcommittee Chair)

March 31, 2005.....
(Date of Subcommittee action)

**Senators Rosen, Anderson, Frederickson, Dibble and Kubly introduced--**

**S.F. No. 1385:** Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to agriculturally derived fuels; authorizing a study by the reliability administrator in the Department of Commerce to determine technical and economic aspects of using biodiesel fuel as a home heating fuel; requiring a report to the legislature.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [STUDY; BIODIESEL FUEL FOR HOME HEATING.]

(a) From the money available to the commissioner of commerce for purposes of studies and technical assistance by the reliability administrator under Minnesota Statutes, section 216C.052, and in conformity with the goals and directives of Minnesota Statutes, section 16B.325, the reliability administrator shall perform a comprehensive technical and economic analysis of the benefits to be derived from using biodiesel fuel as defined in Minnesota Statutes, section 239.77, subdivision 1, or biodiesel fuel blends, as a home heating fuel. The analysis must consider blends ranging from B2 to B100.

(b) Not later than March 15, 2007, the reliability administrator shall report the results of the study and analysis to the appropriate standing committees of the Minnesota senate and house of representatives.

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was referred**

**S.F. No. 1385:** A bill for an act relating to agriculturally derived fuels; authorizing a study by the reliability administrator in the Department of Commerce to determine technical and economic aspects of using biodiesel fuel as a home heating fuel; requiring a report to the legislature.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 17, after "home" insert ", industrial, and commercial"

Amend the title as follows:

Page 1, line 5, after "home" insert ", industrial, and commercial"

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

To: Senator Anderson, Chair

Committee on Jobs, Energy and Community Development

Senator Kubly,

Chair of the Subcommittee on Energy, to which was referred

S.F. No. 1687: A bill for an act relating to energy; requiring utilities to meet certain renewable energy standards; amending Minnesota Statutes 2004, section 216B.1691.

Reports the same back with the recommendation that the bill do pass and be referred to the full committee.

.....
(Subcommittee Chair)

March 31, 2005.....
(Date of Subcommittee action)

**Senators Anderson, Kubly, Metzen, Rosen and Frederickson introduced--**
**S.F. No. 1687:** Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to energy; requiring utilities to meet certain renewable energy standards; amending Minnesota Statutes 2004, section 216B.1691.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 216B.1691, is amended to read:

216B.1691 [RENEWABLE ENERGY STANDARDS AND OBJECTIVES.]

Subdivision 1. [DEFINITIONS.] (a) Unless otherwise specified in law, "eligible energy technology" means an energy technology that:

(1) generates electricity from the following renewable energy sources: solar; wind; hydroelectric with a capacity of less than 60 megawatts; hydrogen, provided that after January 1, 2010, the hydrogen must be generated from the resources listed in this clause; or biomass, which includes an energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste as a primary fuel; and

(2) was not mandated by Laws 1994, chapter 641, or by commission order issued pursuant to that chapter prior to August 1, 2001.

(b) "Electric utility" means a public utility providing electric service, a generation and transmission cooperative electric association, or a municipal power agency.

(c) "Total retail electric sales" means the kilowatt-hours of electricity sold in a year by an electric utility to retail customers of the electric utility or to a distribution utility for distribution to the retail customers of the distribution utility.

Subd. 2. [ELIGIBLE ENERGY OBJECTIVES.] (a) Each electric utility shall make a good faith effort to generate or procure sufficient electricity generated by an eligible energy technology to provide its retail consumers, or the retail customers of a distribution utility to which the electric utility provides wholesale electric service, so that:

(1) commencing in 2005, at least one percent of the electric utility's total retail electric sales is generated by eligible energy technologies;

(2) the amount provided under clause (1) is increased by one percent of the utility's total retail electric sales each year until ~~2015~~ 2010; and

(3) ~~ten~~ five percent of the electric energy provided to retail customers in Minnesota by 2010 is generated by eligible energy technologies.

(b) Of the eligible energy technology generation required under paragraph (a), clauses (1) and (2), not less than 0.5 percent of the energy must be generated by biomass energy technologies, including an energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste as a primary fuel, by 2005. By 2010, one percent of the eligible technology generation required under paragraph (a), clauses (1) and (2), shall be generated by biomass energy technologies. An energy recovery facility used to capture the heat value of mixed municipal solid waste or refuse-derived fuel from mixed municipal solid waste, with a power sales agreement in effect as of May 29, 2003, that terminates after December 31, 2010, does not qualify as an eligible energy technology unless the agreement provides for rate adjustment in the event the facility qualifies as a renewable energy source.

Subd. 2a. [ELIGIBLE ENERGY STANDARD.] Each electric utility shall generate or procure sufficient electricity generated by an eligible energy technology to provide its retail customers, or the retail customers of a distribution utility to which the electric utility provides wholesale electric service, so that at least the following percentages of the electric utility's total retail electric sales is generated by eligible energy technologies by the end of the year indicated:

(1) 2013 ten percent

(2) 2015 15 percent

(3) 2020 20 percent

To be counted toward satisfying the standard, energy must be generated by a facility originally placed in service after January 1, 1975. The commission may delay or modify the standard for an electric utility if it finds that compliance with a standard will jeopardize the reliability of the electric system in a way not consistent with the public interest when weighing the benefits of renewable energy. The standard is both an individual electric utility standard and a statewide standard so that by the end of 2020 at least 20 percent of the electric energy provided to retail customers in Minnesota is generated by eligible energy technologies.

~~(c)~~ Subd. 2b. [COMMISSION ORDER.] By June 1, 2004, and as needed thereafter, the commission shall issue an order detailing the criteria and standards by which it will measure an electric utility's efforts to meet the renewable energy objectives and standards of this section to determine whether the utility is making the required good faith effort and is meeting the standards. In this order, the commission shall include criteria and standards that protect against undesirable impacts on the reliability of the utility's system and economic impacts on the utility's ratepayers and that consider technical feasibility.

~~(d) In its order under paragraph (c), the commission shall provide for a weighted scale of how energy produced by various eligible energy technologies shall count toward a utility's objective. In establishing this scale, the commission shall~~

~~consider the attributes of various technologies and fuels, and shall establish a system that grants multiple credits toward the objectives for those technologies and fuels the commission determines is in the public interest to encourage.~~

Subd. 3. [UTILITY PLANS FILED WITH COMMISSION.] (a) Each electric utility shall report on its plans, activities, and progress with regard to these objectives and standards in its filings under section 216B.2422 or in a separate report submitted to the commission every two years, whichever is more frequent, demonstrating to the commission ~~that~~ the ~~utility is making the required good faith~~ utility's effort to comply with this section. In its resource plan or a separate report, each electric utility shall provide a description of:

(1) the status of the utility's renewable energy mix relative to the ~~good faith~~ objective and standards;

(2) efforts taken to meet the objective and standards;

(3) any obstacles encountered or anticipated in meeting the objective or standards; and

(4) potential solutions to the obstacles.

(b) The commissioner shall compile the information provided to the commission under paragraph (a), and report to the chairs of the house of representatives and senate committees with jurisdiction over energy and environment policy issues as to the progress of utilities in the state in increasing the amount of renewable energy provided to retail customers, with any recommendations for regulatory or legislative action, by January 15 of each odd-numbered year.

Subd. 4. [RENEWABLE ENERGY CREDITS.] (a) To facilitate compliance with this section, the commission, by rule or order, may establish a program for tradable credits for electricity generated by an eligible energy technology. In doing so, the commission shall implement a system that constrains or limits the cost of credits, taking care to ensure that such a system does not undermine the market for those credits.

(b) In lieu of generating or procuring energy directly to satisfy the renewable energy objective and standard of this

section, an electric utility may purchase sufficient renewable energy credits, issued pursuant to this subdivision, to meet its objective and standard.

(c) Upon the passage of a renewable energy standard, portfolio, or objective in a bordering state that includes a similar definition of eligible energy technology or renewable energy, the commission may facilitate the trading of renewable energy credits between states.

Subd. 5. [TECHNOLOGY BASED ON FUEL COMBUSTION.] (a) Electricity produced by fuel combustion may only count toward a utility's objectives or standards if the generation facility:

(1) was constructed in compliance with new source performance standards promulgated under the federal Clean Air Act for a generation facility of that type; or

(2) employs the maximum achievable or best available control technology available for a generation facility of that type.

(b) An eligible energy technology may blend or co-fire a fuel listed in subdivision 1, paragraph (a), clause (1), with other fuels in the generation facility, but only the percentage of electricity that is attributable to a fuel listed in that clause can be counted toward an electric utility's renewable energy objectives.

Subd. 6. [ELECTRIC UTILITY THAT OWNS NUCLEAR GENERATION FACILITY.] (a) An electric utility that owns a nuclear generation facility, as part of its good faith effort under this subdivision and subdivision 2, shall deploy an additional 300 megawatts of nameplate capacity of wind energy conversion systems by 2010, beyond the amount of wind energy capacity to which the utility is required by law or commission order as of May 1, 2003. At least 100 megawatts of this capacity are to be wind energy conversion systems of two megawatts or less, which shall not be eligible for the production incentive under section 216C.41. To the greatest extent technically feasible and economic, these 300 megawatts of wind energy capacity are to be distributed geographically throughout the state. The utility

may opt to own, construct, and operate up to 100 megawatts of this wind energy capacity, except that the utility may not own, construct, or operate any of the facilities that are under two megawatts of nameplate capacity. The deployment of the wind energy capacity under this subdivision must be consistent with the outcome of the engineering study required under Laws 2003, First Special Session chapter 11, article 2, section 21.

~~(b) The renewable energy objective set forth in subdivision 2 shall be a requirement for the public utility that owns the Prairie Island nuclear generation plant. The objective is a requirement subject to resource planning and least cost planning requirements in section 216B.2422, unless implementation of the objective can reasonably be shown to jeopardize the reliability of the electric system. The least cost planning analysis must include the costs of ancillary services and other necessary generation and transmission upgrades.~~

~~(c)~~ Also as part of its good faith effort under this section, the utility that owns a nuclear generation facility is to enter into a power purchase agreement by January 1, 2004, for ten to 20 megawatts of biomass energy and capacity at an all-inclusive price not to exceed $55 per megawatt-hour, for a project described in section 216B.2424, subdivision 5, paragraph (e), clause (2). The project must be operational and producing energy by June 30, 2005.

Subd. 7. [COMPLIANCE.] The commission, on its own motion or upon petition, may investigate whether an electric utility is in compliance with its standard obligation under subdivision 2a and if it finds noncompliance may order the electric utility to construct facilities or purchase credits to achieve compliance. If an electric utility fails to comply with an order under this subdivision, the commission may impose a financial penalty on the electric utility in an amount up to the electric utility's estimated cost of compliance.

MINNESOTA CHAMBER
of Commerce
THE VOICE OF BUSINESS℠

April 4, 2005

Members of the Senate Jobs, Energy and Community Development Committee:

The Minnesota Chamber's energy policy supports developing reliable, low-cost, renewable energy, under three conditions.

- Any increase in the use of renewable energy technology must not compromise reliability;
- Any use of renewable technology must not increase electricity rates more than they would using any other technology in the short or long term; and,
- There should be no additional mandates regarding the use of renewable energy technology.

Clean, reliable, renewable energy is already being produced in Minnesota, at an aggressive pace, because of the utilities' good-faith effort to meet their renewable energy objective (REO). Minnesota utilities have developed innovative ways of creating cleaner energy at a reasonable cost to their customers because of the flexibility that the objective provides.

We know the Legislature wishes to keep an aggressive pace to develop more renewable energy, not just for a cleaner environment, but also for the economic development opportunities for rural (in particular, western) Minnesota. For instance, this session the Legislature is likely to pass some form of a Community-Based Energy Development (C-BED) tariff, which is likely to produce more wind energy by assisting small wind producers' ability to finance their capital costs via a front-loaded tariff. This is a way that utilities can meet their objective while giving cost-neutral support to wind producers.

The Minnesota Chamber therefore believes it is bad policy to force utilities to meet a mandate, and we therefore oppose SF 1687 because of the negative effect we believe a mandate would have on the cost to ratepayers and the reliability of the system. Consider the following:

- Recent legislative changes have added costs to the system, including the Metro Emissions Reduction Program (MERP) settlement and 2003 Prairie Island legislation. More specifically, re-powering three metro-area coal plants will trigger rate increases for all Xcel customers starting in 2006 and peaking in 2009 at 5.5%;
- In 2010, accommodating 15% wind generation on the Xcel system is estimated to add $2,000 to the annual energy bill for an average grocery store, $21,000 for a midsized manufacturer and more than $200,000 for a large industrial customer.
- Xcel Energy and other utilities are expected to file for a general rate increase in the next 12-24 months;
- Through Minnesota's "fuel adjustment clause," utilities are passing the rising cost of natural gas along to customers; this increase could be further exaggerated in the case of a 20% mandate, since renewable technologies tend to need backup fuel and/or generation; and,
- While utilities do their best to minimize financial impact, the REO still may result in higher customer costs.

Each item has increased or will increase the cost of electricity in Minnesota. One result is that our energy rates, on average, are less competitive than they were in 1990. For example, in

(over)

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1990, Minnesota ranked 15th$^{th}$ overall in residential rates. Today we are 20$^{th}$. Our U.S. ranking in the industrial sector was 14$^{th}$ overall in 1990. Today we are ranked 22$^{nd}$.

Minnesota's situation is very different from the vast majority of states that have implemented renewable mandates. Of the 17 states (plus Washington, DC) that currently have renewable energy mandates, 13 also allow customers to buy their electricity in a competitive market. In the context of a competitive market, customers have the ability to shop among competitors, helping to minimize the cost of renewable energy. There does not seem to be any inclination to move toward a competitive market structure in Minnesota; therefore, a mandate almost certainly would raise customers' costs.

Further, given our state's need for baseload generation, we have questions about the immediate need to add more renewables. Our economy depends not only on low-cost electricity, but increasingly, on quality electricity. Technology-intensive industries need to know that the Minnesota Legislature is dedicated to making sure that their power quality needs are met, so that existing businesses can expand, and new businesses will choose to locate in Minnesota.

Under current law, considerable renewable generation already is being added in Minnesota – there is no evidence that current policy is not having the intended effects. The Minnesota Chamber opposes SF 1687 because we believe the best way to continue providing low-cost, reliable, clean energy to Minnesota customers is to allow utilities the flexibility offered under the REO.

Testimony of Tom Daggett
President and CEO of Hutchinson Manufacturing
April 04,2005
Senate Committee on Jobs, Energy and Community Development

Madame Chair and Members of the Committee:

Good afternoon. My name is Tom Daggett. I am the owner and Chief Executive Officer of a rural Minnesota family-owned business, Hutchinson Manufacturing. We have been one of the larger employers in Hutchinson for 51 years, currently providing high-wage, high-skills jobs for 105 employees.

I thank you for the opportunity to speak briefly but forcefully today in favor of the renewable energy standard. I agree with Senator Anderson that this bill - 20% renewable electricity by 2020 - represents a 20/20 vision for our state and ***especially*** for the life and vitality of our rural communities.

Following the first renewable energy requirements approved by this legislature in the early to mid 1990's, I became familiar with the opportunities presented by renewable energy. Some of you may have visited our facility in Hutchinson and seen Micon commercial wind energy turbines in manufacturing and assembly. Following several trips to Denmark, I have witnessed first hand the economic impact that would be born of a legislative vision that directs our state's utilities to pursue renewable energy as an important part of the energy mix.

Southwest Minnesota -- and indeed all of rural Minnesota -- can become a renewable energy marketplace serving the needs of the electric utilities within our region and, building on that success, exporting products to world markets that are hungry for clean energy solutions.

Our firm is a member of the Minnesota Chamber of Commerce. I am not persuaded however, that a commitment to renewable energy posses a risk to higher cost electrical power. Since we built the Micon 600's in the early 90's, technology has brought the cost of wind energy down by over 50%. This is in spite of four lapses in the federal renewable energy tax credit. To picture renewable energy in 2010, 2015 or 2020 based on what we know today is shortsighted. It is somewhat like what our forefathers faced passing legislation for automobiles out 15 years when all they knew was horse and buggy transportation.

A commitment to this bill sends a strong message that a marketplace is viable. This bill will establish opportunities in manufacturing, construction, research and development, service and maintenance, banking and equity ownership.

Unlike oil, natural gas and coal, the consumables of renewable energy cost little or nothing. Wind, sun, corn, soybeans, manure and wood waste are all plentiful in the great state of Minnesota. But while the consumables are abundant, low cost and even in some cases present difficult waste steams, converting them to say fuel or electricity requires a strong

capital investment. Minnesota needs a sustained marketplace for renewable energy if this investment is to be made. Business in this sector will not grow and prosper unless an opportunity is present.

While wind energy is the clear champion of the today's renewable electricity technologies, I am following with excitement the potential development of bio-mass electricity, generated through technologies such as district energy heating and cooling, biogas production from methane digesters and other bio-energy technologies that can responsibly and sustainably tap our agricultural and forest waste resources.

Last month, former Secretary of State James Baker spoke at the Houston Forum, and called for an orderly transition to alternative energy sources. This bill does just that and gives the global renewable energy industry the clear market signal that Minnesota is serious about business, is serious about attracting investment, and is serious about building jobs in our great state.

I strongly urge this body to unify in a bi-partisan way behind Senator Anderson's and Senator Metzen's leadership on renewable energy and pass this legislation through the Senate for consideration by the Governor. I will strongly urge the Governor to sign this important legislation placing Minnesota in its rightful place as the national leader and the renewable energy capital of America.

The role of the state legislature is to set a vision for Minnesota. People in rural Minnesota broadly share a vision of a renewable energy future, including bio-fuels, biomass electricity, wind energy and solar energy. Our opportunity to harvest the fortune of renewable energy in rural Minnesota is now. Hutchinson Manufacturing would be honored to be part of an investment for our future as a state – for our health, for our communities and for our economy.

We ask for your firm support of the renewable energy standard.

Thank you

Tom Daggett
Hutchinson Manufacturing
PO Box 487
Hutchinson, MN 55350
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tdaggett@hutchmfg.com

Grove INSIGHT

TO: Interested Parties

FROM: Lisa Grove and Stephanie Schwenger
Grove Insight, Ltd.

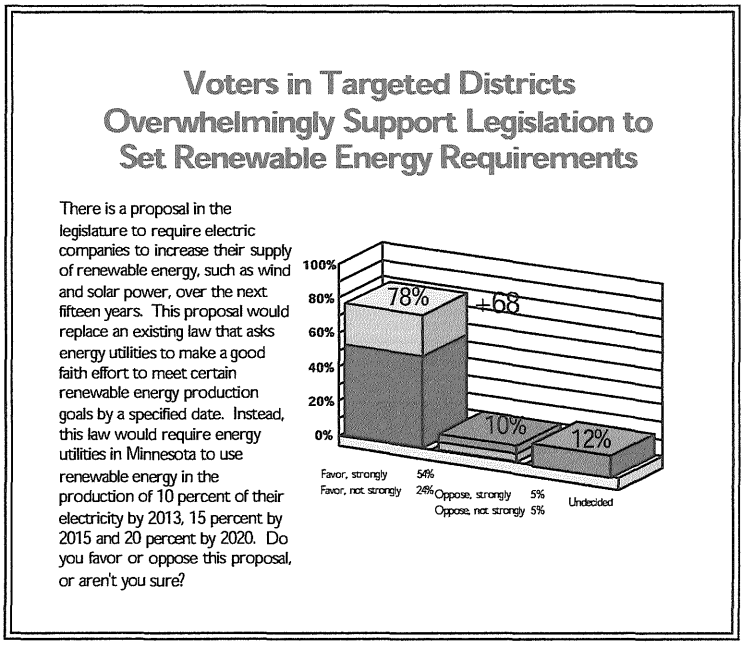
RE: New Poll Shows High Levels of Public Support for Legislation to Put Renewable Energy Requirements into Place

DATE: April 4, 2005

*Grove Insight conducted a survey among 400 registered voters in Minnesota Legislative Districts 23A, 25, 26B, 27, 30, 31, 42, 43, 45A, 47, 51 and 53 from March 31 to April 4, 2005. A voter file sample was used. In terms of partisan identification, 33% of the sample considers themselves a member of the DFL, 32% say they are Republican and 26% are Independent, proving that these are truly swing districts. The margin of error is plus or minus 4.9 percentage points at the 95% level of confidence. The margin of error for subgroups varies and is higher.*

## Voters in Targeted Legislative Districts Overwhelmingly Support Legislation to Set Renewable Energy Requirements

Nearly eight in 10 (78%) support requiring electric companies to increase their supply of renewable energy over the next 15 years, replacing the existing law that asks energy utilities to make a good faith effort to meet certain renewable energy production goals by a



specified date. Just one in 10 (10%) oppose the proposed legislation and another 12% are unsure.

Indeed, support for this legislation does not fall below 70% among any major demographic subgroup, including Republicans, gun owners, frequent church attendees and members of rural electricity cooperatives. Support is even higher among union households, those who receive electricity from municipal providers and voters under 50. There is very little variation across geographic districts or based on educational attainment.

**Threats of Potentially Higher Rates or Arguing for the Status Quo Because of Recently Passed Legislation Does Little to Depress Support**

Even when we offer voters arguments against the legislation – that the law is unnecessary given new laws on the subject and assertions that this may raise electricity bills – support remains very high. Approximately seven in 10 maintain their support after hearing arguments on both sides of these issues.

Minnesotans are extremely supportive of energy efficiency and renewables, a finding that is consistent with what we found in our 2003 statewide survey. Indeed, seven in 10 (71%) believe we need to reduce the need for more power by helping customers use energy more efficiently instead of generating more power (20%). Moreover, 84% have a preference for using renewable sources, while just 4% opt for the use of fossil fuels such as coal or natural gas.

# U.S. poll indicates support for 1000% increase to renewables

COLLEGE PARK, Maryland, US, March 30, 2005 (Refocus Weekly) The American public would increase budgetary spending on renewables by 1000%, according to a national survey.

Responses in a random poll of 1182 American adults last month by Knowledge Networks found that the most dramatic changes would be deep cuts in defense spending, a significant reallocation to deficit reduction, reduction of the country's reliance on oil, and increased spending on education, job training and veterans.

In percentage terms, the largest increase was for conservation and development of renewable energies, with the respondents calling for an increase of 1090% or US$24 billion. Support for renewables also had the highest percentage of respondents favouring an increase at 70%, while 42% favoured increases in the environment and natural resources with an increase of 32% or $9 billion.

Federal spending on renewables in the proposed Bush budget is $2.2 billion, which would increase to $26.2 billion under the survey conclusions.

