

Act Number:	09-025	
Bill Number:	6462	
Senate Pages:	1592, 1657, 1659	3
House Pages:	1414-1436	23
Committee:	Labor: 1082, 1083-1084, 1164, 1165, 1173, 1175, 1235	8
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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2009**

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PART 5
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md
SENATE

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ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 392, PR.

Calendar 393, PR.

Moving to calendar page 11, Calendar 394 is
marked go.

Calendar 395, House Bill Number 5297, Mr.

President, I move to place this item on the Consent
Calendar.

THE CHAIR:

Motion is on the floor for consent. Seeing no
objection, so ordered.

SENATOR LOONEY:

Yes, thank you, Mr. President. Calendar 397, PR.

Calendar 398, PR.

Calendar 401 is PR.

Mr. President, calendar page 11, Calendar 403,
House Bill Number 6462, Mr. President, I move to place
this item on the Consent Calendar.

THE CHAIR:

Motion on the floor for consent. Seeing no
objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Moving to calendar

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Calendar page 6, Calendar 245, Substitute for House Bill 6266.

Calendar page 7, Calendar 272, Substitute for Senate Bill 1040.

Calendar Page 8, Calendar 359, Senate Bill 1082.

Calendar page 10, Calendar 389, Substitute for House Bill 6327; Calendar 391, Substitute for House Bill 5930.

Calendar page 11, Calendar 395, Substitute for House Bill 5297; Calendar 403, House Bill 6462.

Calendar page 12, Calendar 414, Senate Bill 905.

Calendar page 13, Calendar 416, Senate Bill 998;
Calendar 432, Substitute for Senate Bill 1020.

Calendar page 15, Calendar 457, Substitute for House Bill 6356.

Calendar page 16, Calendar 460, Substitute for House Bill 6301; Calendar 465, Senate Bill 963.

Calendar page 18, Calendar 487, Senate Bill 707;
Calendar 489, Substitute for Senate Bill 810.

Calendar page 21, Calendar Number 506, Senate Bill 1136; Calendar 507, Senate Bill 1141.

Calendar page 22, Calendar 515, Substitute for Senate Bill 832.

Calendar page 23, Calendar 524, Substitute for

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Have all Senators voted?

If all Senators have voted, please check the machine. The machine will be locked, the Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1. Total number voting, 36; those voting yea, 36; those voting nay, 0; those absent/not voting, 0.

THE CHAIR:

Consent Calendar Number 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, I would move that all items referred to various committees from the chamber today be transmitted to those committees immediately.

THE CHAIR:

Without objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, also, would announce that we will be convening tomorrow about -- at 11:30 a.m., it's our intention to pick up with bills that had previously been marked "go" today. So I would move that all items previously marked go

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

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THE CLERK:

House Bill Number 6427 as amended by House A.

Total Number Voting 143

Necessary for Passage 72

Those voting Yea 143

Those voting Nay 0

Those absent and not voting 8

SPEAKER DONOVAN:

The bill as amended is passed. Will the Clerk
please call Calendar 161.

THE CLERK:

On page 9, House Bill Number 6462, AN ACT
CONCERNING CERTIFIED PAYROLLS, favorable report by the
Committee on Labor.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Thank you, Mr. Speaker. Mr. Speaker, I move
acceptance for the Joint Committee's favorable report
and passage of the bill.

SPEAKER DONOVAN:

The question on -- the question is acceptance of
the Joint Committee's favorable report and passage of
the bill. Will you remark?

REP. RYAN (139th):

Yes, Mr. Speaker. By law, certified payrolls must include a statement signed by the employer indicating that the records are correct, that the wage rate paid to the -- each covered employee is the prevailing current rate; the employee has complied with the current law; the employer is aware of knowingly filing a false certified payroll, which is a class D felony; and other -- several other requirements have to be met.

This bill would require contractors and subcontractors performing work on state public works projects to submit payrolls through the U.S. mail to the contracting agency. The purpose of this is because the -- it is felt that the 5,000 fine -- dollar fine that it is currently in place for submitting a false payroll is not a sufficient deterrent. And this bill would make submitting a false certified payroll a federal crime, which we feel would be more of a deterrent to submitting when you're submitting a false payroll.

In order to make the bill, or to tighten up the bill a little bit we do have an amendment. The Clerk has LCO 5505. I would ask the Clerk to please call

the amendment and I be allowed -- leave of the -- ask to have leave of the Chamber to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 5505, which will be designated House Amendment Schedule A.

