A bill for an act

relating to employment; changing certain requirements concerning contractors; modifying prevailing wage provisions; imposing penalties; amending Minnesota Statutes 2006, sections 16C.03, subdivision 2; 161.315, subdivisions 1, 2; 177.27, subdivisions 1, 4, 8, 9, 10; 177.42; 177.43; 177.44; 471.345, by adding a subdivision; 574.26, subdivision 2; 574.31, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 177.

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

Section 1. Minnesota Statutes 2006, section 16C.03, subdivision 2, is amended to read:

Subd. 2. **Rulemaking authority.** Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

(1) solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;

(2) contract performance and failure to perform;

(3) authority to debar or suspend vendors from performing any work under a contract as a prime contractor, subcontractor, agent, or material supplier on any contracts funded in whole or in part with state funds, and reinstatement of vendors;

(4) contract cancellation;

(5) procurement from rehabilitation facilities; and

(6) organizational conflicts of interest.

Sec. 2. Minnesota Statutes 2006, section 161.315, subdivision 1, is amended to read:

Subdivision 1. **Legislative intent.** Recognizing that the preservation of the integrity of the public contracting process of the Department of Transportation is vital to the development of a balanced and efficient transportation system and a matter of interest to the people of the state, the legislature hereby determines and declares that:

(1) the procedures of the department for bidding and awarding department contracts exist to secure the public benefits of free and open competition and to secure the quality of public works;

(2) the opportunity to be awarded department contracts or to supply goods or services to the department is a privilege, not a right; and

(3) the privilege of transacting business with the department or local road authority should be denied to persons convicted of a contract crime, or that have committed a serious contract violation, in order to preserve the integrity of the public contracting process.

Sec. 3. Minnesota Statutes 2006, section 161.315, subdivision 2, is amended to read:

Subd. 2. **Definitions.** The terms used in this section have the meanings given them in this subdivision.

(a) "Affiliate" means a predecessor or successor of a person by merger, reorganization, or otherwise, who is, or that has as an officer or director an individual who is, a relative of the person or an individual over whose actions the person exercises substantial influence or control, or a group of entities so connected or associated that one entity controls or has the power to control each of the other entities. "Affiliate" includes the affiliate's principals. One person's ownership of a controlling interest in another entity or a pooling of equipment or income among entities is prima facie evidence that one entity is an affiliate of another.

(b) "Contract crime" means a violation of state or federal antitrust law, fraud, theft, embezzlement, bribery, forgery, misrepresentation, making false statements, falsification or destruction of records, collusion, or other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract, or other offense indicating a lack of business integrity.

(c) "Conviction" has the meaning given it in section 609.02, subdivision 5.

(d) "Debar" means to disqualify from receiving a contract or from serving as a subcontractor or material supplier as provided by Laws 1984, chapter 654, article 2, section 8.

(e) "Person" means a natural person or a business, corporation, association, partnership, sole proprietorship, or other entity formed to do business as a contractor, subcontractor, or material supplier and includes an affiliate of a person.

(f) "Pooling" means a combination of persons engaged in the same business or combined for the purpose of engaging in a particular business or commercial venture and who all contribute to a common fund or place their holdings of a given stock or other security in the hand and control of a managing member or committee of the combination.

(g) "Suspend" means to temporarily disqualify from receiving a contract or from serving as a subcontractor or material supplier as provided by Laws 1984, chapter 654, article 2, section 8.

(h) "Relative" means an individual related by consanguinity within the second degree as determined by the common law, a spouse, or an individual related to a spouse within the second degree as determined by the common law, and includes an individual in an adoptive relationship within the second degree as determined by the common law.

(i) "Serious contract violation" means failure without good cause to perform according to the specifications, time limits, or any terms or conditions in a contract; a record of failure to perform or unsatisfactory performance, according to the terms, of more than one contract as measured by standard commercial practices, not caused by acts beyond the control of the contractor; or any other cause the commissioner determines to be serious and compelling including, but not limited to, threatening or abusive behavior, collusion with other vendors to restrain competition, giving false information on a vendor's registration application or response to a solicitation, or violating terms of a suspension.

(j) "Governmental entity" means the federal government, the state of Minnesota, or any of its departments, commissions, councils, agencies, political subdivisions, municipalities, local government bodies, or an agent of any of those entities.

Sec. 4. Minnesota Statutes 2006, section 177.27, subdivision 1, is amended to read:

Subdivision 1. **Examination of records.** The commissioner may enter during reasonable office hours or upon request and inspect the place of business or employment of any employer of employees working in the state, to examine and inspect books, registers, payrolls, and other records of any employer that in any way relate to wages, hours, and other conditions of employment of any employees. The commissioner may transcribe any or all of the books, registers, payrolls, and other records as the commissioner deems necessary or appropriate and may question the employees to ascertain compliance with sections 177.21 to ~~177.35~~ 177.46. The commissioner may investigate wage claims or complaints by an employee against an employer if the failure to pay a wage may violate Minnesota law or an order or rule of the department.

Sec. 5. Minnesota Statutes 2006, section 177.27, subdivision 4, is amended to read:

Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an employer to comply with sections 177.21 to ~~177.35~~ 177.46, 181.02, 181.03, 181.031, 181.032, 181.101, 181.11, 181.12, 181.13, 181.14, 181.145, 181.15, and 181.79, or with any rule promulgated under section 177.28. The department shall serve the order upon the employer or the employer's authorized representative in person or by certified mail at the employer's place of business. An employer who wishes to contest the order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the employer fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner.

Sec. 6. Minnesota Statutes 2006, section 177.27, subdivision 8, is amended to read:

Subd. 8. **Court actions; suits brought by private parties.** An employee may bring a civil action seeking redress for a violation or violations of sections 177.21 to ~~177.35~~ 177.46 directly to district court. An employer who pays an employee less than the wages and overtime compensation to which the employee is entitled under sections 177.21 to ~~177.35~~ 177.46 is liable to the employee for the full amount of the wages, gratuities, and overtime compensation, less any amount the employer is able to establish was actually paid to the employee and for an additional equal amount as liquidated damages. In addition, in an action under this subdivision the employee may seek damages and other appropriate relief provided by subdivision 7 and otherwise provided by law. An agreement between the employee and the employer to work for less than the applicable wage is not a defense to the action.

Sec. 7. Minnesota Statutes 2006, section 177.27, subdivision 9, is amended to read:

Subd. 9. **District court jurisdiction.** Any action brought under subdivision 8 may be filed in the district court of the county wherein a violation or violations of sections 177.21 to ~~177.35~~ 177.46 are alleged to have been committed, where the respondent resides or has a principal place of business, or any other court of competent jurisdiction. The action may be brought by one or more employees.

