

HOUSE COMMITTEE OF REFERENCE REPORT

February 8, 2024

Chair of Committee

Date

Committee on Business Affairs & Labor.

After consideration on the merits, the Committee recommends the following:

HB24-1008 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 2, after line 1 insert:

2 **"SECTION 1. Legislative declaration.** (1) The general
3 assembly finds and declares that:

4 (a) Wage theft, the failure to pay an employee the employee's
5 legally earned wages, is the largest form of theft in the United States, and
6 the Colorado Fiscal Institute estimates that wage theft transfers nearly
7 \$728 million dollars to employers from the pockets of approximately
8 438,260 Colorado workers each year. Minor workers, women, and
9 workers of color are disproportionately impacted by wage theft.

10 (b) Wage theft not only affects Coloradans' ability to pay rent and
11 put food on the table, but it also denies our state and local governments
12 between \$25 million and \$42 million in revenue each year;

13 (c) To combat wage theft, the state must keep up with changes in
14 the marketplace. One of the most significant changes involves the
15 increasing use of labor market intermediaries to directly employ workers.
16 Too often, this fissuring of the labor market is used to outsource an
17 employer's responsibility to workers required by labor and employment
18 laws.

19 (d) Construction is an industry with extraordinary labor market
20 fissuring, with layers upon layers of contractors, subcontractors, labor
21 brokers, staffing agencies, etc. This incentivizes wage theft by favoring
22 inexpensive subcontractors. It also creates barriers to wage recovery
23 because undercapitalized subcontractors can't or won't pay wages.

24 (e) Due in part to these practices, workers in the construction
25 industry are disproportionately likely to experience wage theft. Federal
26 Department of Labor, Wage and Hour Division data show that Colorado's
27 construction industry has double the number of wage theft violations that

1 it should have in proportion to the number of workers in the industry.
2 This is consistent with Colorado Department of Labor and Employment
3 data showing that while only 7% of Colorado workers are in construction,
4 construction workers make up 17% of administrative wage theft
5 complaints that are found valid after a full agency investigation.

6 (f) Federal data also show that in fiscal years 2022 and 2023, the
7 construction industry saw the highest dollar amount of wage theft of any
8 industry, totaling over \$35 million in federal fiscal year 2023 alone. In
9 addition, the construction industry has among the highest number of
10 individual workers who are victims of wage theft.

11 (g) To effectively combat wage theft in the construction industry,
12 the state needs a tailored solution to ensure not only that workers have
13 substantive legal protection against wage theft, but also that the state has
14 the right alignment of business incentives to prevent wage theft before it
15 happens and the right access to capital to ensure that workers can recover
16 stolen wages;

17 (h) Creating general contractor accountability for wage theft
18 committed on their projects by a subcontractor at any tier provides such
19 a tailored solution. Such accountability will enlist general contractors in
20 the fight against wage theft, incentivize engagement with law-abiding
21 subcontractors who pay their workers correctly, and encourage general
22 contractors to root out bad actors who underbid for contracts knowing
23 they will make up the difference by denying their workers the wages they
24 earned.

25 (i) While creating general contractor liability for wage claims, this
26 act will also ensure that general contractors can efficiently seek
27 reimbursement from subcontractor employers for any amounts paid out
28 for wage claims owed to the subcontractors' employees. In this way, the
29 act will ensure that workers get paid, but will not leave general
30 contractors on the hook for a subcontractor's wage debts.

31 (j) This act narrowly focuses on general contractor liability for
32 wage debts owed to the workers on their projects who were engaged by
33 the general contractor's subcontractors at any tier. Such liability does not
34 extend to wage debts owed to the workers of general contractor suppliers
35 or other business partners. Also, liability for debts owed based on a wage
36 claim or investigation does not include liability for a subcontractor's
37 retaliatory acts.

38 (k) This act does not alter the division of labor standards and
39 statistics' existing obligation to treat a notice of citation or a notice of
40 assessment issued to an employer for a violation of wage law as a public
41 record pursuant to section 8-1-115 (1)(b), Colorado Revised Statutes, and
42 does not require the additional publication of a notice of citation or a
43 notice of assessment issued to a general contractor that is not the

1 employer of an employee who is the victim of wage theft;

2 (l) With this act, Colorado hopes not only to ensure that workers
3 get paid their legally earned wages, but also to partner with the many
4 general contractors who are abiding by the law and want to ensure all
5 workers on their job sites are paid in full and on time; and

6 (m) Therefore, the general assembly declares that wage theft is an
7 unacceptable business practice, and the state should use or adopt all
8 available tools to prevent wage theft before it happens and give workers
9 the means to recover stolen wages.".

