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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections, and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Labor, Elections and Urban Affairs

Senate Bill 672

Relating to: compliance by employers with certain laws whose enforcement depends on the proper classification of persons as employees or nonemployees and providing penalties.

By Senators Wirch, Coggs, Hansen and Lehman; cosponsored by Representatives Parisi, Sinicki and Van Akkeren.

April 07, 2010 Referred to Committee on Labor, Elections and Urban Affairs.

April 14, 2010 **PUBLIC HEARING HELD**

Present: (5) Senators Coggs, Wirch, Lehman, A. Lasee and Grothman.

Absent: (0) None.

Appearances For

- Bob Wirch — Senator
- Hal Bergan — DWD
- Mark Reihl — Wisconsin State Council of Carpenters
- Jim Boullion — AGC of Wisconsin
- Brad Boycks — Wisconsin Builders Association
- John Mielke — ABC of Wisconsin
- Bradley Hasheider
- Patrick Smith — NCSRCC

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Jeff Mehrhoff — IUPAT
- Richard Schriener — IUPAT
- Ron Hanko
- Joanne Ricca — Wisconsin State AFL-CIO
- Daniel LaRocque — DWD
- David Boetcher — IBEW

Registrations Against

- None.

Registrations for Information Only

- None.

April 15, 2010

EXECUTIVE SESSION HELD

Present: (5) Senators Coggs, Wirch, Lehman, A. Lasee and Grothman.

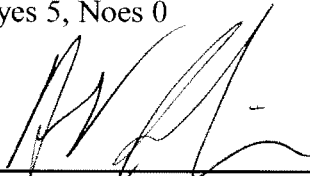
Absent: (0) None.

Moved by Senator Wirch, seconded by Senator Lehman that **Senate Bill 672** be recommended for passage.

Ayes: (5) Senators Coggs, Wirch, Lehman, A. Lasee and Grothman.

Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0



Adam Plotkin
Committee Clerk

Vote Record

Committee on Labor, Elections and Urban Affairs

Date: Thursday, April 15, 2010

Moved by: WIRCH Seconded by: LEHMAN

AB _____ SB 672 _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Spencer Coggs, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator John Lehman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Alan Lasee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>0</u>	_____	_____

Motion Carried Motion Failed

Senate Labor, Elections, and Urban Affairs Committee

Testimony of Hal Bergan, Administrator, Unemployment Insurance Division Senate Bill 672 Relating to Compliance with Worker Classification Laws

April 14, 2010

Chairperson Coggs and members of the Committee: Thank you for the opportunity to appear in favor of LRB 4644, a bill relating to compliance with worker classification laws. This draft bill is the product of a Task Force on worker classification compliance appointed by the Secretary of the Department of Workforce Development (DWD). The Task Force delivered a report in June 2009, copies of which are available to the Committee today.

Task Force Investigation and Conclusions

The Task Force heard from employers in the construction industry, contractors associations, employees and labor groups about misclassification of workers and explored legislative solutions enacted in others states. The Task Force concluded that misclassification has become a serious problem in the construction industry. Misclassification has caused workers to lose the protections and compensation afforded by the laws on workers compensation, minimum wage, overtime compensation, unemployment insurance and social security. The common thread among the violations of these laws is the employer's practice of unlawfully treating workers as though they were independent contractors rather than employees.

Misclassification is also a problem for contractors who correctly classify their workers as employees and otherwise play by the rules. These contractors can be at a competitive disadvantage to contractors who do not meet their legal responsibilities to provide workers compensation insurance and pay unemployment insurance taxes. It is not acceptable to disadvantage employers who do the right thing. They are among the strongest supporters of this legislature.

Finally, this bill addresses the problem of construction contractors who operate in the underground economy. Often these enterprises pay their employees in cash, provide no benefits or protections to their workers, and operate outside the rules that govern their competitors.

Authority of Department to Promote and Investigate Compliance

This bill requires DWD, to promote and achieve compliance by employers with certain employment laws through the proper classification of workers, to:

1. educate employers, employees, nonemployees, and the public about the proper classification of persons performing services for an employer as employees and nonemployees.
2. refer complaints of misclassification of employees as nonemployees to other state or local agencies that administer laws whose enforcement depends on the proper classification of employees and cooperate with those state or local agencies in the investigation and enforcement of those laws.

