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To: Senator Kathleen Taylor, Chair
Senate Committee on Labor & Business

Testimony in Support of HB 2057

HB 2057 is about wage theft and workers not being properly paid by employers in the construction industry. Wage theft includes employers paying employees less than the minimum wage, under the table cash payments, misclassification as independent contractors, failing to pay overtime, or failing to pay benefits or payroll taxes.

This issue has been under discussion, workgroups, and legislative proposals since at least 2009. An Oregon business magazine investigation in 2009 exposed wage theft as a significant part of an 18 billion underground economy in Oregon. The Interagency Compliance Network (ICN), which consists of BOLI, DOR, OED, DCBS, DOJ, CCB, and LCB, was created to try to bring compliance to wage and tax laws to ensure workers are properly paid. This is accomplished through audits which are usually triggered by complaints or adjudicated claims.

In the limited audits conducted in 2022 by the ICN, they found \$23,109,794 of unreported income. The ICN also found that 72% of the violations in 2022 were in the construction industry. Between 2006 and 2021 workers filed claims with BOLI for \$50 million in stolen wages, and BOLI determined most of these claims to be valid. Yet, BOLI only forced employer penalties in just 1% of those cases. The Legislature has heard from BOLI that they have a back log of 1200 claims waiting to be processed, and that these claims could take a year just to be reviewed. Cases are usually settled before a final order where employers agree to pay employees' wages that they are owed. As a result, very few claims receive a final order, approximately only 1% of wage claims receive a final order. The fact that employer's risk little when they violate the law exacerbates the problem of wage theft. They risk little, because as this process plays out, all the employer is required to do is pay what they should've paid to start with and only when a worker successfully files a wage claim and successfully pursues the process. Claims then can take years to complete and recover any part of wages owed.

It has been proposed in multiple previous sessions to require wage bonds of contractors as a methodology to address wage theft. Wage bonds sufficient to cover wages would be prohibitive to most small contractors, which would likely need to be equivalent to 6 months of company payroll, easily topping \$100,000, and would be a large barrier for contractors. Those proposals were rejected repeatedly by many construction industry opponents to HB 2057, who now suggest wage bonds as an alternative. One proposal is to require wage bonds for contractors who have been required by final order to pay wages. This would not be practical or effective. As stated, very few final orders are issued, and surety companies are unlikely to issue a bond to these “bad actor” contractors. It is also uncertain who would hold the bonds and how would workers who happen to be in the 1% who received a final order access the bond, a process that would likely take multiple years. It is already the case that private contracts can require bonds be posted by subcontractors in the construction industry. Though the Wage Security Fund has been enhanced to cover \$10,000 of unpaid wages in recent years, it is still problematic for significantly addressing wage theft for the same reason that a worker must have obtained a final order or judgement for the wages due, or the contractor has ceased business operation, and is limited to a 60-day time period and is subject to funds available.

The major occurrences of wage theft in Oregon occurs by contractors who claim exempt (from payroll taxes), meaning they have no employees, or are unlicensed. And that status can be found on the CCB website. However, when lower tier exempt contractors show up with a workforce to perform a contract, the higher tier contractor seems to look the other way, and not question their exempt status of no employees, or even their license status. Contractors have more ability to recover moneys owed on their contracts, and under HB 2057 the upper tier contractor can recover, from their lower tier contractor’s, the wages they paid on behalf of contractors who fail to pay. Contractors who commit wage theft, or hire those contractors, avail themselves of much lower costs, and take work away from law-abiding contractors and pad their pockets with the stolen wages of workers. When contractors have already been paid for their contracts, it should not be the workers who are left in a challenging legal position to try to recover the wages they worked for and earned.

The bottom line is the higher tier contractor or general contractor gets paid for the project, and they should have some responsibility to ensure the workers on the project are being paid for their work; general contractors have the tools and contractual ability to accomplish this. Workers have only a long and difficult wage claim process to recover their wages. It can take them many months, or years, to recover their wages. They shouldn’t be the ones without the money they earned, while the contractors are fully paid. The people with the most power in this situation are the higher tier general contractors. It’s time we added another tool to make sure workers get paid for their work, and the wages and benefits they earned.

This pathway of establishing joint liability for unpaid wages is not a new concept. It is an existing method of wage recovery in public contracts and prevailing wage law, and in the federal Fair Labor Standards Act, a US DOL process. Wage claims under public contracting and prevailing wage laws get fully paid 94% of the time. In private contracting those wage claims are only fully paid 56% of the time. HB 2057 will add the important tool of joint liability for wages in private contracts in the construction

industry. In certain circumstances in Oregon, joint employment liability also applies to Labor brokers, staffing agencies and worker leasing business models. Joint employment liability in the construction industry is also a statutory pathway to address wage theft in California, Nevada, New Jersey, New York, Maryland, and Illinois. We have seen a recent example of wages being recovered for workers using the joint liability tool by BOLI in a prevailing wage public project. After a year since filing wage claims against Portland Drywall Systems, a sub-contractor to R&H Construction, the general contractor, BOLI was able to apply joint liability for those wages to R&H Construction and settle the wage theft case for about \$193,000 in favor of the workers. (This is more than any proposed wage bond amount). It is time to expand that tool to private construction projects in Oregon.

House Bill 2057 will incentivize higher tier general contractors to better ensure that workers on their projects are paid appropriately for the work they performed. And it will provide a more efficient tool for workers to pursue the wages owed to them. It is noteworthy that the private right of action and the statute of limitations clarified in the bill are existing law. House Bill 2057 will make it less likely that contractors whose business model includes wage theft will receive contracts; and it will provide a more level field of competition with more opportunities for law abiding contractors to receive those contracts. The contractors that use or allow wage theft will be the contractors impacted by this legislation. If their business model is wage theft, they should not be in the industry.

When we build affordable housing here in Oregon, we should not ignore wage theft of the workers building the projects. Wage theft remains rampant in the construction industry even after some recent enhancements to our laws as discussed. The construction industry wage claims still represent the highest percentage of wage theft for workers in Oregon, we have not fixed the problem for workers. And there is a high likelihood that only a small percentage of workers are able to pursue the recovery of wages owed through our slow cumbersome and complicated processes. We can see evidence of our current wage claim mechanisms with the addition of joint employment liability working more successfully to recover wages in our prevailing wage public contract projects. If we don't make sure that workers get paid, we are just adding onto the many problems we are fighting to fix, and spending hundreds of millions of dollars on.

I encourage support on HB 2057 to fight back against wage theft in Oregon and ensure our construction workers are getting paid what they deserve.



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