

Senate File 2364

H-8217

1 Amend Senate File 2364, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <Section 1. Section 84A.5, subsection 4, Code 2020, is
6 amended to read as follows:

7 4. The division of labor services is responsible for the
8 administration of the laws of this state under chapters 88,
9 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
10 and 94A, and sections 73A.21 and 85.68. The executive head of
11 the division is the labor commissioner, appointed pursuant to
12 section 91.2.

13 Sec. 2. Section 91.4, subsection 2, Code 2020, is amended
14 to read as follows:

15 2. The director of the department of workforce development,
16 in consultation with the labor commissioner, shall, at the
17 time provided by law, make an annual report to the governor
18 setting forth in appropriate form the business and expense of
19 the division of labor services for the preceding year, the
20 number of remedial actions taken under chapter 89A, the number
21 of disputes or violations processed by the division and the
22 disposition of the disputes or violations, and other matters
23 pertaining to the division which are of public interest,
24 together with recommendations for change or amendment of the
25 laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,
26 90A, 91A, 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68,
27 and the recommendations, if any, shall be transmitted by the
28 governor to the first general assembly in session after the
29 report is filed.

30 Sec. 3. NEW SECTION. 91F.1 Short title.

31 This chapter shall be known and may be cited as the "*Public*
32 *Improvement Quality Protection Act*".

33 Sec. 4. NEW SECTION. 91F.2 Public policy.

34 It is in the public interest that public improvements
35 are completed by the best means and highest quality of labor

1 reasonably available, and that workers working on public
2 improvements be compensated according to the real value of the
3 services they perform. It is the policy of this state that the
4 wages of workers working on public improvements should be at
5 least equal to the prevailing wage rates paid for similar work
6 by responsible contractors in the community as a whole in order
7 to accomplish all of the following:

8 1. Protect workers and their contractors and subcontractors
9 from the effects of serious and unfair competition resulting
10 from wage levels detrimental to efficiency and well-being.

11 2. Ensure that contractors compete with one another
12 on the basis of the ability to perform work competently
13 and efficiently while maintaining community-established
14 compensation standards.

15 3. Recognize that local participation in public
16 improvements and family wage income and benefits are essential
17 to the protection of community standards.

18 4. Encourage training and education of workers to industry
19 skills standards.

20 5. Encourage contractors and subcontractors to use funds
21 allocated for employee fringe benefits for the actual purchase
22 of those benefits.

23 Sec. 5. NEW SECTION. 91F.3 Definitions.

24 As used in this chapter, unless the context otherwise
25 requires:

26 1. "*Commissioner*" means the labor commissioner appointed
27 pursuant to section 91.2.

28 2. "*Contractor*" or "*subcontractor*" means a person who
29 undertakes, offers to undertake, purports to have the capacity
30 to undertake, or submits a bid, individually or through others,
31 to engage in a public improvement.

32 3. "*Custom fabrication*" means the fabrication of plumbing,
33 heating, cooling, ventilation, architectural systems,
34 structural systems, exhaust duct systems, or mechanical
35 insulation.

1 4. "Division" means the division of labor of the department
2 of workforce development.

3 5. a. "Fringe benefits" means the following for the
4 provision or purchase of any of the benefits enumerated in
5 paragraph "b":

6 (1) The contribution irrevocably made by a contractor or
7 subcontractor to a trustee or to a third person pursuant to a
8 plan, fund, or program.

9 (2) The costs to the contractor or subcontractor which
10 may be reasonably anticipated in providing benefits to
11 workers pursuant to an enforceable commitment to carry out a
12 financially responsible plan or program, given in writing to
13 the workers affected.

14 b. (1) Medical or hospital care.

15 (2) Pensions or annuities on retirement or death.

16 (3) Supplemental unemployment benefits.

17 (4) Life insurance.

18 (5) Disability and sickness insurance.

19 (6) Accident insurance for nonwork-related accidents.

20 (7) Vacation or holiday pay.

21 (8) Defraying costs of apprenticeship programs approved by
22 and registered with the United States department of labor's
23 office of apprenticeship.

24 6. "Interested party" means any of the following:

25 a. A contractor who submits a bid for the purpose of
26 securing the award of a contract for a public improvement.

27 b. A subcontractor of a contractor mentioned in a bid
28 referred to in paragraph "a".

29 c. A worker employed by a contractor or subcontractor
30 described in either paragraph "a" or "b".

31 d. A labor organization that represents workers engaged
32 in the same craft or classification as workers employed by a
33 contractor or subcontractor described in either paragraph "a"
34 or "b" and that exists, in whole or in part, for the purpose
35 of negotiating with employers concerning the wages, hours, or

1 terms and conditions of employment of employees.

2 e. A joint labor-management committee established pursuant
3 to the federal Labor Management Cooperation Act of 1978, 29
4 U.S.C. §175a.

5 7. "*Locality*" means a county of this state.

6 8. "*Maintenance work*" means the repair of existing public
7 improvements when the size, type, or extent of the public
8 improvement is not changed or increased.

9 9. "*Prevailing wage rate*" means the hourly wage plus
10 fringe benefits that the commissioner determines prevails in
11 accordance with this chapter, including all of the following:

12 a. Apprentice ratios and the prevailing apprentice pay
13 levels for each craft, classification, or type of worker which
14 the commissioner determines prevails in accordance with section
15 91F.5.

