



# Senate

General Assembly

**File No. 660**

February Session, 2000

Substitute Senate Bill No. 354

*Senate, April 20, 2000*

The Committee on Commerce reported through SEN. LEBEAU of the 3<sup>rd</sup> Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***An Act Implementing The Recommendations Of The Blue Ribbon Commission To Study Affordable Housing Regarding Economic Development, Job Creation And Housing Affordability.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 32-1c of the general statutes is  
2 repealed and the following is substituted in lieu thereof:

3 (a) In addition to any other powers, duties and responsibilities  
4 provided for in this chapter, chapter 131, chapter 579 and section 4-8  
5 and subsection (a) of section 10-320b, the commissioner shall have the  
6 following powers, duties and responsibilities: (1) To administer and  
7 direct the operations of the Department of Economic and Community  
8 Development; (2) to report annually to the Governor, as provided in  
9 section 4-60; (3) to conduct and administer the research and planning  
10 functions necessary to carry out the purposes of said chapters and  
11 sections; (4) to encourage and promote the development of industry

12 and business in the state and to investigate, study and undertake ways  
13 and means of promoting and encouraging the prosperous  
14 development and protection of the legitimate interest and welfare of  
15 Connecticut business, industry and commerce, within and outside the  
16 state; (5) to serve, ex officio as a director on the board of Connecticut  
17 Innovations, Incorporated; (6) to serve as a member of the Committee  
18 of Concern for Connecticut Jobs; (7) to promote and encourage the  
19 location and development of new business in the state as well as the  
20 maintenance and expansion of existing business and for that purpose  
21 to cooperate with state and local agencies and individuals both within  
22 and outside the state; (8) to plan and conduct a program of information  
23 and publicity designed to attract tourists, visitors and other interested  
24 persons from outside the state to this state and also to encourage and  
25 coordinate the efforts of other public and private organizations or  
26 groups of citizens to publicize the facilities and attractions of the state  
27 for the same purposes; (9) to advise and cooperate with municipalities,  
28 persons and local planning agencies within the state for the purpose of  
29 promoting coordination between the state and such municipalities as  
30 to plans and development; (10) to provide all necessary staff, services,  
31 accounting and office space and equipment required by the  
32 Connecticut Development Authority subject to the provisions of  
33 section 4b-23, where real estate acquisitions are involved; (11) to aid  
34 minority businesses in their development; (12) to appoint such  
35 assistants, experts, technicians and clerical staff, subject to the  
36 provisions of chapter 67, as are necessary to carry out the purposes of  
37 said chapters and sections; (13) to employ other consultants and  
38 assistants on a contract or other basis for rendering financial, technical  
39 or other assistance and advice, provided in implementing the  
40 Connecticut economic information system the commissioner shall to  
41 the maximum extent feasible contract with private vendors for  
42 software, certain data sets and data updating services; (14) to acquire  
43 or lease facilities located outside the state subject to the provisions of  
44 section 4b-23; (15) to advise and inform municipal officials concerning

45 economic development and collect and disseminate information  
46 pertaining thereto, including information about federal, state and  
47 private assistance programs and services pertaining thereto; (16) to  
48 inquire into the utilization of state government resources and  
49 coordinate federal and state activities for assistance in and solution of  
50 problems of economic development and to inform and advise the  
51 Governor about and propose legislation concerning such problems;  
52 (17) to conduct, encourage and maintain research and studies relating  
53 to industrial and commercial development; (18) to prepare and review  
54 model ordinances and charters relating to these areas; (19) to maintain  
55 an inventory of data and information and act as a clearinghouse and  
56 referral agency for information on state and federal programs and  
57 services relative to the purpose set forth herein. The inventory shall  
58 include information on all federal programs of financial assistance for  
59 defense conversion projects and other projects consistent with a  
60 defense conversion strategy and shall identify businesses which would  
61 be eligible for such assistance and provide notification to such business  
62 of such programs; (20) to conduct, encourage and maintain research  
63 and studies and advise municipal officials about forms of cooperation  
64 between public and private agencies designed to advance economic  
65 development; (21) to promote and assist the formation of municipal  
66 and other agencies appropriate to the purposes of this chapter; (22) to  
67 require notice of the submission of all applications by municipalities  
68 and any agency thereof for federal and state financial assistance for  
69 economic development programs as relate to the purposes of this  
70 chapter; (23) with the approval of the Commissioner of Administrative  
71 Services, to reimburse any employee of the department, including the  
72 commissioner, for reasonable business expenses, including, but not  
73 limited to, mileage, travel, lodging, and entertainment of business  
74 prospects and other persons to the extent necessary or advisable to  
75 carry out the purposes of subdivisions (4), (7), (8) and (11) of this  
76 subsection and other provisions of this chapter; (24) to assist in  
77 resolving solid waste management issues; [and] (25) to develop and

