

May 9, 2025

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www.agc-oregon.org

AGC Testimony Re: SB 426A

Dear Chair Grayber, Vice Chairs Elmer and Munoz and Members of the Committee:

Associated General Contractors – Oregon Columbia Chapter represents a broad cross-section of the commercial construction industry, including open shop and union, rural and metro, highway and building contractors. Most of our members are small, homegrown businesses, doing business throughout Oregon.

1. AGC's Strong Opposition to Wage Theft

Most important to note is that AGC has continuously opposed wage theft and worked for practical solutions to bring an end to this heartbreakin issue. No employee should go without pay, and everyone should be fairly and justly compensated for the work that they perform. Wage theft hurts the workers in our industry, and their families – no one should have to go through this and experience what the victims of wage theft have had to endure.

We believe strongly that there are ways to get these bad actors out of the system and ensure that employees are being fully paid for the work they are doing. However, the policy before the committee in SB 426A does not actually target the bad actors and will therefore not effectuate the change necessary to stop these heartbreaking situations.

2. SB 426A Fails to Target the Bad Actors

Throughout conversations on wage theft issues in the construction industry, it has been repeatedly asserted that labor contractors are to blame for a significant number of these cases. However, this bill does nothing to target those labor contractors. Instead, it focuses on shifting liability within the owner/general contractor/subcontractor stream. If the bad actors are the labor contractors, a

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policy change that focuses on the contractors would actually work to bring an end to the situations that we have heard about.

There is nothing in this bill that limits contractor/owner liability to when they were aware of wage theft occurring. Under SB 426A, a contractor will be held liable for unpaid wages regardless of whether they were aware of their subcontractor's failure to pay. A contractor that had no reason to know that there was wage theft occurring by one of their subcontractors is not the right target—the target needs to be the *direct subcontractor* who is not paying their employees. This is particularly true on large commercial or public projects where the general contractor has a significant number of subcontractors who then have subcontractors as well. These jobs are complicated and require the use of different subcontractors for specific work that needs to be completed. It is impossible for a general to keep track of every employee and their pay—the responsibility of payment of wages needs to be on the subcontractor who is in privity of contract with the employee.

3. Senate Amendments to the Bill

We appreciate the efforts made in the Senate, but the amendments did not assuage our primary concerns about the bill. We appreciate the reduction in statute of limitations from six years to two years. However, the reduction in the statute of limitations does not get at our primary concern of creating liability for contractors and owners who have no actual culpability in the case.

The notice to cure provision has been cited as a solution to our liability concerns, that the general receiving 21 days' notice before a lawsuit can be filed will solve the problem of generals and upper tier contractors being held liable for unpaid wages of their subcontractors' employees. While notice does give the opportunity to begin an investigation, it does not resolve the issue that, regardless of the outcome of the investigation, contractors without any contractual relationship with these individuals will be forced to pay wages that they don't owe.

The final amendment that ultimately was adopted introduced a rebuttable presumption against independent contractor status—a major policy shift that deserves separate, thorough discussion. Similar proposals, like HB 2498 (2019),

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have been repeatedly rejected. We're concerned this change could discourage hiring independent contractors due to liability fears, especially harming small and emerging construction businesses at a time when we should be encouraging industry growth.

4. Potential House Amendments

We understand the severity of the situation and how significant the issue is for workers who are not getting paid. As a result, we propose the following solutions:

Solution #1: Include a knowingly standard

We propose an amendment that says *owners and upper tier contractors can only be held liable for unpaid wages of their subcontractors' employees IF the owner/contractor knew or should have known that the sub wasn't paying their employees.* If those contractors and owners up the chain are aware of this illegal activity happening on the project, and they continue to allow them to work on the project, then of course they should be held liable. The bill as currently drafted has no such standards and instead creates strict liability for these contractors and owners.

Solution #2: Remove penalty wages & third-party representative

We propose an amendment that would remove the ability for certain third-party representatives to bring claims on behalf of the unpaid employee. If this liability shift occurs, the employee should be the one making these claims, not opening the floodgates to unrelated third parties to bring lawsuits. We also propose removing penalty wages as what the employee can sue for, since there is no logical reason to penalize a contractor/owner who hadn't actually failed to pay wages.

Solution #3: Include a binding arbitration provision

We propose an amendment that creates an exemption from liability for owners/contractors/subcontractors who have a binding arbitration policy for wage claims in their employment contracts – this is mirroring what the Western States Regional Council of Carpenters have in their master labor agreements. We believe that if it's good enough for represented workers with collective bargaining agreements, then it should be good enough for unrepresented workers. It's a

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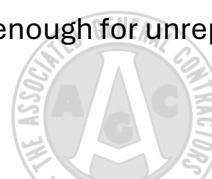
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quicker way to get workers paid and avoids litigation for all parties, making it a better solution than increased litigation.

We appreciate the commitment this committee has to the issue of wage theft, and we look forward to future conversations on how to remove bad actors from the construction pipeline.

Sincerely,

Kirsten Adams
Director and Counsel – Policy and Public Affairs
Associated General Contractors, Oregon-Columbia Chapter

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