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## **OLR Bill Analysis**

### **HB 6792**

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

#### **SUMMARY**

Under the existing wage claim law, an employee can sue an employer for failure to pay wages or fringe benefits (unpaid wages) and may be awarded up to twice their unpaid wages, related costs, and attorney's fees (CGS § 31-72). For contracts executed on or after October 1, 2023, this bill makes a construction contractor liable for the unpaid wages owed by one of the contractor's subcontractors in these lawsuits. 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 two-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 wage claim law. It allows the employee to designate any person, organization, or union to do so.

EFFECTIVE DATE: October 1, 2023

#### **§§ 1 & 2 — CONTRACTOR LIABLE FOR SUBCONTRACTOR'S WAGE DEBT**

The bill applies to a contractor making or taking a construction contract executed on or after October 1, 2023. It requires the contractor to assume liability for any debts owed to a subcontractor's employee due to 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 to (1) construct, reconstruct, alter, maintain, move, or demolish any building, structure, or improvement or (2) develop or improve land, including excavations.

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.

A "subcontractor" is any person, partnership, company, or other entity that is a party to a contract with (1) a contractor or (2) with another party who has a separate contract with a contractor 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.

***Evading Liability Prohibited (§ 2(b)-(c))***

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 a contractor's right to take legal action against a subcontractor to recover the unpaid wages that the contractor must pay under the bill's provisions.

***Enforcement and Notification Requirements (§ 2(d) & (e))***

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

The bill allows an employee to designate any person, organization, or union to file on the employee's behalf a civil action or a complaint with the labor commissioner under the existing wage claim law.

It also requires the employee or designee give notice of the alleged violation to the contractor at least 10 days before filing a civil action under the wage claim law. The notice must describe the nature of the alleged violation. It does not limit the contractor's liability or prevent any later amendments to the action to encompass additional employees of the subcontractor. (The bill does not indicate how the notice must be made, such as certified mail, in order to document when it is delivered and whether it sufficiently describes the alleged violation.)

Furthermore, the notice is not required under the bill if the employee or the employee's designee has previously given notice to the contractor for the same violation or a prior violation of the same contractor. (The bill does not specify how this notice must be made.)

***Lookback Period (§ 2(f))***

Under the bill, any liability assigned to a contractor applies to any claims occurring within two years before the start of the court claim or labor commissioner's civil action. (Presumably, this means the assigned liability is limited to claims that occur within the two years before the claim or action's initiation.)

**§ 3 — CERTIFIED PAYROLL RECORDS 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;
2. attested and 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. the local unions with whom the subcontractor is a signatory contractor, when applicable; and
  6. the name, address, and phone number of the contractor for the subcontractor.

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

The information request must be sent to the subcontractor by certified mail and notify the subcontractor that they have 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 8      Nay 4      (03/21/2023)