A BILL FOR AN ACT

CONCERNING THE MODIFICATION OF PROCUREMENT REQUIREMENTS FOR STATE CONTRACTS FOR PUBLIC PROJECTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill modifies procurement requirements for state contracts for public projects. The bill makes the following changes:

**Invitation for bids:** Currently, all construction contracts for public projects that do not receive federal money may be solicited by invitation for bids. The bill specifies that only a construction contract for a public project that is reasonably expected to cost $1 million or less may be
solicited by invitation for bids.

**Competitive sealed best value bids:** Currently, all construction contracts for public projects that do not receive federal money may be awarded by competitive sealed best value bidding. The bill specifies that, unless prohibited by federal law, a construction contract for a public project that is reasonably expected to cost over $1 million is required to be awarded through competitive sealed best value bidding or integrated project delivery, and a construction contract for a public project that is reasonably expected to cost $1 million or less may be awarded through competitive sealed best value bidding or integrated project delivery.

Current law specifies the evaluation factors that are required to be included in an invitation for competitive sealed best value bids for a public project. The bill adds several required evaluation factors including the craft labor staffing plan for the project for the bidder and the bidder’s subcontractors, the anticipated utilization by the bidder and its subcontractors of apprentices registered with federal or state apprenticeship agencies to complete the work under the contract, and the safety plan and safety record of the bidder and the bidder’s subcontractors.

**Disclosure of subcontractors:** The bill requires any contractor that responds to a competitive solicitation for a public project to disclose, in its initial bid or proposal, the top 5 subcontractor disciplines it plans to use to fulfill the requirements of the contract. The bill specifies how the top 5 subcontractor disciplines are measured and requires contractors to disclose subcontractors for the mechanical, electrical, and plumbing requirements of the contract, even if they are not included in the top 5 disciplines.

**Apprenticeship utilization requirements:** The general contractor for a public project financed in whole or in part by state money in the amount of $1 million or more is required to submit, prior to the contract award, documentation to the contracting agency that certifies that all subcontractors used on the project participate in apprenticeship training programs that have been approved by a federal or state apprenticeship agency and have a proven record of graduating apprentices for at least 3 of the past 5 years. The contractor is required to provide specified supporting documentation to the contracting agency and the agency is required to make the documentation available to the public on its website. A contractor that plans to submit a bid for a public project may request a waiver of the apprenticeship requirements and the contracting agency is required make public all waivers and the specific rationale for granting the waiver.

**Integrated project delivery:** Current law specifies that integrated project delivery is a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these
services, for a public project. The bill adds additional evaluation factors that a contracting agency is required to use to evaluate proposals and the capabilities of participating entities. The additional factors include information about past performance and experience of the bidder, the bidder's project management plan for the contract, the bidder's staffing plan, the bidder's safety plan and safety record, the bidder's job standards, and the availability and use of domestically produced iron, steel, and related manufactured goods to execute the contract.

Be it enacted by the General Assembly of the State of Colorado:

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

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

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

(II) CERTIFIES THAT ALL FIRMS IDENTIFIED PARTICIPATE IN APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES
DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION
OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES
DEPARTMENT OF LABOR AND HAVE A PROVEN RECORD OF GRADUATING
APPRENTICES AS FOLLOWS:

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

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

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

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

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

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

(2) The documentation required pursuant to subsection (1) of this section shall be made publicly available by the contracting agency of government through its website within thirty days from when it is submitted.

(3) To ensure compliance with the requirements of subsection (1) of this section, the general contractor or other firm to which the contract is awarded shall agree to provide additional documentation to the contracting agency regarding affected apprenticeship training programs relating to the requirements of this section.

(4) A contractor that plans to submit a bid for a public works project may request a waiver of the requirements of this section prior to submitting a bid. A contractor that requests a waiver must provide substantial evidence to the agency of government soliciting the contract that there are no available, eligible subcontractors to fulfill the mechanical, electrical, or plumbing portions of the contract. Each agency of government that has contracts for public projects subject to the requirements of this section shall make public all waivers and the specific rationale for granting the waiver.

