

SENATE COMMITTEE OF REFERENCE REPORT

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Chair of Committee

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Date

April 8, 2019

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

SB19-196 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, add 24-92-115 as  
4 follows:

5 **24-92-115. Apprenticeship utilization requirements -**  
6 **mechanical, electrical, and plumbing contracts - public projects -**  
7 **definition.** (1) (a) UNLESS PROHIBITED BY APPLICABLE FEDERAL LAW,  
8 AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS  
9 SECTION, THE CONTRACT FOR ANY PUBLIC WORKS PROJECT THAT DOES NOT  
10 RECEIVE FEDERAL MONEY, INCLUDING A PUBLIC PROJECT THAT WILL HAVE  
11 AN INTEGRATED PROJECT DELIVERY CONTRACT PURSUANT TO ARTICLE 93  
12 OF THIS TITLE 24, IN THE AMOUNT OF ONE MILLION DOLLARS OR MORE  
13 SHALL REQUIRE THE GENERAL CONTRACTOR OR OTHER FIRM TO WHICH THE  
14 CONTRACT IS AWARDED TO SUBMIT, AT THE TIME THE MECHANICAL,  
15 ELECTRICAL, OR PLUMBING SUBCONTRACTOR IS PUT UNDER CONTRACT,  
16 DOCUMENTATION TO THE AGENCY OF GOVERNMENT THAT:

17 (I) IDENTIFIES THE CONTRACTORS OR SUBCONTRACTORS THAT  
18 WILL BE USED FOR ALL MECHANICAL, SHEET METAL, FIRE SUPPRESSION,  
19 SPRINKLER FITTING, ELECTRICAL, AND PLUMBING WORK REQUIRED ON THE  
20 PROJECT;

21 (II) CERTIFIES THAT ALL FIRMS IDENTIFIED PARTICIPATE IN  
22 APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES  
23 DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION  
24 OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES

1 DEPARTMENT OF LABOR AND HAVE A PROVEN RECORD OF GRADUATING  
2 APPRENTICES AS FOLLOWS:

3 (A) BEGINNING JULY 1, 2021, THROUGH JUNE 30, 2026, A  
4 MINIMUM OF FIFTEEN PERCENT OF ITS APPRENTICES FOR AT LEAST THREE  
5 OF THE PAST FIVE YEARS;

6 (B) BEGINNING JULY 1, 2026, THROUGH JUNE 30, 2031, A  
7 MINIMUM OF TWENTY PERCENT OF APPRENTICES FOR AT LEAST THREE OF  
8 THE PAST FIVE YEARS; AND

9 (C) BEGINNING JULY 1, 2031, AND EACH YEAR THEREAFTER, A  
10 MINIMUM OF THIRTY PERCENT OF APPRENTICES FOR AT LEAST THREE OF  
11 THE PAST FIVE YEARS; AND

12 (III) SUPPLIES SUPPORTING DOCUMENTATION FROM THE UNITED  
13 STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP VERIFYING  
14 THE INFORMATION PROVIDED IN THE CERTIFICATION SPECIFIED IN  
15 SUBSECTION (1)(a)(II) OF THIS SECTION.

16 (b) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO THE  
17 DEPARTMENT OF TRANSPORTATION, REGARDLESS OF THE AMOUNT OR  
18 FUNDING SOURCE OF THE PUBLIC PROJECT. THE PROVISIONS OF THIS  
19 SECTION ALSO DOES NOT APPLY TO ANY COUNTY, CITY AND COUNTY, CITY,  
20 MUNICIPALITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY  
21 OTHER POLITICAL SUBDIVISION OF THE STATE.

22 (c) FOR THE PURPOSES OF SUBSECTION (1)(a)(II) OF THIS SECTION,  
23 "GRADUATING" MEANS THE COMPLETION OF A MULTI-YEAR PROGRAM,  
24 INCLUDING THE REQUISITE CLASSROOM COURSE WORK AND ON-THE-JOB  
25 TRAINING REQUIREMENTS AND A CERTIFICATE OF COMPLETION ISSUED BY  
26 THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP.

27 (2) THE DOCUMENTATION REQUIRED PURSUANT TO SUBSECTION (1)  
28 OF THIS SECTION SHALL BE MADE PUBLICLY AVAILABLE BY THE  
29 CONTRACTING AGENCY OF GOVERNMENT THROUGH ITS WEBSITE WITHIN  
30 THIRTY DAYS FROM WHEN IT IS SUBMITTED.

31 (3) TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF  
32 SUBSECTION (1) OF THIS SECTION, THE GENERAL CONTRACTOR OR OTHER  
33 FIRM TO WHICH THE CONTRACT IS AWARDED SHALL AGREE TO PROVIDE  
34 ADDITIONAL DOCUMENTATION TO THE CONTRACTING AGENCY REGARDING  
35 AFFECTED APPRENTICESHIP TRAINING PROGRAMS RELATING TO THE  
36 REQUIREMENTS OF THIS SECTION.

37 (4) A CONTRACTOR THAT PLANS TO SUBMIT A BID FOR A PUBLIC  
38 WORKS PROJECT MAY REQUEST A WAIVER OF THE REQUIREMENTS OF THIS  
39 SECTION PRIOR TO SUBMITTING A BID. A CONTRACTOR THAT REQUESTS A  
40 WAIVER MUST PROVIDE SUBSTANTIAL EVIDENCE TO THE AGENCY OF  
41 GOVERNMENT SOLICITING THE CONTRACT THAT THERE ARE NO AVAILABLE,

1 ELIGIBLE SUBCONTRACTORS TO FULFILL THE MECHANICAL, ELECTRICAL,  
2 OR PLUMBING PORTIONS OF THE CONTRACT. EACH AGENCY OF  
3 GOVERNMENT THAT HAS CONTRACTS FOR PUBLIC PROJECTS SUBJECT TO  
4 THE REQUIREMENTS OF THIS SECTION SHALL MAKE PUBLIC ALL WAIVERS  
5 AND THE SPECIFIC RATIONALE FOR GRANTING THE WAIVER.

