

**Deborah Berkowitz**

National Employment Law Project

# **The Act Relative to Workplace Safety H.3633**

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**Hearing Before Massachusetts Committee on  
Labor and Workforce Development**

November 13, 2017

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The National Employment Law Project (NELP) submits the following testimony in support of the Act Relative to Workplace Safety. NELP applauds Representative Rushing and this committee for holding a hearing on this important bill. The Act Relative to Workplace Safety is a sensible policy that is good for law abiding businesses, good for workers and good for taxpayers.

NELP is a non-profit law and policy organization with 45 years of experience providing research, advocacy and public education to advance the employment and labor rights of the nation's workers. We work together with national, state, and local partners to promote policies and programs to create good, safe jobs and ensure that work is an anchor of economic security and a ladder of economic opportunity for all of America's working families.

Seventy workers in Massachusetts lost their lives on the job in 2016, representing a ten year high in worker fatality rates in the commonwealth. An additional 79,800 workers suffered a serious work-related injury. Nearly 40% of the workers fatality injured in Massachusetts on the job work in the construction industry.

Trenching is among the most dangerous work in construction. A little over one year ago, two workers tragically lost their lives in Boston's South End in an unsafe trench, where proper safeguards were not installed. A subsequent investigation revealed that the employer had been previously cited twice for putting workers in trenches without required safety measures—citations they ignored and hazards they never fixed. The safety violations and horrendous safety record of this company were so egregious that the company and the owner have been charged with manslaughter. These tragic deaths clearly underscored the need for local and state governments to strengthen worker protections.

The Act Relative to Workplace Safety will help save lives and prevent injuries to workers and the public. This bill will require companies seeking to do business with the state, or seeking a trenching permit, to report their records of safety violations. This bill will help assure that the state is not subsidizing or supporting companies that operate with hazardous working conditions.

This bill aims to ensure that the state of Massachusetts does business and gives trenching permits only to responsible companies that respect worker safety laws. This law will help ensure that hardworking Massachusetts workers will get the safe workplaces they deserve.

When enacted, this law will reward responsible contractors and level the procurement playing field. This will help ensure that law abiding companies are not put at a disadvantage in comparison to those that choose to reduce their overall contract costs by cutting corners on worker safety.

We are confident that these rules will also help ensure that the public receives a good value for their tax dollars. A review by the Center for American Progress Action Fund<sup>1</sup> of contractors for the federal government, for example, found that those with the worst workplace violations (such as safety violations) also had significant performance problems such as cost overruns, performance issues and fraudulent billing.

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<sup>1</sup> "Federal Contractors that Harm Workers Also Shortchange Taxpayers," Karla Walter and David Madland, December 2013, Center for American Progress Action Fund

The citizens of Massachusetts expect the government to be good stewards of taxpayer money. Why should Massachusetts tax dollars reward contractor's that jeopardize worker health and safety? Taxpayer dollars should reward companies that respect our worker safety laws.

The Act Relative to Workplace Safety builds on existing Massachusetts procurement requirements and reflects practices that are increasingly common in the private sector as well—especially in the manufacturing and construction industry. Many private companies require subcontractors to disclose their workplace safety records. These companies find that it is a cost effective way to ensure future compliance. Further, a number of states and localities have laws requiring the reporting of workplace violations—and they work. In fact, they encourage more law abiding companies to apply for contracts because they level the playing field.

We have attached to our testimony a few language suggestions for a committee redraft. We strongly urge this committee to issue a favorable report on the Act Relative to Workplace Safety. Thank you for your time and consideration.

