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AOI TESTIMONY ON SB 468 BEFORE THE SENATE WORKFORCE COMMITTEE

February 11, 2015

AOI Opposes SB 468

The bill authorizes the Bureau of Labor and Industries (BOLI) to issue and file with the county clerk a warrant for the collection of debts owed to the agency. As a result, BOLI's warrant will have the effect of a circuit court judgment, but without any due process protections. For example, the bill does not include any mechanism for an employer to challenge the accuracy of an alleged debt, or the legitimacy of the warrant prior to execution. It also does not require BOLI to notify the target of its warrant before execution.

In prevailing wage and ordinary wage cases, BOLI generally issues a final determination that wages are due (along with penalties and interest) without first speaking to the defendant or considering its defenses. The defendant; however, has the right to challenge and/or appeal BOLI's determination in a judicial setting before BOLI can collect the alleged debt.

Nowhere in SB 468 is it clear that a defendant can challenge the determination before BOLI is permitted to take the defendant's property and garnish its funds. The language on lines 5 & 6 "if an amount due to the Bureau of Labor and Industries" is of particular concern, because it is so vague. It's unclear whether BOLI could simply decide that the amount was due and issue a warrant, or whether its authority is limited to debts sustained after having completed the relevant administrative or judicial processes. In the former situation, there may be serious constitutional issues with this bill under the due process provisions of the 14th Amendment.

Additionally, SB 468 is retroactive and would apply to all debts owed to BOLI, even those owing before the effective date of the bill. This retroactivity raises similar constitutional questions, which would likely invalidate the statute if the bill were passed.