78 implement the Connecticut economic information system, in  
79 consultation with the Connecticut Economic Information System  
80 Steering Committee established under section 32-6i; (26) to accompany  
81 any economic development assistance with incentives to assure that  
82 jobs created through such economic assistance will be full-time, that  
83 wages and benefits for new employees will be adequate to promote  
84 such employees' economic self-sufficiency and assure affordability in  
85 their local housing market, and that companies receiving such  
86 economic assistance will not interfere with employee rights to unionize  
87 and will permit them to do so in a simplified manner; and (27) to  
88 ensure that the incentives created in subdivision (26) of this subsection  
89 increase the property tax base where such property is located.

90 Sec. 2. Section 31-53 of the general statutes is repealed and the  
91 following is substituted in lieu thereof:

92 (a) Each contract for the construction, remodeling, refinishing,  
93 refurbishing, rehabilitation, alteration or repair of any public works  
94 project by the state or any of its agents, or by any political subdivision  
95 of the state or any of its agents, shall contain the following provision:  
96 "The wages paid on an hourly basis to any mechanic, laborer or  
97 [workman] worker employed upon the work herein contracted to be  
98 done and the amount of payment or contribution paid or payable on  
99 behalf of each such employee to any employee welfare fund, as  
100 defined in subsection [(h)] (i) of this section, shall be at a rate equal to  
101 the rate customary or prevailing for the same work in the same trade  
102 or occupation in the town in which such public works project is being  
103 constructed. Any contractor who is not obligated by agreement to  
104 make payment or contribution on behalf of such employees to any  
105 such employee welfare fund shall pay to each employee as part of [his]  
106 the employee's wages the amount of payment or contribution for [his]  
107 the employee's classification on each pay day."

108 (b) Any person who knowingly or wilfully employs any mechanic,

109 laborer or [workman] worker in the construction, remodeling,  
110 refinishing, refurbishing, rehabilitation, alteration or repair of any  
111 public works project for or on behalf of the state or any of its agents, or  
112 any political subdivision of the state or any of its agents, at a rate of  
113 wage on an hourly basis which is less than the rate customary or  
114 prevailing for the same work in the same trade or occupation in the  
115 town in which such public works project is being constructed,  
116 remodeled, refinished, refurbished, rehabilitated, altered or repaired,  
117 or who fails to pay the amount of payment or contributions paid or  
118 payable on behalf of each such employee to any employee welfare  
119 fund, or in lieu thereof to the employee, as provided by subsection (a),  
120 shall be fined not less than two thousand five hundred dollars but not  
121 more than five thousand dollars for each offense and (1) for the first  
122 violation, shall be disqualified from bidding on contracts with the state  
123 or any political subdivision until the contractor or subcontractor has  
124 made full restitution of the back wages owed to such persons and for  
125 an additional six months thereafter, and (2) for subsequent violations,  
126 shall be disqualified from bidding on contracts with the state or any  
127 political subdivision until the contractor or subcontractor has made  
128 full restitution of the back wages owed to such persons and for not less  
129 than an additional two years thereafter. In addition, if it is found by  
130 the contracting officer representing the state or political subdivision  
131 [thereof] of the state that any mechanic, laborer or [workman] worker  
132 employed by the contractor or any subcontractor directly on the site  
133 for the work covered by the contract has been or is being paid a rate of  
134 wages less than the rate of wages required by the contract to be paid as  
135 required by this section, the state or contracting political subdivision  
136 [thereof] of the state may (A) by written notice to the contractor,  
137 terminate such contractor's right to proceed with the work or such part  
138 of the work as to which there has been a failure to pay said required  
139 wages and to prosecute the work to completion by contract or  
140 otherwise, and the contractor and [his] the contractor's sureties shall be  
141 liable to the state or the contracting political subdivision for any excess

142 costs occasioned by the state or the contracting political subdivision  
143 thereby, or (B) withhold payment of money to the contractor or  
144 subcontractor. The contracting department of the state or the political  
145 subdivision [thereof shall within] of the state shall, not later than two  
146 days after taking such action, notify the Labor Commissioner in  
147 writing of the name of the contractor or subcontractor, the project  
148 involved, the location of the work, the violations involved, the date the  
149 contract was terminated, and steps taken to collect the required wages.