16 b. A prevailing rate for overtime pay for work in excess
17 of the normal prevailing workday and for weekend overtime pay
18 for each craft, classification, or type of worker, including
19 apprentices.

20 c. Holiday pay for holidays that prevail in the locality in
21 which the work is being performed.

22 10. "*Public body*" means the state and any of its political
23 subdivisions, including but not limited to a county, city,
24 township, school district, state board of regents, and public
25 utility. For the purposes of this chapter, "*public utility*"
26 includes municipally owned utilities and municipally owned
27 waterworks.

28 11. a. "*Public improvement*" means any of the following that
29 meets the criteria set out in paragraphs "b" and "c":

30 (1) Construction, alteration, reconstruction, repair,
31 rehabilitation, refinishing, refurbishing, remodeling,
32 renovation, custom fabricating, maintenance, landscaping,
33 improving, moving, wrecking, painting, decorating, or
34 demolishing of, or adding to or subtracting from any building,
35 structure, highway, road, street, bridge, alley, sewer, ditch,

1 sewage disposal plant, waterworks, parking facility, railroad,
2 excavation or other structure, project, development, or
3 improvement, or any part thereof undertaken by a public body,
4 including any of the following related activities:

5 (a) The erection of scaffolding or other structures or
6 works.

7 (b) The maintenance, repair, assembly, or disassembly of
8 equipment.

9 (c) The testing of materials.

10 (d) The hauling of refuse from a site to an outside disposal
11 location.

12 (e) The cleaning of grounds or structures.

13 (f) The addition to or fabrication into any structure,
14 project, development, or improvement of any material or article
15 of merchandise undertaken by a public body.

16 (2) The preparation and removal of roadway construction
17 zones, lane closures, flagging, or traffic diversions
18 undertaken by a public body.

19 (3) The installation, repair, maintenance, or calibration
20 of monitoring equipment for underground storage tanks
21 undertaken by a public body.

22 (4) Work that is performed on any property or premises
23 dedicated exclusively or nearly so to the completion of a
24 public improvement, and transportation of supplies, material,
25 and equipment to or from the property or premises undertaken
26 by a public body.

27 *b.* Work on the public improvement is performed under public
28 supervision or direction, and the work is financed wholly or
29 in part from public funds, or if at the time of commencement
30 of the public improvement all of the following conditions with
31 respect to the public improvement are met:

32 (1) Not less than fifty-five percent of the structure is
33 leased by a public body, or is subject to an agreement to be
34 subsequently leased by a public body.

35 (2) The portion of the structure that is leased or subject

1 to an agreement to be subsequently leased by a public body
2 measures more than twenty thousand square feet.

3 *c.* The public improvement has an estimated total cost that
4 exceeds twenty-five thousand dollars.

5 12. "*Worker*" means an individual who performs any
6 labor or service for a contractor or subcontractor on a
7 public improvement but does not include an individual when
8 transporting a seller, supplier, manufacturer, or processor of
9 materials or equipment. The individual is deemed an employee
10 of a contractor or subcontractor unless all of the following
11 apply:

12 *a.* The individual provides labor or services free from the
13 direction or control over the means and manner of providing the
14 labor or services, subject only to the right of the person for
15 whom the labor or services are provided to specify the desired
16 results.

17 *b.* The individual providing the labor or services is
18 responsible for obtaining business registrations or licenses
19 required by state law or local ordinance to provide the labor
20 or services.

21 *c.* The individual providing the labor or services furnishes
22 the tools and equipment necessary to provide the labor or
23 services.

24 *d.* The individual providing the labor or services has the
25 authority to hire and fire employees to perform the labor or
26 services.

27 *e.* Payment for the labor or services is made upon
28 completion of the performance of specific portions of a public
29 improvement, or is made on the basis of a periodic retainer.

30 *f.* The individual providing the labor or services represents
31 to the public that the labor or services are to be provided
32 by an independently established business. An individual is
33 engaged in an independently established business when four or
34 more of the following circumstances exist:

35 (1) Labor or services are primarily performed at a location

1 separate from the individual's residence or in a specified
2 portion of the residence that is set aside for performing labor
3 or services.

4 (2) Commercial advertising or business cards are purchased
5 by the individual, or the individual is a member of a trade or
6 professional association.

7 (3) Telephone or electronic mail listings used by the
8 individual for the labor or services are different from the
9 individual's personal listings.

10 (4) Labor or services are performed only pursuant to a
11 written contract.

12 (5) Labor or services are performed for two or more persons
13 or entities within a period of one year.

14 (6) The individual assumes financial responsibility
15 for errors and omissions in the performance of the labor or
16 services as evidenced by insurance, performance bonds, and
17 warranties relating to the labor or services provided.

18 Sec. 6. NEW SECTION. 91F.4 Administration — rules.

19 1. The commissioner and the division shall administer this
20 chapter.

21 2. The commissioner shall adopt rules pursuant to chapter
22 17A to administer this chapter.

