

PA10-047

SB097

House	3253-3256	4
Labor	59-66, 122	9
Senate	1008, 1063-1066	5
		18

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 10
2967 – 3317**

Will the Clerk please call Calendar 382?

THE CLERK:

On page 17, Calendar 382, Senate Bill Number 97, AN ACT CREATING A CIVIL ACTION TO ALLOW CONTRACTORS TO RECOVER UNPAID EMPLOYEE PENSION OBLIGATIONS FROM SUBCONTRACTORS, favorable report of the Committee on Judiciary.

DEPUTY SPEAKER GODFREY:

The distinguished chairman of the Labor Committee, Representative Ryan.

REP. RYAN (139th):

Thank you, Mr. Speaker.

I move for acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER GODFREY:

The question's on passage.

Please proceed, sir.

REP. RYAN (139th):

Thank you, Mr. Speaker.

This bill -- what this bill does is allows a general contractor, who is required by the Department of Labor, to cover for a subcontractor's failure to pay wages and benefits to be able bring a

civil action in Superior Court to recover the damages sustained because of making such a payment, together with all the costs that are -- and reasonable attorneys fees that might be associated with it.

Basically, these companies would have to submit certified -- subcontractors have to submit certified payroll affidavits that say the records are correct, that the rates have been paid, the contribution and benefits have been paid on behalf of the employee to certain pension type funds. It's actually a Class D felony if they falsify these documents but, unfortunately, some people do. And then the general contractor is caught up in having to pay the unpaid pension wages or pension premiums that should have been paid. This will at least allow that contractor to sue the subcontractor to be able to recover the money that he's had to pay a second time.

And I'd ask my colleagues to support this bill.

DEPUTY SPEAKER GODFREY:

Thank you, sir.

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Good afternoon again,

sir.

Mr. Speaker, I am on a streak here agreeing with Representative Ryan on those -- on those bills.

Mr. Speaker, some subcontractors came to me during this debate and some of them said that, you know, we are a small company. Sometimes we neglect, sometimes we don't do it. But, obviously, there's no excuse. We know what the law is and if we don't go and obey the law then there's consequences will be suffered by whoever does it.

So what this bill came before the House, it was discussed in a public hearing and the Labor Committee and it was voted on unanimously. I do agree with its contents, and I do urge my colleagues to support it.

Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir.

Will you remark further on the bill? Will you remark further on the bill? If not, staff and guests please come to the well of the House. Members take your seats. The machine will be opened.

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.

DEPUTY SPEAKER GODFREY:

Have all the members voted? Have all the members voted? If so, the machine will be locked. The Clerk will take a tally. And the Clerk will announce the tally.

THE CLERK:

Senate Bill Number 97 in concurrence with the Senate.

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

DEPUTY SPEAKER GODFREY:

The bill is passed in concurrence with the Senate.

The distinguished Deputy Majority Leader, Representative Olson.

REP. OLSON (46th):

Thank you, Mr. Speaker.

I move for the immediate transmittal of items

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
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THE CHAIR:

Thank you, Senator.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, for a couple of change -- change markings for additions to the consent calendar.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Thank you, Mr. President. On a bill that was passed temporarily back on calendar page 15, Calendar 233, Senate Bill 97, Mr. President, would move to place that item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

And also Mr. President, on calendar page 29, Calendar 396, Substitute Bill 147, move to place that item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

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Calendar page 9, Calendar 117, Senate Bill 232.

Calendar page 10, Calendar 119, substitute for
Senate Bill 261; Calendar 124, substitute for Senate
Bill 251.

Calendar page 11, Calendar 149, Senate Bill 244.

Calendar page 12, Calendar 161, substitute for
Senate Bill 258.

Calendar page 13, Calendar 180, substitute for
Senate Bill 152.

Calendar page 14, Calendar 216, substitute for
Senate Bill 256; Calendar 217, substitute for Senate
Bill 201; Calendar 222, substitute for Senate Bill
275.

Calendar page 15, Calendar Number 233, Senate
Bill Number 97.

Calendar Number -- page 16, Calendar 239, Senate
Bill 105.

Calendar page 17, Calendar 270, substitute for
Senate Bill 234.

Calendar page 18, Calendar 296, substitute for
House Bill 5138; Calendar 297, substitute for House
Bill 5219; Calendar 298, House Bill 5250.

Calendar page 19, Calendar 301, House Bill 5263;
Calendar 302, House Bill 5292; Calendar 303, House

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Bill 5265; Calendar 313, substitute for House Bill 5002.

Calendar page 20, Calendar 314, House Bill 5201.

Calendar page 24, Calendar 340, substitute for Senate Bill 175.

