

House File 28 - Introduced

HOUSE FILE 28

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 providing remedies and penalties, and including effective
4 date provisions.

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

1 Section 1. Section 84A.5, subsection 4, Code 2019, 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 sections 73A.21 and 85.68. The executive head of
7 the division is the labor commissioner, appointed pursuant to
8 section 91.2.

9 Sec. 2. Section 91.4, subsection 2, Code 2019, is amended
10 to read as follows:

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

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

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

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

30 It is in the public interest that public improvements
31 are completed by the best means and highest quality of labor
32 reasonably available, and that workers working on public
33 improvements be compensated according to the real value of the
34 services they perform. It is the policy of this state that the
35 wages of workers working on public improvements should be at

1 least equal to the prevailing wage rates paid for similar work
2 by responsible contractors in the community as a whole in order
3 to accomplish all of the following:

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

7 2. Ensure that contractors compete with one another
8 on the basis of the ability to perform work competently
9 and efficiently while maintaining community-established
10 compensation standards.

11 3. Recognize that local participation in public
12 improvements and family wage income and benefits are essential
13 to the protection of community standards.

14 4. Encourage training and education of workers to industry
15 skills standards.

16 5. Encourage contractors and subcontractors to use funds
17 allocated for employee fringe benefits for the actual purchase
18 of those benefits.

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

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "*Commissioner*" means the labor commissioner appointed
23 pursuant to section 91.2.

24 2. "*Contractor*" or "*subcontractor*" means a person who
25 undertakes, offers to undertake, purports to have the capacity
26 to undertake, or submits a bid, individually or through others,
27 to engage in a public improvement.

28 3. "*Custom fabrication*" means the fabrication of plumbing,
29 heating, cooling, ventilation, architectural systems,
30 structural systems, exhaust duct systems, or mechanical
31 insulation.

32 4. "*Division*" means the division of labor of the department
33 of workforce development.

34 5. a. "*Fringe benefits*" means the following for the
35 provision or purchase of any of the benefits enumerated in

1 paragraph "b":

2 (1) The contribution irrevocably made by a contractor or
3 subcontractor to a trustee or to a third person pursuant to a
4 plan, fund, or program.

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

10 b. (1) Medical or hospital care.

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

12 (3) Supplemental unemployment benefits.

13 (4) Life insurance.

14 (5) Disability and sickness insurance.

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

16 (7) Vacation or holiday pay.

17 (8) Defraying costs of apprenticeship programs approved by
18 and registered with the United States department of labor's
19 office of apprenticeship.

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

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

23 b. A subcontractor of a contractor mentioned in a bid
24 referred to in paragraph "a".

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

27 d. A labor organization that represents workers engaged
28 in the same craft or classification as workers employed by a
29 contractor or subcontractor described in either paragraph "a"
30 or "b" and that exists, in whole or in part, for the purpose
31 of negotiating with employers concerning the wages, hours, or
32 terms and conditions of employment of employees.

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

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

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

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

8 a. Apprentice ratios and the prevailing apprentice pay
9 levels for each craft, classification, or type of worker which
10 the commissioner determines prevails in accordance with section
11 91F.5.

12 b. A prevailing rate for overtime pay for work in excess
13 of the normal prevailing workday and for weekend overtime pay
14 for each craft, classification, or type of worker, including
15 apprentices.

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

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

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

26 (1) Construction, alteration, reconstruction, repair,
27 rehabilitation, refinishing, refurbishing, remodeling,
28 renovation, custom fabricating, maintenance, landscaping,
29 improving, moving, wrecking, painting, decorating, or
30 demolishing of, or adding to or subtracting from any building,
31 structure, highway, road, street, bridge, alley, sewer, ditch,
32 sewage disposal plant, waterworks, parking facility, railroad,
33 excavation or other structure, project, development, or
34 improvement, or any part thereof undertaken by a public body,
35 including any of the following related activities:

1 (a) The erection of scaffolding or other structures or
2 works.

3 (b) The maintenance, repair, assembly, or disassembly of
4 equipment.

5 (c) The testing of materials.

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

8 (e) The cleaning of grounds or structures.

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

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

15 (3) The installation, repair, maintenance, or calibration
16 of monitoring equipment for underground storage tanks
17 undertaken by a public body.

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

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

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

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

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

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

8 a. The individual provides labor or services free from the
9 direction or control over the means and manner of providing the
10 labor or services, subject only to the right of the person for
11 whom the labor or services are provided to specify the desired
12 results.

13 b. The individual providing the labor or services is
14 responsible for obtaining business registrations or licenses
15 required by state law or local ordinance to provide the labor
16 or services.

