



# Senate

General Assembly

**File No. 296**

February Session, 2024

Substitute Senate Bill No. 409

*Senate, April 8, 2024*

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2024*) (a) For purposes of this  
2 section and section 2 of this act:

3 (1) "Construction contract" means any contract entered into on or  
4 after October 1, 2024, for construction, renovation or rehabilitation in  
5 this state, including any improvements to real property that are  
6 associated with such construction, renovation or rehabilitation, or any  
7 subcontract for construction, renovation or rehabilitation between an  
8 owner and a contractor, a contractor and a subcontractor or a  
9 subcontractor and another subcontractor. "Construction contract" does  
10 not include (A) any public works or other contract entered into with this  
11 state, any other state or the United States, or (B) a home improvement  
12 contract for (i) the construction, renovation or rehabilitation of an  
13 owner-occupied residence, or (ii) the construction, renovation or  
14 rehabilitation of a one-family or two-family dwelling unit, except when

15 such contract is for the construction of more than fifteen one-family or  
16 two-family dwelling units at one project site;

17 (2) "Contractor" means any individual, firm, partnership,  
18 corporation, association, company, organization or other business  
19 entity, including, but not limited to, a construction manager, general or  
20 prime contractor, joint venture or any combination thereof that has a  
21 direct contractual relationship with an owner;

22 (3) "Employee" has the same meaning as provided in section 31-71a  
23 of the general statutes;

24 (4) "Owner" has the same meaning as provided in section 42-158i of  
25 the general statutes;

26 (5) "Subcontractor" means any individual, firm, partnership,  
27 corporation, association, company, organization or other business entity  
28 or any combination thereof that (A) does not have a direct contractual  
29 relationship with an owner, and (B) (i) is a party to a construction  
30 contract with a contractor, (ii) is a party to a construction contract with  
31 another subcontractor that has a direct contractual relationship with a  
32 contractor, or (iii) performs any portion of work at any tier within the  
33 scope of a construction contract regardless of whether such  
34 subcontractor has a direct contractual relationship with a contractor;  
35 and

36 (6) "Wages" has the same meaning as provided in section 31-71a of  
37 the general statutes.

38 (b) Any contractor who enters into a construction contract shall be  
39 jointly and severally liable for any unpaid wages due to any employee  
40 of any subcontractor in a direct contractual relationship with the  
41 contractor, or any subcontractor of a subcontractor, for such employee's  
42 performance of labor included within the scope of the construction  
43 contract.

44 (c) Nothing in this section shall prohibit a contractor from including  
45 in each of its subcontracts a provision establishing a remedy for any

46 liability created by the nonpayment of wages by a subcontractor,  
47 provided such provision does not diminish the right of an employee to  
48 bring an action under section 31-72 of the general statutes, as amended  
49 by this act, and does not waive or release any liability assigned to a  
50 contractor under this section. No such provision to waive or release  
51 liability assigned to the contractor under this section shall be  
52 enforceable.

53 Sec. 2. (NEW) (*Effective October 1, 2024*) (a) (1) A contractor may  
54 request from a subcontractor the payroll records of employees  
55 providing labor under the construction contract. Such request shall be  
56 sent to the subcontractor by certified mail and shall notify the  
57 subcontractor that such subcontractor has thirty days to respond.

58 (2) Upon request of a contractor for the payroll records of employees  
59 of a subcontractor pursuant to this subsection, a subcontractor and any  
60 other subcontractors under contract to such subcontractor shall provide  
61 such contractor with such payroll records not later than thirty days after  
62 such request is received. Such payroll records shall (A) be attested to  
63 and certified to be accurate and complete, (B) indicate the  
64 subcontractor's and any lower tier subcontractor's payment status in  
65 paying wages to employees, and (C) be marked or redacted only to  
66 prevent disclosure of an employee's full Social Security number.

67 (b) (1) A contractor may request from a subcontractor: (A) The names  
68 of all employees and independent contractors such subcontractor  
69 employs who are providing labor under the construction contract  
70 between the contractor and subcontractor; (B) when applicable, the  
71 name, address and phone number of any subcontractors with whom  
72 such subcontractor is under contract, the anticipated start date of such  
73 contract and the duration of work under such contract; and (C) when  
74 applicable, collective bargaining agreements of which such  
75 subcontractor is a signatory contractor. Such request shall be sent to the  
76 subcontractor by certified mail and shall notify the subcontractor that  
77 such subcontractor has thirty days to respond. For purposes of this  
78 subdivision, "signatory contractor" means a subcontractor that is

79 independently obligated to one or more collective bargaining  
80 agreements with any labor organization.

