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:

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 Section 31-53 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2010):

(a) Each contract for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project by the state or any of its agents, or by any political subdivision of the state or any of its agents, shall contain the following provision:

"The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection [(h)] (i) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by
agreement to make payment or contribution on behalf of such persons
to any such employee welfare fund shall pay to each mechanic, laborer
or worker as part of such person's wages the amount of payment or
contribution for such person's classification on each pay day."

(b) Any contractor or subcontractor who knowingly or wilfully
employs any mechanic, laborer or worker in the construction,
remodeling, refinishing, refurbishing, rehabilitation, alteration or
repair of any public works project for or on behalf of the state or any of
its agents, or any political subdivision of the state or any of its agents,
at a rate of wage on an hourly basis that is less than the rate customary
or prevailing for the same work in the same trade or occupation in the
town in which such public works project is being constructed,
remodeled, refinshed, refurbished, rehabilitated, altered or repaired,
or who fails to pay the amount of payment or contributions paid or
payable on behalf of each such person to any employee welfare fund,
or in lieu thereof to the person, as provided by subsection (a) of this
section, shall be fined not less than two thousand five hundred dollars
but not more than five thousand dollars for each offense and (1) for the
first violation, shall be disqualified from bidding on contracts with the
state or any political subdivision until the contractor or subcontractor
has made full restitution of the back wages owed to such persons and
for an additional six months thereafter and (2) for subsequent
violations, shall be disqualified from bidding on contracts with the
state or any political subdivision until the contractor or subcontractor
has made full restitution of the back wages owed to such persons and
for not less than an additional two years thereafter. In addition, if it is
found by the contracting officer representing the state or political
subdivision of the state that any mechanic, laborer or worker
employed by the contractor or any subcontractor directly on the site
for the work covered by the contract has been or is being paid a rate of
wages less than the rate of wages required by the contract to be paid as
required by this section, the state or contracting political subdivision of
the state may (A) by written notice to the contractor, terminate such
contractor's right to proceed with the work or such part of the work as
to which there has been a failure to pay said required wages and to
prosecute the work to completion by contract or otherwise, and the
contractor and the contractor's sureties shall be liable to the state or the
contracting political subdivision for any excess costs occasioned the
state or the contracting political subdivision thereby, or (B) withhold
payment of money to the contractor or subcontractor. The contracting
department of the state or the political subdivision of the state shall,
not later than two days after taking such action, notify the Labor
Commissioner, in writing, of the name of the contractor or
subcontractor, the project involved, the location of the work, the
violations involved, the date the contract was terminated, and steps
taken to collect the required wages.

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

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

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

(f) Each employer subject to the provisions of this section or section
31-54 shall (1) keep, maintain and preserve such records relating to the
wages and hours worked by each person performing the work of any
mechanic, laborer and worker and a schedule of the occupation or
work classification at which each person performing the work of any
mechanic, laborer or worker on the project is employed during each
work day and week in such manner and form as the Labor
Commissioner establishes to assure the proper payments due to such
persons or employee welfare funds under this section or section 31-54, regardless of any contractual relationship alleged to exist between the contractor and such person, and (2) submit monthly to the contracting agency by mail, first class postage prepaid, a certified payroll that shall consist of a complete copy of such records accompanied by a statement signed by the employer that indicates (A) such records are correct; (B) the rate of wages paid to each person performing the work of any mechanic, laborer or worker and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (h) of this section, are not less than the prevailing rate of wages and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as determined by the Labor Commissioner pursuant to subsection (d) of this section, and not less than those required by the contract to be paid; (C) the employer has complied with the provisions of this section and section 31-54; (D) each such person is covered by a workers' compensation insurance policy for the duration of such person's employment, which shall be demonstrated by submitting to the contracting agency the name of the workers' compensation insurance carrier covering each such person, the effective and expiration dates of each policy and each policy number; (E) the employer does not receive kickbacks, as defined in 41 USC 52, from any employee or employee welfare fund; and (F) pursuant to the provisions of section 53a-157a, the employer is aware that filing a certified payroll which the employer knows to be false is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both. This subsection shall not be construed to prohibit a general contractor from relying on the certification of a lower tier subcontractor, provided the general contractor shall not be exempted from the provisions of section 53a-157a if the general contractor knowingly relies upon a subcontractor's false certification. Notwithstanding the provisions of section 1-210, the certified payroll shall be considered a public record and every person shall have the right to inspect and copy such records in accordance with the provisions of section 1-212. The provisions of subsections (a)
and (b) of section 31-59 and sections 31-66 and 31-69 that are not inconsistent with the provisions of this section or section 31-54 apply to this section. Failing to file a certified payroll pursuant to subdivision (2) of this subsection is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both.

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

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

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

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

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

(b) Any person required to complete a course or program under subsection (a) of this section who has not completed the course or program shall be subject to removal from the worksite if the person does not provide documentation of having completed such course or program by the fifteenth day after the date the person is found to be in noncompliance. The Labor Commissioner or said commissioner's designee shall enforce this section.
(c) Not later than January 1, 2009, the Labor Commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of subsections (a) and (b) of this section. Such regulations shall require that the ten-hour construction safety and health courses required under subsection (a) of this section be conducted in accordance with federal Occupational Safety and Health Administration Training Institute standards, or in accordance with Federal Mine Safety and Health Administration Standards or in accordance with 29 CFR 1910.268, as appropriate. The Labor Commissioner shall accept as sufficient proof of compliance with the provisions of subsection (a) or (b) of this section a student course completion card issued by the federal Occupational Safety and Health Administration Training Institute, or such other proof of compliance said commissioner deems appropriate, dated no earlier than five years before the commencement date of such public works project.

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

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

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

(b) Any proprietor or partner who fails to pay the contributions when due to an employee welfare fund, as defined in said subsection, under the terms of a written contract or rules and regulations adopted by the trustees of such funds, or any officer, director or employee of
any corporation who has been made responsible by the corporation for
payment of such contributions which have not been paid when due,
shall be fined not more than two hundred dollars or imprisoned not
more than thirty days or both for each week of nonpayment. In
addition, any proprietor or partner who fails to pay such contributions
when due, and the officers or directors of any corporation which fails
to pay such contributions when due, whether or not such officers or
directors were made responsible by the corporation for the payment of
such contributions, shall be personally liable in a civil action for
payment of the amounts due such fund, as well as costs and
reasonable attorney's fees.

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