Calendar page 25, Calendar 346, substitute for Senate Bill 151; Calendar 350, Senate Bill 333; Calendar 371, substitute for House Bill 5014.

Calendar page 26, Calendar 375, House Bill 5320.

Calendar page 27, Calendar 379, substitute for House Bill 5278; Calendar 380, substitute for House Bill 5452; Calendar 381, substitute for House Bill 5006; Calendar 382, House Bill 5157.

Calendar page 28, Calendar 384, substitute for House Bill 5204.

Calendar page 29, Calendar 395, substitute for Senate Bill 127; Calendar 396, Senate Bill 147.

Calendar page 30, Calendar 413, House Bill 5024; Calendar 414, substitute for House Bill 5401.

Calendar page 31, Calendar 419, substitute for House Bill 5303.

Calendar 32 -- page 32, Calendar Number 421, substitute for House Bill 5388; and on calendar page 34, Calendar 46, substitute for Senate Bill 68;

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Calendar 50, substitute for Senate Bill 17.

Calendar page 35, Calendar 64, substitute for
Senate Bill 187.

Calendar page 37, Calendar 109, substitute for
Senate Bill 189.

Calendar page 39, Calendar Number 148, substitute
for Senate Bill 226.

Calendar page 40, Calendar 182, substitute for
Senate Bill 218.

Calendar page 41, Calendar 188, substitute for
Senate Bill 200.

Mr. President, that completes those items placed
on the consent calendar.

THE CHAIR:

All right. If the Clerk has made an announcement
that a roll call vote is in progress in the Senate on
the first consent calendar, the machine will be open.
Senators may cast their vote.

THE CLERK:

The Senate is now voting by roll call on the
consent calendar. Will all Senators please return to
the chamber. The Senate is now voting by roll call on
the consent calendar. Will all Senators please return
to the chamber.

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THE CHAIR:

Would all Senators please check the roll call board to make certain that your vote is properly recorded. If all Senators have voted and if all votes are properly recorded, the machine will be locked, and the Clerk may take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 1 is passed.

Are there any announcements or points of personal privilege? Are there any announcements or points of personal privilege?

Senator LeBeau.

SENATOR LEBEAU:

Thank you, Mr. President, for a -- for an announcement.

THE CHAIR:

Please proceed.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**LABOR AND
PUBLIC EMPLOYEES
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REP. NOUJAIM: Okay. Thank you, Mr. Chairman.

REP. RYAN: Thank you, Representative Noujaim.

Do we have any other questions?

Thank you, sir. Thank you for your testimony.

DAVID DIETSCH: Thank you very much.

REP. RYAN: You've given us a lot to think about.

Miss Compo, and she'll -- after her will be
Walter Topliff.

LELAH CAMPO: Good afternoon. I would like to thank Representative Ryan and Senator Prague and the committee for raising this bill, Senate Bill 97 again. I have submitted written testimony and I am just going to summarize our point since this bill has come up before in the past.

I am Lelah Campo. I am the president of Associated Builders and Contractors, a statewide membership organization representing construction companies. And I come before you today to respectfully seek your support for Senate Bill 97, AN ACT CREATING A CIVIL ACTION TO ALLOW CONTRACTORS TO RECOVER UNPAID EMPLOYEE PENSION OBLIGATIONS FROM SUBCONTRACTORS.

This is an issue that has plagued construction for a while. If you are performing work on a prevailing wage, a public project in Connecticut, and you hire sub-contractors, and those sub-contractors falsify their certifications to you and maintain that they have paid their employees properly and they have paid into the pension fund but they have not, the Connecticut DOL will, in the end, come

to the general contractor and expect them to make the employees whole.

And we're not seeking any change in that. All we're asking is that we give the general contractors the ability to seek that repayment from that subcontractor by allowing them to be held personally liable if they commit fraud and falsely submit those certified prevailing wage forms.

So this is a bill we've worked on long and hard. We've had many meetings with committee members and with all sides on this issue. We believe that there is no controversy on this bill. And we'd like to thank you very much for your consideration and hope that you will be able to support us in this issue.

SENATOR PRAGUE: Are there any questions?

Representative Aman.

REP. AMAN: Yes. Just looking at it, the general concept that the contractor should be able to go back against the subcontractor is something that almost all of us will agree with. I'm -- this only gives you the right as a contractor to go into superior court and collect. Wouldn't you have that right now, to go into superior court now and try to collect?

LELAH CAMPO: Well, this really only addresses if they close the doors. Because, right now, yes, you do have that ability. The problem is if they file bankruptcy or close their doors and open up a another business entity, which we see a lot, you have no ability to go after that entity or that individual. This gives you the ability to pierce the corporate veil and go after the individual, the same as you can for

wages. It also extends it to the pension funds.

