

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0341.01 Nicole Myers x4326

SENATE BILL 19-196

SENATE SPONSORSHIP

Lee and Danielson,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE MODIFICATION OF PROCUREMENT REQUIREMENTS**

102 **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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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.

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

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

4 24-92-115. Apprenticeship utilization requirements -
5 mechanical, electrical, and plumbing contracts - public projects -

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

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

20 (II) CERTIFIES THAT ALL FIRMS IDENTIFIED PARTICIPATE IN
21 APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES

1 DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION
2 OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES
3 DEPARTMENT OF LABOR AND HAVE A PROVEN RECORD OF GRADUATING
4 APPRENTICES AS FOLLOWS:

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

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

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

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

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

24 (c) FOR THE PURPOSES OF SUBSECTION (1)(a)(II) OF THIS SECTION,
25 "GRADUATING" MEANS THE COMPLETION OF A MULTI-YEAR PROGRAM,
26 INCLUDING THE REQUISITE CLASSROOM COURSE WORK AND ON-THE-JOB
27 TRAINING REQUIREMENTS AND A CERTIFICATE OF COMPLETION ISSUED BY

1 THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP.

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

6 (3) TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF
7 SUBSECTION (1) OF THIS SECTION, THE GENERAL CONTRACTOR OR OTHER
8 FIRM TO WHICH THE CONTRACT IS AWARDED SHALL AGREE TO PROVIDE
9 ADDITIONAL DOCUMENTATION TO THE CONTRACTING AGENCY REGARDING
10 AFFECTED APPRENTICESHIP TRAINING PROGRAMS RELATING TO THE
11 REQUIREMENTS OF THIS SECTION.

12 (4) A CONTRACTOR THAT PLANS TO SUBMIT A BID FOR A PUBLIC
13 WORKS PROJECT MAY REQUEST A WAIVER OF THE REQUIREMENTS OF THIS
14 SECTION PRIOR TO SUBMITTING A BID. A CONTRACTOR THAT REQUESTS A
15 WAIVER MUST PROVIDE SUBSTANTIAL EVIDENCE TO THE AGENCY OF
16 GOVERNMENT SOLICITING THE CONTRACT THAT THERE ARE NO AVAILABLE,
17 ELIGIBLE SUBCONTRACTORS TO FULFILL THE MECHANICAL, ELECTRICAL,
18 OR PLUMBING PORTIONS OF THE CONTRACT. EACH AGENCY OF
19 GOVERNMENT THAT HAS CONTRACTS FOR PUBLIC PROJECTS SUBJECT TO
20 THE REQUIREMENTS OF THIS SECTION SHALL MAKE PUBLIC ALL WAIVERS
21 AND THE SPECIFIC RATIONALE FOR GRANTING THE WAIVER.

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

26 (6) (a) TO PROMOTE AND FACILITATE THE DEVELOPMENT OF NEW
27 APPRENTICESHIP PROGRAMS, AN APPRENTICESHIP PROGRAM THAT DOES

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

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

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

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

20 (II) TO MAINTAIN CONDITIONAL APPROVAL PURSUANT TO THIS
21 SUBSECTION (6), THE APPRENTICESHIP PROGRAM MUST DEMONSTRATE TO
22 THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT IT HAS REGISTERED
23 NEW APPRENTICES INTO ITS PROGRAM FOR EVERY YEAR IT HAS BEEN IN
24 OPERATION AND THAT IT HAS ADVANCED, AT A MINIMUM, TEN PERCENT OF
25 ITS APPRENTICES IN EACH YEAR OF OPERATION. THE DEPARTMENT SHALL
26 RESCIND A CONDITIONAL APPROVAL FOR ANY PROGRAM THAT FAILS TO
27 MAINTAIN THESE STANDARDS.

