



# Senate

General Assembly

**File No. 334**

February Session, 2010

Senate Bill No. 97

*Senate, April 7, 2010*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CREATING A CIVIL ACTION TO ALLOW CONTRACTORS TO RECOVER UNPAID EMPLOYEE PENSION OBLIGATIONS FROM SUBCONTRACTORS.***

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

1 Section 1. Section 31-53 of the 2010 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2010*):

4 (a) Each contract for the construction, remodeling, refinishing,  
5 refurbishing, rehabilitation, alteration or repair of any public works  
6 project by the state or any of its agents, or by any political subdivision  
7 of the state or any of its agents, shall contain the following provision:  
8 "The wages paid on an hourly basis to any person performing the  
9 work of any mechanic, laborer or worker on the work herein  
10 contracted to be done and the amount of payment or contribution paid  
11 or payable on behalf of each such person to any employee welfare  
12 fund, as defined in subsection [(h)] (i) of this section, shall be at a rate  
13 equal to the rate customary or prevailing for the same work in the

14 same trade or occupation in the town in which such public works  
15 project is being constructed. Any contractor who is not obligated by  
16 agreement to make payment or contribution on behalf of such persons  
17 to any such employee welfare fund shall pay to each mechanic, laborer  
18 or worker as part of such person's wages the amount of payment or  
19 contribution for such person's classification on each pay day."

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

49 contractor's right to proceed with the work or such part of the work as  
50 to which there has been a failure to pay said required wages and to  
51 prosecute the work to completion by contract or otherwise, and the  
52 contractor and the contractor's sureties shall be liable to the state or the  
53 contracting political subdivision for any excess costs occasioned the  
54 state or the contracting political subdivision thereby, or (B) withhold  
55 payment of money to the contractor or subcontractor. The contracting  
56 department of the state or the political subdivision of the state shall,  
57 not later than two days after taking such action, notify the Labor  
58 Commissioner, in writing, of the name of the contractor or  
59 subcontractor, the project involved, the location of the work, the  
60 violations involved, the date the contract was terminated, and steps  
61 taken to collect the required wages.

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

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

79 (e) The Labor Commissioner shall determine the prevailing rate of  
80 wages on an hourly basis and the amount of payment or contributions  
81 paid or payable on behalf of such person to any employee welfare

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

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

117 persons or employee welfare funds under this section or section 31-54,  
118 regardless of any contractual relationship alleged to exist between the  
119 contractor and such person, and (2) submit monthly to the contracting  
120 agency by mail, first class postage prepaid, a certified payroll that shall  
121 consist of a complete copy of such records accompanied by a statement  
122 signed by the employer that indicates (A) such records are correct; (B)  
123 the rate of wages paid to each person performing the work of any  
124 mechanic, laborer or worker and the amount of payment or  
125 contributions paid or payable on behalf of each such person to any  
126 employee welfare fund, as defined in subsection (h) of this section, are  
127 not less than the prevailing rate of wages and the amount of payment  
128 or contributions paid or payable on behalf of each such person to any  
129 employee welfare fund, as determined by the Labor Commissioner  
130 pursuant to subsection (d) of this section, and not less than those  
131 required by the contract to be paid; (C) the employer has complied  
132 with the provisions of this section and section 31-54; (D) each such  
133 person is covered by a workers' compensation insurance policy for the  
134 duration of such person's employment, which shall be demonstrated  
135 by submitting to the contracting agency the name of the workers'  
136 compensation insurance carrier covering each such person, the  
137 effective and expiration dates of each policy and each policy number;  
138 (E) the employer does not receive kickbacks, as defined in 41 USC 52,  
139 from any employee or employee welfare fund; and (F) pursuant to the  
140 provisions of section 53a-157a, the employer is aware that filing a  
141 certified payroll which the employer knows to be false is a class D  
142 felony for which the employer may be fined up to five thousand  
143 dollars, imprisoned for up to five years, or both. This subsection shall  
144 not be construed to prohibit a general contractor from relying on the  
145 certification of a lower tier subcontractor, provided the general  
146 contractor shall not be exempted from the provisions of section 53a-  
147 157a if the general contractor knowingly relies upon a subcontractor's  
148 false certification. Notwithstanding the provisions of section 1-210, the  
149 certified payroll shall be considered a public record and every person  
150 shall have the right to inspect and copy such records in accordance  
151 with the provisions of section 1-212. The provisions of subsections (a)

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

158 (g) Any contractor who is required by the Labor Department to  
159 make any payment as a result of a subcontractor's failure to pay wages  
160 or benefits, or any subcontractor who is required by the Labor  
161 Department to make any payment as a result of a lower tier  
162 subcontractor's failure to pay wages or benefits, may bring a civil  
163 action in the Superior Court to recover no more than the damages  
164 sustained by reason of making such payment, together with costs and  
165 a reasonable attorney's fee.

166 [(g)] (h) The provisions of this section do not apply where the total  
167 cost of all work to be performed by all contractors and subcontractors  
168 in connection with new construction of any public works project is less  
169 than four hundred thousand dollars or where the total cost of all work  
170 to be performed by all contractors and subcontractors in connection  
171 with any remodeling, refinishing, refurbishing, rehabilitation,  
172 alteration or repair of any public works project is less than one  
173 hundred thousand dollars.

