

To: House Commerce & Economic Development Committee
RE: H.119, H.223, H.323 — Classification of Independent Workers

Testimony of Bruce Shields, woodland owner in Eden since 1966. I have been an independent contractor in various capacities in Vermont since 1977, and have also employed independent contractors in many situations. My most recent arrangement was to have an independent field data collector assist the Eden Town Listers for 10 days in 2016.

H.119 appears very helpful. It embodies the “bright line” or “safe harbor” concept created by the Internal Revenue Service in the 1970’s, when ambitious and over-zealous IRS inspectors began fining loggers, sawmills, trucking companies, farmers and others for not paying employment withholdings. There were Congressional hearings, and IRS issued in cooperation with a wide range of employers and commodity groups their clear simple and predictable tests. H.119 would reinstate the IRS test as Vermont policy.

H.223 and H.323 appear to me to be very hostile to those of us who work independently. The assumption behind them seems to be that we are shysters, cheats, frauds, and gyps who do not pay our debt to society. My own reason for being independent was that I wanted to be paid for my output, not for my time. If I could complete my task in 6 hours, I could go home instead of loafing around on someone else’s property in order to get my full paycheck. I never needed to schedule my days off — instead, I scheduled my work.

These two bills seem to create a way for independent contractors to void their contracts via a complaint to the State of Vermont. The employer subject to such a complaint will then be found retroactively responsible for a range of insurances, withholding taxes, penalties and fees. But I do not see any pathway for the employer to adjust compensation to reflect the new labor overhead costs. Farmers and loggers would appear uniquely exposed to economic damage. Many farm jobs are seasonal, but intense — consider orchard workers. Many businesses employ season “floaters.” The book keeping requirements for people who hire floaters are very burdensome. I understand that in Germany, floaters can be paid cash for up to two weeks without triggering any bureaucratic paperwork, and that when that provision was instituted, the overall unemployment rate dropped from about 10% to 4%.

Small business and independent operators will largely support H.119 for an important reason: it harmonizes Vermont law with the Federal IRS rules. It is a huge annoyance that some contractors find themselves independent with respect to the IRS, but employees with regard to Vermont law. The purpose of statutes should not be to harrass, confuse, and annoy people trying to earn a living.

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03/14/2017