A bill for an act

relating to employment; barring certain employers from bidding on state contracts; requiring construction employers to develop and implement written safety and health plans for each construction project; providing civil and criminal penalties; amending Minnesota Statutes 2006, sections 182.651, by adding subdivisions; 182.66, subdivision 1; 182.666, subdivisions 1, 2, 2a, 3; 182.667, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 16C; 182.

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

Section 1. **[16C.053] AWARDING OF CONTRACTS TO OCCUPATIONAL SAFETY AND HEALTH LAW VIOLATORS PROHIBITED.**

Subdivision 1. **Prohibition.** No contract shall be awarded by the state of Minnesota or any of its political subdivisions to a person or entity if:

(1) the person or entity has been cited for three or more willful violations of an occupational safety and health act or of a standard, order, or regulation, promulgated pursuant to such an act, during the three-year period preceding the bid, provided the violations were cited in accordance with the provisions of a state occupational safety and health act or the Occupational Safety and Health Act of 1970, the violations were not abated within the time frame fixed by the citations, and the citations have not been set aside following appeal to the appropriate agency or court having jurisdiction; or

(2) the person or entity has received one or more criminal convictions related to the injury or death of an employee of the person or entity in the three-year period preceding the bid.

Subd. 2. **Partial ownership.** The state or a political subdivision shall not award any contract to an entity if a person who individually, jointly, or in combination with the person's spouse, parent, or child owns or controls directly or indirectly 25 percent or

more interest in the entity and the person would be barred from being awarded a contract under subdivision 1.

Sec. 2. Minnesota Statutes 2006, section 182.651, is amended by adding a subdivision to read:

Subd. 24. **Construction employer.** "Construction employer" means an employer who is engaged primarily in the building and construction industry or who performs construction work under a contract with a construction owner, except that a utility providing or receiving mutual assistance in the case of a natural or man-made disaster is not a construction employer.

Sec. 3. Minnesota Statutes 2006, section 182.651, is amended by adding a subdivision to read:

Subd. 25. **Construction owner.** "Construction owner" means a person or entity who owns, leases, or has effective control over property with or without improvements or a structure or other improvement on real property on which construction work is being performed or will be performed.

Sec. 4. Minnesota Statutes 2006, section 182.651, is amended by adding a subdivision to read:

Subd. 26. **Construction project.** "Construction project" means all construction work by one or more construction employers that is performed for a construction owner and that is described in work orders, permits, requisitions, agreements, and other project documents.

Sec. 5. Minnesota Statutes 2006, section 182.651, is amended by adding a subdivision to read:

Subd. 27. **Construction work.** "Construction work" means work for construction, alteration, demolition, or repair, or any combination of these, including painting and decorating. Construction work includes work performed under a contract between a construction employer and the state of Minnesota or any of its political subdivisions. Construction work does not include work performed under a contract between a construction employer and a homeowner for work on the homeowner's own residence, or routine maintenance and upkeep performed at least monthly.

Sec. 6. Minnesota Statutes 2006, section 182.651, is amended by adding a subdivision to read:

Subd. 28. **Construction worksite.** "Construction worksite" means a site within a construction project where construction work is performed by one or more construction employers.

Sec. 7. **[182.6547] CONSTRUCTION SAFETY AND HEALTH PLANS AND PROGRAMS.**

Subdivision 1. **Project constructor.** Each construction project must have an individual or entity that is responsible for the establishment of the safety and health plan for the project and for ensuring that the plan is carried out. That individual or entity shall be designated the project constructor. If a construction project has only one general or prime contractor, that contractor is the project constructor. If a construction project has more than one general or prime contractor, then the general or prime contractor whose work accounts for the greatest portion of the project's cost is the project constructor.

Subd. 2. **Construction safety and health plans.** The project constructor for each construction project shall develop and implement a written construction safety and health plan for the construction project to protect employees against hazards that may exist at the project. The plan shall:

(1) include a hazard analysis and construction process protocol that applies to each worksite of the project;

(2) include assurance that each construction employer on the project has a safety and health program that complies and is coordinated with the plan and the requirements of section 182.653, subdivision 8;

(3) provide for regular inspections of the worksite to monitor the implementation of the plan;

(4) include a method for notifying affected construction employers of any hazardous conditions at a construction worksite or of noncompliance by an employer with the project safety and health plan;

(5) include a method for responding to the request of any construction employer, employee, or employee representative for an inspection of a construction worksite to determine if an imminent danger exists and to stop work at, or remove affected employees from, an area in which such a danger exists;

(6) ensure that a competent person is on site at all times to oversee the implementation of the safety plan and coordinate activities among employers; and

(7) ensure that the plan will be reviewed and modified as the project addresses new safety concerns.

