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Business and Labor Committee  
October 28, 2011

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The Committee on Business and Labor met at 1:30 p.m. on Friday, October 28, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing to examine the status of employee misclassification since the passage of LB563 in 2010. Senators present: Steve Lathrop, Chairperson; Tom Carlson; and Norm Wallman. Senators absent: Brad Ashford, Tanya Cook, Burke Harr, and Jim Smith.

SENATOR LATHROP: Good morning. For those of you that are regular attendees in the Business and Labor Committee, you'll appreciate that we have this nice hearing room instead of being crammed into the spot we usually get. I'm Steve Lathrop, Chair of the Business and Labor Committee and state senator from District 12. Today, we're going to do the interim hearing on misclassification. And in 2010 we passed the misclassification bill intended to stop the practice of misclassifying employees, calling them independent contractors, and then not complying with all kinds of state and federal laws by virtue of that business practice. And today what we want to do is have a thoughtful discussion about how are we doing enforcing it. And judging from the people that are in attendance...so we have Cathy Lang here who will visit with us about what the Department of Labor is doing, and then we'll hear from folks who have judgments about how we're doing and their experiences. We have, as you might expect this time of year, conflicts with other interim hearings and so today we'll be joined a little bit later by Burke Harr; and you probably all know Molly; Senator Wallman and Senator Carlson to my left; and then Kate Wolfe. Senator Harr said he would be here a little bit late but he's coming. He had a meeting with the Omaha Public Schools that he was going to attend and then get down here. And so, I think we'll begin with that and I suppose call on the commissioner to testify first. Thank you.

CATHERINE LANG: Good morning, Chairman Lathrop...

SENATOR LATHROP: Good morning.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

CATHERINE LANG: ...and members of the Business and Labor Committee. My name is Catherine Lang. I'm the Commissioner of Labor for the state of Nebraska, appearing today to provide information on what the department has been doing with regard to the Employee Classification Act since its inception, and it was passed in the 2010 Session. We've just issued our annual report for what I would call the '10-11 year of the program. It's our first annual report required to be published by statute. It is available on our Web site. I do want to note immediately for all of you that I guess there is one deficiency in the report and that is there is a requirement that we're supposed to provide information about the number of referrals that were made to the Workers' Compensation Court, the Nebraska Department of Revenue, and any other enforcement authority. And then with that is supposed to be information about what happened with those referrals. Well, as we looked at that, and what I want to tell you that is between the Department of Labor, Department of Revenue, and Workers' Compensation Court, we know that we're required to have that in there. We will provide that as an addendum to this report as soon as we kind of get all of our data together, and then put it in there, and then next year it will roll much more smoothly. But I did want to announce that at the very beginning. In terms of the enforcement of the Employee Classification Act, what I'd like to describe is the four...from a Department of Labor perspective, the four ways that we sort of get at this issue within our agency. And from that, the information that we glean from our processes is shared with the Workers' Compensation Court and with the Nebraska Department of Revenue. And so there is that behind the scenes, behind the veil of the state of Nebraska, there is that sharing of information. There are four ways that the Employee Classification Act and the concern about misclassification of workers comes to our attention. First is through referrals. On our Web site, and I understand that we may hear today some concerns or issues about how the Web site functions, I want to tell you that any ideas, concepts, concerns anybody has about the Web site itself or the form or how that works, we're happy to take that under advisement and make changes going forward into the future, so.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: I think we are going to hear about that...

CATHERINE LANG: Okay.

SENATOR LATHROP: ...because it's a primary portal to make the complaints, and maybe after you hear what the concerns are, we can have you back up to talk about your thoughts on what you've heard today.

CATHERINE LANG: Right. And that will be great because as we get feedback, we attempt to make those changes. So today may be the perfect way that we're going to receive that formal information. But there is a form there available for people to fill out, either anonymously or identified, and when those referrals are made or those complete forms are provided to us through the Web portal, we take those within the Department of Labor, under the Office of General Counsel. John Albin is the director of the Office of General Counsel, is the Labor Standards Division, and within the Labor Standards Division are all of the labor standards enforcement that includes contractor registration and Employee Classification Act. So inside the Labor Standards Division these complaints are investigated. And the other thing that we've done is we've modified the manner by which our staff, when they go out and do contractor registration efforts, we've increased the number of site visits that they're required to make in a year. In the past, I believe the number of site visits was something like 35. The required site visits are now 100 in a year. And while they are out performing the function of the contractor registration process, they are also at the same time doing employee classification.

SENATOR LATHROP: And when did that change? If 35 was the number, when did it go to 100?

CATHERINE LANG: Beginning for the July, 2010-11 year, so this past year...

SENATOR LATHROP: Okay.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

CATHERINE LANG: ...with the adoption of the Employee Classification Act.

SENATOR LATHROP: Okay.

CATHERINE LANG: So that is one method by which we are addressing this issue. And that really...I'm sorry, that's the Web portal, that's the complaints. And then coupled with that is what I would refer to as number two, which is, as we are going about the business of enforcing the contractor registration provisions of law, our staff is sort of dual-tasking and doing the contract registration and employee classification coupled together. So that we have people on the ground doing and observing and looking for employee classification issues.

SENATOR LATHROP: How many people do you have...I understand the people that you have are now supposed to be doing 100 site visits rather than 35. How many is that?

CATHERINE LANG: They have a manager and then under the manager is five staff, I believe five staff.

SENATOR LATHROP: So does that mean we're getting 600 sort of surprise, on-site visits a year?

CATHERINE LANG: It would be 500 site visits.

SENATOR LATHROP: So the manager isn't...

CATHERINE LANG: Right. Right.

SENATOR LATHROP: Okay, just the staff people are.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

CATHERINE LANG: Yes.

SENATOR LATHROP: Is the number of staff devoted to this, I appreciate they're going from 35 visits up to 100 apiece or each, is the number five more or less than what we've had historically?

CATHERINE LANG: Focused on that area, it's probably about the same. It might be down just a little. But then I do want to talk to you about...

SENATOR LATHROP: Okay.

CATHERINE LANG: ...the changes that were made with this passage of the biennial budget,...

SENATOR LATHROP: Okay.

CATHERINE LANG: ...so we'll be getting to that.

SENATOR LATHROP: Okay.

