

# SENATE BILL No. 251

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-16-7.3.

**Synopsis:** Prevailing wage. Requires that, whenever the actual costs for the construction of a public improvement are at least \$150,000, a contractor or subcontractor shall pay the workers employed in the performance of work for the construction of the public improvement a rate of wages that is not less than the prevailing wage determined by the commissioner (commissioner) of the department of labor. Requires that employer contributions for fringe benefits paid under a bona fide collective bargaining agreement be included in the prevailing wage determination unless a contractor or subcontractor is required by federal, state, or local law to provide the fringe benefit. Provides that a prevailing wage determination is conclusive for one year from the date of the determination unless the determination is superseded by a later determination. Requires that all prevailing wage determinations be publicly available. Requires that a contract or subcontract for the construction of a public improvement contain a provision stating that the contractor or subcontractor is required to pay a rate of wages that is not less than the prevailing wage, and that, if it is determined that a worker has been paid less than the prevailing wage, the public body may terminate the contract or part of the contract and continue the work with the public body's own work force or another contractor or subcontractor. Requires a contractor or subcontractor to make full payment of wages without any deductions, except for deductions required by federal or state law and deductions agreed to by the worker and approved by the contracting public body as fair and reasonable. Provides that if a contractor or subcontractor fails to provide records requested by the commissioner concerning the payment of a prevailing wage.

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**Effective:** July 1, 2017.

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January 9, 2017, read first time and referred to Committee on Pensions and Labor.

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## Digest Continued

wage, the commissioner may direct the fiscal or financial officer of the contracting public body to withhold from payment up to 25% of the contract amount and pay the workers directly any wages and fringe benefits due and payable. Requires the commissioner to distribute to all public bodies in the state a list of persons and firms that the commissioner can determine have not paid prevailing wages and prohibits a public body from awarding a contract or subcontract to a person or firm on the list for three years after the list is published. Provides mechanisms for the commissioner, workers, or an interested body to enforce violations of the prevailing wage law. Requires a contractor or subcontractor that fails to pay prevailing wages to pay as a civil penalty 75% of the difference between the prevailing wage rate and the wages paid to the workers. Deposits the civil penalties into a prevailing wage penalty enforcement fund to be used to pay expenses incurred by the commissioner in the administration and enforcement of the prevailing wage law. Prohibits a person from requesting or demanding all or a portion of a worker's wages in exchange for employment on the construction of a public improvement. Prohibits a public body from dividing the construction of a public improvement into two or more contracts to avoid paying the prevailing wage.



Introduced

First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## SENATE BILL No. 251

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-16-7.3 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]:  
4 **Chapter 7.3. Prevailing Wage Determinations for the**  
5 **Construction of Public Improvements**  
6 **Sec. 1. It is the policy of the state to establish a prevailing wage**  
7 **for workers engaged in the construction of any public**  
8 **improvement in order to do the following:**  
9 (1) **Safeguard worker efficiency and general well-being.**  
10 (2) **Ensure that contractors compete on the ability to perform**  
11 **work competently and efficiently while maintaining**  
12 **community established compensation standards.**  
13 (3) **Recognize that local participation in publicly financed**  
14 **construction and family wage income and benefits are**  
15 **essential to the protection of community standards.**



- 1           **(4) Encourage training and education of workers to industry**  
 2           **skill standards.**
- 3           **(5) Encourage employers to use funds allocated for employee**  
 4           **fringe benefits for the actual purchase of those benefits.**
- 5           **Sec. 2. As used in this chapter, "commissioner" means the**  
 6           **commissioner of labor (appointed under IC 22-1-1-2) or the**  
 7           **commissioner's authorized representative.**
- 8           **Sec. 3. As used in this chapter, "construction" means any**  
 9           **construction, reconstruction, remodeling, renovation, demolition,**  
 10           **alteration, repair, or maintenance work, including painting and**  
 11           **decorating of a public improvement, done under a contract and**  
 12           **paid for, in whole or in part, out of the funds of a public body.**
- 13           **Sec. 4. As used in this chapter, "fringe benefit" means one (1) of**  
 14           **the following:**
- 15           **(1) The rate of contribution irrevocably made by a contractor**  
 16           **or subcontractor to a trustee or a third person under a plan,**  
 17           **fund, or program.**
- 18           **(2) The rate of costs to a contractor or subcontractor that may**  
 19           **be reasonably anticipated in providing benefits to workers**  
 20           **under an enforceable written commitment to carry out a**  
 21           **financially responsible plan or program, for any of the**  
 22           **following:**
- 23           **(A) Medical or hospital care.**
- 24           **(B) Pensions upon a worker's retirement or death.**
- 25           **(C) Compensation for injuries or illnesses resulting from**  
 26           **occupational activity, or insurance to provide**  
 27           **compensation for the injuries or illnesses.**
- 28           **(D) Supplemental unemployment benefits.**
- 29           **(E) Life insurance.**
- 30           **(F) Disability and sickness insurance.**
- 31           **(G) Accident insurance.**
- 32           **(H) Vacation and holiday pay.**
- 33           **(I) Payment of the costs of apprenticeship or other similar**  
 34           **training programs.**
- 35           **(J) Other bona fide worker benefits.**
- 36           **Sec. 5. As used in this chapter, "fund" refers to the prevailing**  
 37           **wage penalty enforcement fund created by section 29 of this**  
 38           **chapter.**
- 39           **Sec. 6. As used in this chapter, "interested party", for a**  
 40           **particular public improvement, means any of the following:**
- 41           **(1) A person who submits a bid for the purpose of being**  
 42           **awarded a contract for the construction of a public**



