

House Study Bill 278

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
LABOR BILL BY CHAIRPERSON
OLSON)

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

A BILL FOR

1 An Act requiring the payment of local prevailing wage rates to
2 persons working on public improvements for public bodies, and
3 providing penalties and an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 Section 1. Section 84A.5, subsection 3, Code 2007, is
1 2 amended to read as follows:
1 3 3. The division of labor services is responsible for the
1 4 administration of the laws of this state under chapters 88,
1 5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
1 6 and 94A, and sections 30.7 and 85.68. The executive head of
1 7 the division is the labor commissioner, appointed pursuant to
1 8 section 91.2.
1 9 Sec. 2. NEW SECTION. 91F.1 SHORT TITLE.
1 10 This chapter shall be known and may be cited as the "Public
1 11 Improvement Quality Protection Act".
1 12 Sec. 3. NEW SECTION. 91F.2 PUBLIC POLICY.
1 13 It is in the public interest that public improvements are
1 14 completed by the best means and highest quality of labor
1 15 reasonably available, and that workers working on public
1 16 improvements be compensated according to the real value of the
1 17 services they perform. It is the policy of this state that
1 18 the wages of workers working on public improvements should be
1 19 at least equal to the prevailing wage rates paid for similar
1 20 work by responsible contractors in the community as a whole in
1 21 order to accomplish all of the following:
1 22 1. Protect workers and their contractors and
1 23 subcontractors from the effects of serious and unfair
1 24 competition resulting from wage levels detrimental to
1 25 efficiency and well-being.
1 26 2. Ensure that contractors compete with one another on the
1 27 basis of the ability to perform work competently and
1 28 efficiently while maintaining community-established
1 29 compensation standards.
1 30 3. Recognize that local participation in public
1 31 improvements and family wage income and benefits are essential
1 32 to the protection of community standards.
1 33 4. Encourage training and education of workers to industry
1 34 skills standards.
1 35 5. Encourage contractors and subcontractors to use funds
2 1 allocated for employee fringe benefits for the actual purchase
2 2 of those benefits.
2 3 Sec. 4. NEW SECTION. 91F.3 DEFINITIONS.
2 4 As used in this chapter, unless the context otherwise
2 5 requires:
2 6 1. "Commissioner" means the labor commissioner appointed
2 7 pursuant to section 91.2.
2 8 2. "Contractor" or "subcontractor" means a person who
2 9 undertakes, offers to undertake, purports to have the capacity
2 10 to undertake, or submits a bid, individually or through
2 11 others, to engage in a public improvement.
2 12 3. "Custom fabrication" means the fabrication of plumbing,
2 13 heating, cooling, ventilation, architectural systems,
2 14 structural systems, exhaust duct systems, or mechanical
2 15 insulation.
2 16 4. "Division" means the division of labor of the
2 17 department of workforce development.

2 18 5. a. "Fringe benefits" means the following for the
2 19 provision or purchase of any of the benefits enumerated in
2 20 paragraph "b":
2 21 (1) The contribution irrevocably made by a contractor or
2 22 subcontractor to a trustee or to a third person pursuant to a
2 23 plan, fund, or program.
2 24 (2) The costs to the contractor or subcontractor which may
2 25 be reasonably anticipated in providing benefits to workers
2 26 pursuant to an enforceable commitment to carry out a
2 27 financially responsible plan or program, given in writing to
2 28 the workers affected.

2 29 b. (1) Medical or hospital care.
2 30 (2) Pensions or annuities on retirement or death.
2 31 (3) Supplemental unemployment benefits.
2 32 (4) Life insurance.
2 33 (5) Disability and sickness insurance.
2 34 (6) Accident insurance for nonwork-related accidents.
2 35 (7) Vacation or holiday pay.
3 1 (8) Defraying costs of apprenticeship programs approved by
3 2 and registered with the United States department of labor's
3 3 bureau of apprenticeship and training.

3 4 6. "Interested party" means any of the following:
3 5 a. A contractor who submits a bid for the purpose of
3 6 securing the award of a contract for a public improvement.
3 7 b. A subcontractor of a contractor mentioned in a bid
3 8 referred to in paragraph "a".
3 9 c. A worker employed by a contractor or subcontractor
3 10 described in either paragraph "a" or "b".
3 11 d. A labor organization that represents workers engaged in
3 12 the same craft or classification as workers employed by a
3 13 contractor or subcontractor described in either paragraph "a"
3 14 or "b" and that exists, in whole or in part, for the purpose
3 15 of negotiating with employers concerning the wages, hours, or
3 16 terms and conditions of employment of employees.
3 17 e. A joint labor-management committee established pursuant
3 18 to the federal Labor Management Cooperation Act of 1978, 29
3 19 U.S.C. } 175a.

3 20 7. "Locality" means a county of this state.
3 21 8. "Maintenance work" means the repair of existing public
3 22 improvements when the size, type, or extent of the public
3 23 improvement is not changed or increased.

3 24 9. "Prevailing wage rate" means the hourly wage plus
3 25 fringe benefits, which the commissioner determines prevails in
3 26 accordance with this chapter, including all of the following:
3 27 a. Apprentice ratios and the prevailing apprentice pay
3 28 levels for each craft, classification, or type of worker which
3 29 the commissioner determines prevails in accordance with
3 30 section 91F.5.
3 31 b. A prevailing rate for overtime pay for work in excess
3 32 of the normal prevailing workday and for weekend overtime pay
3 33 for each craft, classification, or type of worker, including
3 34 apprentices.
3 35 c. Holiday pay for holidays that prevail in the locality
4 1 in which the work is being performed.

4 2 10. "Public body" means the state and any of its political
4 3 subdivisions, including but not limited to a county, city,
4 4 township, school district, state board of regents, and public
4 5 utility. For the purposes of this chapter, "public utility"
4 6 includes municipally owned utilities and municipally owned
4 7 waterworks.

4 8 11. a. "Public improvement" means any of the following
4 9 that meets the criteria set out in paragraphs "b" and "c":
4 10 (1) Construction, alteration, reconstruction, repair,
4 11 rehabilitation, refinishing, refurbishing, remodeling,
4 12 renovation, custom fabricating, maintenance, landscaping,
4 13 improving, moving, wrecking, painting, decorating, or
4 14 demolishing of, or adding to or subtracting from any building,
4 15 structure, highway, road, street, bridge, alley, sewer, ditch,
4 16 sewage disposal plant, waterworks, parking facility, railroad,
4 17 excavation or other structure, project, development, or
4 18 improvement, or any part thereof undertaken by a public body,
4 19 including any of the following related activities:
4 20 (a) The erection of scaffolding or other structures or
4 21 works.
4 22 (b) The maintenance, repair, assembly, or disassembly of
4 23 equipment.
4 24 (c) The testing of materials.
4 25 (d) The hauling of refuse from a site to an outside
4 26 disposal location.
4 27 (e) The cleaning of grounds or structures.
4 28 (f) The addition to or fabrication into any structure,

4 29 project, development, or improvement of any material or
4 30 article of merchandise undertaken by a public body.