CATHERINE LANG: So that's sort of one side of the house. On the other side, involved inside the Unemployment Insurance Division of the agency, are two other functions that help us discover the potential for employee misclassification and that is a blocked claim, where a person files for unemployment benefits says, I worked for, I received wages for, I was an employee for ABC construction company. And then we go into the database and we find no reporting by ABC construction company for wages for this individual. And that's called a blocked claim. We can't pay the claim because we don't have any wage reports filed on behalf of that individual. We take that and we investigate all blocked claims. And then from that, if we discover that there has been an issue that this

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

person was in fact an employee, then we will investigate, enforce, go out, and go out after that employer for the issue of unemployment and failure to pay unemployment insurance and issues of employee classification. And then also, we receive each year from the Internal Revenue Service...and we have been doing this since 2002, what I want to let you know is, there's an awful lot of states that are just sort of coming into this practice of the unemployment insurance tax departments reviewing what's called the 1099 tape or the 1099 cross-match. Our state has been doing that since 2002. We were, if not the first one up, the first to work with the IRS on that data. I also know, from my past experience at the Department of Revenue, their work with 1099 cross-match and other data that's received from the IRS. So if you look at our annual report and you look at the very last page, which is the attachment to the report, you will see in particular the historic data that has been categorized for what we would call that 1099 cross-match. And one of the things I think that you'll hear over time is once a state starts to do this...and this is a very efficient process, it's highly automated. We get their data, we run it against our database and then we find areas where there are issues of the misclassification worker, and then we go out and assess for that. Once you start to do that, employers realize that it's pretty easy to get caught, so to speak, and so they're probably less likely to go down this path in a state that's been implementing this for a period of time. And I think what you'll find with other states that have done this is the first few years you have kind of a high level of misclassification of worker in finding, you know, these situations through the cross-match. And then over time it's less and less, because it's...I mean, it's a pretty automated process and we just run it every year. And we go out, we enforce, we...the other thing that our tax staff does is that they work very specifically. They have their own regions. They work with all the employers within the region. And so they're out there constantly working with employers at the beginning of setting up their business to talk about these issues of the proper reporting of wages, payment of unemployment taxes, and therefore, avoiding the potential for the misclassification of workers. To the last issue, which was the...in the budget bill, as we were exploring the General Funds provided to the agency, one of the things that the Appropriations Committee did, in collaboration with the Business and Labor Committee,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

was to target about 150...up to, I think the words in statute are, up to \$150,000 of the General Funds is to be targeted for the Employee Classification Act. So right now what we're doing inside the agency, as we're implementing that piece, because it started on July 1, is as we are...this also goes to sort of our long history of our grant management process, but this will be the very first year that the agency will have all of the budget...the annual budget information, the very specific '11-12 budget information for each division balanced back against the grants. That's never happened in the way that we're doing it now where we are absolutely assuring that we have appropriately budgeted to each and every federal grant and state and General Funds that we have. And so we are right at the very end of that process and what we will then be able to discover, as John, for example, was working on the labor standards budget of putting in individuals to staff for that 150...up to, let me say it that way, up to \$150,000 of General Funds, to be able to staff up to that.

SENATOR LATHROP: What period of time was that money provided for?

CATHERINE LANG: For these...this current biennium, the biennium that we're in right now.

SENATOR LATHROP: Okay. Did we use it to hire the additional staff it was intended to support?

CATHERINE LANG: We will be.

SENATOR LATHROP: But haven't yet.

CATHERINE LANG: Not yet. But we are just about there in terms of our budgeting process.

SENATOR LATHROP: How many more people will you get with that additional

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

appropriation?

CATHERINE LANG: I would guess that we're somewhere in the three staff member range.

SENATOR LATHROP: Okay. Is there a reason we haven't hired them and put them out on the street...

CATHERINE LANG: Yes.

SENATOR LATHROP: ...to enforce this act and...

CATHERINE LANG: Yes.

SENATOR LATHROP: Yes. What's that reason?

CATHERINE LANG: And that's because we are in the process of balancing all of our current annual budgets against all of our grants. For example, I'll just...take my salary, for example. I'm the Commissioner of Labor. My salary is what's...is an allocated cost to all of the grants. So as we go through and if UI has a budget and contractor registration has a budget, I have a piece of that budget. And what you have to do is you have to get all of those budgets together, including my budget, which is an allocated cost; personnel, which is an allocated cost; finance, which is an allocated cost; IT, which is an allocated cost. You've got to have all of those together, run your allocations back against each of the grants to make sure that you are not overbudgeting against a grant, and we are right at the very end of that process.

SENATOR LATHROP: Okay. And I appreciate that you've had some accounting difficulties at the Department of Labor, but I don't know what that has to do with not using the money that the Appropriations Committee earmarked for this purpose and the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

Legislature earmarked for this purpose. If it adds three more people to enforcement, how come we haven't done that? Because if it's just about the Department of Labor, and this is not a criticism about your efforts to fix the accounting problems,...

CATHERINE LANG: Uh-huh.

SENATOR LATHROP: ...and most of those were happening before you got there. I'm not trying to put you on the spot with this other than to say, I remember when the Appropriations Committee put that money aside for you. The Legislature passed it and we wanted to see people on the street.

CATHERINE LANG: Uh-huh.

SENATOR LATHROP: And here's a concern I have, and I hope you will address the revenue that we've gotten from our efforts, because there are two issues when we passed the misclassification bill. One was to stop this practice that honest contractors can't compete with the unscrupulous contractor. Right?

CATHERINE LANG: Uh-huh.

SENATOR LATHROP: That needs to stop so that we level the playing field. But there's a lot of tax revenue that the state is missing out on and it's, in effect, a moneymaker in other states. And so as you continue, if you don't mind, tell us...can we get these...when do you expect to hire these people and get them out in the field?

CATHERINE LANG: Well, I would...

SENATOR LATHROP: Do we have to wait for the accounting issues to be solved?

CATHERINE LANG: Uh-huh. We have to absolutely assure that we have the resources

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

within a program budget, plus their allocated costs, so that we do not exceed, in this case, the General Fund appropriation, the cash fund appropriation, and for the rest of the agency the federal grant fund appropriations.

SENATOR LATHROP: But for misclassification enforcement, if the Legislature gave you, what, \$150,000...

CATHERINE LANG: Up to.

SENATOR LATHROP: ...what we know is you can hire two guys without ever exceeding that appropriation, right? You might be worried about the third guy going over but not the first two.

CATHERINE LANG: I got to tell you until we're all done working through our process I'm going to make absolutely certain that we balance our budgets against our grants.

SENATOR LATHROP: That's...I understand that, okay, and that is important. When do you expect to do that and when can we expect to see the three people, that the Legislature appropriated money for, for enforcement, hired and in the field?

CATHERINE LANG: Probably within the next six weeks.

SENATOR LATHROP: Okay.

CATHERINE LANG: Between now and probably the 1st of December we'll have that done.

SENATOR LATHROP: Okay. And I hope you can appreciate,...

CATHERINE LANG: Uh-huh.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: ...it's a little easier, as you go through your presentation, for us to ask clarifying questions. And if my committee has any, you can feel free to...Senator Carlson.

SENATOR CARLSON: Okay. Thanks, Senator Lathrop. If you go to page 10 on the annual report, additional tax collected, and that's a ten-year period, is \$209,000. Now the five staff member...is this a result of the work of the five staff members?

CATHERINE LANG: No, this...

SENATOR CARLSON: No, this is...where does this come from?

CATHERINE LANG: This is the result of the 1099 cross-match, so this occurs, and the tax that we're talking about here is the unemployment insurance tax.