6 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO SUPERSEDE  
7 THE REQUIREMENTS FOR LICENSED PLUMBERS, LICENSED ELECTRICIANS,  
8 OR APPRENTICES REGISTERED WITH THE STATE PURSUANT TO TITLE 12,  
9 INCLUDING SECTIONS 12-23-105, 12-23-110.5, 12-58-105, AND 12-58-117.

10 (6) (a) TO PROMOTE AND FACILITATE THE DEVELOPMENT OF NEW  
11 APPRENTICESHIP PROGRAMS, AN APPRENTICESHIP PROGRAM THAT DOES  
12 NOT SATISFY THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION  
13 MAY PETITION THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR  
14 CONDITIONAL APPROVAL FOR PURPOSES OF THIS SECTION. TO BE ALLOWED  
15 CONDITIONAL APPROVAL, AN APPRENTICESHIP PROGRAM MUST  
16 DEMONSTRATE THE FOLLOWING:

17 (I) THE PROGRAM HAS BEEN REGISTERED WITH THE UNITED  
18 STATES DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING  
19 ADMINISTRATION OR A STATE APPRENTICESHIP COUNCIL AND HAS BEEN  
20 PROVIDING TRAINING FOR AT LEAST SIX MONTHS; AND

21 (II) THE PROGRAM IS PERFORMING BONA FIDE APPRENTICESHIP  
22 TRAINING AS EVIDENCED BY INFORMATION SHOWING THAT IT HAS THE  
23 REQUITE FACILITIES, PERSONNEL, AND OTHER RESOURCES NEEDED TO  
24 PROVIDE SUCH TRAINING; AND

25 (b) (I) IF CONDITIONAL APPROVAL IS GRANTED, THE PROGRAM WILL  
26 REMAIN ELIGIBLE FOR FUTURE COVERED PROJECTS, SUBJECT TO ANNUAL  
27 REVIEWS BY THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR FIVE  
28 YEARS AFTER CONDITIONAL APPROVAL IS GRANTED OR UNTIL IT CAN  
29 SATISFY THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION AND  
30 CAN SHOW A THREE-YEAR GRADUATION TRACK RECORD.

31 (II) TO MAINTAIN CONDITIONAL APPROVAL PURSUANT TO THIS  
32 SUBSECTION (6), THE APPRENTICESHIP PROGRAM MUST DEMONSTRATE TO  
33 THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT IT HAS REGISTERED  
34 NEW APPRENTICES INTO ITS PROGRAM FOR EVERY YEAR IT HAS BEEN IN  
35 OPERATION AND THAT IT HAS ADVANCED, AT A MINIMUM, TEN PERCENT OF  
36 ITS APPRENTICES IN EACH YEAR OF OPERATION. THE DEPARTMENT SHALL  
37 RESCIND A CONDITIONAL APPROVAL FOR ANY PROGRAM THAT FAILS TO  
38 MAINTAIN THESE STANDARDS.

39 **SECTION 2.** In Colorado Revised Statutes, **add** part 2 to article  
40 92 of title 24 as follows:

41 PART 2

1 PREVAILING WAGE FOR PUBLIC PROJECTS

2 **24-92-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE  
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "AGENCY OF GOVERNMENT" MEANS ANY AGENCY,  
5 DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, INSTITUTION, OR  
6 SECTION OF THE STATE WHICH IS A BUDGETARY UNIT EXERCISING  
7 CONSTRUCTION CONTRACTING AUTHORITY OR DISCRETION. "AGENCY OF  
8 GOVERNMENT" DOES NOT INCLUDE ANY COUNTY, CITY AND COUNTY, CITY,  
9 MUNICIPALITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY  
10 OTHER POLITICAL SUBDIVISION OF THE STATE.

11 (2) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT FOR  
12 A PUBLIC PROJECT WITH AN AGENCY OF GOVERNMENT.

13 (3) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF  
14 PERSONNEL.

15 (4) "EMPLOYEES" MEANS EMPLOYEES OF CONTRACTORS OR  
16 SUBCONTRACTORS PERFORMING JOBS ON VARIOUS TYPES OF PUBLIC  
17 PROJECTS INCLUDING MECHANICS, LABORERS, AND OTHER CONSTRUCTION  
18 EMPLOYEES.

19 (5) "PUBLIC PROJECT" MEANS ANY CONSTRUCTION, ALTERATION,  
20 REPAIR, DEMOLITION, OR IMPROVEMENT OF ANY LAND, BUILDING,  
21 STRUCTURE, FACILITY, ROAD, HIGHWAY, BRIDGE, OR OTHER PUBLIC  
22 IMPROVEMENT SUITABLE FOR AND INTENDED FOR USE IN THE PROMOTION  
23 OF PUBLIC HEALTH, WELFARE, OR SAFETY AND ANY OPERATION OR  
24 MAINTENANCE PROGRAMS FOR THE OPERATION AND UPKEEP OF SUCH  
25 PROJECTS. "PUBLIC PROJECT" INCLUDES ANY WORK, CONSTRUCTION, OR  
26 REPAIR PERFORMED BY A PRIVATE PARTY THROUGH A CONTRACT TO RENT,  
27 LEASE, OR PURCHASE AT LEAST FIFTY PERCENT OF THE PROJECT BY ONE OR  
28 MORE AGENCIES OF GOVERNMENT.