17 c. The individual providing the labor or services furnishes
18 the tools and equipment necessary to provide the labor or
19 services.

20 d. The individual providing the labor or services has the
21 authority to hire and fire employees to perform the labor or
22 services.

23 e. Payment for the labor or services is made upon
24 completion of the performance of specific portions of a public
25 improvement, or is made on the basis of a periodic retainer.

26 f. The individual providing the labor or services represents
27 to the public that the labor or services are to be provided
28 by an independently established business. An individual is
29 engaged in an independently established business when four or
30 more of the following circumstances exist:

31 (1) Labor or services are primarily performed at a location
32 separate from the individual's residence or in a specified
33 portion of the residence that is set aside for performing labor
34 or services.

35 (2) Commercial advertising or business cards are purchased

1 by the individual, or the individual is a member of a trade or
2 professional association.

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

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

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

10 (6) The individual assumes financial responsibility
11 for errors and omissions in the performance of the labor or
12 services as evidenced by insurance, performance bonds, and
13 warranties relating to the labor or services provided.

14 Sec. 6. NEW SECTION. **91F.4 Administration — rules.**

15 1. The commissioner and the division shall administer this
16 chapter.

17 2. The commissioner shall adopt rules pursuant to chapter
18 17A to administer this chapter.

19 Sec. 7. NEW SECTION. **91F.5 Determination of prevailing
20 wages.**

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

29 2. The commissioner shall announce all prevailing wage rate
30 determinations by locality and give notice by posting them
31 on the portion of the department of workforce development's
32 internet site related to the division. A printed version of
33 the prevailing wage rates for the state shall be available to
34 the public upon request to the division.

35 3. The public body awarding any contract for a public

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

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

31 b. The minimum annual prevailing wage rate determination
32 established by the department shall not be lower than the
33 prevailing wage rate determination that may exist for federal
34 public improvements within the locality and in the nearest
35 labor market area.

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

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

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

33 *b.* If the commissioner declines to modify the determination,
34 within ten days upon receiving receipt of the commissioner's
35 decision, the interested person affected may submit in writing

1 the objection to the division by restricted certified mail,
2 stating the specified grounds of the objection. The department
3 of inspections and appeals shall be notified of the objection
4 and set a date for a hearing before an administrative law judge
5 on the objection, after giving notice by restricted certified
6 mail to the interested person and the division at least ten
7 days before the date of the hearing of the time and place of
8 the hearing. The hearing shall be held within forty-five days
9 after the objection is filed, and shall not be postponed or
10 reset for a later date except upon the consent, in writing, of
11 the interested person and the division.

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

23 8. The administrative law judge may in the administrative
24 law judge's discretion hear each written objection filed
25 separately or consolidate for hearing any one or more written
26 objections filed with the division. At the hearing, the
27 division shall introduce into evidence the investigation it
28 instituted which formed the basis of its determination, and the
29 division or any interested objectors may introduce evidence
30 that is material to the determination. The administrative
31 law judge shall rule upon each written objection and make a
32 final determination, as the administrative law judge believes
33 the evidence warrants, and promptly serve a copy of the final
34 determination by personal service or restricted certified mail
35 on all parties to the proceedings. The administrative law

1 judge shall render a final determination within thirty days
2 after the conclusion of the hearing.

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

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

15 Sec. 8. NEW SECTION. **91F.6 Payment of prevailing wages**
16 **required.**

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

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

29 Sec. 9. NEW SECTION. **91F.7 Requirements for public**
30 **improvements.**

31 1. The public body awarding a contract for a public
32 improvement or otherwise undertaking a public improvement shall
33 specify in the call for bids for the contract that this chapter
34 applies to the public improvement.

35 2. If a public improvement requires the payment of

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

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

34 4. If a public improvement requires the payment of
35 prevailing wage rates, the contractor shall require any

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

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

1 worker needed to be included in the subcontract.

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

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

1 of the amount of the payment.

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

11 Sec. 10. NEW SECTION. 91F.8 Federal public improvements
12 — not applicable.

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

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

21 1. While participating in a public improvement, the
22 contractor and each subcontractor shall do all of the
23 following:

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

32 b. Submit weekly a certified payroll to the public body
33 in charge of the public improvement. The certified payroll
34 shall consist of a complete copy of the records identified in
35 paragraph "a". The certified payroll shall be accompanied by a

1 statement signed by the contractor or subcontractor which avers
2 that the records are true and accurate and the hourly wages
3 paid to each worker are not less than the prevailing wage rate
4 required by this chapter.

