NORTHWEST WORKERS' JUSTICE PROJECT

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Testimony of D. Michael Dale
Joint Committee on Ways and Means
Subcommittee on Transportation and Economic Development
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HB 2977 – Licensing of Labor Brokers in Construction

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer in Oregon since 1977, and have spent most of that time representing migrant and seasonal agricultural 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 sponsored by the Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes 35 civic, labor, religious and business organizations.[1]

HB 2977 is supported by the Coalition to Stop Wage Theft to bring an end to the epidemic of nonpayment and underpayment of the wages of Oregon workers. All workers should be paid for the hard work they perform, but unfortunately, some dishonest employers are failing to pay wages they owe. This is bad for honest employers who are trying to do the right thing, but must compete with those who are cutting cost by cheating workers. It is bad for the families of the workers affected, and depresses wage standards for all workers. And it is bad for taxpayers who must make up for the taxes that don't get paid when wages are not paid in full. These problems are acute in the construction industry.

A significant number of clients who come to us with unpaid wage claims were recruited by labor intermediaries who supplied them to a construction site. Often these labor intermediaries are undercapitalized, do not have professional business practices, and are exploitive of workers. Recruitment is often characterized by misrepresentation and fraud as to promised wages and conditions. Typically, the workers are labeled as "independent

[1] Adelante Mujeres, AFL/CIO of Oregon, American Friends Service Committee, CAUSA, Beyond Toxics, 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, Jewish Federation of Greater Portland, Mainstreet Alliance, Northwest Workers' Justice Project, Oregon Action, Oregon School Employees Association, Oregon Center for Christian Voices, Oregon Center for Public Policy, Oregon Strong Voice - Southern OR Chapter, Oregon Thrives, PCUN, Portland Jobs with Justice, Project REconomy, Rural Organizing Project, Oregon New Sanctuary Movement, SEIU Local 49, SEIU Local 503, Tax Fairness Oregon, Teamsters Local 26, United Food and Commercial Workers Local 555, VOZ Workers Rights Education Project, We Are Oregon and Working Families.

contractors" or as employees of the labor broker. When the workers come to us with a claim, however, the labor broker often has either disappeared or has no resources. The contractor or sub-contractor who used the broker is frequently not even known to the workers, and in any event, denies responsibility for payment. These practices have become much more common in recent years and are severely undermining the wages and working conditions of workers in this sector.

Many of the abusive practices that have grown up in the construction industry over the last few years are very similar to what has traditionally occurred in agriculture and reforestation. Over the last forty-five years, Oregon has developed a model law regulating farm and forestry contractors. Although currently all construction contractors are supposed to be licensed under the Construction Contractors Board, and some degree of wage protection is provided under that law if the person is actually licensed, regulation of recruiting practices is minimal. Subcontractors who only provide workers are exempt from registration with the CCB.

HB 2977 would make pure labor contractors in construction (that is, individuals whose primary function is just recruiting workers, as opposed to carrying out the traditional functions of a construction contractor) subject to the provisions of the farm/forest labor contracting licensing provisions of ORS 658.405, *et seq*. It is not the intent of this bill to regulate "regular" construction contractors, even those who operate on a small scale. This would be left with the CCB. Rather the intent is to apply the existing labor contracting regulatory system used in agriculture and reforestation to construction labor brokers, i.e., persons engaged primarily in recruiting and supplying workers to construction sites.

This would be accomplished by including construction in the scope of covered work under ORS 658.405, et seq., but providing an exemption for construction contractors who directly contract with the owner of the construction site, who secure building permits, or who supply building materials or machinery other than manual or hand power tools.

If passed, the effect of this bill would be to require labor brokers in construction to be licensed by BOLI, post a bond to secure payment of wages, provide written disclosure of wages and working conditions, and comply with contracts entered into in the capacity of a labor contractor. Responsible construction contractors seeking workers through a labor broker would thereby have a means of knowing that they are dealing with a lawful, quality operation. They would be required to check whether the labor broker is licensed, and if they did so, would have no other additional duties under this bill. However, entities that intentionally use an unlicensed labor broker would be jointly liable to the workers for labor violations, creating a strong market incentive only to use licensed contractors. Over time, this will dry up opportunities for unscrupulous labor brokers to exploit workers in construction since unlicensed labor intermediaries will not be given work by construction contractors.

The fiscal impact of this bill is indeterminate, no doubt reflecting the fact that the bill regulates what is now an underground economy. However, by using the existing regulatory scheme, costs to implement the bill will be minimal since established staff, rules and practices

can be utilized. Our understanding is that BOLI does not project needing to request additional staff to implement this measure. In addition, the bill would permit BOLI to charge a registration fee that would support its incremental costs in administering this registration system. To the extent that the bill is successful in securing more effective, regular payment of wages, tax collection by the state will be enhanced.

Adoption of this bill would protect construction workers from exploitation and honest construction contractors from unfair competition. We recommend its approval with a do pass recommendation.