

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 11-0366.01 Ed DeCecco

HOUSE BILL 11-1070

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A BILL FOR AN ACT

101 **CONCERNING THE PAYMENT OF PREVAILING COMPENSATION FOR**
102 **WORKERS ON PUBLIC WORKS.**

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://www.leg.state.co.us/billsummaries>.)

The bill requires a contractor awarded a contract for a public works by a state agency in excess of \$100,000, and each subcontractor that works thereon, to:

- ! Pay workers at least the prevailing wages and fringe benefits, as established pursuant to federal law. The

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

1 (a) PROMOTE SAFE, COST-EFFECTIVE, AND HIGH-QUALITY
2 CONSTRUCTION BY TRAINED, SKILLED CRAFT WORKERS;

3 (b) ENSURE THAT WORKERS PERFORMING PUBLIC WORKS ARE
4 FAIRLY COMPENSATED FOR THEIR LABOR;

5 (c) PROTECT COLORADO WORKERS AND EMPLOYERS FROM THE
6 EFFECTS OF UNFAIR COMPETITION CAUSED BY THE PAYMENT OF
7 SUBSTANDARD WAGES AND FRINGE BENEFITS; AND

8 (d) HELP ENSURE THAT EMPLOYERS HAVE A VESTED INTEREST IN
9 COLORADO AND THE LOCAL COMMUNITIES IN WHICH PUBLIC WORKS ARE
10 UNDERTAKEN.

11 (2) NOW, THEREFORE, BY ENACTING THIS ARTICLE, THE GENERAL
12 ASSEMBLY INTENDS TO REQUIRE ALL CONTRACTORS AND
13 SUBCONTRACTORS TO PAY PREVAILING WAGES AND FRINGE BENEFITS FOR
14 WORKERS PERFORMING PUBLIC WORKS.

15 **8-16.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "APPRENTICE" MEANS A PERSON WHO IS CURRENTLY
18 REGISTERED AS AN APPRENTICE IN AND WHO RECEIVES TRAINING FROM AN
19 ESTABLISHED, BONA FIDE APPRENTICESHIP PROGRAM THAT HAS
20 STANDARDS APPROVED BY THE STATE OR THE OFFICE OF APPRENTICESHIP
21 LOCATED IN THE EMPLOYMENT AND TRAINING ADMINISTRATION IN THE
22 UNITED STATES DEPARTMENT OF LABOR OR ANY SUCCESSOR FEDERAL
23 AGENCY.

24 (2) "CONTRACTOR" MEANS ANY INDIVIDUAL, CORPORATION,
25 COMPANY, PARTNERSHIP, FIRM, JOINT VENTURE, ASSOCIATION, OR OTHER
26 BUSINESS ENTITY THAT IS AWARDED A CONTRACT FOR A PUBLIC WORKS BY
27 A STATE AGENCY.

1 (3) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF LABOR
2 IN THE DEPARTMENT OF LABOR AND EMPLOYMENT.

3 (4) "FRINGE BENEFITS" MEANS THE AMOUNT OF:

4 (a) THE COSTS TO THE CONTRACTOR OR SUBCONTRACTOR THAT
5 MAY BE REASONABLY ANTICIPATED IN PROVIDING HEALTH CARE,
6 PENSIONS, COMPENSATION FOR INJURIES OR ILLNESS RESULTING FROM
7 OCCUPATIONAL ACTIVITY, UNEMPLOYMENT BENEFITS, VACATION AND
8 HOLIDAY PAY, APPRENTICESHIPS OR JOB TRAINING, LIFE INSURANCE,
9 DISABILITY AND SICKNESS INSURANCE, ACCIDENT INSURANCE, OR SIMILAR
10 BENEFITS TO WORKERS PURSUANT TO AN ENFORCEABLE COMMITMENT TO
11 CARRY OUT A BONA FIDE, FINANCIALLY RESPONSIBLE FUND, PLAN, OR
12 PROGRAM THAT WAS COMMUNICATED IN WRITING TO THE AFFECTED
13 WORKERS; AND

14 (b) THE CONTRIBUTION IRREVOCABLY MADE BY A CONTRACTOR OR
15 SUBCONTRACTOR TO A BONA FIDE, FINANCIALLY RESPONSIBLE FUND,
16 PLAN, OR PROGRAM.

17 (5) "FUND" MEANS THE PREVAILING WAGE ENFORCEMENT FUND
18 CREATED IN SECTION 8-16.5-109.

