

An Act

SENATE BILL 19-196

BY SENATOR(S) Lee and Danielson, Bridges, Fenberg, Fields, Foote, Ginal, Moreno, Pettersen, Story, Todd, Williams A., Winter, Zenzinger; also REPRESENTATIVE(S) Garnett and Duran, Arndt, Bird, Buckner, Buentello, Caraveo, Cutter, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Gray, Hansen, Herod, Hooton, Jackson, Kennedy, Kipp, Kraft-Tharp, Lontine, McLachlan, Melton, Michaelson Jenet, Mullica, Singer, Sirota, Snyder, Sullivan, Titone, Valdez A., Weissman, Becker.

CONCERNING THE MODIFICATION OF PROCUREMENT REQUIREMENTS FOR STATE CONTRACTS FOR PUBLIC PROJECTS.

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

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

24-92-115. Apprenticeship utilization requirements - mechanical, electrical, and plumbing contracts - public projects - definition. (1) (a) UNLESS PROHIBITED BY APPLICABLE FEDERAL LAW, AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, THE CONTRACT FOR ANY PUBLIC WORKS PROJECT THAT DOES NOT RECEIVE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

FEDERAL MONEY, INCLUDING A PUBLIC PROJECT THAT WILL HAVE AN INTEGRATED PROJECT DELIVERY CONTRACT PURSUANT TO ARTICLE 93 OF THIS TITLE 24, IN THE AMOUNT OF ONE MILLION DOLLARS OR MORE SHALL REQUIRE THE GENERAL CONTRACTOR OR OTHER FIRM TO WHICH THE CONTRACT IS AWARDED TO SUBMIT, AT THE TIME THE MECHANICAL, ELECTRICAL, OR PLUMBING SUBCONTRACTOR IS PUT UNDER CONTRACT, DOCUMENTATION TO THE AGENCY OF GOVERNMENT THAT:

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

(II) CERTIFIES THAT ALL FIRMS IDENTIFIED PARTICIPATE IN APPRENTICESHIP PROGRAMS REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION OR STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THE UNITED STATES DEPARTMENT OF LABOR AND HAVE A PROVEN RECORD OF GRADUATING APPRENTICES AS FOLLOWS:

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

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

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

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

(b) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO THE DEPARTMENT OF TRANSPORTATION, REGARDLESS OF THE AMOUNT OR FUNDING SOURCE OF THE PUBLIC PROJECT. THE PROVISIONS OF THIS SECTION ALSO DO NOT APPLY TO ANY COUNTY, CITY AND COUNTY, CITY,

MUNICIPALITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE.

(c) FOR THE PURPOSES OF SUBSECTION (1)(a)(II) OF THIS SECTION, "GRADUATING" MEANS THE COMPLETION OF A MULTI-YEAR PROGRAM, INCLUDING THE REQUISITE CLASSROOM COURSE WORK AND ON-THE-JOB TRAINING REQUIREMENTS AND A CERTIFICATE OF COMPLETION ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP.

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

(3) TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, THE GENERAL CONTRACTOR OR OTHER FIRM TO WHICH THE CONTRACT IS AWARDED SHALL AGREE TO PROVIDE ADDITIONAL DOCUMENTATION TO THE CONTRACTING AGENCY REGARDING AFFECTED APPRENTICESHIP TRAINING PROGRAMS RELATING TO THE REQUIREMENTS OF THIS IF A CONTRACTING AGENCY OF GOVERNMENT DETERMINES THAT A MECHANICAL, ELECTRICAL, OR PLUMBING SUBCONTRACTOR HAS WILLFULLY FALSIFIED DOCUMENTATION OR WILLFULLY MISREPRESENTED THEIR QUALIFICATIONS REQUIRED TO COMPLY WITH THIS SECTION IN THE CONTRACT, THE AGENCY OF GOVERNMENT SHALL DIRECT THE CONTRACTOR TO TERMINATE THE SUBCONTRACTOR CONTRACT IMMEDIATELY AND THE SUBCONTRACTOR WILL BE IMMEDIATELY REMOVED FROM THE PUBLIC PROJECT. AT THE DISCRETION OF THE DIRECTOR OF THE DEPARTMENT OF PERSONNEL, THE STATE MAY INITIATE THE PROCESS TO DEBAR THE CONTRACTOR PURSUANT TO SECTION 24-109-105, AND MAY PURSUE ANY OTHER REMEDY PROVIDED BY LAW.