29 (6) "WAGES", "SCALE OF WAGES", "WAGE RATES", "MINIMUM  
30 WAGES", AND "PREVAILING WAGES" MEANS:

- 31 (a) THE BASIC HOURLY RATE OF PAY; AND
- 32 (b) FOR MEDICAL OR HOSPITAL CARE, PENSIONS ON RETIREMENT  
33 OR DEATH, COMPENSATION FOR INJURIES OR ILLNESS RESULTING FROM  
34 OCCUPATIONAL ACTIVITY, OR INSURANCE TO PROVIDE ANY OF THE  
35 FORGOING, FOR UNEMPLOYMENT BENEFITS, LIFE INSURANCE, DISABILITY  
36 AND SICKNESS INSURANCE, OR ACCIDENT INSURANCE, FOR VACATION AND  
37 HOLIDAY PAY, FOR DEFRAYING THE COSTS OF APPRENTICESHIP OR OTHER  
38 SIMILAR PROGRAMS, OR FOR OTHER BONA FIDE FRINGE BENEFITS, BUT  
39 ONLY WHERE THE CONTRACTOR OR SUBCONTRACTOR IS NOT REQUIRED BY  
40 OTHER FEDERAL, STATE, OR LOCAL LAW TO PROVIDE ANY OF THOSE  
41 BENEFITS, THE AMOUNT OF:

1 (I) THE RATE OF CONTRIBUTION IRREVOCABLY MADE BY A  
2 CONTRACTOR OR SUBCONTRACTOR TO A TRUSTEE OR TO A THIRD PERSON  
3 UNDER A FUND, PLAN, OR PROGRAM; AND

4 (II) THE RATE OF COSTS TO THE CONTRACTOR OR SUBCONTRACTOR  
5 THAT MAY BE REASONABLY ANTICIPATED IN PROVIDING BENEFITS TO  
6 EMPLOYEES PURSUANT TO AN ENFORCEABLE COMMITMENT TO CARRY OUT  
7 A FINANCIALLY RESPONSIBLE PLAN OR PROGRAM WHICH WAS  
8 COMMUNICATED IN WRITING TO THE EMPLOYEES AFFECTED.

9 **24-92-202. Contractors subject to provisions - weekly payment**  
10 **of employees - rules.** (1) EXCEPT AS OTHERWISE PROVIDED IN  
11 SUBSECTION (2) OF THIS SECTION, ANY CONTRACTOR WHO IS AWARDED A  
12 CONTRACT FOR A PUBLIC PROJECT BY AN AGENCY OF GOVERNMENT IN THE  
13 AMOUNT OF FIFTY THOUSAND DOLLARS OR MORE, AND ANY  
14 SUBCONTRACTORS WORKING ON THE PUBLIC PROJECT, SHALL PAY THEIR  
15 EMPLOYEES AT WEEKLY INTERVALS AND SHALL COMPLY WITH THE  
16 ENFORCEMENT PROVISIONS ESTABLISHED IN SECTION 24-92-209. THIS  
17 PART 2 APPLIES TO A CONTRACT FOR A PUBLIC PROJECT AWARDED  
18 PURSUANT TO PART 1 OF THIS ARTICLE 92 AND TO AN INTEGRATED PROJECT  
19 DELIVERY CONTRACT FOR A PUBLIC PROJECT AWARDED PURSUANT TO  
20 ARTICLE 93 OF THIS TITLE 24. THIS PART 2 DOES NOT APPLY TO CONTRACTS  
21 FOR PUBLIC PROJECTS THAT RECEIVE FEDERAL FUNDING.

22 (2) THIS PART 2 DOES NOT APPLY TO THE DEPARTMENT OF  
23 TRANSPORTATION, REGARDLESS OF THE AMOUNT OR FUNDING SOURCE OF  
24 THE PUBLIC PROJECT; EXCEPT THAT THE DEPARTMENT OF  
25 TRANSPORTATION IS REQUIRED TO PAY EMPLOYEES PERFORMING WORK ON  
26 ANY PUBLIC PROJECT, REGARDLESS OF THE AMOUNT OR FUNDING SOURCE  
27 OF THE PUBLIC PROJECT, IN ACCORDANCE WITH THE REQUIREMENTS OF THE  
28 FEDERAL "DAVIS-BACON ACT", 40 U.S.C. SEC 3141, ET SEQ.

29 (3) THE DIRECTOR MAY PROMULGATE RULES IN ACCORDANCE WITH  
30 ARTICLE 4 OF THIS TITLE 24 AS MAY BE NECESSARY TO ADMINISTER AND  
31 ENFORCE ANY REQUIREMENT OF THIS PART 2.

32 **24-92-203. Prevailing rate of wages and other payments -**  
33 **specifications in solicitations and contract.** (1) BEFORE AWARDED ANY  
34 CONTRACT FOR A PUBLIC PROJECT IN THE AMOUNT OF FIFTY THOUSAND  
35 DOLLARS OR MORE, AN AGENCY OF GOVERNMENT SHALL OBTAIN FROM THE  
36 DIRECTOR THE GENERAL PREVAILING RATE, AS DETERMINED BY THE  
37 DIRECTOR PURSUANT TO SECTION 24-92-205, OF THE REGULAR, HOLIDAY,  
38 AND OVERTIME WAGES PAID AND THE GENERAL PREVAILING PAYMENTS ON  
39 BEHALF OF EMPLOYEES TO LAWFUL WELFARE, PENSION, VACATION,  
40 APPRENTICE TRAINING, AND EDUCATIONAL FUNDS IN THE STATE, FOR EACH  
41 EMPLOYEE NEEDED TO EXECUTE THE CONTRACT FOR THE PUBLIC PROJECT.

1 PAYMENTS TO THE FUNDS MUST CONSTITUTE AN ORDINARY BUSINESS  
2 EXPENSE DEDUCTION FOR FEDERAL INCOME TAX PURPOSES BY  
3 CONTRACTORS AND SUBCONTRACTORS.