23 Sec. 7. NEW SECTION. 91F.5 Determination of prevailing
24 wages.

25 1. The commissioner shall determine annually and publish,
26 on the first business day of July, the prevailing wage rates
27 by locality for each craft, classification, or type of worker
28 needed to perform work on public improvements. The rates shall
29 be conclusive for one year from the date of publication unless
30 superseded within the one year by a later publication of the
31 commissioner, or for a longer period as provided in subsection
32 5.

33 2. The commissioner shall announce all prevailing wage rate
34 determinations by locality and give notice by posting them
35 on the portion of the department of workforce development's

1 internet site related to the division. A printed version of
2 the prevailing wage rates for the state shall be available to
3 the public upon request to the division.

4 3. The public body awarding any contract for a public
5 improvement, or otherwise undertaking any public improvement,
6 shall obtain from the internet site the prevailing wage rate
7 in the locality in which work on the public improvement is
8 to be performed for each craft, classification, or type of
9 worker needed to perform work on the public improvement.
10 After a public improvement contract is awarded, or a public
11 improvement is otherwise undertaken, the prevailing wage
12 rate published by the commissioner and stated in the public
13 body's public improvement procurement documents shall remain
14 in effect throughout the duration of the public improvement
15 unless superseded by a later determination and publication by
16 the commissioner, or unless multiyear prevailing wage rates
17 have been published by the commissioner at the time the public
18 improvement procurement documents were released.

19 4. a. In determining the annual prevailing wage rate
20 for any craft, classification, or type of worker, the
21 commissioner shall ascertain and consider the applicable
22 wage rates and fringe benefits established by collective
23 bargaining agreements, the prevailing wage rate determinations
24 that may exist for federal public improvements within the
25 locality, and other data obtained by the department during any
26 prevailing wage rate survey of contractors who participate in
27 an apprenticeship program approved by and registered with the
28 United States department of labor's office of apprenticeship,
29 who provide health insurance and retirement benefits for their
30 workers, and who are registered with the division. Based
31 upon these considerations, the commissioner shall calculate
32 the prevailing wage rates based on the wage rate plus fringe
33 benefits most often occurring for each craft, classification,
34 or other type of worker within each locality.

35 b. The minimum annual prevailing wage rate determination

1 established by the department shall not be lower than the
2 prevailing wage rate determination that may exist for federal
3 public improvements within the locality and in the nearest
4 labor market area.

5 *c.* None of the fringe benefits enumerated in this chapter
6 may be considered in the determination of prevailing wage
7 rates if the contractor or subcontractor is required by other
8 federal, state, or local law to provide such fringe benefits.

9 5. If the commissioner determines that the prevailing
10 wage rate for any craft, classification, or type of worker
11 is the rate established by a collective bargaining agreement
12 applicable in the locality, the commissioner may adopt that
13 rate by reference and that determination shall be effective
14 for the life of the agreement or until the commissioner adopts
15 another rate.

16 6. *a.* At any time within fifteen days after the division
17 has published on the department of workforce development's
18 internet site the annual prevailing wage rates for each
19 classification, craft, or other type of worker in the locality,
20 any interested person affected may object to the determination
21 or the part of the determination as the interested person
22 may deem objectionable by filing a written notice with the
23 commissioner by restricted certified mail as defined in
24 section 618.15. When objecting to a prevailing wage rate
25 determination, the interested person shall submit, as a
26 part of the written notice, the prevailing wage rate the
27 interested person believes to be the correct prevailing wage
28 rate determination, stating the specific grounds to support
29 that position. Upon receipt of the notice of objection, the
30 commissioner shall reconsider the determination and shall
31 affirm or modify the determination and reply in writing by
32 restricted certified mail to the interested person within
33 fifteen days from the date of the receipt of the notice of
34 objection. Any modification to the prevailing wage rate
35 determination shall be effective on the date the modification

1 is published by the commissioner.

2 *b.* If the commissioner declines to modify the determination,
3 within ten days upon receiving receipt of the commissioner's
4 decision, the interested person affected may submit in writing
5 the objection to the division by restricted certified mail,
6 stating the specified grounds of the objection. The department
7 of inspections and appeals shall be notified of the objection
8 and set a date for a hearing before an administrative law judge
9 on the objection, after giving notice by restricted certified
10 mail to the interested person and the division at least ten
11 days before the date of the hearing of the time and place of
12 the hearing. The hearing shall be held within forty-five days
13 after the objection is filed, and shall not be postponed or
14 reset for a later date except upon the consent, in writing, of
15 the interested person and the division.

16 7. The party requesting a hearing shall have the burden of
17 establishing that the annual prevailing wage rate determination
18 for that locality was not determined in accordance with this
19 chapter. If the party requesting a hearing under this section
20 objects to the commissioner's failure to include a craft,
21 classification, or type of worker within the annual prevailing
22 wage rate determination in the locality, the objector shall
23 have the burden of establishing that there is no existing
24 prevailing wage rate classification for the particular craft,
25 classification, or type of worker in any of the localities
26 under consideration.

27 8. The administrative law judge may in the administrative
28 law judge's discretion hear each written objection filed
29 separately or consolidate for hearing any one or more written
30 objections filed with the division. At the hearing, the
31 division shall introduce into evidence the investigation it
32 instituted which formed the basis of its determination, and the
33 division or any interested objectors may introduce evidence
34 that is material to the determination. The administrative
35 law judge shall rule upon each written objection and make a

1 final determination, as the administrative law judge believes
2 the evidence warrants, and promptly serve a copy of the final
3 determination by personal service or restricted certified mail
4 on all parties to the proceedings. The administrative law
5 judge shall render a final determination within thirty days
6 after the conclusion of the hearing.