**HOUSE . . . . . No. 3633**

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**The Commonwealth of Massachusetts**

PRESENTED BY:  
***Byron Rushing***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to workplace safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>

**HOUSE . . . . . No. 3633**

By Mr. Rushing of Boston, a petition (accompanied by bill, House, No. 3633) of Byron Rushing, Denise Provost and Carlos Gonzalez relative to workplace safety, trench excavation permitting and further regulating the responsibilities of awarding authorities . State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act relative to workplace safety.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 30B of the General Laws is hereby amended by inserting after section 4 the following section:-

Section 4A. (a) For procurement contracts for supplies and services, including construction, that are estimated to cost more than \$50,000, each awarding authority shall ensure that solicitations or invitations for bids require that the offeror represent, to the best of the offeror's knowledge and belief, whether there has been any Occupational Safety and Health Administration, citation, notice, decision, or civil judgment against the company, as a sole proprietorship, limited partnership, and/or limited liability partnership/corporation and/or any affiliated business or subsidiary of which the applicant is owner, manager, officer, and/or director within the preceding 4-year period for a violation of the federal Occupational Safety and Health Act of 1970, 29 U.S.C sections 651 to 678, including any settlement agreement and documentation verifying if hazards identified have been corrected.

(b) An awarding authority, prior to making an award, shall, as part of responsibility determination, provide an offeror with an opportunity to disclose any steps taken to correct any violations of or improve compliance with said federal Occupational Safety and Health Act of 1970, including any settlement agreement and documentation verifying if hazards identified have been corrected.

(c) An awarding authority shall consider the information provided pursuant to subsections (a) and (b) in determining whether an offeror is a responsible source.

(d) For any subcontract where the estimated value of the supplies and services required exceeds \$50,000, an awarding authority shall require that, at the time of execution of the contract, a contractor represents to the contracting agency that the contractor will require each subcontractor to disclose to the awarding authority a citation, notice, decision or civil judgment, rendered against the subcontractor within the preceding 4-year period for a violation of said federal Occupational Safety and Health Act of 1970, said 29 U.S.C sections 651 to 678, including any settlement agreement and documentation verifying if hazards identified have been corrected, and to provide to the awarding authority updated information every 6 months.

(e) As appropriate, an awarding authority shall refer matters related to information provided pursuant to subsections (a), (b) and (d) of this section to the appropriate agency.

(f) During the performance of the contract, each awarding authority shall require that every 6 months contractors subject to this section update the information provided pursuant to subsection (a).

(g) If information regarding a citation, notice, decision or civil judgment, rendered against the offeror within the preceding 4-year period for any violations of said federal Occupational Safety and Health Act of 1970, said 29 U.S.C sections 651 to 678, including any settlement agreements and documentation verifying if hazards identified have corrected, or similar information is obtained through other sources, an awarding authority may request a copy of a citation and evidence of abatement of a hazard, and refer the offeror to appropriate agencies if a hazard has not been abated.

(h) An awarding authority shall require that if information regarding a citation, notice, decision or civil judgment, rendered against a contractor's subcontractor within the preceding 4-year period for any violations of said federal Occupational Safety and Health Act of 1970, said 29 U.S.C sections 651 to 678 is brought to the attention of the contractor or similar information is obtained through other sources, then the contractor shall inform the awarding authority and the awarding authority may request a copy of a citation and evidence of abatement of a hazard, and refer the subcontractor to appropriate agencies if a hazard has not been abated.

(i) As appropriate, awarding authorities shall send information provided pursuant to subsection (a) and subclause (i) of subsection (d) of this section to the appropriate agency.

(j) Nothing in this section shall preclude the exercise or enforcement of any lawful rights or remedies.

SECTION 2. Section 2 of chapter 82A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the fourth sentence the following sentence: A person making application for a trench excavation permit shall disclose in writing: (a) Any citation, notice, decision or civil judgment rendered against the company, as a sole proprietorship, limited partnership, and/or limited liability partnership/corporation and/or any affiliated business or subsidiary of which the applicant is owner, manager, officer, and/or director within the preceding 4-year period for a violation of the federal Occupational Safety and Health Act of 1970, 29 U.S.C sections 651 to 678, including any settlement agreement and documentation verifying if hazards identified have been corrected; and

(b) (i) any prior suspension or revocation of a trench excavation permit held by applicant; (ii) any assessment of fines in relation to a trench excavation permit held by applicant; (iii) any prior immediate shutdown of a trench site by state or local authorities in relation to a trench excavation permit held by applicant; and (iv) the date of each incident.