



General Assembly

February Session, 2008

Raised Bill No. 5726

LCO No. 2189

02189_____LAB

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

AN ACT ELIMINATING THE PREVAILING WAGE THRESHOLD FOR PUBLIC WORKS PROJECTS.

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

1 Section 1. Section 31-53 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) Each contract for the construction, remodeling, refinishing,
4 refurbishing, rehabilitation, alteration or repair of any public works
5 project by the state or any of its agents, or by any political subdivision
6 of the state or any of its agents, shall contain the following provision:
7 "The wages paid on an hourly basis to any person performing the
8 work of any mechanic, laborer or worker on the work herein
9 contracted to be done and the amount of payment or contribution paid
10 or payable on behalf of each such person to any employee welfare
11 fund, as defined in subsection [(h)] (g) of this section, shall be at a rate
12 equal to the rate customary or prevailing for the same work in the
13 same trade or occupation in the town in which such public works
14 project is being constructed. Any contractor who is not obligated by
15 agreement to make payment or contribution on behalf of such persons
16 to any such employee welfare fund shall pay to each mechanic, laborer

17 or worker as part of such person's wages the amount of payment or
18 contribution for such person's classification on each pay day."

19 (b) Any contractor or subcontractor who knowingly or wilfully
20 employs any mechanic, laborer or worker in the construction,
21 remodeling, refinishing, refurbishing, rehabilitation, alteration or
22 repair of any public works project for or on behalf of the state or any of
23 its agents, or any political subdivision of the state or any of its agents,
24 at a rate of wage on an hourly basis that is less than the rate customary
25 or prevailing for the same work in the same trade or occupation in the
26 town in which such public works project is being constructed,
27 remodeled, refinished, refurbished, rehabilitated, altered or repaired,
28 or who fails to pay the amount of payment or contributions paid or
29 payable on behalf of each such person to any employee welfare fund,
30 or in lieu thereof to the person, as provided by subsection (a) of this
31 section, shall be fined not less than two thousand five hundred dollars
32 but not more than five thousand dollars for each offense and (1) for the
33 first violation, shall be disqualified from bidding on contracts with the
34 state or any political subdivision until the contractor or subcontractor
35 has made full restitution of the back wages owed to such persons and
36 for an additional six months thereafter, and (2) for subsequent
37 violations, shall be disqualified from bidding on contracts with the
38 state or any political subdivision until the contractor or subcontractor
39 has made full restitution of the back wages owed to such persons and
40 for not less than an additional two years thereafter. In addition, if it is
41 found by the contracting officer representing the state or political
42 subdivision of the state that any mechanic, laborer or worker
43 employed by the contractor or any subcontractor directly on the site
44 for the work covered by the contract has been or is being paid a rate of
45 wages less than the rate of wages required by the contract to be paid as
46 required by this section, the state or contracting political subdivision of
47 the state may (A) by written notice to the contractor, terminate such
48 contractor's right to proceed with the work or such part of the work as
49 to which there has been a failure to pay said required wages and to
50 prosecute the work to completion by contract or otherwise, and the

51 contractor and the contractor's sureties shall be liable to the state or the
52 contracting political subdivision for any excess costs occasioned the
53 state or the contracting political subdivision thereby, or (B) withhold
54 payment of money to the contractor or subcontractor. The contracting
55 department of the state or the political subdivision of the state shall,
56 not later than two days after taking such action, notify the Labor
57 Commissioner, in writing, of the name of the contractor or
58 subcontractor, the project involved, the location of the work, the
59 violations involved, the date the contract was terminated, and steps
60 taken to collect the required wages.

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

64 (d) For the purpose of predetermining the prevailing rate of wage
65 on an hourly basis and the amount of payment or contributions paid or
66 payable on behalf of each person to any employee welfare fund, as
67 defined in subsection [(h)] (g) of this section, in each town where such
68 contract is to be performed, the Labor Commissioner shall (1) hold a
69 hearing at any required time to determine the prevailing rate of wages
70 on an hourly basis and the amount of payment or contributions paid or
71 payable on behalf of each person to any employee welfare fund, as
72 defined in subsection [(h)] (g) of this section, upon any public work
73 within any specified area, and shall establish classifications of skilled,
74 semiskilled and ordinary labor, or (2) adopt and use such appropriate
75 and applicable prevailing wage rate determinations as have been made
76 by the Secretary of Labor of the United States under the provisions of
77 the Davis-Bacon Act, as amended.

78 (e) The Labor Commissioner shall determine the prevailing rate of
79 wages on an hourly basis and the amount of payment or contributions
80 paid or payable on behalf of such person to any employee welfare
81 fund, as defined in subsection [(h)] (g) of this section, in each locality
82 where any such public work is to be constructed, and the agent

83 empowered to let such contract shall contact the Labor Commissioner,
84 at least ten but not more than twenty days prior to the date such
85 contracts will be advertised for bid, to ascertain the proper rate of
86 wages and amount of employee welfare fund payments or
87 contributions and shall include such rate of wage on an hourly basis
88 and the amount of payment or contributions paid or payable on behalf
89 of each person to any employee welfare fund, as defined in subsection
90 [(h)] (g) of this section, or in lieu thereof the amount to be paid directly
91 to each person for such payment or contributions as provided in
92 subsection (a) of this section for all classifications of labor in the
93 proposal for the contract. The rate of wage on an hourly basis and the
94 amount of payment or contributions to any employee welfare fund, as
95 defined in subsection [(h)] (g) of this section, or cash in lieu thereof, as
96 provided in subsection (a) of this section, shall, at all times, be
97 considered as the minimum rate for the classification for which it was
98 established. Prior to the award of any contract subject to the provisions
99 of this section, such agent shall certify in writing to the Labor
100 Commissioner the total dollar amount of work to be done in
101 connection with such public works project, regardless of whether such
102 project consists of one or more contracts. Upon the award of any
103 contract subject to the provisions of this section, the contractor to
104 whom such contract is awarded shall certify, under oath, to the Labor
105 Commissioner the pay scale to be used by such contractor and any of
106 the contractor's subcontractors for work to be performed under such
107 contract.