- 1           **improvement.**
- 2           **(2) A person acting as a subcontractor of a person described**
- 3           **in subdivision (1).**
- 4           **(3) A bona fide labor organization that:**
- 5               **(A) represents workers engaged in the same trade or craft**
- 6               **as workers employed by a person described in subdivision**
- 7               **(1) or (2); and**
- 8               **(B) exists, in whole or in part, for the purpose of**
- 9               **negotiating with employers concerning the wages, hours,**
- 10              **or terms and conditions of employment for workers.**
- 11           **(4) An association having as members a person described in**
- 12           **subdivision (1) or (2).**
- 13           **Sec. 7. As used in this chapter, "locality" means a political**
- 14           **subdivision of the state, a combination of the political subdivisions**
- 15           **or parts of political subdivisions, or any geographical area or areas**
- 16           **classified, designated, and fixed by the commissioner from time to**
- 17           **time. In determining a "locality", the commissioner shall be guided**
- 18           **by:**
- 19               **(1) the boundary lines of political subdivisions or parts of**
- 20               **political subdivisions; and**
- 21               **(2) a consideration of the geographic areas for which it has**
- 22               **been the practice of employers of particular crafts or trades**
- 23               **to engage in collective bargaining with the representatives of**
- 24               **workers in those crafts or trades.**
- 25           **Sec. 8. As used in this chapter, "maintenance work" means the**
- 26           **repair of an existing public improvement that does not result in a**
- 27           **change or increase in the size, type, or extent of the public**
- 28           **improvement.**
- 29           **Sec. 9. As used in this chapter, "political subdivision" has the**
- 30           **meaning set forth in IC 36-1-2-13.**
- 31           **Sec. 10. As used in this chapter, "prevailing wage" means the**
- 32           **hourly wage rate, including all fringe benefits, paid in a locality to**
- 33           **the majority of workers employed on projects of a similar**
- 34           **character in the same craft, classification, or type of worker, as**
- 35           **determined by the commissioner.**
- 36           **Sec. 11. As used in this chapter, "public body" includes the**
- 37           **following:**
- 38               **(1) The state.**
- 39               **(2) A political subdivision.**
- 40               **(3) An authority created by the general assembly.**
- 41               **(4) An instrumentality or agency of the state or a political**
- 42               **subdivision.**



1           **Sec. 12. As used in this chapter, "public improvement" means**  
 2 **any of the following:**

3           **(1) Construction of buildings, roads, streets, alleys, sewers,**  
 4 **ditches, sewage disposal plants, water works, and all other**  
 5 **structures or works for a public body.**

6           **(2) Construction performed within six (6) months after the**  
 7 **completion of a newly constructed structure to prepare the**  
 8 **structure for occupancy by a public body.**

9           **(3) Construction performed on any property or premises,**  
 10 **whether or not the work is paid for from public funds, if, at**  
 11 **the time of entering into the contract for the construction:**

12           **(A) at least fifty-five percent (55%) of the property or**  
 13 **premises is:**

14           **(i) leased by a public body; or**

15           **(ii) subject to an agreement to be leased by a public**  
 16 **body; and**

17           **(B) the portion of the property or premises that is leased or**  
 18 **subject to an agreement to be leased by a public body**  
 19 **measures more than twenty thousand (20,000) square feet.**

20 **Sec. 13. As used in this chapter, "worker" includes:**

21           **(1) laborers and mechanics employed by contractors and**  
 22 **subcontractors engaged in construction on the site of a public**  
 23 **improvement;**

24           **(2) laborers and mechanics employed by contractors and**  
 25 **subcontractors engaged in construction at locations other**  
 26 **than the site of a public improvement that is necessary for the**  
 27 **performance of a contract or subcontract for the construction**  
 28 **of a public improvement;**

29           **(3) laborers and mechanics employed by contractors and**  
 30 **subcontractors engaged in the transportation of materials and**  
 31 **equipment to or from the site of a public improvement, but**  
 32 **does not include the transportation of sellers, suppliers,**  
 33 **manufacturers, or processors of materials or equipment by**  
 34 **the workers of contractors and subcontractors; and**

35           **(4) other laborers and mechanics performing work in**  
 36 **connection with the construction of a public improvement.**

37           **Sec. 14. Whenever the actual costs for the construction of a**  
 38 **public improvement are at least one hundred fifty thousand dollars**  
 39 **(\$150,000), the contractor or subcontractor shall pay the workers**  
 40 **employed in the performance of work for the construction of the**  
 41 **public improvement a rate of wages that is not less than the**  
 42 **prevailing wage determined by the commissioner under section 15**