(4) UPON EVALUATION OF THE SUBMITTED BIDS, THE CONTRACTING AGENCY OF GOVERNMENT MAY WAIVE THE REQUIREMENTS OF THIS SECTION FOR A PUBLIC PROJECT IF THE AGENCY OF GOVERNMENT DETERMINES THAT THERE IS SUBSTANTIAL EVIDENCE THAT THERE WERE NO RESPONSIVE, ELIGIBLE SUBCONTRACTORS AVAILABLE TO FULFILL THE MECHANICAL, ELECTRICAL, OR PLUMBING PORTIONS OF THE CONTRACT. EACH AGENCY OF GOVERNMENT THAT HAS CONTRACTS FOR PUBLIC PROJECTS SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL MAKE PUBLIC ALL WAIVERS AND THE SPECIFIC RATIONALE FOR GRANTING THE WAIVER. THE AGENCY OF

GOVERNMENT SHALL POST NOTICE OF THE WAIVER AND A JUSTIFICATION FOR THE WAIVER ON ITS WEBSITE.

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

(6) (a) TO PROMOTE AND FACILITATE THE DEVELOPMENT OF NEW APPRENTICESHIP PROGRAMS, AN APPRENTICESHIP PROGRAM THAT DOES NOT SATISFY THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION MAY PETITION THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR CONDITIONAL APPROVAL FOR PURPOSES OF THIS SECTION. TO BE ALLOWED CONDITIONAL APPROVAL, AN APPRENTICESHIP PROGRAM MUST DEMONSTRATE THE FOLLOWING:

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

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

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

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

MAINTAIN THESE STANDARDS.

SECTION 2. In Colorado Revised Statutes, **add** part 2 to article 92 of title 24 as follows:

PART 2
PREVAILING WAGE FOR PUBLIC PROJECTS

24-92-201. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AGENCY OF GOVERNMENT" MEANS ANY AGENCY, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, INSTITUTION, OR SECTION OF THE STATE WHICH IS A BUDGETARY UNIT EXERCISING CONSTRUCTION CONTRACTING AUTHORITY OR DISCRETION. "AGENCY OF GOVERNMENT" DOES NOT INCLUDE ANY COUNTY, CITY AND COUNTY, CITY, MUNICIPALITY, TOWN, SCHOOL DISTRICT, SPECIAL DISTRICT, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE.

(2) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT FOR A PUBLIC PROJECT WITH AN AGENCY OF GOVERNMENT.

(3) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

(4) "EMPLOYEES" MEANS WORKERS WHO ARE EMPLOYEES PURSUANT TO SECTION 8-4-101 (5), AND WHO ARE ENGAGED BY CONTRACTORS OR SUBCONTRACTORS TO PERFORM JOBS ON VARIOUS TYPES OF PUBLIC PROJECTS INCLUDING MECHANICS, LABORERS, AND OTHER CONSTRUCTION WORKERS.