19 (6) "PREVAILING WAGE" MEANS THE WAGE RATE PAID FOR THE
20 SAME CRAFT OR TRADE AS ESTABLISHED BY THE UNITED STATES
21 SECRETARY OF LABOR PURSUANT TO 40 U.S.C. SEC. 3141 ET SEQ.

22 (7) "PUBLIC WORKS" MEANS CONSTRUCTION, RENOVATION,
23 DEMOLITION, ALTERATION, OR REPAIR WORK PERFORMED UNDER
24 CONTRACT AND FINANCED IN WHOLE OR IN PART BY STATE MONEYS.

25 (8) "STATE AGENCY" MEANS ANY DEPARTMENT, AGENCY,
26 AUTHORITY, COMMISSION, COUNCIL, BOARD, BUREAU, COMMITTEE,
27 INSTITUTION OF HIGHER EDUCATION, OR OTHER STATE ENTITY.

1 (9) "SUBCONTRACTOR" MEANS ANY SUBCONTRACTOR OR LOWER
2 TIER SUBCONTRACTOR OF A CONTRACTOR.

3 (10) "WORKER" MEANS ANY LABORER, MECHANIC, OR APPRENTICE
4 EMPLOYED BY ANY CONTRACTOR OR SUBCONTRACTOR AND ENGAGED IN
5 THE PERFORMANCE OF SERVICES UPON A PUBLIC WORKS.

6 **8-16.5-103. Payment of prevailing wages and fringe benefits.**

7 A CONTRACTOR AWARDED A CONTRACT FOR A PUBLIC WORKS BY A STATE
8 AGENCY IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS, AND EACH
9 SUBCONTRACTOR USED ON SUCH CONTRACT, SHALL PAY ITS WORKERS THE
10 PREVAILING WAGES AND FRINGE BENEFITS REQUIRED PURSUANT TO THIS
11 ARTICLE. SUCH WORKERS SHALL BE PAID NOT LESS THAN ONCE A WEEK.

12 A CONTRACTOR OR SUBCONTRACTOR SHALL MEET ITS OBLIGATION TO PAY
13 FRINGE BENEFITS BY MAKING CONTRIBUTIONS TO A BONA FIDE,
14 FINANCIALLY RESPONSIBLE FUND, PLAN, OR PROGRAM.

15 **8-16.5-104. Contract provisions.** ANY CONTRACT FOR A PUBLIC

16 WORKS IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS TO WHICH ANY
17 STATE AGENCY IS A PARTY SHALL CONTAIN A PROVISION STATING THAT
18 WORKERS PERFORMING WORK ON SUCH CONTRACT SHALL BE PAID
19 PREVAILING WAGES AND FRINGE BENEFITS REQUIRED PURSUANT TO THIS
20 ARTICLE. SUCH CONTRACT SHALL ALSO CONTAIN A PROVISION STATING
21 THAT IN THE EVENT IT IS FOUND THAT ANY WORKER EMPLOYED BY THE
22 CONTRACTOR OR ANY SUBCONTRACTOR HAS BEEN PAID WAGES OR FRINGE
23 BENEFITS AT RATES LESS THAN THOSE REQUIRED BY THIS ARTICLE, THE
24 STATE AGENCY MAY TERMINATE THE CONTRACTOR'S OR
25 SUBCONTRACTOR'S RIGHT TO PROCEED WITH THE WORK, OR SUCH PART OF
26 THE WORK FOR WHICH THERE HAS BEEN A FAILURE TO PAY PREVAILING
27 WAGES AND FRINGE BENEFITS, AND MAY MAKE OTHER ARRANGEMENTS AS

1 THE STATE AGENCY DEEMS NECESSARY TO COMPLETE THE WORK. THE
2 CONTRACTOR AND ITS SURETIES SHALL BE LIABLE TO THE STATE AGENCY
3 FOR ANY RESULTING EXCESS COSTS. CONTRACTORS OR SUBCONTRACTORS
4 THAT FAIL TO PAY REQUIRED PREVAILING WAGES AND FRINGE BENEFITS
5 SHALL ALSO BE SUBJECT TO WITHHOLDING OF PAYMENTS DUE FROM THE
6 STATE AGENCY AND OTHER PENALTIES AND SANCTIONS AS PROVIDED BY
7 THIS ARTICLE.

