



# Senate

General Assembly

**File No. 251**

January Session, 2009

Substitute Senate Bill No. 920

*Senate, March 26, 2009*

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CLARIFYING PENSION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS.***

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

1 Section 1. Subsection (f) of section 31-53 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2009*):

4 (f) Each employer subject to the provisions of this section or section  
5 31-54 shall (1) keep, maintain and preserve such records relating to the  
6 wages and hours worked by each person performing the work of any  
7 mechanic, laborer and worker and a schedule of the occupation or  
8 work classification at which each person performing the work of any  
9 mechanic, laborer or worker on the project is employed during each  
10 work day and week in such manner and form as the Labor  
11 Commissioner establishes to assure the proper payments due to such  
12 persons or employee welfare funds under this section or section 31-54,  
13 regardless of any contractual relationship alleged to exist between the

14 contractor and such person, and (2) submit monthly to the contracting  
15 agency a certified payroll that shall consist of a complete copy of such  
16 records accompanied by a statement signed by the employer that  
17 indicates (A) such records are correct; (B) the rate of wages paid to  
18 each person performing the work of any mechanic, laborer or worker  
19 and the amount of payment or contributions paid or payable on behalf  
20 of each such person to any employee welfare fund, as defined in  
21 subsection (h) of this section, are not less than the prevailing rate of  
22 wages and the amount of payment or contributions paid or payable on  
23 behalf of each such person to any employee welfare fund, as  
24 determined by the Labor Commissioner pursuant to subsection (d) of  
25 this section, and not less than those required by the contract to be paid;  
26 (C) the employer has complied with the provisions of this section and  
27 section 31-54; (D) each such person is covered by a workers'  
28 compensation insurance policy for the duration of such person's  
29 employment, which shall be demonstrated by submitting to the  
30 contracting agency the name of the workers' compensation insurance  
31 carrier covering each such person, the effective and expiration dates of  
32 each policy and each policy number; (E) the employer does not receive  
33 kickbacks, as defined in 41 USC 52, from any employee or employee  
34 welfare fund; and (F) pursuant to the provisions of section 53a-157a,  
35 the employer is aware that filing a certified payroll which the  
36 employer knows to be false is a class D felony for which the employer  
37 may be fined up to five thousand dollars, imprisoned for up to five  
38 years, or both. This subsection shall not be construed to prohibit a  
39 general contractor from relying on the certification of a lower tier  
40 subcontractor, provided the general contractor shall not be exempted  
41 from the provisions of section 53a-157a if the general contractor  
42 knowingly relies upon a subcontractor's false certification.  
43 Notwithstanding the provisions of section 1-210, the certified payroll  
44 shall be considered a public record and every person shall have the  
45 right to inspect and copy such records in accordance with the  
46 provisions of section 1-212. The provisions of subsections (a) and (b) of  
47 section 31-59 and sections 31-66 and 31-69 that are not inconsistent  
48 with the provisions of this section or section 31-54 apply to this section.

49 Failing to file a certified payroll pursuant to subdivision (2) of this  
 50 subsection is a class D felony for which the employer may be fined up  
 51 to five thousand dollars, imprisoned for up to five years, or both. A  
 52 general contractor or subcontractor may, in good faith, rely on the  
 53 certification of a lower tier subcontractor as an affirmative defense to  
 54 an action brought by the Labor Commissioner to collect unpaid  
 55 benefits on behalf of an employee of such lower tier subcontractor if  
 56 the general contractor requires the subcontractor to provide (i) a  
 57 payment bond on the public works project, or (ii) sufficient verification  
 58 from the pension and benefit fund administrator of the relevant fund  
 59 that the amount of payment or contributions required to be paid on  
 60 behalf of each such person to any employee welfare fund, as defined in  
 61 subsection (h) of this section, has been paid.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	31-53(f)

**Statement of Legislative Commissioners:**

In (ii), the words "paid or payable" were changed to "required to be paid" for clarity of meaning.

**LAB**      *Joint Favorable Subst.*

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:

---

**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill permits a general contractor or subcontractor for certain projects to rely on the certification of a lower tier subcontractor as an affirmative defense to an action brought by the Labor Commissioner to collect unpaid benefits on behalf of an employee of the lower tier subcontractor, under certain circumstances. This will not result in a fiscal impact.

**OLR Bill Analysis****sSB 920*****AN ACT CLARIFYING PENSION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS.*****SUMMARY:**

By law, contractors on public construction projects must submit to the contracting agency certified payrolls that indicate the contractor or subcontractor paid workers the correct wages and benefits under the prevailing wage law. This bill permits a general contractor or subcontractor on such a project to, in good faith, rely on the certification of a lower tier subcontractor as an affirmative defense to legal action the labor commissioner brings to collect unpaid benefits on behalf of an employee of the lower tier subcontractor. The general contractor can only rely on this certification if it requires the subcontractor to provide:

1. a payment bond on the project or
2. sufficient verification from the pension and benefit fund administrator of the relevant fund that the amount of payment or contributions required to be paid on behalf of each worker to any employee welfare fund has been paid.

Under prevailing wage law, employers must make a contribution on behalf of employees to an employee welfare fund (to provide retirement, disability, health care, and other benefits, or some combination of these). If there is no such benefit fund, the employer must increase wages by the amount that would otherwise go into the fund. The state prevailing wage law applies to all state and municipal construction projects.

EFFECTIVE DATE: October 1, 2009

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 2 (03/12/2009)