# CLASSIFICATION OF WORKERS IN THE CONSTRUCTION INDUSTRY TASK FORCE

## Minutes of the 4th Meeting of the 2020 Interim

## November 16, 2020

### Call to Order and Roll Call

The 4th meeting of the Classification of Workers in the Construction Industry Task Force was held on Monday, November 16, 2020, at 9:00 AM, in Room 171 of the Capitol Annex. Senator Matt Castlen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Matt Castlen, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Karen Berg; Representatives Terri Branham Clark and Sal Santoro; Jason Clark, Spencer Coates, Billy Doelker, Tommy Gumm, Marty Hammons, Patrick Jennings, Ken Lyons, Gary Morris, Kevin Sell, Allyson Smith, and Robert Swisher.

Guests:

LRC Staff: Andrew Manno, Audrey Ernstberger, Drew Baldwin, and Sasche Allen.

### Approval of Minutes

A motion to approve the minutes of the October 14, 2020 meeting was made by Representative Sal Santoro, seconded by Billy Doelker, and approved by voice vote.

### Discussion of Issues and Possible Solutions

Billy Doelker, President of the Kentucky Home Builders Association (HBA), noted that all contractors rely upon subcontractors to complete projects. When builders hire a contractor, they have a checklist of information that is required, including proof of workers' compensation insurance. The system works well and most contractors do things the correct way. He noted it was not common for someone to be without workers' compensation insurance. From the HBA perspective, classification of workers is not a big topic or an issue of concern. The misclassification issue is broader than just the construction industry. There are laws on the books to address misclassification issues. Most in the industry are following the rules.

Tommy Gumm, a representative of the Associated General Contractors (AGC), indicated that independent contractors perform a viable function in Kentucky's economy and provide specialized skill to job sites. There are advantages to the independent

contractor system, such as flexible schedules. Independent contractors are small businesses. Contractors may be utilizing independent contractors on many different jobs at the same time. It would be frightening to have different standards on different jobs. Any changes should be universal and apply across all industries. The AGC is opposed to employers who misclassify employees or pay cash to workers. The public construction industry is already highly regulated with emphasis on workers' compensation, taxes, and bonding. Enforcement has been hampered by the pandemic. The current authority within governmental agencies is sufficient. What is needed is information sharing between agencies and full funding of enforcement.

Kevin Sell, a representative of the Associated Builders and Contractors (ABC), noted that ABC supports free enterprise and open competition, fair compensation with wages based on individual or collective bargaining, and responsible stewardship by the government. Use of 1099 Forms is broader than just the construction industry. There is no real data to support any legislative action at this time. The stories presented to the task force are anecdotal. For action to be taken, much more information is needed. At this point, there is no data regarding the prevalence of the problem or how any solution would be funded. Data mining and sharing must occur. A common definition of employee may be a starting point. ABC does not recommend any legislation at this point and asks that none go forward at this time.

Jason Clark made comments about personally witnessing misclassification of constructions workers and said it is a disservice to the people of the Commonwealth.

Co-Chair Jason Nemes indicated that he wanted to move forward with drafting legislation to address the massive issue of misclassification.

Co-Chair Matt Castlen stated that the issue may not need to be addressed by the General Assembly, but instead executive branch agencies.

There being no further business, the meeting adjourned at 9:29 a.m.