Sec. 8. Minnesota Statutes 2006, section 177.27, subdivision 10, is amended to read:

Subd. 10. **Attorney fees and costs.** In any action brought pursuant to subdivision 8, the court shall order an employer who is found to have committed a violation or violations of sections 177.21 to ~~177.35~~ 177.46 to pay to the employee or employees reasonable costs, disbursements, witness fees, and attorney fees.

Sec. 9. Minnesota Statutes 2006, section 177.42, is amended to read:

177.42 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 177.41 to ~~177.44~~ 177.46 the terms defined in this section have the meanings given them except where the context indicates otherwise.

Subd. 2. **Project.** "Project" means erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by state funds.

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

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

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

Subd. 6. **Prevailing wage rate.** "Prevailing wage rate" means the hourly basic rate of pay plus the contribution for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefit considered by the commissioner to be a direct benefit to the employee and paid to the largest number of workers engaged in the same class of labor within the area and 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, that must be at least two times the established state minimum wage rate.

Subd. 7. **Laborer or mechanic.** "Laborer or mechanic" includes all workers performing manual and physical work on the project including, but not limited to, officers, partners, owners, forepersons, supervisors, and professionals for the time spent performing the duties of classifications of labor on the project.

Subd. 8. **Contracting authority.** "Contracting authority" means the state of Minnesota, a state agency, political subdivision of the state, commission, council, or any other entity with authority to enter into public works projects, or an agent of any of those entities, that enters into a contract for a project.

Subd. 9. **Contractor.** "Contractor" means the individual, firm, corporation, or other business entity entering into a contract with a contracting authority to complete a project, either directly or through an authorized representative, and who undertakes the prosecution of the work prescribed in the contract.

Subd. 10. **Contract.** "Contract" means the written agreement between the contracting authority and the contractor setting forth each party's rights and obligations, including, but not limited to, the performance of the work, type of work, furnishing of labor and materials, basis of payment, work specifications, and other requirements contained in the project documents.

Sec. 10. Minnesota Statutes 2006, section 177.43, is amended to read:

177.43 CONTRACTS FOR STATE PROJECTS; PENALTY.

Subdivision 1. **Hours 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 taxable hourly basic rate ~~of pay~~ paid to the laborer or mechanic for the work performed under a contract; ~~and~~

(2) a laborer or mechanic ~~may~~ must be paid unconditionally and not less often than on a weekly basis and shall 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. Actual costs for providing bona fide fringe benefit programs as defined in subdivision 8 to a laborer or mechanic performing work under the contract may be deducted from the total prevailing wage rate to obtain the taxable hourly basic rate to be paid to the laborer or mechanic; and

(3) apprentices in a certified or registered state or federal program approved by the United States Department of Labor may work on a project for less than the prevailing wage rate. The contractor, subcontractor, or agent shall not exceed the apprenticeship ratio established for the certified or registered program on any project, and shall pay the pay and benefits established for the certified or registered program to the apprentices.

Subd. 2. **Exceptions.** This section does not apply to wage rates and hours of employment of laborers or mechanics who process or manufacture 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 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. **Contract requirements.** The contract must specifically state the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay. The contracting authority shall incorporate into its proposals and contracts the appropriate wage determinations for the contract along with contract language provided by the commissioner of labor and industry to notify the contractor of the applicability of sections 177.41 to 177.46. Failure to incorporate the determination or provided contract language into the contracts shall make the contracting authority liable for making whole the contractor for any increases in the wages paid, including employment taxes and reasonable administrative costs based on the increase in wages, to the laborers or mechanics working on the project. Contracting authorities are specifically authorized to incorporate prevailing wage requirements into any public works contract, whether or not required to do so by sections 177.41 to 177.46. The contracting authority is authorized to incorporate into the bid documents for each project a provision stating that the successful bidder on the project will pay to the contracting authority a compliance-monitoring surcharge, as a mobilization cost for the project. The surcharge shall be a percentage of the amount bid for completion of the project, not including the surcharge. The percentage to be included in the bid for this surcharge shall be either an amount set annually by the commissioner for all projects after investigation to determine the expected costs of monitoring compliance, or an amount requested by the contracting authority and authorized by the commissioner annually, and will be a percentage sufficient, when added to each contract to be awarded that year, to pay the estimated cost to the contracting authority of monitoring compliance with sections 177.41 to 177.46 as required in those sections. The surcharge shall be incorporated into the contract for the project and paid by the contractor to the contracting authority within two weeks of the payment by the contracting authority of the mobilization cost for the project as specified in the successful bid. The contracting authority shall use this surcharge exclusively to defray costs of monitoring compliance with sections 177.41 to 177.46 as required in those sections.

These hours, rates, and classifications, along with contracting authority name, project engineer or agency contact person, telephone number, and project identification numbers, together with the provisions of subdivision 5, printed in bold type of at least 18 point, in English, Spanish, and Hmong, shall be and remain posted directly on the project site by the contractor in at least one conspicuous and accessible location acceptable to the commissioners for the information of all employees working on the project. The contracting authority shall ensure the contractor keeps the required information on the project from the start of work until all work is completed on the project. A civil penalty of $100 per day shall be assessed by the contracting authority against the contractor for each day work is performed on the project and the poster board is not placed or maintained on the project work site at a location acceptable to the contracting authority.

All contracting authorities shall require weekly submittal of certified payrolls from each contractor, subcontractor, or agent working on the project. The contractor shall submit certified payrolls from the contractor's own workforce along with payrolls from all subcontractors and agents working on the project. The contracting authority shall maintain the payrolls under the contracting agency's normal record retention schedules for a minimum of two years past the closing of the contract. The payroll information and certification language shall be submitted in a form approved by the department. The payroll information shall list all laborers or mechanics performing work under the contract, the hourly costs of, and the provider names and contact information of, the company's fringe benefits program, along with project identification information, and the following information on the laborer or mechanic: full name, address, Social Security number, each classification of labor worked, daily and weekly hours worked on the project, rates of pay, overtime hours and rates, taxes withheld and other deductions, the project gross amount and net amounts earned, the total gross amount and net amounts earned, and any additional information determined by the commissioner to be necessary to ensure compliance with this section. Each contracting authority shall redact the Social Security number and address of each laborer or mechanic from each certified payroll before any person other than an employee of the contracting authority or the department is allowed to review the certified payroll. Redacting the Social Security numbers and addresses is a cost of monitoring compliance with this section to be included in the contract amount as required by this subdivision. Payrolls shall be submitted within one week after the week ending date of the week in which the work was performed. Each subcontractor or agent shall furnish to the contractor weekly certified payrolls to demonstrate compliance with this section. The contractor has authority to interview all laborers or mechanics on the project and review subcontractor or agent payroll information to ensure compliance with this section. The contracting authority shall assess a civil penalty of $100 per week against the contractor for each week the contractor's certified payrolls or any of the individual subcontractor or agent-certified payrolls are not submitted after written notification by the contracting authority that the payrolls are late. The contracting authority may deduct from what is owed the contractor on the project for civil penalties and assessments for violations on the project.