150 (c) The Labor Commissioner may make complaint to the proper  
151 prosecuting authorities for the violation of any provision of subsection  
152 (b) of this section.

153 (d) For the purpose of predetermining the prevailing rate of wage  
154 on an hourly basis and the amount of payment or contributions paid or  
155 payable on behalf of each employee to any employee welfare fund, as  
156 defined in subsection [(h)] (i) of this section, in each town where such  
157 contract is to be performed, the Labor Commissioner shall (1) hold a  
158 hearing at any required time to determine the prevailing rate of wages  
159 on an hourly basis and the amount of payment or contributions paid or  
160 payable on behalf of each person to any employee welfare fund, as  
161 defined in subsection [(h)] (i) of this section, upon any public work  
162 within any specified area, and shall establish classifications of skilled,  
163 semiskilled and ordinary labor, or (2) adopt and use such appropriate  
164 and applicable prevailing wage rate determinations as have been made  
165 by the Secretary of Labor of the United States under the provisions of  
166 the Davis-Bacon Act, as amended.

167 (e) The Labor Commissioner shall determine the prevailing rate of  
168 wages on an hourly basis and the amount of payment or contributions  
169 paid or payable on behalf of such employee to any employee welfare  
170 fund, as defined in subsection [(h)] (i) of this section, in each locality  
171 where any such public work is to be constructed, and the agent  
172 empowered to let such contract shall contact the Labor Commissioner,

173 at least ten but not more than twenty days prior to the date such  
174 contracts will be advertised for bid, to ascertain the proper rate of  
175 wages and amount of employee welfare fund payments or  
176 contributions and shall include such rate of wage on an hourly basis  
177 and the amount of payment or contributions paid or payable on behalf  
178 of each employee to any employee welfare fund, as defined in  
179 subsection [(h)] (i) of this section, or in lieu thereof the amount to be  
180 paid directly to each employee for such payment or contributions as  
181 provided in subsection (a) of this section for all classifications of labor  
182 in the proposal for the contract. The rate of wage on an hourly basis  
183 and the amount of payment or contributions to any employee welfare  
184 fund, as defined in subsection [(h)] (i) of this section, or cash in lieu  
185 thereof, as provided in subsection (a) of this section, shall, at all times,  
186 be considered as the minimum rate for the classification for which it  
187 was established. Prior to the award of any contract subject to the  
188 provisions of this section, such agent shall certify in writing to the  
189 Labor Commissioner the total dollar amount of work to be done in  
190 connection with such public works project, regardless of whether such  
191 project consists of one or more contracts. Upon the award of any  
192 contract subject to the provisions of this section, the contractor to  
193 whom such contract is awarded shall certify, under oath, to the Labor  
194 Commissioner the pay scale to be used by such contractor and any of  
195 [his] the contractor's subcontractors for work to be performed under  
196 such contract.

197 (f) Each employer subject to the provisions of this section or section  
198 31-54 shall (1) keep, maintain and preserve such records relating to the  
199 wages and hours worked by each employee and a schedule of the  
200 occupation or work classification at which each mechanic, laborer or  
201 [workman] worker on the project is employed during each work day  
202 and week in such manner and form as the Labor Commissioner  
203 establishes to assure the proper payments due to such employees or  
204 employee welfare funds under this section or section 31-54, and (2)  
205 submit monthly to the contracting agency a certified payroll which

206 shall consist of a complete copy of such records accompanied by a  
207 statement signed by the employer which indicates that (A) such  
208 records are correct; (B) the rate of wages paid to each mechanic, laborer  
209 or [workman] worker and the amount of payment or contributions  
210 paid or payable on behalf of each such employee to any employee  
211 welfare fund, as defined in subsection [(h)] (i) of this section, are not  
212 less than the prevailing rate of wages and the amount of payment or  
213 contributions paid or payable on behalf of each such employee to any  
214 employee welfare fund, as determined by the Labor Commissioner  
215 pursuant to subsection (d) of this section, and not less than those  
216 required by the contract to be paid; (C) the employer has complied  
217 with the provisions of this section and section 31-54; (D) each such  
218 employee is covered by a workers' compensation insurance policy for  
219 the duration of [his] the employee's employment, which shall be  
220 demonstrated by submitting to the contracting agency the name of the  
221 workers' compensation insurance carrier covering each such employee,  
222 the effective and expiration dates of each policy and each policy  
223 number; (E) the employer does not receive kickbacks, as defined in 41  
224 USC 52, from any employee or employee welfare fund; and (F)  
225 pursuant to the provisions of section 53a-157a, the employer is aware  
226 that filing a certified payroll which [he] the employer knows to be false  
227 is a class D felony for which the employer may be fined up to five  
228 thousand dollars, imprisoned for up to five years, or both. This  
229 subsection shall not be construed to prohibit a general contractor from  
230 relying on the certification of a lower tier subcontractor, provided the  
231 general contractor shall not be exempted from the provisions of section  
232 53a-157a if [he] the general contractor knowingly relies upon a  
233 subcontractor's false certification. Notwithstanding the provisions of  
234 section 1-210, as amended by section 1 of public act 99-156, the certified  
235 payroll shall be considered a public record and every person shall have  
236 the right to inspect and copy such records in accordance with the  
237 provisions of section 1-212, as amended by section 2 of public act 99-  
238 71. The provisions of sections 31-59(a), 31-59(b), 31-66 and 31-69 which