THE CLERK:

LCO Number 5505, House A, offered by Representative Ryan.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to summarize. Is there objection to summarization?

Hearing none, Representative Ryan, you may proceed with summarization.

REP. RYAN (139th):

Yes. Thank you Mr. Speaker. What this amendment does is simply gives in more detail the type of mail that it would be sent through, making it a first-class postage prepaid. And it eliminates the last two lines of the bill, because it was felt they were redundant and truly unnecessary. I move for adoption.

SPEAKER DONOVAN:

Question before the Chamber is adoption of House Amendment Schedule A. Will you remark on the amendment? Remark on the amendment? Representative

Noujaim.

REP. NOUJAIM (74th):

Yes, Mr. Speaker. I would like to. I have not seen this amendment yet, and it has not come through the committee. So I would like to take a moment to see it please.

SPEAKER DONOVAN:

Thank you, Representative, the Chamber will stand at ease.

Chamber at ease.

SPEAKER DONOVAN:

The Chamber will come back to order.

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. I would like to, through you, Mr. Speaker, to ask Representative Ryan a question in reference to this amendment, seeing that this is the first time I have seen it.

SPEAKER DONOVAN:

Please proceed.

REP. NOUJAIM (74th):

I have no problem, through you, Mr. Speaker, in

reference to line 15 to say first class postage prepaid. That is perfectly okay, but I would like to ask the reason for taking away lines 52 through 54. Through you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Representative Ryan.

REP. RYAN (139th):

Yes. Through you, Mr. Speaker, I believe the screening committee felt that the last two lines, that once you committed -- if you sent this the certified mail, first-class postage it is inherent that it would be a -- constitute a federal crime and there is no reason to state it in the bill.

SPEAKER DONOVAN:

Thank you. Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker, and I thank Representative Ryan for his answer.

SPEAKER DONOVAN:

Thank you. Will you remark further on the amendment? Will you remark further on the amendment before us? Hearing none, all those in favor of the amendment, please signify by saying, aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended? Will
you remark further on the bill as amended?

Representative O'Neill.

REP. O'NEILL (69th):

Yes. Thank you Mr. Speaker. In looking at the
bill it comes as a bit of a surprise to me that we're
making this requirement at this time. So if I may,
just a couple of questions. We're going to be
requiring that the contractors and subcontractors
submit these certified payrolls by mail. Am I to take
it then that if the contractor were to hand deliver
the certified payroll to the Department of Labor, that
that would be considered to be a violation of the
statute? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, yes, that's true.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

If -- and if I could just ask, has this been a problem that the -- that they've been hand delivered, or is there a reason why hand delivery is considered to be inadequate in terms of making the Department of Labor aware of it? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. WRIGHT (77th):

Through you, Mr. Speaker, I don't believe it's typical for them to be hand delivered. Again, as I mentioned in explaining the bill, it seems as though a \$5,000 fine is enough of a deterrent, from the testimony we heard, to prevent people from submitting falsified payrolls, certified payrolls. So by making them send it through the mail, it becomes a federal crime. We hope it will be more of a deterrent for people submitting falsified payrolls and that will ensure that they -- what they tell the Department of Labor will be the truth.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. Okay, because the normal

trill that we've been seeing more and more with agencies, and with the operations of government is to try to do things even, say, by electronic methodologies such as sending things by e-mail. And I'm not sure if I could ask then, what is the federal penalty for sending a false certified payroll through the U.S. mails? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, submitting a false certified payroll, it would be a federal crime punishable by a fine up to 20 years in prison -- oh, in addition to the \$5,000 fine, or you'd be able to be charged with both under title 18, part I, Chapter 63, Section 1341 of the U.S. code.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. And I'm just wondering, is this done in other states where it is required that the certified payrolls have to be filed by mail?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