The contractor shall incorporate into all subcontract agreements, purchase orders, or other written agreements, the contract wage determinations and the contract language provided by the commissioner contained in the contract. The contractor shall also ensure that all secondary subcontract agreements, purchase orders, or other written agreements contain the same language. The contractor shall provide a written certified confirmation on a form provided by the contracting authority that all subcontractors and agents have received the required contract wage determinations and contract language. The form shall be provided to the contracting authority prior to any subcontractor or agent working on the project. If the contractor does not provide the information required to the subcontractor or agents, or the form to the contracting authority, the contractor shall be the sole entity responsible for any contracting authority or commissioner's assessment. A civil penalty of $50 per week shall be assessed by the contracting authority against the contractor for each week after written notification that the subcontractor or agent forms are not submitted.

Subd. 4. **Determination by commissioner.** The prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required ~~in any project~~ under each contract must be ~~ascertained~~ obtained before ~~the state~~ any contracting authority asks for bids. The wage determinations must also include future hours and rates when they can be determined for classes of laborers or mechanics in an area. The wage determination must specifically state the effective dates of future hours and rates when they are certified. The commissioner of labor and industry shall investigate as necessary to ascertain the information and shall develop and maintain classification definitions. The contractor and contracting authority shall apply the classification definitions to the laborers or mechanics performing work under the contract. Missing classifications, classification disputes, and disputes arising from interpretations of this section shall be resolved by the commissioner of labor and industry. ~~The commissioner shall keep the information posted on the project in at least one conspicuous place for the information of the employees working on the project.~~ A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings within 20 days of the publication or decision. 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 in the manner of 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, and the certified change will be effective on a project advertised for bid on or after the date of certification.

Subd. 5. **Penalty.** It is a ~~misdemeanor~~ violation for an officer or employee of the state or contracting authority knowingly to execute a contract for a project without ~~complying with this section, or for~~ the wage determination or contract language provided by the commissioner of labor and industry, or knowingly close a contract on a project with violations or assessments. A willful violation may be subject to the penalties assigned under section 609.43. A contractor, subcontractor, or agent ~~to pay any laborer, worker, or mechanic employed directly on the project site a lesser wage for work done under the contract than the prevailing wage rate as stated in the contract. This misdemeanor is punishable by a fine of~~ who violates this section is guilty of a gross misdemeanor for the first prosecution of a criminal offense under this section and shall be fined for the violation not more than ~~$700~~ $3,000, or ~~imprisonment~~ imprisoned for not more than ~~90 days~~ one year, or both. ~~Each agent or subcontractor shall furnish to the contractor evidence of compliance with this section.~~

Each day a violation of this section continues is a separate ~~offense~~ violation. It will be considered a felony for the second prosecution of a contractor, subcontractor, or agent for violations of this section, or for the prosecution of a total unpaid back wage assessment by the commissioner of labor and industry against a violating contractor, subcontractor, or agent in excess of $100,000, and shall be fined for the violation not more that $10,000, or imprisoned for not more than five years, or both. Each day that the violation continues is a separate violation.

Whoever induces a job applicant or employee on any project subject to this section to give up or forego any part of the wages to which the job applicant or employee is entitled under the contract governing the project by threat not to employ, by threat of dismissal from employment, or by any other means, or knowingly alters official company employment or time records to falsely report the laborer's or mechanic's pay is guilty of a gross misdemeanor and may by fined for the violation not exceeding $3,000 or imprisoned for not more than one year, or both. Each day that the violation continues is a separate violation.

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, is guilty of a misdemeanor and may be fined no more than $40 or imprisoned not more than 30 days or both. Each day any violation of this paragraph continues is a separate violation.

In addition to or instead of criminal prosecution under this subdivision, the commissioner may engage in any civil enforcement actions authorized by this section or section 177.45.

A contractor, subcontractor, or agent that willfully violates this section shall be deemed to have a lack of business integrity and shall be debarred by the commissioner from working on any contract funded in whole or in part with state funds as a contractor, subcontractor, agent, or material supplier for a period of at least one year and not to exceed three years. The commissioner shall publish a list of the debarred entities. If any contracting authority has debarred an entity for prevailing wage violations, the contracting authority shall report the debarment to the commissioner, who will then include the contractor on the list of debarred entities. All contracting authorities are required to review the list of debarred entities and may not contract with a debarred entity or allow a debarred entity to work on any project as a subcontractor, material supplier, or in any other capacity.

Subd. 6. **Examination of records and investigation by the department.** The Department of Labor and Industry shall enforce this section. ~~The department may demand, and the contractor and subcontractor shall furnish to the department, copies of any or all payrolls.~~ At the written request of the department, the contracting authority that awarded a contract funded in whole or in part with state funds shall notify the commissioner in writing of the project location, contractor, and any other project documentation deemed necessary by the commissioner. The department shall employ at least five investigators to perform on-site project reviews and to receive and investigate complaints of violations of this section, and conduct training of and outreach to contracting authorities to assist them in their compliance efforts. These investigators shall be in addition to any investigators employed to conduct prevailing wage surveys. The department has the right to stop and interview employees working on projects subject to this section during work hours. The commissioner shall hold confidential any written or verbal complaint of violation of this section filed by a laborer or mechanic or filed on behalf of a laborer or mechanic. Each complaint of violation of this section received from a contracting authority or by or for a laborer or mechanic by the department shall be assigned to an investigator and investigated in a timely manner. The department may demand, and the contractor or subcontractor or agent shall furnish to the department, copies of any or all payroll documentation deemed necessary by the department. The department may also demand, and the contracting authority shall furnish to the department, any or all project information. The department may examine all records relating to wages paid or fringe benefits provided to laborers or mechanics ~~on work to which~~ to ensure compliance with sections 177.41 to ~~177.44 apply~~ 177.46.

After gathering the information necessary to evaluate a complaint of a violation of this section, the investigator shall determine whether a violation has occurred. If the investigator determines that no violation has occurred, or that there is a lack of evidence to determine a violation, the investigation shall be terminated. However, if the investigator determines that a violation has occurred, the investigator shall determine the amount of back wages owed to the affected laborer or mechanic, shall assess a 100 percent penalty based on the amount of back wages owed to be paid to the affected laborer or mechanic, and an additional civil penalty equal to 100 percent of the back wages owed to be paid to the department for future prevailing wage enforcement efforts and assess the total amount of back wages owed and penalties against the violating contractor, subcontractor, or agent accordingly. In addition, if the investigator determines that a violation has occurred, the investigator may investigate all other open or closed contracts requiring payment of prevailing wages on which that contractor, subcontractor, or agent performed any work within the previous two years, to determine if there are similar violations. The department shall notify both the contractor and the contracting authority of its findings and assessment. If the violating contractor, subcontractor, or agent does not comply with the department's assessment within 20 days of receipt of written notification, the department shall notify the contracting authority to withhold from any payment due to the contractor a reasonable amount to ensure compliance with the department's assessment. The contracting authority shall require adherence to the department's assessments by the contractor. The contracting authority shall withhold from funds owed the contractor a reasonable amount to ensure compliance with the assessment. The contracting authority shall report back to the investigator when the contractor complies with the commissioner's findings and assessment. The investigator shall report to the commissioner any contractor, subcontractor, or agent who does not comply with the department's findings and assessment within 60 days after the contractor received the written findings and assessment. The commissioner shall deem any unpaid department assessment as an unresolved violation of this section and handle as required under subdivision 6a.