4 31 (2) The preparation and removal of roadway construction
4 32 zones, lane closures, flagging, or traffic diversions
4 33 undertaken by a public body.

4 34 (3) The installation, repair, maintenance, or calibration
4 35 of monitoring equipment for underground storage tanks
5 1 undertaken by a public body.

5 2 (4) Work that is performed on any property or premises
5 3 dedicated exclusively or nearly so to the completion of a
5 4 public improvement, and transportation of supplies, material,
5 5 and equipment to or from the property or premises undertaken
5 6 by a public body.

5 7 b. Work on the public improvement is performed under
5 8 public supervision or direction, and the work is financed
5 9 wholly or in part from public funds, or if at the time of
5 10 commencement of the public improvement all of the following
5 11 conditions with respect to the public improvement are met:

5 12 (1) Not less than fifty-five percent of the structure is
5 13 leased by a public body, or is subject to an agreement to be
5 14 subsequently leased by a public body.

5 15 (2) The portion of the structure that is leased or subject
5 16 to an agreement to be subsequently leased by a public body
5 17 measures more than twenty thousand square feet.

5 18 c. The public improvement has an estimated total cost that
5 19 exceeds twenty-five thousand dollars.

5 20 12. "Worker" means an individual who performs any labor or
5 21 service for a contractor or subcontractor on a public
5 22 improvement but does not include an individual when
5 23 transporting a seller, supplier, manufacturer, or processor of
5 24 materials or equipment. The individual is deemed an employee
5 25 of a contractor or subcontractor unless all of the following
5 26 apply:

5 27 a. The individual provides labor or services free from the
5 28 direction or control over the means and manner of providing
5 29 the labor or services, subject only to the right of the person
5 30 for whom the labor or services are provided to specify the
5 31 desired results.

5 32 b. The individual providing the labor or services is
5 33 responsible for obtaining business registrations or licenses
5 34 required by state law or local ordinance to provide the labor
5 35 or services.

6 1 c. The individual providing the labor or services
6 2 furnishes the tools and equipment necessary to provide the
6 3 labor or services.

6 4 d. The individual providing the labor or services has the
6 5 authority to hire and fire employees to perform the labor or
6 6 services.

6 7 e. Payment for the labor or services is made upon
6 8 completion of the performance of specific portions of a public
6 9 improvement, or is made on the basis of a periodic retainer.

6 10 f. The individual providing the labor or services
6 11 represents to the public that the labor or services are to be
6 12 provided by an independently established business. An
6 13 individual is engaged in an independently established business
6 14 when four or more of the following circumstances exist:

6 15 (1) Labor or services are primarily performed at a
6 16 location separate from the individual's residence or in a
6 17 specified portion of the residence that is set aside for
6 18 performing labor or services.

6 19 (2) Commercial advertising or business cards are purchased
6 20 by the individual, or the individual is a member of a trade or
6 21 professional association.

6 22 (3) Telephone or electronic mail listings used by the
6 23 individual for the labor or services are different from the
6 24 individual's personal listings.

6 25 (4) Labor or services are performed only pursuant to a
6 26 written contract.

6 27 (5) Labor or services are performed for two or more
6 28 persons or entities within a period of one year.

6 29 (6) The individual assumes financial responsibility for
6 30 errors and omissions in the performance of the labor or
6 31 services as evidenced by insurance, performance bonds, and
6 32 warranties relating to the labor or services provided.

6 33 Sec. 5. NEW SECTION. 91F.4 ADMINISTRATION.

6 34 The commissioner and the division shall administer this
6 35 chapter and the commissioner shall adopt rules for the
7 1 administration and enforcement of this chapter as provided in
7 2 section 91.6.

7 3 Sec. 6. NEW SECTION. 91F.5 DETERMINATION OF PREVAILING
7 4 WAGES.

7 5 1. The commissioner shall determine annually and publish,
7 6 on the first business day of July, the prevailing wage rates
7 7 by locality for each craft, classification, or type of worker
7 8 needed to perform work on public improvements. The rates
7 9 shall be conclusive for one year from the date of publication
7 10 unless superseded within the one year by a later publication
7 11 of the commissioner, or for a longer period as provided in
7 12 subsection 5.

7 13 2. The commissioner shall announce all prevailing wage
7 14 rate determinations by locality and give notice by posting
7 15 them on the portion of the department of workforce
7 16 development's website related to the division. A printed
7 17 version of the prevailing wage rates for the state shall be
7 18 available to the public upon request to the division.

7 19 3. The public body awarding any contract for a public
7 20 improvement, or otherwise undertaking any public improvement,
7 21 shall obtain from the website the prevailing wage rate in the
7 22 locality in which the public improvement is to be performed
7 23 for each craft, classification, or type of worker needed to
7 24 perform work on the public improvement. After a public
7 25 improvement contract is awarded, or a public improvement is
7 26 otherwise undertaken, the prevailing wage rate published by
7 27 the commissioner and stated in the public body's public
7 28 improvement procurement documents shall remain in effect
7 29 throughout the duration of the public improvement unless
7 30 superseded by a later determination and publication by the
7 31 commissioner, or unless multiyear prevailing wage rates have
7 32 been published by the commissioner at the time the public
7 33 improvement procurement documents were released.

7 34 4. a. In determining the annual prevailing wage rate for
7 35 any craft, classification, or type of worker, the commissioner
8 1 shall ascertain and consider the applicable wage rates and
8 2 fringe benefits established by collective bargaining
8 3 agreements, the prevailing wage rate determinations that may
8 4 exist for federal public improvements within the locality and
8 5 other data obtained by the department during any prevailing
8 6 wage rate survey of contractors who participate in an
8 7 apprenticeship program approved by and registered with the
8 8 United States department of labor's bureau of apprenticeship
8 9 and training, who provide health insurance and retirement
8 10 benefits for their workers, and who are registered with the
8 11 division. Based upon these considerations, the commissioner
8 12 shall calculate the prevailing wage rates based on the wage
8 13 rate plus fringe benefits most often occurring for each craft,
8 14 classification, or other type of worker within each locality.

8 15 b. The minimum annual prevailing wage rate determination
8 16 established by the department shall not be lower than the
8 17 prevailing wage rate determination that may exist for federal
8 18 public improvements within the locality and in the nearest
8 19 labor market area.

