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To: Pennsylvania House of Representatives Labor and Industry committee

From: John D. Wanner, CAE

Comments on House Bill 1781 of 2017 (independent contractor registration)

The Mechanical Contractor Associations in Pennsylvania and the Sheet Metal Air-conditioning Contractors Association of Pennsylvania oppose House Bill 1781. This legislation may appear, at first glance, to be a straight forward way to determine an individual's status as either an independent contractor or employee. Unfortunately this approach could easily be misused to misclassify employees in order to avoid payroll taxes and gain a competitive advantage in industries like construction.

The construction industry is particularly susceptible to misclassification of employees because nearly all construction projects of size involve multiple companies each working in their respective areas of expertise. Most of the time entities are clearly companies or employees of companies with little ambiguity. Classification questions most often arise in the case of a sole proprietor. The IRS has published guides (see www.irs.gov) to help businesses make the proper determination. These "common law rules" pose questions that are intended to help the employer comply with the law. For example, does the employer "control or have the right to control what the worker does and how the worker does his or her job". Does the worker own his own tools? Does the worker have the opportunity for profit or loss? Does the worker have more than one client? The IRS suggests that no one factor stands alone but that the key is to look at the entire relationship and then make the determination. Complying with the law is important to the industry because of the intense price competition common to the construction marketplace. Prohibiting misclassification of workers levels the playing field so that companies that skirt payroll taxes don't win projects at the expense of companies that follow the rules.

The flaw in House Bill 1781 is that it relies upon a declaration made by an employee that he or she is an independent contractor without regard to the nature of the relationship or the factors posed by the IRS. If enacted, it seems very likely that some companies would soon adopt a practice to only offer jobs to individuals provided that they sign the affidavit declaring themselves to be independent contractors. Men and women in need of work would typically have little understanding of all the ramifications of signing such a form, and even if they did, would do so if their need was great enough. No doubt some companies already intentionally misclassify but without the affidavit and affirmative defense House Bill 1781 would provide.

In 2010, this legislature enacted the Construction Workplace Misclassification Act in recognition that the construction industry is particularly vulnerable to abuse of the system. In 2017 alone, the Pennsylvania Department of Labor and Industry investigated hundreds of complaints and collected more than \$360,000 dollars in penalties. While enactment of House Bill 1781 would not repeal the Construction Workplace Misclassification Act, it would provide a “legal” mechanism to circumvent that law. Our fear is that passage of House Bill 1781 would make the problem of misclassification much worse. It would lead to a routine process of offering a job in exchange for a promise to forgo workers compensation claims regardless of the true nature of the relationship between the company and worker.

Thank you for the opportunity to provide these comments. We urge the committee to reject the concept embodied in House Bill 1781.