The changes were called for both by Republicans and by Democrats, although changes were greater for the latter. When asked to redirect funding from the proposed budget without being told about the size of the federal deficit, 61% redirected $36 billion to reduce the deficit. Defense spending received the deepest cut at 31% or $134 billion, with 65% of respondents cutting. The second largest area to cut was aid for Iraq and Afghanistan, which would be cut 35% of $30 billion if the respondents were writing the budget.

The largest gross increase was for education, which would be increased by $27 billion (39%) and job training by $19 billion (263%). Medical research would increase by $16 billion (53%) and benefits for veterans would rise by $13 billion (40%).

"As Congress undertakes the process of making up a discretionary budget in response to the Administration's recently proposed budget for FY 2006, the question arises of how well the proposed discretionary budget aligns with the priorities of the American public," the report explains.
The Program on International Policy Attitudes conducted a unique survey where respondents were presented with major items of the discretionary budget, and given an opportunity to redistribute funds. The margin of error was in the survey was 2.9% to 4.1%, the pollster claims. For 16 of 18 budget areas, average changes made by Republicans and Democrats went in the same direction with slight differences in allocations for seven items, including renewable energy.

# ME3

*Minnesotans for an*
ENERGY-EFFICIENT ECONOMY

## Minnesota Renewable Energy Standard (SF 1687 & HF 1798)

### *What does the Renewable Energy Standard (RES) bill do?*

**A growing market.** Minnesota would make a firm commitment to steadily develop renewable energy and increase the percentage of renewable energy in the state's energy mix to 20% by the year 2020. An RES is a commitment to expanded economic opportunity, good jobs, and investment in renewable energy.

**Market-friendly.** A Renewable Energy Standard is a flexible, market-based policy for rapidly expanding renewable energy. It sets a requirement that a growing percentage of power generation must come from new, renewable energy facilities. The results will be expanded business opportunities and financial investments in wind power, biomass, solar power, and other local renewable energy sources.

### *What is the timetable for renewable energy development?*

**A gradual phase-in.** The RES includes a timetable for incrementally increasing the renewable electricity in the state. In 2010, it requires 5%, in 2015 it calls for 15%, and increases until it reaches 20% by 2020.

**Five years to plan.** Major new increases won't happen until 2010-2015, allowing time for utility planning and for transmission lines to be upgraded.

### *Minnesota has a Renewable Energy Objective (REO). Why do we need an RES?*

**Current law.** Minnesota has a Renewable Energy Objective (REO) law, requiring utilities to make a good faith effort to meet 10% of their electricity needs with qualifying sources of energy by 2015. The Legislature later made the REO a requirement for only one company, Xcel Energy.

**Need for a clean market opportunity for investment.** The REO specifies that utilities make a "good faith effort" to add 1 percent of their electricity from eligible sources each year from 2005 to 2015. The problem with Minnesota's *objective*, in contrast to a renewable *standard*, is that it fails to create a certain market for renewable energy manufacturers and investment.

Suite 600 | 46 East Fourth Street | Saint Paul, Minnesota 55101 | *phone* 651.225.0878 | *fax* 651.225.0870 | www.me3.org

## *What are the local economic benefits?*

Virtually none of the fuels we use to produce our electricity today come from Minnesota. They must be imported from other states and regions.

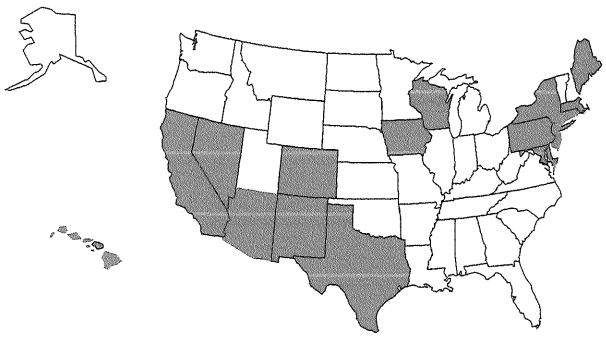
**Stable energy prices.** An RES would create stable energy prices for consumers. Unlike fossil fuels, renewable energy does not suffer from dwindling supplies, volatile prices, or unpredictable environmental regulation.

**Strong signal to global manufacturers.** A Renewable Energy Standard would send a strong signal to industry that our state is a favorable site for manufacturing. This opportunity includes jobs in manufacturing renewable energy parts and components, and constructing and servicing renewable energy projects.

**Less pollution.** More renewable energy means less pollution and mercury in our lakes and streams. Minnesota will have cleaner water, safer fish, healthier children, and less frequent air pollution warning days that we saw this winter.

**Tens of thousands of jobs.** Renewable energy creates more jobs than other sources of energy, four times as many jobs per megawatt of installed capacity as natural gas and 40% more jobs per dollar invested than coal. Most of these jobs will be in the manufacturing, especially steel. Germany, for example, already has $15 billion in wind power plants construction. The industry employs 40,000 high-wage skilled workers and is the second-largest industrial consumer of steel.

## *Other states lead in harvesting the advantages of an RES*



States with Renewable Energy Standards, March 2005

**Minnesota: The 18th state with an RES.** Seventeen other states plus the District of Columbia have adopted a Renewable Energy Standard. As a result, these states are experiencing significant new capital investment, producer payments and lease payments to rural landowners and farmers, and a boost in new local property tax revenues.

**Minnesota competing for jobs.** In 2004, the world's second largest wind energy manufacturer, Gamesa of Spain, announced it would open its US headquarters and a large manufacturing plant for wind turbines in Pennsylvania. This will add up to 1,000 jobs in PA in 5 years. The company acknowledged PA's RES and other renewable energy incentives. MN competed for this plant and lost.

**Opportunity to lead.** In spite of the fact that Minnesota has the capacity to produce more than **ten times** our electricity needs from wind, our state has yet to join other states in adopting a Renewable Energy Standard.

United Steelworkers of America
District 11

2829 University Avenue SE
Suite 100
Minneapolis, MN 55414
(612) 623-8003
(612) 623-8840 Fax

David A. Foster • Director

# Good Jobs, Clean Energy, a Safer World

Since the year 2000, Minnesota has lost over 40,000 manufacturing jobs, the state's portion of over 2 million manufacturing jobs that disappeared throughout the country. These jobs are not likely to return as the global Fortune 1000 continues to move manufacturing jobs to the lowest wage areas of the earth.

However one feels about the reorganization of the global economy, there is ample reason to be concerned about the loss of our manufacturing base in the U.S. Our economy hasn't simply shifted from making high labor content products like clothing apparel to low labor content products requiring high skilled labor. In fact, we have developed an economy that manufactures less of what we consume, has dangerously increased our trade deficits and has left us precariously dependent on the pyramids of U.S. debt owned by Japan and China.

This increasingly fragile global economy is one more reason why labor and environmentalists need to chart a new path for energy independence. Without new sources of energy, our country will become increasingly dependent upon shrinking supplies of oil and gas at the very time that the rapidly expanding economies of China and India will also require them.

Over the last 18 months, the United Steelworkers of America has strongly advocated that there is a key linkage between policies that promote energy independence at home and those that create a new generation of U.S. manufacturing jobs.

In Minnesota, long dubbed the Saudi Arabia of wind, we should be especially excited about the possibilities that lie in front of us. Germany, with only 10% to 20% of the wind resource of Minnesota, currently produces 16,000 megawatts of wind energy, almost 50 times our current production. Germany employs 40,000 workers in its wind energy industry. And wind turbine manufacture is the second largest consumer of that country's steel products, second only to its automotive industry. Even tiny Denmark employs 20,000 in its domestic wind energy industry.

Imagine a coherent renewable energy policy in the state of Minnesota—a new industry with the potential to employ tens of thousands of Minnesotans, expanding

economic opportunity in our rural areas, and a new manufacturing industry close to the consumers of its products!

Early this year the Spanish wind turbine manufacturer, Gamesa, decided to build its first US manufacturing facility in Pennsylvania. The Gamesa plant is expected to employ 1000 workers when it reaches full capacity. Minnesota bid on this plant and lost. Key to the Gamesa decision to locate in Pennsylvania was the recent action of that state's legislature to pass a Renewable Electricity Standard, mandating 10% renewable energy production by the state's utilities in future years.

Far too often Americans believe that economic forces are beyond human intervention. In fact, while globalization may be the next step in the growth of capitalism, the way in which it develops is guided by human decisions such as that of the PA legislature.

In Minnesota, we have an opportunity in to make our state the center for national development of renewable energy resources. Just as this state invested heavily in the infrastructure and scientific knowledge to bring the state's low-grade taconite resources to the steel industry in the 1950's, we should decide today to develop and harvest the state's wind resource by 2020. This is why we need to pass a 20% RES in 2005

## Goldman Bets On Wind Energy With Purchase

By ANN DAVIS
Staff Reporter of THE WALL STREET JOURNAL
March 22, 2005; Page C5

NEW YORK -- **Goldman Sachs Group** Inc., known for taking big risks but keeping a cool head, is suddenly tilting at windmills.

In one of the Wall Street firm's more-unusual bets, it has agreed to acquire Houston-based Zilkha Renewable Energy, one of the largest independent wind-energy development companies in the country. The investment in the closely held company gives Goldman a stake in about two dozen existing and planned "wind farms," or fields dotted with windmill-like "wind turbines," that produce electricity.

Goldman already owns some 30 electric-power generating plants and has a profitable electricity-trading operation as part of a huge commodities-trading business. But this latest acquisition puts it at the forefront of the alternative-energy movement. Producing "clean energy" often can be more expensive and less profitable than traditional power generation.

"We hope to accelerate the integration of wind generation into the nation's energy supply," said Henry M. Paulson Jr., Goldman's chief executive, in a statement. Mr. Paulson himself is a preservation advocate; he is chairman of the Nature Conservancy.

Because wind energy is just starting to catch on with some big companies and utilities, it calls to mind literature's Don Quixote, who mistook windmills for giants and got swept away when he tried to engage a windmill in a battle. Goldman says this is no fanciful fight. **"We think this is an attractive sector and seek returns commensurate with those of other Goldman businesses," said Michael DuVally, a Goldman spokesman.**

He points out that less than 1% of U.S. power generation capacity comes from wind, so there is room for growth.

Michael Skelly, a spokesman for Zilkha Renewable, points out that alternative energy producers get certain tax credits which traditional energy producers don't. "With tax credits the returns are comparable to what you see elsewhere in the industry," he said. Neither Zilkha nor Goldman disclosed the deal price.

The owners of Zilkha Renewable are Selim Zilkha, an energy investor, and his son Michael Zilkha. The elder Mr. Zilkha was a director of El Paso Corp. but resigned and led a proxy battle in 2003 that was narrowly defeated to force out management and its directors.

**Write to** Ann Davis at ann.davis@wsj.com[1]

Senator ..... moves to amend S.F. No. 1687 as follows:

Page 3, line 14, delete "may" and insert "must"

Page 3, line 16, delete everything after "standard" and insert "is not in the public interest because compliance will either produce undesirable impacts on the reliability of the utility's system or on the utility's ratepayers or if it finds that compliance is not technically feasible"

Page 3, delete line 17

Page 3, line 18, delete everything before the period

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was referred**

**S.F. No. 1687:** A bill for an act relating to energy; requiring utilities to meet certain renewable energy standards; amending Minnesota Statutes 2004, section 216B.1691.

Reports the same back with the recommendation that the bill be amended as follows:

Page 3, line 14, delete "may" and insert "must"

Page 3, line 16, delete everything after "standard" and insert "is not in the public interest because compliance will either produce undesirable impacts on the reliability of the utility's system or on the utility's ratepayers or if it finds that compliance is not technically feasible"

Page 3, delete line 17

Page 3, line 18, delete everything before the period

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

**Senators Sparks, Metzen, Bakk and Anderson introduced--**
**S.F. No. 776:** Referred to the Committee on Commerce.

A bill for an act

relating to commerce; imposing certain customer sales or service call center requirements; prescribing a criminal penalty; proposing coding for new law in Minnesota Statutes, chapter 325F.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [325F.695] [CUSTOMER SALES OR SERVICE CALL CENTER REQUIREMENTS.]

Subdivision 1. [DEFINITIONS.] For purposes of this section, the following terms have the meanings given them:

(1) "customer sales and service call center" means an entity whose primary purpose includes the initiating or receiving of telephonic communications on behalf of any person for the purpose of initiating sales, including telephone solicitations as defined in section 325E.311, subdivision 6;

(2) "customer service call center" means an entity whose primary purpose includes the initiating or receiving of telephonic communications on behalf of any person for the purposes of providing or receiving services or information necessary in connection with the providing of services or other benefits; and

(3) "customer services employee" means a person employed by or working on behalf of a customer sales call center or a customer service call center.

Subd. 2. [CUSTOMERS' RIGHT TO CUSTOMER SALES OR CUSTOMER

SERVICE CALL CENTER INFORMATION.] (a) Any person who receives a telephone call from, or places a telephone call to, a customer sales call center or a customer service call center, upon request, has the right to:

(1) know the identification of the city, state, and country where the customer service employee is located;

(2) know the name or registered alias of the customer service employee;

(3) know the name of the employer of the caller with whom the person is speaking; and

(4) speak to a qualified employee of the company or government agency with whom the person is doing business.

(b) No person who receives a telephone call from, or places a telephone call to, a customer sales call center or a customer service call center shall have the person's financial, credit, or identifying information sent to any foreign country without the person's express written permission.

Subd. 3. [VIOLATION.] It is fraud under section 325F.69 for a person to willfully violate this section.

Sec. 2. [EFFECTIVE DATE; APPLICATION.]

This act is effective August 1, 2005.

**Senate Counsel, Research, and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

**Senate**

**State of Minnesota**

# S.F. No. 776 -Customer Sales or Service Call Centers Regulation

**Author:** Senator Dan Sparks

**Prepared by:** Chris Turner, Senate Research (651/296-4350) CT

**Date:** April 4, 2005

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**Section 1, subdivision 1,** defines terms for the purposes of the bill.

**Subdivision 2** provides that any person who places a call to a customer sales call center or customer service call center may request the location, name, and employer of the customer service employee, and the right to speak to a qualified employee of the company or government agency with whom the person is doing business.

Prohibits the transmission of a caller's financial, credit, or identifying information to any foreign country without express written permission.

**Subdivision 3** defines such action as consumer fraud under Minnesota Statutes, section 325F.69.

**Section 2** provides an August 1, 2005 effective date.

CT:vs

Senator ..... moves to amend S.F. No. 776 as follows:

Page 2, delete lines 7 and 8

Page 2, line 9, delete "(3)" and insert "(2)"

Page 2, line 11, delete "(4)" and insert "(3)"

Page 2, delete lines 13 to 17, and insert:

"(b) A person who receives a telephone call from, or places a telephone call to, a customer sales call center or a customer service call center located in a foreign country, which requests the person's financial, credit, or identifying information, shall have the right to request the call be rerouted to a customer sales and service center located in the United States before the information is given."

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was re-referred**

**S.F. No. 776:** A bill for an act relating to commerce; imposing certain customer sales or service call center requirements; prescribing a criminal penalty; proposing coding for new law in Minnesota Statutes, chapter 325F.

Reports the same back with the recommendation that the bill be amended as follows:

Page 2, line 6, after the semicolon, insert "and"

Page 2, delete lines 7 and 8

Page 2, line 9, delete "(3)" and insert "(2)"

Page 2, line 10, delete "; and" and insert a period

Page 2, delete lines 11 to 17 and insert:

"(b) A person who receives a telephone call from, or places a telephone call to, a customer sales call center or a customer service call center located in a foreign country, which requests the person's financial, credit, or identifying information, shall have the right to request the call be rerouted to a customer sales and service center located in the United States before the information is given."

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

**Senator Bakk introduced--**

**S.F. No. 402:** Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to labor; regulating apprentice fees; amending Minnesota Statutes 2004, section 178.12.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 178.12, is amended to read:

178.12 [REGISTRATION FEE.]

The apprenticeship registration account is established in the special revenue fund of the state treasury. An annual registration fee will be charged to each sponsor for each apprentice registered in the program. The fee is established at $30 per apprentice. The $30 fee may be charged only once each year, including the first year in which the apprentice is indentured or registered, so that the total fee in any year does not exceed $30 with regard to any apprentice. Subsequent adjustments to this fee will be made pursuant to sections 16A.1283 and 16A.1285, subdivision 2. The fees collected and any interest earned are appropriated to the commissioner for purposes of this chapter.

**Senate Counsel, Research, and Fiscal Analysis**

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FAX: (651) 296-7747
Jo Anne Zoff Sellner
Director

**Senate**

**State of Minnesota**

# S.F. No. 402 - Regulating Apprentice Fees

**Author:** Senator Thomas Bakk

**Prepared by:** Chris Turner, Senate Research (651/296-4350) CT

**Date:** April 4, 2005

---

**Section 1** clarifies that apprentice registration fees collected under Minnesota Statutes, section 178.12, may be charged only once each year in which the apprentice is indentured or registered, so that the total fee in any year does not exceed $30.

CT:vs

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was referred**

**S.F. No. 402:** A bill for an act relating to labor; regulating apprentice fees; amending Minnesota Statutes 2004, section 178.12.

Reports the same back with the recommendation that the bill do pass and be re-referred to the Committee on Finance. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

To: Senator Anderson, Chair

Committee on Jobs, Energy and Community Development

Senator Kubly,

Chair of the Subcommittee on Energy, to which was referred

S.F. No. 1179: A bill for an act relating to education; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. [APPROPRIATION.]

$300,000, or as much of this amount as is required, is appropriated in fiscal year 2006 from the energy and conservation account in the general fund under section 216B.241, subdivision 2a, to the commissioner of commerce for a grant to Independent School District No. 480, Onamia, for partial repayment of a loan to the city of Onamia for a geothermal heating and ventilation system, including acquisition of the well field site, for a cooperative joint community learning center and health and wellness center. The city and school district shall offer the design and the facilities as a demonstration site for energy conservation and efficiency."

Delete the title and insert:

"A bill for an act relating to appropriations; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia."

And when so amended that the bill be recommended to pass and be referred to the full committee.

.....Dan D. Kubly.....
(Subcommittee Chair)

March 31, 2005.....
(Date of Subcommittee action)

**Senator Wergin introduced--**

**S.F. No. 1179:** Referred to the Committee on Finance.

A bill for an act

relating to education; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [APPROPRIATIONS; ONAMIA.]

(a) $600,000 is appropriated in fiscal year 2006 from the general fund to Independent School District No. 480, Onamia, for permanent financing for a geothermal heating and ventilation system including acquisition of the well field site for the cooperative joint community learning center and health and wellness center.

(b) Up to $300,000 is appropriated in fiscal year 2006 from the energy and conservation account in the general fund under Minnesota Statutes, section 216B.241, subdivision 2a, to the commissioner of commerce for a grant to Independent School District No. 480, Onamia, for partial repayment of a loan to the city of Onamia for a geothermal heating and ventilation system, including acquisition of the well field site, for a cooperative joint community learning center and health and wellness center. The city and school district shall offer the design and the facilities as a demonstration site for energy conservation and efficiency.

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was re-referred**

**S.F. No. 1179:** A bill for an act relating to education; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. [APPROPRIATION.]

$300,000, or as much of this amount as is required, is appropriated in fiscal year 2006 from the energy and conservation account in the general fund under Minnesota Statutes, section 216B.241, subdivision 2a, to the commissioner of commerce for a grant to Independent School District No. 480, Onamia, for partial repayment of a loan to the city of Onamia for a geothermal heating and ventilation system, including acquisition of the well field site, for a cooperative joint community learning center and health and wellness center. The city and school district shall offer the design and the facilities as a demonstration site for energy conservation and efficiency."

Delete the title and insert:

"A bill for an act relating to appropriations; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia."

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was re-referred**

**S.F. No. 1179:** A bill for an act relating to education; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. [APPROPRIATION.]

$300,000, or as much of this amount as is required, is appropriated in fiscal year 2006 from the energy and conservation account in the general fund under Minnesota Statutes, section 216B.241, subdivision 2a, to the commissioner of commerce for a grant to Independent School District No. 480, Onamia, for partial repayment of a loan to the city of Onamia for a geothermal heating and ventilation system, including acquisition of the well field site, for a cooperative joint community learning center and health and wellness center. The city and school district shall offer the design and the facilities as a demonstration site for energy conservation and efficiency."

Delete the title and insert:

"A bill for an act relating to appropriations; appropriating money for the geothermal system for a cooperative joint community learning center and health and wellness center in Onamia."

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

AFSCME Minnesota Council 5
"One Strong Unified Voice for Minnesota Workers"

American Federation of State, County and Municipal Employees
300 Hardman Ave. S., Suite 2, South St. Paul, MN 55075 • (651) 450-4990 • Fax (651) 450-1908 & 455-1311
211 W. 2nd St., Duluth MN 55802 • (218) 722-0577 • Fax (218) 722-6802

**Memorandum**

March 7, 2005

To: Glen Johnson, Business Manager

From: Bob Hilliker, Senior Business Representative

Subject: Crane Certification

To Whom It May Concern:

Council 5 is in support of the Crane Certification bills in the House and Senate as written.

BH/alh

Enclosure

# UNITED ASSOCIATION
## OF
# STEAMFITTERS-PIPEFITTERS-SERVICE TECHNICIANS

## Local Union No. 455

AFL - CIO


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(651) 647-9920
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310 McKINZIE ST.
MANKATO, MN 56001
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FAX (507) 625-5014

T. JERRY BARNES
*Business Manager*
GARY H. ERLANDER
*Assistant Business Manager*
JOHN P. WILKING
*Business Representative*
JACK VOTCA
*Business Representative (Mankato Area)*


February 22, 2005

Dear Brother Johnson, Operating Engineers Local 49

I am writing this letter in support of your Bill H.F. 759. I think it is the right thing to do for the industry. With the intense pressure that is being put on the construction industry to promote support and enforce on the job safety, I can't imagine why everyone wouldn't be on board. So with that being said let it go on record that Local 455 St. Paul Steamfitters, Pipefitters are in support of H.F. 759.

If you need any further assistance don't hesitate to call.

Fraternally,

T. Jerry Barnes

# International Union of Operating Engineers

LOCAL NO. 49, 49A, 49B, 49D, AND 49E
MINNESOTA • NORTH DAKOTA • SOUTH DAKOTA (East Half)

THOMAS H. PARISEAU, President
JOSEPH L. RYAN, Vice President
KYLE D. JONES,
Recording-Corresponding Secretary
JAMES J. HANSEN, Treasurer

GLEN D. JOHNSON
Business Manager/Financial Secretary

Affiliated with the A.F.L. - C.I.O.

2829 Anthony Lane South, Minneapolis, MN 55418-3285
Phone (612) 788-9441 • Toll Free (866) 788-9441 • Fax (612) 788-1936

March 29, 2005

Dear Minnesota Legislators:

For several decades the Operating Engineers, Local 49 have recognized the risk and dangers associated with crane operation and all that it entails. Our industry has witnessed many operators killed on the job because of improper training or no training at all. But when there is a crane accident the threat extends to all of the other construction workers on site as well as the private citizen at or near the work area. For safety reasons alone, we have long supported legislation for crane certification such as the accompanying bill.

