Testimony on House Bill 2400
Presented by
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Good afternoon, Chairman Belfanti, Rep. Lentz and members of the House Labor Relations Committee. My name is Lou Biacchi and I am here on behalf of the Pennsylvania Builders Association to testify on House Bill 2400, creating the Employee Misclassification Prevention Act. The Pennsylvania Builders Association represents over 10,000 member companies with some 528,000 employees. Most of who are small builders – building 6-10 houses a year. I would like to personally thank the Chairman for scheduling a hearing. I clearly understand you want this bill to move.

Let me start by saying that this bill was introduced and scheduled for a vote in committee with less than a week's notice. In our haste to voice our opinion on the bill, to open it up for discussion, we sent a letter to the committee stating that we know of no violations in the housing industry. Because the committee has allowed for additional time to review the legislation, and to hold a hearing, we have been able to reach out to our members. We have found that some of our builders believe abuse of the existing law is taking place. Of course, since Vicki DiLeo sent me a draft of the bill in January, if I had circulated it to my members, I would have gotten their reaction sooner.

PBA has strong concerns over the impact of this bill, in its current form, on the home building industry. The proposed standards to define the contractor/subcontractor relationship are vague and unclear. In an already tough economic situation, and with the housing industry being at a 13-year low, adding more burdensome requirements would be detrimental. The penalty section is also a concern.

Having said that, PBA believes that the bill seeks to address a serious issue and we appreciate the opportunity to work towards creating a solution that would target the 'bad actors' but allow for legitimate contractors, who may have inadvertently violated the standards, another chance.

There needs to be clear definitions in the legislation that separate those who intentionally violate the law and those who make a legitimate mistake. The penalties need to be more suited for both scenarios. The penalty section for "unintentional violations" is too harsh. If they can prove that the violation was a mistake –there should be room for error.

There also needs to be a clear definition of "independent contractor". In the 2005-2006 legislative session, HB 1215 attempted to address this concern. It is essential that this language and the issue, contractors being force to pay twice for worker's compensation insurance, be addressed in HB 2400. HB 1215 was introduced to clearly define sole proprietors as "independent contractors" and permit independent contractors to certify through an affidavit that they are excluded from the Worker's Compensation Act. Certification already exists for corporate officers and those seeking a religious exemption and is used in several other states. When an independent contractor certifies he is exempt from the Act, the independent contractor would be barred from filing a claim against a general contractor. To prevent misconduct, HB 1215 prohibited coercion and collusion in the filing of certification affidavits and provided strict penalties for violations. While I understand that the solution contained in HB 1215 was unacceptable to the construction trade unions, PBA is hopeful that HB 2400 can be amended to address both problems.

The initial staff negotiating session last week, I believe, was very positive. I want to thank both Vicki DiLeo and Bruce Hanson for their cooperative approach to reaching a workable solution to this recognized problem.

PBA will continue to work with the prime sponsor, this committee and the other interested parties, to create a compromise bill that protects the good, honest contractors but at the same time, penalizes the number of bad ones.

Thank you again for allowing me to testify and I would be happy to answer any questions you may have.