

# Labor Law and State Capital Construction Process Workgroup

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House Appropriations Committee

# State Employee Membership

- House Appropriations Staff- Kim and Tony
- Senate Finance Staff- Adam
- Secretary of Administration
  - Department of General Services
- Secretary of Finance
  - Department of Taxation
- Secretary of Commerce and Trade/Chief Workforce Advisor
  - Department of Labor and Industry
  - Department of Professional Occupational Regulations
  - Small Business and Supplier Diversity
- Higher Education Procurement- UVA, VCU

## External Stakeholder Membership

- LIUNA
- Building Trades Virginia and Northern Virginia
- Associated General Contractors of Virginia (3 members)
- Ernie Caldwell- Virginia Board of Workforce and GJ Hopkins President

# Initial Report Considerations

- ***Data and Technology Solution***- With the enactment of new worker laws, agencies need to work together to develop data collection standards with similar fields to help support the sharing of data amongst enforcement agencies. A Data Sharing Agreement or MOU should be signed to share information of employers who are currently being investigated or found guilty of unlawful business practices. A new technology solution might be needed to help share information and communicate amongst the agencies. (Executive Branch/Agencies)

## Initial Report Considerations

- **Coordination-** An interagency taskforce needs to be formed and meet regularly to discuss data collection, examine enforcement strategies, engage with the public through multiple methods of public comment, and develop ongoing recommendations to the General Assembly and Governor. (Executive Branch)
- **Executed Contracts-** With support from the Office of the Attorney General, language about misclassification, payroll fraud, and wage theft needs to be added to general contractor agreements as well as any subcontractor on the job site. Posting the executed contracts, that includes employee and independent contractors' rights, in a public place on each site should be required. (Agency/Regulations/Legislative).

## Initial Report Considerations

- ***Certification and Professional Development***- Any state employee who oversees large capital outlay construction contracts with a value defined by the applicable appropriation, must take an online or face to face course to be certified by 2022. Information about new labor laws specifically to construction projects will be integrated into any procurement officer annual training. Ongoing professional development will be needed for recertification and of best practices. (Agency)
- ***Independent Contractor Registration***- Any independent contractor who works on a publicly procured project must be registered through the Department of Professional and Occupational Regulations by 2023. This registration will help independent contractors know their rights, provide better education around misclassification, payroll fraud, and wage theft as well as help employers identify independent contractors on the job. (Agency/Legislative)

## Initial Considerations

- ***Competitive Bid Process-*** The competitive bid process will be examined to see how the state can support general contractors who exhibit good business practices while making sure small and minority owned businesses are equally competitive, as well as identify general contractors who comply with contract terms.
- ***Future Research and Stakeholder Engagement-*** More research needs to be done on other states' solutions to the workers who have been mistreated on state government projects. Also, additional stakeholders such as agency procurement officers and project managers, general contractors, and workers need to be interviewed for the final report.

# Report Questions

- What is the current landscape of worker protection laws at the state and federal level (Worker Misclassification, Wage Theft, Prevailing Wage)?
- How does each worker protection law fit into the context of Virginia's procurement statutes for state agencies, higher education, and transportation?
- What are the opportunities to better align procurement law, practice, and procedure with Virginia's worker protection statutes?
- How are employees and employers educated about laws and enforcement?
- What are the options for the employee when there is a potential violation under current federal and state law?
- How will the agencies balance compliance versus enforcement?
- What models are used in other states for prevention? What costs are associated with each model?
- What models are used in other states for enforcement?



# Report Questions

- What are the legal consequences for businesses who do not follow certain labor laws?
- What are the gaps in the current law that lead labor brokering? How do you close gaps? Advocates believe transparency measures will close those gaps
- What contractors need to submit certified payrolls? When does that happen now? Under what statutes? When do investigations take place? Who has the authority to do it now?
- How does higher education and transportation fit into a potential remedy each with differing procurement statutes? Should all state agencies have the same regulations when it comes to labor laws?
- How do potential changes to Virginia's procurement law impact the vendor pool available to participate on state contracts? What are the budgetary implications of limiting the vendor pool?
- What are long term and short-term solutions?
- What is root of the issues? Funding? Low bid contracts?

# Timeline

- May-Procure services and hire project manager
- June- Meeting, Presentation by Tax and DOLI on enforcement
- July- Draft recommendations and research other states
- August- Town Halls, Focus Groups, Public Comment
- September- Finalize recommendations
- October- Report due
- November- Draft legislation and budget amendments