(5) "PUBLIC PROJECT" MEANS ANY CONSTRUCTION, ALTERATION, REPAIR, DEMOLITION, OR IMPROVEMENT OF ANY LAND, BUILDING, STRUCTURE, FACILITY, ROAD, HIGHWAY, BRIDGE, OR OTHER PUBLIC IMPROVEMENT SUITABLE FOR AND INTENDED FOR USE IN THE PROMOTION OF PUBLIC HEALTH, WELFARE, OR SAFETY AND ANY OPERATION OR MAINTENANCE PROGRAMS FOR THE OPERATION AND UPKEEP OF SUCH PROJECTS. "PUBLIC PROJECT" INCLUDES ANY WORK, CONSTRUCTION, OR REPAIR PERFORMED BY A PRIVATE PARTY THROUGH A CONTRACT TO RENT, LEASE, OR PURCHASE AT LEAST FIFTY PERCENT OF THE PROJECT BY ONE OR MORE AGENCIES OF GOVERNMENT.

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

(a) THE BASIC HOURLY RATE OF PAY; AND

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

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

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

24-92-202. Contractors subject to provisions - weekly payment of employees - rules. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, ANY CONTRACTOR WHO IS AWARDED A CONTRACT FOR A PUBLIC PROJECT BY AN AGENCY OF GOVERNMENT IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, AND ANY SUBCONTRACTORS WORKING ON THE PUBLIC PROJECT, SHALL PAY THEIR EMPLOYEES AT WEEKLY INTERVALS AND SHALL COMPLY WITH THE ENFORCEMENT PROVISIONS ESTABLISHED IN SECTION 24-92-209. THIS PART 2 APPLIES TO A CONTRACT FOR A PUBLIC PROJECT AWARDED PURSUANT TO PART 1 OF THIS ARTICLE 92 AND TO AN INTEGRATED PROJECT DELIVERY CONTRACT FOR A PUBLIC PROJECT AWARDED PURSUANT TO ARTICLE 93 OF THIS TITLE 24. THIS PART 2 DOES NOT APPLY TO CONTRACTS FOR PUBLIC PROJECTS THAT RECEIVE FEDERAL FUNDING.

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

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

24-92-203. Prevailing rate of wages and other payments - specifications in solicitations and contract. (1) BEFORE AWARDING ANY CONTRACT FOR A PUBLIC PROJECT IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR MORE, AN AGENCY OF GOVERNMENT SHALL OBTAIN FROM THE DIRECTOR THE GENERAL PREVAILING RATE, AS DETERMINED BY THE DIRECTOR PURSUANT TO SECTION 24-92-205, OF THE REGULAR, HOLIDAY, AND OVERTIME WAGES PAID AND THE GENERAL PREVAILING PAYMENTS ON BEHALF OF EMPLOYEES TO LAWFUL WELFARE, PENSION, VACATION, APPRENTICE TRAINING, AND EDUCATIONAL FUNDS IN THE STATE, FOR EACH EMPLOYEE NEEDED TO EXECUTE THE CONTRACT FOR THE PUBLIC PROJECT. PAYMENTS TO THE FUNDS MUST CONSTITUTE AN ORDINARY BUSINESS EXPENSE DEDUCTION FOR FEDERAL INCOME TAX PURPOSES BY CONTRACTORS AND SUBCONTRACTORS.

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

(3) THE GENERAL PREVAILING RATE OF THE REGULAR, HOLIDAY, AND OVERTIME WAGES PAID AND THE PAYMENTS ON BEHALF OF EMPLOYEES TO THE WELFARE, PENSION, VACATION, APPRENTICE TRAINING, AND EDUCATION FUNDS SPECIFIED IN THE COMPETITIVE SOLICITATION AND IN THE CONTRACT FOR A PUBLIC PROJECT PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL

REMAIN THE SAME FOR THE DURATION OF THE WORK ON THE PUBLIC PROJECT.

(4) CONTRACTING AGENCIES OF GOVERNMENT SHALL NOT ARTIFICIALLY DIVIDE PUBLIC PROJECTS TO AVOID COMPLIANCE WITH THE REQUIREMENTS OF THIS PART 2.