8 20 c. None of the benefits enumerated in this chapter may be
8 21 considered in the determination of prevailing wage rates if
8 22 the contractor or subcontractor is required by other federal,
8 23 state, or local law to provide such benefits.

8 24 5. If the commissioner determines that the prevailing wage
8 25 rate for any craft, classification, or type of worker is the
8 26 rate established by a collective bargaining agreement
8 27 applicable in the locality, the commissioner may adopt that
8 28 rate by reference and that determination shall be effective
8 29 for the life of the agreement or until the commissioner adopts
8 30 another rate.

8 31 6. a. At any time within fifteen days after the division
8 32 has published on the department of workforce development's
8 33 website the annual prevailing wage rates for each
8 34 classification, craft, or other type of worker in the
8 35 locality, any interested person affected may object to the
9 1 determination or the part of the determination as the
9 2 interested person may deem objectionable by filing a written
9 3 notice with the commissioner by restricted certified mail as
9 4 defined in section 618.15. When objecting to a prevailing
9 5 wage rate determination, the interested person shall submit,
9 6 as a part of the written notice, the prevailing wage rate the
9 7 interested person believes to be the correct prevailing wage
9 8 rate determination, stating the specific grounds to support
9 9 that position. Upon receipt of the notice of objection, the
9 10 commissioner shall reconsider the determination and shall
9 11 affirm or modify the determination and reply in writing by
9 12 restricted certified mail to the interested person within
9 13 fifteen days from the date of the receipt of the notice of
9 14 objection. Any modification to the prevailing wage rate
9 15 determination shall be effective on the date the modification

9 16 is published by the commissioner.

9 17 b. If the commissioner declines to modify the
9 18 determination, within ten days upon receiving receipt of the
9 19 commissioner's decision, the interested person affected may
9 20 submit in writing the objection to the division by restricted
9 21 certified mail, stating the specified grounds of the
9 22 objection. The department of inspections and appeals shall be
9 23 notified of the objection and set a date for a hearing before
9 24 an administrative law judge on the objection, after giving
9 25 notice by restricted certified mail to the interested person
9 26 and the division at least ten days before the date of the
9 27 hearing of the time and place of the hearing. The hearing
9 28 shall be held within forty-five days after the objection is
9 29 filed, and shall not be postponed or reset for a later date
9 30 except upon the consent, in writing, of the interested person
9 31 and the division.

9 32 7. The party requesting a hearing shall have the burden of
9 33 establishing that the annual prevailing wage rate
9 34 determination for that locality was not determined in
9 35 accordance with this chapter. If the party requesting a
10 1 hearing under this section objects to the commissioner's
10 2 failure to include a craft, classification, or type of worker
10 3 within the annual prevailing wage rate determination in the
10 4 locality, the objector shall have the burden of establishing
10 5 that there is no existing prevailing wage rate classification
10 6 for the particular craft, classification, or type of worker in
10 7 any of the localities under consideration.

10 8 8. The administrative law judge may in the administrative
10 9 law judge's discretion hear each written objection filed
10 10 separately or consolidate for hearing any one or more written
10 11 objections filed with the division. At the hearing, the
10 12 division shall introduce into evidence the investigation it
10 13 instituted which formed the basis of its determination, and
10 14 the division or any interested objectors may introduce
10 15 evidence that is material to the determination. The
10 16 administrative law judge shall rule upon each written
10 17 objection and make a final determination, as the
10 18 administrative law judge believes the evidence warrants, and
10 19 promptly serve a copy of the final determination by personal
10 20 service or restricted certified mail on all parties to the
10 21 proceedings. The administrative law judge shall render a
10 22 final determination within thirty days after the conclusion of
10 23 the hearing.

10 24 9. If proceedings to review judicially the final
10 25 determination of the administrative law judge are not
10 26 instituted as provided in this section, the determination
10 27 shall be final and binding. The provisions of section 17A.19
10 28 shall apply to and govern all proceedings. Appeals from all
10 29 final orders and judgments entered by the court in review of
10 30 the final determination of the administrative law judge may be
10 31 taken by any party to the action. In all reviews or appeals
10 32 under this chapter, the attorney general shall represent the
10 33 division and defend its determination.

10 34 10. This section does not give reason or provide cause for
10 35 an injunction to halt or delay any public improvement.

11 1 Sec. 7. NEW SECTION. 91F.6 PAYMENT OF PREVAILING WAGES
11 2 REQUIRED.

11 3 1. Contractors and subcontractors engaged in a public
11 4 improvement shall pay not less than the current specified
11 5 prevailing wage rates to all of their workers engaged in the
11 6 public improvement. However, this chapter does not prohibit
11 7 the payment of more than the prevailing wage rate to any
11 8 workers engaged in a public improvement.

11 9 2. All contractors and subcontractors required to pay the
11 10 prevailing wage rate under this chapter shall pay the wages in
11 11 legal tender, without any deduction for food, sleeping
11 12 accommodations, transportation, use of tools or safety
11 13 equipment, vehicle or equipment rental, or any other thing of
11 14 any kind or description.

11 15 Sec. 8. NEW SECTION. 91F.7 REQUIREMENTS FOR PUBLIC
11 16 IMPROVEMENTS.

11 17 1. The public body awarding a contract for a public
11 18 improvement or otherwise undertaking a public improvement
11 19 shall specify in the call for bids for the contract that this
11 20 chapter applies to the public improvement.

11 21 2. If a public improvement requires the payment of
11 22 prevailing wage rates, the public body shall require the
11 23 contractor to execute a written instrument that not less than
11 24 the prevailing wage rate shall be paid to all workers
11 25 performing work on the public improvement. The written
11 26 instrument shall also contain a provision that if it is found

11 27 that any of the contractor's workers engaged in the public
11 28 improvement has been paid at a wage rate less than the
11 29 prevailing wage rate required by this chapter, the public body
11 30 may terminate the contractor's right to proceed with the work
11 31 and the contractor and its sureties shall be liable to the
11 32 public body for any excess costs occasioned by the failure to
11 33 pay the prevailing wage rate. The written instrument shall
11 34 have attached a list of the specified prevailing wage rates
11 35 for all crafts, classifications, or types of workers in the
12 1 locality for each worker needed to be included in the contract
12 2 for the public improvement.

