

February 27, 2017

Wilsonville, OR 97070

503-682-3363

800-826-6610

Dear Chair Taylor and Members of the Committee:

Associated General Contractors represents a broad cross section of Oregon's commercial construction industry: rural and urban, highway and building, small and large businesses. What the majority of our members have in common is that they are small businesses. AGC opposes Senate Bill 828 because it is not feasible on any project our contractors are building on any given day.

There are several portions of this bill that impact our members. First, the on call employees section applies to our members. The employer is required to pay 4 hours at regular rate of pay if employee: (a) Is scheduled or called to work and reports for duty but, due to the employer, does not work the employee's scheduled shift in its entirety, or (b) Is notified less than 24 hours before a shift that the employee does not need to report to work or that the hours in the shift have been reduced. This also raises the issue of regular rate of pay- on a construction job site, one employee may complete a variety of tasks that have different pay levels. So determining the "regular rate of pay" is difficult.

The portion of the bill that applies to small employers applies to many of our members. The small employer provisions include an employee's right to input into their work schedule. This provision does not work with the day to day realities of the construction industry. There is a lack of flexibility in the construction industry - things need to be done at a certain time in a certain order. As a result, there are few situations where the employer can change schedules to match an employee's individual needs.

The provisions of the bill applying to all employers would clearly apply to our members. This includes a record keeping provision, along with a rebuttable presumption that if an employer does not retain adequate records, they violated the provisions of this law. The enforcement provisions would also apply to our members, including (a) \$500 for the first violation of a provision and (b) \$1000 for any subsequent violation that occurs within 10 years of the first violation. The retaliation provisions would also apply to our

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members. These protections apply to any person who mistakenly, but in good faith and with an objectively reasonable belief asserts a right protected by sections 2 to 16.

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I have talked with a variety of our members about this proposal and have received a resounding “this doesn’t work for construction.” Every construction project is not only weather dependent, but also dependent on multiple third parties (one specialty contractor completing their project before the next subcontractor can come on the job.) These portions of the project also require that the building permits and inspections are finalized as well. Not to mention that on any given project on any given day, an owner (public or private) can make the decision to add to a project and/or change how they want a portion of the project constructed.

Our industry operates in a constantly changing environment. This is something that workers understand when they choose to go into this field. Our wages reflect that. On average, the annual wage for construction workers is \$53,600, which is about 12% above other private sector jobs.

Most important to us is the safety of our workers. This bill does not align with that priority in our safety-sensitive industry. Our members must adapt every day to ensure the safety of the employees working on every single job.

Safety of our employees is critical. AGC has safety consultants that offer training to members statewide. These consultants train on safety in certain weather conditions. Our consultants stress that “decisions need to be made on safety – to do otherwise is unacceptable.” Choices to halt work due to weather keep employees safe. But under this bill, employers would be penalized for making these potentially life-saving choices.

The weather-related safety risks called out in trainings include scaffolding and ladders, which are unsafe to use in high winds, lightening, ice and snow. As a result, employers should not put their employees on scaffolding or ladders during these weather conditions. Our consultants also train on cranes, which are unsafe in high wind. Inability to use cranes slows the rest of the process down because they are unable to deliver loads needed.

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The flooding in the Pearl District last year created an example of safety-related delays. Water filled a construction site at a parking garage in matter of minutes. The flooding resulted in sewage being released into the water. Because of the bio pathogens, the whole site needed to be sanitized, putting the whole project weeks behind. The employer wouldn't put employees in situation that is harmful for their health.

Another example of taking appropriate safety steps can be showcased by one of our members (who has won AGC's annual safety award). The company has a point person who shows up at 4 am each morning to determine whether the conditions are safe for taking their heavy equipment out. This way, the company ensures that they are not putting their employees or the general public at risk.

There are a variety of issues beyond safety that impact construction schedules. Let me attempt to walk you through one job and how each of part of this bill that would apply to our industry does not work. Imagine a contractor on a construction project. Each specialty contractor that will be working on the project for the next two weeks has been communicated with for the day(s) they are to be on the project along with the area of the project they are on contract to complete. Currently, the electrical group is working diligently to get a "cover" inspection for the electrical rough-in on one of the buildings and their inspection has been scheduled for the end of day. The schedule shows the insulation subcontractor to begin installing insulation the following day and the day after that the drywall subcontractor is scheduled to begin. During the electrical cover inspection at the end of day, it is discovered that the electrician installed the wrong gauge of wire in a particular area and the inspection failed. Not knowing how soon the correction can be completed and work re-inspected, the general contractor notifies the specialty subcontractors to hold off showing up until further notice. Under this bill, the insulator would have to pay their employees each four hours of pay for changing the schedule, despite having no ability to control that kind of building inspection issue.

The electrical inspection is just one example. This very same cascading impact could happen due to a weather event, material delivery delays or any number of other issues that each and every construction job faces each and every day.

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Unexpected schedule changes can also come from the owner. A project is under construction and the owner determines he or she would like to make a change that will impact the work in progress. The work stops while the possible change is discussed and priced. Crews are notified that due to the owner's desires, the job is temporarily on hold to meet the owner's new specifications. (In today's construction market, it is likely that the specialty contractor and its crew will be sent to a different job). Under those circumstances, again the specialty contractor would need to pay wages for a schedule change that was beyond their control.

I hope the committee members can see that any number of events outside the control of a contractor --- including unforeseen weather, required building inspections, and new directions from owners --- can necessitate changing schedules on a daily, if not hourly basis.

For additional information, please contact John Rakowitz (503) 317-1781 or Kirsten Adams (503) 990-2262.

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Sandy Trainor

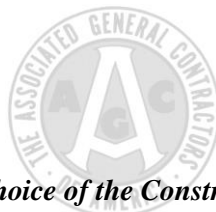
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