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

(a) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PAY ALL THE EMPLOYEES EMPLOYED DIRECTLY ON THE SITE OF THE WORK, UNCONDITIONALLY AND NOT LESS OFTEN THAN ONCE A WEEK, AND WITHOUT SUBSEQUENT DEDUCTION OR REBATE ON ANY ACCOUNT, THE FULL AMOUNTS ACCRUED AT TIME OF PAYMENT COMPUTED AT WAGE RATES NOT LESS THAN THOSE STATED IN THE COMPETITIVE SOLICITATION, REGARDLESS OF ANY CONTRACTUAL RELATIONSHIPS THAT MAY BE ALLEGED TO EXIST BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND THE EMPLOYEES;

(b) THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL PREPARE AND SUBMIT PAYROLL REPORTS TO THE CONTRACTING AGENCY OF GOVERNMENT ON A MONTHLY BASIS THAT DISCLOSE ALL RELEVANT PAYROLL INFORMATION, INCLUDING THE NAME AND ADDRESS OF ANY ENTITIES TO WHICH FRINGE BENEFITS ARE PAID, AND THAT THE CONTRACTING AGENCY OF GOVERNMENT IS REQUIRED TO REVIEW THE CERTIFIED PAYROLL REPORTS IN A TIMELY MANNER AS REQUIRED BY THE STATE CONTRACT;

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

(d) IF THE CONTRACTOR OR ANY SUBCONTRACTOR FAILS TO PAY

WAGES AS ARE REQUIRED BY THE CONTRACT, THE CONTRACTING AGENCY OF GOVERNMENT SHALL NOT APPROVE A WARRANT OR DEMAND FOR PAYMENT TO THE CONTRACTOR UNTIL THE CONTRACTOR FURNISHES THE CONTRACTING AGENCY OF GOVERNMENT EVIDENCE SATISFACTORY TO SUCH AGENCY OF GOVERNMENT THAT SUCH WAGES SO REQUIRED BY THE CONTRACT HAVE BEEN PAID; EXCEPT THAT THE CONTRACTING AGENCY OF GOVERNMENT SHALL APPROVE AND PAY ANY PORTION OF A WARRANT OR DEMAND FOR PAYMENT TO THE CONTRACTOR TO THE EXTENT THE AGENCY OF GOVERNMENT HAS BEEN FURNISHED EVIDENCE SATISFACTORY TO THE AGENCY OF GOVERNMENT THAT THE CONTRACTOR OR ONE OR MORE SUBCONTRACTORS HAS PAID SUCH WAGES REQUIRED BY THE CONTRACT, EVEN IF THE CONTRACTOR HAS NOT FURNISHED EVIDENCE THAT ALL OF THE SUBCONTRACTORS HAVE PAID WAGES AS REQUIRED BY THE CONTRACT. ANY CONTRACTOR OR SUBCONTRACTOR MAY USE THE FOLLOWING PROCEDURE IN ORDER TO SATISFY THE REQUIREMENTS OF THIS SECTION:

(I) THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT TO THE DIRECTOR, FOR EACH EMPLOYEE TO WHOM SUCH WAGES ARE DUE, A CHECK AS REQUIRED BY THE DIRECTOR. SUCH CHECK SHALL BE PAYABLE TO THAT EMPLOYEE OR TO THE STATE SO IT IS NEGOTIABLE BY EITHER OF THOSE PARTIES. EACH SUCH CHECK SHALL BE IN AN AMOUNT REPRESENTING THE DIFFERENCE BETWEEN THE ACCRUED WAGES REQUIRED TO BE PAID TO THAT EMPLOYEE BY THE CONTRACT AND THE WAGES ACTUALLY PAID BY THE CONTRACTOR OR SUBCONTRACTOR.

(II) IF ANY CHECK SUBMITTED PURSUANT THIS SUBSECTION (1)(d) CANNOT BE DELIVERED TO THE EMPLOYEE WITHIN A REASONABLE PERIOD AS DETERMINED BY THE DIRECTOR, THEN IT SHALL BE NEGOTIATED BY THE STATE AND THE PROCEEDS DEPOSITED IN THE UNCLAIMED PROPERTY TRUST FUND CREATED IN SECTION 38-13-116.6. NOTHING IN THIS SUBSECTION (1) SHALL BE CONSTRUED TO LESSEN THE RESPONSIBILITY OF THE CONTRACTOR OR SUBCONTRACTOR TO ATTEMPT TO LOCATE AND PAY ANY EMPLOYEE TO WHOM WAGES ARE DUE.