174 [(h)] (i) As used in this section, section 31-54 and section 31-89a, as  
175 amended by this act, "employee welfare fund" means any trust fund  
176 established by one or more employers and one or more labor  
177 organizations or one or more other third parties not affiliated with the  
178 employers to provide from moneys in the fund, whether through the  
179 purchase of insurance or annuity contracts or otherwise, benefits  
180 under an employee welfare plan; provided such term shall not include  
181 any such fund where the trustee, or all of the trustees, are subject to  
182 supervision by the Banking Commissioner of this state or any other  
183 state or the Comptroller of the Currency of the United States or the  
184 Board of Governors of the Federal Reserve System, and "benefits under

185 an employee welfare plan" means one or more benefits or services  
186 under any plan established or maintained for persons performing the  
187 work of any mechanics, laborers or workers or their families or  
188 dependents, or for both, including, but not limited to, medical, surgical  
189 or hospital care benefits; benefits in the event of sickness, accident,  
190 disability or death; benefits in the event of unemployment, or  
191 retirement benefits.

192 Sec. 2. Section 31-53b of the general statutes is repealed and the  
193 following is substituted in lieu thereof (*Effective October 1, 2010*):

194 (a) Each contract for a public works project entered into on or after  
195 July 1, 2009, by the state or any of its agents, or by any political  
196 subdivision of the state or any of its agents, described in subsection  
197 ~~[(g)]~~ (h) of section 31-53, as amended by this act, shall contain a  
198 provision requiring that each contractor furnish proof with the weekly  
199 certified payroll form for the first week each employee begins work on  
200 such project that any person performing the work of a mechanic,  
201 laborer or worker pursuant to the classifications of labor under section  
202 31-53, as amended by this act, on such public works project, pursuant  
203 to such contract, has completed a course of at least ten hours in  
204 duration in construction safety and health approved by the federal  
205 Occupational Safety and Health Administration or, has completed a  
206 new miner training program approved by the Federal Mine Safety and  
207 Health Administration in accordance with 30 CFR 48 or, in the case of  
208 telecommunications employees, has completed at least ten hours of  
209 training in accordance with 29 CFR 1910.268.

210 (b) Any person required to complete a course or program under  
211 subsection (a) of this section who has not completed the course or  
212 program shall be subject to removal from the worksite if the person  
213 does not provide documentation of having completed such course or  
214 program by the fifteenth day after the date the person is found to be in  
215 noncompliance. The Labor Commissioner or said commissioner's  
216 designee shall enforce this section.

217 (c) Not later than January 1, 2009, the Labor Commissioner shall

218 adopt regulations, in accordance with the provisions of chapter 54, to  
219 implement the provisions of subsections (a) and (b) of this section.  
220 Such regulations shall require that the ten-hour construction safety and  
221 health courses required under subsection (a) of this section be  
222 conducted in accordance with federal Occupational Safety and Health  
223 Administration Training Institute standards, or in accordance with  
224 Federal Mine Safety and Health Administration Standards or in  
225 accordance with 29 CFR 1910.268, as appropriate. The Labor  
226 Commissioner shall accept as sufficient proof of compliance with the  
227 provisions of subsection (a) or (b) of this section a student course  
228 completion card issued by the federal Occupational Safety and Health  
229 Administration Training Institute, or such other proof of compliance  
230 said commissioner deems appropriate, dated no earlier than five years  
231 before the commencement date of such public works project.

232 (d) This section shall not apply to employees of public service  
233 companies, as defined in section 16-1, or drivers of commercial motor  
234 vehicles driving the vehicle on the public works project and delivering  
235 or picking up cargo from public works projects provided they perform  
236 no labor relating to the project other than the loading and unloading of  
237 their cargo.

238 Sec. 3. Section 31-89a of the general statutes is repealed and the  
239 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

245 (b) Any proprietor or partner who fails to pay the contributions  
246 when due to an employee welfare fund, as defined in said subsection,  
247 under the terms of a written contract or rules and regulations adopted  
248 by the trustees of such funds, or any officer, director or employee of  
249 any corporation who has been made responsible by the corporation for  
250 payment of such contributions which have not been paid when due,



The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill permits contractors and subcontractors to bring civil actions in Superior Court in cases where the Department of Labor (DOL) has required them to pay prevailing employee wages and benefits as a result of a subcontractor or lower tier subcontractor failing to do so. This does not result in any fiscal impact to the state or municipalities.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****SB 97*****AN ACT CREATING A CIVIL ACTION TO ALLOW CONTRACTORS TO RECOVER UNPAID EMPLOYEE PENSION OBLIGATIONS FROM SUBCONTRACTORS.*****SUMMARY:**

Under prevailing wage law, the Labor Department can require a contractor on a public project to pay the employee wages and benefits for a subcontractor if the subcontractor fails to do so. The bill permits a contractor in this situation to bring a Superior Court civil action to recover the damages sustained by making such payment, together with costs and a reasonable attorney's fee. It also allows the same legal recourse to a subcontractor that is required to cover for a lower tier subcontractor's failure to pay wages or benefits.

EFFECTIVE DATE: October 1, 2010

**BACKGROUND*****Prevailing Wage Law***

The state prevailing wage law requires contractors on all state and municipal construction jobs to pay the prevailing hourly wage, as determined by the state Labor Department, to all mechanics, laborers, or other workers. This requirement applies to repair and renovation projects of \$100,000 or more and new construction projects of \$400,000 or more. Punishments for violating the law include fines, suspension from bidding on future public projects, and jail time (CGS §§ 31-53, 31-53a, & 31-54).

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 11 Nay 0 (03/04/2010)

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (03/26/2010)