5 2. The public body in charge of the public improvement
6 shall keep the records submitted in accordance with subsection
7 1, paragraph "b", for a period of not less than three years.
8 The records shall be considered public records and be made
9 available in accordance with chapter 22. Personal information
10 submitted in accordance with subsection 1, paragraph "a",
11 including names, addresses, social security numbers, telephone
12 numbers, and other identifying information shall remain
13 confidential and shall not be made public.

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

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

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

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

32 The commissioner shall do all of the following:

33 1. Inquire diligently about any complaint of a violation of
34 this chapter, institute actions for penalties prescribed, and
35 enforce generally the provisions of this chapter.

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

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

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

14 *b.* Copy the books, registers, payrolls, and other
15 records as the commissioner or the commissioner's authorized
16 representative deems necessary or appropriate.

17 *c.* Question the workers for the purpose of ascertaining
18 whether the provisions of this chapter have been and are being
19 complied with.

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

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

31 6. Require a contractor or subcontractor to file, within
32 ten days of receipt of a request, any records enumerated in
33 subsection 4, sworn as to their validity and accuracy as
34 required by subsection 5. If the contractor or subcontractor
35 fails to provide the requested records within ten days, the

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

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

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

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

29 1. For purposes of this section:

30 a. "*Accurate records*" means the payroll records required
31 to be submitted to the public body in charge of the public
32 improvement by section 91F.9. "*Accurate records*" also means the
33 hourly rate of contribution and costs paid for fringe benefits
34 and whether the contributions and costs of the fringe benefits
35 were paid into a fund or paid directly to the worker.

1 *b. "Decision"* means a determination by the division that a
2 single violation of this chapter has occurred, warranting the
3 commissioner to issue a notice of violation to a contractor or
4 subcontractor.

5 *c. "Notice of second violation"* is a formal written notice
6 issued by the division advising a contractor or subcontractor
7 that a second or subsequent violation has occurred within three
8 years from the date of the notice of a first violation.

9 *d. "Notice of violation"* means a formal written notice
10 issued by the division to a contractor or subcontractor
11 that the division has made a decision that the contractor or
12 subcontractor has violated this chapter.

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

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

17 (2) Failed to keep accurate records as required by this
18 chapter.

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

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

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

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

29 (7) Failed to insert into each subcontract or lower-tiered
30 subcontract and into the public improvement specifications
31 for each subcontract or lower-tiered subcontract or provide a
32 written instrument if no contract exists, a written stipulation
33 that not less than the prevailing wage rate be paid as required
34 by this chapter, and a statement that if it is found that a
35 subcontractor's workers engaged in the public improvement have

1 been paid at a rate of wages less than the prevailing wage rate
2 required to be paid by the contract, the public body shall
3 terminate the subcontractor's right to proceed with the work.

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

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

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

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

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

34 a. The severity of the violation, which includes the
35 following:

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

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

8 *b.* The nature and duration of the present violation and the
9 prior history of the contractor or subcontractor related to
10 this history. The prior history considered shall not exceed
11 seven years before the date of the notice of violation.

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

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

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

30 **Sec. 14. NEW SECTION. 91F.12 Violations — remedies and**
31 **penalties.**

32 1. If the commissioner determines that a public body has
33 divided a public improvement into more than one contract for
34 the purpose of avoiding compliance with this chapter, the
35 commissioner shall issue an order compelling compliance. In

1 making a determination whether a public body has divided a
2 public improvement into more than one contract for the purpose
3 of avoiding compliance with this chapter, the commissioner
4 shall consider all of the following:

5 *a.* The physical separation of the public improvement
6 structures or work.

7 *b.* The timing of the work on the public improvement phases
8 or structures.

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

11 *d.* The manner in which the public body and the contractor
12 and subcontractors administer and implement work on the public
13 improvement.

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

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

28 4. If a second or subsequent action to recover underpayments
29 is brought against a contractor or subcontractor within a
30 three-year period and the contractor or subcontractor is
31 found liable for underpayments to a worker, the contractor or
32 subcontractor shall be liable to the division for seventy-five
33 percent of the amount of underpayments payable as a result of
34 the second or subsequent action, additionally liable to the
35 worker for ten percent of the amount of the liability to the

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

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

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

26 7. a. It is a violation of this chapter to do any of the
27 following:

28 (1) To request or demand, either before or after the worker
29 is engaged in a public improvement, that a worker pay back,
30 return, donate, contribute, or give any part or all of the
31 worker's wages, salary, or thing of value, to any person, upon
32 the statement, representation, or understanding that failure to
33 comply with the request or demand will prevent the worker from
34 procuring or retaining employment.

35 (2) To directly or indirectly pay, request, or authorize any

1 other person to violate this chapter.

