

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 454**

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DATE	D-PG	OFFICIAL STATUS
02/24/2011	290	Introduction and first reading Referred to Jobs and Economic Growth

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2010, section 177.42, is amended to read:

177.42 DEFINITIONS.

1.12 Subdivision 1. **Scope.** As used in sections 177.41 to 177.44 the terms defined in this
1.13 section have the meanings given them except where the context indicates otherwise.

1.14 **Subd. 2. Project.** "Project" means erection, construction, remodeling, or repairing
1.15 of a public building or other public work financed ~~in whole or part~~ by state funds in an
1.16 amount that is equal to or greater than 50 percent of total project costs.

1.17 **Subd. 3. Area.** "Area" means the county or other locality from which labor for
1.18 any project is normally secured.

1.19 Subd. 4. **Precailing hours of labor.** "Prevailing hours of labor" means the hours
1.20 of labor per day and per week worked within the area by a larger number of workers of
1.21 the same class than are employed within the area for any other number of hours per day
1.22 and per week. The prevailing hours of labor may not be more than eight hours per day
1.23 or more than 40 hours per week.

1.24 Subd. 5. **Hourly basic rate.** "Hourly basic rate" means the hourly wage paid to
1.25 any employee.

Subd. 6. **P**revailing wage rate. "Prevailing wage rate" means the hourly basic rate of pay plus the contribution paid to or for the largest number of workers engaged in the same class of labor within the area 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 foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying 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:

(1) 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

(2) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

"Prevailing wage rate" includes, for the purposes of section 177.44, rental rates for truck hire paid to those who own and operate the truck.

The prevailing wage rate may not be less than a reasonable and living wage.

Subd. 7. **E**mployer. "Employer" means an individual, partnership, association, corporation, business trust, or other business entity that hires a laborer, worker, or mechanic.

Subd. 8. **P**revailing wage rate. Rates of pay and classifications will be the same as those determined under United States Code, title 40, section 3141, et seq., as amended.

Sec. 2. Minnesota Statutes 2010, section 177.43, is amended to read:

177.43 CONTRACTS FOR STATE PROJECTS; PENALTY.

Subdivision 1. **H**ours of labor. Any contract which provides for a project must state that:

(1) no laborer or mechanic employed directly on the project work site by the contractor or any subcontractor, agent, or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor unless paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and

(2) a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area.

3.1 Subd. 2. **Exceptions.** This section does not apply to wage rates and hours of
3.2 employment of owners, supervisors, or registered apprentices. This section does not
3.3 apply to wage rates and hours of employment of laborers or mechanics who process
3.4 or manufacture materials or products or to the delivery of materials or products by or
3.5 for commercial establishments which have a fixed place of business from which they
3.6 regularly supply processed or manufactured materials or products. This section applies to
3.7 laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which
3.8 is incorporated into the work under the contract by depositing the material substantially in
3.9 place, directly or through spreaders, from the transporting vehicle.

3.10 Subd. 3. **Contract requirements.** The contract must specifically state the prevailing
3.11 wage rates, prevailing hours of labor, and hourly basic rates of pay. The contracting
3.12 authority shall incorporate into its proposals and all contracts the applicable wage
3.13 determinations for the contract along with contract language provided by the commissioner
3.14 of labor and industry to notify the contractor and all subcontractors of the applicability of
3.15 sections 177.41 to 177.44. Failure to incorporate the determination or provided contract
3.16 language into the contracts shall make the contracting authority liable for making whole
3.17 the contractor or subcontractor for any increases in the wages paid, including employment
3.18 taxes and reasonable administrative costs based on the appropriate prevailing wage due to
3.19 the laborers or mechanics working on the project. The contract must also provide that the
3.20 contracting agency shall demand, and the contractor and subcontractor shall furnish to the
3.21 contracting agency, copies of any or all payrolls not more than 14 days after the end of
3.22 each pay period. The payrolls must contain all the data required by section 177.30. The
3.23 contracting authority may examine all records relating to wages paid laborers or mechanics
3.24 on work to which sections 177.41 to 177.44 apply. Notwithstanding section 177.42,
3.25 subdivision 8, employer determinations of worker classifications that are reasonable and
3.26 consistent with widespread industry practices within the state will be upheld.

3.27 Subd. 4. **Determination by commissioner; posting; petition for reconsideration.**
3.28 The prevailing wage rates, ~~prevailing hours of labor~~, and hourly basic rates of pay for all
3.29 trades and occupations required in any project must be ascertained before the state asks for
3.30 bids. The commissioner of labor and industry shall investigate as necessary to ascertain
3.31 the information. Each contractor and subcontractor performing work on a public project
3.32 shall keep the information posted on the project in at least one conspicuous place for the
3.33 information of the employees working on the project. ~~A person aggrieved by a final~~
3.34 ~~determination of the commissioner may petition the commissioner for reconsideration of~~
3.35 ~~findings. A person aggrieved by a decision of the commissioner after reconsideration may,~~

4.1 within 20 days after the decision, petition the commissioner for a public hearing in the
4.2 manner of a contested case under sections 14.57 to 14.61.