8 **8-16.5-105. Establishment of prevailing wages and fringe**
9 **benefits.** (1) THE PREVAILING WAGES AND FRINGE BENEFITS FOR EACH
10 RESPECTIVE CRAFT OR TRADE TO BE EMPLOYED ON A PUBLIC WORKS SHALL
11 BE THE SAME AS THE APPLICABLE WAGES AND FRINGE BENEFITS SET FORTH
12 IN THE PREVAILING WAGE DETERMINATIONS MADE BY THE UNITED STATES
13 SECRETARY OF LABOR PURSUANT TO 40 U.S.C. SEC. 3141 ET SEQ. THE
14 DIRECTOR SHALL KEEP AND MAINTAIN COPIES OF SUCH PREVAILING WAGE
15 DETERMINATIONS MADE BY THE SECRETARY OF LABOR.

16 (2) NOTHING IN THIS ARTICLE SHALL PROHIBIT A CONTRACTOR OR
17 SUBCONTRACTOR FROM PAYING MORE THAN THE PREVAILING WAGES AND
18 FRINGE BENEFITS TO ANY WORKER EMPLOYED ON A PUBLIC WORKS.

19 **8-16.5-106. Certified payroll records.** (1) A CONTRACTOR
20 AWARDED A CONTRACT THAT IS SUBJECT TO THE REQUIREMENTS OF
21 SECTION 8-16.5-104, AND EACH SUBCONTRACTOR, SHALL FURNISH TO THE
22 DIRECTOR ON A WEEKLY BASIS A CERTIFIED COPY OF ITS PAYROLL
23 RECORDS FOR THE PRECEDING WEEK. THE CERTIFIED PAYROLL SHALL
24 INCLUDE EACH WORKER'S NAME, ADDRESS, JOB CLASSIFICATION, HOURLY
25 WAGES AND FRINGE BENEFITS PAID, DEDUCTIONS, PAYCHECK NUMBER,
26 TELEPHONE NUMBER, AND HOURS WORKED EACH DAY IN THAT
27 CLASSIFICATION. THE CERTIFIED PAYROLL SHALL INCLUDE A STATEMENT

1 SIGNED BY THE CONTRACTOR OR SUBCONTRACTOR STATING THAT:

2 (a) THE RECORDS ARE TRUE AND ACCURATE;

3 (b) THE HOURLY WAGES AND FRINGE BENEFITS PAID TO EACH
4 WORKER ARE NOT LESS THAN THE PREVAILING WAGES AND FRINGE
5 BENEFITS REQUIRED BY THIS ARTICLE; AND

6 (c) THE CONTRACTOR OR SUBCONTRACTOR IS AWARE THAT FILING
7 A FALSE CERTIFIED PAYROLL IS A VIOLATION OF THIS SECTION.

8 (2) A CONTRACTOR OR SUBCONTRACTOR SHALL RETAIN A COPY OF
9 THE CERTIFIED PAYROLL FOR THREE YEARS FROM THE DATE OF THE END OF
10 A CONTRACT FOR A PUBLIC WORKS. A CONTRACTOR OR SUBCONTRACTOR
11 THAT FAILS TO PROVIDE THE CERTIFIED PAYROLL REQUIRED BY
12 SUBSECTION (1) OF THIS SECTION SHALL PAY TO THE DIRECTOR ONE
13 HUNDRED DOLLARS FOR EACH DAY OF NONCOMPLIANCE, WHICH SHALL BE
14 DEPOSITED INTO THE FUND.

15 (3) THE CERTIFIED PAYROLL RECEIVED BY THE DIRECTOR SHALL BE
16 A PUBLIC RECORD SUBJECT TO THE PROVISIONS OF PART 2 OF ARTICLE 72
17 OF TITLE 24, C.R.S.

18 **8-16.5-107. Authority of director.** (1) WITH RESPECT TO ANY
19 CONTRACT FOR A PUBLIC WORKS ENTERED INTO BY A STATE AGENCY IN
20 EXCESS OF ONE HUNDRED THOUSAND DOLLARS, THE DIRECTOR SHALL
21 HAVE THE AUTHORITY TO:

22 (a) INVESTIGATE AND ASCERTAIN THE WAGES AND FRINGE
23 BENEFITS OF WORKERS EMPLOYED IN THE PUBLIC WORKS;

24 (b) ENTER AND INSPECT THE PLACE OF BUSINESS OF ANY
25 CONTRACTOR OR SUBCONTRACTOR TO:

26 (I) EXAMINE THE BOOKS, PAYROLLS, AND OTHER RECORDS
27 RELATING TO WAGES, HOURS, FRINGE BENEFITS, AND OTHER

1 REQUIREMENTS OF THIS ARTICLE;

2 (II) COPY ANY BOOKS, PAYROLLS, AND OTHER RECORDS AS THE
3 DIRECTOR MAY DEEM NECESSARY OR APPROPRIATE; AND

4 (III) QUESTION WORKERS TO DETERMINE COMPLIANCE BY THE
5 CONTRACTOR OR SUBCONTRACTOR WITH THE PROVISIONS OF THIS
6 ARTICLE;

7 (c) REQUIRE FROM ANY CONTRACTOR OR SUBCONTRACTOR FULL
8 AND CORRECT WRITTEN STATEMENTS, INCLUDING SWORN STATEMENTS,
9 RELATING TO WAGES, HOURS, FRINGE BENEFITS, AND OTHER INFORMATION
10 PERTAINING TO WORKERS AND THEIR EMPLOYMENT AS THE DIRECTOR MAY
11 DEEM NECESSARY OR APPROPRIATE; AND

12 (d) REQUIRE ANY CONTRACTOR OR SUBCONTRACTOR TO FILE,
13 WITHIN TEN DAYS OF RECEIPT OF A REQUEST FROM THE DIRECTOR, ANY
14 RECORDS ENUMERATED IN PARAGRAPHS (b) AND (c) OF THIS SUBSECTION
15 (1), SWORN AS TO THEIR VALIDITY AND ACCURACY.

16 **8-16.5-108. Posting of prevailing wages and fringe benefits.**
17 ANY CONTRACTOR OR SUBCONTRACTOR PERFORMING WORK ON A
18 CONTRACT THAT IS SUBJECT TO THE REQUIREMENTS OF SECTION
19 8-16.5-104 SHALL POST THE PREVAILING WAGES AND FRINGE BENEFITS FOR
20 EACH CRAFT AND TRADE RELATED TO THE CONTRACT IN PROMINENT AND
21 EASILY ACCESSIBLE PLACES AT THE WORK SITE OF THE PUBLIC WORKS AND
22 AT ANY PLACE USED BY THE CONTRACTOR OR SUBCONTRACTOR TO PAY
23 WORKERS.

24 **8-16.5-109. Prevailing wage enforcement fund - creation.**
25 THERE IS HEREBY CREATED IN THE STATE TREASURY THE PREVAILING
26 WAGE ENFORCEMENT FUND. MONEYS IN THE FUND SHALL BE
27 APPROPRIATED TO THE DIRECTOR FOR THE PURPOSE OF ENFORCING THE

1 PROVISIONS OF THIS ARTICLE. ALL INTEREST AND INCOME EARNED ON THE
2 DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED
3 TO THE FUND. ANY MONEYS NOT APPROPRIATED SHALL REMAIN IN THE
4 FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND
5 OR ANY OTHER FUND AT THE END OF ANY FISCAL YEAR.

6 **8-16.5-110. Enforcement and penalties.** (1) ANY STATE
7 AGENCY HAVING PUBLIC WORKS PERFORMED UNDER A CONTRACT IN
8 EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHERE ANY WORKER IS
9 PAID LESS THAN THE PREVAILING WAGES AND FRINGE BENEFITS SHALL
10 NOTIFY THE DIRECTOR IN WRITING OF THE NAME OF THE CONTRACTOR OR
11 SUBCONTRACTOR FAILING TO PAY PREVAILING WAGES OR FRINGE
12 BENEFITS, UNLESS THE CONTRACTOR OR SUBCONTRACTOR CURES THE
13 ALLEGED UNDERPAYMENT WITHIN A REASONABLE TIME.

14 (2) ANY WORKER, ORGANIZATION REPRESENTING WORKERS, OR
15 ANY OTHER PERSON MAY FILE A COMPLAINT WITH THE DIRECTOR
16 OBJECTING TO THE WAGES OR FRINGE BENEFITS PAID TO WORKERS ON A
17 PUBLIC WORKS.