I'm sorry. I don't have any information to really be able to answer that question.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you. And other cases where the -- where there have been mailings done in Connecticut of a false payroll, false information that had been submitted, in fact, has been submitted by mail, and have any of those cases been prosecuted by a U.S. Attorney's office? Through you, Mr. Speaker, if the member knows.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Yes. Through you, Mr. Speaker, since it is -- since this bill has not yet been enacted, it, right now would be prosecuted by the state level. Wouldn't -- not -- I don't believe that would involve the U.S. Attorney. I could be mistaken about that. But right now it would only be a 5,000 fine -- dollar fine that would be levied by the Commissioner of the Department

of Labor.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Well, Mr. Speaker, as I read the underlying statute of which this is an amendment, it says that filing a false certified payroll is a Class D felony, which does carry a \$5,000 penalty, but it also provides for up to five years of imprisonment under state law. So it's not merely the \$5,000, and certainly, is not imposed by the Commissioner of Labor. It would have to be imposed by a judge after -- or a jury has or -- a judge or a jury has made a finding of guilt. But my understanding of the purpose of this legislation is to, by forcing the uses of the U.S. mails, subject folks to penalty of some sort of mail fraud that would then implicate the U.S. Attorney's jurisdiction.

However, if a person filed a certified payroll today or yesterday that was false, but they filed it by mail, the U.S. Attorney would have jurisdiction because once you use the United States mails, then the U.S. Attorneys would have jurisdiction if there's some sort of fraud being committed. So my question is, is

there -- are there any cases that we know of where someone has currently used the U.S. mails? Let me stop there.

Do we know if there are any -- any employers have actually mailed in the certified payrolls using the U.S. mails? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Thank you, Representative O'Neill. I thank you for making that correction. You're right about -- I misspoke earlier about how that fine would be levied. I do not have anything in the documentation here to cite a specific example of -- I only have an example where the -- there was an issue with the Capstone Building Corporation at UConn. And they were levied a \$5,000 fine, but it says nothing about whether or not they were held accountable under federal law. It just pointed out -- just points out the fact in paying a \$5,000 fine, they were able to make almost a million dollars. So it was, in that particular case, paying \$5,000 earned them a million. And that's one of the reasons that people wanted to tighten up the law, so that it wouldn't be a benefit for a company just to

pay the fine and still circumvent the law. Thank you,
Mr. Speaker.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. The reason why I'm asking the question about any current use of the U.S. mails -- well, let's look at that Capstone case, through you, Mr. Speaker. Does the Chair of the Labor Committee know whether or not the certified payroll in question was mailed in to the Department of Labor, or if it was delivered some other manner? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

I'm going -- no -- it would only be an assumption that it would be mailed. I don't believe -- like I said earlier, it's typical for people to hand deliver these documents. And I don't -- maybe while you're asking the next question I will ask somebody who may know that and be able to respond to you.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. The reason why I'm raising this issue is that my assumption is most people mail most of the documentation that they need to send to state agencies or perhaps they e-mail it nowadays because that, certainly is a faster, cheaper, and in some cases considered more reliable, because you get a quick documentation of the fact that the e-mail was transmitted. But if there have been false certified payrolls, then the question is -- and they have been sent in by the U.S. mails, the question is, has the U.S. Attorney's office taken any interest in prosecuting those particular cases? So again I would renew my question with respect to Capstone, or for that matter, any case where there has been a falsely certified employee list, whether that was in the case of Capstone or anyone else that we know of, where there was a false one, was it sent in by the U.S. mails? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

I -- after referring to my resource here in the Chamber, he also does not -- is not aware of any of

those -- of that occurring. Typically, he believes that it's typically mailed in, but the federal government has not, at this point in time, actually charged anyone with submitting a certified payroll through the mail.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. I'm not quite sure what the -- well, let me ask this, was this a proposal that came from the Department of Labor? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, no it wasn't. But the Department of Labor did testify in favor of it.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. Well, the problem that I have is that under our system of having concurrent jurisdiction between state and federal governments, the United States government prosecutes something like

10 percent of all of the cases, and perhaps even a smaller percentage that are prosecuted. They are very selective.

U.S. attorneys choose what cases they want to pursue and frequently, do not pursue cases which they could pursue because it's just not something that that particular U.S. Attorney's office, or perhaps the Justice Department has chosen to emphasize as a target of the activity of the U.S. Attorney's office. And so, the question is whether a U.S. Attorney's office, in particular in this case, the district of Connecticut or the Attorney General's office in Washington, is going to choose to make mail fraud a high-profile matter -- they're going to make sure that people get prosecuted for it. And if there's already an existing state penalty, a class D felony, which is a felony which would certainly be a serious matter for anyone's record to have a felony and up to five years imprisonment, they may choose to not prosecute under federal law a case -- that particular case, unless there is some extra reason why the federal government feels the need to get involved. And so I think what could easily occur here is a case, such as this Capstone case could have occurred, in which -- excuse

me, Mr. Speaker, in which there was a potential federal action that could have been taken, and the U.S. Attorney's office simply chose not to pursue it.