If a contractor is deemed to be insolvent by the commissioner, the contracting authority shall deduct the department's assessed amount from funds owed the contractor or assess the bonding company for department's assessment. The funds shall be sent to the commissioner to be dispersed to the affected laborers or mechanics.

Subd. 6a. **Prevailing wage rate violations.** (a) **Reporting to violations.** All contracting authorities shall monitor compliance with sections 177.41 to 177.46 on all contracts that receive any amount of state funding. The contracting authority shall interview employees working on the project during working hours. The contracting authority shall randomly review the weekly certified payrolls, subcontract agreements, project documentation, and employee interviews to determine if the contractor has demonstrated compliance with this section. The contracting authority has authority to examine all records relating to the hours of work, wages paid, or cost of providing fringe benefits, to laborers and mechanics performing work under a contract to determine compliance with sections 177.41 to 177.46. The contracting authority shall hold confidential any written or verbal complaint of violation of this section filed by a laborer or mechanic or filed on behalf of a laborer or mechanic. The contracting authority shall notify the contractor in writing of any violations of this section. The contractor shall resolve the violations on the project and provide evidence of the resolution of the violations to the satisfaction of the contracting authority. The contracting authority shall report any unresolved violations of this section to the commissioner of labor and industry after 20 days of a written notification to the contractor to resolve the violations, or the contracting authority has knowledge that it is the violating contractor's, subcontractor's, or agent's second offense of a similar nature. The contracting authority shall not close a contract with any unresolved violations of this section.

The commissioner of labor and industry is required to report any unresolved violations within 60 days of written notification to the contractor, any willful violations of this section, or second offense violations of a similar nature, to both the county attorney where the alleged violation occurred and to the attorney general for criminal prosecution.

(b) **Notice of actions.** A county attorney shall notify the commissioner of labor and industry and the attorney general upon commencing an action for a violation of this section. The county attorney shall also give notice to the commissioner and the attorney general of the outcome of the action, including detailed reasons for the dismissal or settlement of an action pursuant to a plea agreement that awards less than the maximum penalties for a violation of this section. The commissioner shall notify the contracting authority.

(c) **Action by the attorney general.** If the attorney general does not receive notice of the commencement of an action by a county attorney, as required by paragraph (b), within six months of receiving a report under paragraph (a) from the commissioner of labor and industry, the attorney general shall pursue the suspected violation, unless the attorney general and commissioner agree that civil enforcement will be sufficient to effectuate the policies of the Prevailing Wage Act.

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

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

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

Subd. 8. **Fringe benefit programs.** The prevailing wage rate shall be paid for all hours worked on the project. The contractor, subcontractor, or agent may take credit toward the prevailing wage rate for the recovery of the costs of providing bona fide fringe benefits that have been approved by the commissioner prior to working on a contract subject to this section and deemed a direct benefit to the laborer or mechanic.

The contractor, subcontractor, or agent shall not take credit for the company's incurred administrative costs of providing a bona fide fringe benefits program or the costs of legally required plans or insurance including but not limited to workers' compensation and unemployment insurance, as well as program or plan costs deemed by the commissioner to be incurred for the benefit of the contractor, subcontractor, or agent.

The contributions irrevocably made by the employer to a trustee or third party pursuant to bona fide fringe benefit fund, plan, or program may be deducted from the prevailing wage rate, including the reasonable anticipated costs made to a legally enforceable financially responsible employer plan or program. All programs shall be communicated in writing to the employee prior to working on the project.

Contributions to plans or programs must be made on a regular basis, not less often than quarterly. The costs of providing the benefit plan or program must be annualized. Contributions made to a plan or program for government work cannot fund the plan for periods of nongovernment work.

The laborer or mechanic must have an opportunity to receive the benefit; credit will not be given costs deducted from laborers or mechanics that are not eligible to receive the benefit. A laborer or mechanic cannot pay the costs of providing a fringe benefit for another laborer or mechanic.

Bonuses are not considered a fringe benefit as they are paid in the future and the laborer or mechanic must be paid weekly the full amount owed without any rebate. Transportation, board, and lodging are not considered a fringe benefit as it is a properly reimbursable expense of the employer and incurred for the employer's benefit. Company vehicles are not considered a fringe benefit as it is to the advantage of the contractor.

The remainder of the prevailing wage rate after the costs for bona fide fringe benefits have been deducted shall be the taxable hourly wage rate paid to the employee for regular hours worked and used as the basis for calculating overtime rates of pay. The amount deducted for fringe benefit costs on a project may not reduce the taxable hourly wage rate below the laborer's or mechanic's regular rate of pay. A contractor may not reduce the rate of pay of the laborer or mechanic on nonprevailing wage work as a result of the laborer or mechanic having performed work for which payment of prevailing wage is required.

Nothing in this section shall supersede provisions of any collective bargaining agreement. The provisions of the Employment Retirement Income Security Act shall be considered by the commissioner when determining bona fide fringe benefit programs.

Subd. 9. **Keeping records, penalty.** Every employer subject to sections 177.41 to 177.46 must make and keep a record of:

(1) the name, address, Social Security number, and classification of each laborer or mechanic;

(2) the hourly rate of pay, and the amount paid each pay period on both public and private work to each laborer or mechanic;

(3) the hours and classifications worked each day and each work week on both public and private work by the laborer or mechanic;

(4) fringe benefit program information, costs, and disbursements made on behalf of a laborer or mechanic; and

(5) other information the commissioner finds necessary and appropriate to enforce sections 177.41 to 177.46.

The records shall be kept in or near the employer's main business location for three years after the contract is closed on the project worked. The commissioner may fine a contractor, subcontractor, or agent up to $1,000 for each failure to maintain records as required by this section. This penalty is in addition to any penalties provided under section 177.43 or 177.46.

Sec. 11. Minnesota Statutes 2006, section 177.44, is amended to read:

177.44 ~~HIGHWAY~~ TRANSPORTATION CONTRACTS; HOURS OF LABOR; WAGE RATES; PENALTY.