7 9. If proceedings to review judicially the final
8 determination of the administrative law judge are not
9 instituted as provided in this section, the determination
10 shall be final and binding. The provisions of section 17A.19
11 shall apply to and govern all proceedings. Appeals from all
12 final orders and judgments entered by the court in review of
13 the final determination of the administrative law judge may be
14 taken by any party to the action. In all reviews or appeals
15 under this chapter, the attorney general shall represent the
16 division and defend its determination.

17 10. This section does not give reason or provide cause for
18 an injunction to halt or delay any public improvement.

19 **Sec. 8. NEW SECTION. 91F.6 Payment of prevailing wages**
20 **required.**

21 1. Contractors and subcontractors engaged in a public
22 improvement shall pay not less than the current specified
23 prevailing wage rates to all of their workers engaged in the
24 public improvement. However, this chapter does not prohibit
25 the payment of more than the prevailing wage rate to any
26 workers engaged in a public improvement.

27 2. All contractors and subcontractors required to pay the
28 prevailing wage rate under this chapter shall pay the wages
29 in legal tender, without any deduction for food, sleeping
30 accommodations, transportation, use of tools or safety
31 equipment, vehicle or equipment rental, or any other thing of
32 any kind or description.

33 **Sec. 9. NEW SECTION. 91F.7 Requirements for public**
34 **improvements.**

35 1. The public body awarding a contract for a public

1 improvement or otherwise undertaking a public improvement shall
2 specify in the call for bids for the contract that this chapter
3 applies to the public improvement.

4 2. If a public improvement requires the payment of
5 prevailing wage rates, the public body shall require the
6 contractor to execute a written instrument that not less
7 than the prevailing wage rate shall be paid to all workers
8 performing work on the public improvement. The written
9 instrument shall also contain a provision that if it is found
10 that any of the contractor's workers engaged in the public
11 improvement have been paid at a wage rate less than the
12 prevailing wage rate required by this chapter, the public body
13 may terminate the contractor's right to proceed with the work
14 and the contractor and its sureties shall be liable to the
15 public body for any excess costs occasioned by the failure to
16 pay the prevailing wage rate. The written instrument shall
17 have attached a list of the specified prevailing wage rates
18 for all crafts, classifications, or types of workers in the
19 locality for each worker needed to be included in the contract
20 for the public improvement.

21 3. If a contract is let for a public improvement requiring
22 the payment of prevailing wage rates, the public body
23 awarding the contract shall cause to be inserted in the public
24 improvement specifications and contract a stipulation that
25 not less than the prevailing wage rate shall be paid to all
26 workers performing work under the contract. The contract
27 shall also contain a provision to the effect that if it is
28 found that any of the contractor's workers engaged in the
29 public improvement have been paid at a wage rate less than the
30 prevailing wage rate required by this chapter, the public body
31 may terminate the contractor's right to proceed with the work
32 and the contractor and its sureties shall be liable to the
33 public body for any excess costs occasioned by the failure to
34 pay the prevailing wage rate. All bid specifications shall
35 list the specified prevailing wage rates for all crafts,

1 classifications, or types of workers in the locality for each
2 worker needed to be included in the contract.

3 4. If a public improvement requires the payment of
4 prevailing wage rates, the contractor shall require any
5 subcontractors engaged by the contractor on the public
6 improvement to execute a written instrument that not less
7 than the prevailing wage rates shall be paid to all workers
8 performing work on the public improvement. The written
9 instrument shall also contain a provision that if it is
10 found that any of the subcontractor's workers engaged in the
11 public improvement have been paid at a wage rate less than the
12 prevailing wage rate required by this chapter, the public body
13 may terminate the subcontractor's right to proceed with the
14 work and the subcontractor and its sureties shall be liable to
15 the public body for any excess costs occasioned by the failure
16 to pay the prevailing wage rate. The written instrument shall
17 have attached a list of the specified prevailing wage rates
18 for all crafts, classifications, or types of workers in the
19 locality for each worker needed to be included in the contract.

20 5. If a subcontract is let for a public improvement
21 requiring the payment of the prevailing wage rate, the
22 contractor to whom the contract is awarded shall insert
23 into the subcontract and into the public improvement project
24 specifications for each subcontract a written stipulation that
25 not less than the prevailing wage rate shall be paid to all
26 workers performing work under the subcontract. A subcontractor
27 shall insert into each lower-tiered subcontract a stipulation
28 that not less than the prevailing wage rate shall be paid
29 to all workers performing work under the subcontract. The
30 subcontract shall also contain a provision that if it is
31 found that any of the subcontractor's workers engaged in the
32 public improvement have been paid at a wage rate less than the
33 prevailing wage rate required by this chapter, the public body
34 may terminate the subcontractor's right to proceed with the
35 work and the subcontractor and its sureties shall be liable to

1 the public body for any excess costs occasioned by the failure
2 to pay the prevailing wage rate. All bid specifications shall
3 list the specified prevailing wage rates for all crafts,
4 classifications, or types of workers in the locality for each
5 worker needed to be included in the subcontract.