4 (2) AN AGENCY OF GOVERNMENT SHALL SPECIFY IN THE  
5 COMPETITIVE SOLICITATION FOR A PUBLIC PROJECT IN THE AMOUNT OF  
6 FIFTY THOUSAND DOLLARS OR MORE AND IN THE CONTRACT FOR SUCH  
7 PUBLIC PROJECT, THE GENERAL PREVAILING RATE OF THE REGULAR,  
8 HOLIDAY, AND OVERTIME WAGES PAID AND THE PAYMENTS ON BEHALF OF  
9 EMPLOYEES TO THE WELFARE, PENSION, VACATION, APPRENTICE TRAINING,  
10 ANDEDUCATION FUNDS EXISTING IN THE GEOGRAPHIC LOCALITY FOR EACH  
11 EMPLOYEE NEEDED TO EXECUTE THE CONTRACT OR WORK.

12 (3) THE GENERAL PREVAILING RATE OF THE REGULAR, HOLIDAY,  
13 AND OVERTIME WAGES PAID AND THE PAYMENTS ON BEHALF OF  
14 EMPLOYEES TO THE WELFARE, PENSION, VACATION, APPRENTICE TRAINING,  
15 ANDEDUCATION FUNDS SPECIFIED IN THE COMPETITIVE SOLICITATION AND  
16 IN THE CONTRACT FOR A PUBLIC PROJECT PURSUANT TO SUBSECTION (2) OF  
17 THIS SECTION SHALL REMAIN THE SAME FOR THE DURATION OF THE WORK  
18 ON THE PUBLIC PROJECT.

19 **24-92-204. Specification in contract - payment of wages -**  
20 **amount and frequency - unclaimed prevailing wages special trust**  
21 **fund - creation.** (1) EVERY CONTRACT FOR A PUBLIC PROJECT SUBJECT  
22 TO THE PROVISIONS OF THIS PART 2 SHALL CONTAIN A STIPULATION THAT:

23 (a) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PAY ALL  
24 THE EMPLOYEES EMPLOYED DIRECTLY ON THE SITE OF THE WORK,  
25 UNCONDITIONALLY AND NOT LESS OFTEN THAN ONCE A WEEK, AND  
26 WITHOUT SUBSEQUENT DEDUCTION OR REBATE ON ANY ACCOUNT, THE  
27 FULL AMOUNTS ACCRUED AT TIME OF PAYMENT COMPUTED AT WAGE  
28 RATES NOT LESS THAN THOSE STATED IN THE COMPETITIVE SOLICITATION,  
29 REGARDLESS OF ANY CONTRACTUAL RELATIONSHIPS THAT MAY BE  
30 ALLEGED TO EXIST BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND  
31 THE EMPLOYEES;

32 (b) THE SCALE OF WAGES TO BE PAID SHALL BE POSTED BY THE  
33 CONTRACTOR IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE SITE  
34 OF THE WORK;

35 (c) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PREPARE  
36 AND SUBMIT PAYROLL REPORTS TO THE CONTRACTING AGENCY OF  
37 GOVERNMENT ON A MONTHLY BASIS THAT DISCLOSE ALL RELEVANT  
38 PAYROLL INFORMATION, INCLUDING THE NAME AND ADDRESS OF ANY  
39 ENTITIES TO WHICH FRINGE BENEFITS ARE PAID, AND THAT THE  
40 CONTRACTING AGENCY OF GOVERNMENT IS REQUIRED TO REVIEW THE  
41 CERTIFIED PAYROLL REPORTS IN A TIMELY MANNER;

1 (d) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL  
2 MAINTAIN ON THE SITE WHERE PUBLIC PROJECTS ARE BEING CONSTRUCTED  
3 A DAILY LOG OF EMPLOYEES EMPLOYED EACH DAY ON THE PUBLIC  
4 PROJECT. THE LOG SHALL INCLUDE, AT A MINIMUM, FOR EACH EMPLOYEE  
5 HIS OR HER NAME, PRIMARY JOB TITLE, AND EMPLOYER, AND SHALL BE  
6 KEPT ON A FORM PRESCRIBED BY THE DIRECTOR. THE LOG SHALL BE  
7 AVAILABLE FOR INSPECTION ON THE SITE AT ALL TIMES BY THE  
8 CONTRACTING AGENCY OF GOVERNMENT AND THE DIRECTOR.

9 (e) IF THE CONTRACTOR OR ANY SUBCONTRACTORS FAIL TO PAY  
10 THE WAGES AS REQUIRED BY THE CONTRACT, THE STATE CONTROLLER  
11 SHALL NOT APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE  
12 CONTRACTOR UNTIL THE CONTRACTOR PROVIDES THE DIRECTOR WITH  
13 EVIDENCE, SATISFACTORY TO THE DIRECTOR, THAT THE WAGES REQUIRED  
14 BY THE CONTRACT HAVE BEEN PAID. IF THE CONTRACTOR OR ANY  
15 SUBCONTRACTOR FAILS TO PAY WAGES AS ARE REQUIRED BY THE  
16 CONTRACT, THE CONTRACTING AGENCY OF GOVERNMENT SHALL NOT  
17 APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE CONTRACTOR  
18 UNTIL THE CONTRACTOR FURNISHES THE CONTRACTING AGENCY OF  
19 GOVERNMENT EVIDENCE SATISFACTORY TO SUCH AGENCY OF  
20 GOVERNMENT THAT SUCH WAGES SO REQUIRED BY THE CONTRACT HAVE  
21 BEEN PAID; EXCEPT THAT THE CONTRACTING AGENCY OF GOVERNMENT  
22 SHALL APPROVE AND PAY ANY PORTION OF A WARRANT OR DEMAND FOR  
23 PAYMENT TO THE CONTRACTOR TO THE EXTENT THE AGENCY OF  
24 GOVERNMENT HAS BEEN FURNISHED EVIDENCE SATISFACTORY TO THE  
25 AGENCY OF GOVERNMENT THAT THE CONTRACTOR OR ONE OR MORE  
26 SUBCONTRACTORS HAS PAID SUCH WAGES REQUIRED BY THE CONTRACT,  
27 EVEN IF THE CONTRACTOR HAS NOT FURNISHED EVIDENCE THAT ALL OF  
28 THE SUBCONTRACTORS HAVE PAID WAGES AS REQUIRED BY THE  
29 CONTRACT. ANY CONTRACTOR OR SUBCONTRACTOR MAY USE THE  
30 FOLLOWING PROCEDURE IN ORDER TO SATISFY THE REQUIREMENTS OF THIS  
31 SECTION:

