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BUSINESS & LABOR

SENATE FILE 2230

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Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to provide for payment of prevailing wage rates on public
2 construction projects and to provide enforcement through the
3 labor commissioner and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2230

1 Section 1. NEW SECTION. 90.1 PREVAILING WAGE RATE ACT.
2 This chapter shall be known as the "Prevailing Wage Rate
3 Act".

4 Sec. 2. NEW SECTION. 90.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Contract for a public improvement" means a contract
8 for the construction, alteration, repair, or remodeling,
9 including painting and decorating, of a public building or
10 structure or other public improvement of any type located in
11 whole or in part in a city over twenty thousand in population
12 or located in whole or in part in an unincorporated area of a
13 county over twenty thousand in population and to which a
14 governmental body is a party, but does not mean a contract for
15 the construction, alteration, or repair of a farm-to-market
16 road, as defined in section 306.3, to which a governmental
17 body is a party.

18 2. "Contracting party" means contractor or subcontractor
19 party to a contract for a public improvement.

20 3. "Governmental body" means the state of Iowa, an agency
21 or department of the state, or the state board of regents.

22 4. "Prevailing wage rates" means wage rates for mechanics
23 and skilled and unskilled laborers, who perform work pursuant
24 to a contract for a public improvement, as determined by the
25 labor commissioner under section 90.6.

26 5. "Wages" or "wage rates" means all of the following:

27 a. The basic hourly rate of pay.

28 b. The amount of all of the following:

29 (1) The rate of contribution irrevocably made by a
30 contractor or subcontractor to a trustee or to a third person
31 pursuant to a fund, plan, or program.

32 (2) The rate of costs to the contractor or subcontractor
33 which may be reasonably anticipated in providing benefits to
34 laborers and mechanics pursuant to an enforceable commitment
35 to carry out a financially responsible plan or program which

1 was communicated in writing to the laborers and mechanics
2 affected, for medical or hospital care, pensions on retirement
3 or death, compensation for injuries or illness resulting from
4 occupational activity, or insurance to provide any of the
5 foregoing, for unemployment benefits, life insurance,
6 disability and sickness insurance or accident insurance, for
7 vacation and holiday pay, for defraying costs of
8 apprenticeship or other similar programs, or for other bona
9 fide fringe benefits, but only where the contractor or
10 subcontractor is not required by other federal, state, or
11 local law to provide such benefits.

12 Sec. 3. NEW SECTION. 90.3 SPECIFICATIONS FOR CONTRACT.

13 All specifications for a contract for a public improvement
14 in excess of two thousand dollars and a contract for a public
15 improvement in excess of two thousand dollars shall contain
16 provisions that do all of the following:

17 1. Require the contracting party to pay the mechanics and
18 laborers it employs to perform work on the project under the
19 contract for a public improvement not less than the prevailing
20 wage rates.

21 2. Require the contracting party to pay its mechanics and
22 laborers no less frequently than once a week and without
23 subsequent deduction or rebate on any account, the full
24 amounts accrued at the time of payment, computed at wage rates
25 not less than the prevailing wage rates, regardless of any
26 contractual relationship alleged to exist between the
27 contracting party and its mechanics and laborers.

28 3. Require the contracting party to post the prevailing
29 wage rates in a prominent and easily accessible place at the
30 site of work under the contract for a public improvement.

31 4. Require the contracting party to maintain records of
32 the wages paid to its mechanics and laborers employed to
33 perform work under the contract in such form as may be
34 determined necessary by the labor commissioner.

35 5. Permit the governmental body to inspect the records

1 required to be maintained by the contracting party under this
2 section at all reasonable times and places upon demand by the
3 governmental body.

4 6. a. Permit the governmental body to withhold from the
5 contracting party so much of accrued payments under the
6 contract as the governmental body deems necessary to pay the
7 mechanics and laborers employed by the contracting party to
8 perform work under the contract the difference between the
9 prevailing wage rates and the wages paid to them by the
10 contracting party.

11 b. Allow the governmental body, upon not less than seven
12 days written notice to the contracting party, to terminate the
13 contract, in the event the governmental body determines the
14 contracting party has failed or is failing to perform any of
15 its duties under this section, and permit the governmental
16 body to institute an action in the district court for damages
17 reasonably related to the termination of the contract.