1 PROJECTS. "PUBLIC PROJECT" INCLUDES ANY WORK, CONSTRUCTION, OR
2 REPAIR PERFORMED BY A PRIVATE PARTY THROUGH A CONTRACT TO RENT,
3 LEASE, OR PURCHASE AT LEAST FIFTY PERCENT OF THE PROJECT BY ONE OR
4 MORE AGENCIES OF GOVERNMENT.

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

7 (a) THE BASIC HOURLY RATE OF PAY; AND

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

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

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

26 **24-92-202. Contractors subject to provisions - weekly payment**
27 **of employees - rules. (1) EXCEPT AS OTHERWISE PROVIDED IN**

1 SUBSECTION (2) OF THIS SECTION, ANY CONTRACTOR WHO IS AWARDED A
2 CONTRACT FOR A PUBLIC PROJECT BY AN AGENCY OF GOVERNMENT IN THE
3 AMOUNT OF FIFTY THOUSAND DOLLARS OR MORE, AND ANY
4 SUBCONTRACTORS WORKING ON THE PUBLIC PROJECT, SHALL PAY THEIR
5 EMPLOYEES AT WEEKLY INTERVALS AND SHALL COMPLY WITH THE
6 ENFORCEMENT PROVISIONS ESTABLISHED IN SECTION 24-92-209. THIS
7 PART 2 APPLIES TO A CONTRACT FOR A PUBLIC PROJECT AWARDED
8 PURSUANT TO PART 1 OF THIS ARTICLE 92 AND TO AN INTEGRATED PROJECT
9 DELIVERY CONTRACT FOR A PUBLIC PROJECT AWARDED PURSUANT TO
10 ARTICLE 93 OF THIS TITLE 24. THIS PART 2 DOES NOT APPLY TO CONTRACTS
11 FOR PUBLIC PROJECTS THAT RECEIVE FEDERAL FUNDING.

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

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

22 **24-92-203. Prevailing rate of wages and other payments -**
23 **specifications in solicitations and contract.** (1) BEFORE AWARDED ANY
24 CONTRACT FOR A PUBLIC PROJECT IN THE AMOUNT OF FIFTY THOUSAND
25 DOLLARS OR MORE, AN AGENCY OF GOVERNMENT SHALL OBTAIN FROM THE
26 DIRECTOR THE GENERAL PREVAILING RATE, AS DETERMINED BY THE
27 DIRECTOR PURSUANT TO SECTION 24-92-205, OF THE REGULAR, HOLIDAY,

1 AND OVERTIME WAGES PAID AND THE GENERAL PREVAILING PAYMENTS ON
2 BEHALF OF EMPLOYEES TO LAWFUL WELFARE, PENSION, VACATION,
3 APPRENTICE TRAINING, AND EDUCATIONAL FUNDS IN THE STATE, FOR EACH
4 EMPLOYEE NEEDED TO EXECUTE THE CONTRACT FOR THE PUBLIC PROJECT.
5 PAYMENTS TO THE FUNDS MUST CONSTITUTE AN ORDINARY BUSINESS
6 EXPENSE DEDUCTION FOR FEDERAL INCOME TAX PURPOSES BY
7 CONTRACTORS AND SUBCONTRACTORS.

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

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

23 **24-92-204. Specification in contract - payment of wages -**
24 **amount and frequency - unclaimed prevailing wages special trust**
25 **fund - creation. (1) EVERY CONTRACT FOR A PUBLIC PROJECT SUBJECT**
26 **TO THE PROVISIONS OF THIS PART 2 SHALL CONTAIN A STIPULATION THAT:**

27 (a) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PAY ALL

1 THE EMPLOYEES EMPLOYED DIRECTLY ON THE SITE OF THE WORK,
2 UNCONDITIONALLY AND NOT LESS OFTEN THAN ONCE A WEEK, AND
3 WITHOUT SUBSEQUENT DEDUCTION OR REBATE ON ANY ACCOUNT, THE
4 FULL AMOUNTS ACCRUED AT TIME OF PAYMENT COMPUTED AT WAGE
5 RATES NOT LESS THAN THOSE STATED IN THE COMPETITIVE SOLICITATION,
6 REGARDLESS OF ANY CONTRACTUAL RELATIONSHIPS THAT MAY BE
7 ALLEGED TO EXIST BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND
8 THE EMPLOYEES;