32 (I) THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT TO THE  
33 DIRECTOR, FOR EACH EMPLOYEE TO WHOM SUCH WAGES ARE DUE, A  
34 CHECK AS REQUIRED BY THE DIRECTOR. SUCH CHECK SHALL BE PAYABLE  
35 TO THAT EMPLOYEE OR TO THE STATE SO IT IS NEGOTIABLE BY EITHER OF  
36 THOSE PARTIES. EACH SUCH CHECK SHALL BE IN AN AMOUNT  
37 REPRESENTING THE DIFFERENCE BETWEEN THE ACCRUED WAGES REQUIRED  
38 TO BE PAID TO THAT EMPLOYEE BY THE CONTRACT AND THE WAGES  
39 ACTUALLY PAID BY THE CONTRACTOR OR SUBCONTRACTOR.

40 (II) IF ANY CHECK SUBMITTED PURSUANT THIS SUBSECTION (1)(e)  
41 CANNOT BE DELIVERED TO THE EMPLOYEE WITHIN A REASONABLE PERIOD

1 AS DETERMINED BY THE DIRECTOR, THEN IT SHALL BE NEGOTIATED BY THE  
2 STATE AND THE PROCEEDS DEPOSITED IN THE DIRECTOR'S UNCLAIMED  
3 PREVAILING WAGES SPECIAL TRUST FUND, WHICH IS HEREBY CREATED IN  
4 THE STATE TREASURY. NOTHING IN THIS SUBSECTION (1) SHALL BE  
5 CONSTRUED TO LESSEN THE RESPONSIBILITY OF THE CONTRACTOR OR  
6 SUBCONTRACTOR TO ATTEMPT TO LOCATE AND PAY ANY EMPLOYEE TO  
7 WHOM WAGES ARE DUE.

8 (III) ANY VALID, VERIFIED CLAIM FOR PREVAILING WAGES THAT IS  
9 ACTUALLY RECEIVED BY THE STATE THROUGH NEGOTIATION OF ANY  
10 CHECK SUBMITTED PURSUANT TO THIS SUBSECTION (1)(e) MUST BE MADE  
11 PRIOR TO TWO YEARS AFTER THE DATE OF THE LAST UNDERPAYMENT BY  
12 THE CONTRACTOR OR ANY SUBCONTRACTOR TO THE EMPLOYEE TO WHOM  
13 SUCH WAGES WERE DUE. AFTER SUCH DATE, THE STATE SHALL NO LONGER  
14 BE LIABLE FOR PAYMENT. THE STATE, AS TRUSTEE, SHALL PAY SUCH  
15 CLAIMANT ONLY THE AMOUNT OF THE CHECK THAT IS ACTUALLY  
16 NEGOTIATED, REGARDLESS OF ANY DISPUTE AS TO ANY ADDITIONAL  
17 AMOUNT OF WAGES OWED TO THE EMPLOYEE. NO INTEREST SHALL BE PAID  
18 BY THE STATE ON ANY FUNDS RECEIVED OR DISBURSED PURSUANT TO THIS  
19 SUBSECTION (1)(e)(III).

20 (IV) ON THE LAST WORKING DAY OF EACH MONTH, THE AMOUNT  
21 OF ANY CLAIM FOR WHICH THE STATE IS NO LONGER LIABLE SHALL BE  
22 CREDITED TO THE GENERAL FUND, EXCEPT AS OTHERWISE REQUIRED BY  
23 LAW.

24 (V) THE DIRECTOR SHALL MAINTAIN A LIST OF ALL UNCLAIMED,  
25 STATE-NEGOTIATED PREVAILING WAGE CHECKS FOR WHICH THE STATE IS  
26 LIABLE. SUCH LIST SHALL BE UPDATED MONTHLY AND SHALL BE  
27 AVAILABLE FOR INSPECTION AT THE OFFICE OF THE DIRECTOR.

28 **24-92-205. Investigation and determination of prevailing**  
29 **wages - filing of schedule.** (1) IN DETERMINING THE APPLICABLE  
30 PREVAILING WAGE FOR PUBLIC PROJECTS PURSUANT TO SECTION  
31 24-92-204, THE DIRECTOR SHALL USE APPROPRIATE WAGE  
32 DETERMINATIONS ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR  
33 IN ACCORDANCE WITH THE "DAVIS-BACON ACT", 40 U.S.C. SEC. 3141, ET  
34 SEQ., TO ESTABLISH THE PREVAILING WAGE RATES FOR THE APPLICABLE  
35 TRADES OR OCCUPATION FOR THE GEOGRAPHIC LOCALITY OF THE PUBLIC  
36 PROJECT. THE DIRECTOR SHALL KEEP A SCHEDULE ON FILE IN HIS OR HER  
37 OFFICE OF THE CUSTOMARY PREVAILING RATE OF WAGES AND PAYMENTS  
38 MADE TO OR ON BEHALF OF THE EMPLOYEES, WHICH SHALL BE OPEN TO  
39 PUBLIC INSPECTION.

40 (2) THE DIRECTOR SHALL UPDATE THE APPLICABLE PREVAILING  
41 WAGE FOR PUBLIC PROJECTS AS DETERMINED PURSUANT TO SUBSECTION

1 (1) OF THIS SECTION ON OR BEFORE JULY 1, 2022, AND ON OR BEFORE JULY  
2 1 EACH YEAR THEREAFTER.

