



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

January 23, 2024

Representative Jesse Sumner
House Labor and Commerce Committee
State Capitol
Juneau, AK 99801

Transmitted via: Representative.Jesse.Sumner@akleg.gov
Sarena.Hackenmiller@akleg.gov

Re: Support for House Bill 186, An Act Relating to Volunteer Labor Compliance Officers

Dear Representative Sumner,

I am writing on behalf of the United Brotherhood of Carpenters and Joiners of America ("UBC") to give our support for House Bill 186, An Act Relating to Volunteer Labor Compliance Officers.

The focus of my work for the UBC is on the growing problem of illegal employment practices in the construction industry. My work on the topic began in 1989 when I was associate general counsel for my local carpenters' union in Connecticut. Since then I was hired by the UBC, which has put me in the position of witnessing the spread of illicit and immoral employment practices throughout the country that harm workers, responsible construction businesses and taxpayers.

The illicit and immoral employment practices in our industry sadly do not stop at tax fraud, wage theft and workers' compensation premium fraud. They also include labor trafficking, child labor, mail fraud, wire fraud, immigration-law violations, money laundering and racketeering.

In one outrageous case in Minnesota, a subcontract labor provider, Ricardo Batres, was sent to jail for labor trafficking and employer workers' compensation premium fraud.¹ He kept his construction workers packed in living quarters without hot running water.² Whenever his workers complained about their housing and unsafe working conditions, he threatened to call immigration authorities to keep them quiet. Those unsafe working conditions resulted in one of his workers suffering a broken back. Batres' response was to insist that he be brought to a massage therapist.

Conditions in our industry have become so alarming that the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") has issued a notice to banks, money service businesses and

¹ Riham Feshir, *Hennepin County's First Labor-Trafficking Case Ends in Guilty Plea*, Nov. 18, 2019, available at, <https://www.mprnews.org/story/2019/11/18/contractor-ricardo-batres-pleads-guilty-in-rare-labor-trafficking-case>.

² *State of Minnesota v. Ricardo Ernesto Batres*, Court File No. 27-CR-18-24013, 3 (September 25, 2018).

other financial institutions requiring them to report the suspicious transactions of their construction account holders.³ In its notice, FinCEN wrote:

The Financial Crimes Enforcement Network (FinCEN) is issuing this Notice to call financial institutions' attention to what law enforcement has identified as a concerning increase in state and federal payroll tax evasion and workers' compensation insurance fraud in the U.S. residential and commercial real estate construction industries.

Every year across the United States, state and federal tax authorities lose hundreds of millions of dollars to these schemes, which are perpetrated by illicit actors primarily through banks and check cashers. As described in this Notice, many payroll tax evasion and workers' compensation fraud schemes involve networks of individuals and the use of shell companies and fraudulent documents. These schemes further affect the local and national construction job markets, and put legitimate construction contractors and their employees at a competitive disadvantage.⁴

By now you may have been made aware of the data on illegal practices in our industry nationally and in Alaska, so please bear with me as I summarize here. Nationally, up to 2.1 million construction workers, or 19 percent, are either misclassified as independent contractors or paid off the books.⁵ Those are conservative estimates. State and federal tax losses amount to \$10 billion. Construction workers suffer \$1.9 billion of wage theft, and workers' compensation insurers lose \$5 billion a year to employer premium fraud. To add insult to injury, working families suffer a \$5.1 billion tax increase, because crooked contractors foist the employment taxes they should be paying onto the backs of their workers. Nationally, this race to the bottom has led to 39 percent of construction worker families relying on some form of public assistance to make ends meet, costing state and federal taxpayers \$28 billion a year.⁶ It is no wonder that under these conditions the industry is having difficulty attracting and retaining a skilled workforce.

In Alaska, up to 19.2 percent of the construction workforce is either misclassified as independent contractors or paid off the books.⁷ The workers suffer \$4.7 million in wage theft a year and the state is losing \$5.8 million a year in unpaid unemployment insurance contributions, and the offloading of employment-tax obligations result in Alaska construction workers having their taxes increased by \$12.9 million. Unpaid workers compensation premiums are \$12.4 million. You can bet that workers'

³ *FinCEN Notice: FinCEN Calls Attention to Payroll Tax Evasion and Workers' Compensation Fraud in the Construction Sector*, FIN-2023-NTC1, 1 (August 15, 2023), available at https://www.fincen.gov/sites/default/files/shared/FinCEN_Notice_Payroll_Tax_Evasion_and_Workers_Comp_508%20FINAL.pdf.

⁴ *Id.* at 1.

⁵ *Up to 2.1 Million U.S. Construction Workers are Illegally Misclassified or Paid off the Books*, by Laura Gutierrez, Russel Ormiston, Dale Belman and Jody Calemine, The Century Foundation (November 12, 2023), available at <https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/>.

⁶ Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, *The Public Cost of Low-Wage Jobs in the US Construction Industry*, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-us-construction-industry/>.

⁷ 50-State chart in The Century Foundation report, available at <https://docs.google.com/spreadsheets/d/102H18Tg90o279WGeoHS2AILZRJosAURO/edit#gid=1340986834>

compensation insurers are passing along those fraud losses to honest construction employers who then see their premiums go up, making them less competitive against the cheaters.⁸

How did things get this bad? There are a combination of factors, chief among them include a marketplace favoring the lower bids of the crooks, workers' compensation insurer practices that enable fraud, failed immigration laws, the industry's adoption of a labor provider (whom we call "labor brokers") fraud model that protects upper-tier contractors from liability, the absence of accountability for upper-tier contractors that use law-breaking labor brokers, the underfunding of law enforcement, the industry giving up on self policing, and the lack of knowledge and understanding of the construction industry and the severity of the problem.

This now brings us to our support of House Bill 186. The bill wisely improves the state's enforcement capabilities at little cost. The fiscal notes on the legislation put the yearly cost at \$464.6 thousand a year. This is far less, for instance, than the \$5.8 lost to the state unemployment trust fund and the \$4.7 million in wage theft. The volunteer compliance officers will be trained by the Department of Labor and Workforce Development ("DLWD"). The legislation includes safeguards that ensure the impartiality and professional conduct of the volunteers. The volunteers will not be issuing citations-they will serve as a vanguard, reporting suspected violations of state labor law to DLWD who can conduct further investigations that can lead to citations. The volunteers amount to a much-needed force multiplier for DLWD, thus improving law enforcement capabilities for the construction industry, especially when DLWD uses volunteers with industry expertise. This checks many of the boxes needed to improve compliance with state employment, tax, and anti-labor trafficking laws.

The UBC and its affiliates simply seek a level playing field for all law-abiding construction employers and a ticket to the middle class for the men and woman who do the hard work. HB 186 assists in getting there. For these reasons we support the legislation and urge its adoption.

Respectfully submitted,

Matthew F. Capece

Matthew F. Capece
Representative of the General President
United Brotherhood of Carpenters and Joiners of America
Matthew.Capece@carpenters.org

⁸ One loss that has not been calculated, and needs to, is the lost profits of honest construction employers who lose work to the crooks.