

House File 89 - Introduced

HOUSE FILE 89

BY HUNTER

A BILL FOR

1 An Act requiring the payment of local prevailing wage rates to
2 persons working on public improvements for public bodies,
3 and providing penalties and including effective date
4 provisions.

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

1 Section 1. Section 84A.5, subsection 4, Code 2011, is
2 amended to read as follows:

3 4. The division of labor services is responsible for the
4 administration of the laws of this state under chapters 88,
5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
6 and 94A, and section 85.68. The executive head of the division
7 is the labor commissioner, appointed pursuant to section 91.2.

8 Sec. 2. NEW SECTION. **91F.1 Short title.**

9 This chapter shall be known and may be cited as the "Public
10 Improvement Quality Protection Act".

11 Sec. 3. NEW SECTION. **91F.2 Public policy.**

12 It is in the public interest that public improvements
13 are completed by the best means and highest quality of labor
14 reasonably available, and that workers working on public
15 improvements be compensated according to the real value of the
16 services they perform. It is the policy of this state that the
17 wages of workers working on public improvements should be at
18 least equal to the prevailing wage rates paid for similar work
19 by responsible contractors in the community as a whole in order
20 to accomplish all of the following:

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

24 2. Ensure that contractors compete with one another
25 on the basis of the ability to perform work competently
26 and efficiently while maintaining community-established
27 compensation standards.

28 3. Recognize that local participation in public
29 improvements and family wage income and benefits are essential
30 to the protection of community standards.

31 4. Encourage training and education of workers to industry
32 skills standards.

33 5. Encourage contractors and subcontractors to use funds
34 allocated for employee fringe benefits for the actual purchase
35 of those benefits.

1 Sec. 4. NEW SECTION. **91F.3 Definitions.**

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Commissioner*" means the labor commissioner appointed
5 pursuant to section 91.2.

6 2. "*Contractor*" or "*subcontractor*" means a person who
7 undertakes, offers to undertake, purports to have the capacity
8 to undertake, or submits a bid, individually or through others,
9 to engage in a public improvement.

10 3. "*Custom fabrication*" means the fabrication of plumbing,
11 heating, cooling, ventilation, architectural systems,
12 structural systems, exhaust duct systems, or mechanical
13 insulation.

14 4. "*Division*" means the division of labor of the department
15 of workforce development.

16 5. *a.* "*Fringe benefits*" means the following for the
17 provision or purchase of any of the benefits enumerated in
18 paragraph "*b*":

19 (1) The contribution irrevocably made by a contractor or
20 subcontractor to a trustee or to a third person pursuant to a
21 plan, fund, or program.

22 (2) The costs to the contractor or subcontractor which
23 may be reasonably anticipated in providing benefits to
24 workers pursuant to an enforceable commitment to carry out a
25 financially responsible plan or program, given in writing to
26 the workers affected.

27 *b.* (1) Medical or hospital care.

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

29 (3) Supplemental unemployment benefits.

30 (4) Life insurance.

31 (5) Disability and sickness insurance.

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

33 (7) Vacation or holiday pay.

34 (8) Defraying costs of apprenticeship programs approved by
35 and registered with the United States department of labor's

1 office of apprenticeship.

2 6. "*Interested party*" means any of the following:

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

5 b. A subcontractor of a contractor mentioned in a bid
6 referred to in paragraph "a".

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

9 d. A labor organization that represents workers engaged
10 in the same craft or classification as workers employed by a
11 contractor or subcontractor described in either paragraph "a"
12 or "b" and that exists, in whole or in part, for the purpose
13 of negotiating with employers concerning the wages, hours, or
14 terms and conditions of employment of employees.

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

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

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

22 9. "*Prevailing wage rate*" means the hourly wage plus
23 fringe benefits, which the commissioner determines prevails in
24 accordance with this chapter, including all of the following:

25 a. Apprentice ratios and the prevailing apprentice pay
26 levels for each craft, classification, or type of worker which
27 the commissioner determines prevails in accordance with section
28 91F.5.

29 b. A prevailing rate for overtime pay for work in excess
30 of the normal prevailing workday and for weekend overtime pay
31 for each craft, classification, or type of worker, including
32 apprentices.