3 **24-92-206. Statutory provisions included in contracts.** A COPY  
4 OF SECTIONS 24-92-203 AND 24-92-204 SHALL BE INSERTED IN ALL  
5 CONTRACTS FOR PUBLIC PROJECTS AWARDED BY AN AGENCY OF  
6 GOVERNMENT IF THE CONTRACT PRICE IS FIFTY THOUSAND DOLLARS OR  
7 MORE.

8 **24-92-207. Prevailing wage rates - posting.** (1) EACH  
9 CONTRACTOR AWARDED A CONTRACT FOR PUBLIC PROJECT WITH A  
10 CONTRACT PRICE OF FIFTY THOUSAND DOLLARS OR MORE AND EACH  
11 SUBCONTRACTOR WHO PERFORMS WORK ON THE PUBLIC PROJECT SHALL  
12 POST IN CONSPICUOUS PLACES ON THE PROJECT, WHERE EMPLOYEES ARE  
13 EMPLOYED, POSTERS THAT CONTAIN THE CURRENT PREVAILING RATE OF  
14 WAGES AND THE CURRENT PREVAILING RATE OF PAYMENTS TO THE FUNDS  
15 REQUIRED TO BE PAID FOR EACH EMPLOYEE EMPLOYED TO EXECUTE THE  
16 CONTRACT AS ESTABLISHED IN SECTIONS 24-92-203 AND 24-92-204, AND  
17 THE RIGHTS AND REMEDIES OF ANY EMPLOYEE DESCRIBED IN SECTION  
18 24-92-210 FOR NONPAYMENT OF ANY WAGES EARNED PURSUANT TO THIS  
19 SECTION. THE POSTERS SHALL BE FURNISHED TO CONTRACTORS AND  
20 SUBCONTRACTORS BY THE DIRECTOR IN A FORM AND MANNER TO BE  
21 DETERMINED BY THE DIRECTOR.

22 (2) A CONTRACTOR OR SUBCONTRACTOR WHO FAILS TO COMPLY  
23 WITH THIS SECTION SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND  
24 SHALL PAY TO THE DIRECTOR ONE HUNDRED DOLLARS FOR EACH  
25 CALENDAR DAY OF NONCOMPLIANCE AS DETERMINED BY THE DIRECTOR.

26 (3) CONTRACTS SET FORTH IN THIS SECTION SHALL NOT BE  
27 AWARDED BY AN AGENCY OF GOVERNMENT UNTIL THE DIRECTOR HAS  
28 PREPARED AND DELIVERED THE POSTERS TO THE CONTRACTOR TO WHOM  
29 THE CONTRACT IS TO BE AWARDED.

30 **24-92-208. Apprenticeship contribution rate.** (1) (a) THE  
31 DIRECTOR SHALL ESTABLISH A SEPARATE APPRENTICESHIP CONTRIBUTION  
32 RATE UNDER THE PREVAILING WAGE AND FRINGE BENEFIT REQUIREMENTS  
33 OF THIS PART 2.

34 (b) THE CONTRACTING AGENCY OF GOVERNMENT SHALL SPECIFY  
35 IN THE COMPETITIVE SOLICITATION FOR A PUBLIC PROJECT IN THE AMOUNT  
36 OF FIFTY THOUSAND DOLLARS OR MORE AND IN THE CONTRACT FOR SUCH  
37 PUBLIC PROJECT THE APPRENTICESHIP CONTRIBUTION RATE AND FRINGE  
38 BENEFIT REQUIREMENTS OF THIS PART 2.

39 (c) THE DIRECTOR SHALL UPDATE THE APPLICABLE  
40 APPRENTICESHIP CONTRIBUTION RATE AS DETERMINED PURSUANT TO  
41 SUBSECTION (1)(a) OF THE SECTION ON OR BEFORE JULY 1, 2022, AND ON

1 OR BEFORE JULY 1 EACH YEAR THEREAFTER.

2 (d) THE APPLICABLE APPRENTICESHIP CONTRIBUTION RATE  
3 SPECIFIED IN THE COMPETITIVE SOLICITATION AND IN THE CONTRACT FOR  
4 A PUBLIC PROJECT PURSUANT TO THIS SUBSECTION (1) SHALL REMAIN THE  
5 SAME FOR THE DURATION OF THE WORK ON THE PUBLIC PROJECT.

6 (2) THE AMOUNT OF THE APPRENTICESHIP CONTRIBUTION WILL BE  
7 SET IN ACCORDANCE WITH THE APPRENTICESHIP CONTRIBUTION OF THE  
8 COLLECTIVE BARGAINING AGREEMENT OF THE APPLICABLE TRADE IN THE  
9 GEOGRAPHIC LOCALITY OF THE PUBLIC PROJECT. CONTRACTORS SHALL  
10 ACHIEVE COMPLIANCE WITH THIS REQUIREMENT BY ONE OF THE  
11 FOLLOWING OPTIONS:

12 (a) CONTRACTORS SIGNATORY TO THE APPLICABLE COLLECTIVE  
13 BARGAINING AGREEMENT SHALL BE REQUIRED TO PAY NO MORE THAN THE  
14 APPRENTICESHIP CONTRIBUTION RATE OF THE AGREEMENT;

15 (b) CONTRACTORS THAT ARE NOT SIGNATORY TO THE APPLICABLE  
16 COLLECTIVE BARGAINING AGREEMENT BUT THAT PARTICIPATE IN AN  
17 APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES  
18 DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION  
19 OR A STATE APPRENTICESHIP COUNCIL REGISTERED WITH THE UNITED  
20 STATES DEPARTMENT OF LABOR SHALL PAY THE DETERMINED  
21 APPRENTICESHIP CONTRIBUTION TO THAT PROGRAM; OR

22 (c) CONTRACTORS THAT DO NOT QUALIFY FOR EITHER OPTION  
23 SPECIFIED IN SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION SHALL BE  
24 REQUIRED TO PAY THE AMOUNT OF THE APPRENTICESHIP CONTRIBUTION  
25 TO AFFECTED WORKERS IN CASH PAYMENTS IN ADDITION TO THE OTHER  
26 COMPONENTS OF THE PREVAILING WAGE AND FRINGE BENEFIT PACKAGE  
27 REQUIRED PURSUANT TO THIS PART 2.