24-92-205. Investigation and determination of prevailing wages - filing of schedule. (1) IN DETERMINING THE APPLICABLE PREVAILING WAGE FOR PUBLIC PROJECTS PURSUANT TO SECTION 24-92-204, THE DIRECTOR SHALL USE APPROPRIATE WAGE DETERMINATIONS ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR IN ACCORDANCE WITH THE "DAVIS-BACON ACT", 40 U.S.C. SEC. 3141, ET SEQ., TO ESTABLISH THE

PREVAILING WAGE RATES FOR THE APPLICABLE TRADES OR OCCUPATION FOR THE GEOGRAPHIC LOCALITY OF THE PUBLIC PROJECT. THE DIRECTOR SHALL KEEP A SCHEDULE ON FILE IN HIS OR HER OFFICE OF THE CUSTOMARY PREVAILING RATE OF WAGES AND PAYMENTS MADE TO OR ON BEHALF OF THE EMPLOYEES, WHICH SHALL BE OPEN TO PUBLIC INSPECTION.

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

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

24-92-207. Prevailing wage rates - posting. (1) EACH CONTRACTOR AWARDED A CONTRACT FOR PUBLIC PROJECT WITH A CONTRACT PRICE OF FIVE HUNDRED THOUSAND DOLLARS OR MORE AND EACH SUBCONTRACTOR WHO PERFORMS WORK ON THE PUBLIC PROJECT SHALL POST IN CONSPICUOUS PLACES ON THE PROJECT, WHERE EMPLOYEES ARE EMPLOYED, POSTERS THAT CONTAIN THE CURRENT PREVAILING RATE OF WAGES AND THE CURRENT PREVAILING RATE OF PAYMENTS TO THE FUNDS REQUIRED TO BE PAID FOR EACH EMPLOYEE EMPLOYED TO EXECUTE THE CONTRACT AS ESTABLISHED IN SECTIONS 24-92-203 AND 24-92-204, AND THE RIGHTS AND REMEDIES OF ANY EMPLOYEE DESCRIBED IN SECTION 24-92-210 FOR NONPAYMENT OF ANY WAGES EARNED PURSUANT TO THIS SECTION. THE POSTERS SHALL BE FURNISHED TO CONTRACTORS AND SUBCONTRACTORS BY THE DIRECTOR IN A FORM AND MANNER TO BE DETERMINED BY THE DIRECTOR.

(2) A CONTRACTOR OR SUBCONTRACTOR WHO FAILS TO COMPLY WITH THIS SECTION SHALL BE DEEMED GUILTY OF A CLASS 3 MISDEMEANOR AND SHALL PAY TO THE DIRECTOR ONE HUNDRED DOLLARS FOR EACH CALENDAR DAY OF NONCOMPLIANCE AS DETERMINED BY THE DIRECTOR.

(3) CONTRACTS FOR PUBLIC WORKS PROJECTS SHALL CONTAIN THE SPECIFIC OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION INCLUDING PROVISIONS REGARDING THE POSTING OF POSTERS ON THE JOB SITE AS REQUIRED BY THIS SECTION AND THE DEPARTMENT'S PROCEDURES FOR THE

CONTRACTOR TO RECEIVE THE POSTERS.

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

(b) THE CONTRACTING AGENCY OF GOVERNMENT SHALL SPECIFY IN THE COMPETITIVE SOLICITATION FOR A PUBLIC PROJECT IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR MORE AND IN THE CONTRACT FOR SUCH PUBLIC PROJECT THE APPRENTICESHIP CONTRIBUTION RATE AND FRINGE BENEFIT REQUIREMENTS OF THIS PART 2.