SENATOR CARLSON: Okay. And I'm going to ask this and it sounds like it's nitpicky but it helps clear things in my mind. How many staff does it take to identify the \$209,000 over that ten-year period?

CATHERINE LANG: Our tax staff in total is probably, from a statewide perspective, I'm guessing, was somewhere in the 20 range, but they are doing all of the enforcement of the unemployment insurance tax from the tax collection, tax enforcement side, not the benefit side but the tax side. I'm guessing that's approximately the number and I can absolutely verify that for you later.

SENATOR CARLSON: Well, I understand that, whatever their duties are, that this is only a portion of those duties, and...

CATHERINE LANG: And it's only a portion of the collection of any unemployment taxes

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

that we discover. It is just purely from the 1099 cross-match. This is not blocked claims, this is not other discoveries while in the field. This is the 1099 cross-match.

SENATOR CARLSON: And Senator Lathrop refers to other states as possibly they're...what they do ends up being a...maybe rather than a moneymaker, it's a positive cash flow return, but I wanted to ask that. But now let's go back to the five staff that make these visits. That's roughly 100 visits per staff member...

CATHERINE LANG: That's our target.

SENATOR CARLSON: ...in a year.

CATHERINE LANG: Uh-huh.

SENATOR CARLSON: And there's about 200 working days so that's about a visit every other day or I suppose they make a couple of visits in one day and then have to write those up. And do they do the research on what they find out? How does that process work? Because if I'm a staff member, I go out and visit a site.

CATHERINE LANG: Uh-huh.

SENATOR CARLSON: And then I've got to...it would be my responsibility to write that up and turn that in to you?

CATHERINE LANG: Uh-huh. Well, not to me, to their manager.

SENATOR CARLSON: Okay. So...but what kind of...what kind of a revenue do these visits uncover that show the classification was wrong and it should have been corrected, and it results in additional revenue that an employer should have been paying? Does this pay for itself? And if it doesn't, I understand you don't always go by bottom line

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

because you have to enforce the law and sometimes that doesn't necessarily bring in extra revenue. But how close does this come to paying for itself?

CATHERINE LANG: Well, one, I'd be happy to put that information together and provide it to the committee from staff. The other thing is, remember that there are going to be instances where they discover information and then feed it back over to the unemployment insurance tax side for additional enforcement, and then as well the additional referrals of other tax issues or state revenue issues to other divisions...or departments, excuse me, Department of Revenue and the Workers' Compensation Court. And so I would be happy to get for you specifically...because our staff is enforcing the Contractor Registration Act and assuring that they're properly registered there, as well as looking for misclassification. And so we could try and divide that out for you so that you could see that.

SENATOR CARLSON: Well, that would be interesting.

CATHERINE LANG: Okay.

SENATOR CARLSON: And now we're talking about two or three more staff members, so how does all that end up working out that it's a good expenditure?

CATHERINE LANG: And we'd be happy to try and break that out.

SENATOR CARLSON: Okay. Thank you.

CATHERINE LANG: And as well, I think it might be helpful to have a narrative of the process that we've implemented for how this contractor registration, employee classification process is dovetailing within the agency. So we could write that up as a narrative and provide that.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: How many of that 500 visits are follow-up to leads that you've received from the Web site or some other source?

CATHERINE LANG: We can find that out. Because what I don't know...

SENATOR LATHROP: Do you think it's most of them, or are most of the 500 surprise visits to a construction site?

CATHERINE LANG: Most of them are probably the 500 surprise visits to a construction site that we feel we're obligated to perform whether we receive a lead or not. But we can try and break that out to give that information to you so you can see that.

SENATOR LATHROP: Okay. We've sort of interrupted your presentation. I didn't...I wanted to clarify some of the numbers before you went on, so if you want to continue, go ahead and...

CATHERINE LANG: Well, actually so what I was...my point in my clarification was to let you know the annual report is there; to then hear, especially today, any issues, concerns, whatever, to be able to take those under advisement; hear from you, as committee members, additional information that you'd like to see more specific in the ways that you've described today. I wanted you to know about the four ways that the agency looks at this issue, receives information, processes that, and goes out to basically prosecute it, and that's really about all I had.

SENATOR LATHROP: Okay. I do want to follow up then and ask, the additional tax that's collected, this is from a process that's independent of the misclassification act, am I right?

CATHERINE LANG: It has been going on since 2002 and we intend it to continue to go on.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: Okay. And so I'm going to ask the question again to see if I understand the information on page 10 in this schedule.

CATHERINE LANG: Uh-huh.

SENATOR LATHROP: This is a process that was begun before the misclassification act and what we see here is the result of a process that was independent of the misclassification bill.

CATHERINE LANG: That would be correct.

SENATOR LATHROP: Do you have any evidence of what the Department of Revenue has received as a result of enforcing the misclassification bill?

CATHERINE LANG: I do not to date, and that's what we're working on with them.

SENATOR LATHROP: Okay. Have you made referrals to the Department of Revenue for them to collect back income tax withholding?

CATHERINE LANG: Yes.

SENATOR LATHROP: How many?

CATHERINE LANG: We've made referrals through the Employee Classification Act, as required, and I can get that exact number for you. It's not as large as you might otherwise think.

SENATOR LATHROP: I'm not thinking it's very large at all so you're not going to surprise me with the number, I suspect.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

CATHERINE LANG: Okay.

SENATOR LATHROP: Can you give me an idea? Is it more than 20?

CATHERINE LANG: I'm sorry, I...hang on. Oh, and on page 4, we have 18 UI, unemployment insurance tax field representatives. So the number there is 18 for the staff member there. If you look at page 5, we talk about that the contractor registration program yielded 31 misclassification inquiries through the on-line application. It appears that the number would be 40...26. Oh, 26 from UI, 40 from the Employee Classification Act, so 66.

SENATOR LATHROP: So we've sent over to the Department of Revenue 66 leads for people that have not been withholding income tax either.

CATHERINE LANG: Right.

SENATOR LATHROP: So we found misclassified employees and sent 66 leads over there. Do you know whether or not they have made claim, secured the withholding money, what the Department of Revenue's success has been in getting money out of these people?

CATHERINE LANG: That's the piece of the report that we have not yet provided and we're working with the other departments to create the addendum so that you would have that information.

SENATOR LATHROP: Okay. When do you think that's going to happen?

CATHERINE LANG: Over the next few weeks. We're working on that right now.



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: Okay. I know when we looked at misclassification before this bill passed, and we looked at some other states, just our neighbor to the east, Iowa,...

CATHERINE LANG: Uh-huh.