(5) Nothing in this section shall be construed to supersede the requirements for licensed plumbers, licensed electricians, or apprentices registered with the state pursuant to title 12, including sections 12-23-105, 12-23-110.5, 12-58-105, and 12-58-117.

(6) (a) To promote and facilitate the development of new apprenticeship programs, an apprenticeship program that does

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NOT SATISFY THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION
MAY PETITION THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR
CONDITIONAL APPROVAL FOR PURPOSES OF THIS SECTION. TO BE ALLOWED
CONDITIONAL APPROVAL, AN APPRENTICESHIP PROGRAM MUST
DEMONSTRATE THE FOLLOWING:

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

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

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

(II) TO MAINTAIN CONDITIONAL APPROVAL PURSUANT TO THIS
SUBSECTION (6), THE APPRENTICESHIP PROGRAM MUST DEMONSTRATE TO
THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT IT HAS REGISTERED
NEW APPRENTICES INTO ITS PROGRAM FOR EVERY YEAR IT HAS BEEN IN
OPERATION AND THAT IT HAS ADVANCED, AT A MINIMUM, TEN PERCENT OF
ITS APPRENTICES IN EACH YEAR OF OPERATION. THE DEPARTMENT SHALL
RESCIND A CONDITIONAL APPROVAL FOR ANY PROGRAM THAT FAILS TO
MAINTAIN THESE STANDARDS.
SECTION 2. In Colorado Revised Statutes, add part 2 to article 92 of title 24 as follows:

PART 2

PREVAILING WAGE FOR PUBLIC PROJECTS

24-92-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Agency of government" means any agency, department, division, board, bureau, commission, institution, or section of the state which is a budgetary unit exercising construction contracting authority or discretion, "Agency of government" does not include any county, city and county, city, municipality, town, school district, special district, or any other political subdivision of the state.

(2) "Contractor" means any person having a contract for a public project with an agency of government.

(3) "Director" means the director of the department of personnel.

(4) "Employees" means employees of contractors or subcontractors performing jobs on various types of public projects including mechanics, laborers, and other construction employees.

(5) "Public project" means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of public health, welfare, or safety and any operation or maintenance programs for the operation and upkeep of such
PROJECTS. "PUBLIC PROJECT" INCLUDES ANY WORK, CONSTRUCTION, OR REPAIR PERFORMED BY A PRIVATE PARTY THROUGH A CONTRACT TO RENT, LEASE, OR PURCHASE AT LEAST FIFTY PERCENT OF THE PROJECT BY ONE OR MORE AGENCIES OF GOVERNMENT.

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

(a) THE BASIC HOURLY RATE OF PAY; AND

(b) FOR MEDICAL OR HOSPITAL CARE, PENSIONS ON RETIREMENT OR DEATH, COMPENSATION FOR INJURIES OR ILLNESS RESULTING FROM OCCUPATIONAL ACTIVITY, OR INSURANCE TO PROVIDE ANY OF THE FORGOING, FOR UNEMPLOYMENT BENEFITS, LIFE INSURANCE, DISABILITY AND SICKNESS INSURANCE, OR ACCIDENT INSURANCE, FOR VACATION AND HOLIDAY PAY, FOR DEFRAVING THE COSTS OF APPRENTICESHIP OR OTHER SIMILAR PROGRAMS, OR FOR OTHER BONA FIDE FRINGE BENEFITS, BUT ONLY WHERE THE CONTRACTOR OR SUBCONTRACTOR IS NOT REQUIRED BY OTHER FEDERAL, STATE, OR LOCAL LAW TO PROVIDE ANY OF THOSE BENEFITS, THE AMOUNT OF:

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

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

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

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

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

24-92-203. Prevailing rate of wages and other payments -
specifications in solicitations and contract. (1) BEFORE AWARDING ANY
CONTRACT FOR A PUBLIC PROJECT IN THE AMOUNT OF FIFTY THOUSAND
DOLLARS OR MORE, AN AGENCY OF GOVERNMENT SHALL OBTAIN FROM THE
DIRECTOR THE GENERAL PREVAILING RATE, AS DETERMINED BY THE
DIRECTOR PURSUANT TO SECTION 24-92-205, OF THE REGULAR, HOLIDAY,
AND OVERTIME WAGES PAID AND THE GENERAL PREVAILING PAYMENTS ON
BEHALF OF EMPLOYEES TO LAWFUL WELFARE, PENSION, VACATION,
APPRENTICE TRAINING, AND EDUCATIONAL FUNDS IN THE STATE, FOR EACH
EMPLOYEE NEEDED TO EXECUTE THE CONTRACT FOR THE PUBLIC PROJECT.
PAYMENTS TO THE FUNDS MUST CONSTITUTE AN ORDINARY BUSINESS
EXPENSE DEDUCTION FOR FEDERAL INCOME TAX PURPOSES BY
CONTRACTORS AND SUBCONTRACTORS.

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

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

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

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

(b) The scale of wages to be paid shall be posted by the
contractor in a prominent and easily accessible place at the site
of the work;

(c) The contractor and any subcontractors shall prepare
and submit payroll reports to the contracting agency of
government on a monthly basis that disclose all relevant
payroll information, including the name and address of any
entities to which fringe benefits are paid, and that the
contracting agency of government is required to review the
certified payroll reports in a timely manner;

(d) The contractor and any subcontractors shall
maintain on the site where public projects are being constructed
a daily log of employees employed each day on the public
project. The log shall include, at a minimum, for each employee
his or her name, primary job title, and employer, and shall be
kept on a form prescribed by the director. The log shall be
available for inspection on the site at all times by the
contracting agency of government and the director.

(e) If the contractor or any subcontractors fail to pay
THE WAGES AS REQUIRED BY THE CONTRACT, THE STATE CONTROLLER

SHALL NOT APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE

CONTRACTOR UNTIL THE CONTRACTOR PROVIDES THE DIRECTOR WITH

EVIDENCE, SATISFACTORY TO THE DIRECTOR, THAT THE WAGES REQUIRED

BY THE CONTRACT HAVE BEEN PAID. IF THE CONTRACTOR OR ANY

SUBCONTRACTOR FAILS TO PAY WAGES AS ARE REQUIRED BY THE

CONTRACT, THE CONTRACTING AGENCY OF GOVERNMENT SHALL NOT

APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE CONTRACTOR

UNTIL THE CONTRACTOR FURNISHES THE CONTRACTING AGENCY OF

GOVERNMENT EVIDENCE SATISFACTORY TO SUCH AGENCY OF

GOVERNMENT THAT SUCH WAGES SO REQUIRED BY THE CONTRACT HAVE

BEEN PAID; EXCEPT THAT THE CONTRACTING AGENCY OF GOVERNMENT

SHALL APPROVE AND PAY ANY PORTION OF A WARRANT OR DEMAND FOR

PAYMENT TO THE CONTRACTOR TO THE EXTENT THE AGENCY OF

GOVERNMENT HAS BEEN FURNISHED EVIDENCE SATISFACTORY TO THE

AGENCY OF GOVERNMENT THAT THE CONTRACTOR OR ONE OR MORE

SUBCONTRACTORS HAS PAID SUCH WAGES REQUIRED BY THE CONTRACT,

EVEN IF THE CONTRACTOR HAS NOT FURNISHED EVIDENCE THAT ALL OF

THE SUBCONTRACTORS HAVE PAID WAGES AS REQUIRED BY THE

CONTRACT. ANY CONTRACTOR OR SUBCONTRACTOR MAY USE THE

FOLLOWING PROCEDURE IN ORDER TO SATISFY THE REQUIREMENTS OF THIS

SECTION:

(I) THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT TO THE

DIRECTOR, FOR EACH EMPLOYEE TO WHOM SUCH WAGES ARE DUE, A

CHECK AS REQUIRED BY THE DIRECTOR. SUCH CHECK SHALL BE PAYABLE

TO THAT EMPLOYEE OR TO THE STATE SO IT IS NEGOTIABLE BY EITHER OF

THOSE PARTIES. EACH SUCH CHECK SHALL BE IN AN AMOUNT
REPRESENTING THE DIFFERENCE BETWEEN THE ACCRUED WAGES REQUIRED
TO BE PAID TO THAT EMPLOYEE BY THE CONTRACT AND THE WAGES
ACTUALLY PAID BY THE CONTRACTOR OR SUBCONTRACTOR.

