

Labor and Public Employees Committee

JOINT FAVORABLE REPORT

Bill No.: SB-409

Title: AN ACT CONCERNING WAGE THEFT RESPONSIBILITY.

Vote Date: 3/19/2024

Vote Action: Joint Favorable Substitute

PH Date: 3/12/2024

File No.:

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SPONSORS OF BILL:

Labor & Public Employees Committees

REASONS FOR BILL:

This bill would make general contractors responsible for any hired subcontractors' unpaid wages on a construction contract they oversee. This bill follows concerns of rampant fraud in the construction industry and difficulty finding contractors liable for unpaid wages due to many layers of subcontractors acting as shields from liability. This bill is intended to force liability on general contractors for unpaid wages on their projects which would lead to them better screening and overseeing subcontractors they hire to avoid potential liability, as well as better enforcing punishment on bad actors in the industry prevents a race to the bottom by allowing contractors who follow ethical practices to not be undercut.

The substitute language clarifies that this bill will go into effect on October 1, 2024.

RESPONSE FROM ADMINISTRATION/AGENCY:

William Tong, Attorney General, Attorney General's Office: The attorney general voices his support of the bill citing the need to hold contractors responsible for underpaying workers. This bill would incentivize contractors to better vet and oversee the actions of their subcontractors, forcing them to examine why the labor costs of certain subcontractors may be lower than others. The attorney general believes that this will protect the good actors in the industry from being undercut by bad actors and urges the passage of the bill.

NATURE AND SOURCES OF SUPPORT:

Anonymous: An anonymous source supports this bill citing a desire to see a level playing field among contractors and problems other states have when wage theft is not enforced.

Aziz Dehkan, Executive Director, CRCJ: Dehkan voices his support of the bill as he believes it ensures construction workers are properly paid. Dehkan believes that holding general contractors accountable for unpaid wages by their subcontractors will decrease unethical business practices by forcing general contractors to have better oversight on who they hire. By holding general contractors accountable for who they hire the playing field among contractors is level as poor business practices will no longer be rewarded with cheaper costs.

Ed Hawthorne, President, CT AFL-CIO: Hawthorne voices his support of the bill citing problems with wage theft in construction and how contractors are often able to dodge responsibility by shielding themselves behind layers of subcontractors. This damages ethical contractors as they are unable to compete with contractors who have lower labor costs due to unpaid wages. By holding contractors responsible for their subcontractors both problems are solved. Finally, Hawthorne points to New York as a successful example of this bill and suggests language changes to clarify that "joint and several liability extends to subcontractors at any tier."

Matthew F. Capece, Representative of the General President, United Brotherhood of Carpenters and Joiners of America: Capece on behalf of UBC voices his support of the bill citing growing unethical practices in the construction industry and a need for legislators to address them. Construction employers have created a model to evade paying wages by adding layers of contractors to avoid liability. This has become a nationwide problem that has been receiving US Department of the Treasury's attention who have told banks to flag suspicious transaction from construction account holders. In 2023 19% (28.3 in CT) of construction workers were mislabeled as contractors and paid off the books leading to significant tax avoidance. Additionally, construction workers are frequently left out of benefits with 31% not having healthcare and many being forced to rely on public assistance. This bill is based on similar legislation in New York that works to make sure contractors cannot hide themselves behind layers of subcontractors. Capece also addresses criticisms of the bill stating that bonding premiums have not gone up in states with the legislation, homeowners will not be liable under the law, minority contractors have not gotten less work, there has not been less residential construction, if housing prices increase that means wage theft is built into the price, and contractors will not have pay twice and have legal recourse if subcontractors fail to pay wages. Capece requests that some definition in the bill be clarified to improve clarity and states that if action is not taken wage theft and unfair competition will only get worse.

Kimberly Glassman, Director, Foundation for Fair Contracting: Glassman on behalf of FFC voices their support for the bill citing increasing fraud from the construction industry. Glassman points out that 28.3% of construction workers in CT are paid off the books frequently leading to under or improperly paying for benefits and overtime. This has led to 39% of construction worker families being on government assistance and a loss in tax revenue meaning that these business practices are costing CT \$229 million annually. This bill which follows recent New York legislation would better prevent wage theft and raise the quality of construction work by allowing ethical contractors to better compete.

NATURE AND SOURCES OF OPPOSITION:

John Butts, Executive Director, Associated General Contractors of Connecticut Inc.:

Butts on behalf of the AGC voices his opposition to the bill stating that while the AGC appreciates what the bill is trying to address they believe it doesn't approach the problem in the right way. The AGC believes that the bill currently doesn't consider certain practical and legal matters in determining how much general contractors are supposed to pay unpaid workers of their subcontractors when pay is disputed. The AGC also believes that portions of the bill are preempted by federal ERISA laws, specifically allowing labor organization to file claims on behalf of employees. The AGC is also concerned about the lack of a statute of limitation within the bill which is increasingly difficult for contractors who never directly employed these workers. The AGC recommends the following changes: Add a notice requirement within 90 days of a missed payment, state that a common wage schedule will be set for each classification of work prior to each project, add a 2-year statute of limitation that falls in line with CT precedent, remove the labor organization representing employees' section that is preempted by federal law, and exempt projects under \$5,000,000.