And it would seem to me that the surer approach to getting action here to have a more powerful deterrent would have been to take the Class D felony that's currently on the books and bump it up to a Class C felony or make it a minimum mandatory of at least one or two years imprisonment, perhaps have the fine be larger or do other things that would have enabled the prosecutor, state prosecutors to take stronger action.

Apparently, well, in their own decision making, if they just levied a \$5,000, fine which is the maximum, but did not seek imprisonment of any of the people involved, even though they had the power to do so, they exercised their prosecutorial discretion in such a way as to not take full advantage of all of the penalties that are currently available. Now, and I just want to be sure that that in fact was the case. I think the member indicated that the prosecution of this resulted only in a \$5,000 penalty. And the cap -- no one at Capstone was, in fact, prosecuted. No one was, rather, imprisoned for any period of time on

these charges. So through you, Mr. Speaker, I would put to the Labor Committee Chair, am I correct? Did his answer earlier indicate that the only penalty was to fine, that there was no term of imprisonment in the Capstone case? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, that's the understanding I have.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. Well, it would, again, I'm not really strenuously objecting or don't really have a problem with saying that we're going to allow the federal government to prosecute these cases. But I would just have thought that if we wanted to be sure that people were going to be prosecuted for falsely filing payrolls, that we would have up bumped up the penalties, that we would have made it into Class B or C or some other higher-level felony or had it a much larger fine, be levied against them or, perhaps, even create some sort of a process whereby the State of

Connecticut would be able to seek restitution of any monies that were paid out or -- by the State based on the falsely filed payroll. Or let me ask that question. Was there any, in the Capstone case, was there any effort to achieve a restitution of the million dollars to which reference was earlier made? Did the State seek to try to recover that money from Capstone? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I see -- I have -- I note -- know of any effort by the State to try to recover, not to say that they did or didn't, I just don't know.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker. Because certainly, while in private cases if there was a violation of this law and somebody was disadvantaged, that would perhaps, be an issue, but then I wouldn't be sure of exactly how I would necessarily want to handle it but, we -- when it's the State's money that's involved, I would

certainly hope that efforts would be made by the Attorney General's office to bring action against an organization such as Capstone on -- if they filed this kind of a false employee list. And I guess, I'm sort of surprised that no action along those lines was taken or that no action could be taken, but again, that's the kind of thing that might be a more effective deterrent.

The concern that I have is that we're going to do this. Somebody is going to fail to mail the thing in, in a timely fashion. It'll be delayed by a day or two. They won't be able to hand deliver the list. It won't be that there's a -- any really false information. It's just going to be delayed because people are -- were relying on the mails, and they may not get it into the post office and they're going to miss the deadline. But then, on the other end of it, besides those more mundane examples, the federal prosecutors may just simply not want to prosecute these kinds of cases, because they are not what the federal prosecutors are focused on at any given moment. And it's really just invoking federal authority here in a very tangential way.

So I would hope that if this is a serious problem

that perhaps, this would be revisited by way of increasing this Class D felony and/or imposing a mandatory minimum fine, or rather, mandatory minimum jail term. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Remark further?
Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Good afternoon,
Mr. Speaker.

SPEAKER DONOVAN:

Good afternoon, Representative.

REP. NOUJAIM (74th):

Mr. Speaker, during the debate and the conversation on this bill, during our Labor Committee meeting, we talked about the fact that, as an answer to Representative O'Neill, at the time, there were a couple of out-of-state agencies who, kind of, circumvented the system. And this is the reason for which this bill was introduced in the first place, and we asked for the Labor Department's opinion on it and they agreed upon it.

So it is a bill that we supported unanimously, and the committee and I would support it. However, I

do have a have a quick question to ask of Representative Ryan about an amendment, since now it is amended, and we will be voting on it as such. My question is that we inserted in line 15, a first-class postage prepaid. What happens then if somebody decides to deliver it via an overnight, one of those overnight carriers? Would this be against the law, as well, or it would be acceptable as we put this bill forth? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Representative Ryan.

REP. NOUJAIM (74th):

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

After intense consultation, we -- I believe overnight delivery is a version of first-class mail. It's just hastened by the fact that you pay an extra fee to have it go through the mail a little faster.