(II) IF ANY CHECK SUBMITTED PURSUANT THIS SUBSECTION (1)(e)
CANNOT BE DELIVERED TO THE EMPLOYEE WITHIN A REASONABLE PERIOD
AS DETERMINED BY THE DIRECTOR, THEN IT SHALL BE NEGOTIATED BY THE
STATE AND THE PROCEEDS DEPOSITED IN THE DIRECTOR’S UNCLAIMED
PREVAILING WAGES SPECIAL TRUST FUND, WHICH IS HEREBY CREATED IN
THE STATE TREASURY. NOTHING IN THIS SUBSECTION (1) SHALL BE
CONSTRUED TO LESSEN THE RESPONSIBILITY OF THE CONTRACTOR OR
SUBCONTRACTOR TO ATTEMPT TO LOCATE AND PAY ANY EMPLOYEE TO
WHOM WAGES ARE DUE.

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

(IV) ON THE LAST WORKING DAY OF EACH MONTH, THE AMOUNT
OF ANY CLAIM FOR WHICH THE STATE IS NO LONGER LIABLE SHALL BE
CREDITED TO THE GENERAL FUND, EXCEPT AS OTHERWISE REQUIRED BY
(V) The director shall maintain a list of all unclaimed, state-negotiated prevailing wage checks for which the state is liable. Such list shall be updated monthly and shall be available for inspection at the office of the director.

24-92-205. Investigation and determination of prevailing wages - filing of schedule. (1) In determining the applicable prevailing wage for public projects pursuant to section 24-92-204, the director shall use appropriate wage determinations issued by the United States Department of Labor in accordance with the "Davis-Bacon Act", 40 U.S.C. Sec. 3141, et seq., to establish the prevailing wage rates for the applicable trades or occupation for the geographic locality of the public project. The director shall keep a schedule on file in his or her office of the customary prevailing rate of wages and payments made to or on behalf of the employees, which shall be open to public inspection.

(2) The director shall update the applicable prevailing wage for public projects as determined pursuant to subsection (1) of this section on or before July 1, 2022, and on or before July 1 each year thereafter.

24-92-206. Statutory provisions included in contracts. A copy of sections 24-92-203 and 24-92-204 shall be inserted in all contracts for public projects awarded by an agency of government if the contract price is fifty thousand dollars or more.

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

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

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

24-92-208. Apprenticeship contribution rate. (1) (a) The director shall establish a separate apprenticeship contribution rate under the prevailing wage and fringe benefit requirements of this part 2.

(b) The contracting agency of government shall specify in the competitive solicitation for a public project in the amount
OF FIFTY THOUSAND DOLLARS OR MORE AND IN THE CONTRACT FOR SUCH PUBLIC PROJECT THE APPRENTICESHIP CONTRIBUTION RATE AND FRINGE BENEFIT REQUIREMENTS OF THIS PART 2.

(c) THE DIRECTOR SHALL UPDATE THE APPLICABLE APPRENTICESHIP CONTRIBUTION RATE AS DETERMINED PURSUANT TO SUBSECTION (1)(a) OF THE SECTION ON OR BEFORE JULY 1, 2022, AND ON OR BEFORE JULY 1 EACH YEAR THEREAFTER.

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

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

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

(b) CONTRACTORS THAT ARE NOT SIGNATORY TO THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT BUT THAT PARTICIPATE IN AN APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION OR A STATE APPRENTICESHIP COUNCIL REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR SHALL PAY THE DETERMINED APPRENTICESHIP CONTRIBUTION TO THAT PROGRAM; OR
(c) Contractors that do not qualify for either option specified in subsection (2)(a) or (2)(b) of this section shall be required to pay the amount of the apprenticeship contribution to affected workers in cash payments in addition to the other components of the prevailing wage and fringe benefit package required pursuant to this Part 2.