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

12 20 4. If a public improvement requires the payment of
12 21 prevailing wage rates, the contractor shall require any
12 22 subcontractors engaged by the contractor on the public
12 23 improvement to execute a written instrument that not less than
12 24 the prevailing wage rates shall be paid to all workers
12 25 performing work on the public improvement. The written
12 26 instrument shall also contain a provision that if it is found
12 27 that any of the subcontractor's workers engaged in the public
12 28 improvement has been paid at a wage rate less than the
12 29 prevailing wage rate required by this chapter, the public body
12 30 may terminate the subcontractor's right to proceed with the
12 31 work and the subcontractor and its sureties shall be liable to
12 32 the public body for any excess costs occasioned by the failure
12 33 to pay the prevailing wage rate. The written instrument shall
12 34 have attached a list of the specified prevailing wage rates
12 35 for all crafts, classifications, or types of workers in the
13 1 locality for each worker needed to be included in the
13 2 contract.

13 3 5. If a subcontract is let for a public improvement
13 4 requiring the payment of the prevailing wage rate, the
13 5 contractor to whom the contract is awarded shall insert into
13 6 the subcontract and into the public improvement project
13 7 specifications for each subcontract a written stipulation that
13 8 not less than the prevailing wage rate shall be paid to all
13 9 workers performing work under the subcontract. A
13 10 subcontractor shall insert into each lower-tiered subcontract
13 11 a stipulation that not less than the prevailing wage rate
13 12 shall be paid to all workers performing work under the
13 13 subcontract. The subcontract shall also contain a provision
13 14 that if it is found that any subcontractor's workers engaged
13 15 in the public improvement have been paid at a wage rate less
13 16 than the prevailing wage rate required by this chapter, the
13 17 public body may terminate the subcontractor's right to proceed
13 18 with the work and the subcontractor and its sureties shall be
13 19 liable to the public body for any excess costs occasioned by
13 20 the failure to pay the prevailing wage rate. All bid
13 21 specifications shall list the specified prevailing wage rates
13 22 for all crafts, classifications, or types of workers in the
13 23 locality for each worker needed to be included in the
13 24 subcontract.

13 25 6. A contractor or subcontractor engaging in a public
13 26 improvement shall submit a performance bond in an amount
13 27 determined by the public body which bond shall include a
13 28 provision that will guarantee the payment of the prevailing
13 29 wage rates as required by the contract.

13 30 7. Before final payment is made by or on behalf of a
13 31 public body of any sum or sums due on a public improvement,
13 32 the treasurer of the public body or other officer or person
13 33 charged with the custody and disbursement of the funds of the
13 34 public body shall require the contractor and subcontractor to
13 35 file a written statement with the public body, in a form
14 1 satisfactory to the division, certifying to the amounts then
14 2 due and owing from the contractor and subcontractor to any and

14 3 all workers for wages due on account of the public
14 4 improvement, setting forth the names of the persons whose
14 5 wages are unpaid and the amount due to each respectively. The
14 6 statement shall be verified by the oath of the contractor or
14 7 subcontractor, as the case may be, that the contractor or
14 8 subcontractor has read the statement certified by the
14 9 contractor or subcontractor, knows the contents, and that the
14 10 statement is true in accordance with the contractor's or
14 11 subcontractor's own knowledge. However, this chapter shall
14 12 not impair the right of a contractor to receive final payment
14 13 from a public body because of the failure of a subcontractor
14 14 to comply with provisions of this chapter. The treasurer of
14 15 the public body or other officer or person charged with the
14 16 custody and disbursement of the funds of the public body shall
14 17 withhold the amount, if any, listed on the verified statement
14 18 filed pursuant to this section for the benefit of the worker
14 19 whose wages are unpaid as shown by the verified statement
14 20 filed by the contractor or subcontractor, and the public body
14 21 shall pay directly to any worker the amount shown by the
14 22 statement to be due to the worker for the wages. Payment
14 23 shall discharge the obligation of the contractor or
14 24 subcontractor to the person receiving the payment to the
14 25 extent of the amount of the payment.

14 26 8. The public body awarding a contract for a public
14 27 improvement or otherwise undertaking a public improvement
14 28 shall notify the commissioner in writing, on a form prescribed
14 29 by the commissioner, if a contract subject to the provisions
14 30 of this chapter has been awarded. The public body shall file
14 31 the notification with the commissioner within thirty days
14 32 after the contract is awarded or before commencement of the
14 33 public improvement, and shall include a list of all first-tier
14 34 subcontractors.

14 35 Sec. 9. NEW SECTION. 91F.8 FEDERAL PUBLIC IMPROVEMENTS
15 1 == NOT APPLICABLE.

15 2 The provisions of this chapter shall not be applicable to
15 3 public improvements financed entirely by federal funds which
15 4 require a prevailing wage rate determination by the United
15 5 States department of labor. However, unless a federal
15 6 provision applies, if a public improvement is financed in part
15 7 by a public body and in part by federal funds, the higher of
15 8 the prevailing wage rates shall prevail for the public
15 9 improvement.

15 10 Sec. 10. NEW SECTION. 91F.9 RECORDS REQUIRED.

15 11 1. While participating in a public improvement, the
15 12 contractor and each subcontractor shall do all of the
15 13 following:

15 14 a. Make and keep, for a period of not less than three
15 15 years, accurate records of all workers employed by the
15 16 contractor or subcontractor on the public improvement. The
15 17 records shall include each worker's name, address, telephone
15 18 number when available, social security number, trade
15 19 classification, the hourly wages paid in each pay period, the
15 20 number of hours worked each day, and the starting and ending
15 21 times of work each day.

15 22 b. Submit weekly a certified payroll to the public body in
15 23 charge of the public improvement. The certified payroll shall
15 24 consist of a complete copy of the records identified in
15 25 paragraph "a". The certified payroll shall be accompanied by
15 26 a statement signed by the contractor or subcontractor which
15 27 avers that the records are true and accurate and the hourly
15 28 wages paid to each worker are not less than the prevailing
15 29 wage rate required by this chapter.

15 30 2. The public body in charge of the public improvement
15 31 shall keep the records submitted in accordance with subsection
15 32 1, paragraph "b", for a period of not less than three years.
15 33 The records shall be considered public records and be made
15 34 available in accordance with chapter 22. Personal information
15 35 submitted in accordance with subsection 1, paragraph "a",
16 1 including names, addresses, social security numbers, telephone
16 2 numbers, and other identifying information shall remain
16 3 confidential and shall not be made public.

16 4 3. The contractor and each subcontractor shall make
16 5 available for inspection the records identified in subsection
16 6 1, paragraph "a", to the public body in charge of the public
16 7 improvement, its officers and agents, and to the division.

16 8 4. For the purpose of verifying the accuracy of the
16 9 records submitted pursuant to this section, the contractor and
16 10 each subcontractor shall make its workers available at the
16 11 site of the public improvement for interview by the public
16 12 body in charge of the public improvement, its officers and
16 13 agents, and the division.