18 (3) UPON RECEIPT OF A NOTICE OR COMPLAINT PURSUANT TO
19 SUBSECTION (1) OR (2) OF THIS SECTION, THE DIRECTOR SHALL DIRECT THE
20 STATE AGENCY TO WITHHOLD PAYMENT TO THE CONTRACTOR OR
21 SUBCONTRACTOR AND SHALL PROVIDE THE CONTRACTOR OR
22 SUBCONTRACTOR WITH WRITTEN NOTICE OF INTENT TO WITHHOLD
23 PAYMENT. BEFORE ISSUING AN ORDER OR DETERMINATION ON THE
24 ALLEGED VIOLATION, THE DIRECTOR SHALL HOLD A HEARING AND PROVIDE
25 NOTICE TO THE CONTRACTOR OR SUBCONTRACTOR OF THE TIME AND
26 PLACE OF THE HEARING, ALONG WITH A COPY OF THE COMPLAINT. THE
27 HEARING SHALL OCCUR NO LATER THAN FIFTEEN DAYS FROM THE DATE OF

1 SERVICE OF THE NOTICE.

2 (4) HEARINGS HELD PURSUANT TO THIS SECTION SHALL BE
3 CONDUCTED BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE, WHO SHALL
4 HAVE THE RIGHT TO ISSUE SUBPOENAS, ADMINISTER OATHS, AND EXAMINE
5 WITNESSES. THE DIRECTOR OR DESIGNEE SHALL MAKE A DETERMINATION
6 AND ENTER AN ORDER WITHIN TEN DAYS AFTER THE HEARING AND SHALL
7 SERVE A COPY OF THE ORDER UPON THE PARTIES. THE ORDER SHALL
8 EITHER DISMISS THE CHARGES OR DIRECT PAYMENT OF PREVAILING WAGES
9 OR FRINGE BENEFITS FOUND TO BE DUE, INCLUDING INTEREST AT THE RATE
10 OF TWELVE PERCENT FROM THE DATE OF THE UNDERPAYMENT TO THE
11 DATE OF PAYMENT. IF THE ORDER DIRECTS PAYMENT OF PREVAILING
12 WAGES OR FRINGE BENEFITS FOUND TO BE DUE, THE ORDER SHALL DIRECT
13 PAYMENT OF REASONABLE ATTORNEY FEES AND COSTS TO THE PARTY
14 THAT FILED THE COMPLAINT.

15 (5) UPON A FINDING THAT A CONTRACTOR OR SUBCONTRACTOR
16 HAS WILLFULLY FAILED TO PAY PREVAILING WAGES AND FRINGE BENEFITS,
17 THE ORDER ENTERED PURSUANT TO THIS SECTION SHALL ALSO REQUIRE A
18 CIVIL PENALTY OF AT LEAST TWO TIMES THE TOTAL AMOUNT DUE BUT NOT
19 MORE THAN THREE TIMES THE TOTAL AMOUNT DUE. IN ASSESSING THE
20 AMOUNT OF THE PENALTY, DUE CONSIDERATION SHALL BE GIVEN TO THE
21 SIZE OF THE CONTRACTOR'S OR SUBCONTRACTOR'S BUSINESS, THE GRAVITY
22 OF THE VIOLATION, THE HISTORY OF PREVIOUS VIOLATIONS, AND THE
23 FAILURE TO COMPLY WITH RECORD-KEEPING REQUIREMENTS. THE
24 PENALTY SHALL BE PAID TO THE DIRECTOR, WHO SHALL TRANSMIT THE
25 PAYMENT TO THE STATE TREASURER FOR DEPOSIT IN THE FUND. THE
26 SURETY OF ANY CONTRACTOR OR SUBCONTRACTOR FOUND TO BE IN
27 VIOLATION OF THIS ARTICLE SHALL BE BOUND TO PAY ANY PENALTIES

1 ASSESSED ON SUCH CONTRACTOR OR SUBCONTRACTOR.

2 (6) IF A CONTRACTOR OR SUBCONTRACTOR FAILS TO PROVIDE ANY
3 RECORDS RELATING TO THE PUBLIC WORKS REQUESTED BY THE DIRECTOR
4 WITHIN TEN DAYS FROM THE DATE OF THE REQUEST, THE DIRECTOR SHALL,
5 WITHIN FIFTEEN DAYS FROM THE DATE OF THE REQUEST, DIRECT THE
6 STATE AGENCY UNDER CONTRACT WITH THE CONTRACTOR OR
7 SUBCONTRACTOR TO IMMEDIATELY WITHHOLD FROM PAYMENT TO THE
8 CONTRACTOR OR SUBCONTRACTOR UP TO TWENTY-FIVE PERCENT OF THE
9 AMOUNT, WHICH WITHHOLDING SHALL NOT EXCEED ONE HUNDRED
10 THOUSAND DOLLARS, TO BE PAID UNDER THE CONTRACT. THE AMOUNT
11 WITHHELD SHALL BE IMMEDIATELY RELEASED UPON RECEIPT BY THE
12 STATE AGENCY OF A NOTICE FROM THE DIRECTOR THAT THE REQUEST FOR
13 RECORDS HAS BEEN SATISFIED.