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

35 10. "*Public body*" means the state and any of its political

1 subdivisions, including but not limited to a county, city,
2 township, school district, state board of regents, and public
3 utility. For the purposes of this chapter, "public utility"
4 includes municipally owned utilities and municipally owned
5 waterworks.

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

8 (1) Construction, alteration, reconstruction, repair,
9 rehabilitation, refinishing, refurbishing, remodeling,
10 renovation, custom fabricating, maintenance, landscaping,
11 improving, moving, wrecking, painting, decorating, or
12 demolishing of, or adding to or subtracting from any building,
13 structure, highway, road, street, bridge, alley, sewer, ditch,
14 sewage disposal plant, waterworks, parking facility, railroad,
15 excavation or other structure, project, development, or
16 improvement, or any part thereof undertaken by a public body,
17 including any of the following related activities:

18 (a) The erection of scaffolding or other structures or
19 works.

20 (b) The maintenance, repair, assembly, or disassembly of
21 equipment.

22 (c) The testing of materials.

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

25 (e) The cleaning of grounds or structures.

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

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

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

35 (4) Work that is performed on any property or premises

1 dedicated exclusively or nearly so to the completion of a
2 public improvement, and transportation of supplies, material,
3 and equipment to or from the property or premises undertaken
4 by a public body.

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

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

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

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

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

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

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

34 *c.* The individual providing the labor or services furnishes
35 the tools and equipment necessary to provide the labor or

1 services.

2 *d.* The individual providing the labor or services has the
3 authority to hire and fire employees to perform the labor or
4 services.

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

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

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

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

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

23 (4) Labor or services are performed only pursuant to a
24 written contract.

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

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

31 **Sec. 5. NEW SECTION. 91F.4 Administration.**

32 The commissioner and the division shall administer this
33 chapter and the commissioner shall adopt rules for the
34 administration and enforcement of this chapter as provided in
35 section 91.6.

1 Sec. 6. NEW SECTION. **91F.5 Determination of prevailing**
2 **wages.**

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

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

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

32 4. *a.* In determining the annual prevailing wage rate
33 for any craft, classification, or type of worker, the
34 commissioner shall ascertain and consider the applicable
35 wage rates and fringe benefits established by collective

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

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

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

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

29 6. *a.* At any time within fifteen days after the division
30 has published on the department of workforce development's
31 internet site the annual prevailing wage rates for each
32 classification, craft, or other type of worker in the locality,
33 any interested person affected may object to the determination
34 or the part of the determination as the interested person
35 may deem objectionable by filing a written notice with the

1 commissioner by restricted certified mail as defined in
2 section 618.15. When objecting to a prevailing wage rate
3 determination, the interested person shall submit, as a
4 part of the written notice, the prevailing wage rate the
5 interested person believes to be the correct prevailing wage
6 rate determination, stating the specific grounds to support
7 that position. Upon receipt of the notice of objection, the
8 commissioner shall reconsider the determination and shall
9 affirm or modify the determination and reply in writing by
10 restricted certified mail to the interested person within
11 fifteen days from the date of the receipt of the notice of
12 objection. Any modification to the prevailing wage rate
13 determination shall be effective on the date the modification
14 is published by the commissioner.

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

29 7. The party requesting a hearing shall have the burden of
30 establishing that the annual prevailing wage rate determination
31 for that locality was not determined in accordance with this
32 chapter. If the party requesting a hearing under this section
33 objects to the commissioner's failure to include a craft,
34 classification, or type of worker within the annual prevailing
35 wage rate determination in the locality, the objector shall

1 have the burden of establishing that there is no existing
2 prevailing wage rate classification for the particular craft,
3 classification, or type of worker in any of the localities
4 under consideration.

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

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

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

32 Sec. 7. NEW SECTION. 91F.6 Payment of prevailing wages
33 required.

34 1. Contractors and subcontractors engaged in a public
35 improvement shall pay not less than the current specified

1 prevailing wage rates to all of their workers engaged in the
2 public improvement. However, this chapter does not prohibit
3 the payment of more than the prevailing wage rate to any
4 workers engaged in a public improvement.