16 14 5. Contractors and subcontractors performing work on
16 15 public improvements subject to this chapter shall post the
16 16 prevailing wage rates for each craft, classification, or type
16 17 of workers involved in the public improvement in a prominent
16 18 and easily accessible place at the site of the public
16 19 improvement or at the place or places used by the contractor
16 20 or subcontractor to pay workers their wages.

16 21 Sec. 11. NEW SECTION. 91F.10 POWERS OF COMMISSIONER.

16 22 The commissioner shall do all of the following:

16 23 1. Inquire diligently about any complaint of a violation
16 24 of this chapter, institute actions for penalties prescribed,
16 25 and enforce generally the provisions of this chapter.

16 26 2. Sue for injunctive relief against the awarding of a
16 27 contract, the undertaking of a public improvement, or the
16 28 continuation of a public improvement when the prevailing wage
16 29 rate requirements of this chapter have not been met.

16 30 3. Investigate and ascertain the wages of workers engaged
16 31 in any public improvement in this state.

16 32 4. a. Enter and inspect the place of business or
16 33 employment of a contractor, subcontractor, or workers employed
16 34 on a public improvement in this state, for the purpose of
16 35 examining and inspecting books, registers, payrolls, and other
17 1 records of a contractor or subcontractor that in any way
17 2 relate to or have a bearing upon the question of wages, hours,
17 3 and other conditions of employment of workers covered under
17 4 this chapter.

17 5 b. Copy the books, registers, payrolls, and other records
17 6 as the commissioner or the commissioner's authorized
17 7 representative deems necessary or appropriate.

17 8 c. Question the workers for the purpose of ascertaining
17 9 whether the provisions of this chapter have been and are being
17 10 complied with.

17 11 d. Administer oaths, take or cause to be taken depositions
17 12 of witnesses, and require by subpoena the attendance and
17 13 testimony of witnesses and the production of all books,
17 14 registers, payrolls, and other evidence relative to the matter
17 15 under investigation or hearing.

17 16 5. Require from a contractor or subcontractor full and
17 17 correct statements in writing, including sworn statements,
17 18 with respect to wages, hours, names, addresses, and other
17 19 information pertaining to its workers and their employment, as
17 20 the commissioner or the commissioner's authorized
17 21 representative may deem necessary or appropriate.

17 22 6. Require a contractor or subcontractor to file, within
17 23 ten days of receipt of a request, any records enumerated in
17 24 subsections 3 and 4, sworn as to their validity and accuracy
17 25 as required by subsection 5. If the contractor or
17 26 subcontractor fails to provide the requested records within
17 27 ten days, the commissioner may direct, within fifteen days
17 28 after the end of the ten-day period, that the fiscal or
17 29 financial officer charged with the custody and disbursements
17 30 of the funds of the public body, which contracted for
17 31 construction of the public improvement or undertook the public
17 32 improvement, to immediately withhold from payment to the
17 33 contractor or subcontractor up to twenty-five percent of the
17 34 amount to be paid to the contractor or subcontractor under the
17 35 terms of the contract or written instrument under which the
18 1 public improvement is being performed. The amount withheld
18 2 shall be immediately released upon receipt by the public body
18 3 of a notice from the commissioner indicating that the request
18 4 for records as required by this section has been satisfied.

18 5 7. If a contractor or subcontractor fails to provide
18 6 requested records in accordance with subsection 6 within ten
18 7 days, direct, within fifteen days after the end of the ten-day
18 8 period, the fiscal or financial officer charged with the
18 9 custody and disbursements of the funds of the public body,
18 10 which contracted for construction of the public improvement or
18 11 undertook the public improvement, to pay directly to workers
18 12 employed by the contractor or subcontractor from the amount
18 13 withheld from the contractor or subcontractor pursuant to
18 14 subsection 6 any prevailing wage rates found to be due and
18 15 payable to the workers.

18 16 8. Contract with a person registered as a public
18 17 accountant under chapter 542 to conduct an audit of a
18 18 contractor, subcontractor, or public body.

18 19 Sec. 12. NEW SECTION. 91F.11 NOTICE OF VIOLATIONS.

18 20 1. For purposes of this section:

18 21 a. "Accurate records" means the payroll records required
18 22 to be filed with the public body in charge of the public
18 23 improvement as required by section 91F.9. "Accurate records"
18 24 also means the hourly rate of contribution and costs paid for

18 25 fringe benefits and whether the contributions and costs of the
18 26 fringe benefits were paid into a fund or paid directly to the
18 27 worker.

18 28 b. "Decision" means a determination by the division that a
18 29 single violation of this chapter has occurred, warranting the
18 30 commissioner to issue a notice of violation to a contractor or
18 31 subcontractor.

18 32 c. "Notice of second violation" is a formal written notice
18 33 issued by the division advising a contractor or subcontractor
18 34 that a second or subsequent violation has occurred within
18 35 three years from the date of the notice of a first violation.

19 1 d. "Notice of violation" means a formal written notice
19 2 issued by the division to a contractor or subcontractor that
19 3 the division has made a decision that the contractor or
19 4 subcontractor has violated this chapter.

19 5 e. "Violation" means a written decision by the division
19 6 that a contractor or subcontractor has done one of the
19 7 following:

19 8 (1) Failed or refused to pay the prevailing wage rate to
19 9 one or more workers as required by this chapter.

19 10 (2) Failed to keep accurate records as required by this
19 11 chapter.

19 12 (3) Failed to produce for the division accurate records or
19 13 produced records not in compliance with this chapter.

19 14 (4) Refused to submit records or testimony to the division
19 15 in response to a subpoena issued in accordance with this
19 16 chapter.

19 17 (5) Refused to comply with the certified payroll provision
19 18 of section 91F.9.

19 19 (6) Refused the division access, at any reasonable hour at
19 20 a location within the state, to inspect the contractor's or
19 21 subcontractor's records as required by this chapter.

19 22 (7) Failed to insert into each subcontract or lower-tiered
19 23 subcontract and into the public improvement specifications for
19 24 each subcontract or lower-tiered subcontract or provide a
19 25 written instrument if no contract exists, a written
19 26 stipulation that not less than the prevailing wage rate be
19 27 paid as required by this chapter, and a statement that if it
19 28 is found that a subcontractor's workers engaged in the public
19 29 improvement have been paid at a rate of wages less than the
19 30 prevailing wage rate required to be paid by the contract, the
19 31 public body shall terminate the subcontractor's right to
19 32 proceed with the work.

19 33 (8) Failed to obtain a bond in the proper amount that
19 34 guarantees the payment of the prevailing wage rates required
19 35 in the contract.

20 1 (9) Failed to post the prevailing wage rates as required
20 2 by this chapter.