Subd. 3. **Availability.** Copies of the plan shall be made available to each construction employer prior to commencement of construction work by that employer.

Subd. 4. **Emergency work.** If it is necessary to perform construction work on a worksite immediately in order to prevent injury to persons or substantial damage to property, and this work must be conducted before compliance with this section can be made, the commissioner shall be given notice as soon as practicable of such work. Compliance shall then be made as soon as practicable thereafter.

Sec. 8. Minnesota Statutes 2006, section 182.66, subdivision 1, is amended to read:

Subdivision 1. **Written citations.** After an inspection or investigation, if the commissioner believes that an employer has violated a requirement of section 182.653 or 182.6547, or any standard, rule or order adopted pursuant to this chapter, the commissioner shall, with reasonable promptness and in no event later than six months following the inspection, issue a written citation to the employer by certified mail. The citation shall describe with particularity the nature of the violation, including a reference to the provision of the act, standard, rule or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

Sec. 9. Minnesota Statutes 2006, section 182.666, subdivision 1, is amended to read:

Subdivision 1. **Willful or repeated violations.** Any employer who willfully or repeatedly violates the requirements of section 182.653 or 182.6547, or any standard, rule, or order adopted under the authority of the commissioner as provided in this chapter, may be assessed a fine not to exceed $70,000 for each violation. The minimum fine for a willful violation is $5,000.

Sec. 10. Minnesota Statutes 2006, section 182.666, subdivision 2, is amended to read:

Subd. 2. **Serious violations.** Any employer who has received a citation for a serious violation of its duties under section 182.653 or 182.6547, or any standard, rule, or order adopted under the authority of the commissioner as provided in this chapter, shall be assessed a fine not to exceed $7,000 for each violation. If a serious violation under section 182.653, subdivision 2, or 182.6547 causes or contributes to the death of an employee, the employer shall be assessed a fine of up to $25,000.

Sec. 11. Minnesota Statutes 2006, section 182.666, subdivision 2a, is amended to read:

Subd. 2a. **Citations connected to the death of an employee.** (a) Notwithstanding any other provision of this section, if any (1) serious, willful, or repeated violation other than a violation of section 182.653, subdivision 2, or 182.6547; or (2) failure to correct a violation pursuant to subdivision 4 causes or contributes to the death of an employee, the minimum total nonnegotiable fine which shall be assessed for all citations connected to the death of an employee is $50,000 if there is a willful or repeated violation or $25,000 if there is no willful or repeated violation, except as provided in paragraph (b).

(b) If there is no willful or repeated violation and the employer has fewer than 50 employees, the employer shall be assessed an initial fine of $5,000 and an additional fine of $5,000 for each of the following four years. The commissioner may elect to waive the $5,000 fine for any of the following four years if the employer received no citations in the preceding calendar year.

(c) If the business or enterprise employs fewer than 50 employees, this subdivision does not apply to the death of an employee who owns a controlling interest in the business or enterprise, except if the commissioner determines that a fine shall be assessed.

Sec. 12. Minnesota Statutes 2006, section 182.666, subdivision 3, is amended to read:

Subd. 3. **Nonserious violations.** Any employer who has received a citation for a violation of its duties under section 182.653, subdivisions 2 to 4, or 182.6547, where the violation is specifically determined not to be of a serious nature as provided in section 182.651, subdivision 12, may be assessed a fine of up to $7,000 for each violation.

Sec. 13. Minnesota Statutes 2006, section 182.667, subdivision 2, is amended to read:

Subd. 2. **Willful or repeated violations.** Any employer who willfully or repeatedly violates the requirements of section 182.653 or 182.6547, any safety and health standard promulgated under this chapter, any existing rule promulgated by the department, may be punished by a fine of not more than $70,000 or by imprisonment for not more than six months or ~~by~~ both~~:~~ except~~,~~ that if the conviction is for a violation committed after a first conviction of ~~such~~ the person, punishment shall be a fine of not more than $100,000 or by imprisonment for not more than one year, or ~~by~~ both.