The risks associated with crane operation have now also materialized in tremendous workers compensation premiums for the crane operation businesses. The cost of building is growing because obvious safety standards are being ignored. Therefore, the employers in our industry have sought our help in creating standards and minimizing the risk of loss to everyone who works in the construction field.

In order to establish acceptable standards that certify an operator's knowledge, skills and ability we support this legislation.

Sincerely,

Glen Johnson
Business Manager

GDJ/MLW/dka
opeiu #12
afl-cio

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1848 2nd Ave SE
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8381 North Enterprise Drive
Virginia, MN 55792
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Fargo, ND 58102
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1521B 24th Ave So.
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101 South Fairfax Avenue
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**LABORERS DISTRICT COUNCIL**
**MINNESOTA AND NORTH DAKOTA**
Affiliated with Laborers International Union
of North America
2350 Main Street • Lino Lakes, Minnesota 55038
**council@laborers-mnnd.org**
**(651) 653-9776** **Fax (651) 653-9745**

JIM BRADY
President/Business Manager
S 18

March 7, 2005

Mr. Glen Johnson
Operating Engineers Local 49
2829 Anthony Lane S
Minneapolis, Minnesota 55418

Dear Glen:

We have reviewed the proposed crane operator certification legislation that would supplement Minnesota Statutes, chapter 184C. It is our understanding that the Operating Engineers are supporting this legislation in an effort to ensure the safety of all who work on or near cranes at construction sites. As the representative of over 11,000 Construction Craft Laborers, the Laborers District Council of Minnesota and North Dakota also supports this legislation as it is currently presented.

Sincerely,

Jim Brady
President and Business Manager

JB:sc

Phillip J. Qualy
Legislative Director,
Chairperson

Robert J. Pearson
Assistant Director

Richard A. Olson
Secretary

**united transportation union**

*Minnesota Legislative Board*

Labor and Professional Centre
411 Main Street. Suite 212
St. Paul, MN 55102
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FAX (651) 222-7828
E-MAIL:
UTUMNLEGBD@VISI.COM

April 4, 2005

The Honorable Ellen R. Anderson
Chairperson, Jobs, Energy, Community
Development Committee, State of Minnesota
120 State Capitol
St. Paul, MN 55155

RE: Senate File 1603, The Injured Railroad Workers Medical Treatment Bill.

Dear Senator Anderson,

Today the United Transportation Union,(UTU), joined by other railroad unions in this state, introduces Senate File 1603 to your committee. This bill relates to railroads and addresses a disturbing pattern of conduct by railroad management personnel.

Since the year 2003 and as recently as February 2005, the carriers have intentionally denied, delayed, and interfered with the first-aid medical treatment of injured railroad workers in this state. If passed into law, S. F. 1603 will make this conduct unlawful.

Enclosed herewith, please find attachments from UTU General Counsel which affirms the State of Minnesota's legal right to legislate and outlaw conduct that delays medical treatment to injured railroad workers. Also enclosed is an actual case file with a responsive letter of finding from the Federal Railroad Administration that affirms the same.

The United Transportation Union is the exclusive bargaining agent for Trainmen, Conductors, Remote Control Locomotive Operators, and Yardmasters in Minnesota and nationwide. On behalf of the railroad workers in Minnesota, thank you for the opportunity to have this matter heard before the Senate Jobs and Energy Committee.

Phillip Qualy
State Director, United Transportation Union

PAUL C. THOMPSON
International President

RICK L. MARCEAU
Assistant President

DAN E. JOHNSON
General Secretary and Treasurer

United transportation union

14600 DETROIT AVENUE
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LEGAL DEPARTMENT

CLINTON J. MILLER, III
General Counsel

KEVIN C. BRODAR
Associate General Counsel

ROBERT L. McCARTY
Associate General Counsel

DANIEL R. ELLIOTT, III
Associate General Counsel

**Fax and Regular Mail**

February 18, 2005

Mr. P. J. Qualy, Director
Minnesota State Legislative Board
3989 Central Ave., N.E., Ste. 525
Columbia Heights, MN 55421

Dear Mr. Qualy:

This is in response to your February 8, 2005 letter regarding the bill amending Chapter 609 of the Minnesota statutes to add Section 609.849. That bill makes it unlawful for any railroad or person employed by the railroad to deny, delay or interfere with medical treatment or aid to any employee who has been injured. A question has been raised concerning possible preemption.

Preemption occurs in three ways: (1) Congress may pass a statute that by its express terms preempts state law; (2) Congress, though not expressly stating, may imply that it is preempting state law by occupation of an entire field of regulation, so that no room is left for supplementary state regulation; (3) Congress may speak neither expressly nor impliedly of preemption, nonetheless state law is preempted to the extent it actually conflicts with federal law; such a conflict occurs when (a) compliance with both state and federal law is impossible, or (b) when state law stands as an impediment to a federal purpose. *Michigan Canners and Freezers Assoc. v. Agricultural Mktg. and Bargaining Bd.*, 467 U.S. 461, 469 (1984).

One of the leading Supreme Court cases on the issue of preemption is *CSX v. Easterwood*, 507 U.S. 658 (1993), which held that state law is not preempted unless federal regulation "substantially subsumes" the particular state regulation. See also, *In re: Miamisburg Train Derailment Litigation*, 626 N.E. 2d 85 (Ohio 1994) (tank cars); *Southern Pacific Railroad v. P.U.C. of State of Oregon*, 9 F.3d 807 (9th Cir. 1993) (locomotive whistles); *Norfolk & Western Railway Company v. Pennsylvania Public Utilities Commission*, 413 A.2d 1037 (1980) (flush type toilets); *National Association of Regulatory Utility Commissioners v. Coleman*, 542 F.2d 11 (3d Cir. 1976) (accident reporting); *State of Washington v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 484 P.2d 1146 (Wash. 1971) (spark arresters); *Bessemer and Lake Erie R.R. v. Pennsylvania Public Utilities Commission*, 368 A.2d 1305 (1977) (flagging); *State by E. I. Malone v. Burlington Northern*, 247 N.W. 2d 54 (Minn. 1976) (blue signal); and *State ex ref. Utilities Commission v. Seaboard Coastline R.R.*, 303 S.E. 2d 549 (N.C. 1983) (open drainage ditches).

Here, it does not appear that any federal regulation has "substantially subsumed" the area addressed by the bill in question. While the FRA does address accident reporting in 49 C.F.R. § 225, that section only requires that carriers make timely and accurate accident reports and maintain certain records. It does not speak to medical treatment or aid to injured employees. Nor does it appear that the FRA has issued any other regulation that directly, or even indirectly, addresses the substance of proposed law regarding medical treatment. Similarly, it does not appear that any part of the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, addresses or deals with medical treatment for injured employees.

This analysis is not significantly different from that applied to a Wisconsin statute requiring two person crews. There, the carriers argued that such state regulation was preempted. Their arguments however succeeded only with respect to hostling and helper service. *Burlington Northern & Santa Fe Ry., v. Doyle,* 186 F.3d 790 (7th Cir. 1999). Here, not only is there no federal statute or regulation addressing the matter, but also the safety and health of the citizenry of the state is a legitimate state interest, just as was the two person crew law. Indeed, a much stronger safety issue could be asserted here.

> [W]hen a state legitimately asserts the existence of a safety justification for a regulation . . . the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce . . . .

*Bibb v. Navaho Freight Lines, Inc.*, 359 U.S. 520, 524 (1959). See *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island & Pacific Railroad,* 393 U.S. 129, 140 (1968); *Raymond Motor Transportation, Inc. v. Rice,* 434 U.S. 429, 449 (1978); *Kassel v. Consolidated Freightways Corporation,* 450 U.S. 662 (1981). The proposed legislation places an insignificant burden on railroads within the state in light of the compelling need for the state to promote the safety of its citizens.

We think it is fairly clear given the history and current state of the law that the state regulation regarding medical treatment is not preempted.

Sincerely,

Kevin C. Brodar
Associate General Counsel

cc: P. C. Thompson, International President
R. L. Marceau, Assistant President
J. M. Brunkenhoefer, U.S. National Legislative Director
C. J. Miller, III, General Counsel

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2003]
>From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR225.1]



TITLE 49--TRANSPORTATION

CHAPTER II--FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 225--RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS--Table of Co

Sec. 225.1 Purpose.

The purpose of this part is to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its regulatory responsibilities under 49 U.S.C. chapters 201-213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents. Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that State.

[61 FR 30967, June 18, 1996]

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2004]
From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR225]

[Page 305-327]

# TITLE 49--TRANSPORTATION

## CHAPTER II--FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

## PART 225 RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS--Table of Contents

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225.1 Purpose.
225.3 Applicability.
225.5 Definitions.
225.7 Public examination and use of reports.
225.9 Telephonic reports of certain accidents/incidents.
225.11 Reporting of accidents/incidents.
225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.
225.13 Late reports.
225.15 Accidents/incidents not to be reported.
225.17 Doubtful cases; alcohol or drug involvement.
225.19 Primary groups of accidents/incidents.
225.21 Forms.
225.23 Joint operations.
225.25 Recordkeeping.
225.27 Retention of records.
225.29 Penalties.
225.31 Investigations.
225.33 Internal Control Plans.
225.35 Access to records and reports.
225.37 Magnetic media transfer and electronic submission.
225.39 FRA policy on covered data.

Appendix A to Part 225--Schedule of Civil Penalties
Appendix B to Part 225--Procedure for Determining Reporting Threshold

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Source: 39 FR 43224, Dec. 11, 1974, unless otherwise noted.

### Sec. 225.1 Purpose.

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**Phillp J. Qualy**
Legislative Director,
Chairperson

**Robert J. Pearson**
Assistant Director

**Richard A. Olson**
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# united transportation union

## *Minnesota Legislative Board*

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September 27, 2004

Mr. Paul E. Comstock
Chief Inspector, Region Four.
Federal Railroad Administration
One Federal Drive, Room G56B
St. Paul, MN 55111-4027

RE: Reported Hours of Service Violation on the Union Pacific Railroad.

Dear Mr. Comstock,

It has been reported to this office that on Thursday December 4, 2003, the Union Pacific Railroad intentionally violated the Federal Hours of Service Act at Mason City Iowa. United Transportation Union Local 650 member, M[redacted], was held on duty for a total of nineteen hours and fifteen minutes and against his will after personal injury.

Enclosed herewith, please find this organization's complete file. This includes UTU Local 650 Local Chairman David J. Riehle's letter dated January 8th, 2004. This letter provides a clear narrative and chronology of events that occurred while [redacted] was under the direct authority of carrier management.

What is particularly troublesome is that after [redacted] reported his injury that occurred en route, was taken for treatment which included the injection of a pain killer, he was then ordered back to the yard office for questioning and to *reenact the incident* on the same Bad Order car that had caused his injury. This was at the clear direction of carrier officers[redacted], and [redacted] and after telephone conversation with Director Road Operations [redacted]. If substantiated, this matter would represent egregious conduct.

Therefore, I ask that the Federal Railroad Administration investigate this matter, prepare and present the appropriate findings. If the allegations contained herein are substantiated, I ask the Federal Railroad Administration to pursue sanctions against the carrier to ensure that this type of treatment of our members and federal rule violation does not occur again.

Thank you for your attention to this matter.

Phillip Qualy,
UTU Legislative Director.
cc: UTU Local and National Files.

UNITED TRANSPORTATION UNION

RECEIVED
FEB 3 - 2004

LOCAL
650-A

www.utu650.0rg
1063 Albemarle Street
Saint Paul, MN 55117
(612) 802-1482
Dave Riehle, Local Chairman

*Organized March 27, 1893 as "Hearts of Oak" Lodge 525, Brotherhood of Railroad Trainmen*

John Smullen
Director
UTU Minnesota State Leg Bd
3989 Central Ave NE Suite 525
Minneapolis MN 55421

Thursday, January 08, 2004

RE: Union Pacific Hours of Service Violation December 04, 2003

Dear Brother Smullen,

Enclosed please find material related to Union Pacific Hours of Service violation at Mason City, Iowa involving Conductor [redacted]g. Brother [redacted] was held on duty at Mason City after expiring on his hours of service from 1100 until 1535 hours, December 04, 2003 despite his request to be released. A substantial part of this time was consumed by prolonged interrogation of Brother [redacted] by Carrier officers. The following is a chronology of his tour of duty as I have transcribed it from his notes (attached) and personal interview.

Brother [redacted] first went on duty at South St Paul, Minnesota, his home terminal on Train AHAKS 04 at 2300 hours, December 03, 2003. During the course of his initial terminal work he handled a troublesome handbrake on car GTW 504419 which required some extra exertion.

After taking siding at Manly Iowa at about 0330 hours Brother [redacted] began to experience some discomfort in his back, which he identified with the exertion required in handing the handbrake on GTW 504419. As the symptoms became more acute, he decided to report it to the Carrier. After some six hours in Manly siding his train proceeded to its final terminal at Mason City where the crew expired on its hours at 1100 hrs and transported to the Mason City yard office, arriving at about 1105 hrs.

Brother [redacted] then proceeded directly to the office of Manager of Train Operations [redacted]n, his immediate supervisor, and reported his symptoms. He was held at Mr. [redacted]s office for about one hour, during which Mr. [redacted] made calls to his superiors, including Director of Road Operation [redacted], South St Paul, seeking instructions on how to proceed. Mr. [redacted] and Manager of Operating Practices [redacted] questioned him during this time period.

During this time Brother [redacted] partially filled out the Carrier's Personal Injury Report (attached.) At about 1220 hrs Mr. [redacted] transported him to Mercy Medical Center in Mason City where he was examined by an attending physician and at about 1350 hrs given an 60 mg injection of the analgesic Tordal.

Brother [redacted] was then transported back to the Mason City yard office, arriving there about 1420 hrs. When Brother [redacted] stated that he was tired and hungry, Mr. [redacted] instructed him that he would remain at that location for further interrogation. After submitting to a toxicological test at about 1430 hrs., he was interrogated in Mr. [redacted]'s office by [redacted], [redacted] and another carrier officer, M[redacted]s. At about 1530 Brother [redacted] was taken to the rip track, where car GTW 504419 had been set out by a guard crew, and required to partially reenact the incident. He was released at 1535 and boarded a van for transportation back to South St Paul, finally tieing up there at 1815 hours.

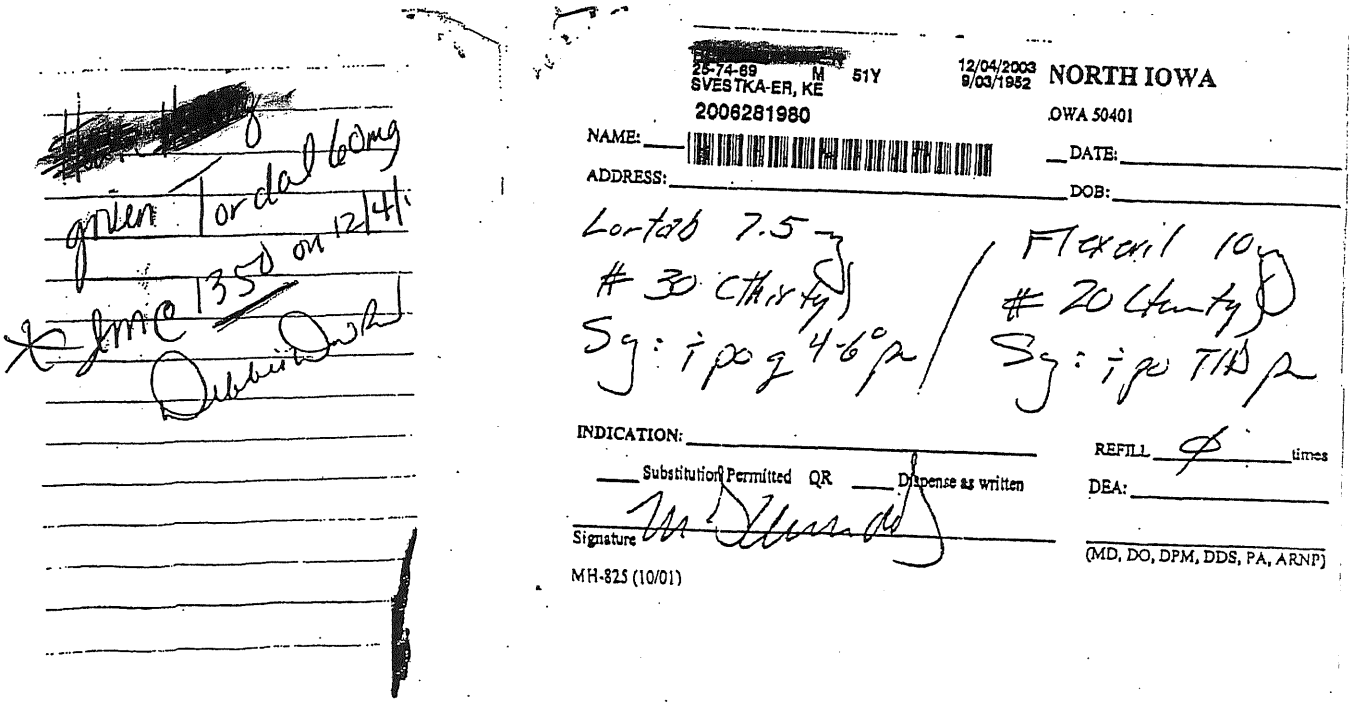
The foregoing evidence seems to support a conclusion that Brother [redacted] was improperly and unnecessarily held on duty well past his hours of service for the primary purpose of grilling him at length about his possible injury.

I trust you will handle this violation with the appropriate authorities.

Sincerely and fraternally,

DJ Riehle
Local Chairman

Cc: JW Babler
H[redacted]g



U.S. Department of Transportation
**Federal Railroad Administration**

Region VI

DOT Building
901 Locust Street, Suite 464
Kansas City, MO 64106

H2004-UP-6-003010

March 1, 2005

Mr. Philip Qualy, Legislative Director, Chairperson
Minnesota Legislative Board
United Transportation Union
3989 Central Avenue NE, Suite 525
Columbia Heights, Minnesota 55421-3900

Dear Mr. Qualy:

This is in response to your letter dated September 28, 2004, concerning the alleged violation of the Federal Hours of Service Law (HSL) by the Union Pacific Railroad Company (UP) following an on-duty injury at Mason City, Iowa, on December 4, 2003.

The Federal Railroad Administration (FRA) has completed its investigation.

Your letter alleged that on December 4, 2003, officers of the UP required employee [redacted] to violate the HSL by holding him on duty well in excess of his HSL expiration time in order to interrogate him about facts surrounding an injury that he claimed he sustained during his shift. M[redacted]g was contacted about the circumstances surrounding these allegations. He said he was offered prompt medical attention but following this, the local railroad managers "asked" him to recreate the circumstances surrounding the injury. A request coming from several railroad managers can appear to be mandatory and it came 4 ½ hours after the expiration of the maximum hours permitted by law. M[redacted]g was finally allowed to report off duty at 6:15 p.m., 16 hours 35 minutes after reporting on duty.

The investigation revealed a violation was committed. The findings of this investigation will be forwarded to the Office of Chief Counsel with a recommendation for civil penalties for failure of the railroad to comply with requirements of the Federal HSL.

I understand you have been contacted and advised of our findings and handling in this matter. Thank you for your interest in railroad safety and if you have any future concerns, please contact us.

Sincerely,

D. J. Tisor
Regional Administrator

(1) DIRECTORS NOTE: PLEASE BE INFORMED THIS CASE OF MEDICAL CARE DELAY AND INTERFERENCE IS NOT WITHIN 3/15/05 SENATE TESTIMONY.

(2) RELEVANCE IS THAT F.R.A DID NOT FIND OR ADDRESS ISSUE OF DELAY AND INTERFERENCE. F.R.A ONLY ADDRESSED HSL ISSUE. → NO FEDRAL JURISDICTION TO ADDRESS TREATMENT.

**Senator Anderson introduced--**

**S.F. No. 1984:** Referred to the Committee on Jobs, Energy and Community Development.

A bill for an act

relating to employment; increasing the penalty for failure to pay a discharged employee within 24 hours; modifying the penalty for failure to pay benefits or wage supplements; increasing the penalty for violation of migrant worker payment requirements; amending Minnesota Statutes 2004, sections 181.11; 181.74, subdivision 1; 181.89, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 181.11, is amended to read:

181.11 [DISCHARGED EMPLOYEE MUST BE PAID WITHIN 24 HOURS.]

When any such transitory employment as is described in section 181.10 which requires an employee to change the employee's place of abode while performing the service required by the employment is terminated, either by the completion of the work or by the discharge or quitting of the employee, the wages or earnings of such employee in such employment shall be paid within 24 hours and, if not then paid, the employer shall pay the employee's reasonable expenses of remaining in the camp or elsewhere away from home while awaiting the arrival of payment of wages or earnings and, if such wages or earnings are not paid within ~~three~~ two days after the termination of such employment for any cause, the employer shall, in addition, pay to the employee two times the average amount of the employee's daily earnings in such employment from the time of the termination of the employment until payment has been made in full~~, but not for~~

~~a longer period of time than 15 days~~.

Sec. 2. Minnesota Statutes 2004, section 181.74, subdivision 1, is amended to read:

Subdivision 1. [GROSS MISDEMEANOR.] Any employer required under the provisions of an agreement to which the employer is a party to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees, and who refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within ~~60~~ 30 days after such payments are required to be made under law or under agreement, is guilty of a gross misdemeanor. If such employer is a corporation, any officer who intentionally violates the provisions of this section shall be guilty of a gross misdemeanor. The institution of bankruptcy proceedings according to law shall be a defense to any criminal action under this section.

Sec. 3. Minnesota Statutes 2004, section 181.89, subdivision 2, is amended to read:

Subd. 2. [JUDGMENT; DAMAGES.] If the court finds that any defendant has violated the provisions of sections 181.86 to 181.88, the court shall enter judgment for the actual damages incurred by the plaintiff or the appropriate penalty as provided by this subdivision, whichever is greater. The court may also award court costs and a reasonable attorney's fee. The penalties shall be as follows:

(1) Whenever the court finds that an employer has violated the record-keeping requirements of section 181.88, $50;

(2) Whenever the court finds that an employer has recruited a migrant worker without providing a written employment statement as provided in section 181.86, subdivision 1, $250;

(3) Whenever the court finds that an employer has recruited a migrant worker after having provided a written employment statement, but finds that the employment statement fails to comply with the requirement of section 181.86, subdivision 1 or section 181.87, $250;

(4) Whenever the court finds that an employer has failed to

comply with the terms of an employment statement which the employer has provided to a migrant worker or has failed to comply with any payment term required by section 181.87, ~~$250~~ $500;

(5) Whenever the court finds that an employer has failed to pay wages to a migrant worker within a time period set forth in section 181.87, subdivision 2 or 3, ~~$250~~ $500; and

(6) Whenever penalties are awarded, they shall be awarded severally in favor of each migrant worker plaintiff and against each defendant found liable.