20 3 2. After receipt of a complaint or on the division's
20 4 initiative, the commissioner shall review the investigative
20 5 file to determine whether a violation has occurred for which
20 6 the contractor or subcontractor must be given notice. All
20 7 information and observations made during an audit or
20 8 investigation shall be considered and shall constitute the
20 9 basis for the division's decision that this chapter has been
20 10 violated and that a notice of violation is required to be
20 11 issued. The notice of violation shall identify the specific
20 12 violation and the amount of moneys estimated due the division
20 13 and in controversy based on reasons contained in the
20 14 investigative file.

20 15 3. In making a decision that a contractor or subcontractor
20 16 has failed to allow the commissioner access to accurate
20 17 records, the commissioner shall rely on the information
20 18 contained in the investigative file, the certified payroll
20 19 records filed with the public body in charge of the public
20 20 improvement or any other information, and shall assess a
20 21 separate violation for each day worked by each worker on the
20 22 public improvement. Each decision of a separate violation
20 23 shall be listed in the notice of violation.

20 24 4. In determining that this chapter has been violated and
20 25 that the issuance of a notice of violation is required, the
20 26 commissioner shall base the decision on one or any combination
20 27 of the following reasons:

20 28 a. The severity of the violations, which includes the
20 29 following:

20 30 (1) The amount of wages that are determined to be
20 31 underpaid pursuant to this chapter.

20 32 (2) The activity or conduct complained of that violates
20 33 the requirements of this chapter and was not merely a
20 34 technical, nonsubstantive error. Examples of a technical
20 35 error include but are not limited to a mathematical error,

21 1 bookkeeping error, transposition of numbers, or computer or
21 2 programming error.

21 3 b. The nature and duration of the present violation and
21 4 the prior history of the contractor or subcontractor related
21 5 to this history. The prior history considered shall not
21 6 exceed seven years before the date of the notice of violation.

21 7 c. Whether the contractor or subcontractor filed certified
21 8 payroll records with the public body in charge of the public
21 9 improvement; whether the contractor or subcontractor has kept
21 10 payroll records and accurate records for three years; and
21 11 whether the contractor or subcontractor produced certified
21 12 payroll records in accordance with section 91F.9.

21 13 d. Whether the contractor or subcontractor has violated
21 14 any other provision of this chapter.

21 15 5. The notices of the first, second, and subsequent
21 16 violations shall be sent by restricted certified mail,
21 17 addressed to the last known address of the contractor or
21 18 subcontractor involved. The notices shall contain a reference
21 19 to the specific provisions of this chapter alleged to have
21 20 been violated, identify the particular public improvement
21 21 involved, identify the conduct complained of, and identify
21 22 whether the notice is a first, second, or subsequent notice,
21 23 and include a contractor's or subcontractor's statement of
21 24 liabilities.

21 25 Sec. 13. NEW SECTION. 91F.12 VIOLATIONS == REMEDIES.

21 26 1. If the commissioner determines that a public body has
21 27 divided a public improvement into more than one contract for
21 28 the purpose of avoiding compliance with this chapter, the
21 29 commissioner shall issue an order compelling compliance. In
21 30 making a determination whether a public body has divided a
21 31 public improvement into more than one contract for the purpose
21 32 of avoiding compliance with this chapter, the commissioner
21 33 shall consider all of the following:

21 34 a. The physical separation of the public improvement
21 35 structures.

22 1 b. The timing of the work on the public improvement phases
22 2 or structures.

22 3 c. The continuity of public improvement contractors and
22 4 subcontractors working on public improvement parts or phases.

22 5 d. The manner in which the public body and the contractor
22 6 and subcontractors administer and implement work on the public
22 7 improvement.

22 8 2. A worker employed by the contractor or subcontractor
22 9 who is paid less than the specified prevailing wage rate under
22 10 this chapter shall have a private right of action for the
22 11 difference between the amount so paid and the specified
22 12 prevailing wage rate, together with costs and reasonable
22 13 attorney fees as shall be allowed by the court.

22 14 3. The contractor or subcontractor shall additionally be
22 15 liable to the department for fifty percent of the
22 16 underpayments and shall be additionally liable to the worker
22 17 for punitive damages in an amount equal to five percent of the
22 18 liability to the division for underpayments for each month
22 19 following the date of payment during which underpayments
22 20 remain unpaid, together with costs and reasonable attorney
22 21 fees as shall be allowed by the court.

22 22 4. If a second or subsequent action to recover
22 23 underpayments is brought against a contractor or subcontractor
22 24 within a three-year period and the contractor or subcontractor
22 25 is found liable for underpayments to a worker, the contractor
22 26 or subcontractor shall be liable to the division for
22 27 seventy-five percent of the underpayments payable as a result
22 28 of the second or subsequent action, additionally liable for
22 29 ten percent of the amount of the liability to the division for
22 30 underpayments for each month following the date of payment
22 31 during which the underpayments remain unpaid, and liable for
22 32 triple the difference between the amount so paid to the worker
22 33 and the specified prevailing wage rate required, together with
22 34 costs and reasonable attorney fees as shall be allowed by the
22 35 court. The three-year period begins to run from the date the
23 1 contractor or subcontractor is determined liable for the first
23 2 violation.

23 3 5. The commissioner and any interested party shall also
23 4 have a right of action on behalf of a worker who has a right
23 5 of action under this chapter. An action brought to recover
23 6 the same shall be deemed to be a suit for wages, and all
23 7 judgments entered in the action shall have the same force and
23 8 effect as other judgments for wages. At the request of a
23 9 worker employed by a contractor or subcontractor who is paid
23 10 less than the prevailing wage rate required by this chapter,
23 11 the commissioner may take an assignment of the wage claim in

23 12 trust for the assigning worker and may bring any legal action
23 13 necessary to collect the claim, and the contractor or
23 14 subcontractor shall be required to pay the expenses of the
23 15 division incurred in collecting the claim.

23 16 6. In circumstances where a worker may not be available to
23 17 receive a payment or judgment, the payment due the worker
23 18 shall revert to the division after one year elapses from the
23 19 time payment was attempted to be made or judgment was
23 20 rendered.

23 21 7. It is a violation of this chapter to do any of the
23 22 following:

23 23 a. To request or demand, either before or after the worker
23 24 is engaged, that a worker pay back, return, donate,
23 25 contribute, or give any part or all of the worker's wages,
23 26 salary, or thing of value, to any person, upon the statement,
23 27 representation, or understanding that failure to comply with
23 28 the request or demand will prevent the worker from procuring
23 29 or retaining employment.

23 30 b. To directly or indirectly pay, request, or authorize
23 31 any other person to violate this chapter.

23 32 This subsection does not apply to an agent or
23 33 representative of a duly constituted labor organization acting
23 34 in the collection of dues or assessments of the organization.