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

11 **Sec. 8. NEW SECTION. 91F.7 Requirements for public**
12 **improvements.**

13 1. The public body awarding a contract for a public
14 improvement or otherwise undertaking a public improvement shall
15 specify in the call for bids for the contract that this chapter
16 applies to the public improvement.

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

34 3. If a contract is let for a public improvement requiring
35 the payment of prevailing wage rates, the public body

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

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

33 5. If a subcontract is let for a public improvement
34 requiring the payment of the prevailing wage rate, the
35 contractor to whom the contract is awarded shall insert

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

19 6. A contractor or subcontractor engaging in a public
20 improvement shall submit a performance bond in an amount
21 determined by the public body which bond shall include a
22 provision that will guarantee the payment of the prevailing
23 wage rates as required by the contract.

24 7. Before final payment is made by or on behalf of a public
25 body of any sum or sums due on a public improvement, the
26 treasurer of the public body or other officer or person charged
27 with the custody and disbursement of the funds of the public
28 body shall require the contractor and subcontractor to file a
29 written statement with the public body, in a form satisfactory
30 to the division, certifying to the amounts then due and owing
31 from the contractor and subcontractor to any and all workers
32 for wages due on account of the public improvement, setting
33 forth the names of the persons whose wages are unpaid and
34 the amount due to each respectively. The statement shall be
35 verified by the oath of the contractor or subcontractor, as the

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

19 8. The public body awarding a contract for a public
20 improvement or otherwise undertaking a public improvement shall
21 notify the commissioner in writing, on a form prescribed by
22 the commissioner, if a contract subject to the provisions of
23 this chapter has been awarded. The public body shall file
24 the notification with the commissioner within thirty days
25 after the contract is awarded or before commencement of the
26 public improvement, and shall include a list of all first-tier
27 subcontractors.

28 **Sec. 9. NEW SECTION. 91F.8 Federal public improvements —**
29 **not applicable.**

30 The provisions of this chapter shall not be applicable
31 to public improvements financed entirely by federal funds
32 which require a prevailing wage rate determination by the
33 United States department of labor. However, unless a federal
34 provision applies, if a public improvement is financed in part
35 by a public body and in part by federal funds, the higher of the

1 prevailing wage rates shall prevail for the public improvement.

2 Sec. 10. NEW SECTION. 91F.9 Records required.

3 1. While participating in a public improvement, the
4 contractor and each subcontractor shall do all of the
5 following:

6 a. Make and keep, for a period of not less than three years,
7 accurate records of all workers employed by the contractor or
8 subcontractor on the public improvement. The records shall
9 include each worker's name, address, telephone number when
10 available, social security number, trade classification, the
11 hourly wages paid in each pay period, the number of hours
12 worked each day, and the starting and ending times of work each
13 day.

14 b. Submit weekly a certified payroll to the public body
15 in charge of the public improvement. The certified payroll
16 shall consist of a complete copy of the records identified in
17 paragraph "a". The certified payroll shall be accompanied by a
18 statement signed by the contractor or subcontractor which avers
19 that the records are true and accurate and the hourly wages
20 paid to each worker are not less than the prevailing wage rate
21 required by this chapter.

22 2. The public body in charge of the public improvement
23 shall keep the records submitted in accordance with subsection
24 1, paragraph "b", for a period of not less than three years.
25 The records shall be considered public records and be made
26 available in accordance with chapter 22. Personal information
27 submitted in accordance with subsection 1, paragraph "a",
28 including names, addresses, social security numbers, telephone
29 numbers, and other identifying information shall remain
30 confidential and shall not be made public.

31 3. The contractor and each subcontractor shall make
32 available for inspection the records identified in subsection
33 1, paragraph "a", to the public body in charge of the public
34 improvement, its officers and agents, and to the division.

35 4. For the purpose of verifying the accuracy of the records

1 submitted pursuant to this section, the contractor and each
2 subcontractor shall make its workers available at the site of
3 the public improvement for interview by the public body in
4 charge of the public improvement, its officers and agents, and
5 the division.

6 5. Contractors and subcontractors performing work on public
7 improvements subject to this chapter shall post the prevailing
8 wage rates for each craft, classification, or type of workers
9 involved in the public improvement in a prominent and easily
10 accessible place at the site of the public improvement or at
11 the place or places used by the contractor or subcontractor to
12 pay workers their wages.