14 (7) ANY CONTRACTOR OR SUBCONTRACTOR FOUND TO HAVE
15 WILLFULLY MADE A FALSE OR FRAUDULENT REPRESENTATION ON ANY
16 RECORDS REQUESTED BY THE DIRECTOR FOR ENFORCEMENT OF THIS
17 ARTICLE SHALL BE REQUIRED TO PAY A CIVIL PENALTY IN AN AMOUNT NO
18 LESS THAN ONE THOUSAND DOLLARS AND NO MORE THAN FIFTEEN
19 THOUSAND DOLLARS FOR EACH SUCH REPRESENTATION. THE PENALTY
20 SHALL BE PAID TO THE DIRECTOR, WHO SHALL TRANSMIT THE PAYMENT TO
21 THE STATE TREASURER FOR DEPOSIT IN THE FUND.

22 (8) AN ORDER ENTERED PURSUANT TO THIS SECTION SHALL
23 CONSTITUTE FINAL AGENCY ACTION FOR PURPOSES OF SECTION 24-4-106,
24 C.R.S.

25 (9) FOR PURPOSES OF THIS ARTICLE, CONDUCT THAT IS
26 UNDERTAKEN WILLFULLY IS ANY ACTION THAT WAS TAKEN AS THE RESULT
27 OF INTENTIONAL CONDUCT OR CONDUCT UNDERTAKEN WITH A RECKLESS

1 DISREGARD AS TO THE RESULT OR CONSEQUENCES.

2 **8-16.5-111. Statement by contractor of amounts due.**

3 (1) BEFORE FINAL PAYMENT IS MADE BY A STATE AGENCY OF ANY SUM
4 DUE ON A CONTRACT FOR A PUBLIC WORKS, THE STATE AGENCY SHALL
5 REQUIRE THE CONTRACTOR TO FILE A WRITTEN STATEMENT CERTIFYING
6 THE AMOUNTS DUE AND OWING TO WORKERS BY THE CONTRACTOR AND
7 EACH SUBCONTRACTOR FOR UNPAID PREVAILING WAGES AND FRINGE
8 BENEFITS AND INCLUDING THE NAMES OF THE PERSONS WHOSE WAGES OR
9 BENEFITS ARE UNPAID AND THE AMOUNT DUE TO EACH. THE CONTRACTOR
10 SHALL VERIFY IN WRITING THAT THE CONTRACTOR HAS READ THE
11 STATEMENT, THAT THE CONTRACTOR KNOWS ITS CONTENTS TO BE TRUE
12 AND ACCURATE, AND THAT THE CONTRACTOR HAS THE AUTHORITY TO
13 MAKE THE STATEMENT.

14 (2) THE STATE AGENCY SHALL NOTIFY THE DIRECTOR IN WRITING
15 OF THE NAME OF A CONTRACTOR OR SUBCONTRACTOR FAILING TO PAY THE
16 PREVAILING WAGES OR FRINGE BENEFITS FOR PUBLIC WORKS PERFORMED
17 FOR THE STATE AGENCY.

18 (3) THE STATE AGENCY SHALL WITHHOLD THE AMOUNT OF ANY
19 UNPAID PREVAILING WAGES AND FRINGE BENEFITS FOR THE PUBLIC WORKS,
20 AS SHOWN BY THE VERIFIED STATEMENT FILED BY THE CONTRACTOR, AND
21 SHALL PAY DIRECTLY TO ANY WORKER THE AMOUNT OWED TO THE
22 WORKER SHOWN BY THE STATEMENT.

23 **8-16.5-112. Contractors and subcontractors - list of violators**

24 **- debarment.** (1) THE DIRECTOR SHALL CREATE A LIST OF THE NAMES OF
25 ANY CONTRACTOR OR SUBCONTRACTOR WHOSE FAILURE TO PAY
26 PREVAILING WAGES OR FRINGE BENEFITS WAS DETERMINED TO BE A
27 WILLFUL VIOLATION OF THE REQUIREMENTS OF THIS ARTICLE AND PROVIDE

1 A COPY OF THE LIST TO ANY STATE AGENCY THAT REQUESTS IT. THE
2 DIRECTOR SHALL MAKE THE LIST PUBLICLY AVAILABLE AND POST THE LIST
3 ON THE OFFICIAL WEB SITE OF THE DEPARTMENT OF LABOR AND
4 EMPLOYMENT.

