

BILL NUMBER: A9375

SPONSOR: Camara(MS)

TITLE OF BILL: An act to amend the labor law, in relation to prevailing wages for service workers

PURPOSE OR GENERAL IDEA OF BILL: This bill strengthens and clarifies Article 9 of the Labor Law to ensure that workers employed to provide service work for the benefit of public agencies are paid the prevailing wages to which the law entitles them.

SUMMARY OF SPECIFIC PROVISIONS: The bill renames Article P of the Labor Law "Prevailing Wage for Service Employees" and makes changes in two basic areas:

A. Definitions in 5230 are clarified to ensure that they clearly apply to all appropriate categories of service work for public agencies:

(1) The terms "building service employee" and "building service work" are changed to "service employee" and "service work" throughout the article, in order to more accurately reflect the types of service work commonly required by public agencies. The definition of "service employee" is clarified to reflect the fact that service work often is not restricted to building interiors, but can also include care, maintenance, and patrolling of outdoor areas, such as parking lots, grounds and other outdoor work sites. The provisions of this article are neutral in respect to any employee directly or indirectly performing work for or, on behalf of a business improvement district.

(2) The definition of "service work" is amended to delete the exemption for public utility services.

(3) The definition of "public agency" is amended to include public utility services provided by a public authority or by a public utility selling gas, electric or steam services at retail rates under a franchise granted by the Public Service commission (including any substantially owned entity affiliated with the public utility).

(4) The definition of "person" (from Article 8) is added to ensure the law is enforceable against partnerships, joint ventures and other forms of organization.

B. Safeguards against abuse are added and time-tested enforcement tools are borrowed from Labor Law Article 9 (prevailing wages for public work) to ensure compliance:

(1) A new 5235(2) (g) is added to apply enforcement tools that have long been a part of Article E. Specifically, this paragraph empowers the fiscal officer to request and receive person or entity who is responsible for paying the service employees, and authorizes Partial (up to 28.T;) withholding of payments to any such person or entity that fails to produce the records.

(2) 5237 is amended to import other enforcement tools from Article 8 that make willful failure to file Payroll records with the public agency a class E felony, and that require public agencies to designate an individual responsible for the receipt, collection and review for facial validity of contractors' certified payroll statements before payment is made.

(3) Amendments to S238(2) increase the criminal penalties for failure to pay service work prevailing wages to a misdemeanor and the greater of two thousand five hundred dollars or double the amount of underpayments for a first violation and a class E felony and the greater of five thousand dollars or three times the amount of underpayment, or imprisoned for a second or subsequent relation.

EFFECTS OF PRESENT LAN WHICH THIS BILL WOULD ALTER: Currently, the prevailing wage law for service employees lacks many of the procedural safeguards and enforcement tools that have long been incorporated into Article 9 of the labor law, Combined with some ambiguous and outdated definitions, this has left the door open for efforts to avoid paying prevailing wages for service work performed for public agencies. This bill would bolster the ability of enforcement agencies to ensure that service employees receive the prevailing wages to which they are entitled. Business improvement districts are exempted from this legislation, unless such work performed directly or indirectly for such entities would have been subject to the requirements of Article 9 as in effect on January first, two thousand eleven.

JUSTIFICATION: For almost forty years, Article 9 of the Labor Law has promoted the public policy that workers who perform service work on behalf of public agencies should be paid the prevailing wage for such experience has been gained over what provisions of the law require strengthening to prevent abuses. This bill clarifies the definitions and applicability of Article 9 and adds provisions that are analogous to several enforcement tools that have long been a part of Article 8, in order to ensure that prevailing wages are paid for all appropriate service work.

PRIOR LEGISLATIVE HISTORY: 2010: A. 10257-D/S. 9379-A passed both houses of the Legislature and vetoed by the Governor.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: Any fiscal implications are completely dependent upon specific agency/worksite circumstances, including when current contracts or agreements expire or are up for renewal and what terms are negotiated in the future.

EFFECTIVE DATE: Ninetieth day after enactment, to apply to all contracts or other agreements entered into, renewed or extended on or after such date; provided that the amendments to subdivision 4 of section 230 of the labor law made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 5 of chapter 678 of the laws of 2007, as amended, when such date the provisions of section three of this shall take effect; and the amendments to subdivision 5 of section 231 of the labor law made by section four of this act shall be subject to the expiration and reversion of such subdivision Pursuant to section 5 of chanter 673 of the laws of 2007, as amended, when upon such date the provisions of section five of this act shall take effect.