



General Assembly

February Session, 2010

Raised Bill No. 97

LCO No. 560

* SB00097LABJUD030410 *

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

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2 statutes is repealed and the following is substituted in lieu thereof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,
251 shall be fined not more than two hundred dollars or imprisoned not
252 more than thirty days or both for each week of nonpayment. In
253 addition, any proprietor or partner who fails to pay such contributions
254 when due, and the officers or directors of any corporation which fails
255 to pay such contributions when due, whether or not such officers or
256 directors were made responsible by the corporation for the payment of
257 such contributions, shall be personally liable in a civil action for
258 payment of the amounts due such fund, as well as costs and
259 reasonable attorney's fees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	31-53
Sec. 2	<i>October 1, 2010</i>	31-53b
Sec. 3	<i>October 1, 2010</i>	31-89a

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Joint Favorable C/R

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