REP. AMAN: If you do pierce the corporate veil to go after a company to do this, how is it decided who within the company you're going after? Obviously, if it's a one or two person operation, it's fairly easy to see. But if you have a company of 30 or 40 individuals, who, when you pierce the corporate shield, are you going to be able to go after?

LELAH CAMPO: Well, we believe that that would be a matter really for the legal court system to look at. But we believe it would probably be the officer that falsified the prevailing wage certifications. But that's an area that we would be looking to the -- to the court system to decide, just as they do if they go after an individual or corporation. But I would say that you don't see very many construction companies that are that large.

REP. AMAN: Uh-huh.

LELAH CAMPO: And typically, the construction companies that we see kind of falsifying these prevailing wage forms and then closing their doors and opening a new business tend to be very small firms, sole proprietors, LLC's. We don't see conglomerates much in -- in the industry with these types of issues. We're really looking at -- at smaller firms. And unfortunately, we see a lot of them just close their doors having never fulfilled their obligation to their employees, and within months, have another business and they're out bidding public work again.

REP. AMAN: I -- I agree with you that that type of person should be definitely punished and put

out of business. I'm just looking at it from -- what I am going to see this in front of the Judiciary Committee and the legal problems that I perceive being presented there, and wondering if there is something we can do at this time, before we send the bill forward, to address those concerns before that committee does and the bill ends up not going anywhere.

LELAH CAMPO: Okay.

REP. AMAN: So I -- I would ask our chairman or vice -- our chairman, when they are looking at this going forward, to maybe discuss it with the leaders of the Judiciary Committee to see how those problems can be alleviated before we actually vote the bill out to committee.

LELAH CAMPO: I appreciate that very much. And I'll try to do my part to get some answers as well.

SENATOR PRAGUE: Thank you, Representative Aman.

I would just appreciate it if you would consult with your attorney --

LELAH CAMPO: Uh-huh.

SENATOR PRAGUE: -- to address Representative Aman's issues.

LELAH CAMPO: Okay.

SENATOR PRAGUE: It's a short session and we need to get it out of here with the right language.

Yes, Representative Esposito.

REP. ESPOSITO: Hi Lelah. Question for you. Is there any -- anything that prohibits the general contractor from withholding part of the

wages that are paid to the sub to cover the contributions that are required?

LELAH CAMPO: The only amount that they're allowed to withhold is the retainage, which in construction is, you know, usually about 7 and a half percent. The problem arises that often -- and we've tried to really close the gap. Because we -- when we looked at this issue, we thought the answer would be to have the pension funds provide notification to maybe the safety OL or to the general contractor when these contributions were not being made. And we went through timeline after timeline and followed all of the paperwork. And we couldn't seem to close the gap in a timely enough fashion that you could alert the general contractor while they were still withholding a significant amount of funds on the job. Often, at the very most, they withheld 7 and a half percent. But often, we get notified even after that 7 and a half percent has been paid.

REP. ESPOSITO: Uh-huh. So part of the problem is not only with the sub. It's also that the reporting requirement is lagging from DOL to timely notify the GC of -- of the funds.

LELAH CAMPO: It's not DOL's fault at all. It's the amount of time it takes for the contractor and the union to send the paperwork to the pension. And then time for the pension to collect it, find out that they haven't been funded fully and get it back. We couldn't seem to close that loop.

I think someday technology will take care of it. But, at this point in time, without creating an entire new data base and reporting system which of -- of which no infrastructure exists for, we can't close the gap in a timely

enough fashion.

REP. ESPOSITO: Okay. I think I will go back to my original question then. If -- if it's a matter of depositing the funds into the pension fund first, why couldn't that be withheld right at the time the GC is making payments and just make the pension contribution directly?

I -- I -- maybe I am over simplifying it but, you know, it seems to me that if this is a recurring problem that there should be some solution other than taking it through litigation and costing you more time and money to -- to try to recoup your funds.

LELAH CAMPO: We definitely feel that litigation often doesn't solve an issue, which is why we -- we comment that we don't believe this is going to be a hard and fast solution for this. But we do believe it will be a deterrent. And we actually have spent well over two years looking at this issue from every angle. And so much of what you're bringing up, we have explored.

The challenge is that when a general contractor has a hundred different subs -- and believe it or not, that's not that unusual -- a hundred subs on a project that are submitting monthly requisitions and getting their certified payroll forms, to require them to cut a joint check on every single one of those labor certified payroll forms would be so incredibly burdensome and probably -- the impracticality of it. And it would tie up the payments to the subcontractors. And all of the subs will tell you that they don't want anything that's going to tie up their payments. And it would penalize so many of the good guys, for a handful of the ones that have gotten themselves

in trouble.