Sec. 4. [EFFECTIVE DATE.]

Sections 1 to 3 are effective August 1, 2005. Section 2 applies to crimes committed on or after that date. Section 3 applies to causes of action arising on or after that date.

**Senate Counsel, Research, and Fiscal Analysis**

G-17 STATE CAPITOL
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JO ANNE ZOFF SELLNER
DIRECTOR

**Senate**
**State of Minnesota**

# S.F. No. 1984 -Employee Nonpayment Penalty Increases

**Author:** Senator Ellen R. Anderson

**Prepared by:** Chris Turner, Senate Research (651/296-4350) CT

**Date:** April 4, 2005

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**Section 1** requires employers who fail to pay transitory workers within two days after termination of employment to pay them twice their average daily earnings from the day of termination until the day of full payment. Current law only provides for payment of average daily earnings for up to 15 days, after three days of non-payment.

**Section 2** requires employers to pay benefits or wage supplements within 30 days after such payments are required by law. Failure to do so is a gross misdemeanor. Under current law, an employer is in violation of this section after 60 days of nonpayment.

**Section 3** increases the monetary penalty for failure to pay wages to migratory workers or failure to comply with the terms of a migratory worker employment agreement from $250 to $500.

**Section 4** provides an August 1, 2005 effective date, and applies to crimes committed or causes of action arising on or after that date.

CT:vs

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was referred**

**S.F. No. 1984:** A bill for an act relating to employment; increasing the penalty for failure to pay a discharged employee within 24 hours; modifying the penalty for failure to pay benefits or wage supplements; increasing the penalty for violation of migrant worker payment requirements; amending Minnesota Statutes 2004, sections 181.11; 181.74, subdivision 1; 181.89, subdivision 2.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 23, after "two" insert "business"

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

**Senator Anderson from the Committee on Jobs, Energy and Community Development, to which was re-referred**

**S.F. No. 588:** A bill for an act relating to employment; prohibiting employers from misrepresenting the nature of employment relationships; providing a civil remedy; proposing coding for new law in Minnesota Statutes, chapter 181.

Reports the same back with the recommendation that the bill be amended as follows:

Page 2, line 5, delete "any"

Page 2, line 6, delete "person guilty of violating" and insert "that a violation of" and after "section" insert "has occurred"

Page 2, lines 7 and 9, delete "of guilt"

Page 2, line 14, delete "A person" and insert "An individual not a contractor"

Page 2, line 16, delete everything after the period

Page 2, delete lines 17 and 18

Page 2, line 19, delete everything before "The"

Page 2, line 21, delete "person" and insert "individual"

And when so amended the bill do pass and be re-referred to the Committee on Finance. Amendments adopted. Report adopted.

.....
(Committee Chair)

April 4, 2005.....
(Date of Committee recommendation)

A bill for an act

relating to employment; prohibiting employers from misrepresenting the nature of employment relationships; providing a civil remedy; proposing coding for new law in Minnesota Statutes, chapter 181.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [181.722] [MISREPRESENTATION OF EMPLOYMENT RELATIONSHIP PROHIBITED.]

Subdivision 1. [PROHIBITION.] No employer shall misrepresent the nature of its employment relationship with its employees to any federal, state, or local government unit, to other employers or to its employees. An employer misrepresents the nature of its employment relationship with its employees if it makes any statement regarding the nature of the relationship that the employer knows or has reason to know is untrue and if it fails to report individuals as employees when legally required to do so.

Subd. 2. [AGREEMENTS TO MISCLASSIFY PROHIBITED.] No employer shall require or request any employee to enter into any agreement, or sign any document, that results in misclassification of the employee as an independent contractor or otherwise does not accurately reflect the employment relationship with the employer.

Subd. 3. [DETERMINATION OF EMPLOYMENT RELATIONSHIP.] For purposes of this section, the nature of an employment

relationship is determined using the same tests and in the same manner as employee status is determined under the applicable workers' compensation and unemployment insurance program laws and rules.

Subd. 4. [REPORTING OF VIOLATIONS.] Any court finding any person guilty of violating this section shall transmit a copy of the documentation of the finding of guilt to the commissioner of labor and industry. The commissioner of labor and industry shall report the finding of guilt to relevant state and federal agencies, including at least the commissioner of commerce, the commissioner of employment and economic development, the commissioner of revenue, the federal Internal Revenue Service, and the United States Department of Labor.

Subd. 5. [CIVIL REMEDY.] A person injured by a violation of this section may bring an action for damages against the violator. There is a rebuttable presumption that a losing bidder on a project on which a violation of this section has occurred has suffered damages in an amount equal to the profit it projected to make on its bid. The court may award attorney fees, costs, and disbursements to a party recovering under this section. If the person injured is an employee of the violator of this section, the employee's representative, as defined in section 179.01, subdivision 5, may bring an action for damages against the violator on behalf of the employee.

Sec. 2. [REVISOR'S INSTRUCTION.]

The revisor of statutes shall insert a first grade headnote prior to Minnesota Statutes, section 181.722, that reads "MISREPRESENTATION OF EMPLOYMENT RELATIONSHIPS."

**Senate Counsel, Research, and Fiscal Analysis**

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JO ANNE ZOFF SELLNER
DIRECTOR

**Senate**
**State of Minnesota**

# S.F. No. 588 -Unlawful Trade Practices (First Engrossment)

**Author:** Senator Satveer Chaudhary

**Prepared by:** Chris Turner, Senate Research (651/296-4350) CT

**Date:** April 4, 2005

---

**Section 1, subdivision 1,** prohibits false reporting by employers about the status of employees and requires reports of violations to state and federal labor and other authorities.

**Subdivision 2** prohibits employers from requiring employees to enter into any agreement that results in the misclassification of their employee status.

**Subdivision 3** provides that employment status shall be determined using the same tests as those applicable under workers' compensation and unemployment insurance laws and rules.

**Subdivision 4** requires any court finding of a violation of this section to be forwarded to the Commissioner of Labor and Industry, who shall report the violation to the relevant state and federal agencies.

**Subdivision 5** allows aggrieved parties to bring a civil action for damages against violators of this section. The court may award attorney fees, costs, and disbursements.

**Section 2** instructs the Revisor of Statutes to headnote this section "Misrepresentation of Employment Relationships."

CT:vs

APRIL 6th 2003

# Technology strengthens state tax enforcement

By Terry Fiedler
*Star Tribune Staff Writer*

The state caught on to a tax scam by a group of Northwest pilots the old-fashioned way: through a tip.

State officials were told to check the pilots' parking lots for clues that some were falsely claiming to be residents of lower-tax states. Sure enough, a scan in December 2001 found 34 cars bearing South Dakota plates, 22 cars with Texas license plates, 15 with Florida plates, 15 bearing Washington state plates, five with New Hampshire plates and three with Alaska plates. None of those places has a state income tax.

"It was pretty unlikely that they were commuting every day," said Jerry McClure, director of the individual income tax division of the Minnesota Department of Revenue.

This tax season, technology is allowing the state to take compliance efforts to a new level. Armed with a new system that allows the department to store, retrieve and compare data far more efficiently than ever before, investigators are taking a harder look at whole categories of individuals who may be underpaying taxes or not paying at all.

Chief among those groups are the self-employed, such as roofers, carpet layers and electrical contractors.

"This is a fairly dramatic step up in our capabilities," McClure said. "Auditors can spend their time auditing instead of screening returns."

The department also appears to be in line to get 62 auditors and collectors in the next two years as part of a $5.4 million increase in its budget. In return, the department is projecting that it will bring an additional $32.4 million in tax revenue in that time.

**TAXES continues on D4:**
*— The system handles more than 3 million state tax forms that bring in about $5 billion a year.*

## Tax cheating: *He said, she said*

- **Nearly a third** of both men and women said it was OK to cheat "a little here and there" on income taxes.
- **18 percent of men** and 9 percent of women said it was OK to cheat "as much as possible."
- **49 percent of men** and 59 percent of women responded that it is not acceptable to cheat on income taxes.
- **40 percent of women** believed that millions of wealthy people pay no federal taxes at all; 26 percent of men surveyed believed that is true.
- **43 percent of women** surveyed believed that businesses don't pay their fair share of income taxes; 31 percent of men surveyed thought that was true.

Source: Clarion University and Slippery Rock University poll

**TAXES from D1**

## *System handles more than 3 million state tax forms*

The potential is vast. The state estimates that underreporting of income and failure to file returns costs the state as much as $700 million a year.

McClure said the timing of stepped-up efforts is good not only because of the state budget crunch but also because times of economic stress generally lead to more tax cheating.

The department's so-called data warehouse, which started up in January, was one of the last pieces of an $18.6 million computer system overhaul that began in 1999. The system now handles more than 3 million state income- and property-tax forms that bring in about $5 billion in receipts each year.

McClure said the department quickly can identify how many people own Minnesota-based businesses that gross more than $100,000 a year but aren't paying any personal state income tax.

The answer: 27.

Or it can match the number of people who have homesteaded house values of $250,000 or more and haven't filed state income tax returns. About 200 are in that group.

And it has gotten the department focused on categories of people that the data suggest should be examined.

### Roofers

The department randomly ...oofers vs. what roofers themselves reported as their income in the 1999 tax year.

The result got the department's attention: The company reported $8 million paid to workers, but the workers reported only $2 million in income to the state.

McClure said none of the businesses connected to the workers claimed to be the employer — the roofers were considered independent contractors — so none of the workers had state taxes withheld from their paychecks. The state hopes to change that situation.

The lack of withholding, coupled with the fact that many roofing workers were illegal aliens, McClure said, meant that many workers simply collected their pay and left the state without paying any taxes.

Jim Bigham, spokesman for the Twin Cities Roofing Contractors Association, which represents about 60 firms that ...e their own union employee withholding with many independent contractors, but many of those roofers also are not covered by workers' compensation insurance. That could put homeowners at risk in the event of an injury, and creates an non-level playing field for firms that are following state rules, he added.

### Carpet and floor layers

Several test audits showed what McClure called "some significant underreporting" of income to the state, with many people claiming expenses representing more than 50 percent of their gross receipts.

The department is auditing 80 people in this category.

McClure said that many routine living expenses — from food to parts of mortgage payments — are being written off in part or in whole even though they may have nothing to do with business.

...test audits in this area. According to the IRS, contractors in general nationwide are considered to be among the least tax-compliant group among the self-employed, on average paying 40 percent of the taxes they should be.

McClure said there isn't strong evidence of underreporting of income, though in general the group normally represents a "problem area."

### Temporary workers

The department is looking at the relationship between the compensation of temporary workers and temporary firms. Clients pay the temp firms, which in turn pay the temp workers, McClure said, but there's a difference between what the client pays and what the temp firms reportedly pay to workers that doesn't seem to be getting reported to the state.

The department's particular ...

Andrew Schmitz, an executive of Jeane Thorne Inc., a staffing firm in St. Paul and public relations director for the Staffing Association of Minnesota, said his firm treats its temp workers as employees.

"It's pretty straightforward," Schmitz said. "We pay their taxes and, unfortunately, we pay a lot of taxes just like everyone else."

He said it would be atypical for temp-firm employees to be considered self-employed, although there may be some "mavericks" operating that way.

In total, the department not only wants to go after the most egregious cases, it wants to create greater enforcement presence.

"It's the highway patrol syndrome," McClure said. "You slow down if you see them on the highway. If you never see the tax man, you might push it more."

**Minnesota Floorcovering Association**

5401 East River Road • Fridley, MN 55421 • Phone: 763-502-2213 • Fax: 763-571-3411

Affiliated With
**World Floor Covering Association**
*Success by Association®*



If you – like most in our industry – use subcontractor labor for installations, please take a moment to read this Open Letter to learn about important changes in the Minnesota workers' compensation law, which may have a very significant impact on the way that you do business.

MINNESOTA STATUTES ANNOTATED

LABOR, INDUSTRY

CHAPTER 176. WORKERS' COMPENSATION



Current through End of 2002 1st Sp. Sess.,

with Laws 2003, c. 28, art. 2, eff. May 28, 2003

## Section 176.042. Independent contractors

**Subdivision 1. General rule; are employees.** Except as provided in subdivision 2, every independent contractor doing commercial or residential building construction or improvements in the public or private sector is, for the purpose of this chapter, an employee of any employer under this chapter for whom the independent contractor is performing service in the course of the trade, business, profession, or occupation of that employer at the time of the injury.

**Subd. 2. Exception.** An independent contractor, as described in subdivision 1, is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:
(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;
(2) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year;
(3) operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;
(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;
(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;
(6) receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;
(7) may realize a profit or suffer a loss under contracts to perform work or service;
(8) has continuing or recurring business liabilities or obligations; and
(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

**An open letter from the Minnesota Floorcovering Association to all Minnesota floor covering dealers**

**Regarding: subcontractor labor and related workers' compensation issues**

For years, most Minnesota floor covering retailers have used independent contractors to install floor covering products. This relationship was desired both by the retailers and the installers, most of whom did not wish to become employees of the retailer, and enjoyed the autonomy and independence that comes with "being your own boss." Along with that autonomy and independence came the responsibility to ensure that required workers' compensation coverage was provided for all installers. Traditionally, that responsibility rested with the independent contractors themselves, and not with the retailers.

But in 1996, the Minnesota Legislature changed the rules for who may be considered an "independent contractor" for workers' compensation purposes by adding a section to the Workers' Compensation Act dealing specifically with the employment status of independent contractors working in the commercial building or construction trades, which clearly encompasses our industry.

**The independent contractor statute.** Under this new law – Minn.Stat. § 176.042 – even those individuals who otherwise would clearly qualify as independent contractors under the prior law are nevertheless considered employees, ***unless*** each of nine specific conditions are met. If even one of these nine factors cannot be met, the installer would be considered an employee of the retailer rather than an independent contractor. This would mean that retailers would be ultimately responsible for providing workers' compensation benefits to any such installer who sustains a work-related injury.

If you are unfamiliar with this statute, it would be worth your while to review the attached copy of the statute. You will quickly see that the requirements of this law are very strict. Moreover, the Minnesota courts that have addressed the law have interpreted and applied it in an extremely strict and narrow fashion – so strict that it is difficult to imagine how most of our installer contractors could ever qualify for independent contractor status under the law.

**How are courts applying this law?** In the leading case on this issue, a flooring installer (who had operated for years as an independent contractor) injured his hand on an installation project and sought workers' compensation benefits from the retailer that had hired him. After an initial hearing, a workers' compensation judge determined that the installer qualified as an independent contractor under the nine-factor test set out in the 1996 statute. On appeal, however, the Workers' Compensation Court of Appeals reversed that determination, and held that the installer was an employee of the retailer, and was therefore entitled to receive workers' compensation benefits from the employer and its workers' compensation insurer. That decision was subsequently affirmed (without further opinion) by the Minnesota Supreme Court.

In requiring the retailer to provide workers' compensation benefits, the Court expressed its belief that the 1996 statute was intended to be "a major expansion of workers' compensation coverage in the construction industry." The court held that, to qualify as an "independent contractor," the installer must be "actually running a [construction] business, with the usual trappings associated with business operations." While the Court did not define what those "usual trappings" might be, it did provide some clues, such as: the existence of a store front or some separate facility from which the installer operates; the installer has employees or assistants (as

opposed to the "one-person operation"); the installer has some "significant" investment in facilities or equipment or "significant" recurring liabilities; the installer holds licences to perform the work; the installer advertises his services; the installer independently guarantees or warranties their work. How many of your installers have these qualities? Moreover, even where those facts might be present, the question of who "incurs the main expense" of the work would remain very problematic for our industry, as the Court apparently views the flooring "materials" themselves as an "expense." Since that "expense"is born by the retailer, not the installer, it is difficult to imagine a situation in which one of our traditional installers could be considered an independent contractor, rather than an employee.

**The potential impact on your business.** So what does all of this mean for your business? It means that you could be responsible for providing workers' compensation benefits – and, therefore, workers' compensation insurance coverage – to your installers. This could lead to very significant cost increases. In our experience, workers' compensation insurance rates can range from 12% to 25% of wages paid, depending on the type of subcontractor. Hence, if you pay a particular installer $100,000 per year, the cost of providing workers' compensation insurance coverage for that contractor could be as high as $25,000 per year.

Many floor covering retailers have long required installers to provide certificates of workers' compensation insurance. But as many of you know, these installers (in order to save premium costs themselves) often elect to provide coverage only for their employees (if any, and often there are none) and not themselves. Under the law discussed above, such an installer would be entitled to recover benefits from the retailer if he or she is determined to be an "employee" of the retailer under the law. Hence, even where you can produce a certificate of insurance for an installer, it is possible that your workers' compensation insurer may require you to provide coverage for the installer, which would likely result in a significantly increased premium.

While it is still somewhat unclear as to how the insurance carriers will ultimately address this situation, some of our members are reporting that this issue is being raised during annual premium audits performed by their insurance carriers. Moreover, there was a bill introduced during the last legislative session that was designed to specifically prohibit employers from "misrepresenting the nature of its employment relationship with its employees," and from requiring or requesting an employee to enter into "an agreement that results in a misclassification of the employee as an independent contractor." While this bill did not pass during the past session, it may be reconsidered next session, and it raises the possibility that government agencies may be more closely scrutinizing the nature of your relationship with your installers.

**How can the floor covering industry respond to the law?** So what is the problem with simply paying the premiums associated with providing workers' compensation coverage? Can't we just roll this cost into the labor prices charged to our customers? That may be one option, but many of our members have expressed concern over whether such a policy would be consistently applied by all retailers and installers, which gives rise to concerns over unfair competition in the market. Other members have raised concerns over whether providing workers' compensation coverage to installers might cause the I.R.S. to require that we also treat these installers as "employees" for tax purposes.

What other options do we have? One option that our members have considered is to make the Legislature aware of how this law impacts our industry, and to consider some changes to the statute. To that end, a small group of retailers hired a lobbyist to explore that issue during the last legislative session. While those initial efforts were unsuccessful in bringing about any change, this was, of course, a highly unusual legislative session. Our Association continues to believe that our representatives in the Legislature need to be made aware of how this law is impacting our industry and affecting your business.

A grass-roots campaign from floor covering retailers – including letters, faxes and e-mails to your state representative and senator – would be an effective way of sending this message. Consider the potential impact of this law on your business – can you afford to absorb potentially tens of thousands of dollars in increased workers' compensation premiums? Then contact your legislators. Make them aware of this issue. Invite them to contact you for additional details on the practical impact of this law. Urge others to do the same. If you need assistance in identifying your representatives, please contact us, and we will be happy to help.

Web sites are: www.senate.leg.state.mn.us and ww3.house.leg.state.mn.us.

If you have any questions regarding this important issue, we encourage you to contact the Minnesota Floorcovering Association for more information. And we urge you to take action now on an issue that we believe will have a very significant impact on the retail floor covering industry in general, and your business in particular. Thank you.

Sincerely,

The Board of Directors
Minnesota Floorcovering Association

**176.042 Independent contractors.**

Subdivision 1. **General rule; are employees.** Except as provided in subdivision 2, every independent contractor doing commercial or residential building construction or improvements in the public or private sector is, for the purpose of this chapter, an employee of any employer under this chapter for whom the independent contractor is performing service in the course of the trade, business, profession, or occupation of that employer at the time of the injury.

Subd. 2. **Exception.** An independent contractor, as described in subdivision 1, is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;

(2) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year;

(3) operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;

(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;

(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under contracts to perform work or service;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

HIST: 1996 c 374 s 3; 2001 c 123 s 1 

JEFFREY E. THOMAS, Employee/Appellant, v. CARPET DESIGN CTR. and GENERAL CASUALTY INS. CO., Employer-Insurer, and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor.

WORKERS= COMPENSATION COURT OF APPEALS
OCTOBER 16, 2000

*HEADNOTES*

EMPLOYMENT RELATIONSHIP - INDEPENDENT CONTRACTOR. Where the requirements of Minn. Stat. ' 176.042, subd. 2, were not all met, the compensation judge erred in concluding that the petitioner, an independent contractor in floor installation, was not an employee of the respondent pursuant to Minn. Stat. ' 176.042, subd. 1.

Reversed.

Determined by Wilson, J., Johnson, J., and Rykken, J.
Compensation Judge: Paul V. Rieke.

OPINION

DEBRA A. WILSON, Judge

Jeffrey Thomas appeals from the compensation judge=s decision that he is ineligible for workers= compensation benefits for his work injury because he was an independent contractor under the pertinent statute and rules. We reverse.

BACKGROUND

In 1992, Jeffrey Thomas began working as a salaried salesperson for Carpet Design Center[1] [Carpet Design], a floor covering business that also sells lighting and ceramic tile. With regard to floor covering, Carpet Design has Amajor accounts@ with forty or fifty home builders, who send their customers to Carpet Design, with flooring allowances, to choose floor coverings for installation in their new homes. On occasion, Carpet Design works directly with the builders and also handles remodeling projects.

According to Paul Reinertson, president and co-owner of Carpet Design, at least 85% of Carpet Design=s floor covering business includes installation, which is performed by any of the fifteen to forty installers used by Carpet Design for that work. Mr. Reinertson testified that it was his intent to use independent contractors for flooring installation in order to ensure profitability. The installation work is scheduled by Carpet Design to meet the needs of the builders. The installers are generally paid by the Asquare@ (square foot) for flooring actually installed, with additional hourly pay for certain preparation work, such as grinding or sanding plywood floor seams. Carpet Design apparently sets the pay rates based on what competitors are paying, but in some cases installers have their own price lists. Flooring installers use their own hand tools, saws, and staples, and they generally use their own vehicles to transport the flooring itself from Carpet Design=s warehouse to the job site. After completing the work, the installers submit invoices to Carpet Design, which pays the installers

# LAKES & PLAINS

Transcript of Telephone Recording

Between Jeffrey Miller and Nathan

Transcribed March 10, 2005

By Patricia Martinez, Court Reporter

BY MR. MILLER:

Q. So how long have you -- You've worked for M & M out of Chaska, right?

A. Yeah.

Q. And they subcontract from Home Value?

A. Yep.

Q. Okay. So I guess -- Why don't you sub directly from Home Value?

A. Uh --

Q. Did M & M set you up to sub out of there or what?

A. Yeah, pretty much.

Q. Okay. How long have you been subcontractor for M & M?

A. Uh, since July of '02.

Q. July of '02. Okay. Did you know someone at M & M that got you into it or --

A. Yeah, actually my friend's buddy's parents actually own the company.

Q. Oh, who's that?

A. Gary Morris.

Q. Gary Morris?

A. Yeah, Patty Morris.

Q. Okay. Gary Morris. Okay. Have I ever talked to you on the job site before?

A. I don't think so.
Q. Okay. So that's Gary Morris, the big softball player, huh?
A. Yeah.
Q. Okay. So you working for him today or-
A. Yeah, but not here.
Q. Oh, is he on the job site or no?
A. No, he's not.
Q. So I guess, how does it work? Does he pay you a certain -- Does he pay you by the yard or what?
A. I just get paid by the hour.
Q. You get paid by the hour?
A. Yeah.
Q. Okay. How much is he paying you by the hour?
A. $18 an hour.
Q. $18 an hour. And are you responsible for your own workers' comp and stuff like that or does he pay for that?
A. Yeah, I'm responsible. I'm responsible for everything.
Q. So supplies and stuff like that?
A. Well, supplies, they cover all that.
Q. Oh, he pays for that?
A. Yeah, but other than that there's no like benefits or anything.

