

**Testimony of the
International Union of Operating Engineers Local 478
before the
Labor and Public Employees Committee
on SB 920
March 3, 2009**

The Operating Engineers Local 478 is testifying against SB 920, An Act Clarifying Pension Obligations of Contractors and Subcontractors. We feel that this bill has so many changes that would negatively affect the working men and women of the State of Connecticut and the pension plans that they depend on to retire with some type of dignity that 3 minutes of testimony would not even begin to cover the high points. This bill is asking for general contractors and construction managers to bring the types of subcontractors that worked on the UCONN dormitories that we are still paying to fix onto every construction job in Connecticut. Once a GC or CM is relieved of the fiscal responsibility of their subcontractors not paying, there is really no reason to increase expenses by hiring a responsible subcontractor.

Pension funds rely on some method of legal action or threat of legal action to enforce payments from companies that have incurred liabilities to them. Liens and Bonds are two methods used by the construction multi employer pension funds to recover payments that are not paid. Joint checks is another. This bill in effect eliminates the ability of a pension fund or individual worker to go after a contractor or owner for a subcontractors default on their promise to pay pension obligations by drastically shortening the time period to take action on some methods of recovering those funds and by eliminating another method entirely. It also makes it less likely for a GC or CM to go to the expense or trouble of requiring joint checks, since they would have no monetary downside if the subcontractor does not pay.

The bill, as proposed, would shorten the time period to file a claim against a general contractor or construction manager to 30 days after the debt is incurred, would eliminate liens against the project the debt was incurred on as a manner of redress, require the pension fund to serve written notice on the owner of a project about the lack of payment and serve written notice he construction manager or general contractor about the lack of payment, and would shorten from 3 years to 30 days the current statutory limit on filing claims against a construction bond unless the proper procedures are followed.

The current law gives the unpaid worker that does not receive payments for his pension 180 days from when the work is performed to make a claim on the contractors bond for payment. The time period for filing a mechanic's lien is currently 90 days from the time the work is performed. This bill would reduce that time to 30 days from the time the work is done (Section 4) and eliminate the ability of a worker or pension fund to file a mechanic's lien (Section 2). Please note that mechanic's liens cannot by statute be filed on state projects.

The reality of the construction business is that most General Contractors and Construction Managers do not make payments to subcontractors on submitted invoices until they are paid by the owner. That usually occurs after the General Contractor has submitted their invoice containing the subcontractors request for payment. Depending on the timing of the requests for payment and the tier of the subcontractor the period that subcontractors wait for payment can range from 30 to 90 days. This wait would, in all practicality, eliminate any chance that a worker or a pension fund, in the case of a unionized worker, could file a claim against the project or the general contractor for payment of pension money that was promised to the worker as part of their compensation. In the case of the Operating Engineers pension fund, the payments are due on the 20th of the month after the month the work was performed. As an example, if the work that obligated the payment was done in January, the payment to the Operating Engineers fund is due on February 20th . If the payment is received on time, then all work performed 10 days or more prior to the end of January would not have the assurance of being covered by the contractors bond. Couple this with proposed Bill 1035, which would eliminate the requirement that subcontractors supply a bond if the general contractor has bonded the job and you will have taken away the ability of a person to go after anyone except the delinquent subcontractor for pension monies owed them. For workers not covered by collectively bargained agreements, companies often make quarterly payments into their 401K or other pension plans. For them, the situation would be even worse.

The ability to collect from a general contractor or construction manager for unpaid monies owed by a subcontractor is a safeguard for workers currently in the law. It makes it more likely that general contractors and construction managers will hire responsible subcontractors that will discharge their obligations to the workers they employ, not just hire the cheapest subcontractor they can find regardless of their reputation or their personnel practices. The excuse " Talk to the sub, I have no responsibility for or control over whether they pay or not" will become the mantra of many of the less responsible contractors if this bill or any of its components become law. The people that will pay the most, however, will not be the workers that are cover by collectively bargained pension plans. They will be the constructions workers that have to navigate the intricacies of these laws by themselves, most likely not knowing about the steps they must take to ensure they get what their employers promised them, unable to

respond in the shortened time frames mandated if this passes, or completely unable to do anything if they are working on a job that their only recourse is to file a lien.

Section 3 of SB920 is also in direct opposition to what the Operating Engineers is trying to accomplish. We support another bill on this agenda, HB 6462, which would require that certified payrolls be submitted by U.S. Mail. The purpose of that bill is to increase penalties to make it less likely that contractors will submit false certified payrolls. It accomplishes this by requiring them to be mailed and creating the possibility of prosecution for mail fraud. Section 3 of 920 gives contractors the ability to submit electronically or by U.S. Mail, which we feel makes no substantial change in the current law other than making it easier on the contractor. The only cost that we see to submitting by mail only is the cost of a stamp, and envelope and someone to put the payrolls in the envelope. Mailing payrolls does not seem to me to be a very complicated process either. If they want to change the process to allow e-mail, I would suggest the language "electronically and by mail" as a compromise.

SB 920 Section 3 also changes the language that exempts contractors from responsibility if they rely on the certification of a lower tier subcontractor about the truth of a certified payroll. We again feel that this section of the law should be strengthened to make the general contractor and construction manager take more responsibility for the quality of the subcontractors they hire, but do not believe that it has to change at all. Let us not give contractors another opportunity to claim "I didn't know" as a defense. Currently the law lets them rely on the subcontractors claim, but does not give them a blanket pass. Weakening this section to make it easier on the contractor to escape responsibility is not the way to go.

We are daily watching as bankruptcy courts eliminate pension plans, companies unilaterally suspend matching payments to 401K's, and more and more companies eliminate pensions altogether. Connecticut does not need to weaken its laws to allow another type of assault on workers ability to retire with dignity by accumulating a nest egg that is guaranteed them by the benefit requirement that is contained in the prevailing wage laws. There is no requirement that contractors have any type of pension plan, but if they do not they must pay the benefit part of the prevailing wage to the employee as part of their paycheck. Let's not let a unscrupulous contractor promise an employee that part of their wage as a retirement benefit, giving that contractor the cost savings of not having to pay taxes, unemployment, workmen's compensation and social security match on that money and then have that contractor not pay the employee those dollars without the recourses currently available in the Connecticut Statutes.