4.3 **Subd. 5. Penalty.** It is a misdemeanor for an officer or employee of the state to
4.4 execute a contract for a project without complying with this section, or for a contractor,
4.5 subcontractor, or agent to pay any laborer, worker, or mechanic employed directly on the
4.6 project site a lesser wage for work done under the contract than the prevailing wage rate as
4.7 stated in the contract. This misdemeanor is punishable by a fine of not more than \$700,
4.8 or imprisonment for not more than 90 days, or both. Each agent or subcontractor shall
4.9 furnish to the contractor evidence of compliance with this section. Each day a violation of
4.10 this section continues is a separate offense.

4.11 **Subd. 6. Examination of records; investigation by the department.** The
4.12 Department of Labor and Industry shall enforce this section. The department may
4.13 demand, and the contractor and subcontractor shall furnish to the department, copies
4.14 of any or all payrolls. The department may examine all records relating to wages paid
4.15 laborers or mechanics on work to which sections 177.41 to 177.44 apply. The department
4.16 shall employ at least three investigators to perform on-site project reviews, receive and
4.17 investigate complaints of violations of this section, and conduct training and outreach
4.18 to contractors and contracting authorities for public works projects financed in whole
4.19 or in part with state funds. The department must issue a compliance order or notify
4.20 the interested parties that no further action will be pursued no later than 30 days after
4.21 receiving employment records related to a dispute.

4.22 **Subd. 6a. Prevailing wage violations.** Upon issuing a compliance order to an
4.23 employer pursuant to section 177.27, subdivision 4, for violation of sections 177.41 to
4.24 177.44, the commissioner shall issue a withholding order to the contracting authority
4.25 ordering the contracting authority to withhold payment of sufficient sum to the prime
4.26 or general contractor on the project to satisfy the back wages assessed or otherwise
4.27 cure the violation, and the contracting authority must withhold the sum ordered until
4.28 the compliance order has become a final order of the commissioner and has been fully
4.29 paid or otherwise resolved by the employer.

4.30 During an investigation of a violation of sections 177.41 to 177.44 which the
4.31 commissioner reasonably determines is likely to result in the finding of a violation of
4.32 sections 177.41 to 177.44 and the issuance of a compliance order pursuant to section
4.33 177.27, subdivision 4, the commissioner may notify the contracting authority of the
4.34 determination and the amount expected to be assessed and the contracting authority shall
4.35 give the commissioner 90 30 days' prior notice of the date the contracting authority
4.36 intends to make final payment.

5.1 Subd. 7. **Applicability.** This section does not apply to a contract, or work under
5.2 a contract, under which:

5.3 ~~(1) the estimated total cost of completing the project is less than \$2,500 and only one
5.4 trade or occupation is required to complete it, or~~

5.5 ~~(2) the estimated total cost of completing the project is less than \$25,000 and more
5.6 than one trade or occupation is required to complete it \$500,000.~~

5.7 Subd. 8. **Enforcement fee.** Within 30 days of executing a contract under sections
5.8 177.42 to 177.436, contracting agencies must transfer \$5,000 to the Department of Labor
5.9 and Industry in order to help defray enforcement costs under sections 177.42 to 177.436.

5.10 Sec. 3. **[177.436] DETERMINATION OF APPRENTICE WAGES.**

5.11 Subdivision 1. **Procedure.** The graduated schedule of wages under an apprenticeship
5.12 agreement shall be calculated on the percentage rate used in the majority of individual
5.13 apprenticeship agreements on file with the Division of Voluntary Apprenticeship in any
5.14 particular trade. The wage must be equal to or exceed the federal or state minimum wage
5.15 rate, whichever is higher.

5.16 Subd. 2. **J Journeyman wage rate.** The journeyman wage rate for apprenticeship
5.17 agreements where no bargaining agreement exists shall be determined based on an average
5.18 of all journeyman workers currently employed by the sponsoring company at the same
5.19 location where apprentices are employed. When employed on a public work project,
5.20 apprentices shall be paid a portion of the prevailing wage rate.

5.21 Subd. 3. **Exceptions.** Programs in penal institutions including stipends paid by the
5.22 Department of Corrections are exempt from the requirements of this section.