Q. No benefits, okay. So does he send you out by yourself or what?

A. Sometimes.

Q. Okay.

A. Sometimes it's just a few people.

Q. A couple people, who else works there with you?

A. Uh, I don't know all the names.

Q. How many guys are -- How many guys are working there for Gary?

A. Ten maybe.

Q. Ten guys. Are they all paid by the hour, too?

A. Yeah.

Q. They're paid by the hour. So they're not paid by the yard?

A. No.

Q. Okay. Do they have a store front, M & M Floor Covering or he just runs it out of his house?

A. Out of his house.

Q. Okay. So I guess you heard about us and your interested in joining. What reason are you interested in joining us for?

A. I was hoping I could find a better job.

Q. Better job as far as money or what?

A. Yeah, we work odd hours all the time. I want a 40-hour week.

Q. Oh, you're not working 40 hours a week?

A. No.

Q. Huh.

A. Well, it could be one week. The next week it's like 28, the next week, 30. It's all different.

Q. So does he supply you with a van or --

A. Nope.

Q. You've got your own van?

A. I've got my own vehicle. It's not a van.

Q. Okay. So he delivers the job -- jobs and the supplies and then you go to wherever he tells you to go?

A. Yep.

Q. So how do you do that? Does he give you a work order or what, or do you just call him everyday?

A. We get a schedule at the beginning of the week and we go to a house according to the schedule.

Q. So he gives you a schedule of where to go every -- at the beginning of the week for the entire week?

A. Yep.

Q. Oh, and sometimes you're with other guys or what?

A. Yep.

Q. You never know who you're going to be with or does he have that on the schedule, too?

A. Yeah, it's usually on the schedule.

Q. Yeah. Well, you have a unique situation working. So what, does he take taxes out of that 18 bucks an hour?

A. Nope.

Q. He doesn't take taxes out of it. So you're responsible to pay your own taxes?

A. Yep, I'm pretty much my own company I would say. That's how they work it.

Q. And so you have to pay your own taxes out of the 18 bucks an hour and he just gives you a lump sum check?

A. Yep.

Q. Did you get stung by the IRS?

A. Not yet.

Q. Not yet. Are you behind or aren't you doing your taxes?

A. I figured it came out of there last year, but this year it's not looking so good so far.

Q. It's not looking very good?

A. Nah.

Q. Well, if you don't mind my me asking what did you make in the last few years? What did you make in --

about?

A. Oh, man, last year I made like 30 thousand.

Q. So you made 30 thousand and then after -- after taxes, how much did you make?

A. Um, I don't know.

Q. Oh.

A. I couldn't tell you offhand.

Q. Okay. Does Gary -- Does Gary supply you with tools or --

A. Yeah, he gives us -- Well, he supplies us with tools, but I got some of my own, too.

Q. You've got some of your own, but he gives you the tools?

A. Yeah.

Q. Oh, I see. Well, I can tell you what you could do is we have informational meetings every second and fourth Wednesday of the month. And we do have contractors that are looking to hire people at certain times of the year. And I'm not exactly sure where they're at. I could talk to a couple of people and definitely get back to you. But would you be interested in coming to an informational meeting?

A. I could do that.

Q. Okay. Do you have a pen and paper by chance or do you want -- Do you want me to call at a later time

or do you have one handy?

A. I got one. Let me turn off the vehicle there.

Q. Okay. Where are you working today?

A. Chanhassen.

Q. Oh, Chanhassen. Are you doing some big homes out there or what?

A. Yeah, Lundgren homes.

Q. Oh, you're doing the Lundgren homes?

A. Yeah.

Q. I see. Pretty big development?

A. Yeah, I guess.

Q. Yeah, so did you start brand new and -- I mean, did Gary teach you everything you know or --

A. Pretty much.

Q. Are you working with someone today or no?

A. Yeah, there's a few people here. All right. I got it.

Q. Okay. You could come to an informational meeting at 700 Olive Street.

A. Yeah.

Q. And that's in St. Paul. And do you live out that way or --

A. No, I live in Belle Plaine.

Q. Wow, I see. So basically the meeting starts

at 5:00 on the second and fourth Wednesday of the month. What you do is you come way over to St. Paul from way over in Belle Plaine. You would come 94 or I don't know if you would want to come up 35E.

A. All right.

Q. Which one would you like to do, 35E?

A. Yeah.

Q. Yeah, why don't you take 35, get on 35E from down there somewhere, and go north. And when you come up near St. Paul, you'll probably go underneath 94 where the spaghetti junction is.

A. Uh-huh.

Q. And when 35E starts going north out of downtown, you want to get off at Pennsylvania. It's the first exit as you go north out of downtown on 35E.

A. All right.

Q. And then you're going to take a right and go east. And there's a couple stop signs right there, so you'll just go east and when you come up -- You got that, go east?

A. Yep.

Q. You'll come up to an intersection where you can either stay to the left and go straight over a bridge or take a right on Olive Street, and you want to take a right on Olive Street. And that blue building or

the concrete building with the blue banding on the left-hand side, you'll come down to the southern main entrance. Is there other guys interested in becoming, you know, trying get into the union or not really?

A. Uh, not really. I don't know. I haven't really talked to anybody.

Q. So who got you interested in it?

A. A buddy of mine, he's in the electrical union and I was talking to him about it.

Q. Yeah. I mean, right now our floor coverers, you know, are making pretty good money. You know, my brother is an installer in the field. And last year, he made about $57,000 with full medical coverage. And how old are you, Nathan?

A. 24.

Q. 24. Yeah, I got into it when I was in my early 20's also. But last year my brother made about $57,000, and he's got medical insurance. And at 24, you really don't care about medical insurance. At least I didn't.

A. It would be nice.

Q. Yeah, I mean, it's expensive. It's expensive stuff. You've got medical insurance, dental insurance, eye glasses, stuff like that. A pension so when you retire that you'll have something saved up so that you

can still substain the same type of life that you had before. So it's a pretty good opportunity. So what -- I mean, does he consider you a journeyman after -- I mean, your skill level. I mean, does he have you doing everything from stretching to seaming to everything or --

A. Not yet, I haven't done any seaming yet.

Q. Okay. So what does he have you basically doing, stripping and padding and help layout?

A. Yeah, stripping, padding, layout, trim, maybe stretch some drop room.

Q. I see. So you would probably be going through our apprenticeship school. And actually our entry-level apprenticeship level is about 13 bucks an hour on the check with complete medical coverage and benefits right now. So you're really making about $20.74 an hour. And every six months, if you work a thousand hours, you are guaranteed a raise. And it graduates until you hit the 27 bucks an hour with benefits which comes out to about 30, 37 bucks an hour total package. So it's a pretty good deal. I mean, you know, you have your health insurance coverage and your pension.

I mean, I was one time at your age and I would have just wasted the money on snowmobiles and

motorcycles and big trucks, so I know how that is. I'm still a boy at heart because I still have toys.

A. That sounds about right.

Q. Yeah, snowmobiles. And now I have kids so I don't snowmobile as much, so now I have a Harley. But yeah, it's really easy to spend money and not put anything away so when you retire that, you know, you can have some money there. And you know, that's what you learn to appreciate after a while when you turn 40 like I did just last year. You start trying to figure out, "Oh, how am I going to retire?" And I'm glad they put money away for me because I really wasn't interested in retirement, you know, when I was your age either. It's like, "Yeah, that's way down the road, don't need to worry about it."

But yeah, why don't you -- I'll try to keep in contact with you and hopefully we can see you at a meeting or I can see if anyone's looking for an apprentice, to hire an apprentice, so. All right, Nathan?

A. All right.

Q. Hey, thanks for calling. And sorry it took me so long to get back to you.

A. All right. Thanks.

Q. Yeah, bye.

REPORTER'S CERTIFICATE

I, Patricia Martinez, Court Reporter in and for the County of Hennepin, State of Minnesota, hereby certify that the preceding transcript consisting of pages 1 through 13 constitutes a true and complete transcription of an audio recording to the best of my ability.

Date:

Patricia Martinez
Court Reporter
Notary Public, Commission Exp. 1/31/2010

New York State
ASSEMBLY
Sheldon Silver - Speaker

Monday, April 4, 2005

# Bill Summary - A03644

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See Bill Text

## A03644 Summary:

SAME AS No same as

SPONSOR John

COSPNSR Nolan

MLTSPNSR

Add S44, Lab L
Establishes a task force within the department of labor to study employment classification and misclassification with respect to a worker being an employee or an independent contractor and report thereon.

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## A03644 Actions:

02/03/2005 referred to labor

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## A03644 Votes:

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## A03644 Memo:

TITLE OF BILL: An act to amend the labor law, in relation to establishing a task force to study employment classification and misclassification

PURPOSE OR GENERAL IDEA OF BILL:

The bill establishes a task force within the Department of Labor to study employment classification and misclassification.

SUMMARY OF SPECIFIC PROVISIONS: The task force shall consist of fourteen members. The Commissioner of Labor and the Dean of the New York State School for Industrial Relations shall be appointed co-chairs without voting authority. Three members shall be appointed by the Governor

including a representative from the Business Council as well as a representative from the NYS AFL-CIO. The Comptroller shall recommend three members. The speaker of the assembly as well as the Temporary President of the Senate shall recommend two members each. Finally, the Minority Leaders in both the Assembly and the Senate shall recommend one member each.

The task force shall hold regional meetings open to those invited or those wishing to speak on the issues being discussed. Vacancies shall be filled in the manner in which they were appointed and seven members shall make a quorum. The task force is authorized to use a number of agencies and public entities for assistance purposes. The task force must produce a report by May 1, 2003, which shall be distributed to the Governor, the Speaker of the Assembly, the Temporary President of the Senate, and the Chairs of the Senate and Assembly Labor Committees.

JUSTIFICATION:

The intent of this legislation is to correct the growing problem in our state regarding the classification and misclassification of workers as either employees or independent contractors. The ramifications of employment classification or misclassification are many, and employees` eligibility for unemployment insurance, workers` compensation and disability benefits are implicated. A study of this problem is needed so that the status of our state`s workers is fairly and justly determined.

PRIOR LEGISLATIVE HISTORY:

A.5339 of 2001-02; labor
A.8161 of 2003-04; labor

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.

New York State ASSEMBLY
Sheldon Silver - Speaker

**Monday, April 4, 2005**

# Bill Text - A03644

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See Bill Summary

STATE OF NEW YORK

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3644

2005-2006 Regular Sessions

IN ASSEMBLY

February 3, 2005

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Introduced by M. of A. JOHN, NOLAN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing a task force to study employment classification and misclassification

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. It has become increasingly clear that there is a growing problem in our state regarding the classification and misclassification of workers as either employees or independent contractors. The ramifications of employment classification or misclassification are many, and employees` eligibility for unemployment insurance, workers` compensation and disability insurance are implicated. There have been instances where certain employers have forced their employees to sign agreements which classify them as independent contractors in order to keep working. The situation is becoming increasingly common in certain industries which are vital to our economy including the construction industry and the entertainment field. Conversely, employers argue that many workers wish to be considered independent contractors.

Given the extent of this controversy and the profound implications of employment classification and misclassification, the legislature declares that a comprehensive study should be undertaken to receive information, examine the many perspectives of the issue and to ensure that the status of our state`s workers be fairly and justly determined.

S 2. The labor law is amended by adding a new section 44 to read as follows:

S 44. TASK FORCE TO STUDY EMPLOYMENT CLASSIFICATION AND MISCLASSIFICATION. 1. THERE SHALL BE ESTABLISHED WITHIN THE DEPARTMENT A TASK FORCE TO STUDY EMPLOYMENT CLASSIFICATION AND MISCLASSIFICATION. THE TASK FORCE SHALL CONSIST OF THREE MEMBERS APPOINTED BY THE GOVERNOR, ONE OF WHOM SHALL BE A REPRESENTATIVE OF THE BUSINESS COUNCIL, AND ONE OF WHOM SHALL

BE A REPRESENTATIVE OF ORGANIZED LABOR AFFILIATED WITH THE NEW YORK

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

LBD07277-01-5



STATE FEDERATION OF AFL-CIO; TWO MEMBERS APPOINTED ON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY AND ONE ON THE RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY; TWO MEMBERS APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND ONE UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE; AND THREE UPON THE RECOMMENDATION OF THE COMPTROLLER.

2. THE COMMISSIONER AND THE DEAN OF THE NEW YORK STATE SCHOOL FOR INDUSTRIAL AND LABOR RELATIONS SHALL BE APPOINTED CO-CHAIRS. THE CO-CHAIRS SHALL SERVE EX OFFICIO WITHOUT VOTING AUTHORITY, BUT WITH THE AUTHORITY TO CONVENE MEETINGS.

3. THE TASK FORCE SHALL HOLD REGIONAL PUBLIC HEARINGS AND ROUND-TABLES, WHICH SHALL BE OPEN TO THOSE INVITED AND THOSE PETITIONING TO SPEAK ON THE PROBLEMS WHICH EMPLOYEES AND EMPLOYERS FACE AS A RESULT OF EMPLOYMENT CLASSIFICATION OR MISCLASSIFICATION. THE TASK FORCE SHALL RECEIVE INFORMATION FROM LABOR UNIONS, BUSINESS GROUPS, ADVOCACY GROUPS FOR WORKERS, COMMUNITY GROUPS AND OTHER INTERESTED PARTIES, INCLUDING BUT NOT LIMITED TO, THE BUSINESS COUNCIL OF NEW YORK, THE RETAIL COUNCIL OF NEW YORK, THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, THE CORNELL INSTITUTE FOR WOMEN AND WORK AND THE NATIONAL EMPLOYMENT LAW PROJECT.

4. VACANCIES IN THE MEMBERSHIP OF THE COUNCIL AND AMONG ITS OFFICERS SHALL BE FILLED IN THE MANNER PROVIDED FOR ORIGINAL APPOINTMENTS. ANY FINDING, RECOMMENDATION OR CONCLUSION RENDERED BY THE COUNCIL SHALL REQUIRE THE CONCURRENCE OF AT LEAST SEVEN MEMBERS.

5. TO THE MAXIMUM EXTENT FEASIBLE, THE COUNCIL SHALL BE ENTITLED TO REQUEST AND RECEIVE AND SHALL UTILIZE AND BE PROVIDED WITH SUCH FACILITIES AND RESOURCES OF ANY COURT, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, OR AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AS IT MAY REASONABLY REQUEST TO CARRY OUT PROPERLY ITS POWERS AND DUTIES. THE DEPARTMENT AND THE WORKERS` COMPENSATION BOARD SHALL DESIGNATE APPROPRIATE PERSONNEL TO ASSIST THE TASKFORCE.

6. STATE AGENCIES ARE PROHIBITED FROM GRANTING OR ACTING ON WAIVERS REGARDING INDEPENDENT CONTRACTOR STATUS FOR THE PURPOSES OF THE APPLICATION OF UNEMPLOYMENT INSURANCE, WORKERS` COMPENSATION OR ANY OTHER ACTIVITY UNDER THEIR JURISDICTION.

7. THE TASK FORCE SHALL REPORT ITS FINDINGS ON OR BEFORE MAY FIRST, TWO THOUSAND SIX IN A REPORT TO BE DELIVERED TO THE GOVERNOR, TO THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE, AND TO THE CHAIRS OF THE SENATE AND ASSEMBLY LABOR COMMITTEES.

S 3. This act shall take effect immediately.

.SO DOC A 3644 *END* BTXT 2005

# Misclassification of Employees

Misclassification occurs when an employer treats a worker who would otherwise be a waged or salaried employee as independent contractors (self employed). Or a worker who should be receiving a W-2 for income tax but instead receives a 1099 Misc. income form.

**Why would an employer misclassify an employee? To avoid paying:**

- Federal payroll taxes, including the 7.65% Social Security and the federal unemployment insurance tax.
- Local and City Taxes.
- Workers Compensation premiums
- State unemployment insurance premiums

**What does the Misclassified Worker Lose?**

- Job security
- Employer tax contributions to employment benefits
- Unemployment insurance benefits
- Workers' Compensation benefits
- Protection of federal and state employment standards laws
- Overtime pay

**What do we all Lose?**

- FICA tax dollars, which are contributed to Social Security
- Tax revenues at the federal, state and local levels
- Tax dollars for schools, infrastructure, education and city services
- Child Support payments from parents whose income is not reported, or subject to withholding taxes.
- Small businesses shoulder a disproportionate tax burden
- Legitimate, legal tax paying employers suffer from an unfair trade advantages
- Under funding of the Dept. Of Labor and Industry.

# The Social and Economic Costs of Employee Misclassification in Construction

Françoise Carré, Ph.D. and Randall Wilson
Center for Social Policy
McCormack Graduate School of Policy Studies
University of Massachusetts Boston

A report of the

**Construction Policy Research Center**

**Labor and Worklife Program, Harvard Law School**
**and**
**Harvard School of Public Health**

Elaine Bernard, Ph.D. and Robert Herrick, Sc.D. Principal Investigators

December 17, 2004

This project was funded by the Center to Protect Workers' Rights in Silver Spring, MD.
through a collaborative grant from the National Institute of Occupational Safety and Health.

# I. Summary Findings

With this study, a cross disciplinary team of the Center for Construction Policy Research has taken a first and significant step in documenting employee misclassification in the Massachusetts construction industry. This report documents the dimensions of misclassification and its implications for tax collection and worker compensation insurance.

Misclassification occurs when employers treat workers who would otherwise be waged or salaried employees as independent contractors (self employed). Or as one report commissioned by the U.S. Department of Labor put it, misclassification occurs "when workers (who should be) getting W-2 forms for income tax filing instead receive 1099- Miscellaneous Income forms."[1]

Forces promoting employee misclassification include the desire to avoid the costs of payroll taxes and of mandated benefits. Chief among these factors is the desire to avoid payment of worker compensation insurance premiums.

Employee misclassification creates severe challenges for workers, employers, and insurers as well as for policy enforcement. Misclassified workers lose access to unemployment insurance and to appropriate levels of worker compensation insurance. Also, they are liable for the full Social Security tax. They lose access to employer-based benefits as well. For employers, the practice of misclassification creates an uneven playing field. Employers who classify workers appropriately have higher costs and can get underbid by employers who engage in misclassification. The collection of Unemployment Insurance tax, and to some degree that of the income tax, are adversely affected by misclassification. Worker Compensation insurers experience a loss of premiums.

Using several years of de-identified data on unemployment insurance tax audits made available by the Massachusetts Division of Unemployment Assistance (DUA), we have developed estimates of the dimensions of misclassification in the state and particularly in the construction industry.

Because this study relies on Unemployment Insurance tax audits to develop estimates of the dimensions and impacts of misclassification, it addresses primarily the forms of misclassification that can be documented. It does not fully capture the scope of underground economy activities in construction and other sectors.

## Employee Misclassification in Massachusetts

- During the years 2001-03, *at least one in seven, or 14%, of MA construction employers are estimated to have misclassified workers* as independent contactors. This conservative estimate translates into a minimum of 2,634 construction employers statewide.[2] Across all industries[3], 13% of employers were found to under-report worker wages and UI tax liability to the Commonwealth and thus to have misclassified workers. This represents about 26,000 employers statewide. This conservative estimate is based on audits of employers that, while not selected by fully statistically random methods, are considered random, or non-targeted, audits in common auditing practices (Planmatics 2000).

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[1] Lalith de Silva et al. 2000. *Independent contractors: prevalence and implications for Unemployment Insurance programs.* Planmatics, Inc., Prepared for US Department of Labor Employment and Training Administration. Planmatics, 2000. (Hereafter, Planmatics 2000.)

[2] The yearly number of establishments averaged over 2001-03 was 18,803 in construction and 194,315 across all industries.

[3] The "all industries" category includes Construction as well.

- *Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of MA construction employers.* Projecting this rate to actual DUA establishment counts, we estimate that up to 4,459 construction employers are misclassifying workers statewide. Construction employers appear to engage in misclassification more frequently than the average of all employers. Across all industries, up to 19% of employers misclassified at some point over the period, amounting to about 36,500 employers. This less conservative method includes a mix of random audits and of audits explicitly targeted based on past behavior (and thus more likely to uncover misclassification).

- *When construction employers misclassify, they do so extensively.* A key measure of misclassification is the degree or severity of its impact *within* employers who misclassify. This measure indicates that *misclassification is a common occurrence rather than an isolated incident in construction companies where misclassification occurs.* According to our low estimate, 4 in 10 workers are misclassified in construction employers found to be misclassifying in 2001-03. The severity of impact of misclassification found among construction employers is one of the three highest among industrial sectors.

- When we consider the workforce of all employers (those that misclassify and those that do not), *at least one in twenty (5.4%) construction workers in MA is estimated to be misclassified as an independent contractor during 2001-03, according to our conservative estimate.* The *extent* of misclassification is slightly higher in construction than the average across all industries (4.5%). And as we look at larger pools of data that include audits that are explicitly targeted based on past record, the extent of workers misclassified as independent contractors goes up to 11% in construction.

- We estimate that the actual number of workers affected across the Commonwealth ranges from almost 7,478 to about 15,790 construction workers.[4] For the workforce as a whole, it could range from about 125,725 to 248,206.

- While misclassified individuals lose out on unemployment insurance, the unemployment insurance system is adversely affected as well. We estimate that from $12.6 million to $35 million in unemployment insurance taxes are not levied on the payroll of misclassified workers as should be. Of these amounts, from $1.03 to $3.9 million are due to misclassification in construction.

- At income tax time, workers misclassified as independent contractors are known to under-report their personal income; therefore, the state experiences a loss of income tax revenue. Based on an estimate that 30% of the income of misclassified workers is not reported, we roughly estimate that $91 million of income tax are lost. Of these, $4 million are lost due to misclassification in construction. Based on an estimate that 50% of misclassified worker income goes unreported, a rough estimate of income tax loss amounts to $152 million of revenue. Of these, $6.9 million are due to misclassification in construction.

