

# **General Contractors Association of Pennsylvania**

## **Testimony on House Bill 1170 & House Bill 716**

### **Verification of Employee Work Authorization & Misclassification Task Force**

**Presented by Jon O'Brien, GCAP Executive Director**

**Monday, April 29, 2019**

Thank you, Chairmen Jim Cox and Patrick Harkin and all the members of the House Labor & Industry Committee for inviting the General Contractors Association of Pennsylvania (GCAP) to testify today in support of House Bill 1170 and House Bill 716. I would also like to thank Representatives Ryan Mackenzie and John Galloway for introducing the aforementioned pieces of legislation and for championing these bills that help in the fight against the construction industry's underground workforce.

Established in 1953, GCAP is a statewide, united group of union construction employers that establish positions and recommendations from the union contractor's point of view. GCAP is an organization that represents the memberships of the General Building Contractors Association (based in Philadelphia); the Keystone Contractors Association (based in Harrisburg); and, the Master Builders' Association of Western Pennsylvania (based in Pittsburgh). Additionally, GCAP is days away from adding its newest association member – the

Scranton-based Northeast Pennsylvania Contractors Association. Collectively, GCAP is the voice for over 700 union construction companies based throughout the Commonwealth of Pennsylvania.

The association members of GCAP were founded to serve as management's collective bargaining agents in labor relations. GCAP association members negotiate with such trades as: Carpenters, Laborers, Operating Engineers, Cement Masons, Drywall Finishers, Plasterers, Millwrights, to name a few. Along with labor relations, GCAP association members have evolved over the years to provide additional services to union contractors, like; safety, education & training, career development, community service, government relations, etc.

Because of the growing underground construction economy, construction companies are losing market share and this is hurting the companies that belong to the association members of GCAP. HB 1170 and HB 716 are two pieces of legislation that can help stop the downward trend that the industry has been heading in over the past few years. We must stop this race to the bottom.

By "underground" it's meant that a fraudulent company hires ghost workers that are nonexistent on paper and this fraud system is snatching jobs from honest contractors. Much of the credit in exploiting this underground economy goes to the Keystone Mountain Lakes Regional Council of Carpenters as they shined the spotlight on construction owners, developers, and general contractors that hire companies that use labor brokers to supply workers to projects. The labor brokers are producing workers that are not documented (or more accurately

defined these workers are not being asked to produce basic information by their employers as a condition of employment). These workers are not asked to produce a social security number, they have no insurance coverage, and they are paid in cash through the labor broker and this cash transaction results in no records that these workers even exist. These labor brokers are promoting a system that hurts all of Pennsylvania as NO TAXES ARE PAID. NO TAXES ARE WITHHELD. NO WORKERS COMPENSATION INSURANCE IS PROVIDED.

Just to clarify, by using terms like “underground” and “undocumented” this not a reference to a worker’s immigration status. This underground workforce is made up of people who want to be off the grid for a variety of reasons. Workers may want to avoid child support or alimony. They may have criminal records or failed drug tests that make them less employable. Their immigration status may be illegal. Or the worker may simply want to have more cash in their pocket, without having to make fair benefit and payroll contributions that legitimately-hired workers make. None of the aforementioned motives benefit the construction industry or society in general.

Research on the magnitude of this underground workforce is understandably thin, but the KML Carpenters have been closely studying the issue in cities for several years and they’re trying to determine the overall effects. In Western Pennsylvania, the Carpenters estimate that the share of work by the underground workforce is now at 15 percent. If that share of the workforce were to be undocumented for all trades in Western Pennsylvania, more than 3,000 workers would be working in the industry without accountability.

Because of the mass severity of the issue, earlier this year the City of Pittsburgh established the Joint Task Force on Construction Industry Fraud, which will work to identify and combat “unfair trade practices, including tax fraud” among the city’s construction businesses. This resolution takes particular aim at construction companies that commit wage violations that result in underpayment or nonpayment of taxes, as well as too-low pay rates that prevent workers from being able to support their families. GCAP applauds the City of Pittsburgh for taking this step and we are encouraged by the legislature wanting to act on HB 716. GCAP looks forward to working with the General Assembly to not only push this legislation over the goal line, but also assisting in any way possible to help on the issue. Please think of us as a resource, ready to help.

As for HB 1170 and the requirement of E-Verify for all construction in Pennsylvania, this is a perfect companion piece of legislation for HB 716. E-Verify is an electronic database to verify eligibility of workers. This process for construction popped up sporadically during the Federal Stimulus Package under President Obama and construction projects were requiring its contractors to use E-Verify as a condition of contract award. As is the case with a new process that is being required, many contractors had hesitation and concerns back in 2009. However, these concerns quickly vanished as contractors used E-Verify and realized that is not an extra burden on companies, but an easy process to use in the hiring process.

E-Verify compares the information on a worker's I-9 form with databases at the U.S. Department of Homeland Security, Social Security Administration, and/or U.S. Citizenship and Immigration Services. This process takes place within three days of employment and completion of the I-9. If the data lines up, all is good and an "Employment Authorized" message will be sent. If the data doesn't line up, a "Tentative Non-confirmation" message may arrive. Employers will then have to privately provide their employee a "Further Action Notice" which explains the reason this non-confirmation was issued and the worker's right to contest it.

When the use of E-Verify was mandated for public construction in Pennsylvania, many (most) construction companies associated with GCAP used E-Verify for all new hires regardless of whether employees work in the public or private sector; mainly because it was such an easy process. Most of the legitimate construction companies are already using E-Verify for all new hires, and those that question this requirement should be closely analyzed.

Thank you for allowing GCAP to present our opinion on these pieces of legislation to the House Labor & Industry Committee. In closing, GCAP respectfully urges the Committee and Legislature to support HB 1170 and HB 716.