SPEAKER DONOVAN:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. So I take it that

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overnight mail is acceptable. Through you, Mr.
Speaker.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Yes, Mr. Speaker.

SPEAKER DONOVAN:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. I intend to support this
bill. However, had Representative Ryan spoken with
the ranking member about this amendment ahead of time,
we could have solved it before becoming to this
debate. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Remark further on the
bill as amended? Remark further on the bill as
amended? If not, staff and guests please come to the
well of the House. Members take their seats. The
machine will be open.

THE CLERK:

The House of Representatives is voting by roll
call. Members to the chamber. The House is voting by
roll call. Members to the chamber, please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? If all the members voted, please check the machine and make sure your vote has been properly cast. If all the members voted, please check the board to determine if your vote has been properly cast. If all members have voted, the machine will be locked. And the Clerk will please take a tally. Will the Clerk please announce the tally?

THE CLERK:

House bill 6462 as amended by House Amendment
Schedule A.

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

SPEAKER DONOVAN:

The bill as amended is passed.

Will the Clerk please call Emergency Certified
Bill Number 6715.

THE CLERK:

House Bill Number 6715, AN ACT CONCERNING CERTAIN
STATE PROGRAMS AND THE AMERICAN RECOVERY AND

**JOINT
STANDING
COMMITTEE
HEARINGS**

**LABOR AND
PUBLIC EMPLOYEES
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clerk to call his office to see if we can get him down here. And we'll go to the public list, and we'll just bring Representative -- Senator Fonfara, excuse me, up when he gets here.

Now the first person on the public list is Dave Moakley, and he's followed by Lloyd Pelletier.

DAVE MOAKLEY: Good afternoon, Chairman Ryan and the

Rest of the members of the Labor Committee. I'm here to testify against Senate Bill 920. We're testifying against this bill because we feel it has so many changes that would negatively affect the working men and women of the state of Connecticut and the pension plans they retire on, that actually three minutes of testimony won't even begin to cover the high points of this, so I'll get the real high points on it.

Pension funds rely on some method of legal action, or threat of legal action, to enforce payments from companies that have incurred liabilities to them. Liens and bonds are two of the methods used by the construction multiemployer pension funds to recover payments that are not paid. Joint checks is another. This bill in effect eliminates the ability of a pension fund or an individual worker to go after a contractor or owner for a subcontractor's default on their promise to pay pension obligations by drastically shortening the time period to take action on some methods of recovering those funds. It takes it from 180 days down to 30 days -- and eliminating another method entirely: it eliminates the ability to put a

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jf/med LABOR AND PUBLIC EMPLOYEES 2:00 P.M.
COMMITTEE

lien on a project to collect funds that are owed to a person.

If the bill as proposed would shorten the time period to file a claim to 30 days and would eliminate liens. Our pension plan collects money on the 20th of the month following the month the work was performed. If you work in January, the payment is due on February 20th. What this bill would do would be -- it effectively eliminates the first 20 days of January from being collected. If a person worked in there and was not paid into their pension fund, they would have 30 days from the time the work was performed to notify the company - the contractor, in writing, and the owner, in writing, by certified mail -- that he wasn't paid, or she wasn't paid. And if they didn't do that, they would no longer have a claim. We feel that this is way too short. Most of the time, people wouldn't even know that the payment wasn't made, especially for nonrepresented workers. They would have no idea that payment wasn't made for that time because some of their people put bills in quarterly. And we really think it's a bad idea.

There's another part of it which is in direct opposition to what we are trying to accomplish by another bill on this agenda, 6462, which we support. It would require that certified payrolls would be submitted by U.S. mail. This allows people to submit them by electronic mail or U.S. mail. We'd be fine with it if you said electronic mail and U.S. mail, but we don't think just letting them putting it in by e-mail would be a good thing.

And we daily watch as bankruptcy courts eliminate pension plans, companies

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unilaterally suspend matching payments, and more companies eliminate pensions altogether. We don't need to weaken this law to allow another type of assault on workers' ability to retire with dignity by accumulating a nest egg that's guaranteed them by the benefit requirement that's contained in prevailing wage laws. And I'll end there.

REP. RYAN: Thank you. Going back to 920

DAVE MOAKLEY: Yes --

REP. RYAN: I believe

DAVE MOAKLEY: That was part of my -- Go Ahead, I'm sorry.