Subdivision 1. **Hours, wages permitted.** A laborer or mechanic employed by a contractor, subcontractor, agent, or other person doing or contracting to do all or part of the work under a contract based on bids as provided in Minnesota Statutes ~~1971~~, section 161.32, ~~to which the state is a party~~, or for contracts for which the Department of Transportation has a delegation of authority to be the contracting authority, or for contracts that the Department of Transportation oversees under its authority to oversee constitutionally mandated state funding to other local governmental bodies, or units of government, or political subdivisions that are the contracting authority, for the construction or maintenance of a highway or other public work projects, may not be permitted or required to work longer than the prevailing hours of labor unless the laborer or mechanic is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the actual hourly basic rate ~~of pay of~~ paid to the laborer or mechanic for the work performed on the project. The laborer or mechanic must be paid ~~at least~~ unconditionally and not less often than on a weekly basis and shall 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. The costs of providing fringe benefit programs as defined in section 177.43, subdivision 8, to the laborers or mechanics working on the project may be deducted from the total prevailing wage rate. Contractors, subcontractors, agents, or other persons performing work under the contract must maintain records as defined in section 177.43, subdivision 9.

Apprentices in a certified or registered state or federal program may perform work under a contract for less than the prevailing wage rate. The employer must not exceed the program's approved apprenticeship ratio on any project, and must pay the pay and benefits established for the certified or registered program to the apprentices.

Subd. 2. **~~Applicability~~ Exceptions.** 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~~ or mechanics and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of ~~labor and~~ laborers or mechanics commonly employed in highway, heavy, or building construction work, so as to determine prevailing hours of labor, prevailing wage rates, and hourly basic rates of pay. If a contract contains multiple types of construction work, the contract must contain all appropriate wage determinations and the laborer or mechanic must be paid at a rate for all hours worked under the type of work performed on the project. The Department of Labor and Industry shall develop, maintain, and publish classification definitions for use on Department of Transportation contracts. The contractors and Department of Transportation and other contracting authorities must apply the classification definitions to the laborers or mechanics working on the project. Missing classifications, classification disputes, and other questions arising from the interpretations of this section must be resolved by the commissioner of labor and industry as specified in section 177.43, subdivision 4.

The Department of Labor and Industry 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. The contracting agency must incorporate the minimum rates into its contracts for bid. The contractor, subcontractor, or agent must pay the minimum rate established by the commissioner of labor and industry directly to the person who owns and operates the truck without any deductions or rebates. The contracting authority must receive evidence from the contractor, subcontractor, or agent that the proper minimum rate has been paid to the person who owns and operates the truck in a form approved by the Department of Transportation. A civil penalty of $100 may be assessed against the contractor for each week the approved form is not submitted after written notification that the form is late to the contractor.

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~~ or 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~~ or mechanics in an area. The certification must specifically state the effective dates of future hours and rates when they are certified. 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~~, all applicable area wage determinations must be contained in the contract and the hours of labor and wage rates paid the laborer or mechanic must be specific to the areas in which the work is performed. A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings within 20 days of the publication or decision. 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 and the certified change is effective on a project advertised for bid on or after the date of certification.

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~~ transportation contract which is funded in whole or in part with state funds. In addition to the wage determinations issued by the Department of Labor and Industry, the contracting authority must incorporate into its proposals and contracts the contract language provided by the commissioner of transportation to notify the contractor of the application of sections 177.41 to 177.46. Failure to incorporate the proper determination into the contracts makes the contracting authority liable for making the contractor whole for the increases in the wages paid, including employment taxes and reasonable administrative costs based on the increased wages, to the laborers or mechanics working on the project. Contracting authorities are specifically authorized to incorporate prevailing wage requirements into any public works contract, whether or not required to do so by sections 177.41 to 177.46. The contracting authority is authorized to incorporate into the bid documents for each project a provision stating that the successful bidder on the project will pay to the contracting authority a compliance-monitoring surcharge as a mobilization cost for the project. The surcharge shall be a percentage of the amount bid for completion of the project, not including the surcharge. The percentage to be included in the bid for this surcharge shall be either an amount set annually by the department for all projects after investigation to determine the expected costs of monitoring compliance, or an amount requested by the contracting authority and authorized by the commissioner annually, and will be a percentage sufficient, when added to each contract to be awarded that year to pay the estimated cost to the contracting authority of monitoring compliance with sections 177.41 to 177.46 as required in those sections. The surcharge shall be incorporated into the contract for the project and paid by the contractor to the contracting authority within two weeks of the payment by the contracting authority of the mobilization cost for the project as specified in the successful bid. The contracting authority shall use this surcharge exclusively to defray costs of monitoring compliance with sections 177.41 to 177.46 as required in those sections.

These hours, rates, and classifications, together with the name of the project engineer or agency contact person, telephone number, project identification numbers, and the provisions of subdivision 6, printed in bold type of at least 18 point, in English, Spanish, and Hmong, must be kept posted directly on the project by the ~~employer~~ contractor in at least one conspicuous ~~place~~ and accessible location for the information of ~~employees~~ all laborers or mechanics working on the project. The contracting authority must ensure the contractor keeps the required information on the project from the start of work until all work is completed on the project. A civil penalty of $100 per day must be assessed by the contracting authority against the contractor for each day work is performed on the project and the poster board is not placed or maintained on the project work site at a location acceptable to the contracting authority.

Subd. 6. **Penalties.** It is a violation for an officer or employee of the state or contracting authority to knowingly execute a contract for a project without the wage determination or contract language provided by the commissioner of transportation on the application of this section, or knowingly close a contract with violations of this section or assessments by the commissioner of transportation. A violation may be subject to the penalties under section 609.43.

A contractor, subcontractor, or agent who violates this section is guilty of a gross misdemeanor for the first prosecution of a criminal offense under this section and ~~may~~

must be fined for each violation not more than ~~$300~~ $3,000 or imprisoned not more than ~~90 days~~ one year or both, and required to reimburse the county attorney or attorney general for the cost of prosecution. Each day that the violation continues is a separate offense. It is a felony for the second criminal prosecution of a contractor, subcontractor, or agent for violations of this section, or for a criminal prosecution of a total unpaid back wage assessment by the commissioner of transportation against the violating contractor, subcontractor, or agent in excess of $100,000, and must be fined for the violation not more than $10,000, or imprisoned no more than five years, or both, and required to reimburse the county attorney or the attorney general for the cost of prosecution. 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 forego 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, or knowingly alters official company employment or time records to falsely report the employee's pay, may be fined not exceeding ~~$1,000~~ $3,000 or imprisoned not more than one year, or both. Each day that the violation continues is a separate offense.

Any employee under this section who knowingly permits the contractor ~~or~~, subcontractor, or agent 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.

In addition to or instead of criminal prosecution under this subdivision, the commissioner of transportation may engage in any civil enforcement actions authorized by this section or section 177.45.