81 (2) Upon request of a contractor pursuant to this section, a  
82 subcontractor and any lower tier subcontractor under contract to such  
83 subcontractor shall provide such contractor with such information not  
84 later than thirty days after such request is received.

85 (c) Failure by a subcontractor to comply with a request from a  
86 contractor under subsections (a) and (b) of this section shall be cause for  
87 a contractor to withhold payments owed to a subcontractor.

88 Sec. 3. Section 31-72 of the general statutes is repealed and the  
89 following is substituted in lieu thereof (*Effective October 1, 2024*):

90 (a) When any employer fails to pay an employee wages in accordance  
91 with the provisions of sections 31-71a to 31-71i, inclusive, or fails to  
92 compensate an employee in accordance with section 31-76k or where an  
93 employee or a labor organization representing an employee institutes  
94 an action to enforce an arbitration award which requires an employer to  
95 make an employee whole or to make payments to an employee welfare  
96 fund, such employee or labor organization shall recover, in a civil action,  
97 (1) twice the full amount of such wages, with costs and such reasonable  
98 attorney's fees as may be allowed by the court, or (2) if the employer  
99 establishes that the employer had a good faith belief that the  
100 underpayment of wages was in compliance with law, the full amount of  
101 such wages or compensation, with costs and such reasonable attorney's  
102 fees as may be allowed by the court. Any agreement between an  
103 employee and his or her employer for payment of wages other than as  
104 specified in said sections shall be no defense to such action. The Labor  
105 Commissioner may collect the full amount of any such unpaid wages,  
106 payments due to an employee welfare fund or such arbitration award,  
107 as well as interest calculated in accordance with the provisions of section  
108 31-265 from the date the wages or payment should have been received,  
109 had payment been made in a timely manner. In addition, the Labor  
110 Commissioner may bring any legal action necessary to recover twice the  
111 full amount of unpaid wages, payments due to an employee welfare

112 fund or arbitration award, and the employer shall be required to pay the  
 113 costs and such reasonable attorney's fees as may be allowed by the court.  
 114 The commissioner shall distribute any wages, arbitration awards or  
 115 payments due to an employee welfare fund collected pursuant to this  
 116 section to the appropriate person.

117 (b) When a subcontractor fails to pay an employee for labor  
 118 performed within the scope of a construction contract, the employee, or  
 119 a labor organization representing the employee, may bring a civil action  
 120 under this section against either the subcontractor, the contractor or  
 121 both the subcontractor and contractor. Not less than ten days prior to  
 122 bringing a civil action under this section, such employee shall provide  
 123 notice of an alleged violation by such subcontractor to the contractor.  
 124 Such notice shall describe the general nature of the alleged violation. No  
 125 employee shall be required to provide notice pursuant to this subsection  
 126 if such employee has previously given notice to a contractor of either  
 127 the same violation or a prior violation by the same subcontractor. Any  
 128 notice provided to a contractor pursuant to this subsection shall not  
 129 limit the liability of the contractor or preclude subsequent amendments  
 130 of an action brought under this section to encompass additional  
 131 employees employed by the subcontractor. For purposes of this section,  
 132 "construction contract", "contractor" and "subcontractor" have the same  
 133 meanings as provided in section 1 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2024	New section
Sec. 2	October 1, 2024	New section
Sec. 3	October 1, 2024	31-72

**Statement of Legislative Commissioners:**

In Section 1(b) "entering" was changed to "who enters into" for conformity with standard drafting conventions, and Subsec. (c) was rewritten for clarity; in Section 2(a)(1) "on a construction contract" was changed to "under the construction contract" for conformity with standard drafting conventions, and in Subsec. (b)(1) "on the construction contract" was changed to "under the construction contract" for

conformity, and in Section 3(b) "entered into on or after October 1, 2024," was deleted for conformity with standard drafting conventions.

**LAB**      *Joint Favorable Subst.*

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*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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### **OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

### **Explanation**

The bill, which makes contractors liable for unpaid wages owed to employees of subcontractors that perform work on any portion of a construction contract, does not result in any fiscal impact to the state or municipalities.<sup>1</sup>

Section 3 allows an employee and other designated parties to bring action against a contractor for unpaid wages and does not result in any fiscal impact to the state or municipalities. The court system disposes of over 263,000 cases annually and the number of cases is not anticipated to be great enough to need additional resources.

### **The Out Years**

**State Impact:** None

**Municipal Impact:** None

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<sup>1</sup> Current law, unchanged by the bill, allows employees to sue an employer for failure to pay wages or fringe benefits, and may be awarded up to twice their unpaid wages, related costs, and attorney's fees (CGS § 31-72).