28 (3) THE APPRENTICESHIP CONTRIBUTION RATE SHALL BE  
29 DEDUCTED FROM THE PREVAILING WAGE RATE PACKAGE TO AVOID  
30 DOUBLE PAYMENT BY THE CONTRACTOR OR SUBCONTRACTOR.

31 **24-92-209. Enforcement - rules.** (1) UPON RECEIPT OF A  
32 COMPLAINT OR UPON ANALYSIS OF CERTIFIED PAYROLL RECORDS, A  
33 CONTRACTING AGENCY OF GOVERNMENT SHALL REPORT ANY PERCEIVED  
34 VIOLATION OF THIS PART 2 TO THE CONTRACTOR WITHIN FORTY-EIGHT  
35 HOURS OF BEING MADE AWARE OF THE PERCEIVED VIOLATION. IN  
36 CONNECTION WITH THE PERCEIVED VIOLATION:

37 (a) THE CONTRACTING AGENCY OF GOVERNMENT SHALL ALLOW  
38 THE CONTRACTOR TO CURE THE PERCEIVED VIOLATION WITHIN FIFTEEN  
39 CALENDAR DAYS IF THE CONTRACTOR CAN DEMONSTRATE THE INSTANCE  
40 IN QUESTION WAS THE RESULT OF LEGITIMATE ADMINISTRATIVE ERROR.

41 (b) IF THE CONTRACTOR DOES NOT REMEDY THE PERCEIVED

1 VIOLATION WITHIN FIFTEEN CALENDAR DAYS OR IF THE CONTRACTING  
2 AGENCY DETERMINES THAT THE PERCEIVED VIOLATION WAS WILLFUL, THE  
3 CONTRACTING AGENCY SHALL REPORT THE PERCEIVED VIOLATION TO THE  
4 DEPARTMENT OF LABOR AND EMPLOYMENT FOR INVESTIGATION.

5 (2) (a) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL  
6 INVESTIGATE ALL COMPLAINTS REFERRED TO THE DEPARTMENT BY THE  
7 CONTRACTING AGENCY OF GOVERNMENT TO DETERMINE IF THE PERCEIVED  
8 VIOLATION WAS CONDUCTED IN A WILLFUL MANNER.

9 (b) FOR THE PURPOSES OF THIS SECTION, "WILLFUL VIOLATION"  
10 INCLUDES INTENTIONAL VIOLATIONS AND THOSE VIOLATIONS MADE WITH  
11 RECKLESS DISREGARD OR DELIBERATE IGNORANCE OF THE LAW.

12 (3) IF THE DEPARTMENT OF LABOR AND EMPLOYMENT DETERMINES  
13 THAT A WILLFUL VIOLATION OCCURRED, IT SHALL REQUIRE RESTITUTION  
14 OF APPLICABLE BACK PAY FOR THE IMPACTED EMPLOYEES AND SHALL  
15 SUBJECT THE CONTRACTOR TO THE FOLLOWING FINES:

16 (a) FIVE THOUSAND DOLLARS FOR THE FIRST VIOLATION IN  
17 ADDITION TO WAGE RESTITUTION TO THE IMPACTED EMPLOYEES;

18 (b) TEN THOUSAND DOLLARS FOR THE SECOND VIOLATION IN  
19 ADDITION TO WAGE RESTITUTION TO THE IMPACTED EMPLOYEES; AND

20 (c) TWENTY-FIVE THOUSAND DOLLARS FOR THE THIRD AND ALL  
21 SUBSEQUENT VIOLATIONS IN ADDITION TO WAGE RESTITUTION TO THE  
22 IMPACTED EMPLOYEES.

23 (4) AT THE DISCRETION OF THE DIRECTOR, THE CONTRACTOR MAY  
24 BE DEBARRED IF THEY HAVE BEEN FOUND TO HAVE THREE OR MORE  
25 WILLFUL VIOLATIONS IN ANY FIVE YEAR PERIOD. THE TERM OF DEBARMENT  
26 WILL BE THREE YEARS.

27 (5) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL  
28 MAINTAIN A LIST OF CONTRACTORS WHO HAVE BEEN FOUND TO HAVE  
29 WILLFULLY VIOLATED THIS ACT, INCLUDING DETAILS OF THE VIOLATION,  
30 ON A PUBLICLY AVAILABLE WEBSITE.

31 (6) IF A CONTRACTING AGENCY OF GOVERNMENT OR THE  
32 DEPARTMENT OF LABOR AND EMPLOYMENT FAILS TO RESOLVE AN  
33 ACTIONABLE WAGE CLAIM WITHIN ONE HUNDRED TWENTY DAYS, THE  
34 EMPLOYEE SHALL HAVE THE RIGHT TO FILE A PRIVATE LAWSUIT PURSUANT  
35 TO SECTION 24-92-210.

36 (7) THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY  
37 PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE 24 AS  
38 MAY BE NECESSARY TO ADMINISTER AND ENFORCE ANY REQUIREMENT OF  
39 THIS PART 2. SUCH RULES MAY INCLUDE A REASONABLE ADMINISTRATIVE  
40 APPEAL PROCESS FOR DETERMINATIONS MADE PURSUANT TO THIS SECTION.