REP. RYAN: I have this ringing in my ears. I guess

Just thinking about your objections to Senate Bill 920, I believe that the purpose of this with some subcontractors or contractor -- the prime contractor, general contractor might not be aware that the subcontractors haven't made the payment --

DAVE MOAKLEY: Yes.

REP. RYAN: -- and they're getting penalized for it?

I mean, you have a problem with that issue? Because it doesn't seem fair that a contractor who doesn't know what his subcontractor would be doing would be the one to pay the penalty. And I think we're trying to take care of that.

DAVE MOAKLEY: With the way -- the way the law is Set up now is that, if a subcontractor does not pay a pension fund, then the ultimate liability goes back to the general contractor

JOYCE VOTJAS: No. I just wanted to say a couple of

Things. At one time, there was concern about employees in the manufacturing process, and -- or in a manufacturing plant, and those employees are exempt from licensing requirements under Section 23-40. They're currently exempt, so this doesn't affect -- have anything to do with employees that are working for manufacturers that do this type of work.

Last year, in a bill sponsored by the Department of Public Safety, An Act Concerning State Fire Prevention Code, there was a change in the law that said, rather than just allowing inspections for brick and mortar by fire marshals, the inspections now include processes, equipment systems, and other areas regulated by the state fire and safety code. This is important because the tubing and piping branch lines could also be regulated by the fire safety code, and the concern of the mechanical contractors and the plumbers and pipe fitters is, of course, that the work is being done by untrained, unlicensed people. And we'll be happy for your support for this bill.

REP. RYAN: Thank you. Testify as well?

CAMERON CHAMPLIN: Yes. Just a couple of things that I want to just touch on. I would like to concur with the previous testimony of Hubert Barnes. He gave you the same type of thing that I would give you on, you know, what the systems are, and so forth. But also, I wanted to just -- on Bill 920 -- the story we heard from that contractor was terrible. But this isn't the fix. If you do Bill 920, there's no way of going after somebody that owes pension

HB 6462

HB 6534

benefits. So that can't work. But yes, we should work on something to catch the crook, not just say okay, we're going to let him go after 30 days. That'll never work. That -- that kills everything.

Bill 6462 and 6534, I just want to concur with the previous speakers who spoke in favor of it. And with that, I will answer any questions, if there are any.

REP. RYAN: Cameron, when you talk about 920 --

CAMERON CHAMPLIN: Yes.

REP. RYAN: -- we're confused about you're making The same argument that leaves no way of going after the bad contractor, but unfortunately the person who's making restitution for it is the general contractor, who's already paid off and made the proper payments and certified and done everything correctly, and all of a sudden, they actually become another victim because somebody's going to come back to them to get the money that the general contractors run off with. So I guess our point of this bill is to ensure that that general -- I'm sorry, the subcontractor is the one who pays the bill, and the general contractor -- who has done everything correctly, keep in mind, is not penalized because of that, because they made a mistake in who they hired, or they thought it was all set and then they're unaware of the fact that they haven't paid the pension until it's too late.

CAMERON CHAMPLIN: Right. And I agree with you. That's why I'm saying, this bill isn't the fix for it. There's got to be something done, but if you put this bill into effect, and it's the 30-day notice, our -- for instance, our

**Testimony of the
International Union of Operating Engineers Local 478
before the
Labor and Public Employees Committee
on SB 920 HB 6462
March 3, 2009**

The Operating Engineers Local 478 is testifying against SB 920, An Act Clarifying Pension Obligations of Contractors and Subcontractors. We feel that this bill has so many changes that would negatively affect the working men and women of the State of Connecticut and the pension plans that they depend on to retire with some type of dignity that 3 minutes of testimony would not even begin to cover the high points. This bill is asking for general contractors and construction managers to bring the types of subcontractors that worked on the UCONN dormitories that we are still paying to fix onto every construction job in Connecticut. Once a GC or CM is relieved of the fiscal responsibility of their subcontractors not paying, there is really no reason to increase expenses by hiring a responsible subcontractor.

Pension funds rely on some method of legal action or threat of legal action to enforce payments from companies that have incurred liabilities to them. Liens and Bonds are two methods used by the construction multi employer pension funds to recover payments that are not paid. Joint checks is another. This bill in effect eliminates the ability of a pension fund or individual worker to go after a contractor or owner for a subcontractors default on their promise to pay pension obligations by drastically shortening the time period to take action on some methods of recovering those funds and by eliminating another method entirely. It also makes it less likely for a GC or CM to go to the expense or trouble of requiring joint checks, since they would have no monetary downside if the subcontractor does not pay.