This bill authorizes DWD to investigate the practices of employers **in the construction industry** (construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects) to determine whether the employers:

1. maintain records identifying **all persons performing work** for the employer, including the name, address, and social security number of each of those persons.
2. maintain worker's compensation coverage for its **employees** as required by Wisconsin's worker's compensation law.
3. provide to DWD the information that employers are required to provide with respect to newly hired **employees**.
4. maintain records of the hours worked by its **employees**, the wages paid to those employees, any deductions from those wages, and any other information that the employer is required to keep under rules promulgated by DWD relating to hours of labor and the minimum wage, and is listing deductions from wages as required by law.
5. comply with the unemployment insurance laws for the benefit of their **employees**.

The department will visit the site where the employer is engaged in construction; question the employer, employees and others on site; and inspect the employer's records related to compliance with these requirements. Inspection of the employer's records may occur at the site at another place of the employer's business.

Notice to the Employer and Stop Work Order

In the event the department finds that an employer has failed to comply with the requirements mentioned above, the department will seek to obtain compliance through a step-by-step process prescribed by the bill:

1. Department serves the employer a notice of intent to issue a stop work order.
2. Employer has 3 days after service of the notice to show compliance.
3. Employer shows compliance within 3 days, no penalty or adverse action.
4. Employer fails to show compliance within 3 days:
 - Department issues a stop work order requiring the employer to stop work at the locations specified in the prior notice to the employer.
 - Forfeiture of \$250 per day begins to accrue and continues until the employer satisfies the department that it has either stopped work or complied with the requirements.

Appeal of the Stop Work Order

The employer may appeal the order that the employer stop work and assessing a forfeiture:

1. On the work site with a simple appeal form; or by letter to the department.
2. Hearing scheduled within 14 days before administrative law judge.
3. Issues at hearing: compliance with requirements (1 – 5 above).
4. Decision by ALJ within 7 days after hearing.
5. Stop work order is stayed from date of appeal until decision by ALJ; forfeiture continues while work continues and employer has not complied.

Post-appeal process

After issuance of appeal decision, the employer or the department may obtain:

1. Review of decision by petition to Labor and Industry Review Commission (LIRC);
2. Review of LIRC decision by action for judicial review in circuit court (under Wis. Stat. s.102.23, as in unemployment and workers compensation cases).
3. Stop work order remains in effect during the pendency of review.
4. Violation of a final stop work order or final decision affirming such an order is assessed a forfeiture of \$1,000. Review of such forfeiture is provided in the same manner as a stop work order is reviewed.

Limited effect of this bill

Stop work order and appeal decisions do not impair any other action that is required or permitted under the employment laws of this state to enforce a requirement under any of those laws.



DJE?

SB 672 and AB 939

Legislation to Assure Compliance with Laws Dependent on Proper Classification of Workers as Employees

This bill is the product of a Task Force on worker classification compliance appointed by the Secretary of the Department of Workforce Development (DWD). The Task Force heard from employers in the construction industry, contractors associations, employees and labor groups about misclassification of workers. Misclassification has become a serious problem in the construction industry.

When employers unlawfully treat workers as though they were independent contractors rather than employees and evade the laws by paying wages in cash without legally required records, workers lose the protections afforded by the laws on workers compensation, minimum wage, overtime compensation, unemployment insurance and social security.

Authority of Department to Investigate and Promote Compliance

This bill requires DWD to promote and achieve compliance by employers with certain employment laws by educating employers and the public about the proper classification of workers as employees and to coordinate enforcement with other agencies.

This bill authorizes DWD to investigate the practices of employers **in the construction industry** (construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects) to determine whether the employers:

1. maintain records identifying **all persons performing work** for the employer, including the name, address, and social security number of each of those persons.
2. maintain worker's compensation coverage for its **employees** as required under the worker's compensation law.
3. provide to DWD the information that employers are required to provide with respect to newly hired **employees**.
4. maintain records of the hours worked by its **employees**, the wages paid to those employees, any deductions from those wages, and any other information that the employer is required to keep under rules promulgated by DWD relating to hours of labor and the minimum wage, and is listing deductions from wages as required by law.
5. comply with the unemployment insurance laws for the benefit of their **employees**.

