

February 27, 2023



To: Minnesota Senate Labor Committee

**RE: SF 1988 Public Testimony Submission**

Dear Committee Members,

My name is Kirk Pennings, I am the President of Yellow Tree Construction Services, LLC (YTCS). YTCS is a mid-size General Contractor specializing in urban infill multi-family projects. YTCS has been committed to building multi-family housing inventory in the Twin Cities since 2017, partnering with numerous subcontracting firms and skilled tradespeople in delivering this important work. As you know, the shortage of housing inventory is a significant issue in our region; as a result, even as we navigate supply chain challenges and labor shortages, we are committed to keeping our construction projects on track. We routinely seek bids from both union and non-union subcontractors in order to avoid the schedule disruptions that are almost inevitable in such a tight labor and supply market. We always take the “best value” approach when selecting subcontractors based on quality, availability, and price. Often we do not select the low bidder. Subcontractors routinely report satisfaction in working on our projects because they are run professionally, safely and with strict adherence to all labor and employment laws. We operate with a high level of integrity and position our subcontractors for success to ensure that our projects meet the expectations of our clients, our employees and the communities we strive to serve.

SF 1988 requires nonunion General Contractors to assume liability for any unpaid wages or fringe benefits owed to an employee by a subcontractor of any tier. It would then fall on the General Contractor to initiate legal proceedings to recover from the subcontractor. This puts 100% of the labor risk on the General Contractor and essentially destroys the value and purpose of a subcontract. SF 1988 states that if an employee takes legal action against a subcontractor, this bill makes the general contractor jointly and severally liable for unpaid wages and benefits. This means if the subcontractor is unable to pay, the General Contractor is stuck with the costs. This is an unfair to General Contractors who have no knowledge of what may have transpired between subcontractors and their employees. The General Contractors do not sit in on the HR or accounting divisions of the dozens and dozens of subcontractors that they work with, on every single project or multiple projects.

It seems the intent of this bill is to eliminate the General Contractor and Subcontractor legal relationship in terms of liability. However, it’s interesting that these concerns seem to only apply to nonunion General Contractors, as the bill explicitly permits the assumption of liability to be waived by a collective bargaining agreement with a trade union. Prevailing wage projects are also exempt from this liability. Does the fact that a project pays prevailing wage really mean that wage theft is less likely?

**DEVELOPER | INVESTOR | BUILDER**

Rather than address wage theft, SF 1988 creates an uneven playing field where certain General Contractors are forced to assume the liability of unpaid wages owed by subcontractors, while others are free to conduct business as usual. If wage theft is a problem in our state, why doesn't the state enforce laws that are already in place and hold the perpetrators accountable?

YTCS has been successful at building small 50 – 150 unit buildings in the Twin Cities because we are a small company and have low overhead costs as compared to the large union General Contractors. Our projects do not take any government subsidies yet we are commonly able to build housing with rents affordable at 65% AMI or even less. There are very few General Contractors that are able to make the financials work on these projects. Construction costs have escalated severely over the past few years and margins have shrunk. If we are now forced to assume liability of all nonunion subcontractors, our insurance and overhead costs would go through the roof. These projects may no longer be viable and this important contribution to the affordable housing gap would be lost.

There has to be a better way to combat wage theft than forcing Construction Managers to become Human Resource managers. Investigate and prosecute the individuals that are responsible. Do not penalize and target nonunion General Contractors that have little to no control over wage theft not to mention the countless legitimate law abiding nonunion subcontractors that would be also be stigmatized by this law.

Thank you for the opportunity to provide testimony. I urge the committee to vote NO on SF 1988.

Thanks,

A handwritten signature in black ink, appearing to read 'Kirk Pennings', with a long horizontal stroke extending to the right.

Kirk Pennings  
President