2 *b.* This subsection does not apply to an agent or
3 representative of a duly constituted labor organization acting
4 in the collection of dues or assessments of the organization.

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

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

24 *b.* For the purposes of this subsection, "*any interest*" means
25 an interest in the entity bidding or performing work on the
26 public improvement, whether as an owner, partner, officer,
27 manager, employee, agent, consultant, or representative. "*Any*
28 *interest*" includes but is not limited to all instances where the
29 barred contractor or subcontractor receives payments, whether
30 cash or any other form of compensation, from any entity bidding
31 or performing work on the public improvement, or enters into
32 a contract with the entity bidding or performing work on the
33 public improvement for services performed or to be performed
34 under contract that have been or will be assigned or sublet,
35 or for vehicles, tools, equipment, or supplies that have been

1 or will be sold, rented, or leased during the period from the
2 initiation of the barring proceedings until the end of the term
3 of the barring period. "Any interest" does not include shares
4 held in a publicly traded corporation if the shares were not
5 received as compensation after the barring of an entity bidding
6 or performing work on a public improvement.

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

14 11. Upon a determination that a contractor or subcontractor
15 has violated this chapter on two separate occasions within a
16 three-year period, the division shall notify the violating
17 contractor or subcontractor by restricted certified mail. The
18 contractor or subcontractor has ten working days to request of
19 the division a hearing before an administrative law judge on
20 the alleged violation. Failure to respond within ten working
21 days shall result in automatic and immediate barring of the
22 violator from work as provided in subsection 9 and placement
23 and publication of the violator's name on the department of
24 workforce development's internet site as provided in subsection
25 10. If the contractor or subcontractor requests a hearing
26 within ten working days by restricted certified mail, the
27 department of inspections and appeals shall set a hearing
28 before an administrative law judge on the alleged violation.
29 The hearing shall take place no later than forty-five calendar
30 days after the receipt by the division of the request for a
31 hearing. An action by an administrative law judge constitutes
32 final agency action and is subject to judicial review under
33 section 17A.19.

34 12. The attorney general shall prosecute the cases
35 identified in this section upon complaint by the commissioner

1 or by any interested person. In any proceeding brought
2 pursuant to this section, the commissioner shall be represented
3 by the attorney general.

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

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

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

19 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
20 3, shall not apply to this Act.

21 Sec. 17. EFFECTIVE DATE. This Act takes effect January 1,
22 2020.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill requires a contractor to pay workers the same
27 hourly wage plus fringe benefits for a public improvement
28 costing more than \$25,000 as prevails in the locality of the
29 public improvement. The bill allows the per-hour wage rate to
30 be based on what is normally paid in the area by contractors
31 for similar projects, and to be adjusted on a yearly basis by
32 the department of workforce development.

33 The wage rates that the workers must be paid shall also
34 include benefits such as medical care, life insurance, overtime
35 pay, and vacation and holiday pay. The bill applies to any

1 public improvement that receives money from a public body and
2 includes most types of public improvements from construction to
3 road maintenance to painting to hauling.

4 The labor commissioner determines the wage rates for
5 specific geographical areas and for specific crafts,
6 classifications, and types of workers. This information must
7 be posted on the department of workforce development's internet
8 site. In determining what the wage rate for a worker is, the
9 commissioner may consult collective bargaining agreements, wage
10 rate determinations for federal projects in the same area, and
11 other information the department may receive from contractors
12 who participate in an apprenticeship program approved by the
13 federal office of apprenticeship.

14 Any person affected by the wage rates has 15 days after the
15 department of workforce development has posted the wage rates
16 on its internet site to object in writing, stating the specific
17 reason for the objection, to the labor commissioner. The
18 commissioner must reconsider the determination being objected
19 to, and either affirm or modify it within 15 days of receiving
20 the objection.

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

33 The bill requires that contractors and subcontractors not
34 pay the workers less than the established wage rate but does
35 not prohibit them from paying the workers more than the wage

1 rate. The wage rate must be paid without any deductions
2 such as for food, sleeping quarters, use of tools, or safety
3 equipment.

4 The bill also requires the public body to monitor the
5 contractors and subcontractors to ensure that the wage rate
6 is paid. A call for bids must state that the wage rate must
7 be included in the bids for the public improvement. All
8 bids shall list the specific wage rates for each craft,
9 classification, and type of worker needed for the public
10 improvement. All contractors and subcontractors are required
11 to sign a contract that states they will pay workers the wage
12 rate determined by the division. If the contractors and
13 subcontractors are found to not be paying the wage rate, the
14 contract states that the contractor's or subcontractor's right
15 to work on the public improvement and get paid for work already
16 done may be terminated.