23 35 8. In addition to other penalties provided under this
24 1 chapter, whoever induces a worker working on a public
24 2 improvement subject to this chapter to give up or forego any
24 3 part of the prevailing wage rates to which the worker is
24 4 entitled under this chapter by threat not to employ or by
24 5 threat of dismissal from employment is guilty of a serious
24 6 misdemeanor. An agreement between the worker and the
24 7 contractor or subcontractor to work for less than the
24 8 specified prevailing wage rate shall not be a defense to
24 9 criminal prosecution.

24 10 9. a. A contract shall not be awarded to a contractor or
24 11 subcontractor who, on two separate occasions within a
24 12 three-year period, has been determined to have violated this
24 13 chapter, or to any firm, corporation, partnership, or
24 14 association in which the contractor or subcontractor has any
24 15 interest until five years have elapsed from the date on which
24 16 a final determination is rendered finding the contractor or
24 17 subcontractor in violation of this chapter.

24 18 b. For the purposes of this subsection, "any interest"
24 19 means an interest in the entity bidding or performing work on
24 20 the public improvement, whether as an owner, partner, officer,
24 21 manager, employee, agent, consultant, or representative. "Any
24 22 interest" includes but is not limited to all instances where
24 23 the barred contractor or subcontractor receives payments,
24 24 whether cash or any other form of compensation, from any
24 25 entity bidding or performing work on the public improvement,
24 26 or enters into a contract with the entity bidding or
24 27 performing work on the public improvement for services
24 28 performed or to be performed under contract that have been or
24 29 will be assigned or sublet, or for vehicles, tools, equipment,
24 30 or supplies that have been or will be sold, rented, or leased
24 31 during the period from the initiation of the barring
24 32 proceedings until the end of the term of the barring period.
24 33 "Any interest" does not include shares held in a publicly
24 34 traded corporation if the shares were not received as
24 35 compensation after the barring of an entity bidding or
25 1 performing work on a public improvement.

25 2 10. If the division determines that a contractor or
25 3 subcontractor has violated this chapter on two separate
25 4 occasions within a three-year period, the division shall list
25 5 on the department of workforce development's website and keep
25 6 on record the name of the contractor or subcontractor and give
25 7 notice by restricted certified mail of the list to any public
25 8 body requesting the list.

25 9 11. Upon a determination that a contractor or
25 10 subcontractor has violated this chapter on two separate
25 11 occasions within a three-year period, the division shall
25 12 notify the violating contractor or subcontractor by restricted
25 13 certified mail. The contractor or subcontractor has ten
25 14 working days to request of the division a hearing before an
25 15 administrative law judge on the alleged violation. Failure to
25 16 respond within ten working days shall result in automatic and
25 17 immediate barring of the violator from work and placement and
25 18 publication of the violator's name on the department of
25 19 workforce development's website. If the contractor or
25 20 subcontractor requests a hearing within ten working days by
25 21 restricted certified mail, the department of inspections and
25 22 appeals shall set a hearing before an administrative law judge

25 23 on the alleged violation. The hearing shall take place no
25 24 later than forty-five calendar days after the receipt by the
25 25 division of the request for a hearing. An action by an
25 26 administrative law judge constitutes final agency action and
25 27 is subject to judicial review under section 17A.19.
25 28 12. The attorney general shall prosecute the cases
25 29 identified in this section upon complaint by the commissioner
25 30 or by any interested person. In any proceeding brought
25 31 pursuant to this section, the commissioner shall be
25 32 represented by the attorney general.
25 33 13. This section does not give reason or provide cause for
25 34 an injunction to halt or delay any public improvement.

25 35 Sec. 14. NEW SECTION. 91F.13 APPRENTICES.
26 1 This chapter shall not prevent the employment of
26 2 apprentices upon public improvements. However, an apprentice
26 3 employed on a public improvement must be registered with the
26 4 United States department of labor's bureau of apprenticeship
26 5 and training under an apprenticeship program registered with
26 6 that bureau, paid the proper wages specified in the standards
26 7 of apprenticeship, and engaged only in the trade to which the
26 8 apprentice is registered. If the apprentice is employed on a
26 9 public improvement in a trade to which the apprentice is not
26 10 registered with the United States department of labor's bureau
26 11 of apprenticeship and training, the apprentice shall be
26 12 treated as any other worker under this chapter.
26 13 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection
26 14 3, shall not apply to this Act.
26 15 Sec. 16. EFFECTIVE DATE. This Act takes effect January 1,
26 16 2008.

26 17 EXPLANATION

26 18 This bill requires a contractor to pay workers the same
26 19 hourly wage plus fringe benefits for a public improvement
26 20 costing more than \$25,000 as the contractor would pay workers
26 21 for a private construction or improvement project. The bill
26 22 allows the per-hour wage rate to be based on what is normally
26 23 paid in the area by contractors for similar projects, and to
26 24 be adjusted on a yearly basis by the department of workforce
26 25 development.

26 26 The wage rates that the workers must be paid shall also
26 27 include benefits such as medical care, life insurance,
26 28 overtime pay, and vacation and holiday pay. The bill applies
26 29 to any public improvement that receives money from a public
26 30 body and includes most types of public improvements from
26 31 construction to road maintenance to painting to hauling.

26 32 The labor commissioner determines the wage rates for
26 33 specific geographical areas and for specific crafts,
26 34 classifications, and types of workers. This information must
26 35 be posted on the department of workforce development's
27 1 website. In determining what the wage rate for a worker is,
27 2 the commissioner may consult collective bargaining agreements,
27 3 wage rate determinations for federal projects in the same
27 4 area, and other information the department may receive from
27 5 contractors who participate in an apprenticeship program
27 6 approved by the federal bureau of apprenticeship and training.

27 7 Any person affected by the wage rates has 15 days after the
27 8 department of workforce development has posted the wage rates
27 9 on its website to object in writing, stating the specific
27 10 reason for the objection, to the labor commissioner. The
27 11 commissioner must reconsider the determination being objected
27 12 to, and either affirm or modify it within 15 days of receiving
27 13 the objection.

27 14 If the commissioner declines to modify the determination,
27 15 with 10 days, the person affected may submit an objection in
27 16 writing to the division, stating the specific reasons for the
27 17 objection. A hearing must be set by the department of
27 18 inspections and appeals before an administrative law judge
27 19 within 45 days after the objection is filed. The person who
27 20 filed the objection must show the administrative law judge
27 21 that the wage rate was somehow made in error. The division is
27 22 required to show how it determined the wage rate. The
27 23 administrative law judge must make a decision about the wage
27 24 rate within 30 days and it is considered a final
27 25 determination.