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

12 (c) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PREPARE
13 AND SUBMIT PAYROLL REPORTS TO THE CONTRACTING AGENCY OF
14 GOVERNMENT ON A MONTHLY BASIS THAT DISCLOSE ALL RELEVANT
15 PAYROLL INFORMATION, INCLUDING THE NAME AND ADDRESS OF ANY
16 ENTITIES TO WHICH FRINGE BENEFITS ARE PAID, AND THAT THE
17 CONTRACTING AGENCY OF GOVERNMENT IS REQUIRED TO REVIEW THE
18 CERTIFIED PAYROLL REPORTS IN A TIMELY MANNER;

19 (d) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL
20 MAINTAIN ON THE SITE WHERE PUBLIC PROJECTS ARE BEING CONSTRUCTED
21 A DAILY LOG OF EMPLOYEES EMPLOYED EACH DAY ON THE PUBLIC
22 PROJECT. THE LOG SHALL INCLUDE, AT A MINIMUM, FOR EACH EMPLOYEE
23 HIS OR HER NAME, PRIMARY JOB TITLE, AND EMPLOYER, AND SHALL BE
24 KEPT ON A FORM PRESCRIBED BY THE DIRECTOR. THE LOG SHALL BE
25 AVAILABLE FOR INSPECTION ON THE SITE AT ALL TIMES BY THE
26 CONTRACTING AGENCY OF GOVERNMENT AND THE DIRECTOR.

27 (e) IF THE CONTRACTOR OR ANY SUBCONTRACTORS FAIL TO PAY

1 THE WAGES AS REQUIRED BY THE CONTRACT, THE STATE CONTROLLER
2 SHALL NOT APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE
3 CONTRACTOR UNTIL THE CONTRACTOR PROVIDES THE DIRECTOR WITH
4 EVIDENCE, SATISFACTORY TO THE DIRECTOR, THAT THE WAGES REQUIRED
5 BY THE CONTRACT HAVE BEEN PAID. IF THE CONTRACTOR OR ANY
6 SUBCONTRACTOR FAILS TO PAY WAGES AS ARE REQUIRED BY THE
7 CONTRACT, THE CONTRACTING AGENCY OF GOVERNMENT SHALL NOT
8 APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE CONTRACTOR
9 UNTIL THE CONTRACTOR FURNISHES THE CONTRACTING AGENCY OF
10 GOVERNMENT EVIDENCE SATISFACTORY TO SUCH AGENCY OF
11 GOVERNMENT THAT SUCH WAGES SO REQUIRED BY THE CONTRACT HAVE
12 BEEN PAID; EXCEPT THAT THE CONTRACTING AGENCY OF GOVERNMENT
13 SHALL APPROVE AND PAY ANY PORTION OF A WARRANT OR DEMAND FOR
14 PAYMENT TO THE CONTRACTOR TO THE EXTENT THE AGENCY OF
15 GOVERNMENT HAS BEEN FURNISHED EVIDENCE SATISFACTORY TO THE
16 AGENCY OF GOVERNMENT THAT THE CONTRACTOR OR ONE OR MORE
17 SUBCONTRACTORS HAS PAID SUCH WAGES REQUIRED BY THE CONTRACT,
18 EVEN IF THE CONTRACTOR HAS NOT FURNISHED EVIDENCE THAT ALL OF
19 THE SUBCONTRACTORS HAVE PAID WAGES AS REQUIRED BY THE
20 CONTRACT. ANY CONTRACTOR OR SUBCONTRACTOR MAY USE THE
21 FOLLOWING PROCEDURE IN ORDER TO SATISFY THE REQUIREMENTS OF THIS
22 SECTION:

23 (I) THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT TO THE
24 DIRECTOR, FOR EACH EMPLOYEE TO WHOM SUCH WAGES ARE DUE, A
25 CHECK AS REQUIRED BY THE DIRECTOR. SUCH CHECK SHALL BE PAYABLE
26 TO THAT EMPLOYEE OR TO THE STATE SO IT IS NEGOTIABLE BY EITHER OF
27 THOSE PARTIES. EACH SUCH CHECK SHALL BE IN AN AMOUNT

1 REPRESENTING THE DIFFERENCE BETWEEN THE ACCRUED WAGES REQUIRED
2 TO BE PAID TO THAT EMPLOYEE BY THE CONTRACT AND THE WAGES
3 ACTUALLY PAID BY THE CONTRACTOR OR SUBCONTRACTOR.

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

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

25 (IV) ON THE LAST WORKING DAY OF EACH MONTH, THE AMOUNT
26 OF ANY CLAIM FOR WHICH THE STATE IS NO LONGER LIABLE SHALL BE
27 CREDITED TO THE GENERAL FUND, EXCEPT AS OTHERWISE REQUIRED BY

1 LAW.

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

6 **24-92-205. Investigation and determination of prevailing**
7 **wages - filing of schedule.** (1) IN DETERMINING THE APPLICABLE
8 PREVAILING WAGE FOR PUBLIC PROJECTS PURSUANT TO SECTION
9 24-92-204, THE DIRECTOR SHALL USE APPROPRIATE WAGE
10 DETERMINATIONS ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR
11 IN ACCORDANCE WITH THE "DAVIS-BACON ACT", 40 U.S.C. SEC. 3141, ET
12 SEQ., TO ESTABLISH THE PREVAILING WAGE RATES FOR THE APPLICABLE
13 TRADES OR OCCUPATION FOR THE GEOGRAPHIC LOCALITY OF THE PUBLIC
14 PROJECT. THE DIRECTOR SHALL KEEP A SCHEDULE ON FILE IN HIS OR HER
15 OFFICE OF THE CUSTOMARY PREVAILING RATE OF WAGES AND PAYMENTS
16 MADE TO OR ON BEHALF OF THE EMPLOYEES, WHICH SHALL BE OPEN TO
17 PUBLIC INSPECTION.

18 (2) THE DIRECTOR SHALL UPDATE THE APPLICABLE PREVAILING
19 WAGE FOR PUBLIC PROJECTS AS DETERMINED PURSUANT TO SUBSECTION
20 (1) OF THIS SECTION ON OR BEFORE JULY 1, 2022, AND ON OR BEFORE JULY
21 1 EACH YEAR THEREAFTER.

22 **24-92-206. Statutory provisions included in contracts.** A COPY
23 OF SECTIONS 24-92-203 AND 24-92-204 SHALL BE INSERTED IN ALL
24 CONTRACTS FOR PUBLIC PROJECTS AWARDED BY AN AGENCY OF
25 GOVERNMENT IF THE CONTRACT PRICE IS FIFTY THOUSAND DOLLARS OR
26 MORE.

27 **24-92-207. Prevailing wage rates - posting.** (1) EACH

1 CONTRACTOR AWARDED A CONTRACT FOR PUBLIC PROJECT WITH A
2 CONTRACT PRICE OF FIFTY THOUSAND DOLLARS OR MORE AND EACH
3 SUBCONTRACTOR WHO PERFORMS WORK ON THE PUBLIC PROJECT SHALL
4 POST IN CONSPICUOUS PLACES ON THE PROJECT, WHERE EMPLOYEES ARE
5 EMPLOYED, POSTERS THAT CONTAIN THE CURRENT PREVAILING RATE OF
6 WAGES AND THE CURRENT PREVAILING RATE OF PAYMENTS TO THE FUNDS
7 REQUIRED TO BE PAID FOR EACH EMPLOYEE EMPLOYED TO EXECUTE THE
8 CONTRACT AS ESTABLISHED IN SECTIONS 24-92-203 AND 24-92-204, AND
9 THE RIGHTS AND REMEDIES OF ANY EMPLOYEE DESCRIBED IN SECTION
10 24-92-210 FOR NONPAYMENT OF ANY WAGES EARNED PURSUANT TO THIS
11 SECTION. THE POSTERS SHALL BE FURNISHED TO CONTRACTORS AND
12 SUBCONTRACTORS BY THE DIRECTOR IN A FORM AND MANNER TO BE
13 DETERMINED BY THE DIRECTOR.