(3) The apprenticeship contribution rate shall be deducted from the prevailing wage rate package to avoid double payment by the contractor or subcontractor.

24-92-209. Enforcement - rules. (1) Upon receipt of a complaint or upon analysis of certified payroll records, a contracting agency of government shall report any perceived violation of this Part 2 to the contractor within forty-eight hours of being made aware of the perceived violation. In connection with the perceived violation:

(a) The contracting agency of government shall allow the contractor to cure the perceived violation within fifteen calendar days if the contractor can demonstrate the instance in question was the result of legitimate administrative error.

(b) If the contractor does not remedy the perceived violation within fifteen calendar days or if the contracting agency determines that the perceived violation was willful, the contracting agency shall report the perceived violation to the Department of Labor and Employment for investigation.

(2) (a) The Department of Labor and Employment shall investigate all complaints referred to the Department by the contracting agency of government to determine if the perceived
VIOLATION WAS CONDUCTED IN A WILLFUL MANNER.

(b) For the purposes of this section, "willful violation" includes intentional violations and those violations made with reckless disregard or deliberate ignorance of the law.

(3) If the Department of Labor and Employment determines that a willful violation occurred, it shall require restitution of applicable back pay for the impacted employees and shall subject the contractor to the following fines:

(a) Five thousand dollars for the first violation in addition to wage restitution to the impacted employees;

(b) Ten thousand dollars for the second violation in addition to wage restitution to the impacted employees; and

(c) Twenty-five thousand dollars for the third and all subsequent violations in addition to wage restitution to the impacted employees.

(4) At the discretion of the Director, the contractor may be debarred if they have been found to have three or more willful violations in any five year period. The term of debarment will be three years.

(5) The Department of Labor and Employment shall maintain a list of contractors who have been found to have willfully violated this Act, including details of the violation, on a publicly available website.

(6) If a contracting agency of government or the Department of Labor and Employment fails to resolve an actionable wage claim within one hundred twenty days, the employee shall have the right to file a private lawsuit pursuant
TO SECTION 24-92-210.

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

24-92-210. Private right of action to collect wages or benefits - definition. (1) AN EMPLOYEE OR FORMER EMPLOYEE OF A CONTRACTOR OR SUBCONTRACTOR MAY BRING A CIVIL ACTION FOR A VIOLATION OF SECTION 24-92-204 FOR APPROPRIATE INJUNCTIVE RELIEF, ACTUAL DAMAGES, OR BOTH WITHIN THREE YEARS AFTER THE OCCURRENCE OF THE ALLEGED VIOLATION. AN ACTION COMMENCED PURSUANT TO THIS SECTION MAY BE BROUGHT IN THE DISTRICT COURT FOR THE COUNTY WHERE THE ALLEGED VIOLATION OCCURRED, THE COUNTY WHERE THE COMPLAINANT RESIDES, OR THE COUNTY WHERE THE PERSON AGAINST WHOM IN THE CIVIL COMPLAINT IS FILED RESIDES OR HAS THEIR PRINCIPAL PLACE OF BUSINESS. ANY CONTRACTOR OR SUBCONTRACTOR WHO VIOLATES SECTION 24-92-204 SHALL BE LIABLE TO THE AFFECTED EMPLOYEE OR EMPLOYEES IN THE AMOUNT OF UNPAID WAGES OR BENEFITS PLUS INTEREST.

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

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

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

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

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

(7) (a) ANY PERSON, FIRM, OR CORPORATION FOUND TO HAVE
WILLFULLY MADE A FALSE OR FRAUDULENT REPRESENTATION IN
CONNECTION WITH WAGE OBLIGATIONS OWED ON A CONTRACT SHALL BE
REQUIRED TO PAY A CIVIL PENALTY IN AN AMOUNT OF NO LESS THAN ONE
THOUSAND DOLLARS AND NOT GREATER THAN THREE THOUSAND DOLLARS
PER REPRESENTATION. SUCH PENALTIES SHALL BE RECOVERABLE IN CIVIL
ACTIONS FILED PURSUANT TO THIS SECTION.

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

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

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

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