17 Before the contractor or subcontractor receives the final
18 payment for the public improvement, the public body overseeing
19 the public improvement must certify the payments include proper
20 amounts due the workers, and the contractor or subcontractor
21 must swear under oath that the records are accurate.

22 The bill does not apply to public improvement projects
23 funded by the federal government that require federal
24 prevailing wage rates. However, unless a federal provision
25 applies, if a public improvement project is financed by both a
26 state public body and the federal government, then the higher
27 of the applicable wage rates shall be paid to the workers.

28 The bill also requires that contractors and subcontractors
29 keep detailed records for at least three years about the
30 workers, the rates paid, and the hours worked for each
31 public improvement. The records are public records and must
32 be available for inspection. However, workers' personal
33 information is not available to the public for inspection.
34 During the public improvement, a contractor or subcontractor
35 must present a certified weekly payroll to demonstrate that

1 the correct and full wage rate is being paid to workers. The
2 contractors and subcontractors must make all workers available
3 on-site to officials for interviews so that the records'
4 accuracy can be checked. Contractors and subcontractors must
5 also post the wage rates for each craft, classification, and
6 type of worker in a public place where workers can see the
7 posting or at the place where they receive their wages.

8 The commissioner is given specific powers for investigation,
9 enforcement, and penalization. The commissioner may sue to
10 prevent a contractor or subcontractor from being awarded
11 a contract for a public improvement when the wage rate
12 requirements have not been met. The commissioner is given the
13 power to withhold payments if a contractor or subcontractor
14 does not produce records upon request and to pay the workers
15 directly if the contractor or subcontractor continues to refuse
16 to provide records.

17 After receiving a complaint, the commissioner shall
18 investigate whether there has been a violation. If the
19 commissioner determines there has been a violation, the
20 contractor or subcontractor must be given notice of that
21 violation. The notice is a formal written statement from the
22 department of workforce development that states the specific
23 violation and the amount of money due as a penalty.

24 If a public body has divided up a public improvement to
25 avoid having to pay the wage rate, the commissioner shall order
26 compliance. A worker who is paid less than the wage rate set by
27 this law can sue for the difference in payment and collect the
28 difference along with costs and attorney fees in court.

29 The contractor or subcontractor shall also have to pay the
30 division 50 percent of the amount of underpayment and is liable
31 to the worker for punitive damages of up to 5 percent of the
32 underpayments for each month the underpayment remains unpaid
33 plus costs and attorney fees.

34 If a second or subsequent action for underpaying a worker
35 is brought against a contractor or subcontractor within a

1 three-year period and the contractor or subcontractor is
2 liable, the contractor or subcontractor shall pay the division
3 75 percent of the amount of underpayment, is liable to the
4 worker for 10 percent of the penalty for underpayments for each
5 month following it that the underpayment remains unpaid, and
6 is liable to the worker for triple the difference between the
7 amount paid to the worker and the amount due under the wage
8 rate set by the commissioner plus costs and attorney fees.

9 The commissioner or any interested party has a right of
10 action on behalf of any individual who has a right of action
11 under the bill. The commissioner may file a lawsuit in trust
12 for a worker who assigns the claim and then bring legal action
13 to collect the claim. The contractor shall be required to pay
14 the expenses for collection of the claim.

15 The bill prohibits a person from requesting or demanding
16 that a worker pay back, return, donate, contribute, or give
17 any part or all of the worker's wages, salary, or thing of
18 value, to any person who asserts that failure to comply with
19 the request or demand will prevent the worker from procuring
20 or retaining employment. The bill prohibits a person from
21 paying, requesting, or authorizing any other person to violate
22 the requirements of the bill. However, these provisions do
23 not apply to authorized labor organization representatives
24 collecting dues or assessments.

25 In addition to other penalties under the bill, anyone who
26 attempts to get a worker to give up any part of compensation
27 on a public improvement by threat not to hire or by threat of
28 firing is guilty of a serious misdemeanor. Any agreement to
29 work for less than the determined wage rate is not a defense to
30 criminal prosecution. A serious misdemeanor is punishable by
31 confinement for no more than one year and a fine of at least
32 \$315 but not more than \$1,875.

33 If a contractor or subcontractor has violated the bill twice
34 within a three-year period, the contractor or subcontractor
35 or any company or group associated with the contractor or

1 subcontractor shall not be given any public improvement work
2 for five years. The department of workforce development
3 shall keep a list on its internet site of contractors and
4 subcontractors who have violated the bill twice within a
5 three-year period and notify public bodies by restricted
6 certified mail.

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

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

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

28 The bill takes effect January 1, 2020.