13 Sec. 11. NEW SECTION. 91F.10 Powers of commissioner.

14 The commissioner shall do all of the following:

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

18 2. Sue for injunctive relief against the awarding of a
19 contract, the undertaking of a public improvement, or the
20 continuation of a public improvement when the prevailing wage
21 rate requirements of this chapter have not been met.

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

24 4. a. Enter and inspect the place of business or employment
25 of a contractor, subcontractor, or workers employed on a public
26 improvement in this state, for the purpose of examining and
27 inspecting books, registers, payrolls, and other records of a
28 contractor or subcontractor that in any way relate to or have a
29 bearing upon the question of wages, hours, and other conditions
30 of employment of workers covered under this chapter.

31 b. Copy the books, registers, payrolls, and other
32 records as the commissioner or the commissioner's authorized
33 representative deems necessary or appropriate.

34 c. Question the workers for the purpose of ascertaining
35 whether the provisions of this chapter have been and are being

1 complied with.

2 *d.* Administer oaths, take or cause to be taken depositions
3 of witnesses, and require by subpoena the attendance and
4 testimony of witnesses and the production of all books,
5 registers, payrolls, and other evidence relative to the matter
6 under investigation or hearing.

7 5. Require from a contractor or subcontractor full and
8 correct statements in writing, including sworn statements,
9 with respect to wages, hours, names, addresses, and other
10 information pertaining to its workers and their employment,
11 as the commissioner or the commissioner's authorized
12 representative may deem necessary or appropriate.

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

31 7. If a contractor or subcontractor fails to provide
32 requested records in accordance with subsection 6 within ten
33 days, direct, within fifteen days after the end of the ten-day
34 period, the fiscal or financial officer charged with the
35 custody and disbursements of the funds of the public body,

1 which contracted for construction of the public improvement or
2 undertook the public improvement, to pay directly to workers
3 employed by the contractor or subcontractor from the amount
4 withheld from the contractor or subcontractor pursuant to
5 subsection 6 any prevailing wage rates found to be due and
6 payable to the workers.

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

10 Sec. 12. NEW SECTION. 91F.11 **Notice of violations.**

11 1. For purposes of this section:

12 a. *"Accurate records"* means the payroll records required
13 to be submitted to the public body in charge of the public
14 improvement as required by section 91F.9. *"Accurate records"*
15 also means the hourly rate of contribution and costs paid for
16 fringe benefits and whether the contributions and costs of the
17 fringe benefits were paid into a fund or paid directly to the
18 worker.

19 b. *"Decision"* means a determination by the division that a
20 single violation of this chapter has occurred, warranting the
21 commissioner to issue a notice of violation to a contractor or
22 subcontractor.

23 c. *"Notice of second violation"* is a formal written notice
24 issued by the division advising a contractor or subcontractor
25 that a second or subsequent violation has occurred within three
26 years from the date of the notice of a first violation.

27 d. *"Notice of violation"* means a formal written notice
28 issued by the division to a contractor or subcontractor
29 that the division has made a decision that the contractor or
30 subcontractor has violated this chapter.

31 e. *"Violation"* means a written decision by the division that
32 a contractor or subcontractor has done one of the following:

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

35 (2) Failed to keep accurate records as required by this

1 chapter.

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

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

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

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

12 (7) Failed to insert into each subcontract or lower-tiered
13 subcontract and into the public improvement specifications
14 for each subcontract or lower-tiered subcontract or provide a
15 written instrument if no contract exists, a written stipulation
16 that not less than the prevailing wage rate be paid as required
17 by this chapter, and a statement that if it is found that a
18 subcontractor's workers engaged in the public improvement have
19 been paid at a rate of wages less than the prevailing wage rate
20 required to be paid by the contract, the public body shall
21 terminate the subcontractor's right to proceed with the work.

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

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

27 2. After receipt of a complaint or on the division's
28 initiative, the commissioner shall review the investigative
29 file to determine whether a violation has occurred for
30 which the contractor or subcontractor must be given notice.
31 All information and observations made during an audit or
32 investigation shall be considered and shall constitute the
33 basis for the division's decision that this chapter has
34 been violated and that a notice of violation is required
35 to be issued. The notice of violation shall identify the

1 specific violation and the amount of moneys estimated due the
2 division and in controversy based on reasons contained in the
3 investigative file.

