



House of Representatives

General Assembly

File No. 475

January Session, 2023

Substitute House Bill No. 6792

House of Representatives, April 6, 2023

The Committee on Labor and Public Employees reported through REP. SANCHEZ, E. of the 24th Dist., Chairperson of the Committee on the part of the House, 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, 2023*) As used in this section and
2 sections 2 and 3 of this act:

3 (1) "Construction contract" means a written or oral agreement (A) for
4 the construction, reconstruction, alteration, maintenance, moving or
5 demolition of any building, structure or improvement, or (B) relating to
6 the excavation of or other development or improvement to land.
7 "Construction contract" does not include any contract that is subject to
8 section 31-53 of the general statutes;

9 (2) "Contractor" means any person, firm, partnership, corporation,
10 association, company, organization or other entity, including, but not
11 limited to, a construction manager, general or prime contractor, joint
12 venture, or any combination thereof, that enters into a construction
13 contract with an owner;

14 (3) "Owner" means any person, firm, partnership, corporation,
15 association, company, organization or other entity, or combination of
16 any thereof, that causes (A) a new building or structure to be
17 constructed or an existing building or structure or improvement to be
18 constructed, altered, repaired, maintained, moved or demolished, or (B)
19 land to be excavated or otherwise developed or improved; and

20 (4) "Subcontractor" means any person, firm, partnership, corporation,
21 association, company, organization or other entity, or any combination
22 thereof, that is a party to a contract with a contractor, or a party to a
23 contract with another party who has a separate contract with a
24 contractor, that performs any portion of work, at any tier, within the
25 scope of such contractor's construction contract with an owner,
26 including where the subcontractor has no direct privity of contract with
27 the contractor.

28 Sec. 2. (NEW) (*Effective October 1, 2023*) (a) On and after October 1,
29 2023, any contractor that makes or enters into a construction contract
30 with an owner shall be liable for any debt that is owed to an employee
31 resulting from an action brought under section 31-72 of the general
32 statutes by a subcontractor, at any tier, acting under, by or for such
33 contractor or its subcontractors, for such employee's performance of
34 labor under such construction contract.

35 (b) (1) On and after October 1, 2023, no agreement, either in the
36 construction contract with an owner or in another contract, to waive or
37 release liability assigned to a contractor under this section, shall be
38 valid, except as provided in this section.

39 (2) No provision of this section shall be deemed to impair the rights
40 of a contractor to bring an action against a subcontractor for the amount
41 of owed wages that are paid by a contractor under this section.

42 (c) No contractor or any other person shall evade or commit any act
43 that negates the requirements of this section. Nothing in this section
44 shall be deemed to prohibit a contractor or subcontractor from
45 establishing, by contract, or enforcing any other lawful remedies against

46 a subcontractor, that such contractor or subcontractor hires, for liability
47 created by violation of this section, provided such contract or
48 arrangement does not diminish the right of an employee to bring an
49 action under section 31-72 of the general statutes.

50 (d) In the case of a civil action brought against a subcontractor under
51 section 31-72 of the general statutes, the contractor shall be considered
52 jointly and severally liable for any unpaid wages, wage supplements
53 and any other remedies available under section 31-72 of the general
54 statutes.

55 (e) (1) In the case of a civil action brought by an employee under
56 section 31-72 of the general statutes, such employee may designate any
57 person, organization or collective bargaining agent to file a civil action
58 or a complaint with the Labor Commissioner on such employee's behalf.
59 Not less than ten days prior to bringing a civil action under section 31-
60 72 of the general statutes, an employee, or an employee's designee, shall
61 provide notice of the alleged violation to a contractor. Such notice shall
62 describe the general nature of the alleged violation. Any notice provided
63 to a contractor shall not limit the liability of the contractor or preclude
64 subsequent amendments of an action to encompass additional
65 employees employed by the subcontractor.

66 (2) No employee, or employee's designee, shall be required to
67 provide notice to a contractor pursuant to this subsection if such
68 employee, or employee's designee, has previously given notice to such
69 contractor of the same violation or a prior violation by the same
70 subcontractor.

71 (f) Any liability assigned to a contractor pursuant to the provisions of
72 this section shall be limited to claims that occurred not earlier than two
73 years prior to the initiation of such claim in Superior Court or the
74 commencement of a civil action brought by the Labor Commissioner
75 under section 31-72 of the general statutes.

76 (g) Nothing in this section shall prevent the Labor Commissioner
77 from bringing a civil action under section 31-72 of the general statutes

78 to collect unpaid wages and penalties on behalf of an employee
79 pursuant to this section.

80 Sec. 3. (NEW) (*Effective October 1, 2023*) (a) Upon request of a
81 contractor or a contractor's subcontractor, a subcontractor shall provide
82 such contractor or contractor's subcontractor with payroll records
83 attested to and certified to be accurate and complete. Such payroll
84 records shall indicate a subcontractor's payment status in paying wages
85 and making any applicable fringe or other benefit payments or
86 contributions to a third party on each employee's behalf. Such payroll
87 records shall be marked or redacted to an extent only to prevent
88 disclosure of an employee's full Social Security number. Such request
89 shall be sent to the subcontractor, by certified mail, and shall notify the
90 subcontractor that they have thirty days to respond.

91 (b) Upon request of a contractor or a contractor's subcontractor, a
92 subcontractor shall provide such contractor or contractor's
93 subcontractor: (1) The names of all employees the subcontractor
94 employs on the project, including the names of all those designated as
95 independent contractors; (2) when applicable, the name of the
96 contractor's subcontractor with whom such subcontractor is under
97 contract; (3) the anticipated contract start date; (4) the scheduled
98 duration of work; (5) when applicable, collective bargaining agents with
99 whom such subcontractor is a signatory contractor; and (6) the name,
100 address and phone number of a contractor for such subcontractor. Such
101 request shall be sent to the subcontractor, by certified mail, and shall
102 notify the subcontractor that they have thirty days to respond.

103 (c) Failure to comply with a request for information under
104 subsections (a) and (b) of this section shall be cause for a contractor to
105 withhold payments owed to a subcontractor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2023</i>	New section
Sec. 2	<i>October 1, 2023</i>	New section

Sec. 3	October 1, 2023	New section
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Statement of Legislative Commissioners:

Section 2(a) was rewritten for clarity, Section 2(b) was divided into Subdivs. and rewritten for clarity, in Section 2(c) ", provided this section shall not" was changed to ". Nothing in this section shall" for consistency with standard drafting conventions, in Section 2(e) "give" was changed to "provide" and "A" was changed to "Any" for consistency with standard drafting conventions, in Section 3(a) and (b) "contractor's" was added before "subcontractor" for clarity, and in Section 3(c) "in accordance with" was changed to "under" for consistency with standard drafting conventions.

LAB *Joint Favorable Subst.*

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.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which makes a construction contractor liable for any wage debt resulting from a delinquent wage claim brought against one of their subcontractors and enhances associated enforcement mechanisms, does not result in any fiscal impact to the state or municipalities.¹

Section 2 allows an employee, the Department of Labor, 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 250,000 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

¹ Current law, unchanged by the bill, allows relief to be awarded in the form of up to twice the wages owed, related costs, and attorney's fees.

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)