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

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

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

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

(b) CONTRACTORS THAT ARE NOT SIGNATORY TO A COLLECTIVE BARGAINING AGREEMENT BUT THAT ARE MEMBERS OF A MULTI-EMPLOYER TRADE ASSOCIATION THAT SPONSORS AN APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S EMPLOYMENT AND TRAINING ADMINISTRATION OR DIRECTLY SPONSOR SUCH A PROGRAM FOR THEIR OWN EMPLOYEES, SHALL PAY THE DETERMINED

APPRENTICESHIP CONTRIBUTION TO THAT PROGRAM OR TO A STATE APPRENTICESHIP COUNCIL REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR; OR

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

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

(4) TO THE EXTENT FEASIBLE, THE DEPARTMENT OF PERSONNEL SHALL PUBLISH AN ANNUAL REPORT DETAILING THE AMOUNT OF APPRENTICESHIP TRAINING CONTRIBUTION PAID PURSUANT TO SUBSECTIONS (2)(a), (2)(b), AND (2)(c) OF THIS SECTION FROM INFORMATION REPORTED BY THE CONTRACTING AGENCIES OF GOVERNMENT.

(5) IF THE DATA TRACKED BY THE DEPARTMENT OF PERSONNEL DEMONSTRATES THAT PORTIONS OF THE APPRENTICE CONTRIBUTIONS REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION ARE PAID UNDER THE REQUIREMENTS OF SUBSECTION (2)(c) OF THIS SECTION AT A HIGHER RATE THAN UNDER THE REQUIREMENTS OF SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION, THE DEPARTMENT MAY PROMULGATE RULES FOR ALTERNATIVES TO THE REQUIREMENTS SUBSECTION (2)(c) OF THIS SECTION.

24-92-209. Enforcement - rules. (1) UPON RECEIPT OF A COMPLAINT FROM AN EMPLOYEE, A FORMER EMPLOYEE, OR A CONTRACTING AGENCY DERIVED FROM AN ANALYSIS OF CERTIFIED PAYROLL RECORDS, A CONTRACTING AGENCY OF GOVERNMENT SHALL REPORT ANY PERCEIVED VIOLATION OF THIS PART 2 TO THE CONTRACTOR WITHIN FORTY-EIGHT HOURS OF BEING MADE AWARE OF THE PERCEIVED VIOLATION. IN CONNECTION WITH THE PERCEIVED VIOLATION:

(a) THE CONTRACTING AGENCY OF GOVERNMENT SHALL ALLOW THE CONTRACTOR TO CURE THE PERCEIVED VIOLATION WITHIN FIFTEEN

CALENDAR DAYS IF THE CONTRACTOR CAN DEMONSTRATE THE INSTANCE IN QUESTION WAS THE RESULT OF LEGITIMATE ADMINISTRATIVE ERROR.

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

(2) (a) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL INVESTIGATE ALL COMPLAINTS REFERRED TO THE DEPARTMENT BY THE CONTRACTING AGENCY OF GOVERNMENT TO DETERMINE IF THE PERCEIVED VIOLATION WAS CONDUCTED IN A WILLFUL MANNER.

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

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

(a) FIVE THOUSAND DOLLARS FOR THE FIRST VIOLATION;

(b) TEN THOUSAND DOLLARS FOR THE SECOND VIOLATION; AND

(c) TWENTY-FIVE THOUSAND DOLLARS FOR THE THIRD AND ALL SUBSEQUENT VIOLATIONS.

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

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

(6) IF A CONTRACTING AGENCY OF GOVERNMENT OR THE DEPARTMENT OF LABOR AND EMPLOYMENT FAILS TO RESOLVE AN ACTIONABLE WAGE CLAIM WITHIN ONE HUNDRED TWENTY DAYS FROM THE DATE OF THE INITIAL DETERMINATION BY THE DEPARTMENT THAT A WILLFUL VIOLATION OCCURRED, THE EMPLOYEE SHALL HAVE THE RIGHT TO FILE A PRIVATE LAWSUIT PURSUANT TO SECTION 24-92-210.