6 6. A contractor or subcontractor engaging in a public
7 improvement shall submit a performance bond in an amount
8 determined by the public body which bond shall include a
9 provision that will guarantee the payment of the prevailing
10 wage rates as required by the contract.

11 7. Before final payment is made by or on behalf of a public
12 body of any sum or sums due on a public improvement, the
13 treasurer of the public body or other officer or person charged
14 with the custody and disbursement of the funds of the public
15 body shall require the contractor and subcontractor to file a
16 written statement with the public body, in a form satisfactory
17 to the division, certifying to the amounts then due and owing
18 from the contractor and subcontractor to any and all workers
19 for wages due on account of the public improvement, setting
20 forth the names of the persons whose wages are unpaid and
21 the amount due to each respectively. The statement shall be
22 verified by the oath of the contractor or subcontractor, as the
23 case may be, that the contractor or subcontractor has read the
24 statement certified by the contractor or subcontractor, knows
25 the contents, and that the statement is true in accordance with
26 the contractor's or subcontractor's own knowledge. However,
27 this chapter shall not impair the right of a contractor to
28 receive final payment from a public body because of the failure
29 of a subcontractor to comply with provisions of this chapter.
30 The treasurer of the public body or other officer or person
31 charged with the custody and disbursement of the funds of the
32 public body shall withhold the amount, if any, listed on the
33 verified statement filed pursuant to this section for the
34 benefit of the worker whose wages are unpaid as shown by the
35 verified statement filed by the contractor or subcontractor,

1 and the public body shall pay directly to any worker the amount
2 shown by the statement to be due to the worker for the wages.
3 Payment shall discharge the obligation of the contractor or
4 subcontractor to the person receiving the payment to the extent
5 of the amount of the payment.

6 8. The public body awarding a contract for a public
7 improvement or otherwise undertaking a public improvement shall
8 notify the commissioner in writing, on a form prescribed by
9 the commissioner, if a contract subject to the provisions of
10 this chapter has been awarded. The public body shall file
11 the notification with the commissioner within thirty days
12 after the contract is awarded or before commencement of the
13 public improvement, and shall include a list of all first-tier
14 subcontractors.

15 Sec. 10. NEW SECTION. 91F.8 Federal public improvements
16 — not applicable.

17 The provisions of this chapter shall not be applicable
18 to public improvements financed entirely by federal funds
19 which require a prevailing wage rate determination by the
20 United States department of labor. However, unless a federal
21 provision applies, if a public improvement is financed in part
22 by a public body and in part by federal funds, the higher of the
23 prevailing wage rates shall prevail for the public improvement.

24 Sec. 11. NEW SECTION. 91F.9 Records required.

25 1. While participating in a public improvement, the
26 contractor and each subcontractor shall do all of the
27 following:

28 a. Make and keep, for a period of not less than three years,
29 accurate records of all workers employed by the contractor or
30 subcontractor on the public improvement. The records shall
31 include each worker's name, address, telephone number when
32 available, social security number, trade classification, the
33 hourly wages paid in each pay period, the number of hours
34 worked each day, and the starting and ending times of work each
35 day.

1 *b.* Submit weekly a certified payroll to the public body
2 in charge of the public improvement. The certified payroll
3 shall consist of a complete copy of the records identified in
4 paragraph "a". The certified payroll shall be accompanied by a
5 statement signed by the contractor or subcontractor which avers
6 that the records are true and accurate and the hourly wages
7 paid to each worker are not less than the prevailing wage rate
8 required by this chapter.

9 2. The public body in charge of the public improvement
10 shall keep the records submitted in accordance with subsection
11 1, paragraph "b", for a period of not less than three years.
12 The records shall be considered public records and be made
13 available in accordance with chapter 22. Personal information
14 submitted in accordance with subsection 1, paragraph "a",
15 including names, addresses, social security numbers, telephone
16 numbers, and other identifying information shall remain
17 confidential and shall not be made public.

18 3. The contractor and each subcontractor shall make
19 available for inspection the records identified in subsection
20 1, paragraph "a", to the public body in charge of the public
21 improvement, its officers and agents, and to the division.

22 4. For the purpose of verifying the accuracy of the records
23 submitted pursuant to this section, the contractor and each
24 subcontractor shall make its workers available at the site of
25 the public improvement for interview by the public body in
26 charge of the public improvement, its officers and agents, and
27 the division.

28 5. Contractors and subcontractors performing work on public
29 improvements subject to this chapter shall post the prevailing
30 wage rates for each craft, classification, or type of workers
31 involved in the public improvement in a prominent and easily
32 accessible place at the site of the public improvement or at
33 the place or places used by the contractor or subcontractor to
34 pay workers their wages.

35 Sec. 12. NEW SECTION. 91F.10 Powers of commissioner.

1 The commissioner shall do all of the following:

2 1. Inquire diligently about any complaint of a violation of
3 this chapter, institute actions for penalties prescribed, and
4 enforce generally the provisions of this chapter.

5 2. Sue for injunctive relief against the awarding of a
6 contract, the undertaking of a public improvement, or the
7 continuation of a public improvement when the prevailing wage
8 rate requirements of this chapter have not been met.

9 3. Investigate and ascertain the wages of workers engaged in
10 any public improvement in this state.

