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**Testimony of D. Michael Dale**  
**Before the Senate Committee on General Government, Small Business and Consumer**  
**Protection**  
**April 5, 2013**  
**SB 573 – Collecting Unpaid Wages**

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer in Oregon since 1977, and have spent most of that time representing migrant and seasonal agricultural workers. The Northwest Workers' Justice Project provides legal representation to low wage contingent workers throughout the economy in sectors such as construction, building maintenance, landscaping, hotel and restaurant industry, food processing, agriculture and reforestation. This bill is sponsored by the Oregon Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition is a group of 35 organizations, including the PCUN, Rural Organizing Project, Voz Workers' Rights Education Project, Oregon Center for Public Policy, AFL/CIO, SEIU Locals 49 and 503, PCUN, UFCW Local 555, Teamsters Local 26, Ecumenical Ministries of Oregon, the Oregon Center for Christian Voices, the Jewish Federation of Portland, CAUSA, Main Street Alliance, Family Forward Oregon, Portland Jobs with Justice, Oregon Center for Public Policy, the Working Families Organization, Rural Organizing Project, and Voz Worker Education Project.

All workers should be paid for their work. Unfortunately, not all employers pay wages owed. At NWJP, we frequently find that by the time we have obtained a judgment for unpaid wages, it is difficult to collect the judgment. In the NWJP office, alone, we currently have judgments on behalf of nearly 100 workers who are owed more than  $\frac{3}{4}$  of a million dollars that we have not yet been able to collect, and indeed, may never collect. NWJP works with other private and legal services attorneys on wage claim matters, and they report similar experience. You will hear from the Oregon Center for Public Policy an analysis of BOLI wage claim data showing that, even with the full resources of the state, less than half of those workers who win a BOLI determination for unpaid wages receive them in full. Workers need effective tools to obtain payment for wages earned, but not paid.

Of course, in some cases, the employer may simply have no ability to pay the worker, and there isn't much to be done about that. However, we see many cases where there are other issues that this legislation would address. One of the most serious is that, in the time it takes to get a court judgment, the employer may transfer assets to put them beyond the reach of creditors. This can take the form of moving assets out of a corporation to individual owners, or even changing the corporate business entity, leaving the old corporation as an empty shell from which nothing can be collected. A business that is failing may simply run out of money before the worker can get a judgment or BOLI wage order, even though the debt could have

been paid at the time it was due. In other cases, the employer often has substantial value in assets, but there is an existing lien holder that has a prior claim on the asset. Even if the value of the asset exceeds the amount of the prior lien, the worker is in the position of having to pay the prior lien in order to reach the asset, which a working person can rarely, if ever, do. We find that businesses have often pledged every asset they have, including future income, to secure an operating loan.

SB 573 seeks to assure that if a worker proves that the employer owes wages, at the end of the day, there will be a way to collect what is owed to the extent this is possible. To that end, SB 573 would create a lien for unpaid wages on the real and personal property of the delinquent employer. This is somewhat similar to the construction liens, crop liens, or mechanics liens that have long been a part of Oregon law. The main differences are that 1) the lien would be available to workers in other fields besides the limited number of jobs that are covered now; 2) the lien would be against property of the employer, itself, not against property of an innocent third party, who may have already paid the employer; 3) the lien would be superior to most other interests in the property.

SB 573 is modeled after a longstanding provision of Wisconsin law that appears to have functioned well. To pursue a wage lien, the worker must first file a lien claim on the employer's real or personal property. Separate filings and fees apply to filing and recording the lien on real and personal property. Once the lien is filed and the employer notified, the lien takes precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, even if the other claims were filed earlier. Exceptions are provided for tax liens, and for commercial lending institution liens filed before the wage lien. The wage lien takes precedence over a lending institution lien only as to the first \$3,000 of unpaid wages owed to the employee. The Bill also contains a provision that the wage lien has priority in bankruptcy by including language recommended by a United States Court of Appeals' decision addressing the issue.<sup>1</sup>

SB 573 protects the employer in several ways. First, either the worker who files the lien or the Bureau of Labor and Industries must take action to enforce the lien within 120 days or the lien lapses. Additionally, if the employer wishes to clear the lien from the property sooner, it may do so by posting a bond in the amount of the lien.

In discussing this proposed legislation with business, two principal objections have been raised.

Concern is expressed that if SB 573 becomes law, banks will curtail lending to businesses, with ensuing bad effects for the economy. However, as noted above, similar provisions have been in effect in Wisconsin for many years. This concern has not been a significant issue in Wisconsin. In considering this argument many years after the lien provisions

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<sup>1</sup> *In re: Globe Building Materials, Inc.* 463 F.3d 631 (7<sup>th</sup> Cir. 2006)

had been in effect, the Wisconsin Court of Appeals noted, “Thus, we do not discern how paying workers the wages they have earned ‘imperils’ the banking and commercial finance industry in any way.” *Pfister v. Milwaukee Economic Development Corp.*, 576 N.W.2d 554, 564, 216 Wis.2d 243, 270 (Wis.App. 1997).

The second objection that has been offered is that workers may seek to abuse this process, and, without justification, cause economic harm to the employer. This has not been an issue with the long-existing specific wage lien bills that are already in law, and there is no reason for this lien to be any different. A worker would have to pay to file the lien, and would most certainly need help from a lawyer to be able to put the lien in a form acceptable for filing. A lawyer who assists in filing a frivolous court document is subject both to economic sanctions and bar discipline up to and including loss of license. Thus, there is little likelihood that a lawyer would help with filing a frivolous claim.

Today more than ever, workers’ wages are being stolen from them—a 2008 study of low wage workers in three major US cities found that a shocking percentage are paid less than minimum wage, denied compensation for overtime, illegally charged for equipment and other expenses, and are subjected to other violations of labor law. While the percentages vary between industries, more than two thirds of the workers surveyed had experienced at least one pay-related violation in the previous week.<sup>2</sup> Similarly, the Economic Policy Foundation, a business-funded think tank, estimated that companies annually steal \$19 billion in unpaid overtime.<sup>3</sup> Passage of SB 573 would help to remedy this problem.

We recommend that the Committee pass out SB 573 with a do pass recommendation.

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<sup>2</sup> Bernhardt, Annette, Milkman, Ruth, Theodore, Nik, et al. *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*. September 2009.

<sup>3</sup> Craig Becker, “A Good Job for Everyone: Fair Labor Standards Act Must Protect Employees in Nation’s Growing Service Economy,” *Legal Times*, 27, No. 36, September 6, 2004.