The bill, as proposed, would shorten the time period to file a claim against a general contractor or construction manager to 30 days after the debt is incurred, would eliminate liens against the project the debt was incurred on as a manner of redress, require the pension fund to serve written notice on the owner of a project about the lack of payment and serve written notice he construction manager or general contractor about the lack of payment, and would shorten from 3 years to 30 days the current statutory limit on filing claims against a construction bond unless the proper procedures are followed.

respond in the shortened time frames mandated if this passes, or completely unable to do anything if they are working on a job that their only recourse is to file a lien.

Section 3 of SB920 is also in direct opposition to what the Operating Engineers is trying to accomplish. We support another bill on this agenda, HB 6462, which would require that certified payrolls be submitted by U.S. Mail. The purpose of that bill is to increase penalties to make it less likely that contractors will submit false certified payrolls. It accomplishes this by requiring them to be mailed and creating the possibility of prosecution for mail fraud. Section 3 of 920 gives contractors the ability to submit electronically or by U.S. Mail, which we feel makes no substantial change in the current law other than making it easier on the contractor. The only cost that we see to submitting by mail only is the cost of a stamp, and envelope and someone to put the payrolls in the envelope. Mailing payrolls does not seem to me to be a very complicated process either. If they want to change the process to allow e-mail, I would suggest the language "electronically and by mail" as a compromise.

SB 920 Section 3 also changes the language that exempts contractors from responsibility if they rely on the certification of a lower tier subcontractor about the truth of a certified payroll. We again feel that this section of the law should be strengthened to make the general contractor and construction manager take more responsibility for the quality of the subcontractors they hire, but do not believe that it has to change at all. Let us not give contractors another opportunity to claim "I didn't know" as a defense. Currently the law lets them rely on the subcontractors claim, but does not give them a blanket pass. Weakening this section to make it easier on the contractor to escape responsibility is not the way to go.

We are daily watching as bankruptcy courts eliminate pension plans, companies unilaterally suspend matching payments to 401K's, and more and more companies eliminate pensions altogether. Connecticut does not need to weaken its laws to allow another type of assault on workers ability to retire with dignity by accumulating a nest egg that is guaranteed them by the benefit requirement that is contained in the prevailing wage laws. There is no requirement that contractors have any type of pension plan, but if they do not they must pay the benefit part of the prevailing wage to the employee as part of their paycheck. Let's not let a unscrupulous contractor promise an employee that part of their wage as a retirement benefit, giving that contractor the cost savings of not having to pay taxes, unemployment, workmen's compensation and social security match on that money and then have that contractor not pay the employee those dollars without the recourses currently available in the Connecticut Statutes.

**Testimony of the
International Union of Operating Engineers Local 478
before the
Labor and Public Employees Committee
on Raised Bill 6462
March 3, 2009**

The Operating Engineers Local 478 is testifying in favor of Raised Bill 6462, An Act Concerning Certified Payrolls. This bill requires that Certified Payrolls be submitted by U.S. Mail to the contracting agency. This will make the submitting of a false certified payroll a Federal crime punishable by a fine or up to 20 years in prison or both under Title 18, Part I, Chapter 63 Section 1341 of the U.S. Code.

The reason this change is needed is that currently the only punishment for submitting a false payroll is a \$5000 fine levied by the Connecticut Department of Labor and the requirement to pay back wages that were not paid under the law. This has not proven to be much of a deterrent, as can be seen by the case of Capstone Building Corporation at UCONN. About 25 of the 30 subcontractors that they used were forced to pay back almost 1 million dollars to workers. That means that the only downside to not paying workers what they are entitled to by law is a \$5000 civil fine. Risking a \$5000 from the State of Connecticut to save almost \$1 million seems like a reasonable risk for a business person to take for the ability to cut their price and win a bid, especially when the fine is being levied only if you are caught by a department that has 3 inspectors, downsized from 8, to inspect all of the prevailing wage jobs going on in the state of Connecticut.

We feel that making it a Federal crime to do so will make contractors less likely to take a chance. This will lead to honest contractors that bid on their ability to manage a project well winning more bids, the Connecticut residents that work for them and pay taxes here being on the jobs and help to prevent bottom feeders that can only compete by reducing wages and eliminating benefits from doing our work in Connecticut.