SENATOR LATHROP: ...they saw, with enforcement, and they have a significant enforcement process, they saw with a significant enforcement process a huge amount of tax money come into the state, some of it unemployment, a lot of it state withholding that wasn't taking place, I mean in the millions and millions. And I'm very interested in that because...and then maybe my next question for you, and then I think it will be beneficial to ask some more questions of you after we hear from people who have tried to make complaints, or whoever is here to talk about the act today or enforcement, but...and maybe you can answer this question for me after you listen to everybody, but I'd like to know what you need from this committee or from the Legislature to improve enforcement. Okay? Because I appreciate that the report wasn't necessarily due by today and I appreciate that you gave us some information to accommodate our hearing and that we will get more by whatever deadline we set in the bill, and thank you for that. But I do think what we're looking at with the complaints that I've heard is that enforcement needs to be more significant. People need to be more afraid that they are going to get caught misclassifying employees. And when we have you back up, I'd like you to address what, if anything, you need from us so that that can happen, because I think we're missing out on an opportunity to level the playing field, as well as a lot of revenue to the state from the cheaters. Right? So, okay.

CATHERINE LANG: Okay.

SENATOR LATHROP: Any other questions? Senator Carlson.

SENATOR CARLSON: Yeah, thanks, Senator Lathrop. I want to follow up a little bit on what he asked. Let's go back to page 10.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

CATHERINE LANG: Okay.

SENATOR CARLSON: Because his question, I think, was have you seen any effectiveness yet of the misclassification act? If you look at the last two figures of the number of workers misclassified in 1/11 and 2/11, those are the two largest numbers in the ten-year list. Is that a result of an initial effect of the misclassification act?

CATHERINE LANG: With regard to the 1099 cross-match, I don't know.

SENATOR CARLSON: Okay.

CATHERINE LANG: We've been doing this since 2002 so I don't know that.

SENATOR CARLSON: Well, I think it's kind of significant in those two months that those are the two highest figures of the ten years for whatever...

CATHERINE LANG: And those are quarters, just so you know. Those are quarters, so those are the first two quarters of '11.

SENATOR CARLSON: Oh, those are quarters. Okay.

CATHERINE LANG: Yeah.

SENATOR CARLSON: Okay.

CATHERINE LANG: I mean, if you look back in quarter three of '04, you had 347.

SENATOR CARLSON: Oh, okay. I...

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

CATHERINE LANG: And, yes, it ebbs and flows and it changes over time. I cannot tell you the...

SENATOR CARLSON: No, that's the number of audits. It's the number of workers misclassified...

CATHERINE LANG: Oh, I'm sorry.

SENATOR CARLSON: ...in that column.

CATHERINE LANG: Okay.

SENATOR CARLSON: Those are the two highest numbers, the last two.

CATHERINE LANG: I can ask staff if they believe that that's been a...had that impact on those two quarters. Yep. Okay.

SENATOR CARLSON: Okay.

SENATOR LATHROP: Okay. Thanks, Cathy.

CATHERINE LANG: All right. Thanks.

SENATOR LATHROP: Okay. We're going to open it up. Because it's not a bill where we have opponents and proponents, we're just going to open it up and if you're here to share an experience or express a concern or pat the Department of Labor on the back, you're welcome to come up and testify. One at a time. (Laughter)

KEN MASS: Senator Lathrop, my name is Ken Mass. I'm with the Nebraska AFL-CIO. And to the committee, welcome. I guess my first point, it doesn't make sense to me. As

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

we look at page 10 in that audit, and I see a number of audits from 1099s and I'm going to look at year 1/11, and right in that area you got 231 audits of 1099s. I take that as a 1099 as individual, I assume. I guess that's a question for back here. But from that you've got number of workers misclassified as 473. So I got 231 audits, I take those as individual audits, to get 473 workers misclassified. I don't understand it.

SENATOR LATHROP: Well, an audit may be of a business, I suspect.

KEN MASS: Is it an audit of one business?

SENATOR LATHROP: Cathy is shaking her head yes.

KEN MASS: Okay. So you audited 231 businesses, right, employers? And from that you got 473 individuals. See what I'm saying? Could be the same individual that worked there several times?

CATHERINE LANG: I can't answer that.

SENATOR LATHROP: We're going to have to have you direct your comments to the committee and not interrogate the commissioner. (Laughter)

KEN MASS: I think that needs to be explained a little bit more, the numbers there, because you got that kind of thing.

SENATOR LATHROP: Okay. We'll ask. Cathy can clarify that when she comes back up.

KEN MASS: But back to the misclassification. I think they...the money was allotted and you don't have the answers to that, you're going to get that, of why that money that wasn't, when appropriated, put into misclassification to get on the road and get out there and do it. I think that's concern and also has been a concern in enforcement. If we are

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Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

taking individuals and using them in several different stalls of...to get into that point, I think it's not doing the misclassification legislation justice, because it's still going on. It's still going on. What I hear from, you know, you're right. You're comparing...you're not comparing apples to apples anymore. It's still apples to oranges. And when you get into the bidding process there is (inaudible) judgment that hasn't brought it up to bidding the jobs equally. And the good guys are getting left in the sunset because the illegals are just continuing to do this. Nobody is really policing them until...

SENATOR LATHROP: When you say illegals, you're talking about the contractors who misclassify.

KEN MASS: Contractors, illegal contractors, yes, I'm sorry. Yeah. So they're going to continue that until they get their hands slapped or somebody enforces them, not from telephone, not through the mail, in person. Until you get that done, it's going to continue and that's a problem. So I think the enforcement has always been the problem. It still is the problem. And it would be...yes, I hear the same thing from the state from the east. You know you're talking about...and I broke this down on this...it's 4,900 misclassification workers. We assume they're individuals but it could be the same one. That's only \$50 per person over that period of time from 2002 to 2011. If you divide 4,900 into that amount, it ends up being \$50 per misclassification of worker. It seems like a low number. It should be a higher number if they're really, you know, doing their number out there, so.

SENATOR LATHROP: I suspect some of that, although I don't know, I suspect some of it is you find a guy has been misclassified, you go to the employer and you say, you should have had him classified as an employee and the guy doesn't have any money, right?

KEN MASS: Um-hum.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: Which is part of what happens for some of the unscrupulous contractors. They're fly-by-night. You catch them and then they don't have anything to contribute to the Unemployment Compensation Fund even when you catch them,...

KEN MASS: Uh-huh.

SENATOR LATHROP: ...which I think speaks to the importance of scaring them to do it right in the first place as opposed to trying to catch them and hope you can get money out of somebody that operates in that fashion.

KEN MASS: Uh-huh. Yeah, you're exactly right. When you go back to...you know, going from the 1099s or from the audits, those people are out of town, they're gone. You're not going to find them.

SENATOR LATHROP: Yeah, and they may have caught a lot of them. I don't know if the commissioner can address this, but my guess is they catch a lot of them and get no money out of it and occasionally they'll find somebody who is doing it and recover what they should.

KEN MASS: Uh-huh. Okay.

SENATOR LATHROP: But that's probably the nature of the...

KEN MASS: All right. That probably answers the question. Our concern is still the enforcement of it and, you know, hopefully, there's more money can come from the Legislature this year. It's economic development. When you can create something to create money into the revenue, it is economic development. So put some people on the road.

SENATOR LATHROP: All right. Thanks, Ken. Any questions? I see none. Next.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

HARRY WOODWARD: Good morning.