The department will investigate compliance with these 5 requirements by questioning the employer, employees and others on site where the employer is engaged in construction; and by inspecting the employer's records related to compliance.

Notice to the Employer and Stop Work Order

In the event the department finds that an employer has failed the requirements (1 – 5 above), the department will seek to obtain compliance by a step-by-step process:

1. Department serves the employer a **notice of intent to issue a stop work order**.
2. Employer shows compliance within 3 days, no action adverse to employer.
3. Employer fails to show compliance within 3 days:
 - Department issues a **stop work order** requiring the employer to stop work at the locations specified in the prior notice to the employer.
 - **Forfeiture of \$250 per day** begins to accrue and continues until the employer has either stopped work or complied with the requirements.

Employer Appeal of the Stop Work Order

The employer may appeal (immediately on site) the stop work / forfeiture order.

Employer's appeal hearing before administrative law judge occurs within 14 days.

Decision by ALJ within 7 days after hearing.

Employer is protected: stop work order is stayed from appeal until decision by ALJ.

Forfeiture continues while work continues and employer has not complied.

Post-appeal Process

After appeal decision, the employer or the department may obtain:

1. Review of decision by Labor and Industry Review Commission;
2. Review of LIRC decision by circuit court and court of appeals.

Stop work order remains in effect during the pendency of review.

Violation of a final stop work order or final decision affirming stop work order is assessed a forfeiture of \$1,000. Review of \$1,000 forfeiture is the same as for stop work order.

Limited Effect of this Bill

Stop work order and appeal decisions do not impair any other action that is required or permitted under the employment laws of this state to enforce a requirement under any of those laws.

LEVA Exec + Hearing - 4/14/10

Exec

SB 672

Grothman? on status of UI trust fund

Hearing

SB 669

- Rinner + Pocar

- no written testimony

- Pocar does extemporaneous, brief comments

- Wisch ~~has~~ comment

- Sullivan

- has written testimony

- speaks extemporaneously

- SC points on needing to move quickly

- Wisch comment on history of labor relations in WI

- Jeff Mehrhoff

- has written testimony

- Gerald Rintamaki

- has brief comments

- SC? on illegal workers

- Lehman + Wisch comments

(1)

6B672

- Wirsch + Hal Bergan

- Wirsch has written remarks, no copy while reading
- Bergan has written, summarizes enforcement provision
 - SC? on relation between 6A+672
 - not bad to have specificity in 669 as well
 - indy. contractor vs. employee
 - easier to determine in some fields than others
 - SC talks about possibility of lawsuit in residential work
- Lehman? on affirmative contract w/ Reserve?
 - yes.
 - addressed by public education

- Mark Reihl

- no written testimony
- thanked Hal + staff
 - SC? on stats
- Jim Boullion, John Mielke, Brad Boycks
 - Mielke thanks department
 - contractors get tripped up
 - Boycks thanks Mark Reihl, Bergan, Wirsch, Ferris
 - Boullion looks forward to work on admin rules
 - Wirsch on good all the way around

- Bradley Hasheider (raking contractor)

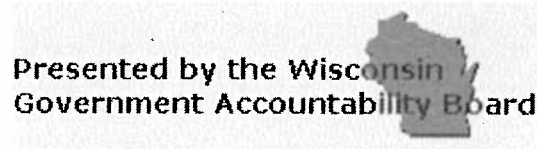
- levels the playing field
- lucrative to skirt the law by scallaws
- possible liability for homeowners
- allows for shady contractors to operate

- Patrick Smith

2



- ▶ Home
- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Tuesday, April 13, 2010

2009-2010 legislative session

Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Senate Bill 672

compliance by employers with certain laws whose enforcement depends on the proper classification of persons as employees or nonemployees and providing penalties. (FE)

TEXT
sponsors
LRB analysis

STATUS
committee actions and
votes
text of amendments

COST & HOURS
of lobbying efforts
directed at this
proposal

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
◆	◆	Construction Business Group	4/12/2010	↑	
◆	◆	Operating Engineers Local #139	4/13/2010	↑	
◆	◆	Wisconsin State Council of Carpenters	4/8/2010	↑	

Select a legislative proposal and click "go"

House

Proposal Type

Proposal Number (enter proposal number)

Legislative Session