A contractor, subcontractor, or agent that willfully violates this section must be debarred by the commissioner of transportation under section 161.315 from working on any contracts funded in whole or in part with state funds as a contractor, subcontractor, agent, or material supplier for a period of at least one year and not more than three years. The commissioner of transportation shall publish a list of the debarred entities. If any contracting authority has debarred an entity for prevailing wage violations, the contracting authority must report the debarment to the commissioner of transportation, who must include the contractor on the list of debarred entities. All contracting authorities are required to review the list of debarred entities and may not contact with a debarred entity or allow a debarred entity to work on any project as a subcontractor, material supplier, or in any other capacity.

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.~~ all sections relating to sections 177.41 to 177.46 on active project contracts for which the Department of Transportation is the contracting authority, or on active contracts that the commissioner of transportation has been delegated authority to be the contracting authority, or on active contracts that the commissioner of transportation has been delegated authority to be the contracting authority, or on active contracts that the commissioner of transportation has authority to oversee the distribution of constitutional mandated state funding to other local governmental bodies, or units of government, or political subdivisions who act as the contracting authority. The Department of Transportation shall maintain a staff of at least five investigators to ensure compliance on the projects. The commissioner of transportation or contracting authority shall hold confidential any complaint filed by a laborer or mechanic or filed on behalf of a laborer or mechanic.

The contracting authority must require weekly submittal of certified payrolls from every contractor and subcontractor or agent performing work under the contract. The contractor must submit certified payrolls for the contractor's own workforce along with payrolls from all subcontractors and agents working on the project. The contracting authority must maintain the payrolls under the contracting agency's normal record retention schedules for a minimum of two years past the closing of the contract. The payroll information and certification language must be submitted in a form approved by the Department of Transportation. The payroll information must list all laborers or mechanics performing work under the contract, the hourly costs, the provider names and contact information, the company's fringe benefits program along with project identification information, and the following information on the laborer or mechanic: full name, address, Social Security number, each classification of labor worked, daily and weekly hours worked on the project, rates of pay, overtime hours and rates, taxes withheld and other deductions, the project gross amount and net amounts earned, the total gross amount and net amounts earned, and any additional information determined by the commissioner of transportation or commissioner of labor and industry to be necessary to ensure compliance with this section. Each contracting authority must redact the Social Security number and address of each laborer or mechanic from each certified payroll before any person other than an employee of the contracting authority or the Department of Transportation is allowed to review the certified payroll. Redacting the Social Security numbers and addresses is a cost of monitoring compliance with this section to be included in the contract amount as required by this subdivision. Payrolls must be submitted within one week after the week ending date of the week in which the work was performed. Each subcontractor or agent must furnish to the contractor weekly certified payrolls that demonstrate compliance with this section. The commissioner of transportation may deduct from what is owed the contractor on the project or after written notification, any other state-funded projects under the commissioner of transportation's authority that the contractor is working on, a liquidated damage for delinquent or missing payrolls or back wage assessments. The contracting authority may deduct from what is owed the contractor on the project for civil penalties and assessments for violations on the project. The contracting authority may interview laborers or mechanics on the project site and must review certified payrolls to determine compliance with this section. The contracting authority must assess a civil penalty of $100 per week against the contractor for each week the certified payrolls or that of the individual subcontractor or agent certified payrolls are not submitted after written notification by the contracting authority that the payrolls are late. If a contracting authority is unable to achieve or determine compliance on a project, the commissioner of transportation must be notified in writing of the problems or violations.

The contractor must incorporate into all subcontract agreements, purchase orders, or other written agreements the contract wage determination and the contract language provided by the commissioner of transportation contained in the contract. The contractor must also ensure that all secondary subcontract agreements, purchase orders, or other written agreements contain the same language. The contractor must provide a written certified confirmation on a form provided by the contracting authority that all subcontractors and agents have received the required contract wage determinations and contract language. The form must be provided to the contracting authority prior to any subcontractor or agent working on the project. If the contractor does not provide the information required to the subcontractor or agents, or the form to the contracting authority, the contractor must be the sole entity responsible for any contracting authority or commissioner's assessment. A civil penalty of $50 per week may be assessed by the contracting authority against the contractor for each week after written notification that the subcontractor or agent forms are not submitted.

The commissioner of transportation may examine all business, employment, and time records and other documents relating to hours of work and the wages paid laborers ~~and~~ or mechanics ~~on work to which~~ considered necessary by the commissioner of transportation to ensure compliance with 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.~~

After gathering the information necessary to evaluate a complaint of a violation of this section, the Department of Transportation investigator shall determine whether a violation has occurred. If the investigator determines that no violation has occurred or there is not enough evidence to determine a violation has occurred, the investigation must be terminated. However, if the investigator determines that a violation has occurred, the investigator shall determine the amount of back wages owed to the affected laborer or mechanic, plus a civil penalty equal to 100 percent of the back wages owed, to be paid to the affected laborer or mechanic, and an additional civil penalty equal to 100 percent of the back wages owed to be paid to the department and used by the department for future prevailing wage enforcement efforts and assess the total amount of back wages owed and penalties against the violating contractor, subcontractor, or agent accordingly. In addition, if the investigator determines that a violation has occurred, the investigator shall investigate all other contracts, requiring payment of prevailing wages, on which that contractor, subcontractor, or agent performed any work within the previous two years, to determine if there are similar violations.

(1) For investigations on projects where the contracting authority is the Department of Transportation, the project engineer and contractor must be notified in writing of the violations and determination of assessments. If the violating contractor, subcontractor, or agent does not comply with the investigator's assessment within 20 days of written notification, the investigator must cause to be withheld from any money owed the contractor by the Department of Transportation a reasonable amount to ensure compliance with the assessments.

(2) For investigations where the contracting authority is a local governmental body or political subdivision of the state, the investigator shall notify in writing the contracting authority and the contractor of the violations and determination of assessments. If the violating contractor, subcontractor, or agent does not comply with the Department of Transportation's assessment within 20 days of written notification, the Department of Transportation investigator shall notify the contracting authority to withhold a reasonable amount of funds to ensure compliance with the commissioner of transportation's assessments. The contracting authority must require adherence to the Department of Transportation's assessment. The contracting authority must withhold a reasonable amount from money owed the contractor to ensure compliance with the assessment.

The investigator shall report to the commissioner of labor and industry any contractor, subcontractor, or agent who does not pay the amount assessed within 60 days of receipt of written notification of the determination of assessment for record-keeping purposes and the commissioner of transportation shall consider the unpaid assessment as an unresolved violation of this section. The commissioner of transportation shall report any unresolved violations, willful violations, or second offense violations of a similar nature, of this section to both the county attorney where the alleged violation occurred and to the attorney general. A county attorney shall notify the commissioner of transportation and the attorney general upon commencing an action for a violation of this section. The county attorney shall also give notice to the commissioner of transportation and the attorney general of the outcome of the action, including detailed reasons for the dismissal or settlement of an action pursuant to a plea agreement that awards less than the maximum penalties for a violation of this section. The commissioner of transportation shall notify the contracting authority.