SENATOR LATHROP: Good morning.

HARRY WOODWARD: My name is Harry Woodward and I'm out of...Harry Woodward and out of North Platte, Nebraska.

SENATOR LATHROP: Mr. Woodward, could we have you spell your name for us?

HARRY WOODWARD: W-o-o-d-w-a-r-d.

SENATOR LATHROP: All right. Just one second. Did I mention that we have to have you fill out a sheet? You can do it after the fact but...oh, okay, good. If you're going to testify, we have to have you fill a sheet out, which is the usual program.

HARRY WOODWARD: Sorry.

SENATOR LATHROP: Okay, go ahead. Thank you for coming today.

HARRY WOODWARD: What I'm here for is to talk about the misclassification and I had filed a misclassification complaint with the Department of Labor. And someone, I can't remember who it was for sure, sent me back a note saying that it was done nationally and they didn't know what I would want them to do, and where it's a state law instead of a national one, that should be different than the national. And that's millions of dollars against FedEx Ground, but it would be...owe back taxes for misclassifying.

SENATOR LATHROP: Okay. You're from North Platte, did you say?

HARRY WOODWARD: Yes, sir.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: And what do you do in North Platte, if you can tell us?

HARRY WOODWARD: Now I deliver candy during the day and I work at the hospital at night.

SENATOR LATHROP: Okay. And you made a complaint to...or a misclassification complaint? Is that what you're trying to share with us?

HARRY WOODWARD: Yes, on-line...on-line to the Department of Labor.

SENATOR LATHROP: The Nebraska Department of Labor.

HARRY WOODWARD: Yes.

SENATOR LATHROP: You made a complaint on-line and when did you do that?

HARRY WOODWARD: Probably late last year or the early part of this year. I can't remember.

SENATOR LATHROP: And was that complaint directed at a particular employer?

HARRY WOODWARD: Yes.

SENATOR LATHROP: And who was that?

HARRY WOODWARD: FedEx Ground.

SENATOR LATHROP: Okay. And what response, if any, or was there any follow-up from the Department of Labor? Did you hear back from them?



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

HARRY WOODWARD: Yes, and they sent me a note, e-mail, that that was being investigated nationally and she...they didn't know what they could do about it.

SENATOR LATHROP: When did you get that note in relationship to your complaint? Like, did they write you back a couple of days later?

HARRY WOODWARD: Yeah, within a couple days.

SENATOR LATHROP: Okay. And did the person identify themselves that sent you the note?

HARRY WOODWARD: They did, but I cannot remember and I did not bring the...

SENATOR LATHROP: It would have been a staff member at the Department of Labor?

HARRY WOODWARD: Yes.

SENATOR LATHROP: Okay. Did you make any other inquiry or any other follow-up?

HARRY WOODWARD: No, I did not.

SENATOR LATHROP: Okay.

HARRY WOODWARD: Yes, I did. I remember now. I believe I did call them, and I don't know who I talked to again, but I...and I said that I felt that that was a state law now and it would be separate from the national misclassification or lawsuit that was going on.

SENATOR LATHROP: Okay. Did you get some kind of a response you want to tell us about?

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

HARRY WOODWARD: No. No.

SENATOR LATHROP: Okay. Okay. I don't have any other questions. Senator Carlson? Okay. Well, thanks for coming all the way from North Platte to share your experience with us.

HARRY WOODWARD: Okay. Sorry.

SENATOR LATHROP: Good morning.

STEVEN MULCAHY: Good morning.

SENATOR LATHROP: Morning.

STEVEN MULCAHY: My name is Steven Mulcahy. I'm with the North Central States Regional Council of Carpenters. I just want to thank the committee here and the Chair for working to help enforce workers' rights. I want to thank the Department of Labor for trying to wrap their arms around this, but I just want to say I don't think it's working, I don't think it's effective. When we passed LB563, it was an attempt to close the loophole in contractor registration and clean up the employee misclassification problem that exists. Unfortunately, I see and our team sees that it hasn't. We have four teams a day that go out throughout the state of Nebraska and part of Iowa. We visit approximately 48 job sites a day. Not a day goes by that we do not find it on a job site.

SENATOR LATHROP: You don't find what? I'm sorry.

STEVEN MULCAHY: Employee misclassification. I can go to a job site where there's a legitimate subcontractor listed as having four employees. Unfortunately, they have 30 men on the job site--that's one job site, one contractor, one visit, one day--each of them

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

working for a different schedule of pay, all of them working as independent contractors of a subcontractor, of a subcontractor, of a general contractor. We see this every day. We've been to job sites where contractors are not registered. There's no DOL postings for LB563. We bring it up to the contractor. We stop back again in a week. There has been no correction. We've sent an e-mail or a phone call to the Department of Labor. Oftentimes, the lag is about nine days, and I got, you know, we'll look into it. When we go back to the contractor that had 30 people working there that day, those people are there for a few days and then they're on to a different job. I've seen the same carpenter work for three different subcontractors as an independent contractor on three different jobs in one week. This bill gave us the real-time enforcement we needed with the teeth to fine these contractors, but it has to be real time. It has to be effective. You have to put people on the street to make this effective. You have to go with a focused job site. If you have a claim that it exists right here today with this contractor or this address, you should be able to respond to that and have a very effective site visit versus responding to a backed-up e-mail claim that came in from, you know, a source, a disgruntled employee. That's what we're seeing out there. We see this every day. I got a contractor here that does work all over for the city, working for the Corps of Engineers, not registered, working in town. What we've got, we've got the "I'm gonna." You know, if one of your six children...all your children at the end of the day they do their chores, they get a cookie. And one of the kids eats three cookies before he gets his chore done and you say, don't do that again, "I'm gonna...I'm gonna do something." By the end of the week you keep replacing the cookies in the jar and pretty soon his brothers start taking two cookies. Pretty soon the kids from the neighborhood come in and start taking two cookies. Pretty soon the cupboard is empty of cookies because everybody is doing it. And that's what's happening. We've got a contractor from Florida that's come up and bought a small contractor up here and is now employing the same practices because they can, they're unregistered. They've just secured a job site for the university. It's 11,446 man-hours, a \$748,245 job, and they got it because they're employing these practices. We can't compete. A question I would have is, how many people do we think have been fined with this new bill, LB563? Because that's the teeth we're supposed to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