4 3. In making a decision that a contractor or subcontractor
5 has failed to allow the commissioner access to accurate
6 records, the commissioner shall rely on the information
7 contained in the investigative file, the certified payroll
8 records submitted to the public body in charge of the public
9 improvement or any other information, and shall assess a
10 separate violation for each day worked by each worker on the
11 public improvement. Each decision of a separate violation
12 shall be listed in the notice of violation.

13 4. In determining that this chapter has been violated and
14 that the issuance of a notice of violation is required, the
15 commissioner shall base the decision on one or any combination
16 of the following reasons:

17 a. The severity of the violations, which includes the
18 following:

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

21 (2) The activity or conduct complained of that violates the
22 requirements of this chapter and was not merely a technical,
23 nonsubstantive error. Examples of a technical error include
24 but are not limited to a mathematical error, bookkeeping error,
25 transposition of numbers, or computer or programming error.

26 b. The nature and duration of the present violation and the
27 prior history of the contractor or subcontractor related to
28 this history. The prior history considered shall not exceed
29 seven years before the date of the notice of violation.

30 c. Whether the contractor or subcontractor submitted
31 certified payroll records with the public body in charge of the
32 public improvement; whether the contractor or subcontractor
33 has kept payroll records and accurate records for three years;
34 and whether the contractor or subcontractor produced certified
35 payroll records in accordance with section 91F.9.

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

3 5. The notices of the first, second, and subsequent
4 violations shall be sent by restricted certified mail,
5 addressed to the last known address of the contractor or
6 subcontractor involved. The notices shall contain a reference
7 to the specific provisions of this chapter alleged to have been
8 violated, identify the particular public improvement involved,
9 identify the conduct complained of, and identify whether the
10 notice is a first, second, or subsequent notice of violation,
11 and include a contractor's or subcontractor's statement of
12 liabilities.

13 Sec. 13. NEW SECTION. 91F.12 Violations — remedies.

14 1. If the commissioner determines that a public body has
15 divided a public improvement into more than one contract for
16 the purpose of avoiding compliance with this chapter, the
17 commissioner shall issue an order compelling compliance. In
18 making a determination whether a public body has divided a
19 public improvement into more than one contract for the purpose
20 of avoiding compliance with this chapter, the commissioner
21 shall consider all of the following:

22 *a.* The physical separation of the public improvement
23 structures.

24 *b.* The timing of the work on the public improvement phases
25 or structures.

26 *c.* The continuity of public improvement contractors and
27 subcontractors working on public improvement parts or phases.

28 *d.* The manner in which the public body and the contractor
29 and subcontractors administer and implement work on the public
30 improvement.

31 2. A worker employed by the contractor or subcontractor who
32 is paid less than the specified prevailing wage rate under this
33 chapter shall have a private right of action for the difference
34 between the amount so paid and the specified prevailing wage
35 rate, together with costs and reasonable attorney fees as shall

1 be allowed by the court.

2 3. The contractor or subcontractor shall additionally be
3 liable to the department for fifty percent of the amount of
4 underpayments and shall be additionally liable to the worker
5 for punitive damages in an amount equal to five percent of the
6 liability to the division for underpayments for each month
7 following the date of payment during which underpayments remain
8 unpaid, together with costs and reasonable attorney fees as
9 shall be allowed by the court.

10 4. If a second or subsequent action to recover underpayments
11 is brought against a contractor or subcontractor within a
12 three-year period and the contractor or subcontractor is
13 found liable for underpayments to a worker, the contractor or
14 subcontractor shall be liable to the division for seventy-five
15 percent of the amount of underpayments payable as a result of
16 the second or subsequent action, additionally liable for ten
17 percent of the amount of the liability to the division for
18 underpayments for each month following the date of payment
19 during which the underpayments remain unpaid, and liable for
20 triple the difference between the amount so paid to the worker
21 and the specified prevailing wage rate required, together with
22 costs and reasonable attorney fees as shall be allowed by the
23 court. The three-year period begins to run from the date the
24 contractor or subcontractor is determined liable for the first
25 violation.