**OLR Bill Analysis****sSB 409*****AN ACT CONCERNING WAGE THEFT RESPONSIBILITY.*****SUMMARY**

Under the existing wage claim law, an employee can sue an employer for failing to pay wages or fringe benefits (unpaid wages) and may be awarded up to twice their unpaid wages as well as any related costs and attorney's fees (CGS § 31-72). For construction contracts executed on or after October 1, 2024, this bill makes a construction contractor liable for the unpaid wages owed by one of the contractor's subcontractors in these lawsuits. 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, an employee who performed work under a construction contract or a labor organization may bring a civil action against the subcontractor, the contractor, or both if the subcontractor fails to pay the employee.

Under the bill, a construction contract, with some exceptions, is any (1) contract entered into for construction, renovation, or rehabilitation, including improvements to real property that are associated with any of this work, or (2) subcontract for construction, renovation, or rehabilitation between an owner and a contractor, a contractor and a subcontractor, or a subcontractor and another subcontractor.

EFFECTIVE DATE: October 1, 2024

**CONTRACTOR LIABLE FOR SUBCONTRACTOR'S WAGE DEBT  
(§§ 1 & 2)**

For contracts executed on or after October 1, 2024, the bill makes a



construction contractor liable for the unpaid wages owed by one of their subcontractors. It applies to any employee whose labor is included in a construction contract of (1) any subcontractor in a direct contractual relationship with the contractor, or (2) any subcontractor of a subcontractor. The bill covers wages that are compensation for labor or services rendered by an employee regardless of how they are determined (e.g., a time, commission, or other basis).

The bill does not apply to (1) public works (i.e., prevailing wage) contracts or any contract entered into with this state, any other state, or the United States (CGS § 31-53) or (2) a home improvement contract for the construction, renovation, or rehabilitation of (a) an owner-occupied residence or (b) a one-family or two-family dwelling unit, except when the contract is for the construction of more than 15 one-family or two-family dwelling units at one site.

### **Definitions (§ 1(a))**

The bill also includes the following definitions:

1. A “contractor” is any person, partnership, company, or other entity, including a construction manager, general or prime contractor, joint venture, or any combination of these, that enters into a construction contract with an owner.
2. An “owner” is any person, partnership, company, or other business entity that is the owner of record or lessee of real property where the construction work under the construction contract will be performed.
3. A “subcontractor” is any person, partnership, company, or other entity that is a party to a contract with (1) a contractor or (2) another party who has a separate contract with a contractor; or that performs work, at any tier, for the contractor’s construction contract with an owner, whether or not the subcontractor has a direct contract with the contractor.

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**Permitted Contractor Protections and Prohibited Provisions (§ 1(c))**

The bill (1) allows a contractor to include in each subcontract a remedy for any liability created by a subcontractor's nonpayment of wages, provided it does not (1) interfere with an employee's right to take action to collect unpaid wages or (2) waive or release the contractor from any liability assigned under the bill.

Also, the bill prohibits any provision that waives or releases the contractor's liability from being enforceable.

**§ 2 — PAYROLL AND OTHER PROJECT INFORMATION**

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

1. the names of all the subcontractor's project workers, including independent contractors, working under the contract;
2. attested and certified payroll records for all project employees;
3. the name, address, and phone number of any subcontractor with whom the responding subcontractor is under contract;
4. for any projects the subcontractor is contracted for, the scheduled duration and start date; and
5. the collective bargaining agreements the subcontractor is party to, when applicable.

**Payroll Records (§ 2(a))**

In addition to being certified, the payroll records must indicate the subcontractor's and any lower-tier subcontractor's payment status in paying wages to employees. Payroll records must be redacted to prevent disclosing an employee's full Social Security number.

**Notification and Deadline (§ 2(b) & (c))**

The information request must be sent to the subcontractor by certified mail and notify the subcontractor that they have 30 days to respond. The

bill requires the subcontractor, and any lower-tier subcontractor under contract, to provide the information within 30 days of receiving the request. Under the bill, a failure to comply with the request for information is cause for a contractor to withhold payments owed to a subcontractor.

**§ 3 — ENFORCEMENT**

Under the bill, an employee who performed work under a construction contract or a labor organization may bring a civil action for any unpaid wages against the subcontractor, the contractor, or both.

At least 10 days before bringing a civil action, the employee must provide notice to the contractor of an alleged violation by the subcontractor. The notice must describe the general nature of the violation.

This notice requirement does not apply if the employee has previously given notice to a contractor of either the same violation or a prior violation by the same subcontractor. The bill also states the notice provided to a contractor does not limit their liability or prevent amending an action to encompass additional employees of the subcontractor.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 4 (03/19/2024)