have. I know that back when contractor registration got passed and we were pushing that back in 2002, and that stimulated the Department of Revenue sharing their information and going back and getting these people. But again you're tagging the workers there, not Jose Pinto, some figure that doesn't exist who they work for, for another sub and a sub. We're after the labor brokers here. We're after the people that we need to fine with this bill. And if we fine them, according to this bill, that's going to be how we stop it. I would have a couple of recommendations if we move forward with this to make it a more effective bill. The Web site reporting needs to be streamlined so a worker can do it. Maybe we need to test it out with a worker; pull Joe dry-waller off the job and say, hey, try this. Can you do this? All right. But the Web site does need to be streamlined so it's effective for a worker, a man out on the street or a woman out on the street providing for their family who is being exploited, being told he's going to be 1099 or she's going to be 1099 as an independent contractor. They're being told that they are going to get paid that way. They're not choosing to work that way. They're being told that's the job you've got, take it or leave it. We've got people from Florida coming up here taking our jobs. They're taking money out of our cookie jar and they're taking it back home. So the Web site needs to be streamlined so it makes sense for a worker to make a complaint or bring the attention to the job site and the contractor. And I'll be honest with you, I know that we're doing the 1099 cross-references, but a lot of these guys are never going to file taxes. The reason the contractor is telling them they're going to be an independent contractor, because they...or may not have I-9 requirements, or one of his group may not have that, they're never going to file taxes. It's a great step in the right direction, but if we don't stop them from employing these practices by whacking them with the fine that the bill allows us to do it, it's not going to stop. It's not going to stop and it hasn't stopped. If there's a way that we can work with our job site visits with the Department of Labor so that we have a level of trust, if we can turn in a legitimate claim and say, hey, this is happening here right now. When is your task force going to be in Omaha? Or when is your task force going to be in North Platte? Or when is your task force going to be in Lincoln? We'll be in Lincoln the same day and we'll be able to give you feedback because we can hit 48 job sites a day. We've

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

hit 50. We've hit 60. We can work any way with that. We know it exists. It's killing our contractors, it's killing our wages, and it keeps happening. People are coming in from out of town taking our cookies. It has to be stopped. If there's any questions that you would have for me or I can try to answer, get the information for, I'd encourage it.

SENATOR LATHROP: Steve, I do want to ask you some questions. And just by way of background, the interest labor has in this, organized labor, is that the practice of misclassification affects the ability of those employers you...organized labor works for, their ability to find work and compete against the guy who is misclassifying their employees.

STEVEN MULCAHY: That's correct. The contractor that employs the misclassification of the employee clearly has a big savings on no taxes taken out of the payroll.

SENATOR LATHROP: It's not the difference between the wage rate for a union carpenter versus anybody else. It's the fact that they're not paying Work Comp premiums, they're not paying unemployment, and they're not doing federal and state withholding.

STEVEN MULCAHY: Correct.

SENATOR LATHROP: That gives the employer, the unscrupulous employer, an advantage over the honest one and unevens the playing field.

STEVEN MULCAHY: That's correct.

SENATOR LATHROP: And your interest is indirect in that respect.

STEVEN MULCAHY: That's correct.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR LATHROP: You said that you have four task forces that go out every day or four groups?

STEVEN MULCAHY: Yes, usually we have four teams that go out every day.

SENATOR LATHROP: And when you say we, you're talking about the carpenters?

STEVEN MULCAHY: I'm talking about the carpenters, yes.

SENATOR LATHROP: And how many people are on a team?

STEVEN MULCAHY: Two.

SENATOR LATHROP: And do you guys look at--I'm just curious--do you look at building permits or how do you know where to go? You just drive up and down the street looking for...?

STEVEN MULCAHY: We are on the streets by 8:00 every day. We meet in the morning. We have a set schedule of visits we're going to do and we come back and regroup in the afternoon. So we're on the streets every day for seven and a half hours. We do look at permits. We look at drive-bys. We see a trash heap sticking out of a window, we go see who's doing the work. We have a number of sources, bulletins and Internet, that we look for job sites and then, of course, there is just the "stumble-upons" or the tips.

SENATOR LATHROP: Okay. When you do that, I'm curious, you show up at a job site, what do you do, just go in and say, hey, I'm Steve, and are your employees classified correctly? Why do they even let you on the property is what I'm wondering.

STEVEN MULCAHY: Well, we set up scheduled visits with contractors that are partnered with us, and sometimes there are subcontractors, and subcontractors on the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

job that we talk to. Oftentimes, we'll introduce ourselves at a job trailer for maybe a contractor that's not one of our partners and we'll talk with them. We'll let him know whether he's got the right posting or not there, just inform him. We actually have photocopies of them in our vehicle that we've handed out. And we've asked them if we could visit their job site. And there's times when workers will call us because they know what's happening so we'll talk to them off the job site.

SENATOR LATHROP: Okay. And when you do that, how many sites do the groups...your people that fan out across the state, let's just use Nebraska, how many sites do you think your group visits a day in Nebraska?

STEVEN MULCAHY: Again, about 48.

SENATOR LATHROP: And are you looking just for carpenter misclassification or do you, for example, run into misclassified roofers or cement finishers?

STEVEN MULCAHY: You know, we focus obviously on our craft, that's what we do. But does it exist? Yes. We don't specifically target that, no.

SENATOR LATHROP: Okay. And how many occasions do you believe you find legitimate leads or legitimate situations where someone is being misclassified, where it's unequivocal, it's just not speculation but you have hard evidence that someone is being misclassified?

STEVEN MULCAHY: Oh, one, two, three, four times a day.

SENATOR LATHROP: And do you report all of those to the Department of Labor?

STEVEN MULCAHY: No, we don't. To be really legitimate, you need to have paycheck stubs from the men to know how they're being paid. Oftentimes, they don't know which

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

sub of a sub they're working for that day. It's common. So we don't actually have...we don't have access to what we would need to prove it unequivocally. But, yes, when I look up a contractor and he's got 4 registered employees and he's got 30 guys on one job site, and they tell us that they're working as independent contractors, at some point the "I'm gonna" doesn't work for us. I mean, we can only turn them in if we're going to be effective. For us to gather that information and go out there and get it and turn it in and not have something happen real time, it's disappointing, and it's not effective. So we try to educate the workers on that.

SENATOR LATHROP: How many times do you think you've turned somebody in since we've had the new law, you or somebody on one of these crews?

STEVEN MULCAHY: You know, I'd say we really started focusing on it here since it took effect, and I couldn't say. I know we've turned in, myself, I've turned in probably, you know, six or eight. I've called...you know, I made the phone call and then when you don't get the feedback from spending the time making a complaint, again, you don't do as much. You have to be effective. And I know the rest of the team has turned some in. And again you get a phone call or I've even gone to the point where I've got an e-mail address now just recently so I can e-mail all the specific job site info so we can just pop it like that. And that was a nine day lag to, I'll look into it.

SENATOR LATHROP: Okay. I'm wondering, it sounds like, and well, the commissioner will talk about that when she comes back up, but the bill requires that they investigate all credible claims, and obviously if you're running a Web site where people can get on there for nothing and cause some headaches for a former employer that let him go,...

STEVEN MULCAHY: Right.

SENATOR LATHROP: ...you know, because you're showing up to work late or whatever, you're going to get a lot of crank complaints. But what do you think are the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

elements of a credible complaint, in your judgment? Because it does sound like some of them are pretty slippery.