41 **24-92-210. Private right of action to collect wages or benefits**

1 - **definition.** (1) AN EMPLOYEE OR FORMER EMPLOYEE OF A CONTRACTOR  
2 OR SUBCONTRACTOR MAY BRING A CIVIL ACTION FOR A VIOLATION OF  
3 SECTION 24-92-204 FOR APPROPRIATE INJUNCTIVE RELIEF, ACTUAL  
4 DAMAGES, OR BOTH WITHIN THREE YEARS AFTER THE OCCURRENCE OF THE  
5 ALLEGED VIOLATION. AN ACTION COMMENCED PURSUANT TO THIS  
6 SECTION MAY BE BROUGHT IN THE DISTRICT COURT FOR THE COUNTY  
7 WHERE THE ALLEGED VIOLATION OCCURRED, THE COUNTY WHERE THE  
8 COMPLAINANT RESIDES, OR THE COUNTY WHERE THE PERSON AGAINST  
9 WHOM IN THE CIVIL COMPLAINT IS FILED RESIDES OR HAS THEIR PRINCIPAL  
10 PLACE OF BUSINESS. ANY CONTRACTOR OR SUBCONTRACTOR WHO  
11 VIOLATES SECTION 24-92-204 SHALL BE LIABLE TO THE AFFECTED  
12 EMPLOYEE OR EMPLOYEES IN THE AMOUNT OF UNPAID WAGES OR BENEFITS  
13 PLUS INTEREST.

14 (2) A CONTRACTOR OR SUBCONTRACTOR'S RESPONSIBILITY AND  
15 LIABILITY IS SOLELY FOR ITS OWN EMPLOYEES.

16 (3) AN ACTION INITIATED PURSUANT TO THIS SECTION MAY BE  
17 BROUGHT BY ONE OR MORE EMPLOYEES OR FORMER EMPLOYEES ON  
18 BEHALF OF HIM OR HERSELF OR THEMSELVES AND OTHER EMPLOYEES  
19 SIMILARLY SITUATED; EXCEPT THAT NO EMPLOYEE SHALL BE A PARTY  
20 PLAINTIFF TO ANY SUCH ACTION UNLESS HE OR SHE CONSENTS IN WRITING  
21 TO BECOME SUCH A PARTY AND SUCH CONSENT IS FILED IN THE COURT IN  
22 WHICH SUCH ACTION IS BROUGHT.

23 (4) IF THE COURT FINDS THAT AN ACTION BROUGHT PURSUANT TO  
24 THIS SECTION WAS FRIVOLOUS, THE COURT SHALL AWARD COSTS AND  
25 ATTORNEY FEES TO THE DEFENDANT IN THE ACTION.

26 (5) THE COURT IN AN ACTION FILED UNDER THIS SECTION SHALL  
27 AWARD AFFECTED EMPLOYEES OR FORMER EMPLOYEES LIQUIDATED  
28 DAMAGES IN AN AMOUNT EQUAL TO TWO TIMES THE AMOUNT OF UNPAID  
29 WAGES OR BENEFITS OWED. UNPAID FRINGE BENEFIT CONTRIBUTIONS  
30 OWED PURSUANT TO THIS SECTION IN ANY FORM SHALL BE PAID TO THE  
31 APPROPRIATE BENEFIT FUND; EXCEPT THAT IN THE ABSENCE OF AN  
32 APPROPRIATE FUND THE BENEFIT SHALL BE PAID DIRECTLY TO THE  
33 INDIVIDUAL.

34 (6) THE FILING OF A CIVIL ACTION UNDER THIS SECTION SHALL NOT  
35 PRECLUDE THE DIRECTOR FROM PROHIBITING A CONTRACTOR OR  
36 SUBCONTRACTOR FROM BIDDING ON OR OTHERWISE PARTICIPATING IN  
37 STATE CONTRACTS OR FROM PROHIBITING TERMINATION OF WORK ON  
38 FAILURE TO PAY AGREED WAGES.

39 (7) (a) ANY PERSON, FIRM, OR CORPORATION FOUND TO HAVE  
40 WILLFULLY MADE A FALSE OR FRAUDULENT REPRESENTATION IN  
41 CONNECTION WITH WAGE OBLIGATIONS OWED ON A CONTRACT SHALL BE

1 REQUIRED TO PAY A CIVIL PENALTY IN AN AMOUNT OF NO LESS THAN ONE  
2 THOUSAND DOLLARS AND NOT GREATER THAN THREE THOUSAND DOLLARS  
3 PER REPRESENTATION. SUCH PENALTIES SHALL BE RECOVERABLE IN CIVIL  
4 ACTIONS FILED PURSUANT TO THIS SECTION.

5 (b) FOR PURPOSES OF THIS SUBSECTION (7) "WILLFULLY" MEANS  
6 REPRESENTATIONS THAT ARE KNOWN TO BE FALSE OR REPRESENTATIONS  
7 MADE WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THEIR  
8 TRUTH OR FALSITY.

9 (8) AN EMPLOYER SHALL NOT DISCHARGE, THREATEN, OR  
10 OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE, OR FORMER EMPLOYEE,  
11 REGARDING COMPENSATION TERMS, CONDITIONS, LOCATIONS OR  
12 PRIVILEGES OF EMPLOYMENT BECAUSE THE EMPLOYEE OR FORMER  
13 EMPLOYEE, OR A PERSON OR ORGANIZATION ACTING ON HIS OR HER  
14 BEHALF REPORTS OR MAKES A COMPLAINT UNDER THIS SECTION OR  
15 OTHERWISE ASSERTS HIS OR HER RIGHTS UNDER THIS SECTION.

16 **SECTION 3. Act subject to petition - effective date -**  
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
18 the expiration of the ninety-day period after final adjournment of the  
19 general assembly (August 2, 2019, if adjournment sine die is on May 3,  
20 2019); except that, if a referendum petition is filed pursuant to section 1  
21 (3) of article V of the state constitution against this act or an item, section,  
22 or part of this act within such period, then the act, item, section, or part  
23 will not take effect unless approved by the people at the general election  
24 to be held in November 2020 and, in such case, will take effect on the  
25 date of the official declaration of the vote thereon by the governor.

26 (2) This act applies to solicitations issued on or after July 1,  
27 2021."

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