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

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

22 **24-92-208. Apprenticeship contribution rate.** (1) (a) THE
23 DIRECTOR SHALL ESTABLISH A SEPARATE APPRENTICESHIP CONTRIBUTION
24 RATE UNDER THE PREVAILING WAGE AND FRINGE BENEFIT REQUIREMENTS
25 OF THIS PART 2.

26 (b) THE CONTRACTING AGENCY OF GOVERNMENT SHALL SPECIFY
27 IN THE COMPETITIVE SOLICITATION FOR A PUBLIC PROJECT IN THE AMOUNT

1 OF FIFTY THOUSAND DOLLARS OR MORE AND IN THE CONTRACT FOR SUCH
2 PUBLIC PROJECT THE APPRENTICESHIP CONTRIBUTION RATE AND FRINGE
3 BENEFIT REQUIREMENTS OF THIS PART 2.

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

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

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

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

21 (b) CONTRACTORS THAT ARE NOT SIGNATORY TO THE APPLICABLE
22 COLLECTIVE BARGAINING AGREEMENT BUT THAT PARTICIPATE IN AN
23 APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES
24 DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION
25 OR A STATE APPRENTICESHIP COUNCIL REGISTERED WITH THE UNITED
26 STATES DEPARTMENT OF LABOR SHALL PAY THE DETERMINED
27 APPRENTICESHIP CONTRIBUTION TO THAT PROGRAM; OR

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

7 (3) THE APPRENTICESHIP CONTRIBUTION RATE SHALL BE
8 DEDUCTED FROM THE PREVAILING WAGE RATE PACKAGE TO AVOID
9 DOUBLE PAYMENT BY THE CONTRACTOR OR SUBCONTRACTOR.

10 **24-92-209. Enforcement - rules.** (1) UPON RECEIPT OF A
11 COMPLAINT OR UPON ANALYSIS OF CERTIFIED PAYROLL RECORDS, A
12 CONTRACTING AGENCY OF GOVERNMENT SHALL REPORT ANY PERCEIVED
13 VIOLATION OF THIS PART 2 TO THE CONTRACTOR WITHIN FORTY-EIGHT
14 HOURS OF BEING MADE AWARE OF THE PERCEIVED VIOLATION. IN
15 CONNECTION WITH THE PERCEIVED VIOLATION:

16 (a) THE CONTRACTING AGENCY OF GOVERNMENT SHALL ALLOW
17 THE CONTRACTOR TO CURE THE PERCEIVED VIOLATION WITHIN FIFTEEN
18 CALENDAR DAYS IF THE CONTRACTOR CAN DEMONSTRATE THE INSTANCE
19 IN QUESTION WAS THE RESULT OF LEGITIMATE ADMINISTRATIVE ERROR.

20 (b) IF THE CONTRACTOR DOES NOT REMEDY THE PERCEIVED
21 VIOLATION WITHIN FIFTEEN CALENDAR DAYS OR IF THE CONTRACTING
22 AGENCY DETERMINES THAT THE PERCEIVED VIOLATION WAS WILLFUL, THE
23 CONTRACTING AGENCY SHALL REPORT THE PERCEIVED VIOLATION TO THE
24 DEPARTMENT OF LABOR AND EMPLOYMENT FOR INVESTIGATION.