STEVEN MULCAHY: Well, they are. Obviously, they're pretty slippery but, you know, I guess you'd have to have a relationship with...which is what we'd like to do. We'd like to have a relationship with the Department of Labor that says if we send this to you, that means that we've talked to the men, we've been on the job, we know it exists, we've looked it up. We've sent in a number of contractor registration violations of subcontractors that show up not registered. And in our minds, we thought that that would kind of, obviously, if they're not registered and they're working, they're misclassified. So maybe on our part...and I just started thinking about that this morning listening to testimony, but maybe we'd lump that together in the complaint perhaps or the notification that this is existing here now. But understand also the nature of this business: dry wall goes on, when you're ready for rock you put it on, and then you go away and you wait again. So if you're going to respond to a dry wall, and rock being dry wall, when you need to respond to one of these, and that's why I asked if the task force is going to be in town for the department and we're there that day, we can direct them to a very high possibility of success of enforcing those two bills.

SENATOR LATHROP: Have you seen, since the bill passed, anybody be made, and I'm going to use this term, "a public example"?

STEVEN MULCAHY: No, I haven't.

SENATOR LATHROP: Okay. I think that's all the questions I had. Senator Carlson.

SENATOR CARLSON: Thank you, Senator Lathrop. Steve, who do you represent again?

STEVEN MULCAHY: The North Central States Regional Council of Carpenters,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

Carpenter Local 444 in Omaha, Nebraska.

SENATOR CARLSON: Okay. And you're...so you're employed by the union.

STEVEN MULCAHY: Correct.

SENATOR CARLSON: And how many employees...it looks like eight employees that do nothing but inspect job sites.

STEVEN MULCAHY: There are...that's about right. That's about right. We have...sometimes we share manpower with other locals in other areas and they come and visit us so we'll have an extra team out there. We have one guy that runs solo a lot simply because he covers an outlying area. So he spends a lot of time driving. But, yes, that's approximately correct.

SENATOR CARLSON: Of you and these eight people, what's your job description and what's your objective?

STEVEN MULCAHY: I'm just simply representative of the council and our objective is to allow our contractors to be more competitive so they can put our skilled work force to work and get them back out of the grocery stores and back off the lawn mowers and put them back at their craft, because that's where we're at. We've got hundreds of people that are no longer working in the craft with us and driving trucks over the road and yet we've got people from other states coming here to do their work.

SENATOR CARLSON: And so you're compensated through union dues?

STEVEN MULCAHY: Correct.

SENATOR CARLSON: Now with these eight people, and you're number nine, what's

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

the membership in North Central?

STEVEN MULCAHY: The entire regional council covers several states and it's about 18,000, I believe.

SENATOR CARLSON: Is your objective to uncover these misclassifications and, you could say, bring them to justice? Is part of your responsibility to recruit members for the union?

STEVEN MULCAHY: Not necessarily. My responsibility is to put those that are in there to work and to secure work for our contractors so we do market our contractors. And there is no...our contractors can hire anybody they want. They can hire a guy off the street if they want. We don't have an exclusive hiring on.

SENATOR CARLSON: So in terminology here as we talk, when you use the term "contractor," that is somebody who owns a business. And a member would be a carpenter.

STEVEN MULCAHY: Correct.

SENATOR CARLSON: And you're trying to get work for your carpenters in the proper classification.

STEVEN MULCAHY: Yes, that's one of my goals. Mostly my goal is to make sure they're treated fairly and they secure a fair wage and maintain the area standards for the craft.

SENATOR CARLSON: Okay. I'm just willing to ask point-blank questions.

STEVEN MULCAHY: Sure. Sure.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR CARLSON: Is part of your responsibility over a period of time to recruit so many new members of the union?

STEVEN MULCAHY: No, we have no recruitment requirements at all.

SENATOR CARLSON: Okay. Thank you.

STEVEN MULCAHY: You bet.

SENATOR LATHROP: Senator Wallman.

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for being here.

STEVEN MULCAHY: Thank you.

SENATOR WALLMAN: It's a...the workers are getting a hit on, you know, all over the land. But the state of Iowa, you know, brings a lot more revenue. They have better enforcement or...?

STEVEN MULCAHY: Yes. Yes, they do. They're very responsive and have a...I don't have a problem sending an e-mail or a call over there and they're very responsive. I've seen, for example, I have notified them and they're first...I've heard back from them, they made contact within a day or two. And that was notifying a guy in Des Moines about a job in Council Bluffs.

SENATOR WALLMAN: Does their Department of Labor have more employees, do you know?

STEVEN MULCAHY: I have no idea. I just know it's more effective.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

SENATOR WALLMAN: Okay. Thanks.

SENATOR LATHROP: I do want to clarify or follow up to Senator Carlson's questions and that is, you're not going to the site to recruit union members, is that right, but rather to identify people who are misclassifying because those people are making it impossible for businesses that do hire union carpenters to compete when they bid the jobs?

STEVEN MULCAHY: That is certainly one of our goals when we're on the job, yes.

SENATOR LATHROP: Okay. In other words, you're not out there trying to...this isn't an organizing effort. It's trying to identify the people that are breaking the law.

STEVEN MULCAHY: We don't have any organizing campaigns going on right now. We have none.

SENATOR LATHROP: Okay. Okay. I guess that's all I had.

STEVEN MULCAHY: We're simply out there trying to maintain the area standards.

SENATOR LATHROP: Okay. Yeah. Senator Carlson.

SENATOR CARLSON: Okay. Thanks, Senator Lathrop. And I'll add one comment to what Senator Lathrop just said because I asked some of these questions. You're employed by the union, you're supposed to do what you're asked to do. I don't have any qualms of that.

STEVEN MULCAHY: Correct.

SENATOR CARLSON: But your goal isn't to put nonunion contractors out of business,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

is it?

STEVEN MULCAHY: Absolutely not.

SENATOR CARLSON: Okay. You just want to play by the rules.

STEVEN MULCAHY: I want them to play by the rules, because if they played by the rules then we would have everybody on the same field and the contractors that pay the area standards would be able to compete.

SENATOR CARLSON: So a nonunion contractor that hires nonunion employees, that's fine with you as long as they play by the rules.

STEVEN MULCAHY: That's correct.

SENATOR CARLSON: Okay. Good. Thank you.

STEVEN MULCAHY: You bet.

SENATOR LATHROP: I see no other questions. Thanks, Steve.

STEVEN MULCAHY: You bet.

SENATOR LATHROP: Appreciate having you here...

STEVEN MULCAHY: Thank you.

SENATOR LATHROP: ...and your testimony. Anybody else care to testify today? I thought with all these people we'd have more testimony. If not, I'm going to close this hearing. I see some people shuffling. Oh, yeah, no, I want Cathy to come back, if you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

wouldn't mind, so we can...the commissioner to come back so we could...

CATHERINE LANG: Yes, sir.

