



General Assembly

January Session, 2017

Committee Bill No. 432

LCO No. 4513



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING EXCEPTIONS TO THE PREVAILING WAGE REQUIREMENT IN 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 Section 31-53 of the general statutes is repealed and the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, 2017*):

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 (i) of this section, shall be at a rate equal
12 to the rate customary or prevailing for the same work in the same
13 trade or occupation in the town in which such public works project is
14 being constructed. Any contractor who is not obligated by agreement
15 to make payment or contribution on behalf of such persons to any such
16 employee welfare fund shall pay to each mechanic, laborer or worker

17 as part of such person's wages the amount of payment or contribution
18 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 or electronic notice to the contractor,
48 terminate such contractor's right to proceed with the work or such part
49 of the work as to which there has been a failure to pay said required
50 wages and to prosecute the work to completion by contract or

51 otherwise, and the contractor and the contractor's sureties shall be
52 liable to the state or the contracting political subdivision for any excess
53 costs occasioned the state or the contracting political subdivision
54 thereby, or (B) withhold payment of money to the contractor or
55 subcontractor. The contracting department of the state or the political
56 subdivision of the state shall, not later than two days after taking such
57 action, notify the Labor Commissioner, in writing or electronically, of
58 the name of the contractor or subcontractor, the project involved, the
59 location of the work, the violations involved, the date the contract was
60 terminated, and steps 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 (i) 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 (i) of this section, upon any public work within
73 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 (i) of this section, in each locality where
82 any such public work is to be constructed, and the agent empowered

83 to let such contract shall contact the Labor Commissioner, at least ten
84 but not more than twenty days prior to the date such contracts will be
85 advertised for bid, to ascertain the proper rate of wages and amount of
86 employee welfare fund payments or contributions and shall include
87 such rate of wage on an hourly basis and the amount of payment or
88 contributions paid or payable on behalf of each person to any
89 employee welfare fund, as defined in subsection (i) of this section, or in
90 lieu thereof the amount to be paid directly to each person for such
91 payment or contributions as provided in subsection (a) of this section
92 for all classifications of labor in the proposal for the contract. The rate
93 of wage on an hourly basis and the amount of payment or
94 contributions to any employee welfare fund, as defined in subsection
95 (i) of this section, or cash in lieu thereof, as provided in subsection (a)
96 of this section, shall, at all times, be considered as the minimum rate
97 for the classification for which it was established. Prior to the award of
98 any contract, purchase order, bid package or other designation subject
99 to the provisions of this section, such agent shall certify to the Labor
100 Commissioner, either in writing or electronically, the total dollar
101 amount of work to be done in connection with such public works
102 project, regardless of whether such project consists of one or more
103 contracts. Upon the award of any contract subject to the provisions of
104 this section, the contractor to whom such contract is awarded shall
105 certify, under oath, to the Labor Commissioner the pay scale to be used
106 by such contractor and any of the contractor's subcontractors for work
107 to be performed under such 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, provided such employer shall have the
119 option of keeping, maintaining and preserving such records in an
120 electronic format, and (2) submit monthly to the contracting agency by
121 mail, electronic mail or other method accepted by such agency, a
122 certified payroll that shall consist of a complete copy of such records
123 accompanied by a statement signed by the employer that indicates (A)
124 such records are correct; (B) the rate of wages paid to each person
125 performing the work of any mechanic, laborer or worker and the
126 amount of payment or contributions paid or payable on behalf of each
127 such person to any employee welfare fund, as defined in subsection (i)
128 of this section, are not less than the prevailing rate of wages and the
129 amount of payment or contributions paid or payable on behalf of each
130 such person to any employee welfare fund, as determined by the
131 Labor Commissioner pursuant to subsection (d) of this section, and not
132 less than those required by the contract to be paid; (C) the employer
133 has complied with the provisions of this section and section 31-54; (D)
134 each such person is covered by a workers' compensation insurance
135 policy for the duration of such person's employment, which shall be
136 demonstrated by submitting to the contracting agency the name of the
137 workers' compensation insurance carrier covering each such person,
138 the effective and expiration dates of each policy and each policy
139 number; (E) the employer does not receive kickbacks, as defined in 41
140 USC 52, from any employee or employee welfare fund; and (F)
141 pursuant to the provisions of section 53a-157a, the employer is aware
142 that filing a certified payroll which the employer knows to be false is a
143 class D felony for which the employer may be fined up to five
144 thousand dollars, imprisoned for up to five years, or both. This
145 subsection shall not be construed to prohibit a general contractor from
146 relying on the certification of a lower tier subcontractor, provided the
147 general contractor shall not be exempted from the provisions of section
148 53a-157a if the general contractor knowingly relies upon a
149 subcontractor's false certification. Notwithstanding the provisions of
150 section 1-210, the certified payroll shall be considered a public record

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

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

167 (h) The provisions of this section do not apply where the total cost
168 of all work to be performed by all contractors and subcontractors in
169 connection with new construction of any public works project is less
170 than [four hundred thousand] one million dollars or where the total
171 cost of all work to be performed by all contractors and subcontractors
172 in connection with any remodeling, refinishing, refurbishing,
173 rehabilitation, alteration or repair of any public works project is less
174 than [one] four hundred thousand dollars. Effective July 1, 2018, and
175 not later than each July fifteenth thereafter, the Labor Commissioner
176 shall announce an adjustment in such total cost thresholds which shall
177 be equal to the percentage increase between the last complete calendar
178 year and the previous calendar year in the consumer price index for
179 urban wage earners and clerical workers in the northeast urban area of
180 New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, with no
181 seasonal adjustment, as calculated by the United States Department of
182 Labor's Bureau of Labor Statistics, with the amount of such
183 adjustments rounded to the nearest dollar. The total cost thresholds

184 plus the adjustment announced by the Labor Commissioner on July
185 fifteenth shall become the new total cost thresholds and shall be
186 effective on the January first immediately following.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	31-53

Statement of Purpose:

To provide relief from municipal mandates by increasing the prevailing wage thresholds.

[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.]

Co-Sponsors: SEN. FASANO, 34th Dist.; SEN. WITKOS, 8th Dist.

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