26 5. The commissioner and any interested party shall also
27 have a right of action on behalf of a worker who has a right of
28 action under this chapter. An action brought to recover the
29 same shall be deemed to be a suit for wages, and all judgments
30 entered in the action shall have the same force and effect as
31 other judgments for wages. At the request of a worker employed
32 by a contractor or subcontractor who is paid less than the
33 prevailing wage rate required by this chapter, the commissioner
34 may take an assignment of the wage claim in trust for the
35 assigning worker and may bring any legal action necessary to

1 collect the claim, and the contractor or subcontractor shall
2 be required to pay the expenses of the division incurred in
3 collecting the claim.

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

8 7. It is a violation of this chapter to do any of the
9 following:

10 a. To request or demand, either before or after the worker
11 is engaged, that a worker pay back, return, donate, contribute,
12 or give any part or all of the worker's wages, salary, or thing
13 of value, to any person, upon the statement, representation, or
14 understanding that failure to comply with the request or demand
15 will prevent the worker from procuring or retaining employment.

16 b. To directly or indirectly pay, request, or authorize any
17 other person to violate this chapter.

18 This subsection does not apply to an agent or representative
19 of a duly constituted labor organization acting in the
20 collection of dues or assessments of the organization.

21 8. In addition to other penalties provided under this
22 chapter, whoever induces a worker working on a public
23 improvement subject to this chapter to give up or forego
24 any part of the prevailing wage rates to which the worker
25 is entitled under this chapter by threat not to employ
26 or by threat of dismissal from employment is guilty of a
27 serious misdemeanor. An agreement between the worker and the
28 contractor or subcontractor to work for less than the specified
29 prevailing wage rate shall not be a defense to criminal
30 prosecution.

31 9. a. A contract shall not be awarded to a contractor
32 or subcontractor who, on two separate occasions within a
33 three-year period, has been determined to have violated
34 this chapter, or to any firm, corporation, partnership, or
35 association in which the contractor or subcontractor has any

1 interest until five years have elapsed from the date on which
2 a final determination is rendered finding the contractor or
3 subcontractor in violation of this chapter.

4 *b.* For the purposes of this subsection, "*any interest*" means
5 an interest in the entity bidding or performing work on the
6 public improvement, whether as an owner, partner, officer,
7 manager, employee, agent, consultant, or representative. "*Any*
8 *interest*" includes but is not limited to all instances where the
9 barred contractor or subcontractor receives payments, whether
10 cash or any other form of compensation, from any entity bidding
11 or performing work on the public improvement, or enters into
12 a contract with the entity bidding or performing work on the
13 public improvement for services performed or to be performed
14 under contract that have been or will be assigned or sublet,
15 or for vehicles, tools, equipment, or supplies that have been
16 or will be sold, rented, or leased during the period from the
17 initiation of the barring proceedings until the end of the term
18 of the barring period. "*Any interest*" does not include shares
19 held in a publicly traded corporation if the shares were not
20 received as compensation after the barring of an entity bidding
21 or performing work on a public improvement.

22 10. If the division determines that a contractor or
23 subcontractor has violated this chapter on two separate
24 occasions within a three-year period, the division shall list
25 on the department of workforce development's internet site and
26 keep on record the name of the contractor or subcontractor and
27 give notice by restricted certified mail of the list to any
28 public body requesting the list.

29 11. Upon a determination that a contractor or subcontractor
30 has violated this chapter on two separate occasions within a
31 three-year period, the division shall notify the violating
32 contractor or subcontractor by restricted certified mail. The
33 contractor or subcontractor has ten working days to request
34 of the division a hearing before an administrative law judge
35 on the alleged violation. Failure to respond within ten

1 working days shall result in automatic and immediate barring
2 of the violator from work and placement and publication of the
3 violator's name on the department of workforce development's
4 internet site. If the contractor or subcontractor requests a
5 hearing within ten working days by restricted certified mail,
6 the department of inspections and appeals shall set a hearing
7 before an administrative law judge on the alleged violation.
8 The hearing shall take place no later than forty-five calendar
9 days after the receipt by the division of the request for a
10 hearing. An action by an administrative law judge constitutes
11 final agency action and is subject to judicial review under
12 section 17A.19.