11 4. *a.* Enter and inspect the place of business or employment
12 of a contractor, subcontractor, or workers employed on a public
13 improvement in this state, for the purpose of examining and
14 inspecting books, registers, payrolls, and other records of a
15 contractor or subcontractor that in any way relate to or have a
16 bearing upon the question of wages, hours, and other conditions
17 of employment of workers covered under this chapter.

18 *b.* Copy the books, registers, payrolls, and other
19 records as the commissioner or the commissioner's authorized
20 representative deems necessary or appropriate.

21 *c.* Question the workers for the purpose of ascertaining
22 whether the provisions of this chapter have been and are being
23 complied with.

24 *d.* Administer oaths, take or cause to be taken depositions
25 of witnesses, and require by subpoena the attendance and
26 testimony of witnesses and the production of all books,
27 registers, payrolls, and other evidence relative to the matter
28 under investigation or hearing.

29 5. Require from a contractor or subcontractor full and
30 correct statements in writing, including sworn statements,
31 with respect to wages, hours, names, addresses, and other
32 information pertaining to its workers and their employment,
33 as the commissioner or the commissioner's authorized
34 representative may deem necessary or appropriate.

35 6. Require a contractor or subcontractor to file, within

1 ten days of receipt of a request, any records enumerated in
2 subsection 4, sworn as to their validity and accuracy as
3 required by subsection 5. If the contractor or subcontractor
4 fails to provide the requested records within ten days, the
5 commissioner may direct, within fifteen days after the end
6 of the ten-day period, that the fiscal or financial officer
7 charged with the custody and disbursements of the funds of the
8 public body, which contracted for construction of the public
9 improvement or undertook the public improvement, to immediately
10 withhold from payment to the contractor or subcontractor
11 up to twenty-five percent of the amount to be paid to the
12 contractor or subcontractor under the terms of the contract
13 or written instrument under which the public improvement is
14 being performed. The amount withheld shall be immediately
15 released upon receipt by the public body of a notice from
16 the commissioner indicating that the request for records as
17 required by this section has been satisfied.

18 7. If a contractor or subcontractor fails to provide
19 requested records in accordance with subsection 6 within ten
20 days, direct, within fifteen days after the end of the ten-day
21 period, the fiscal or financial officer charged with the
22 custody and disbursements of the funds of the public body,
23 which contracted for construction of the public improvement or
24 undertook the public improvement, to pay directly to workers
25 employed by the contractor or subcontractor from the amount
26 withheld from the contractor or subcontractor pursuant to
27 subsection 6 any prevailing wage rates found to be due and
28 payable to the workers.

29 8. Contract with a person registered as a public accountant
30 under chapter 542 to conduct an audit of a contractor,
31 subcontractor, or public body.

32 Sec. 13. NEW SECTION. 91F.11 Notice of violations.

33 1. For purposes of this section:

34 a. "Accurate records" means the payroll records required
35 to be submitted to the public body in charge of the public

1 improvement by section 91F.9. *"Accurate records"* also means the
2 hourly rate of contribution and costs paid for fringe benefits
3 and whether the contributions and costs of the fringe benefits
4 were paid into a fund or paid directly to the worker.

5 *b. "Decision"* means a determination by the division that a
6 single violation of this chapter has occurred, warranting the
7 commissioner to issue a notice of violation to a contractor or
8 subcontractor.

9 *c. "Notice of second violation"* is a formal written notice
10 issued by the division advising a contractor or subcontractor
11 that a second or subsequent violation has occurred within three
12 years from the date of the notice of a first violation.

13 *d. "Notice of violation"* means a formal written notice
14 issued by the division to a contractor or subcontractor
15 that the division has made a decision that the contractor or
16 subcontractor has violated this chapter.

17 *e. "Violation"* means that a contractor or subcontractor has
18 done one of the following:

19 (1) Failed or refused to pay the prevailing wage rate to one
20 or more workers as required by this chapter.

21 (2) Failed to keep accurate records as required by this
22 chapter.

23 (3) Failed to produce for the division accurate records or
24 produced records not in compliance with this chapter.

25 (4) Refused to submit records or testimony to the division
26 in response to a subpoena issued in accordance with this
27 chapter.

28 (5) Refused to comply with the certified payroll provision
29 of section 91F.9.

30 (6) Refused the division access, at any reasonable hour at
31 a location within the state, to inspect the contractor's or
32 subcontractor's records as required by this chapter.

33 (7) Failed to insert into each subcontract or lower-tiered
34 subcontract and into the public improvement specifications
35 for each subcontract or lower-tiered subcontract or provide a

1 written instrument if no contract exists, a written stipulation
2 that not less than the prevailing wage rate be paid as required
3 by this chapter, and a statement that if it is found that a
4 subcontractor's workers engaged in the public improvement have
5 been paid at a rate of wages less than the prevailing wage rate
6 required to be paid by the contract, the public body shall
7 terminate the subcontractor's right to proceed with the work.

8 (8) Failed to obtain a bond in the proper amount that
9 guarantees the payment of the prevailing wage rates required in
10 the contract.

11 (9) Failed to post the prevailing wage rates as required by
12 this chapter.