10 Renumber succeeding sections accordingly.

11 Page 3, strike line 2 and substitute "SUBCONTRACTOR, IF SUCH CONTRACT
12 RELATES TO REAL PROPERTY OTHER THAN PROPERTY FOR WHICH THE
13 OWNER COULD CLAIM THE HOMESTEAD EXEMPTION PURSUANT TO PART 2
14 OF ARTICLE 41 OF TITLE 38.".

15 Page 4, strike lines 7 through 26 and substitute "**in the construction
16 industry.** (1) (a) A GENERAL CONTRACTOR ENTERING INTO A
17 CONSTRUCTION CONTRACT IN THIS STATE IS LIABLE FOR ALL AMOUNTS
18 OWED TO AN EMPLOYEE PURSUANT TO THIS ARTICLE 4 OR ARTICLE 6 OF
19 THIS TITLE 8 FOR THE EMPLOYEE'S LABOR, CONSTRUCTION, OR OTHER
20 WORK INCLUDED WITHIN THE SCOPE OF THE CONSTRUCTION CONTRACT,
21 INCLUDING AMOUNTS OWED BY A SUBCONTRACTOR AT ANY TIER ACTING
22 UNDER, BY, OR FOR THE GENERAL CONTRACTOR OR THE GENERAL
23 CONTRACTOR'S SUBCONTRACTORS.

24 (b) THE GENERAL CONTRACTOR'S RESPONSIBILITY UNDER
25 SUBSECTION (1)(a) OF THIS SECTION DOES NOT EXTEND TO DAMAGES
26 OWED FOR RETALIATION COMMITTED BY A SUBCONTRACTOR PURSUANT TO
27 SECTION 8-4-120 (3).

28 (2) UNLESS THE VIOLATION IS CAUSED BY THE GENERAL
29 CONTRACTOR'S LACK OF PAYMENT TO THE SUBCONTRACTOR IN
30 ACCORDANCE WITH THE TERMS OF THE CONTRACT BETWEEN THE GENERAL
31 CONTRACTOR AND THE SUBCONTRACTOR:

32 (a) A SUBCONTRACTOR EMPLOYER SHALL INDEMNIFY THE
33 GENERAL CONTRACTOR FOR:

34 (I) ALL AMOUNTS OWED BY THE GENERAL CONTRACTOR PURSUANT
35 TO SUBSECTION (1) OF THIS SECTION DUE TO THE SUBCONTRACTOR'S
36 VIOLATION OF THIS ARTICLE 4 OR ARTICLE 6 OF THIS TITLE 8; AND

37 (II) ALL ATTORNEY FEES PAID BY THE GENERAL CONTRACTOR TO
38 DEFEND AGAINST LIABILITY FOR SUBCONTRACTOR VIOLATIONS OF THIS
39 ARTICLE 4 OR ARTICLE 6 OF THIS TITLE 8;

40 (b) A GENERAL CONTRACTOR MAY BRING A CROSSCLAIM FOR

1 INDEMNIFICATION AGAINST THE SUBCONTRACTOR EMPLOYER IN ANY
2 ACTION RELATED TO THE WAGE CLAIM.

3 (3) A SUBCONTRACTOR'S FAILURE TO INDEMNIFY THE GENERAL
4 CONTRACTOR IS NOT A DEFENSE TO ANY ACTION BROUGHT AGAINST THE
5 GENERAL CONTRACTOR PURSUANT TO SUBSECTION (1) OF THIS SECTION.".

6 Renumber succeeding subsections accordingly.

7 Page 6, strike line 10 and substitute:

8 "(II) CONTAINS A GRIEVANCE PROCEDURE THAT RESULTS IN A
9 FINAL AND BINDING DECISION;

10 (III) MAY BE USED TO RECOVER UNPAID WAGES ON BEHALF OF
11 EMPLOYEES COVERED BY THE AGREEMENT;

12 (IV) PROVIDES FOR THE COLLECTION OF UNPAID CONTRIBUTIONS
13 TO FRINGE BENEFIT TRUST FUNDS ESTABLISHED PURSUANT TO 29 U.S.C.
14 SEC. 186 (c)(5) AND (c)(6), BY OR ON BEHALF OF SUCH TRUST FUNDS;
15 AND".

16 Renumber succeeding subparagraph accordingly.

17 Page 6, strike lines 13 through 20 and substitute:

18 **"SECTION 5. Act subject to petition - effective date -
19 applicability.** (1) This act takes effect July 1, 2025; except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within the ninety-day period after final adjournment of the general
23 assembly, then the act, item, section, or part will not take effect unless
24 approved by the people at the general election to be held in November
25 2024 and, in such case, will take effect July 1, 2025, or on the date of the
26 official declaration of the vote thereon by the governor, whichever is
27 later.

28 (2) This act applies to wage claims brought and investigations
29 commenced on or after the applicable effective date of this act.".

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