Anthony Gaglio Jr., Vice President, Viking Construction Inc.: Gaglio voices his opposition to the bill citing concern on how this will impact private companies who do not have a standard wage. Gaglio believes that it will be difficult for general contractors to know whether benefits and wages were properly paid even if payroll data is shared. This will lead to hefty legal expenses and contractors potentially being on the hook for wages that were never owed or were already properly paid. Additionally, Gaglio is concerned about labor organizations being allowed to bring action on behalf of workers could be meant to harass and intimidate contractors.

Jaqueline Laramee, Owner, Laramee voices her opposition to the bill citing a belief that it will create a joint employer dynamic between contractors and creating additional overhead in increased oversight on payroll forms. Laramee lists her specific issues with the bill: it creates a joint employer relationship which she believes makes contractors unfairly responsible to the other actions, additional overhead, hurts small construction companies, forced disclosure of employee data, subcontractors can still falsify payroll, allows for unions to recruit, and potential for costly lawsuits.

Jim Perras, CEO, HBRAC: Perras voices his opposition to the bill believing it puts an unjust burden on the construction industry. Perras is concerned that the bill does not consider the dynamics of the construction industry and the potential for multiple contractors on a job and how difficult it will be for construction companies to track multiple payrolls. Additionally, Perras believes that the current system is already sufficient for wage disputes and adding this legislation uniformly will damage all construction but specifically will strongly impact construction like housing.

Elaine M. Rooke, CFO, Advanced Performance Glass Inc.: Rooke voices her opposition to the bill believing it will damage good contractors without preventing wage theft. Rooke is specifically concerned about the payroll requirements stating that it will be burdensome on employers and disclosing employee information could lead to employees getting poached. Rooke believes that this new payroll requirement will hurt small businesses who will have

more difficulty reaching requirement than large companies who have administrative departments.

Mark Shteierman, President, Axela Construction: Shteierman voices his opposition to the bill believing it will add to CT's housing storage by damaging construction. Shteierman cites increased administrative burden on small contractors, rising construction costs due to potential of litigation, and cashflow challenges for subcontractors which could lead to business closures as specific concerns he has with the bill.

Robert Wiedenmann, Sunwood Development Corp.: Wiedenmann voices his opposition to the bill believing it puts an unfair burden on him and other fair contractors in CT. Wiedenmann believes it is unfair for contractors to be forced into contractual obligations with subcontractors' employees. Additionally, Wiedenmann believes that it is impossible to properly monitor subcontractors' payrolls as the bill requires, which is especially difficult for small companies. Wiedenmann believes existing labor laws are sufficient for protecting workers and that this bill is unnecessary and burdensome.

Nathan Breglio, President, Crest Mechanical Services Inc.: Breglio voices his support of the bill believing that it is a legal and compliance nightmare for smaller contractors. This will require general contractors to collect payroll information which is both costly and an information leakage liability. Breglio believes if this bill is enacted large contractors who can better tank the cost of increase bookkeeping will also be able to poach employees and gain private information on vendors, which will give them even larger control over the market.

Christopher Fryxell, President, Associated Builders and Contractors of CT: Fryxell voices his opposition to the bill citing the difficulty contractors will have on private jobs trying to figure out how much unpaid workers are owed. Fryxell believes that it should be the state's job to prevent wage theft not general contractors as currently he believes this is an unjust burden to put on businesses, especially smaller ones. Fryxell is also concerned about information leakage to competitors and labor organizations being allowed to act against companies and create large legal costs.

Brian T. Kronenberger, Manager, Kronenberger & Sons Restoration, LLC: Kronenberger voices his opposition to the bill citing concerns for general contractors to determine whether wages and benefits were properly paid and concerns over additional costs this made add legally/administratively.

Tim O'Brien, Executive Vice President, KBE Building Corporation: O'Brien voices his opposition to the bill citing concerns over being able determine what is owed when there is no standard wage which will create additional administrative and legal costs for companies.

Melissa C. Sheffy, President, Network Interiors Inc.: Sheffy voices her opposition to the bill citing: unfair join employer relationships, addition overhead, damaging small companies who are less able to handle the bill than big companies, a belief that cheating subcontractors will still be able to cheat, forced disclosure of employee information, and allowing third parties to bring lawsuit against them creating a large cost.

Ashley Zane, Senior Public Policy Associate, CBIA: Zane on behalf of the CBIA voices their opposition of the bill over concerns about how this will impact housing and the expense

this will add for contractors. The CBIA is concerned that this bill will divert resources to administrative costs from construction and with diminish the states' ability to build housing for its workforce. The CBIA feels that the current system already holds contractors accountable and believes that this will create a difficult situation for contractors who will be unable to tell what has or hasn't been paid even with payroll records. The CBIA believes this bill is too uniform and doesn't recognize the difference in construction scale and is concerned on how it will impact smaller projects.

Reported by: Noah Gulla

Date: 3/27/2024