18 Sec. 4. NEW SECTION. 90.4 GOVERNMENTAL BODY POWERS AND
19 DUTIES.

20 1. In addition to any other duties imposed by law
21 concerning the letting of a bid for, entering into, and
22 performing a contract for a public improvement, a governmental
23 body shall do all of the following:

24 a. Ascertain the prevailing wage rates for any contract
25 for a public improvement.

26 b. Comply with the provisions of section 90.3 in the
27 letting of bids for a contract for a public improvement.

28 c. Refrain from entering into a contract for a public
29 improvement which fails to contain the provisions set out in
30 section 90.3.

31 d. Take all actions reasonably necessary to ensure the
32 contracting party is in compliance with the terms and
33 conditions of a contract for a public improvement, including
34 inspecting the records maintained by the contracting party
35 pursuant to a contract under section 90.3 and pursuant to

1 section 90.5 and investigating complaints by any person that
2 the contracting party is not in compliance with the terms and
3 conditions of the contract for a public improvement.

4 e. Refrain from entering into a contract for a public
5 improvement with a contracting party which has been found to
6 be in violation of a contract for a public improvement as
7 determined by the labor commissioner.

8 f. Report to the labor commissioner, in such form and
9 manner as the labor commissioner determines, a violation of
10 the provisions of this chapter by any contracting party which
11 is a party to a contract for a public improvement with the
12 governmental body.

13 2. A governmental body may do either of the following:

14 a. Require the contracting party to post a bond as deemed
15 necessary by the governmental body to provide for the payment
16 of the prevailing wage rates.

17 b. Take any action to enforce the terms and provisions of
18 a contract for a public improvement.

19 Sec. 5. NEW SECTION. 90.5 DUTIES OF CONTRACTING PARTY.

20 1. A contracting party shall do all of the following:

21 a. At the time of submitting a bid for a contract for a
22 public improvement, state to the governmental body the
23 identity of all other persons, partnerships, corporations or
24 other entities to which it is subcontracting any portion of
25 the work to be performed under a contract for a public
26 improvement. No work under a contract for a public
27 improvement shall be performed by any persons, partnerships,
28 corporations, or other entities other than those stated to the
29 governmental body in the contracting party's bid proposal,
30 except in the event of exigent circumstances which require the
31 substitution of a subcontractor, and which substitution has
32 been approved in writing by the governmental body and by the
33 labor commissioner.

34 b. Comply with the terms of the contract for a public
35 improvement required by section 90.3.

1 c. Maintain and provide to the governmental body records
2 showing payment of the prevailing wage rates to its mechanics
3 and skilled and unskilled laborers under the contract for a
4 public improvement in such form and manner as the labor
5 commissioner shall determine.

6 2. A contracting party shall not attempt, either directly
7 or indirectly, to avoid the requirements of this chapter.

8 Sec. 6. NEW SECTION. 90.6 LABOR COMMISSIONER DUTIES.

9 The labor commissioner shall have the following duties and
10 powers:

11 1. The labor commissioner shall adopt rules, at least
12 annually, which establish the wage rates for mechanics and
13 laborers of the type customarily employed to perform work
14 under a contract for a public improvement, which prevail in
15 each county and in each city over twenty thousand in
16 population in the state among workers performing work similar
17 in character to that performed on projects under contracts for
18 a public improvement. The wage rates so determined for each
19 county and city by the labor commissioner shall be the
20 prevailing wage rates for work to be performed by a
21 contracting party under a contract for a public improvement
22 within that county or city.

23 2. In determining and establishing the prevailing wage
24 rates for each county and city, the labor commissioner shall
25 consider prevailing wage rate data established by the United
26 States secretary of labor pursuant to 40 U.S.C. §§ 276a to
27 276a-7, wage rates for mechanics and skilled and unskilled
28 laborers for work performed within the county or city provided
29 for in bona fide collective bargaining agreements, and any
30 other reliable and relevant information concerning wages. If
31 the labor commissioner reasonably deems it necessary, the
32 labor commissioner may conduct surveys within the county or
33 city to acquire information regarding wages paid.

34 3. The labor commissioner shall publish annually all
35 prevailing wage rates determined and established pursuant to

1 rules adopted under subsection 1.

