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## **OLR Bill Analysis**

### **sHB 5439**

#### ***AN ACT CONCERNING WAGE THEFT RESPONSIBILITY.***

#### **SUMMARY**

This bill makes a construction contractor liable for any wage debt resulting from a delinquent wage claim brought against one of the contractor's subcontractors under the existing wage claim law. Under existing law, an employee can bring a claim against an employer for failure to pay wages or fringe benefits and may be awarded up to twice their owed wages, related costs, and attorney's fees (CGS § 31-72). The bill does not apply to prevailing wage contracts (i.e., most public works projects) (CGS § 31-53).

The bill also (1) prohibits a contractor from evading the bill's requirements; (2) allows a three-year lookback period from the start of a claim; (3) establishes procedures for a contractor to request payroll records and other project information from the subcontractor; and (4) allows the Department of Labor (DOL) to bring a civil action to collect unpaid wages and penalties on behalf of an employee under the bill.

Lastly, the bill expands who can file a civil action or a complaint with DOL on the employee's behalf under the state's existing wage claim. The bill allows the employee to designate any person, organization, or union to do so.

EFFECTIVE DATE: October 1, 2022

#### **CONTRACTOR LIABLE FOR SUBCONTRACTOR'S WAGE DEBT**

The bill's provisions apply to a contractor making or taking a construction contract executed on or after October 1, 2022. It requires the contractor to assume liability for any debts owed to a subcontractor's employee, or a labor organization representing an employee, resulting from an action brought under the wage claim law. The bill applies to debt incurred by a subcontractor at any tier acting under, by, or for the contractor or the contractor's subcontractors.

Under the bill, a “construction contract” is a written or oral agreement for the (1) construction, reconstruction, alteration, maintenance, moving, or demolition of any building, structure, or improvement or (2) development of or improvement to land, including excavations.

A “subcontractor” is any person, partnership, company, or other entity that is a party to a contract with a contractor, or contractor’s subcontractor at any tier, to perform work for the contractor’s construction contract with an owner, whether or not the subcontractor has a direct contract with the contractor.

In a civil action against a subcontractor, the bill makes the contractor jointly and severally liable for any unpaid wages, benefits, wage supplements, and any other remedies available under the wage claim law.

***Evading Liability Prohibited (§ 1(c) & (g))***

The bill generally prohibits any agreement executed after October 1, 2022, from waiving or releasing a contractor from liability under the bill, except as the bill allows.

The bill prohibits a contractor from evading or negating the bill’s requirements, but it allows a contractor or subcontractor to establish by contract, or enforcement of other legal remedies, a hired subcontractor’s liability for violating the bill. These contracts or remedies cannot diminish an employee’s right to bring an action under the bill.

The bill cannot be deemed to impair the rights of a contractor to take legal action against a subcontractor for the wages owed that the contractor pays under the bill’s provisions.

***Lookback Period (§ 1(h))***

Under the bill, any liability assigned to a contractor is applicable for any claims occurring not later than three years prior to the initiation of the court claim or labor commissioner’s civil action. (Presumably, this means the assigned liability is limited to claims that occur no earlier than the three years before the claim or action’s initiation.)

***Certified Payroll Records and Other Project Information (§ 1(i)-(k))***

The bill requires subcontractors to provide the following information upon the request of a contractor or a contractor's subcontractor:

1. the names of all the subcontractor's project workers, including independent contractors;
2. certified payroll records for all project employees;
3. the project's scheduled duration and start date;
4. the name of any contractor's subcontractor with whom the responding subcontractor is under contract (i.e., the subcontractor's own subcontractor);
5. when applicable, the local unions with whom the subcontractor is a signatory contractor; and
6. the name, address, and phone of the contractor for the subcontractor.

The payroll records must contain sufficient information to apprise the contractor or subcontractor of the responding subcontractor's payment status in paying wages and any fringe or other benefits. Payroll records must be redacted to prevent disclosure of an employee's full Social Security number.

The information request must be sent to the subcontractor by certified mail and notify the subcontractor that it has 30 days to respond. Under the bill, a failure to comply with the request for information is cause for a contractor to withhold payments owed to a subcontractor.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/24/2022)