5 (2) IN THE EVENT THAT THE DIRECTOR DETERMINES THAT A
6 CONTRACTOR OR SUBCONTRACTOR HAS COMMITTED TWO OR MORE
7 WILLFUL VIOLATIONS OF THIS ARTICLE, EACH OF WHICH OCCURS WITHIN A
8 THREE-YEAR PERIOD AND EACH OF WHICH RESULTS IN AWARDS OF BACK
9 PAY OR OTHER PENALTIES OF ONE THOUSAND DOLLARS OR MORE, THE
10 CONTRACTOR OR SUBCONTRACTOR SHALL BE DEBARRED FROM
11 PERFORMING WORK ON A NEW CONTRACT FOR A PUBLIC WORKS FOR A
12 PERIOD OF AT LEAST ONE YEAR, BUT NOT GREATER THAN THREE YEARS, AS
13 DETERMINED BY THE DIRECTOR.

14 (3) PRIOR TO MAKING THE DETERMINATION SET FORTH IN
15 SUBSECTION (2) OF THIS SECTION, THE DIRECTOR SHALL NOTIFY THE
16 VIOLATING CONTRACTOR OR SUBCONTRACTOR. THE CONTRACTOR OR
17 SUBCONTRACTOR SHALL HAVE TEN DAYS TO REQUEST A HEARING WITH
18 THE DIRECTOR ON THE ALLEGED VIOLATIONS. FAILURE TO RESPOND
19 WITHIN THE TEN-DAY PERIOD SHALL RESULT IN DEBARMENT FOR A PERIOD
20 SET BY THE DIRECTOR. IF THE CONTRACTOR OR SUBCONTRACTOR
21 REQUESTS A HEARING WITHIN THE TEN-DAY PERIOD, THE DIRECTOR SHALL
22 SET A HEARING ON THE ALLEGED VIOLATIONS NO LATER THAN FORTY-FIVE
23 CALENDAR DAYS AFTER THE RECEIPT OF THE REQUEST BY THE DIRECTOR.

24 **8-16.5-113. Discrimination against workers.** (1) A
25 CONTRACTOR OR SUBCONTRACTOR SHALL NOT DISCHARGE, THREATEN,
26 RETALIATE AGAINST, OR OTHERWISE DISCRIMINATE AGAINST A WORKER,
27 FORMER WORKER, OR ANY AUTHORIZED REPRESENTATIVE OF A WORKER

1 REGARDING COMPENSATION, TERMS, CONDITIONS, LOCATIONS, OR
2 PRIVILEGES OF EMPLOYMENT BECAUSE THE WORKER, FORMER WORKER, OR
3 AUTHORIZED REPRESENTATIVE:

4 (a) PARTICIPATES IN ANY INVESTIGATION, HEARING, OR INQUIRY
5 CONDUCTED BY THE DIRECTOR IN CONNECTION WITH THIS ARTICLE; AND

6 (b) REPORTS A VIOLATION OF THIS ARTICLE OR OTHERWISE
7 ASSERTS RIGHTS PURSUANT TO THIS ARTICLE.

8 (2) A WORKER, FORMER WORKER, OR AN AUTHORIZED
9 REPRESENTATIVE OF A WORKER MAY FILE AN ACTION IN ANY COURT OF
10 COMPETENT JURISDICTION FOR A VIOLATION OF THIS SECTION. THE COURT
11 SHALL ORDER REINSTATEMENT, RESTITUTION, OR BOTH AS APPROPRIATE;
12 BACK PAY TO THE DATE OF SUCH VIOLATION; AN ADDITIONAL AMOUNT IN
13 LIQUIDATED DAMAGES EQUAL TO TWICE THE AMOUNT OF BACK PAY; AND
14 REASONABLE ATTORNEY FEES AND COSTS.

15 **8-16.5-114. Private right of action.** (1) (a) A WORKER, FORMER
16 WORKER, OR AN ORGANIZATION REPRESENTING WORKERS MAY BRING A
17 CIVIL ACTION FOR VIOLATIONS OF THIS ARTICLE IN ANY COURT OF
18 COMPETENT JURISDICTION FOR APPROPRIATE INJUNCTIVE RELIEF, ACTUAL
19 DAMAGES, OR BOTH WITHIN THREE YEARS AFTER THE OCCURRENCE OF THE
20 ALLEGED VIOLATION. SUCH AN ACTION MAY BE BROUGHT BY A WORKER
21 OR ORGANIZATION ON BEHALF OF THE WORKER OR AN ORGANIZATION AND
22 OTHER WORKERS OR FORMER WORKERS SIMILARLY SITUATED. IF THE
23 ACTION IS BROUGHT ON BEHALF OF OTHER WORKERS OR FORMER WORKERS
24 SIMILARLY SITUATED, THE ACTION SHALL PROCEED AS A COLLECTIVE
25 LAWSUIT.