239 are not inconsistent with the provisions of this section or section 31-54  
240 shall apply to this section. Failing to file a certified payroll pursuant to  
241 subdivision (2) of this subsection is a class D felony for which the  
242 employer may be fined up to five thousand dollars, imprisoned for up  
243 to five years, or both.

244 (g) The provisions of this section [shall] do not apply where the total  
245 cost of all work to be performed by all contractors and subcontractors  
246 in connection with new construction of any public works project is less  
247 than four hundred thousand dollars or where the total cost of all work  
248 to be performed by all contractors and subcontractors in connection  
249 with any remodeling, refinishing, refurbishing, rehabilitation,  
250 alteration or repair of any public works project is less than one  
251 hundred thousand dollars.

252 (h) The provisions of this section apply to each construction project  
253 financed with assistance from the Department of Economic and  
254 Community Development, provided the total amount of such  
255 assistance for a project involving (1) new construction equals or  
256 exceeds four hundred thousand dollars, or (2) remodeling, refinishing,  
257 refurbishing, rehabilitation, alteration or repair equals or exceeds one  
258 hundred thousand dollars.

259 [(h)] (i) As used in this section, section 31-54 and section 31-89a, as  
260 amended by this act, "employee welfare fund" means any trust fund  
261 established by one or more employers and one or more labor  
262 organizations or one or more other third parties not affiliated with the  
263 employers to provide from moneys in the fund, whether through the  
264 purchase of insurance or annuity contracts or otherwise, benefits  
265 under an employee welfare plan; provided such term shall not include  
266 any such fund where the trustee, or all of the trustees, are subject to  
267 supervision by the Commissioner of Banking of this state or any other  
268 state or the Comptroller of the Currency of the United States or the  
269 Board of Governors of the Federal Reserve System, and "benefits under

270 an employee welfare plan" means one or more benefits or services  
271 under any plan established or maintained for employees or their  
272 families or dependents, or for both, including, but not limited to,  
273 medical, surgical or hospital care benefits; benefits in the event of  
274 sickness, accident, disability or death; benefits in the event of  
275 unemployment, or retirement benefits.

276 Sec. 3. Subsection (a) of section 31-89a of the general statutes is  
277 repealed and the following is substituted in lieu thereof:

278 (a) Payments to employee welfare funds, as defined in subsection  
279 [(h)] (i) of section 31-53, as amended by this act, which are past due  
280 under the terms of a written contract or rules and regulations adopted  
281 by the trustees of such funds shall be considered as wages for the  
282 purpose of section 31-72.

**CE Committee Vote:** Yea 18 Nay 8 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Indeterminate Cost and Potential Indeterminate Savings (Bond Funds), Potential Minimal Cost, and Potential Minimal Revenue Gain

**Affected Agencies:** Department of Economic and Community Development, Department of Labor, Various Criminal Justice System Agencies

**Municipal Impact:** See Explanation Below

**Explanation**

**State Impact:**

The passage of this bill would result in additional costs to state bond funds that are indeterminate, and could also result in potential minimal costs and in potential minimal revenue gain to the state. The bill extends prevailing wage requirements to construction projects financed through the Department of Economic and Community Development (DECD), if the projects are above the specified threshold value (\$400,000 for new construction and \$100,000 for repairs). The bill would result in an increase in the cost of such DECD projects that cannot be determined at this time. A 1996 report by the Legislative Program Review and Investigations Committee estimated that prevailing wage requirements add from 4% to 7% to the cost of a construction project. DECD has averaged administering between 19 and 26 projects per year. It is not known at this time how many of these would have been subject to the bill's threshold value

requirements. It should also be noted that projects that receive federal funds are subject to the federal prevailing wage law (Davis-Bacon Act). This could also result in additional administrative costs to DECD, depending on the number of projects subject to the new prevailing wage requirements.