13 12. The attorney general shall prosecute the cases
14 identified in this section upon complaint by the commissioner
15 or by any interested person. In any proceeding brought
16 pursuant to this section, the commissioner shall be represented
17 by the attorney general.

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

20 Sec. 14. NEW SECTION. 91F.13 **Apprentices.**

21 This chapter shall not prevent the employment of apprentices
22 upon public improvements. However, an apprentice employed
23 on a public improvement must be registered with the United
24 States department of labor's office of apprenticeship under
25 an apprenticeship program registered with that office, paid
26 the proper wages specified in the standards of apprenticeship,
27 and engaged only in the trade to which the apprentice is
28 registered. If the apprentice is employed on a public
29 improvement in a trade to which the apprentice is not
30 registered with the United States department of labor's office
31 of apprenticeship, the apprentice shall be treated as any other
32 worker under this chapter.

33 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection
34 3, shall not apply to this Act.

35 Sec. 16. EFFECTIVE DATE. This Act takes effect January 1,

1 2012.

2 EXPLANATION

3 This bill requires a contractor to pay workers the same
4 hourly wage plus fringe benefits for a public improvement
5 costing more than \$25,000 as the contractor would pay workers
6 for a private construction or improvement project. The bill
7 allows the per-hour wage rate to be based on what is normally
8 paid in the area by contractors for similar projects, and to
9 be adjusted on a yearly basis by the department of workforce
10 development.

11 The wage rates that the workers must be paid shall also
12 include benefits such as medical care, life insurance, overtime
13 pay, and vacation and holiday pay. The bill applies to any
14 public improvement that receives money from a public body and
15 includes most types of public improvements from construction to
16 road maintenance to painting to hauling.

17 The labor commissioner determines the wage rates for
18 specific geographical areas and for specific crafts,
19 classifications, and types of workers. This information must
20 be posted on the department of workforce development's internet
21 site. In determining what the wage rate for a worker is, the
22 commissioner may consult collective bargaining agreements, wage
23 rate determinations for federal projects in the same area, and
24 other information the department may receive from contractors
25 who participate in an apprenticeship program approved by the
26 federal office of apprenticeship.

27 Any person affected by the wage rates has 15 days after the
28 department of workforce development has posted the wage rates
29 on its internet site to object in writing, stating the specific
30 reason for the objection, to the labor commissioner. The
31 commissioner must reconsider the determination being objected
32 to, and either affirm or modify it within 15 days of receiving
33 the objection.

34 If the commissioner declines to modify the determination,
35 within 10 days, the person affected may submit an objection

1 in writing to the division, stating the specific reasons for
2 the objection. A hearing must be set by the department of
3 inspections and appeals before an administrative law judge
4 within 45 days after the objection is filed. The person who
5 filed the objection must show the administrative law judge
6 that the wage rate was somehow made in error. The division
7 is required to show how it determined the wage rate. The
8 administrative law judge must make a decision about the wage
9 rate within 30 days and it is considered a final determination.

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

15 The bill also requires the public body to monitor the
16 contractors and subcontractors to ensure that the wage rate
17 is paid. A call for bids must state that the wage rate must
18 be included in the bids for the public improvement. All
19 bids shall list the specific wage rates for each craft,
20 classification, and type of worker needed for the public
21 improvement. All contractors and subcontractors are required
22 to sign a contract that states they will pay workers the wage
23 rate determined by the division. If the contractors and
24 subcontractors are found to not be paying the wage rate, the
25 contract states that the contractor's or subcontractor's right
26 to work on the public improvement and get paid for work already
27 done may be terminated.

28 Before the contractor or subcontractor receives the final
29 payment for the public improvement, the public body overseeing
30 the public improvement must certify the bills include proper
31 amounts due the workers, and the contractor or subcontractor
32 must swear under oath that the records are accurate.

33 The bill does not apply to public improvement projects
34 funded by the federal government. However, unless a federal
35 provision applies, if a public improvement project is financed

1 by both a state public body and the federal government, then
2 the higher of the applicable wage rates shall be paid to the
3 workers.