5.23 Sec. 4. Minnesota Statutes 2010, section 177.44, is amended to read:

5.24 **177.44 HIGHWAY CONTRACTS; HOURS OF LABOR; WAGE RATES;
5.25 PENALTY.**

5.26 Subdivision 1. **Hours, wages permitted.** A laborer or mechanic employed by a
5.27 contractor, subcontractor, agent, or other person doing or contracting to do all or part of
5.28 the work under a contract based on bids as provided in Minnesota Statutes 1971, section
5.29 161.32, to which the state is a party, for the construction or maintenance of a highway, may
5.30 not be permitted or required to work longer than ~~the prevailing hours of labor~~ 40 hours
5.31 per week unless the laborer or mechanic is paid for all hours in excess of ~~the prevailing~~
5.32 ~~hours~~ 40 hours per week at a rate of at least 1-1/2 times the hourly basic rate of pay of the
5.33 laborer or mechanic. The laborer or mechanic must be paid at least the prevailing wage
5.34 rate in the same or most similar trade or occupation in the area.

Subd. 2. **Applicability.** This section does not apply to wage rates and hours of employment of owners, supervisors, and registered apprentices. This section does not apply to wage rates and hours of employment of laborers or mechanics engaged in the processing or manufacture of materials or products, or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply the processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

Subd. 3. Investigations by Department of Labor and Industry. The Department of Labor and Industry shall conduct investigations and hold public hearings necessary to define classes of laborers and mechanics and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work, so as to determine prevailing hours of labor, prevailing wage rates, and hourly basic rates of pay.

The department shall determine the nature of the equipment furnished by truck drivers who own and operate trucks on contract work to determine minimum rates for the equipment, and shall establish by rule minimum rates to be computed into the prevailing wage rate.

Subd. 4. Certification of hours and rate. The commissioner of labor and industry shall at least once a year certify the prevailing hours of labor, the prevailing wage rate, and the hourly basic rate of pay for all classes of laborers and mechanics referred to in subdivision 3 in each area. The certification must also include future hours and rates when they can be determined for classes of laborers and mechanics in an area. The certification must specifically state the effective dates of future hours and rates when they are certified. Rates of pay and classifications will be the same as those determined under United States Code, title 40, section 3141, et seq., as amended. If a construction project extends into more than one area there shall be only one standard of hours of labor and wage rates for the entire project. A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings. A person aggrieved by a decision of the commissioner after reconsideration may within 20 days after the decision petition the commissioner for a public hearing as in a contested case under sections 14.57 to 14.61. If the commissioner finds that a change in the certified prevailing hours of labor, prevailing wage rate, and the hourly basic rate of pay for a class of laborers or mechanics in any area is required, the commissioner may at any time certify that change.

Subd. 5. **Hours and rates to be posted.** The ~~prevailing hours of labor, the~~ prevailing wage rates, the hourly basic rates of pay, and classifications for all labor as certified by the commissioner must be specifically stated in the proposals and contracts for each highway construction contract to which the state is a party. These hours, rates, and classifications, together with the provisions of subdivision 6, must be kept posted on the project by the employer in at least one conspicuous place for the information of employees working on the project.

Subd. 6. **Penalties.** A contractor, subcontractor, or agent who violates this section is guilty of a misdemeanor and may be fined not more than \$300 or imprisoned not more than 90 days or both. Each day that the violation continues is a separate offense.

Whoever induces a job applicant or employee on any project subject to this section to give up or forgo any part of the wages to which entitled under the contract governing the project by threat not to employ, by threat of dismissal from employment, or by any other means may be fined not exceeding \$1,000 or imprisoned not more than one year or both.

Any employee under this section who knowingly permits the contractor or subcontractor to pay less than the prevailing wage rate set forth in the contract, or who gives up any part of the compensation to which entitled under the contract, may be fined not exceeding \$40 or imprisoned not more than 30 days or both. Each day any violation of this paragraph continues is a separate offense.

Subd. 7. **Department of Transportation to enforce.** The Department of Transportation shall require adherence to this section. The commissioner of transportation may demand and every contractor and subcontractor shall furnish copies of payrolls. The commissioner of transportation may examine all records relating to hours of work and the wages paid laborers and mechanics on work to which this section applies. Upon request of the Department of Transportation or upon complaint of alleged violation, the county attorney of the county in which the work is located shall investigate and prosecute violations in a court of competent jurisdiction. The department must issue a compliance order or notify the interested parties that no further action will be pursued no later than 30 days after receiving employment records related to a dispute.

Sec. 5. **REPEALER.**

Minnesota Statutes 2010, section 177.435, and Minnesota Rules, parts 5200.1020, subparts 1, 2, 4, 5, 6, and 7; 5200.1030, subparts 1, 2, and 2a; 5200.1035; 5200.1040; 5200.1050, subparts 1, 2, 2a, 2b, 2c, 3a, and 4; 5200.1060; 5200.1080; 5200.1090; 5200.1100; 5200.1105; 5200.1106; and 5200.1120, are repealed.