SENATOR LATHROP: Okay. Besides what we've heard today, as you might expect because it was a bill that I introduced and this committee passed, I do get a lot of calls on this and I get e-mails from people who are frustrated with enforcement. And the idea of...and I'm told there's some pretty prominent contractors that are still doing this, or at least prominent by Omaha standards. And the frustration for those, and it is not a union problem because the person that calls me the most about this is a nonunion or a cement contractor who doesn't have union help. People look at that Web site and I'll start there. And I've got on it before to try to look. The Web site looks like the questions, or they're blanks, and it looks like somebody is supposed to be turning their own boss in. Okay. So if I get on there and I am a...let's say that I'm a carpenter on the job site and I can see that the folks that are doing the cement finishing are all misclassified, it doesn't ask questions that permit me to turn somebody else in. It doesn't...if I think I've lost a job to somebody, a contracting job to somebody I know is misclassifying, and I want to turn in somebody who is taking work from me because they're doing this business practice, unlawful business practice, the questions don't really permit me to make that kind of a complaint. They're all geared to one person. That's the guy complaining about the fellow that hired him. And I don't think it's a friendly Web site, to start with, and that's a pretty important portal. The other would be the phone. And then it seems to me this is a matter of being responsive. Right?

CATHERINE LANG: Yes.

SENATOR LATHROP: So what can we do different? Because I know...I mean we haven't seen the numbers yet but if they were good, we'd probably be looking at them or you'd be telling us that they're coming and they look really good and I haven't heard you say that. And I know over in Iowa, it was in the tens of millions of dollars in back taxes

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Business and Labor Committee  
October 28, 2011

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or taxes that they were collecting for the state of Iowa by identifying the unscrupulous contractors. And do you know if we've collected a million dollars in taxes?

CATHERINE LANG: I don't know that.

SENATOR LATHROP: No idea.

CATHERINE LANG: I do not know that.

SENATOR LATHROP: Do you know if we've issued a single citation to an unscrupulous contractor or prosecuted anybody?

CATHERINE LANG: I will get that answer for you. I believe it's in the report but I will get that answer for you.

SENATOR LATHROP: Okay. Well, yeah, it would have been nice to have that report before we...or all that information before we sat down. Yeah. I would like to know, and I think the statute requires that you identify, how much money we're making, who is being prosecuted, and what taxes are we getting in. And that will be in the addendum?

CATHERINE LANG: From the...well, it requires us to provide the referrals and what the referred agencies did with our information.

SENATOR LATHROP: Right.

CATHERINE LANG: Right.

SENATOR LATHROP: Will we know from that information...when you provide an addendum to the report, will we know how much state taxes that we've collected?



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Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

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CATHERINE LANG: We can do that.

SENATOR LATHROP: Okay. I think that's what it calls for, doesn't it?

CATHERINE LANG: Without rereading the statute, right off the top of my head, I can't tell you that.

SENATOR LATHROP: Okay. Well, if you can do it, we'd like to see it, because...

CATHERINE LANG: Okay. That would be great.

SENATOR LATHROP: And then the other question is responsiveness. It's not just the carpenters that call me. I hear from contractors, some of them are union contractors, some of them are not union contractors. They're just guys that want the playing field leveled and they make complaints and nothing happens. That's the problem. And if we provide for three more people to help you out, and we're waiting for an accounting cleanup to happen over at the Department of Labor before we put them on the street, we don't have an opportunity to be responsive. And this really is...it's not...it's certainly not a union thing. It really isn't. It's about making sure the guy that's withholding and doing all the things we ask him to do and observing the law can compete with the guy...many of them come in from out of town. They hire a bunch of folks and they don't pay their taxes and they don't cover them with Work Comp and we never get a dime of unemployment from them. And they become...their business model is use the state, don't pay anything in. Their employees end up at the hospital walking out on their bills. And I'll look forward to the addendum and I can assure you I will be looking at it very closely, and one of these hearings that we're going to have in the Business and Labor Committee is going to get sidetracked into a follow-up. Okay. When you're in front of the Business and Labor Committee, I can tell you that we're going to follow up with more questions about your report and the enforcement. And again, I want to be clear about it, I want to be a partner with the executive branch in figuring out how to do this well, and

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Rough Draft

Business and Labor Committee  
October 28, 2011

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not intending just to embarrass somebody. So if there's something you need from the Legislature to provide enforcement that is on par with other states that are realizing good enforcement and realizing tax revenues and leveling the playing field for the contractors, we'd like to know, okay,...

CATHERINE LANG: Yes.

SENATOR LATHROP: ...certainly in time for bill introduction if there's something we need to add to this bill. Okay?

CATHERINE LANG: Yes. Yes.

SENATOR LATHROP: Senator Carlson.

SENATOR CARLSON: Thank you, Senator Lathrop. And again to just kind of add something to what he has said, because I believe that you would like to see the incidences of misclassification significantly reduced.

CATHERINE LANG: Yes.

SENATOR CARLSON: We all would.

CATHERINE LANG: Exactly.

SENATOR CARLSON: And so along with what Senator Lathrop requested, I would ask you to kind of put yourself in the spot of the executive who is making decisions. We need to see this done, we need to get it done, and here's what we have to do in order to allow us to do it. I don't think the additional two or three staff members is going to get there. However, I don't want to see any more money spent than absolutely necessary. But if your frame of mind would be, we can do this, here's what we have to have, and if

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Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

---

that came in the form of a bill in the next session that would be helpful.

SENATOR LATHROP: Yeah. The other thing is, it sounds like there's an opportunity for some collaboration here. You have the carpenters. I promise you, I'm hearing from the cement finishers, okay, a lot. That guy is e-mailing me regularly about the problems it's causing in that trade. There are people that are willing to go out and identify, what I would call, good prospects for prosecution.

CATHERINE LANG: And we would love to hear from them.

SENATOR LATHROP: Okay. Well, maybe you can stick around and talk to them and see if there isn't an opportunity here for them to be the eyes and ears of the Department of Labor so that they have somebody down there who they can call and say, there are dry-wallers over at this project, there's 30 of them, not 1 of them is an employee, and they're going to be there another two days. Because I appreciate when you're talking about dry-wallers or cement finishers, they are in and out of a job site in a couple of days, probably. So maybe you can, maybe you can...

CATHERINE LANG: And we'd be happy to look at...

SENATOR LATHROP: ...spend some time talking to some folks and...

CATHERINE LANG: And we'd be happy to look at the Web site and the form and take into consideration all of those things to ensure that it is as user friendly as we can make it, so happy to do that.

SENATOR LATHROP: Okay. Yeah,...

CATHERINE LANG: Okay.

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Transcriber's Office  
Rough Draft

Business and Labor Committee  
October 28, 2011

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SENATOR LATHROP: ...I'm sure you are. Okay. You know, this isn't...I'm not accusing you of anything.

CATHERINE LANG: Right. Right.

SENATOR LATHROP: Okay. Anything else? I don't see anything.

CATHERINE LANG: Okay.

SENATOR LATHROP: We appreciate the interest you've had in this subject matter. You can be assured the Business and Labor Committee will continue to follow up and try to make sure that we are devoting the resources the state needs to, to this important enforcement. And as always, call, write, let us know what your experiences are, and we'll share those with the commissioner. Thank you.