If the attorney general does not receive notice of the commencement of an action by a county attorney, as required by this subdivision, within six months of receiving an unresolved violation report from the commissioner of transportation, the attorney general shall pursue the suspected violation in a court of competent jurisdiction, unless the attorney general and commissioner of transportation agree that civil enforcement will be sufficient to effectuate the policies of the Prevailing Wage Act.

Civil penalties and debarments under this section may be assessed by the commissioner of transportation and, if necessary, the case must be heard before an administrative law judge.

Sec. 12. **[177.45] INVESTIGATIONS AND SUBPOENAS.**

Subdivision 1. **General powers.** For the purposes of this section, "commissioner" means the commissioner of labor and industry with respect to duties and responsibilities entrusted to the commissioner of labor and industry by sections 177.41 to 177.46, and the commissioner of transportation with respect to duties and responsibilities entrusted to the commissioner of transportation by sections 177.41 to 177.46. In connection with the duties and responsibilities entrusted to each commissioner pursuant to sections 177.41 to 177.46, each commissioner may:

(1) conduct investigations necessary to determine whether any person has violated or is about to violate this section;

(2) require or permit any person to file a statement in writing, under oath, or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the duties and responsibilities entrusted to the commissioner;

(4) conduct investigations and hold hearings for the purpose of compiling information related to the duties and responsibilities entrusted to the commissioner;

(5) examine the books, accounts, records, and files of every contractor, subcontractor, or agent and of every person who is engaged in work under a contract subject to sections 177.41 to 177.46; the commissioner or a designated representative must have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business; and

(6) publish information that is contained in any order issued by the commissioner.

Subd. 2. **Response to department requests.** A contractor, subcontractor, agent, or other person performing work under a contract subject to the jurisdiction of the commissioner must comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the department. A contractor, subcontractor, agent, or other person subject to the jurisdiction of the commissioner must appear before the commissioner or the commissioner's representative when requested to do so and bring all documents or materials that the commissioner or the commissioner's representative has requested.

Subd. 3. **Power to compel production of evidence.** For the purpose of any investigation, hearing, proceeding, or inquiry related to the duties and responsibilities entrusted to the commissioner, the commissioner or a designated representative may administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

Subd. 4. **Court orders.** In case of a refusal to appear or a refusal to obey a subpoena issued to any person, the district court, upon application by the commissioner, may issue to any person an order directing that person to appear before the commissioner or the officer designated by the commissioner and produce documentary evidence if so ordered or give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Subd. 5. **Scope of privilege.** No person is excused from attending and testifying or from producing any document or record before the commissioner or from obedience to the subpoena of the commissioner or any officer designated by the commissioner or in a proceeding instituted by the commissioner, on the ground that the testimony or evidence required may tend to incriminate that person or subject that person to a penalty of forfeiture. No person may be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 6. **Compliance orders.** The commissioner may issue an order requiring a contractor, subcontractor, or agent to comply with an assessment issued by an investigator pursuant to section 177.43 or 177.44. The department shall serve the order upon the contractor, subcontractor, or agent, or the party's authorized representative, in person or by certified mail at the contractor's, subcontractor's, or agent's place of business. A contractor, subcontractor, or agent who wishes to contest the order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held according to sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the contractor, subcontractor, or agent fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner.

Subd. 7. **Contractor, subcontractor, or agent liability.** If the commissioner issues a compliance order under subdivision 6, the commissioner shall order the contractor, subcontractor, or agent to cease and desist from engaging in the violative practice and to take such affirmative steps that in the judgment of the commissioner will effectuate the purposes of the section violated. The commissioner shall order the contractor, subcontractor, or agent to pay the assessed amounts to the department and the department shall distribute to the affected laborers or mechanics the portions of the assessment designated for the laborer or mechanic. Any contractor, subcontractor, or agent that is found by the commissioner to have repeatedly or willfully violated a section or sections identified in subdivision 6 shall be subject to a civil penalty of up to $1,000 for each violation for each laborer or mechanic. In determining the amount of a civil penalty under this subdivision, the appropriateness of the penalty to the size of the contractor's, subcontractor's, or agent's business and the gravity of the violation shall be considered. In addition, the commissioner may order the contractor, subcontractor, or agent to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceeding, unless payment of costs would impose extreme financial hardship on the contractor, subcontractor, or agent. If the contractor, subcontractor, or agent is able to establish extreme financial hardship, then the commissioner may order the contractor, subcontractor, or agent to pay a percentage of the total costs that will not cause extreme financial hardship. Costs include but are not limited to the costs of services rendered by the attorney general, attorneys for the department, private attorneys if engaged by the department, administrative law judges, court reporters, expert witnesses, and the cost of transcripts. Interest shall accrue on and be added to the unpaid balance of a commissioner's order from the date the order is signed by the commissioner until it is paid, at an annual rate provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow accounts for purposes of distributing damages.

Subd. 8. **Civil actions.** The commissioner may bring an action in the district court where a contractor, subcontractor, or agent resides or where the commissioner maintains an office to enforce or require compliance with orders issued under subdivision 6 or 7.

Subd. 9. **Legal actions; injunctions.** Whenever it appears to the commissioner that a person has engaged or is about to engage in any act or practice constituting a violation of this section or order related to the duties and responsibilities entrusted to the commissioner, the commissioner may bring an action in the name of the state in Ramsey County District Court or the district court of an appropriate county to enjoin the acts or practices and to enforce compliance, or the commissioner may refer the matter to the attorney general or the county attorney of the appropriate county. A permanent injunction or other appropriate relief must be granted based solely upon a showing that the person has engaged or is about to engage in an act or practice constituting a violation of a law, rule, or order related to the duties and responsibilities entrusted to the commissioner. The terms of this subdivision govern an action brought under this subdivision, including an action against a person who, for whatever reason, claims that the subject law, rule, or order does not apply to the person.

Subd. 10. **Powers additional.** The powers contained in sections 177.41 to 177.46 are in addition to all other powers of the commissioner of labor and industry, commissioner of transportation, and any contracting authority.

Sec. 13. **[177.46] COURT ACTIONS; PRIVATE PARTY CIVIL ACTIONS.**

Subdivision 1. **Civil action; damages.** A laborer or mechanic may bring a civil action seeking redress for violations of sections 177.41 to 177.46 directly to district court. A contractor, subcontractor, or agent who is found to have violated sections 177.41 to 177.46 is liable to the aggrieved party for all unpaid wages. A contractor, subcontractor, or agent who is found to have violated sections 177.41 to 177.46 is also liable for compensatory damages, interest on the unpaid wages at the statutory rate, liquidated damages equal to three times the wages owed, punitive damages for repeated or willful violations, and any other appropriate relief including, but not limited to, injunctive relief. The contracting authority must provide the laborer or mechanic bringing the action any and all requested project records, including certified payrolls with Social Security numbers redacted, after written notice, and that has been deemed to be a public record, at a reasonable cost.