13 2. After receipt of a complaint or on the division's
14 initiative, the commissioner shall review the investigative
15 file to determine whether a violation has occurred for
16 which the contractor or subcontractor must be given notice.
17 All information and observations made during an audit or
18 investigation shall be considered and shall constitute the
19 basis for the division's decision that this chapter has
20 been violated and that a notice of violation is required
21 to be issued. The notice of violation shall identify the
22 specific violation and the amount of moneys estimated due the
23 division and in controversy based on reasons contained in the
24 investigative file.

25 3. In making a decision that a contractor or subcontractor
26 has failed to allow the commissioner access to accurate
27 records, the commissioner shall rely on the information
28 contained in the investigative file, the certified payroll
29 records submitted to the public body in charge of the public
30 improvement or any other information, and shall assess a
31 separate violation for each day worked by each worker on the
32 public improvement. Each decision of a separate violation
33 shall be listed in the notice of violation.

34 4. In determining that this chapter has been violated and
35 that the issuance of a notice of violation is required, the

1 commissioner shall base the decision on one or any combination
2 of the following reasons:

3 *a.* The severity of the violation, which includes the
4 following:

5 (1) The amount of wages that are determined to be underpaid
6 pursuant to this chapter.

7 (2) The activity or conduct complained of that violates the
8 requirements of this chapter and was not merely a technical,
9 nonsubstantive error. Examples of a technical error include
10 but are not limited to a mathematical error, bookkeeping error,
11 transposition of numbers, or computer or programming error.

12 *b.* The nature and duration of the present violation and the
13 prior history of the contractor or subcontractor related to
14 this history. The prior history considered shall not exceed
15 seven years before the date of the notice of violation.

16 *c.* Whether the contractor or subcontractor submitted
17 certified payroll records with the public body in charge of the
18 public improvement; whether the contractor or subcontractor
19 has kept payroll records and accurate records for three years;
20 and whether the contractor or subcontractor produced certified
21 payroll records in accordance with section 91F.9.

22 *d.* Whether the contractor or subcontractor has violated any
23 other provision of this chapter.

24 5. The notices of the first, second, and subsequent
25 violations shall be sent by restricted certified mail,
26 addressed to the last known address of the contractor or
27 subcontractor involved. The notices shall contain a reference
28 to the specific provisions of this chapter alleged to have been
29 violated, identify the particular public improvement involved,
30 identify the conduct complained of, and identify whether the
31 notice is a notice of a first, second, or subsequent violation,
32 and include a contractor's or subcontractor's statement of
33 liabilities.

34 Sec. 14. NEW SECTION. 91F.12 Violations — remedies and
35 penalties.

1 1. If the commissioner determines that a public body has
2 divided a public improvement into more than one contract for
3 the purpose of avoiding compliance with this chapter, the
4 commissioner shall issue an order compelling compliance. In
5 making a determination whether a public body has divided a
6 public improvement into more than one contract for the purpose
7 of avoiding compliance with this chapter, the commissioner
8 shall consider all of the following:

9 a. The physical separation of the public improvement
10 structures or work.

11 b. The timing of the work on the public improvement phases
12 or structures.

13 c. The continuity of public improvement contractors and
14 subcontractors working on public improvement parts or phases.

15 d. The manner in which the public body and the contractor
16 and subcontractors administer and implement work on the public
17 improvement.

18 2. A worker employed by the contractor or subcontractor who
19 is paid less than the specified prevailing wage rate under this
20 chapter shall have a private right of action for the difference
21 between the amount so paid and the specified prevailing wage
22 rate, together with costs and reasonable attorney fees as shall
23 be allowed by the court.

24 3. The contractor or subcontractor shall additionally be
25 liable to the division for fifty percent of the amount of
26 underpayments and shall be additionally liable to the worker
27 for punitive damages in an amount equal to five percent of the
28 liability to the division for underpayments for each month
29 following the date of payment during which underpayments remain
30 unpaid, together with costs and reasonable attorney fees as
31 shall be allowed by the court.

32 4. If a second or subsequent action to recover underpayments
33 is brought against a contractor or subcontractor within a
34 three-year period and the contractor or subcontractor is
35 found liable for underpayments to a worker, the contractor or

1 subcontractor shall be liable to the division for seventy-five
2 percent of the amount of underpayments payable as a result of
3 the second or subsequent action, additionally liable to the
4 worker for ten percent of the amount of the liability to the
5 division for underpayments for each month following the date
6 of payment during which the underpayments remain unpaid, and
7 further liable to the worker for triple the difference between
8 the amount so paid to the worker and the specified prevailing
9 wage rate required, together with costs and reasonable attorney
10 fees as shall be allowed by the court. The three-year period
11 begins to run from the date the contractor or subcontractor is
12 determined liable for the first violation.

13 5. The commissioner and any interested party shall also
14 have a right of action on behalf of a worker who has a right of
15 action under this chapter. An action brought to recover the
16 same shall be deemed to be a suit for wages, and all judgments
17 entered in the action shall have the same force and effect as
18 other judgments for wages. At the request of a worker employed
19 by a contractor or subcontractor who is paid less than the
20 prevailing wage rate required by this chapter, the commissioner
21 may take an assignment of the wage claim in trust for the
22 assigning worker and may bring any legal action necessary to
23 collect the claim, and the contractor or subcontractor shall
24 be required to pay the expenses of the division incurred in
25 collecting the claim.

