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**Testimony of D. Michael Dale
Before the House Committee on Business and Labor
February 27, 2017
HB 2856 – Community Enforcement Resources**

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer since 1975, and have spent most of that time representing migrant and seasonal 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 supported by the Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes about 40 civic, labor, religious and business organizations.¹

Today more than ever, workers' wages are being stolen from them: a 2008 study of low wage workers found that a shocking percentage are paid less than minimum wage, denied compensation for overtime, illegally charged for equipment and other expenses, or not paid at all.² While percentages vary between industries, more than two thirds of the workers surveyed had experienced at least one pay-related violation in the previous week. Some of the most egregious violations occur in day labor. Oregon has not been exempt from these trends. An analysis of wage claims filed with BOLI since 2006 shows that Oregon workers filed \$45 million in wage claims.³ Of course, this is just the tip of the iceberg, since many victims do not file claims with BOLI due to fear of retaliation, lack of knowledge of how to file or geographic isolation.

¹ Adelante Mujeres, AFL/CIO of Oregon, AFT Oregon, American Friends Service Committee, Beyond Toxics, CAUSA, Catholic Office of Life, Justice and Peace, Archdiocese of Portland, Centro Latino Americano of Eugene, Common Cause Oregon, Community Alliance of Lane County, Economic Fairness Oregon, Ecumenical Ministries of Oregon, Family Forward Oregon, Human Dignity Advocates of Crook County, Interfaith Movement for Immigrant Justice (IMiR), Jewish Federation of Greater Portland, Mainstreet Alliance, Northwest Forest Worker Center, Northwest Workers' Justice Project, Oregon Action, Oregon AFSCME, Oregon School Employees Association, Oregon Center for Christian Voices, Oregon Center for Public Policy, Oregon Strong Voice - Southern OR Chapter, Oregon Thrives, Oregon Trial Lawyers Association (OTLA), Oregon Working Families, PCUN, Portland Jobs with Justice, Project REconomy, Rural Organizing Project, SEIU Local 49, SEIU Local 503, Tax Fairness Oregon, Teamsters Local 26, Unidos Bridging Community, United Food and Commercial Workers Local 555, and VOZ Workers Education Project.

² Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Hckathorn, Mirabai Auer, James DeFilippis, Ana Luz Gonzalez, Victor Narro, Jason Perelshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (Chicago: Center for Urban Economic Development, 2009). Available at www.unprotectedworkers.org/index.php/broken_laws/index.

³ "Wage Theft Increases Poverty and Costs to the Public," Oregon Center for Public Policy (February 13, 2017), <http://www.ocpp.org/2017/02/13/fs20170213-wage-theft-poverty-public-costs/>.

One of the key reasons that wage theft continues to occur in Oregon is that so few wage theft victims complain about it, relative to its prevalence in the economy. Elsewhere we have proposed measures to make retaliatory firing more difficult (see HB 2181) and to remove obstacles to filing a private action to collect wages (see HB 2169). But perhaps the most important reason workers may not complain about being shorted wages is the lack of information about basic wage rights and about how and where one might seek redress. Community non-profit organizations, who are already serving as an important, trusted resource to low wage workers, are a key asset to address this aspect of the problem. However, these organizations typically operate on shoe-string budgets and lack staff to undertake significant work in assisting workers with collecting wages. It was for this reason that the Oregon Coalition to Stop Wage Theft developed a legislative concept to create a means of helping community organizations around the state to play this key role.

The sponsors of HB 2856 were thinking along very similar lines. The Oregon Coalition to Stop Wage Theft is in full support of HB 2856 as one approach to empowering community organizations to help with wage theft issues and would be pleased if it were adopted.

Attached to this testimony is a draft of the bill we had originally conceived, converted to a possible amendment to replace HB 2856. There are two principal differences in the two proposals. First, HB 2856 relies upon public funding to create the community enforcement grant program. Our draft bill would generate a source of funding by automatically adding a surcharge of 20% to wages that BOLI collects that would be dedicated to assisting non-profit organizations in helping workers with wage claims. We estimate that this would produce revenues of about \$250,000 per year to be used for wage assistance by community non-profits. In addition to producing a funding source for this program that doesn't rely on public funds, this approach would create at least a modest penalty for not paying wages in every case. (This is the exception, not the rule in current BOLI practice). It would also place the cost of the community enforcement program on employers who have violated wage laws, not on good employers or the general public.

HB 2856 also proposes changes to the remedies provisions of ORS 659A.885 which are not included in our draft bill.

As noted above, we support HB 2856, including the remedies provision, and recommend that this committee forward the bill with a do pass recommendation. In the alternative, we would also favor passage of the attached amendment to HB 2856 in order to move the bill forward.

1 Delete the text of the existing bill and insert:

2 **SECTION 1.** The Community Outreach and Labor Education Account is
3 established in the State Treasury, as a special trust account, separate
4 and distinct from the General Fund. Interest earned by the account
5 shall be credited to the account. All moneys in the Community
6 Outreach and Labor Education Account are appropriated
7 continuously for the purpose of awarding grants as provided in Section
8 3.

9 **SECTION 2.** The Commissioner shall collect from responsible employers
10 an additional penalty on all moneys otherwise collected pursuant to
11 ORS 652.330, or as a result of administrative proceedings pursuant to
12 ORS 652.332, in the amount of twenty percent of the amount otherwise
13 collected. The surcharge shall be deposited in the State Treasury to
14 become part of the Community Outreach and Labor Education
15 Account.

16 **SECTION 3.** (1) Funds in the Community Outreach and Labor Education
17 Account shall be granted from time to time by the Commissioner of the
18 Bureau of Labor and Industries to non-profit organizations to fund
19 outreach, education and technical assistance to Oregon workers
20 pertaining to employee rights in the workplace.

21 (2) Grants provided through the Community Outreach and Labor
22 Education Program may be used for activities to assist workers in
23 enforcing employment rights, including outreach, community-
24 based education events, training materials, technical assistance,

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 counseling, research and referral services.

2 (3) When considering applications for grants, the Commissioner
3 shall give priority to projects that provide services to especially
4 vulnerable workers, including low-wage, immigrant, refugee and

5 contingent workers, women, Lesbian, gay, bisexual or transgender
6 individuals; injured or disabled workers or workers under 20
7 years of age.

8 SECTION 5. This 2017 Act being necessary for the immediate pre-
9 servation of the public peace, health and safety, an emergency is de-
10 clared to exist, and this 2017 Act takes effect July 1, 2017.