- The worker's compensation insurance industry loses on premium collection, a significant issue if, as is reported in previous studies[5], misclassified workers are surreptitiously added onto companies' worker compensation policies *after* they are injured. For these workers, benefits are paid out even though premiums were not collected. We estimate that up to $91 million of worker compensation premiums are not paid for misclassified workers. Of this amount, $7 million are not paid due to construction misclassification.

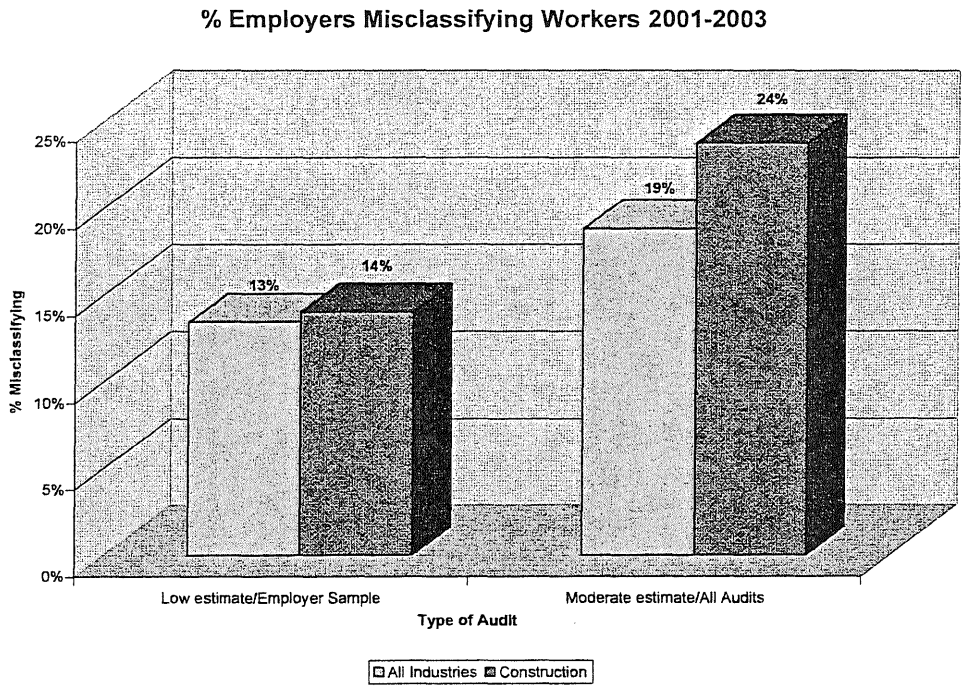
- The prevalence of misclassification has increased over the years since 1995 and so has the severity of impact. This is true for construction and across all sectors. Our low estimate for the

[4] The yearly number of workers over the period 2001-03 was 138,736 in construction, and 2,797,203 across all industries.
[5] Planmatics , 2000.

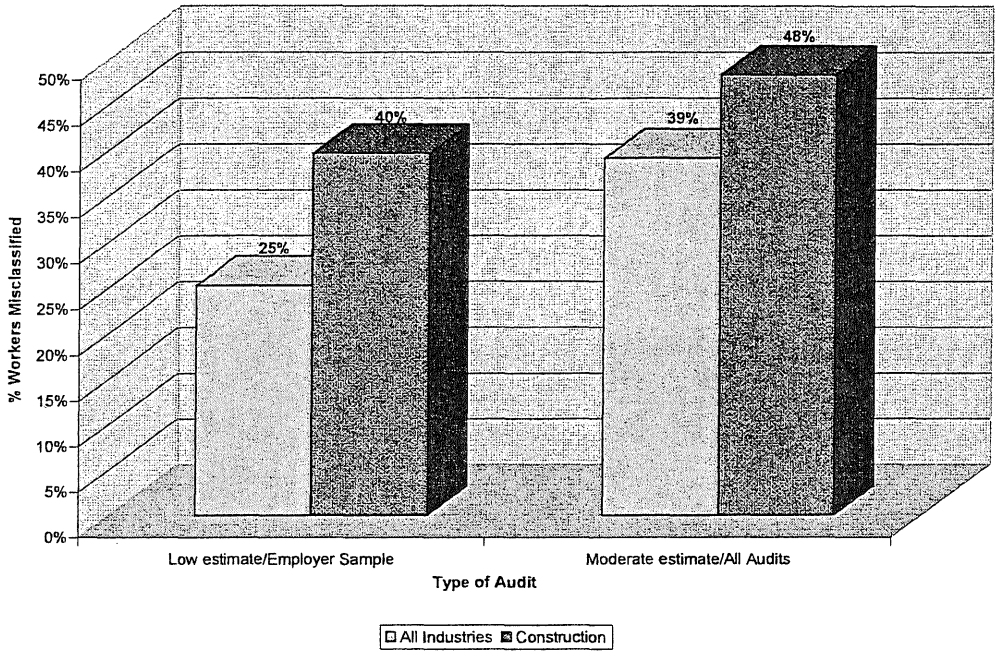
percent of construction employers found to be misclassifying was 10% for 1995-97 and 11% for 1998-2000 as compared to 14% for the 2001-03 period. The low estimate for all industries combined was 8% for the period 1995-97 and 11% for 1998-2000 as compared to 13% for the most recent period. The severity of impact, that is, the percent of workers misclassified *in the workforce of employers found to be misclassifying* appears to have increased as well.

- We believe that worker misclassification is a compelling problem requiring attention. It has significant consequences for workers, employers, insurers, and for tax revenues. We strongly recommend that a study employing both business and individual income tax returns be conducted with the Department of Revenue. It would provide an even more accurate measure of the tax revenue implications of misclassification. Workers, businesses, revenue collection agencies, and policy analysts all stand to benefit from better documentation of the impacts of misclassification.

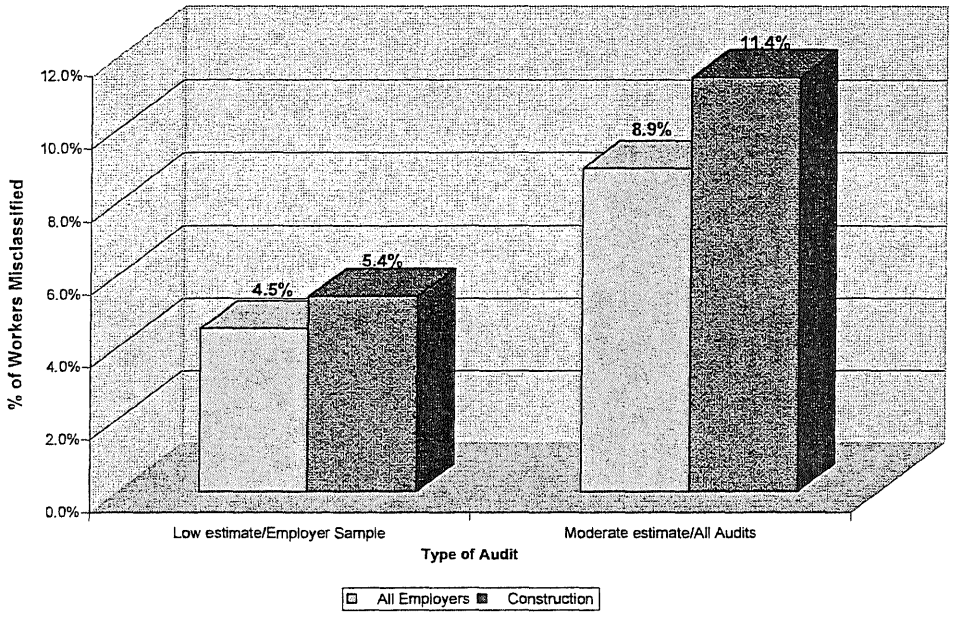
# Facts at a Glance



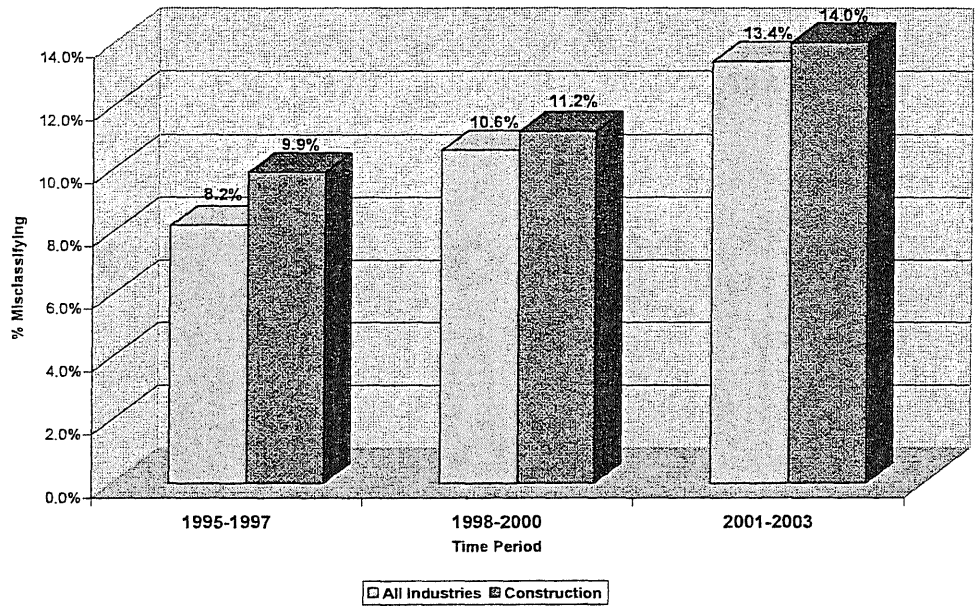
## % Workers Misclassified in Misclassifying Employers



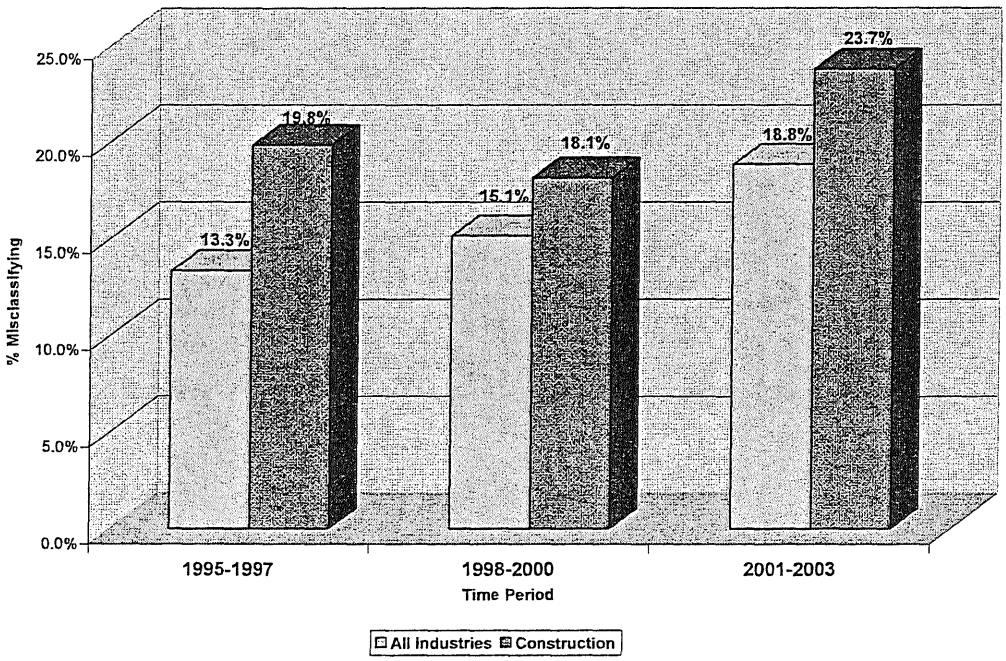
## Extent of Workers Misclassified 2001-2003



## Misclassification Rate by Time Period: Low Estimate/Employer Sample




## Misclassification Rate by Time Period: Moderate Estimate/All Audits



## Acknowledgements

This project received funding from the National Institute of Occupational Safety and Health through the Center to Protect Workers' Rights in Silver Spring, MD.

The authors wish to thank the Massachusetts Division of Unemployment Assistance (Department of Labor and Workforce Development). We are particularly grateful to members of the Division of Unemployment Assistance Revenue Services and Revenue Audits departments who provided access to de-identified audit data, prepared data files, and answered our numerous queries about variable definitions.

The authors also thank the members of this project for contributing to the implementation of the research and the interpretation of the results: Elaine Bernard, Ph.D. and Robert Herrick, Sc.D., Principal Investigators, as well as Mark Erlich of the United Brotherhood of Carpenters Local 40 and Prof. David Weil, Economics, Boston University and Harvard Kennedy School of Government. We also thank Lorette Baptiste and Dr. John Trumpbour at the Harvard Labor and Worklife Program.

# II. The Problem

*Misclassification occurs when employers treat workers who would otherwise be waged or salaried employees as independent contractors.* Or, as one report commissioned by the U.S. Department of Labor put it, "when workers (who should be) getting W-2 forms for income tax filing instead receive 1099- Miscellaneous Income forms."[6] In practice, these workers must take out their own taxes for Social Security and Medicare, rather than having the employer withhold them. But determining who is an employee, and who is a contractor, is sometimes far from simple. The distinction is complicated by deliberate deceptions on the part of employers (and workers, at times), who seek to avoid paying taxes and meeting other legal obligations to employees and to government. But even when there is no intent to deceive, ambiguities in employment law and relationships can result in misclassification, or make it easier to occur.

*How is misclassification accomplished?* Misclassification usually begins at the point when workers are hired. Practices vary widely. In one common pattern, employers put prospective hires to work as self-employed contractors and, for tax purposes, issue them a "1099" Miscellaneous income form. (Workers are sometimes referred to on construction sites as "1099s" or "subs," as well as independent contractors.) The paperwork does not stop there. Sometimes, before workers can begin employment, employers require them to purchase their own workers' compensation and liability insurance coverage. They are expected to sign certificates of worker's compensation insurance and of liability insurance as well as various other waivers absolving the employer of obligations. (However, because this workers' compensation insurance only covers the holders' employees, it has no value for the worker and only protects the employer in case of tax and/or insurance audits.) Another pattern, at the other end of the spectrum of practices, entails entirely informal arrangements with cash payment and no 1099 tax reporting. This second pattern leaves no documentation; the practice is part of what is termed the "underground economy" and is often paired with the hiring of unprotected, undocumented workers.

*Forces promoting employee misclassification include the desire to avoid the costs of payroll taxes, and of mandated benefits.* One factor stands out, however. A recent Department of Labor-sponsored report found that the "number one reason" for misclassifying workers lies in avoiding

[6] Planmatics, 2000.

payment of workers' compensation insurance premiums and thus escaping workplace injury and disability-related disputes.[7] Driven by increased medical costs, worker compensation costs rose significantly over the past 20 years.[8] And in industries such as construction worker compensation costs are particularly high.

*Misclassification creates severe challenges for workers, employers and insurers as well as for policy enforcement.* For workers who are misclassified, it creates immediate and long term problems. These include the lack of access to unemployment insurance, and to appropriate levels of worker compensation insurance.[9] They entail liability for the full Social Security tax (rather than half for employees). They also include the loss of access to health insurance, and other employer-based social protection benefits. If injury strikes, it can be catastrophic for the worker.

Misclassification creates challenges for compliant employers because it creates an uneven "playing field." Employers who respect the law and classify employees appropriately have a higher wage bill and can get underbid by contractors that do not comply and have lower costs.

Misclassification presents a two-fold challenge for policy implementation. The *enforcement* of labor standards such as health and safety standards, or of wage and hours regulations is made more difficult in contexts where there are misclassified independent contractors. *Tax collection* is affected as well. This includes collection of unemployment insurance tax. It also includes state income tax because independent contractors are known to underreport their income.

The worker compensation insurance industry is also adversely affected by misclassification. Employers with misclassified workers have been known to surreptitiously add uncovered independent contractors, or those with insufficient coverage, back onto a company's worker compensation policy *after* they are injured. Therefore, benefits are paid out to workers for whom an insurance premium has not been paid according to a U.S. DOL commissioned study.[10]

Misclassification presents broader societal costs that are harder to document. For example, workers without health insurance might resort to publicly subsidized emergency medical care. The costs of "uncompensated care pools" make their way into the costs of health and worker compensation insurance. Also, workers who sustain injuries, and have inadequate worker compensation coverage, make use of public assistance when they are unable to work.

A problem of this importance for individual workers, businesses, and government requires thorough documentation. This study of the Center for Construction Policy Research represents a significant step in documenting employee misclassification in the Massachusetts construction industry and in estimating the costs of misclassification in terms of tax loss and worker compensation insurance premium losses. In subsequent work, these researchers will benchmark Massachusetts results with those of other New England states.

Using several years of de-identified data on unemployment insurance tax audits made available by the Massachusetts Division of Unemployment Assistance, we have developed estimates of the dimensions of misclassification in the state and particularly in the construction industry.[11] Using methods established in previous studies in particular one commissioned by the U.S. Department of Labor (Planmatics 2000), we present projections of the costs of misclassification for unemployment insurance, income tax, and worker compensation insurance systems.

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[7] Planmatics, 2000.
[8] This rapid growth has tapered in recent years but the cost of Worker Compensation insurance remains high.
[9] Misclassified workers must establish that they are indeed employees in order to receive unemployment or worker compensation insurance.
[10] Planmatics, 2000, p. 76.
[11] This study analyzes data on private sector employers exclusively.

Unemployment insurance (UI) tax audit records are a key source of information on employee misclassification. When an audit finds workers not covered by UI who should be (and documents under-reported wages), the cause is virtually always misclassification as independent contractor of someone who should be an employee included in the company payroll. Therefore, information from UI tax audits is a useful proxy for employee misclassification.[12]

Because this study relies exclusively on UI tax audits to develop estimates of the dimensions and impacts of misclassification, it addresses primarily the forms of misclassification that can be documented. It cannot fully capture underground economy activities in construction and other sectors.

# III. Dimensions of Misclassification in Massachusetts

## When employers engage in misclassification

During the years 2001-03, at least one in seven, or 14%, of MA construction employers are estimated to have misclassified workers as independent contactors. This conservative estimate translates into a minimum of 2,634 construction employers statewide. Across all industries[13] as a whole, 13% of employers were found to under-report worker wages and UI tax liability to the Commonwealth and thus to have misclassified workers. This represents about 26,000 employers statewide. This conservative estimate is based on audits of employers that, while not selected by fully statistically random methods, are considered non-targeted or random audits in common auditing practices (Planmatics 2000).

*Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of MA construction employers.* Projecting this rate to actual DUA establishment counts, we estimate that up to 4,459 employers are misclassifying construction workers statewide. Construction employers appear to engage in misclassification more frequently than the average of employers across all industries. State wide, up to 19% of all employers misclassify at some point over the period, amounting to about 36,500 employers. This less conservative method includes a mix of random audits and of audits explicitly targeted based on past behavior (and thus more likely to uncover misclassification).

**Prevalence of Misclassification: Percent of Employers Found to Misclassify Workers as Independent Contractors - Massachusetts 2001-2003**

| | Low estimate (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| All Industries | 13% | 19% |
| **Construction** | **14%** | **24%** |

**Estimated Number of MA Employers Found to Misclassify Workers 2001-03**

| | Low estimate (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| All industries | 26,038 | 36,531 |
| **Construction** | 2,634 | 4,459 |

[12] In audit data, "new workers" that is, previously uncovered workers who are to be added to the employer payroll for UI tax purposes are proxies for misclassified workers.

[13] This "all industries" category includes Construction as well.

## Workers affected by misclassification

To understand how workers are affected by misclassification, we use two measures. The first measure is the percent of workers misclassified *within employers found to have misclassified workers.* This first measure is the degree of impact, or *severity of impact,* of misclassification when it occurs. The second is the percent of workers misclassified *among all workers in construction or in the state as a whole* (including employers who misclassify and those who do not). This second measure is the *extent* of misclassification.

1) **Severity of impact of misclassification:**

The measure of severity of impact indicates that in construction companies where misclassification occurs, it is a common occurrence rather than an isolated incident. According to the low estimate, 4 in 10 workers are misclassified in these employers. A less conservative estimate counts 1 in 2 workers affected among construction employers that are misclassifying. The severity of impact measure is higher in construction than average. Construction ranks among the top three industries in the state in terms of severity of impact.

**Percent of Workers Misclassified among Misclassifying Employers: 2001-2003**

| | Low estimate- (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| All industries | 25% | 39% |
| **Construction** | 40% | 48% |

2) **Extent of misclassification**

*Over the 2001-03 period, at least one in twenty (5.4%) construction workers in MA is estimated to be misclassified as an independent contractor during 2001-03.* The *extent* of misclassification is slightly higher in construction than the average across all industries (4.5%). As we look at larger pools of data that include audits that are explicitly targeted based on past record, the extent of workers misclassified as independent contractors increases up to 11.4% in construction.

Based on these proportions, we estimate that the actual number of workers affected across the Commonwealth ranges from almost 7,500 to about 16,000 construction workers. For the workforce as a whole, it could range from about 125,700 to 248,206.

**Extent of MA Workers Misclassified as Independent Contractors**

| | Low estimate- (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| All industries | 4.5% | 8.9% |
| **Construction** | **5.4%** | **11.4%** |

**Estimated Number of MA Workers Misclassified as Independent Contractors**

| | Low estimate- (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| All industries | 125,725 | 248,206 |
| **Construction** | **7,478** | **15,790** |

## The problem worsens over time

The prevalence of misclassification has increased over the years since 1995 and so has the severity of impact. This is true for Construction and across all industries. This trend holds for random, or non-targeted, audits (low estimate/Employer Sample), a group of audits whose characteristics have not changed significantly over time, according to the DUA audit department. The trend also holds for all audits, a group whose composition has changed over time. The mix of audit methods has included a growing share of targeted audits and those are more likely to result in a finding of misclassification.[14] Nevertheless, findings from the random audits present compelling evidence that misclassification is increasing in construction as well as statewide, across all industries.

**Percent of employers found to be misclassifying across time: All Industries**

| | 1995-1997 | 1998-2000 | 2001-2003 |
|---|---|---|---|
| **Low estimate (Employer Sample)** | 8% | 11% | 13% |
| **Moderate estimate (All Audited Employers)** | 13% | 15% | 19% |

**Percent of employers found to be misclassifying across time: Construction Employers**

| | 1995-1997 | 1998-2000 | 2001-2003 |
|---|---|---|---|
| **Low estimate (Employer Sample)** | 10% | 11% | 14% |
| **Moderate estimate (All Audited Employers)** | 20% | 18% | 24% |

Additionally, where misclassification occurs, it is displaying greater severity of impact, meaning that the share of workers affected within misclassifying employers appears to have increased over the years. This pattern holds particularly for Construction.