26 (b) ANY CONTRACTOR OR SUBCONTRACTOR FOUND LIABLE SHALL
27 PAY TO AN AFFECTED WORKER THE AMOUNT OF UNPAID PREVAILING

1 WAGES OR FRINGE BENEFITS, AN ADDITIONAL AMOUNT IN LIQUIDATED
2 DAMAGES EQUAL TO THE AMOUNT OF THE UNPAID PREVAILING WAGES OR
3 FRINGE BENEFITS, AND INTEREST.

4 (c) DAMAGES FOR ANY OTHER VIOLATION OF THIS ARTICLE SHALL
5 BE PAID TO THE DIRECTOR, WHO SHALL TRANSMIT THE PAYMENT TO THE
6 STATE TREASURER FOR DEPOSIT IN THE FUND.

7 (2) A CIVIL ACTION FILED PURSUANT TO THIS SECTION MAY BE
8 COMMENCED INSTEAD OF, BUT NOT IN ADDITION TO, A HEARING BY THE
9 DIRECTOR HELD PURSUANT TO SECTION 8-16.5-110 IF THE CIVIL ACTION IS
10 FILED PRIOR TO THE DATE THE DIRECTOR ISSUES NOTICE OF SUCH A
11 HEARING. AT THE REQUEST OF A WORKER, FORMER WORKER, OR AN
12 ORGANIZATION REPRESENTING WORKERS, THE DIRECTOR MAY TAKE AN
13 ASSIGNMENT OF THE WAGE CLAIM IN TRUST FOR THE WORKER AND MAY
14 BRING ANY LEGAL ACTION NECESSARY TO COLLECT THE CLAIM.

15 (3) AN ACTION PURSUANT TO THIS SECTION MAY BE BROUGHT BY
16 ONE OR MORE WORKERS OR FORMER WORKERS ON BEHALF OF THEMSELVES
17 AND OTHER WORKERS.

18 (4) UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED PURSUANT TO
19 THIS SECTION IN ANY FORM SHALL BE PAID TO THE APPROPRIATE BENEFIT
20 FUND, AND IN THE ABSENCE OF AN APPROPRIATE BENEFIT FUND, THE
21 BENEFIT SHALL BE PAID TO THE DIRECTOR, WHO SHALL TRANSMIT THE
22 PAYMENT TO THE STATE TREASURER FOR DEPOSIT IN THE FUND.

23 (5) IN ADDITION TO ANY JUDGMENT AWARDED PURSUANT TO THIS
24 SECTION, THE COURT SHALL REQUIRE THE PAYMENT OF REASONABLE
25 ATTORNEY FEES AND COSTS.

26 **8-16.5-115. Collective bargaining.** NOTHING IN THIS ARTICLE
27 SHALL BE DEEMED TO INTERFERE WITH, IMPEDE, OR IN ANY WAY DIMINISH

1 THE RIGHT OF WORKERS TO BARGAIN COLLECTIVELY THROUGH
2 REPRESENTATIVES OF THEIR OWN CHOOSING IN ORDER TO ESTABLISH
3 WAGES AND FRINGE BENEFITS IN EXCESS OF THE PREVAILING WAGES AND
4 FRINGE BENEFITS ESTABLISHED PURSUANT TO THIS ARTICLE.

5 **8-16.5-116. Rule-making authority.** THE DIRECTOR IS
6 AUTHORIZED TO PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF
7 TITLE 24, C.R.S., AS MAY BE REQUIRED FOR THE ADMINISTRATION AND
8 ENFORCEMENT OF THIS ARTICLE.

9 **SECTION 2. Act subject to petition - effective date -**
10 **applicability.** (1) This act shall take effect September 1, 2011; except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V
12 of the state constitution against this act or an item, section, or part of this
13 act within the ninety-day period after final adjournment of the general
14 assembly, then the act, item, section, or part shall not take effect unless
15 approved by the people at the general election to be held in November
16 2012 and shall take effect on the date of the official declaration of the
17 vote thereon by the governor.

18 (2) The provisions of this act shall apply to contracts for a public
19 works that are entered into or renewed on or after the applicable effective
20 date of this act.