26 6. In circumstances where a worker may not be available to
27 receive a payment or judgment, the payment due the worker shall
28 revert to the division after one year elapses from the time
29 payment was attempted to be made or judgment was rendered.

30 7. a. It is a violation of this chapter to do any of the
31 following:

32 (1) To request or demand, either before or after the worker
33 is engaged in a public improvement, that a worker pay back,
34 return, donate, contribute, or give any part or all of the
35 worker's wages, salary, or thing of value, to any person, upon

1 the statement, representation, or understanding that failure to
2 comply with the request or demand will prevent the worker from
3 procuring or retaining employment.

4 (2) To directly or indirectly pay, request, or authorize any
5 other person to violate this chapter.

6 b. This subsection does not apply to an agent or
7 representative of a duly constituted labor organization acting
8 in the collection of dues or assessments of the organization.

9 8. In addition to other penalties provided under this
10 chapter, whoever induces a worker working on a public
11 improvement subject to this chapter to give up or forego
12 any part of the prevailing wage rates to which the worker
13 is entitled under this chapter by threat not to employ
14 or by threat of dismissal from employment is guilty of a
15 serious misdemeanor. An agreement between the worker and the
16 contractor or subcontractor to work for less than the specified
17 prevailing wage rate shall not be a defense to criminal
18 prosecution.

19 9. a. A contract shall not be awarded by a public
20 body to a contractor or subcontractor who, on two separate
21 occasions within a three-year period, has been determined
22 to have violated this chapter, or to any firm, corporation,
23 partnership, or association in which the contractor or
24 subcontractor has any interest until five years have elapsed
25 from the date on which a final determination is rendered
26 finding the contractor or subcontractor in violation of this
27 chapter.

28 b. For the purposes of this subsection, "*any interest*" means
29 an interest in the entity bidding or performing work on the
30 public improvement, whether as an owner, partner, officer,
31 manager, employee, agent, consultant, or representative. "*Any*
32 *interest*" includes but is not limited to all instances where the
33 barred contractor or subcontractor receives payments, whether
34 cash or any other form of compensation, from any entity bidding
35 or performing work on the public improvement, or enters into

1 a contract with the entity bidding or performing work on the
2 public improvement for services performed or to be performed
3 under contract that have been or will be assigned or sublet,
4 or for vehicles, tools, equipment, or supplies that have been
5 or will be sold, rented, or leased during the period from the
6 initiation of the barring proceedings until the end of the term
7 of the barring period. "Any interest" does not include shares
8 held in a publicly traded corporation if the shares were not
9 received as compensation after the barring of an entity bidding
10 or performing work on a public improvement.

11 10. If the division determines that a contractor or
12 subcontractor has violated this chapter on two separate
13 occasions within a three-year period, the division shall list
14 on the department of workforce development's internet site and
15 keep on record the name of the contractor or subcontractor and
16 give notice by restricted certified mail of the list to any
17 public body requesting the list.

18 11. Upon a determination that a contractor or subcontractor
19 has violated this chapter on two separate occasions within a
20 three-year period, the division shall notify the violating
21 contractor or subcontractor by restricted certified mail. The
22 contractor or subcontractor has ten working days to request of
23 the division a hearing before an administrative law judge on
24 the alleged violation. Failure to respond within ten working
25 days shall result in automatic and immediate barring of the
26 violator from work as provided in subsection 9 and placement
27 and publication of the violator's name on the department of
28 workforce development's internet site as provided in subsection
29 10. If the contractor or subcontractor requests a hearing
30 within ten working days by restricted certified mail, the
31 department of inspections and appeals shall set a hearing
32 before an administrative law judge on the alleged violation.
33 The 2 shall take place no later than forty-five calendar days
34 after the receipt by the division of the request for a hearing.
35 An action by an administrative law judge constitutes final

1 agency action and is subject to judicial review under section
2 17A.19.

3 12. The attorney general shall prosecute the cases
4 identified in this section upon complaint by the commissioner
5 or by any interested person. In any proceeding brought
6 pursuant to this section, the commissioner shall be represented
7 by the attorney general.

8 13. This section does not give reason or provide cause for
9 an injunction to halt or delay any public improvement.

10 Sec. 15. NEW SECTION. 91F.13 **Apprentices.**

11 This chapter shall not prevent the employment of apprentices
12 upon public improvements. However, an apprentice employed
13 on a public improvement must be registered with the United
14 States department of labor's office of apprenticeship under
15 an apprenticeship program registered with that office, paid
16 the proper wages specified in the standards of apprenticeship,
17 and engaged only in the trade to which the apprentice is
18 registered. If the apprentice is employed on a public
19 improvement in a trade to which the apprentice is not
20 registered with the United States department of labor's office
21 of apprenticeship, the apprentice shall be treated as any other
22 worker under this chapter.

23 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
24 3, shall not apply to this Act.

25 Sec. 17. EFFECTIVE DATE. This Act takes effect January 1,
26 2021.>

27 2. Title page, by striking lines 1 through 5 and inserting
28 <requiring the payment of local prevailing wage rates to
29 persons working on public improvements for public bodies,
30 providing remedies and penalties, and including effective date
31 provisions.>

HUNTER of Polk