**Severity of Impact of Misclassification: % of Workers Misclassified in Misclassifying Employers Across Time: Low Estimate (Employer Sample)**

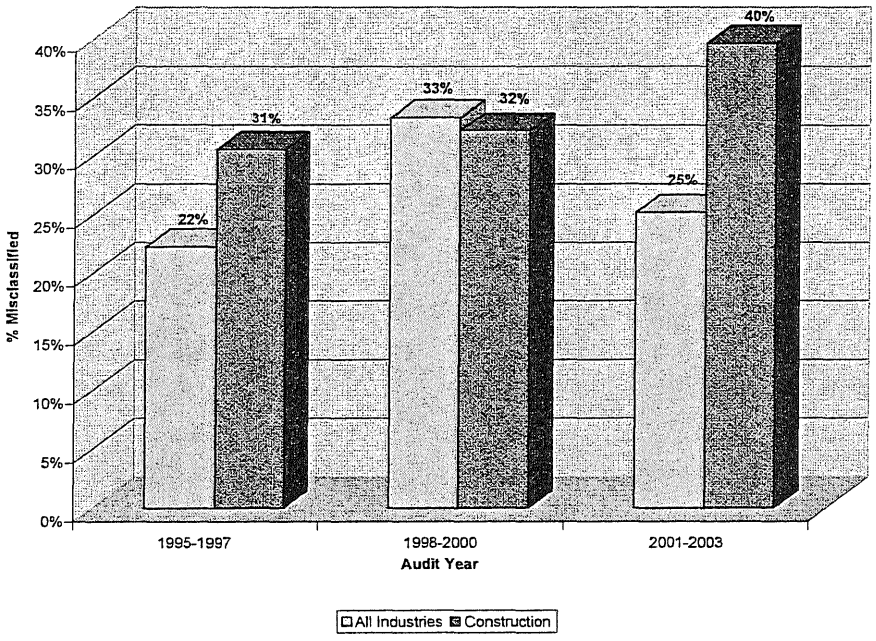
| Audit Year | Construction | All Industries |
|---|---|---|
| 1995-1997 | **31%** | 22% |
| 1998-2000 | **32%** | 33% |
| 2001-2003 | **40%** | 25% |

**Severity of Impact of Misclassification: % of Workers Misclassified in Misclassifying Employers Across Time: Moderate Estimate (All Audits)**

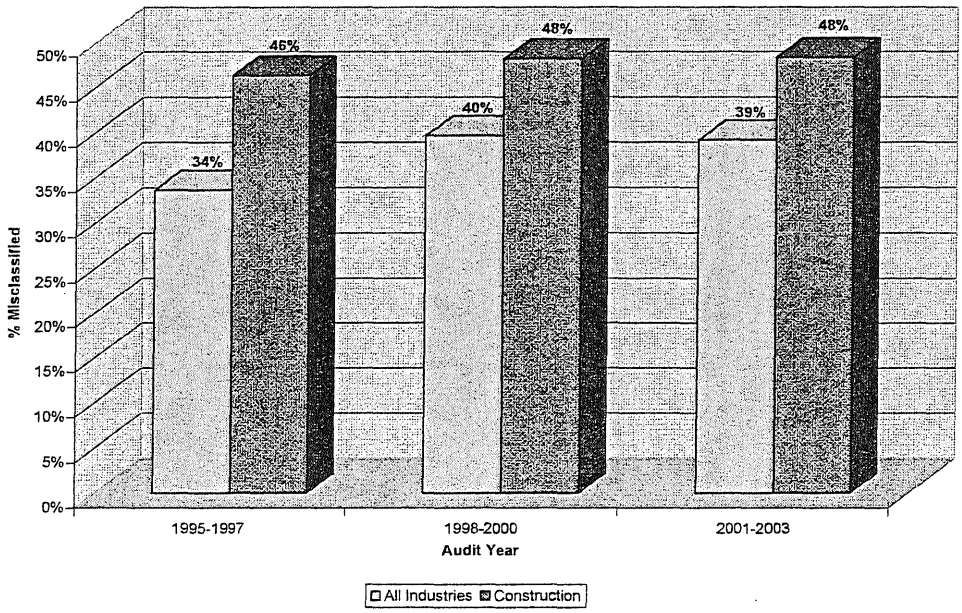
| | Construction | All Industries |
|---|---|---|
| 1995-1997 | **46%** | 34% |
| 1998-2000 | **48%** | 40% |
| 2001-2003 | **48%** | 39% |

[14] As discussed in a later section, targeted audits result from a study of past behavior related to UI tax payment or a contested UI claim.

**% Workers Misclassified in Misclassifying Employers Over Time:**
**Randomly Audited Employers 1995-2004**




**% of Workers Misclassified in Misclassifying Employers Over Time:**
**All Audited Employers 1995-2004**



# IV. Implications of Employee Misclassification in Massachusetts

We estimate the implications of employee misclassification for unemployment insurance tax revenues as well as state income tax revenues. We also estimate the amount of workers' compensation insurance premiums lost due to misclassification. These cost estimates rely upon our *Low Estimates* of prevalence and extent of misclassification (random audits). They are therefore conservative estimates. In fact, our approach is more conservative than that used in the DOL commissioned study (Planmatics 2000) which used a rate of prevalence derived from mixes of random and targeted audits. (Further details on calculation methods are in the Appendix.)

## The implications of employee misclassification for Unemployment Insurance tax

Workers who should be misclassified as employees lose out when work ceases, and they are ineligible for unemployment insurance compensation. In some cases, workers may be unaware that they are ineligible. Some employer audits are triggered when workers file for unemployment insurance and the claim is contested.

In addition to individuals, the unemployment insurance system is also affected by misclassification. The unemployment insurance tax is a payroll tax and, when workers are misclassified, the tax is not levied on their earnings, as it should. We estimate that from $12.6 to $35.1 million of UI tax were lost over the period 2001-03 due to misclassification statewide. [15] Of that amount, from $1 to $3.9 million of UI tax were lost due to misclassification in the construction sector per se. These losses correspond to annualized averages ranging from $3.4 to $11.7 million statewide, and $334,000 to $1.3 million due to construction alone.

For the period 2001 to 2003, we further estimate that the state lost an estimated $83 to $142 in unpaid UI taxes per worker misclassified in all industries, and between $134 and $251 per construction worker misclassified (2001-2003).

**Estimate of UI Tax Impacts from Misclassification, MA 2001-2003[16]**

| | All industries | Construction |
|---|---|---|
| | | |
| Low estimate (Employer sample/Random audits) | $12,629,058 | $1,030,311 |
| Moderate estimate (All audits) | $35,125,471 | $3,961,678 |

To derive these estimates of the size of the UI tax loss, we replicated the method used in the 2000 US DOL commissioned report to assess the impacts of misclassification on UI trust funds. Essentially, the method entails computing the average tax loss per worker due to misclassification for the audit sample and multiplying this amount by the estimated number of workers misclassified statewide.

[15] The low estimate is derived using the percent of workers misclassified in the random/Employer Sample audit results only. The Moderate estimate is derived using the percent of workers misclassified in results from all audit types.

[16] These figures were computed using the methodology of Planmatics, Inc., in a report for the U.S. Department of Labor.

## The implications of employee misclassification for state income tax revenues

At income tax time, workers misclassified as independent contractors are known to under-report their personal income (they are over-represented among taxpers found to owe taxes relative to their share of taxpayers and the problem seems to have worsened).[17] Therefore, the state experiences a loss of income tax revenue. Based on an estimate that 50% of misclassified worker income goes unreported, a rough estimate of income tax loss amounts to $152 million of revenue. Of these, $7 million are due to misclassification in construction. Based on an estimate that 30 % of the income of misclassified workers is not reported, we roughly estimate that $91 million of income taxes are lost. Of these, $4 Million are lost due to misclassification in construction.

This is a broad estimate applying the state's 5.3 percent income tax rate to the unreported share (50% or 30%) of personal income of misclassified workers. We assumed that any standard or itemized deductions were taken fully on the reported share of income and therefore do not apply to the unreported income.[18]

These cost estimates make conservative assumptions about the share of misclassified independent contractor income that goes unreported. A U.S. General Accounting Office report cites IRS reports that self-employed workers operating formally under-report 32 % of their business income[19] but that "informal suppliers" (self employed reporting cash income) do not report 81 percent of their income (GAO 1997, p. 3). Therefore, an estimate of tax loss prompted by employee misclassification could be higher, if higher shares (than 50%) of total income go unreported.

It is also worth noting that we did not compute the loss of federal tax revenue which is also likely to be high. The IRS estimates that unreported income contributes to most of the tax gap (difference between taxes owed and taxes collected).[20]

| | 30% of income is not reported | 50% of income is not reported |
|---|---|---|
| All industries | $91,546,482 | $152,577,470 |
| Construction | $ 4,161,507 | $ 6,935,845 |

[17] Historically, self-employed workers (whether misclassified or not) have tended to under-report their income, according to federal sources. For example, of $79.2 billion in taxes owed the IRS in FY93, 74 % was owed by taxpayers with primarily non-wage income. Also, the IRS Inspector General reported that the number of 1099 information returns with missing or incorrect Taxpayer Information Numbers (an indicator of possible misclassification) grew by 36% from 1995-98 (US Treasury Department 2001).

[18] For this computation, we estimated the annual (self employment) earnings of misclassified construction workers to be $35,000. This is a conservative estimate, lower than median earnings in the state. We used this estimate because we found the UI audit file to be an unreliable source of information on total earnings. We estimated average annual earnings for workers across all industries to be $45,796, a simple average computed on the BLS-ES202 database for Massachusetts.

[19] A 1974 IRS report indicated that all independent contractors (misclassified or not) did not report 26% of their income, so under-reporting may be worsening over time (US Treasury Department 2001, p. 7).

[20] Out of a $62.8 billion income tax gap from individuals in 1992, 32% or $20.3 billion was due to self-employed workers GAO 1994).

### The implications of employee misclassification for worker compensation

The workers compensation insurance industry loses on premium collection, a significant issue if, as is reported in previous studies, misclassified workers are surreptitiously added onto companies' worker compensation policies *after* they are injured. For these workers, benefits are paid out even though premiums were not collected.

Data were not available to us to compute the extent to which benefits are paid to workers for whom premiums were not paid. However, we estimate the amount of insurance premiums that would have been collected were workers not misclassified.

We estimate that over the period 2001-03, up to $7 million of worker compensation premiums were not paid for misclassified construction workers and up to $91 million of premiums were not paid for misclassified workers across all industries. This estimate is broad. It applies an average worker compensation premium of $15 per $100 of payroll to the estimated amount of wages for misclassified workers statewide, in construction and across all industries. Alternatively, with an average worker compensation premium of $12 per $100 of payroll, we estimate that $5.5 million of premium were not paid for misclassified construction workers and $73 million were not paid for misclassified workers in all industries.

A more detailed estimate would apply detailed rates for construction trades (such as finished carpentry, or drywall) appropriately weighed by the share of employment accounted for by each trade.

## V. What lies behind the Low and Moderate Estimates?

We have taken a *conservative approach* in estimating the overall prevalence, extent, and tax implications of misclassification in Massachusetts. We derived estimates on the number of employers engaged in misclassification, the number of workers affected, and their tax revenue consequences using the results of a subset of audits that are the audits labeled random,[21] or non-targeted, according to standard auditing practices. ( The Massachusetts Division of Unemployment Assistance refers to these audits as the "Employer Sample.")

In choosing to work with Unemployment Insurance tax audits to develop low and moderate estimates of misclassification, we took the lead from a study commissioned by the U.S. Department of Labor (Planmatics 2000). Our estimates for "low," and "moderate" rates of misclassification are based on the different categories employed by the DUA for selecting audit candidates. *Low* estimates are based solely on audits listed here as "random" or less targeted (the Employer Sample) while *moderate* estimates are based on all categories of audits from random to targeted. Targeted audits find higher levels of prevalence of misclassification. (Further details are provided in the Appendix.)

## VI. How does the situation in construction compare to that in other industries?

In Massachusetts, the percent of construction employers engaged in misclassification and the overall percent of workers affected are slightly higher than average but not among the highest. *However, when construction employers are found to be misclassifying, the percent of their workers affected by misclassification ( "severity of impact" measure) is among the highest among industrial sectors.* In other words, the construction sector as a whole has a prevalence of misclassification that is high but, most importantly, it includes firms that, when engaged in misclassification, do so for a significant share of their workers. In the employer sample, among employers engaged in misclassification, up to 40 percent of the workforce is found to be misclassified.

[21] This is the nomenclature used by US DOL to describe these audits (Planmatics 2000).

## Prevalence of Misclassification by Industry and Audit Type – 2001-03

| | Low estimate- (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| Transportation/utilities | 21.4% | 28.7% |
| Information | 20.9% | 28.7% |
| Professional/business services | 19.0% | 22.2% |
| Education/health services | 15.7% | 18.7% |
| Natural resources | 14.6% | 17.6% |
| **Construction** | **14.0%** | **23.7%** |
| **Total (all industries)** | **13.4%** | **18.8%** |
| Manufacturing | 12.9% | 15.3% |
| Other services, private | 12.5% | 20.0% |
| Financial activities | 10.8% | 15.7% |
| Leisure/hospitality | 10.4% | 13.7% |
| Trade | 10.1% | 13.4% |

## Extent of Misclassification by Industry and Audit Type: Percent of Total Employment Affected

| | Low estimate- (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| Transportation/utilities | 12.0% | 17.0% |
| Other services, private | 8.5% | 13.1% |
| Professional/business services | 7.2% | 13.5% |
| Education/health services | 5.4% | 16.1% |
| **Construction** | **5.4%** | **11.4%** |
| **Total (all industries)** | **4.5%** | **8.9%** |
| Natural resources | 4.1% | 10.6% |
| Leisure/hospitality | 4.0% | 4.8% |
| Trade | 3.8% | 5.0% |
| Financial activities | 3.7% | 7.2% |
| Information | 3.1% | 14.3% |
| Manufacturing | 1.4% | 2.5% |

**Severity of Impact by Industry and Audit Type: Percent of Misclassified Workers among Employers Found to be Misclassifying**

| Industry | Low estimate- (Employer Sample) | Moderate estimate (All Audits) |
|---|---|---|
| Transportation/utilities | 48% | 52% |
| Other services, private | 44% | 52% |
| **Construction** | **40%** | **48%** |
| Professional/business services | 29% | 43% |
| Natural resources | 28% | 43% |
| Leisure/hospitality | 26% | 29% |
| **Total (all industries)** | **25%** | **39%** |
| Education/health services | 24% | 55% |
| Financial activities | 23% | 34% |
| Trade | 19% | 25% |
| Manufacturing | 13% | 16% |
| Information | 10% | 44% |

# VII. Strengths and limitations of estimates of misclassification

Prior research on misclassification has generated estimates *for all industries* primarily, rather than for construction per se. Only one federal study provides a 1984 estimate that 20 % of construction employers engage in misclassification (GAO 1996).

In this section, we examine in greater detail estimates from other studies for all industries and compare these with the estimates we derived from our analysis of the Massachusetts UI tax audit data. This exercise has enabled us to put lower and upper bounds to our estimate.

## Comparing Massachusetts 2001-03 estimates to data from other states

The table below summarizes the results of the study commissioned by the U.S. Department of Labor for misclassification *across all industries* in nine states (Planmatics 2000), as well as a 1984 Treasury Department estimate (U.S. GAO 1996) for employers nationwide.

**Past State and National Estimates of the Prevalence of Employer Misclassification**

| | Low | Moderate | High |
|---|---|---|---|
| All industries (MA) | 13% | 19% | |
| All industries (9 states) 1/ | 5-10% | 13-23% | 29-42% |
| All industries (US) 2/ | | 15% | |
| **Construction MA** | **14%** | **24%** | |
| **Construction (US) 2/** | | **20%** | |

1) All industries based on DOL/Planmatics state estimate ranges, ~1999
2) Based on 1984 Treasury Department estimate, cited by U.S. GAO. (1996)

For all industries, our estimates for MA generally fall close to or within the ranges found in other states and for the US as a whole. The US DOL-commissioned study arrayed 9 states according to their mix of "targeted" and "random" audits. In the table above, the low estimate for the 9 states sample is derived only from states with a low proportion of targeted audits in their audit mix. Conversely the high estimate is derived only from results for states with higher share of targeted audits in their mix and the moderate estimate from states with 30 to 50 % of random audits in their mix.

Our study's moderate estimate —derived from the complete and mixed set of audits— falls directly within the ranges found in other states with similar audit mix. Our low estimate for all Massachusetts employers is slightly higher (13%) than for states from the U.S. DOL study with a high share of random audits (5-10%).

The next table compares MA to the DOL study's state findings in greater detail. It also presents the degree to which each state did target audit candidates versus relying on more "random" selection methods. For the 9 states in the DOL study, we observe that, as expected, the more a state targets employers (by size/industry/location, by past record, by presence of worker claim), the higher is the observed rate of misclassification. Massachusetts generally conforms to this pattern. For the period 2001-2003, the DUA utilized "random" (less targeted) methods for a little over half of all audits (56%). It is thus closest to the "moderately random" states listed below. Our observed rate of misclassification (from audits of all types) which generated the Moderate estimate for all industries, at 19%, falls between the "low random" state of Minnesota (13% employers misclassifying) and moderate-random Wisconsin, with a misclassification rate of 23%.

**Prevalence of Misclassification in All Industries: MA vs. DOL State Estimates**

| State | % employers misclassifying workers | % of audit group randomly sampled | Dominant Audit method |
|---|---|---|---|
| MD | 5% | 100% | High randomness |
| WA | 10% | 98% | High randomness |
| CO | 5% | 90% | High randomness |
| **MA** | **19%** | **56%** | **Mod-High randomness** |
| MN | 13% | 30-50% | Moderate randomness |
| NE | 10% | 30-50% | Moderate randomness |
| NJ | 9% | 30-50% | Moderate randomness |
| WI | 23% | 18% | Low randomness |
| CN | 42% | 5% | Low randomness |
| CA | 29% | 1% | Low randomness |

Another source of comparison comes from another New England state, Maine.[22] The state relies exclusively on audits that are considered fully random. For the Maine Construction industry, the rate of misclassification is 14.2 percent (Peterson 2004 for Maine Department of Labor, to be released). On a number of dimensions — construction wages as share of state's average wage, distribution of construction establishments by subsectors, and distribution of employment by subsectors— the Maine construction industry does not differ significantly from that in Massachusetts. However, the two state construction industries have different unionization rates; about 10% in Maine as compared to 28 % in Massachusetts (estimates). Also, the share of value of construction work is highest for the

[22] Audit results from Maine will be the object of a separate report produced collaboratively with the Maine Department of Labor.

building, developing and general contracting category in Massachusetts (43% of construction work$$$). In contrast, it is highest for the specialty trade contractors in Maine (44% of construction work $$$).[23]

# VIII. Next Steps

This study has made significant headway toward documenting the dimensions and impacts of misclassification in construction in the state. Next steps include, first, examining more closely the misclassification of workers across construction subsectors (for example, carpentry or dry walling) because accounts from the field indicate that there is wide variation across subsectors in prevalence. Second, next steps also include comparing the findings from Massachusetts with those from other New England states. While keeping in mind variations in characteristics of the construction industry across states (e.g. firm size, distribution of activity across types of contractors), we plan to use estimates of incidence, severity, and extent derived from UI tax audit results elsewhere in New England as a further means to gauge the dimensions of misclassification in Massachusetts. Third, we will explore in greater detail policy proposals for addressing misclassification and look at approaches that have been successful in other states. This task will be particularly timely if misclassification is growing in prevalence as it appears to be. A final report for this project will provide an analysis of policy issues and present the results of Massachusetts in the context of those for other New England states.

More importantly, this study's findings have established that worker misclassification is indeed a compelling problem requiring attention and one with significant consequences for workers, employers, insurers, and for tax revenues. A problem of this importance requires further and more precise documentation, one that would enable analysts to project revenue losses with greater confidence than is possible when relying on UI tax audit data which require making several assumptions.

A tested and more accurate method for measuring misclassification has been established in a national study by the U.S. General Accounting Office (U.S. GAO 1989) and rests on the combined use of business and individual tax information. Such a study could be replicated with state level tax information. This approach entails matching "1099 information returns" filed by businesses on behalf of their independent contractors with individual income tax returns for the workers concerned. This match enables analysts to apply criteria such as deriving all or most of one's income from a single business payer (a strong indicator of misclassification) and thus to estimate the percent of workers misclassified. The federal study (U.S. GAO 1989) that first established this method found that very stringent criteria (e.g. at least $10,000 of income all from a single business payer) point to misclassification that, in turn, is confirmed in virtually all cases (through an IRS audit). Using these criteria, or slight variations of these criteria,[24] would generate measures of the number of workers misclassified in a given tax year and the number of businesses engaged in misclassification, as well as a very reliable accounting of misclassified earnings and tax losses.

We strongly recommend the replication of this federal study with Massachusetts tax information. Such a replication would require investment from, and the collaboration of, the Massachusetts Department of Revenue because it entails using individual tax record information (as well as the

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[23] Sources used included: U.S. Department of Labor, Bureau of Labor Statistics, ES-202 Series (wages, distribution of employment and of establishments by subsector); U.S. Census Bureau, Current Population Survey (unionization); and U.S. Bureau of the Census, 1997 Economic Census, Construction—Geographic Area Series. (Massachusetts, Maine). General Statistics for Establishments With Payroll By State. Table 2, page 9 (value of construction work by subsector)..

[24] For example, the criterion might be amended to receiving most or 70% of one's self-employment earnings from a single business payer.

sharing of federal business income tax return information by the Internal Revenue Service with the Massachusetts DOR). The information generated with the present study presents a compelling case for making this investment in better documenting misclassification in the Commonwealth through a study of tax records. More precise measures of misclassification would inform a more specific policy debate about means to address it. Our study also makes clear that multiple parties stand to benefit from better documentation of the dimensions and implications of worker misclassification —individual workers stand to gain better social protection, tax authorities stand to recover tax revenue losses, and compliant employers would benefit from an even playing field.

Further research will also need to devise means to document underground activities and their implications. These do not leave traces in UI or tax records that we can readily examine.

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# Appendix A - Estimation Methods

*Audit Year*
We assigned each audit record to a specific year (1995-2004) and to three-year cycles (1995-1997, 1998-2000, and 2001-2003). This was done on the basis of the Massachusetts DUA's "year complete" variable, using the calendar date of the audit's official completion. While a portion of the audits may have actually been initiated in the year prior to completion, we believe that the resulting distortion is small when audits are grouped in three-year periods.

*Calculating the Prevalence of Employer Misclassification (% of employers with misclassified workers)*
Employers are assumed to be misclassifying workers if their audit record reveals one or more 'new worker.' New workers are those who were not covered previously by Unemployment Insurance. We calculate the percentage of all (randomly) audited employers who are misclassifying, and apply the result to the total number of UI-covered employers in the state. We thus assume that the sample of employers selected for auditing is representative of (can stand for) all UI-contributing employers statewide.

*Calculating the Severity of Impact of Misclassification (% of workers misclassified within employers misclassifying workers as independent contractors.)*
To estimate the severity or degree of misclassification among those employers who under-report workers (who would otherwise be covered by UI), we assume that audited employers found to be misclassifying can represent all misclassifying employers in the state. We compute the percentage of workers among these audited employers who are misclassified (or "new workers,") and use it as proxy for the statewide severity (% misclassified) among all Massachusetts employers that misclassify workers.

*Calculating the Extent of Workers Misclassified (% of all workers misclassified as independent contractors)*
We assume that total workers employed by audited employers can represent all UI-covered workers statewide. To estimate the extent of worker misclassification, we compute the percentage of workers at all audited employers who are "new workers," or previously unreported for purposes of unemployment insurance taxes. This percentage is applied to the total number of UI-covered workers in the state.

*Calculating Losses in Unemployment Insurance Taxes*
Revenue losses from underpayment of UI taxes (owed on workers misclassified as independent contractors) were estimated using the method employed in the DOL-requested study (Planmatics, 2000). We computed an average tax loss per worker due to misclassification of workers in the audit sample. We assumed, as before, that these workers could stand for all workers statewide misclassified as independent contractors (and that the distribution of wages was similar). The result was multiplied by the estimated number of workers misclassified statewide.

*Calculating Losses in the State Income Tax*
To compute losses in state income tax revenue, we multiplied the estimated number of misclassified workers statewide (7,478) by an estimated average yearly income level for construction workers of $35,000. We then made two estimates of "hidden income" using alternative assumptions about the amount of income unreported by these workers (50% and 30%). Multiplying each of these results by 5.3% (the state income tax rate) provided a range of estimated state income tax losses.
We chose an average earnings level for construction workers of $35,000 per year, a level much lower than median earnings for Massachusetts and, therefore, a conservative estimate. The level is higher than earnings culled from the audit database but we had concerns about the reliability of those data

for portraying the level of earnings in the state. For earnings across all industries, we used average annual earnings for workers across all industries at $45,796, a simple average computed on the BLS-ES202 database for Massachusetts.

*Calculating Revenue Losses on Worker Compensation Insurance Premiums*
We assumed that all average WC premiums for workers, including construction workers, can be estimated by assuming $15 per $100 of payroll for workers compensation. We computed unreported wages from misclassifying employers as a percentage of total payroll from randomly audited firms, and assumed that this could represent the percentage of wages unreported from misclassifying employers statewide. Applying this to the actual total wages of UI-contributing employers statewide yielded an estimate of unreported wages for employers in all industries and construction employers. Taking 15% of these figures produced estimates of WC revenue losses. We also computed a lower estimate of premium losses by setting the WC rate at $12 per $100 of payroll.

# Appendix B - The Role of Audit Methods

The report commissioned by the US Department of Labor used Unemployment Insurance (UI) tax audit results from 9 states to obtain an estimate of misclassification (Planmatics 2000). Unemployment Insurance Tax audits seek to establish whether all workers supposed to be covered by unemployment insurance are in fact covered. Most often, when workers are not covered, it is because they were classified as independent contractors. When an audit finds workers not covered by UI who should be, they are reclassified as a "new worker" on the payroll subject to taxation. Therefore UI tax audits are a useful source of information about misclassification, one that has been relied upon by previous studies such as the DOL commissioned report.

UI tax audits are the best source of information on misclassification behavior available to researchers to date, and have been used by the US Department of Labor to gauge the prevalence and extent of misclassification. Using them to estimate misclassification, however, is not a straightforward matter. UI tax audit practices aim at redressing tax loss. The sampling of employers for audit purposes is not meant to be statistically random; it is meant to assist in UI tax collection. Some of the audit methods used are targeted; they aim to audit employers with a high likelihood of misclassification based on past UI tax record. Therefore these methods result in a relatively high observed rate of misclassification. Conversely, other audit methods are not targeted; they are conventionally called random audits. All state UI tax revenue departments practice a mix of methods. Therefore, audits are not a statistically perfect source of information; they allow for an estimation rather than an actual measure of the dimensions of misclassification.[25]

The Massachusetts Division of Unemployment Assistance (DUA) conducts random audits based on broad guidelines provided by US DOL for non-targeted audits. The Employer Sample (random audits) consists of audit candidates from the UI Tax employer database (Tax System) that fit limited, DOL recommended, criteria such as employment size, distribution of geographic location and industry. The results yielded by these audits provide a conservative estimate of the prevalence and extent of misclassification in the state as a whole.

The DUA performed 5,957 audits over the period 2001-03. Slightly over half (56%) of the audits were drawn from the "Employer Sample." [26] They are referred to here as "random" (sampled but prescreened on the basis of selected criteria), or "not targeted." [27]

The remainder of DUA audits were targeted audits based on contested unemployment claims and/or a determination that a worker is in fact an employee, or because of delinquent UI tax filings over the years. Their purpose is to locate cases of likely misclassification. Targeted audit methods include the following categories:

1) "Targeted Type 1" or Request Multiple (RM) audits: The employer has three quarters of filings delinquent within the last three years. (20 % of audits in 2001-03.)
2) "Targeted Type 2" or Request Delinquency (RD) audits: The employer has multiple delinquent quarters due to late registration, often related to UI claims made by workers. (7 % of audits in 2001-03.)
3) "Targeted Type 3" or Subjectivity Letter (SL) audits: The employer is either made subject of an audit as the result of a claim or determination has been made that an employer/employee relationship exists. (18% of audits in 2001-03.)

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[25] An actual measure would require a large scale random survey of workers and employers throughout the state.

[26] There were 919 construction audits, of which 428 were random audits.

[27] The "audit rate" or percent of audited employers in total employers was 3.1 percent across all industries, and 4.9 percent in construction. These rates represent declines from the period 1995-2000 when greater resources were available for auditing: 5 percent of employers across all industries were audited and 6 percent of construction employers were audited. Also random/Employer Sample audits amounted to over 80 % of audits in the earlier period 1995 to 2000. With declining resources for auditing, targeted audits are used with more frequency to aid in tax collection.

As can be seen below, more targeted audit methods find higher prevalence of misclassification, as expected. Among all audit methods, Subjectivity Letters and "Request Multiple" audits find misclassification most frequently. This is true for construction as well as for all industries. The prevalence rates obtained from these targeted methods provide an "upper bound" for an estimate of misclassification in the state.

**Rates of Misclassification by Detailed Audit Type: All Industries**

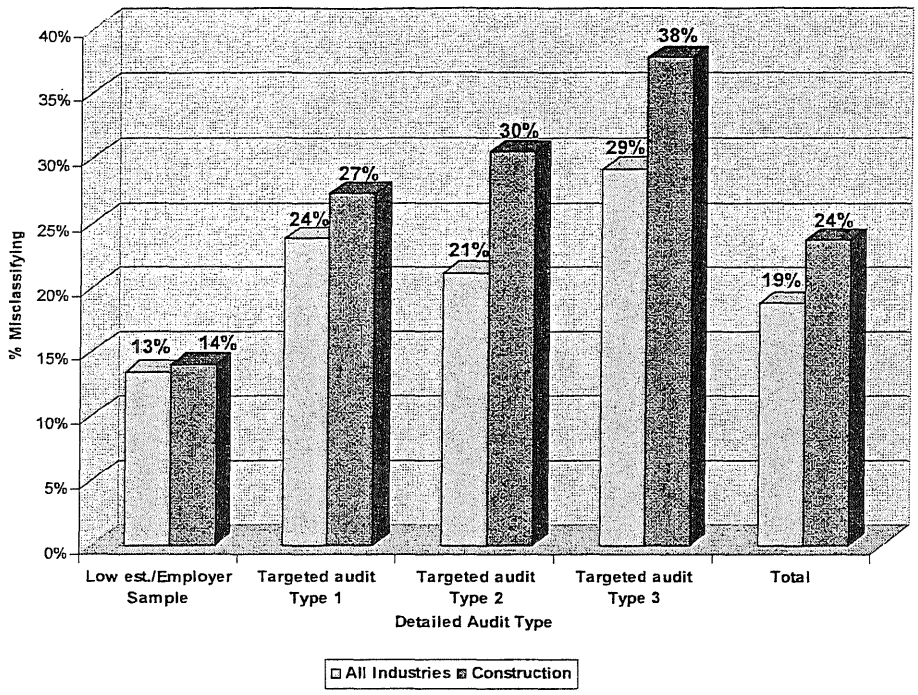
| | Low estimate- (Employer Sample) | Targeted Type 1 (Request Multiple) | Targeted Type 2 (Request Delinquent) | Targeted Type 3 (Subjectivity letter) | Moderate estimate (All Audits) |
|---|---|---|---|---|---|
| Misclassifying Employers | 448 | 278 | 83 | 310 | 1119 |
| All Audited Employers | 3335 | 1168 | 392 | 1062 | 5957 |
| % Misclassifying | 13% | 24% | 21% | 29% | 19% |

**Rates of Misclassification by Detailed Audit Type: Construction Employers**

| | Low estimate- (Employer Sample) | Targeted Type 1 (Request Multiple) | Targeted Type 2 (Request Delinquent) | Targeted Type 2 (Request Delinquent) | Moderate estimate (All Audits) |
|---|---|---|---|---|---|
| Misclassifying Employers | 60 | 56 | 25 | 77 | 218 |
| All Audited Employers | 428 | 205 | 82 | 204 | 919 |
| % Misclassifying | 14% | 27% | 30% | 38% | 24% |

For our estimates of impacts, we have used results from random audits only (Employer Sample) as a base. This approach is more conservative than that taken in the US DOL commissioned study (Planmatics 2000). That study relied on results from both random and targeted audits (to the exclusion of very targeted audits) to generate the estimates used to project tax revenue losses.

## Misclassification by Detailed Audit Type: 2001-2003



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# REMARKS

**Edward C. Sullivan. President**
**Building & Construction Trades Dept.- AFL-CIO**

## The Social and Economic Costs of Employee Misclassification in Construction Study Panel Discussion

**Construction Policy Research Center**
**Labor and Worklife Program, Harvard Law School and Harvard School of Public Health**

**Cambridge, MA**

**December 13, 2004**

**Thank you Mark....**

**It is a special privilege to be here today to discuss this important study on employee misclassification. On behalf of the Building Trades, I want to commend Dr. Carre (CAH-RAY) and Randall Wilson for their impressive work on this critical issue. Your findings help underscore the extent to which the growing underground economy negatively affects our society.**

**The misclassification of workers has been an all too common occurrence in all sectors of our economy for years.**

**The detriment to the construction industry, in particular, has been apparent. This independent study supports the anecdotal concerns put forth by construction tradesmen or women for decades and will hopefully serve as a catalyst for long overdue reform.**

**Today, I would like to specifically address the impact that the misclassification of employees is having on workers, not just in Massachusetts, but also across the nation.**

**An employer hires a worker; the worker performs a job and agrees to be paid a set hourly rate. Workers who will receive W-2's and those who will receive 1099's at the end of the year may work side-by-side doing the same job.**

**But, there is a big difference because the misclassified worker is being denied the basic rights and benefits afforded to workers in America...rights that took over a century to achieve...unemployment benefits, overtime pay, worker's compensation, social security and, in many cases, health insurance.**

**Short term, the worker is in a losing situation. Misclassified workers, particularly immigrant workers, are often compelled to work for a rate below prevailing wage or even minimum wage.**

**Misclassified workers are also under-compensated for extra hours worked when overtime rates are denied to them.**

**And a misclassified worker is left totally vulnerable if a lay-off or accident or illness leaves them without a paycheck. At the same, the worker's Social Security account is left dormant showing no employer contribution and growth toward retirement.**

**Long term, everyone else ultimately pays the price for employers who fail to meet their legal responsibilities. A laid-off or injured worker lacking unemployment or workers compensation benefits will be forced to turn to public services to survive.**

**Injured or sick workers lacking health insurance...and their families...must seek the most expensive kind of free care at hospital emergency rooms....this free care drives up the cost of health care and insurance across the board.**

**I would suggest that unionized construction workers pay the highest price for employers' misclassification of workers. Because this illegal practice effectively denies union workers access to those jobs by creating a situation where union contractors cannot bid on a level playing field with nonunion contractors, who deliberately misclassify their workers to undercut labor costs.**

**Nonunion contractors do not bear the costs of Social Security, Medicare, workers compensation or health insurance contributions for misclassified workers. This makes them more competitive and more profitable at the expense of others.**

**Ironically, in most states, union health insurance plans are required to pay a surcharge to fund the state's free-care pool. These free-care pools pay for the health care provided to misclassified workers. Therefore, union members and legitimate employers are actually paying the costs the health care that unscrupulous employers refuse to provide.**

**In Congress and the White House, Social Security and immigration are at the top of the 2005 agenda. I would suggest that there is no better time for them to address the problem of misclassified employees because it affects both of those major issues.**

**The misclassification practice has caused a major loss in revenue into Social Security and Medicare program accounts.**

**And the economic abuse of immigrant workers is not only illegal, it is immoral.**

**We can take a lesson from our neighbors to the north. Faced with a similar report to the one being released here today, almost a decade ago Canada declared war on what they refer to as "undeclared hours" and took concerted action to stop this underground economy practice. They mobilized all industries, modernized and increased inspections and stiffened penalties for noncompliance.**

**Let me give you a brief idea of their success by telling you about what happened in the province of Quebec alone.**

**Between 1996 and 2001, in just 5 years in one province, they recovered 70 million undeclared hours, which amounted to shutting down about 70% of potential underground hours.**

**They realized a fiscal recovery of $580 million dollars as well as the restoration of a fair and competitive market. The program itself cost them $34 million, which amounts to a $1 investment for every $21 retrieved from their underground economy.**

**And those are just the monetary considerations. What was reclaimed for those affected workers and their families in fair compensation, self-esteem and peace of mind cannot be calculated in dollars alone.**

**I believe we could realize a similar outcome if federal and state authorities take direct and sustained actions to confront the problem.**

**This will be only be possible if we start recognizing the misclassification of workers for what it really is: tax evasion and insurance fraud.**

**Ladies and gentlemen, this is not an innocent mistake by an employer or employer's accountant, whether motivated by greed or used to get an unfair advantage in the marketplace.**

**Misclassifying workers is a calculated and deliberate illegal action to avoid financial responsibility to state and federal governments, insurance providers and to workers.**

**Without much stronger enforcement of the laws governing employers and employment, this problem will only continue to fuel the growth of the underground economy in the U.S.**

**To accept the status quo only serves to unfairly punish taxpayers, legal workers and law-abiding employers.**

**We are grateful to the Construction Policy Research Center Labor and Worklife Program, Harvard Law School and Harvard School of Public Health for helping to bring public attention to this critical problem.**

**I am hopeful that, armed with the results of this independent study from the UMass- Boston's McCormack Graduate School of Public Policy, we will be able to mobilize support across all industries and at both the state and federal levels for increased enforcement and needed policy change.**

**I can assure you that the Building Trades and all of organized labor will make this a priority in 2005.**

**Thank you.** (end)

INSURANCE HEIST

# Workers' Con

## Companies are cheating on workers' compensation, costing billions in added premiums—and leaving their employees at risk.

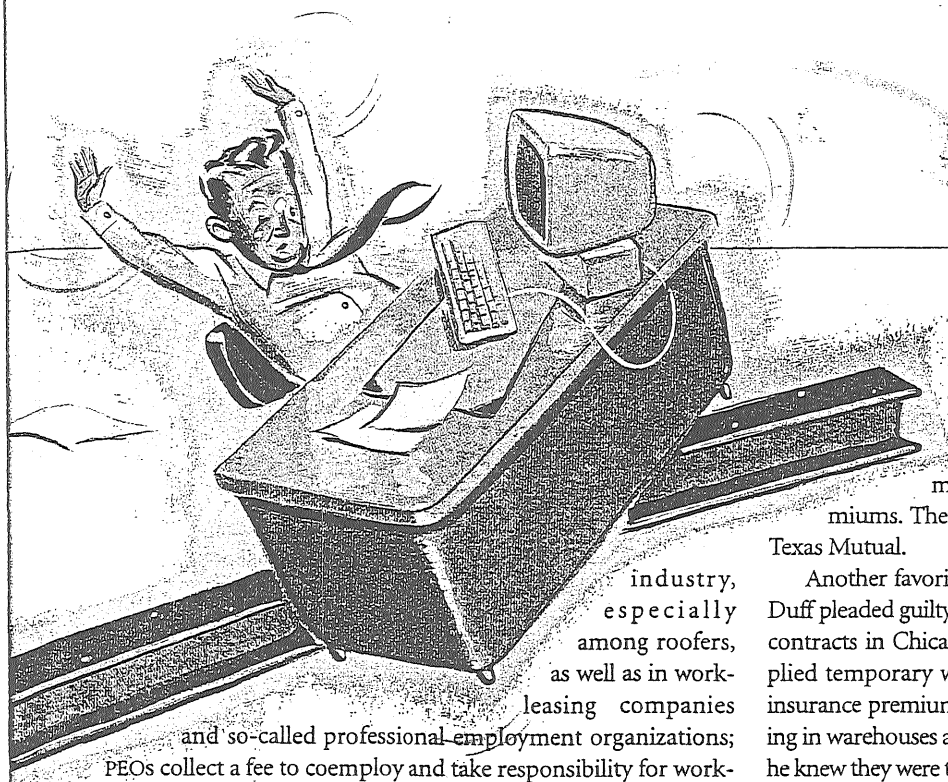
By Nathan Vardi

JORGE GOMEZ WAS HELPING TO BUILD A TWO-STORY house on a Jacksonville, Fla.-area construction site owned by D.R. Horton in 2003 when a 24-foot wood beam fell and broke his neck. Gomez, who had crossed into the U.S. from Mexico illegally, was being paid $400 a week in cash from a subcontractor. Now a quadriplegic, the 23-year-old has amassed more than $1 million in hospital bills but has no way to pay them. Companies are supposed to cover all workers, even illegal ones. But his disability claims to the subcontractor and the home builder were denied. He is now suing $11 billion (sales) D.R. Horton, which insists it did nothing wrong and points the finger at the sub. Trial date: this fall.

Workers' comp is out of control again. Premium rates have risen 44% in the last three years, says the Insurance Information Institute, pushing total corporate costs to $80 billion annually. Along with rising medical costs, fraud is a swelling part of that bill, amounting to billions of dollars each year, says the institute's chief economist, Robert Hartwig. Some skulduggery still comes from people faking or exaggerating injuries. But employers cheat, too, using creative ways to underpay workers' comp insurance, driving up premiums for other businesses.

Judging by the number of suits by private and state insurers, the problem is getting worse. Fraud is particularly prevalent in the construction

RYAN HESHKA FOR FORBES



industry, especially among roofers, as well as in work-leasing companies and so-called professional-employment organizations; PEOs collect a fee to coemploy and take responsibility for workers. The highest incidence of fraud seems to be among companies in California and Florida.

This month the U.S. attorney in Jacksonville plans to file indictments involving a PEO, according to sources familiar with the investigation, accusing it of pocketing $600 million or so, much of which was to have paid for workers' comp premiums. A federal grand jury in the Jacksonville case has heard evidence that the PEO collected fees and comp premium payouts from clients across the nation but never purchased insurance. Every state except Texas requires most businesses to insure all their employees.

Some companies rely on their own ingenuity to cheat. Charles Yi, 62, stands accused of underreporting the number of employees on his payroll as a way of reducing his workers' comp premiums. According to a Los Angeles deputy district attorney, Yi committed fraud between 2000 and 2003, when his Natural Building Maintenance painted dorm rooms at UCLA and provided janitorial services at the Rose Bowl, claiming the work had been done by 18 employees when, in fact, it was the labor of at least 300. Yi pleaded not guilty in November and is awaiting trial.

A craftier way to avoid paying workers' compensation: Shift employees around phony companies. Miguel and Linda Delgado created a fake entity to hide staff at their San Antonio, Tex. janitorial outfit, Border Maintenance Services, thereby reducing workers' comp premiums, says a suit filed by its insurer, Texas Mutual. The allegedly bogus company, Del-Kleen, got fat state contracts by showing it had insured its workers against injury, a requirement for state government jobs in Texas. But, according to the complaint, the work was actually done by Border Maintenance's 450 employees. The company managed to avoid nearly $1 million in comp premiums. The Delgados were ordered to pay $1.6 million to Texas Mutual.

Another favorite trick: giving fake job titles to workers. James Duff pleaded guilty in January to fraudulently obtaining municipal contracts in Chicago. His Windy City Labor Service, which supplied temporary workers, ducked $3 million in workers' comp insurance premiums by reclassifying nearly all 2,100 workers toiling in warehouses and refuse centers as paper pushers, even though he knew they were temporary day laborers engaged in manual labor, says a federal indictment. Clerical jobs carried premium rates of near 35 cents per $100 of payroll, as opposed to $8 for muscle jobs, according to court papers. (The payroll used to calculate the rate can be capped as high as $84,500.) Duff is awaiting sentencing.

Hiding wages is a clever way to go—until you get caught. That, according to a suit filed by the California State Compensation Insurance Fund, was the intention behind Ideal Payroll Plus and Ideal Management, two Rancho Cucamonga, Calif. PEOs run as limited partnerships by David Clancy. The complaint alleges that by disguising half of the paid-out wages as distributions to partners, Clancy skirted $1.3 million in premium payments.

How did it work? The partnerships hired and leased employees to a Buick dealership and a local roofer, among others, says the suit, and paid some wages legitimately. An associate, Telma Moguel, set up a trust that was financed by the partnerships to funnel the rest of employee wages through the trust as "partnership income," as if it were a payout from an investment. A California court hit the PEOs with a $14.6 million default judgment in late December. Suits against Clancy and Moguel are pending; both deny wrongdoing.

"Premium scams milk workers' comp insurers out of untold millions," says James Quiggle at the Coalition Against Insurance Fraud, "depressing profits and forcing comp premiums higher for honest businesses." But there aren't enough cops to nab crooks. Jeffrey Korte, head of Florida's workers' comp fraud bureau, says his 26 investigators can't keep up.

In the 1990s workers' comp costs fell, thanks to deregulation, which goosed price competition among insurers, and the stock market, which helped insurance firms cover underwriting losses with investment income. The monster is back. Average employer costs per $100 of wages were $1.58 nationwide in 2002—down from $2.18 at the 1990 peak, but steadily climbing since 2000, when they were $1.33. The rate in California averages $5.34.

It's enough to make you want to cheat the system. F