And it did not seem to be something that was going to add to our industry. It -- it would have created an incredible juggernaut in the process.

REP. ESPOSITO: So this problem than is not as widespread as I am being lead to believe? It's just a handful of subs that are causing the problem, even though you -- you cite one incident where the GC had to, you know, reimburse a hundred percent of what was already paid because the -- the payments weren't made by the sub.

LELAH CAMPO: Well he didn't have to reimburse a hundred percent. It would only be the pension portion and the prevailing wage of their -- of their requisition. We see this happen, that I'm made aware of, several times a year.

Unfortunately, with the economy we see a spike. We see subcontractors that are getting over their head, that are bidding too low in their desperation for work. And we have seen a lot of bankruptcies and we have seen a lot of companies that are on the verge of bankruptcy.

So it's a consistent problem in our industry. It is one that is inherently unfair in -- in a system that strives to provide fairness. That you would pay a subcontractor -- you would have collected all of the paperwork that you could possibly collect from them and be told that you have to make more restitution, is a -- is an area that we're just trying to address without, in any way, preventing the employee from being made whole, which was very important to us.

So we never wanted to say that, well, and the

end result is, you know, you shouldn't have worked for a contractor who wasn't paying into your fund. We always wanted to create the avenue for the employee to still to be made whole but just to get one more method for a general contractor to perhaps get reimbursed if they get caught in the system.

REP. ESPOSITO: Thank you.

SENATOR PRAGUE: Any further questions from the committee members?

Seeing none. Thank you very much for coming in.

Our next speaker is Walter Topliff, followed by Mandi Jackson.

WALTER TOPLIFF: I'm sorry. I speak before you today in support of House Bill 5059, AN ACT CONCERNING THE APPOINTMENT OF MUNICIPAL ASSESSORS.

As a graduate of the University of Connecticut with a degree in real estate, I currently hold a commercial appraisal license in the state of Connecticut. For years I worked in the private sector and did very well financially. However, I made a career decision to move to the public sector because I felt a call to serve and recognize that the governmental sector needs qualified individuals administering the assessment and local property tax system.

I definitely made the right choice, as I love working in the public sector and find it very rewarding. I have continually attempted to persuade many of my qualified real estate peers to pursue careers in the assessment profession only to be shot down by their fear of taking on

Ps 7, line 22



Connecticut Chapter

Testimony by Lelah Camp, President of
Associated Builders & Contractors

Before the Committee on Labor and Public Employees on February 18, 2010

Supporting SB 97 AN ACT CREATING A CIVIL ACTION TO ALLOW
CONTRACTORS TO RECOVER UNPAID EMPLOYEE PENSION OBLIGATIONS
FROM SUBCONTRACTORS.

I am the President (Executive Director) of Associated Builders and Contractors of Connecticut (CT ABC). CT ABC is a statewide membership association that represents merit contractors and is the largest construction association in Connecticut.

We come before you today to respectfully seek your support of SB 97 AN ACT CREATING A CIVIL ACTION TO ALLOW CONTRACTORS TO RECOVER UNPAID EMPLOYEE PENSION OBLIGATIONS FROM SUBCONTRACTORS.

General Contractors performing work in Connecticut on state funded projects that mandate the payment of prevailing wage are exposed to "double jeopardy". This act seeks to give GCs a method to seek reimbursement if they find one of their subs has committed fraud on a prevailing wage project. GCs are required to receive certification that their subcontractors paid proper wages and benefits to the sub's employees. These certified payroll affidavits contain a statement that the records are correct, the rates paid are correct, and that contributions and benefits paid on behalf of the employee to certain pension-type funds have been made. It is a Class D felony to falsify this affidavit, but unfortunately it still happens.

Many GCs have experienced a situation like the following example: A subcontractor was paid 100% of the contract amount due to them. After the completion of the project, the GC receives a call from the Department of Labor that pension fund deposits were not made on behalf of the employees working for this subcontractor on the project. The Department of Labor asks the GC to withhold further payments, which is not possible as there are no further funds due to this subcontractor. The Department of Labor has the right to have the GC pay the contributions even though the GC did their due diligence and already paid the subcontractor in full.

Unfortunately, this situation has happened to almost every major GC in the industry. With the recession we fear we may see it happen even more frequently.

If a GC is caught in this "double jeopardy" scenario and makes the employees of a subcontractor 'whole', the industry needs an avenue to pursue these unethical firms even if they close their doors. We have seen firms close operations only to change their name and reopen having skirted paying their employees.

While this bill is by no means a hard and fast method to prevent this from happening, it does give GCs a tool to collect the money that they will have paid out twice.

We thank the committee and urge their support for SB 97.