25 (2) (a) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
26 INVESTIGATE ALL COMPLAINTS REFERRED TO THE DEPARTMENT BY THE
27 CONTRACTING AGENCY OF GOVERNMENT TO DETERMINE IF THE PERCEIVED

1 VIOLATION WAS CONDUCTED IN A WILLFUL MANNER.

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

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

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

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

13 (c) TWENTY-FIVE THOUSAND DOLLARS FOR THE THIRD AND ALL
14 SUBSEQUENT VIOLATIONS IN ADDITION TO WAGE RESTITUTION TO THE
15 IMPACTED EMPLOYEES.

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

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

24 (6) IF A CONTRACTING AGENCY OF GOVERNMENT OR THE
25 DEPARTMENT OF LABOR AND EMPLOYMENT FAILS TO RESOLVE AN
26 ACTIONABLE WAGE CLAIM WITHIN ONE HUNDRED TWENTY DAYS, THE
27 EMPLOYEE SHALL HAVE THE RIGHT TO FILE A PRIVATE LAWSUIT PURSUANT

1 TO SECTION 24-92-210.

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

7 **24-92-210. Private right of action to collect wages or benefits**
8 **- definition. (1) AN EMPLOYEE OR FORMER EMPLOYEE OF A CONTRACTOR**
9 **OR SUBCONTRACTOR MAY BRING A CIVIL ACTION FOR A VIOLATION OF**
10 **SECTION 24-92-204 FOR APPROPRIATE INJUNCTIVE RELIEF, ACTUAL**
11 **DAMAGES, OR BOTH WITHIN THREE YEARS AFTER THE OCCURRENCE OF THE**
12 **ALLEGED VIOLATION. AN ACTION COMMENCED PURSUANT TO THIS**
13 **SECTION MAY BE BROUGHT IN THE DISTRICT COURT FOR THE COUNTY**
14 **WHERE THE ALLEGED VIOLATION OCCURRED, THE COUNTY WHERE THE**
15 **COMPLAINANT RESIDES, OR THE COUNTY WHERE THE PERSON AGAINST**
16 **WHOM IN THE CIVIL COMPLAINT IS FILED RESIDES OR HAS THEIR PRINCIPAL**
17 **PLACE OF BUSINESS. ANY CONTRACTOR OR SUBCONTRACTOR WHO**
18 **VIOLATES SECTION 24-92-204 SHALL BE LIABLE TO THE AFFECTED**
19 **EMPLOYEE OR EMPLOYEES IN THE AMOUNT OF UNPAID WAGES OR BENEFITS**
20 **PLUS INTEREST.**

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

23 (3) AN ACTION INITIATED PURSUANT TO THIS SECTION MAY BE
24 BROUGHT BY ONE OR MORE EMPLOYEES OR FORMER EMPLOYEES ON
25 BEHALF OF HIM OR HERSELF OR THEMSELVES AND OTHER EMPLOYEES
26 SIMILARLY SITUATED; EXCEPT THAT NO EMPLOYEE SHALL BE A PARTY
27 PLAINTIFF TO ANY SUCH ACTION UNLESS HE OR SHE CONSENTS IN WRITING

1 TO BECOME SUCH A PARTY AND SUCH CONSENT IS FILED IN THE COURT IN
2 WHICH SUCH ACTION IS BROUGHT.

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

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

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

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

26 (b) FOR PURPOSES OF THIS SUBSECTION (7) "WILLFULLY" MEANS
27 REPRESENTATIONS THAT ARE KNOWN TO BE FALSE OR REPRESENTATIONS

1 MADE WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THEIR
2 TRUTH OR FALSITY.

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

10 **SECTION 3. Act subject to petition - effective date -**
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
12 the expiration of the ninety-day period after final adjournment of the
13 general assembly (August 2, 2019, if adjournment sine die is on May 3,
14 2019); except that, if a referendum petition is filed pursuant to section 1
15 (3) of article V of the state constitution against this act or an item, section,
16 or part of this act within such period, then the act, item, section, or part
17 will not take effect unless approved by the people at the general election
18 to be held in November 2020 and, in such case, will take effect on the
19 date of the official declaration of the vote thereon by the governor.

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