Subd. 2. **District court jurisdiction.** An action brought under subdivision 1 may be filed in the district court of the county where a violation is alleged to have been committed, where the respondent resides or has a principal place of business, where the contracting authority has its main office, or any other court of competent jurisdiction.

Subd. 3. **Persons who may sue.** An action authorized by this section may be maintained against any contractor, subcontractor, or agent by any one or more laborers or mechanics for and on behalf of themselves and other laborers or mechanics similarly situated. No laborer or mechanic must be a party plaintiff to any action authorized by this section unless the laborer or mechanic gives consent in writing to become a party and the consent is filed in the court in which the action is brought.

Subd. 4. **Discovery allowed.** Upon request, a contractor, subcontractor, or agent against whom an action authorized by this section is brought, must provide to any plaintiff records kept in the normal course of its business that show all laborers or mechanics working on the project including the last known address, hours worked, classifications worked, and wages and benefits paid for the work performed, with Social Security numbers redacted from those records. The records must be provided without court order. If a contractor, subcontractor, or agent refuses to provide this information without court order, the court must include in the order a provision requiring the contractor, subcontractor, or agent to pay the reasonable attorney fees and costs incurred by the laborer or mechanic in bringing a motion for the court order.

Subd. 5. **Attorney fees and costs.** In an action brought under subdivision 1, the court shall order any entity who is found to have committed a violation to pay to the aggrieved party reasonable costs, disbursements, witness fees, and attorney fees.

Subd. 6. **Civil penalty.** In an action brought under subdivision 1, the court shall order any entity who is found to have committed a violation to pay a civil penalty equal to 100 percent of the total damages awarded to all plaintiffs in the action, including the fees and costs awarded under subdivision 5, to the agency or contracting authority responsible for enforcing the Prevailing Wage Act with respect to the project, to be used in future enforcement efforts.

Sec. 14. Minnesota Statutes 2006, section 471.345, is amended by adding a subdivision to read:

Subd. 20. **Debarred entities.** Notwithstanding any other provision of this section, municipalities must comply with sections 177.43 and 177.44 with respect to awarding any contracts subject to sections 177.41 to 177.46.

Sec. 15. Minnesota Statutes 2006, section 574.26, subdivision 2, is amended to read:

Subd. 2. **Terms.** Except as provided in sections 574.263 and 574.264 or if the amount of the contract is $75,000 or less, a contract with a public body for the doing of any public work is not valid unless the contractor gives (1) a performance bond to the public body with whom the contractor entered into the contract, for the use and benefit of the public body to complete the contract according to its terms, which includes claims by the contracting authority to ensure proper payment to the individual laborer or mechanic working on the project to ensure the contractor is in compliance with sections 177.41 to 177.46, and conditioned on saving the public body harmless from all costs and charges that may accrue on account of completing the specified work, and (2) a payment bond for the use and benefit of all persons furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for the labor and materials. Reasonable attorneys' fees, costs, and disbursements may be awarded in an action to enforce claims under the act if the action is successfully maintained or successfully appealed.

Sec. 16. Minnesota Statutes 2006, section 574.31, subdivision 2, is amended to read:

Subd. 2. **Claims on payment bonds.** (a) In the event of a claim on a payment bond by a person furnishing labor and materials, no action shall be maintained on the payment bond unless, within 120 days after completion, delivery, or provision by the person of its last item of labor and materials, for the public work, the person serves written notice of claim under the payment bond personally or by certified mail upon the surety that issued the bond and the contractor on whose behalf the bond was issued at their addresses as stated in the bond specifying the nature and amount of the claim and the date the claimant furnished its last item of labor and materials for the public work. The addresses of the contractor and the surety listed on the bond must be addresses at which the companies are authorized to accept service of the notice of the claim. If an agent or attorney-in-fact is authorized to accept service of notice of the claim for the contractor or surety, that fact must be expressly stated in the bond along with the address of the agent or attorney-in-fact at which service of the notice of the claim can be made. For the purpose of this section, notice is sufficient if served personally or via certified mail to the addresses of the contractor and surety listed on the bond. Provided, however, that if there is a violation of law involving the contractor providing the bond, or any subcontractor or agent of the contractor, the 120 days begins to run from the date the violations are resolved, either through the public body or through court action. The form of notice is sufficient if it is substantially as follows:

NOTICE OF CLAIM ON PAYMENT BOND FOR PUBLIC WORK

TO: ....

(Surety that issued payment bond)

and ....

(The contractor on whose behalf the bond was issued)

NOTICE IS HEREBY GIVEN that the undersigned claimant has a claim against the above named surety for labor and materials furnished by the undersigned for the public work described as follows: ....

....

(Description of the public work)

The labor and materials were furnished under a contract or agreement with

....

(Name and address of contractor or supplier requesting labor and materials from the claimant)

The nature of the labor and materials furnished is as follows: ....

....

The amount of the claim is: ....

The date the claimant last furnished labor and materials to this public work is the ...... day of ...., ...

Claimant seeks payment of the claim according to the law.

....

Claimant

....

Address

....

STATE OF ....

ss.

COUNTY OF ....

.... being duly sworn on oath says that ...... is .... of the claimant named above and has knowledge of the claim and that the claim is correct, and no part of the claim has been paid.

....

Signed and sworn to before me on ...., ...,

by .... (Notary Seal)

....

Notary Public

(b) If the contractor providing the payment bond fails to comply with the filing requirements of section 574.28 by failing to state both its address and the address of the surety providing the bond, then a claimant under the bond need not provide either the surety or the contractor written notice of its claim under paragraph (a).

(c) An action to enforce a claim against the surety under the bond must be commenced within one year from the date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work stated in its notice of claim. <u>Provided, however, that if there is a violation of law involving the contractor providing the bond, or any subcontractor or agent of the contractor, the one year begins to run from the date the violations are resolved, either through the public body or through court action.</u> If no notice of claim was required because the contractor providing the bond failed to comply with the requirements of section 574.28, then any action under the bond must be commenced within one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work. Any other person having a cause of action on a payment bond may be admitted, on motion, as a party to the action, and the court shall determine the rights of all parties. If the amount realized on the bond is insufficient to discharge all the claims in full, the amount must be prorated among the parties.

(d) The claimant can extend the time within which to bring an action to enforce a claim under the bond to beyond that specified in paragraph (c) either by: (1) written stipulation between the claimant and surety stating the extended deadline and executed by both parties before the expiration of one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work; or (2) written notice extending by one year the deadline specified in paragraph (c) sent by the claimant to the surety via certified mail 90 days before the expiration of the deadline specified in paragraph (c), which notice is not objected to in a return written notice sent by the surety to the claimant via certified mail within 30 days after the surety's receipt of claimant's notice. If a claimant's payment is not yet contractually due within one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials, the court shall continue and not dismiss the action until the payment is due.