There is a workload increase for the Department of Labor associated with calculating the prevailing wages for construction projects financed by DECD that meet the dollar amounts established in this bill. This workload increase can be handled within normal budgetary resources.

In addition, extending the prevailing wage law to additional projects could result in additional violations of these laws. Although the number of these cases is uncertain, it is estimated that the impact on the criminal justice system will be minimal and can be absorbed within current budgetary and caseload structures. Any increase in revenues from criminal fines is also anticipated to be minimal.

The bill also requires the Commissioner of DECD to include incentives in any economic development assistance to assure (1) that the jobs created will be full-time, (2) that wages and benefits paid will be adequate to promote economic self-sufficiency and home ownership, and (3) that companies receiving assistance will not interfere with employees' rights to unionize. These incentives must also increase the tax base of the town where the property is located. It is not clear what the incentives would be or their impact. To the extent that any of the requirements result in less state assistance being provided, there would be a savings to the state. The exact impact is not known.

***Municipal Impact:***

Requiring that the incentives increase the property tax base of the town where the property is located could increase revenues to the

municipality. However, it is unclear what the incentives and their exact impact would be.

**OLR Amended Bill Analysis**

sSB 354

***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION TO STUDY AFFORDABLE HOUSING REGARDING ECONOMIC DEVELOPMENT, JOB CREATION AND HOUSING AFFORDABILITY.*****SUMMARY:**

This bill extends the requirement that government contractors pay prevailing wage rates to Department of Economic and Community Development (DECD)-funded private construction projects. This applies if DECD provides \$400,000 or more in assistance for a new construction project or \$100,000 or more for rehabilitation or repairs. The bill covers construction, remodeling, refinishing, refurbishing, rehabilitation, and alteration or repair of any covered DECD-funded project. By law, government contractors must pay wages at least equal to those customary and prevailing in the area where a public construction project occurs. For public works projects, prevailing wage is triggered if the total cost is \$400,000 or more for new construction, or \$100,000 or more for alterations and repairs.

The bill also requires the DECD commissioner to include, with any economic development assistance, incentives to assure full-time jobs and wages and benefits that adequately promote economic self-sufficiency and accessibility to local housing markets. The incentives must also increase the property-tax base of the town where the property is located. These incentives are not defined and appear to be left to the commissioner to specify.

Finally, the incentives must assure that companies receiving such economic assistance will not interfere with employees' rights to unionize and will allow them to unionize in a "simplified manner" (see COMMENT).

**EFFECTIVE DATE:** October 1, 2000

## **BACKGROUND**

### ***Applicable Prevailing Wage Provisions***

Under law, public works prevailing wage provisions include the requirement for contractors to pay wages equal to the rate customary or prevailing for the same work in the same trade or occupation in the town such a public works project is being constructed. Penalties for noncompliance include possible exclusion from state and municipal work for up to three years and a fine of \$2,500 to \$5,000 per offense. A contractor can also be prosecuted for larceny depending on the amount of wages owed. Filing a false certified payroll is a class D felony, punishable by one to five years in prison, a fine of up to \$5,000, or both.

### ***Legislative History***

On April 5, the Senate referred the original version of this bill (File 257) to the Commerce Committee. On April 12, the Commerce Committee reported out its version that added the requirement that the DECD-incentives increase the property-tax base in the town where the project is located.

### ***Related Bill***

SB 486 (File 500) is similar to this bill in that it requires for-profit entities receiving economic development assistance, over a designated threshold, from DECD, the Connecticut Development Authority, and Connecticut Innovations, Inc. to meet certain employment and compensation requirements.

## **COMMENT**

### ***Federal Preemption***

The portion of the bill dealing with rights to unionize may violate the National Labor Relations Act (NLRA), the major federal law governing private-sector labor relations. This would depend on the meaning of "simplified manner," which the bill does not define. The U.S. Supreme

Court has found in some cases that the NLRA preempts state laws addressing rights to unionize (*Wisconsin Department of Industry, Labor, and Human Relations v. Gould Inc.*, 106 S. Ct. 1057 (1986)). In other cases, it has found similar state laws acceptable if the purpose is not to regulate private sector labor, but to achieve a larger public policy purpose (*Building and Construction Trades Council of Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc. et al*, 113 S. Ct. 1190 (1993)).

**COMMITTEE ACTION**

Select Committee on Housing

Joint Favorable Substitute Change of Reference

Yea 7 Nay 4

Planning and Development Committee

Joint Favorable Report

Yea 9 Nay 7

Commerce Committee

Joint Favorable Substitute

Yea 18 Nay 8