27 26 The bill requires that contractors and subcontractors not
27 27 pay the workers less than the established wage rate but does
27 28 not prohibit them from paying the workers more than the wage
27 29 rate. The wage rate must be paid without any deductions for
27 30 food, sleeping quarters, use of tools, or safety equipment.

27 31 The bill also requires the public body to monitor the
27 32 contractors and subcontractors to ensure that the wage rate is
27 33 paid. A call for bids must state that the wage rate must be

27 34 included in the bids for the public improvement. All bids
27 35 shall list the specific wage rates for each craft,
28 1 classification, and type of worker needed for the public
28 2 improvement. All contractors and subcontractors are required
28 3 to sign a contract that states they will pay workers the wage
28 4 rate determined by the division. If the contractors and
28 5 subcontractors are found to not be paying the wage rate, the
28 6 contract states that the contractor's or subcontractor's right
28 7 to work on the public improvement and get paid for work
28 8 already done may be terminated.

28 9 Before the contractor or subcontractor receives the final
28 10 payment for the public improvement, the public body overseeing
28 11 the public improvement must certify the bills include proper
28 12 amounts due the workers, and the contractor or subcontractor
28 13 must swear under oath that the records are accurate.

28 14 The bill does not apply to public improvement projects
28 15 funded by the federal government. However, unless a federal
28 16 provision applies, if a public improvement project is financed
28 17 by both a state public body and the federal government, then
28 18 the higher of the applicable wage rates shall be paid to the
28 19 workers.

28 20 The bill also requires that contractors and subcontractors
28 21 keep detailed records for at least three years about the
28 22 workers, the rates paid, and the hours worked for each public
28 23 improvement. The records are public records and must be
28 24 available for inspection. However, workers' personal
28 25 information is not available to the public for inspection.
28 26 During the public improvement, a contractor or subcontractor
28 27 must present a certified weekly payroll to demonstrate that
28 28 the correct and full wage rate is being paid to workers. The
28 29 contractors and subcontractors must all make workers available
28 30 on-site to officials for interviews so that the records'
28 31 accuracy can be checked. Contractors and subcontractors must
28 32 also post the wage rates for each craft, classification, and
28 33 type of worker in a public place where workers can see the
28 34 posting or at the place where they receive their wages.

28 35 The commissioner is given specific powers for
29 1 investigation, enforcement, and penalization. The
29 2 commissioner may sue to prevent a contractor or subcontractor
29 3 from being awarded a contract for a public improvement when
29 4 the wage rate requirements have not been met. The
29 5 commissioner is given the power to withhold payments if a
29 6 contractor or subcontractor does not produce records upon
29 7 request and to pay the workers directly if the contractor or
29 8 subcontractor continues to refuse to provide records.

29 9 After receiving a complaint, the commissioner shall
29 10 investigate whether there has been a violation. If the
29 11 commissioner determines there has been a violation, the
29 12 contractor or subcontractor must be given notice of that
29 13 violation. The notice is a formal written statement from the
29 14 department of workforce development that states the specific
29 15 violation and the amount of money due as a penalty.

29 16 If a public body has divided up a public improvement to
29 17 avoid having to pay the wage rate, the commissioner shall
29 18 order compliance. A worker who is paid less than the wage
29 19 rate set by this law can sue for the difference in payment and
29 20 collect the difference along with costs and attorney fees in
29 21 court.

29 22 The contractor or subcontractor shall also have to pay the
29 23 department of workforce development 50 percent of the
29 24 underpayment and is liable to the worker for punitive damages
29 25 of up to five percent of the underpayments for each month the
29 26 underpayment remains unpaid plus costs and attorney fees.

29 27 If a second or subsequent action for underpaying a worker
29 28 is brought against a contractor or subcontractor within a
29 29 three-year period and the contractor or subcontractor is
29 30 liable, the contractor or subcontractor shall pay the
29 31 department of workforce development 75 percent of the
29 32 underpayment, pay the department 10 percent of the penalty for
29 33 underpayments for each month following it that the
29 34 underpayment remains unpaid, and is liable for triple the
29 35 difference between the amount paid to the worker and the
30 1 amount due under the wage rate set by the department plus
30 2 costs and attorney fees.

30 3 The commissioner or any interested party has a right of
30 4 action on behalf of any individual who has a right of action
30 5 under the bill. The commissioner may file a lawsuit in trust
30 6 for a worker who assigns the claim and then bring legal action
30 7 to collect the claim. The contractor shall be required to pay
30 8 the expenses for collection of the claim.

30 9 A person may not ask, demand, receive, donate, give, or

30 10 agree to give back any part of a worker's wages or thing of
30 11 value to any person who asserts that failing to do so will
30 12 prevent the worker from keeping or getting work. However,
30 13 this provision does not apply to authorized labor organization
30 14 representatives.

30 15 In addition to other penalties under this law, anyone who
30 16 attempts to get a worker to give up any part of compensation
30 17 on a public improvement by threat not to hire or by threat of
30 18 firing is guilty of a serious misdemeanor. Any agreement to
30 19 work for less than the determined wage rate is not a defense
30 20 to criminal prosecution.

30 21 If a contractor or subcontractor has violated this law
30 22 twice within a three-year period, the contractor or
30 23 subcontractor or any company or group associated with the
30 24 contractor or subcontractor shall not be given any public
30 25 improvement work for five years. The department of workforce
30 26 development shall keep a list on its website of contractors
30 27 and subcontractors who have violated this law twice within a
30 28 three-year period and notify public bodies by restricted
30 29 certified mail.

30 30 A contractor or subcontractor who has been notified of the
30 31 second violation has 10 days to request a hearing before an
30 32 administrative law judge. If no hearing is requested, the
30 33 contractor is barred from receiving public improvement work
30 34 and its name and information is posted on the department's
30 35 website. A hearing must be held within 45 days of the

31 1 request.

31 2 Apprentices employed on a public improvement project must
31 3 be registered with the federal apprenticeship and training
31 4 program. Apprentices must receive the wages set out in the
31 5 standards of apprenticeship and do only the work specified in
31 6 the trade to which they are apprenticed. An apprentice not
31 7 registered with the federal program shall be paid the wage
31 8 rate the same as any other worker.

31 9 The bill may include a state mandate as defined in Code
31 10 section 25B.3. The bill makes inapplicable Code section
31 11 25B.2, subsection 3, which would relieve a political
31 12 subdivision from complying with a state mandate if funding for
31 13 the cost of the state mandate is not provided or specified.
31 14 Therefore, political subdivisions are required to comply with
31 15 any state mandate included in the bill.

31 16 The bill takes effect January 1, 2008.

31 17 LSB 1434YC 82

31 18 ak:rj/je/5.5