108 (f) Each employer subject to the provisions of this section or section
109 31-54 shall (1) keep, maintain and preserve such records relating to the
110 wages and hours worked by each person performing the work of any
111 mechanic, laborer and worker and a schedule of the occupation or
112 work classification at which each person performing the work of any
113 mechanic, laborer or worker on the project is employed during each
114 work day and week in such manner and form as the Labor
115 Commissioner establishes to assure the proper payments due to such
116 persons or employee welfare funds under this section or section 31-54,

117 regardless of any contractual relationship alleged to exist between the
118 contractor and such person, and (2) submit monthly to the contracting
119 agency a certified payroll that shall consist of a complete copy of such
120 records accompanied by a statement signed by the employer that
121 indicates (A) such records are correct; (B) the rate of wages paid to
122 each person performing the work of any mechanic, laborer or worker
123 and the amount of payment or contributions paid or payable on behalf
124 of each such person to any employee welfare fund, as defined in
125 subsection [(h)] (g) of this section, are not less than the prevailing rate
126 of wages and the amount of payment or contributions paid or payable
127 on behalf of each such person to any employee welfare fund, as
128 determined by the Labor Commissioner pursuant to subsection (d) of
129 this section, and not less than those required by the contract to be paid;
130 (C) the employer has complied with the provisions of this section and
131 section 31-54; (D) each such person is covered by a workers'
132 compensation insurance policy for the duration of such person's
133 employment, which shall be demonstrated by submitting to the
134 contracting agency the name of the workers' compensation insurance
135 carrier covering each such person, the effective and expiration dates of
136 each policy and each policy number; (E) the employer does not receive
137 kickbacks, as defined in 41 USC 52, from any employee or employee
138 welfare fund; and (F) pursuant to the provisions of section 53a-157a,
139 the employer is aware that filing a certified payroll which the
140 employer knows to be false is a class D felony for which the employer
141 may be fined up to five thousand dollars, imprisoned for up to five
142 years, or both. This subsection shall not be construed to prohibit a
143 general contractor from relying on the certification of a lower tier
144 subcontractor, provided the general contractor shall not be exempted
145 from the provisions of section 53a-157a if the general contractor
146 knowingly relies upon a subcontractor's false certification.
147 Notwithstanding the provisions of section 1-210 of the 2008
148 supplement to the general statutes, the certified payroll shall be
149 considered a public record and every person shall have the right to
150 inspect and copy such records in accordance with the provisions of

151 section 1-212. The provisions of subsections (a) and (b) of section 31-59
152 and sections 31-66 and 31-69 that are not inconsistent with the
153 provisions of this section or section 31-54 apply to this section. Failing
154 to file a certified payroll pursuant to subdivision (2) of this subsection
155 is a class D felony for which the employer may be fined up to five
156 thousand dollars, imprisoned for up to five years, or both.

157 [(g) The provisions of this section do not apply where the total cost
158 of all work to be performed by all contractors and subcontractors in
159 connection with new construction of any public works project is less
160 than four hundred thousand dollars or where the total cost of all work
161 to be performed by all contractors and subcontractors in connection
162 with any remodeling, refinishing, refurbishing, rehabilitation,
163 alteration or repair of any public works project is less than one
164 hundred thousand dollars.]

165 [(h)] (g) As used in this section, section 31-54 and section 31-89a,
166 "employee welfare fund" means any trust fund established by one or
167 more employers and one or more labor organizations or one or more
168 other third parties not affiliated with the employers to provide from
169 moneys in the fund, whether through the purchase of insurance or
170 annuity contracts or otherwise, benefits under an employee welfare
171 plan; provided such term shall not include any such fund where the
172 trustee, or all of the trustees, are subject to supervision by the Banking
173 Commissioner of this state or any other state or the Comptroller of the
174 Currency of the United States or the Board of Governors of the Federal
175 Reserve System, and "benefits under an employee welfare plan" means
176 one or more benefits or services under any plan established or
177 maintained for persons performing the work of any mechanics,
178 laborers or workers or their families or dependents, or for both,
179 including, but not limited to, medical, surgical or hospital care
180 benefits; benefits in the event of sickness, accident, disability or death;
181 benefits in the event of unemployment, or retirement benefits.

182 Sec. 2. Subsection (a) of section 31-89a of the general statutes is

183 repealed and the following is substituted in lieu thereof (*Effective*
184 *October 1, 2008*):

185 (a) Payments to employee welfare funds, as defined in subsection
186 [(h)] (g) of section 31-53, which are past due under the terms of a
187 written contract or rules and regulations adopted by the trustees of
188 such funds shall be considered as wages for the purpose of section 31-
189 72.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	31-53
Sec. 2	<i>October 1, 2008</i>	31-89a(a)

Statement of Purpose:

To eliminate the prevailing wage threshold for public works projects.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]