2 4. Upon request by a governmental body the labor
3 commissioner shall determine the prevailing wage rates
4 applicable to work to be performed pursuant to a contract for
5 a public improvement. The labor commissioner shall provide by
6 rule an expedited procedure for resolution of disputes
7 concerning the applicable prevailing wage rate for work to be
8 performed pursuant to a contract for a public improvement.
9 Such a dispute shall not be a contested case under chapter
10 17A.

11 5. The labor commissioner shall by rule provide that if
12 work pursuant to a contract for a public improvement is to be
13 performed in more than a single county or a single city, the
14 highest prevailing wage rates applicable shall apply to all
15 work performed pursuant to the contract for a public
16 improvement.

17 6. The labor commissioner shall adopt rules providing for
18 the maintenance of wage records and the reports required by
19 section 90.3, subsection 4, and section 90.5, subsection 1,
20 paragraph "c". At a minimum, the records required by section
21 90.3, subsection 4, shall contain the name, address, and
22 social security number of each mechanic and laborer, the
23 number of hours worked each day, and the gross wages paid each
24 day. At a minimum, the reports required by section 90.5,
25 subsection 1, paragraph "c", to be submitted to the
26 governmental body shall contain the same information as
27 contained in the records required under section 90.3,
28 subsection 4, and shall be submitted at least once a week.
29 The reports submitted to the governmental body as required by
30 section 90.5, subsection 1, paragraph "c", shall be public
31 records under chapter 22, and shall not be exempt under
32 chapter 22.

33 7. The labor commissioner may enter upon the premises of
34 any work site where work is being performed pursuant to a
35 contract for a public improvement at any reasonable time and

1 may interview any mechanic or skilled or unskilled laborer for
2 the purposes of determining whether the contracting party is
3 complying with the provisions of this chapter. No worker
4 shall be discharged or otherwise disciplined or discriminated
5 against by the contracting party for providing information to
6 the labor commissioner in such an interview. Any worker
7 discharged, disciplined, or otherwise discriminated against by
8 the contracting party for providing information to the labor
9 commissioner in such an interview shall have a right of action
10 for reinstatement, back pay, and such other equitable relief
11 as may be appropriate in the district court.

12 8. The labor commissioner shall maintain and publish, at
13 least semiannually, a listing of all contracting parties which
14 have been found by a governmental body, the labor
15 commissioner, or a court to have violated this chapter.

16 9. The labor commissioner shall adopt, pursuant to chapter
17 17A, rules and regulations necessary to perform duties or
18 exercise powers under this chapter.

19 Sec. 7. NEW SECTION. 90.7 REMEDIES.

20 In addition to any remedies otherwise available under law,
21 the following remedies for violation of any provisions of this
22 chapter shall be available:

23 1. A mechanic or laborer, who performed work pursuant to a
24 contract for a public improvement but to whom the contracting
25 party failed to pay the applicable prevailing wage rates, may
26 maintain an action in the district court to recover the
27 difference between the applicable prevailing wage rates and
28 the wages the worker received from the contracting party. The
29 provisions of chapter 91A shall apply to the action. However,
30 the labor commissioner may institute an action for the
31 collection of unpaid wages on behalf of all employees affected
32 by the actions of the same contracting party on the same
33 project without the necessity of obtaining a wage assignment
34 from any of the affected employees. The fact that the
35 mechanic or laborer knowingly accepted payment of wages less

1 than the applicable prevailing wage rate does not relieve the
2 contracting party from liability.

3 2. The labor commissioner may maintain an action in
4 district court against a contracting party for a knowing and
5 intentional failure to pay the prevailing wage rates. The
6 district court shall provide for a penalty against the
7 contracting party of five hundred dollars per day for each day
8 it finds the contracting party has failed to pay the required
9 prevailing wage rates.

10 Sec. 8. NEW SECTION. 90.8 PENALTY.

11 Violation of any provisions of this chapter by a
12 contracting party or its representative or by a representative
13 or employee of a governmental body is a serious misdemeanor.

14 Sec. 9. NEW SECTION. 90.9 FEDERAL FUND PROJECTS.

15 The provisions of this chapter shall not apply to any
16 contract for a public improvement which is funded in whole or
17 in part by federal funds and to which the provisions of 40
18 U.S.C. §§ 276a to 276a-7 apply to all portions of the work to
19 be performed under the contract for a public improvement.

20 EXPLANATION

21 This bill incorporates the substantive portions of the
22 federal Davis-Bacon Act, commonly known as the prevailing wage
23 law, into the Code.

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