4 The bill also requires that contractors and subcontractors
5 keep detailed records for at least three years about the
6 workers, the rates paid, and the hours worked for each
7 public improvement. The records are public records and must
8 be available for inspection. However, workers' personal
9 information is not available to the public for inspection.
10 During the public improvement, a contractor or subcontractor
11 must present a certified weekly payroll to demonstrate that
12 the correct and full wage rate is being paid to workers. The
13 contractors and subcontractors must make all workers available
14 on-site to officials for interviews so that the records'
15 accuracy can be checked. Contractors and subcontractors must
16 also post the wage rates for each craft, classification, and
17 type of worker in a public place where workers can see the
18 posting or at the place where they receive their wages.

19 The commissioner is given specific powers for investigation,
20 enforcement, and penalization. The commissioner may sue to
21 prevent a contractor or subcontractor from being awarded
22 a contract for a public improvement when the wage rate
23 requirements have not been met. The commissioner is given the
24 power to withhold payments if a contractor or subcontractor
25 does not produce records upon request and to pay the workers
26 directly if the contractor or subcontractor continues to refuse
27 to provide records.

28 After receiving a complaint, the commissioner shall
29 investigate whether there has been a violation. If the
30 commissioner determines there has been a violation, the
31 contractor or subcontractor must be given notice of that
32 violation. The notice is a formal written statement from the
33 department of workforce development that states the specific
34 violation and the amount of money due as a penalty.

35 If a public body has divided up a public improvement to

1 avoid having to pay the wage rate, the commissioner shall order
2 compliance. A worker who is paid less than the wage rate set by
3 this law can sue for the difference in payment and collect the
4 difference along with costs and attorney fees in court.

5 The contractor or subcontractor shall also have to pay the
6 department of workforce development 50 percent of the amount of
7 underpayment and is liable to the worker for punitive damages
8 of up to 5 percent of the underpayments for each month the
9 underpayment remains unpaid plus costs and attorney fees.

10 If a second or subsequent action for underpaying a worker
11 is brought against a contractor or subcontractor within
12 a three-year period and the contractor or subcontractor
13 is liable, the contractor or subcontractor shall pay the
14 department of workforce development 75 percent of the amount of
15 underpayment, pay the department 10 percent of the penalty for
16 underpayments for each month following it that the underpayment
17 remains unpaid, and is liable for triple the difference between
18 the amount paid to the worker and the amount due under the wage
19 rate set by the department plus costs and attorney fees.

20 The commissioner or any interested party has a right of
21 action on behalf of any individual who has a right of action
22 under the bill. The commissioner may file a lawsuit in trust
23 for a worker who assigns the claim and then bring legal action
24 to collect the claim. The contractor shall be required to pay
25 the expenses for collection of the claim.

26 A person may not ask, demand, receive, donate, give, or agree
27 to give back any part of a worker's wages or thing of value to
28 any person who asserts that failing to do so will prevent the
29 worker from keeping or getting work. However, this provision
30 does not apply to authorized labor organization representatives
31 collecting dues or assessments.

32 In addition to other penalties under this law, anyone who
33 attempts to get a worker to give up any part of compensation
34 on a public improvement by threat not to hire or by threat of
35 firing is guilty of a serious misdemeanor. Any agreement to

1 work for less than the determined wage rate is not a defense to
2 criminal prosecution.

3 If a contractor or subcontractor has violated this law twice
4 within a three-year period, the contractor or subcontractor
5 or any company or group associated with the contractor or
6 subcontractor shall not be given any public improvement work
7 for five years. The department of workforce development
8 shall keep a list on its internet site of contractors and
9 subcontractors who have violated this law twice within a
10 three-year period and notify public bodies by restricted
11 certified mail.

12 A contractor or subcontractor who has been notified of the
13 second violation has 10 days to request a hearing before an
14 administrative law judge. If no hearing is requested, the
15 contractor is barred from receiving public improvement work and
16 its name and information is posted on the department's internet
17 site. A hearing must be held within 45 days of the request.

18 Apprentices employed on a public improvement project must
19 be registered with the federal office of apprenticeship.
20 Apprentices must receive the wages set out in the standards of
21 apprenticeship and do only the work specified in the trade to
22 which they are apprenticed. An apprentice not registered with
23 the federal program shall be paid the wage rate the same as any
24 other worker.

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

32 The bill takes effect January 1, 2012.