(7) THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE 24 AS MAY BE NECESSARY TO ADMINISTER AND ENFORCE ANY REQUIREMENT OF THIS PART 2. SUCH RULES SHALL INCLUDE A REASONABLE ADMINISTRATIVE APPEAL PROCESS FOR DETERMINATIONS MADE PURSUANT TO THIS SECTION AND AN ADMINISTRATIVE PROCESS FOR AN EMPLOYEE OR FORMER EMPLOYEE OF A CONTRACTOR OR SUBCONTRACTOR TO FILE A COMPLAINT FOR A VIOLATION OF THIS PART 2.

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

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

(3) AN ACTION INITIATED PURSUANT TO THIS SECTION MAY BE BROUGHT BY ONE OR MORE EMPLOYEES OR FORMER EMPLOYEES ON BEHALF OF HIM OR HERSELF OR THEMSELVES AND OTHER EMPLOYEES SIMILARLY SITUATED; EXCEPT THAT NO EMPLOYEE SHALL BE A PARTY TO ANY SUCH ACTION UNLESS HE OR SHE CONSENTS IN WRITING TO BECOME SUCH A PARTY AND SUCH CONSENT IS FILED IN THE COURT IN WHICH SUCH ACTION IS BROUGHT.

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

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

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

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

(b) FOR PURPOSES OF THIS SUBSECTION (7) "WILLFULLY" MEANS REPRESENTATIONS THAT ARE KNOWN TO BE FALSE OR REPRESENTATIONS MADE WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THEIR TRUTH OR FALSITY.

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

SECTION 3. In Colorado Revised Statutes, 24-109-105, **amend**

(2)(e) and (2)(f); and **add** (2)(g) as follows:

24-109-105. Debarment and suspension. (2) A person may be debarred for any of the following reasons:

(e) The person is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a federal, state, or local governmental entity; ~~or~~

(f) The department of labor and employment has imposed three fines on a contractor within five years pursuant to section 8-17-104, C.R.S., for failure to satisfy Colorado labor requirements; OR


(g) THE PERSON WILLFULLY FALSIFIED DOCUMENTATION OR WILLFULLY MISREPRESENTED THEIR QUALIFICATIONS REQUIRED TO COMPLY WITH THE CONTRACT.


SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.


(2) This act applies to solicitations issued on or after July 1, 2021; except that for institutions of higher education and the Auraria higher

education center created in article 70 of title 23, Colorado Revised Statutes, this act applies to public projects approved by their governing boards on or after July 1, 2021.

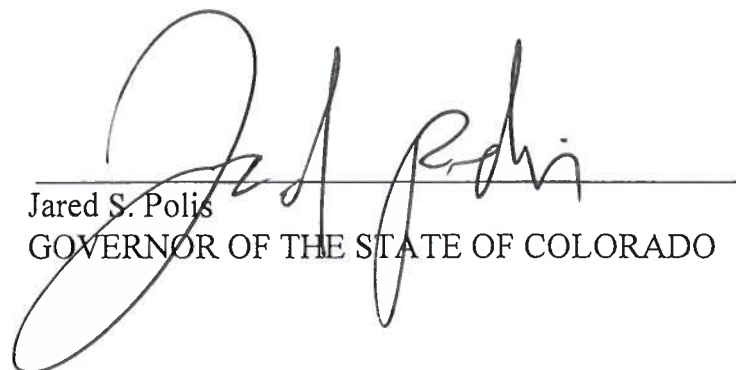

Leroy M. Garcia
PRESIDENT OF
THE SENATE


KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES


Cindi L. Markwell
SECRETARY OF
THE SENATE


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 28, 2019 at 4:09 p.m.
(Date and Time)


Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO