



March 17, 2021

Dear Members of the Senate Judiciary & Public Safety Committee –

On behalf of the Associated Builders and Contractors MN/ND Chapter, our 330 construction industry members and their 20,000 employees, thank you for allowing me to testify to share our opposition to SF 1384. Our local contractor members, and the men and women that they employ, are part of the 76% of the construction industry in Minnesota that choose to be merit shop craft professionals rather than be in a union. Our members are located throughout Minnesota and build our schools, multi-family housing, retail and commercial spaces, medical facilities, energy, and other critical infrastructure, and much more.

ABC is opposed to several of the provisions included within SF 1384. Our first concern is that Sec. 1 of the bill, as written, would take away the right of an employee to request that an employer or the employer's attorney be present when being interrogated by OSHA investigators. In practice, there are situations in which an employee may want the employer or the employer's attorney to be present during the interview, and ABC is concerned that this prohibition could violate an employee's rights. For example, not too long ago, MNOSHA showed up an ABC contractor's jobsite to conduct a routine inspection. After being interviewed by MNOSHA, employees informed the contractor that the MNOSHA investigator was questioning them about whether they had ever thought about joining a union. Not only is this out of the purview of MNOSHA, but it also an example of a situation in which an employee may want to reserve the right to have an employer present. The bottom line is that employees – not the legislature – should be the ones making the determination regarding who they want to be in the room with them during an interview with MNOSHA.

ABC is also opposed to the language in Sec. 3 of the bill, which addresses the classification of MNOSHA citation data. Current law and practice already make MNOSHA citation records timely and readily available through federal OSHA's public website after a matter is closed by the department. Anyone can search the site for citations listed by employer, project zip code, date range, and more. From there, any member of the public can see if an investigation is open or closed, the amount of penalty or fine that may have been issued, as well as the union affiliation or lack of, for the contractor at issue.

The publication of the "nature of the investigation" before claims are fully adjudicated will create an appearance of guilty until proven innocent for the named contractor. There are many times when a citation is issued, and the contractor appeals the citation. When that happens and the contractor is successful, the penalty or fine may be reduced or not levied at all. ABC members have been subject to dozens of MNOSHA investigations based on anonymous complaints that were later determined to be without merit. However, the appeals process takes time – sometimes even a couple of years.

If this section is enacted, we are concerned that the publicly available information could be used to engage in smear campaigns against contractors – even if the allegations in the citation haven't been formally adjudicated or are even subsequently dropped by the department.

The publication of this data has been compared to the publication of criminal charges which let the public know of the alleged offense. However, in criminal cases, the burden of proof is on the government and those charged with a crime are innocent until proven guilty. The government must also produce its evidence and its case. In MNOSHA citation matters, the individual is essentially guilty until proven innocent and MNOSHA does not have to produce its original records with the evidence of the violation until after the notice of contest is filed and the judge sets discovery. This makes it extremely difficult for employers to determine whether the complaints against them have merit and to adequately respond to the allegations. If these details are made public 20 days after the employer receives the citation, MNOSHA should also be required to provide the accused with copies of any documents that detail the evidence of the violation upon issuance of the citation.

In closing, I strongly encourage the committee to vote NO on SF 1384. Thank you again for the opportunity to submit this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Boesche', with a stylized, cursive script.

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