- 1 of this chapter.
- 2 **Sec. 15. (a) The commissioner shall determine the prevailing**  
 3 **wage for each craft, trade, or classification of worker needed to**  
 4 **construct a public improvement.**
- 5 **(b) The prevailing wage for a public improvement shall be**  
 6 **determined and computed in accordance with this chapter.**
- 7 **(c) Employer contributions for fringe benefits paid by**  
 8 **contractors and subcontractors under a bona fide collective**  
 9 **bargaining agreement to any craft or trade in a locality must be**  
 10 **included in the prevailing wage determined under this chapter.**  
 11 **However, if a contractor or subcontractor is required by federal,**  
 12 **state, or local law to provide a fringe benefit listed in section 4(2)**  
 13 **of this chapter, the benefit may not be considered in the prevailing**  
 14 **wage determination.**
- 15 **(d) A prevailing wage determination is conclusive for a period**  
 16 **of one (1) year from the date the determination is issued unless the**  
 17 **determination is superseded within that year by a later**  
 18 **determination.**
- 19 **(e) All prevailing wage determinations issued by the**  
 20 **commissioner must be publicly available. In addition, the**  
 21 **commissioner shall provide all prevailing wage determinations by**  
 22 **United States mail or electronically to any of the following that file**  
 23 **a written request to receive the determinations:**
- 24 **(1) A representative of any craft or trade.**
  - 25 **(2) A contractor or subcontractor.**
  - 26 **(3) A representative of any group of contractors or**  
 27 **subcontractors.**
- 28 **Sec. 16. (a) If the commissioner determines that the prevailing**  
 29 **wage for any craft, classification, or type of worker is the rate**  
 30 **established by a collective bargaining agreement applicable in the**  
 31 **locality, the commissioner shall adopt by reference the rate**  
 32 **established in the collective bargaining agreement and that**  
 33 **determination shall be effective for the life of the agreement or**  
 34 **until the commissioner determines that another rate should be**  
 35 **adopted.**
- 36 **(b) If the commissioner determines that the collectively**  
 37 **bargained wage rate for a craft, classification, or type of worker**  
 38 **does not represent the rate actually prevailing in a locality, the**  
 39 **commissioner shall conduct an independent wage survey. If a**  
 40 **majority of the workers in the same trade or occupation are not**  
 41 **paid at the same rate, the mode of the hourly wages, including all**  
 42 **fringe benefits, paid in the locality to workers in the same craft,**



1 classification, or type of worker is the prevailing wage rate.

2 (c) If the wage rate paid by a contractor or subcontractor to  
3 workers on a public improvement is based on a time period other  
4 than an hour, the prevailing wage hourly rate is mathematically  
5 determined by dividing the number of hours worked in the time  
6 period into the total wages paid for the time period.

7 Sec. 17. (a) Whenever a contractor or subcontractor is required  
8 to pay the prevailing wage, the contract or subcontract for the  
9 construction of a public improvement must contain a provision  
10 stating that the contractor or subcontractor is required to pay to  
11 the workers employed in the performance of the contract or  
12 subcontract a rate of wages that is not less than the prevailing  
13 wage determined by the commissioner.

14 (b) A contract or subcontract described in subsection (a) must  
15 also contain a provision that, in the event it is determined that any  
16 worker employed by a contractor or a subcontractor covered by  
17 the contract has been paid a rate of wages less than the prevailing  
18 wage required by the contract, the public body may:

19 (1) terminate:

20 (A) the contract; or

21 (B) only the part of the contract as to which there has been  
22 a failure to pay the required wages; and

23 (2) continue the work covered by the termination described in  
24 subdivision (b)(1)(A) or (b)(1)(B) with the public body's own  
25 work force or another contractor or subcontractor.

26 (c) The original contractor or subcontractor and their sureties  
27 are liable to the public body for any excess costs occasioned by the  
28 contractor or subcontractor's failure to pay the prevailing wage  
29 required by this chapter.

30 Sec. 18. (a) A public body shall notify the commissioner in  
31 writing, on a form prescribed by the commissioner, not later than  
32 thirty (30) days after the date the public body awards a contract  
33 subject to the provisions of this chapter.

34 (b) The notice described in subsection (a) must include a list of  
35 all tier 1 and tier 2 contractors (as defined by IC 5-16-13-4).

36 Sec. 19. (a) A contractor's or subcontractor's obligation to make  
37 payments in accordance with a prevailing wage determination may  
38 be discharged by:

39 (1) making wage payments to the workers employed by the  
40 contractor or subcontractor;

41 (2) paying for the workers' fringe benefits by making the  
42 contributions referred to in section 4(1) of this chapter;





1           (3) assuming of an enforceable commitment to bear the costs  
2           of a fringe benefit plan or program referred to in section 4(2)  
3           of this chapter; or

4           (4) any combination of payments, contributions, or costs  
5           described in subdivisions (1), (2), or (3), so long as the total of  
6           the payments, contributions, and costs is not less than the  
7           prevailing wage determined by the commissioner.

8           (b) Except as provided in subsection (c), in determining the  
9           overtime pay to which a worker is entitled under federal or state  
10          law, the worker's regular or basic hourly rate of pay (or an  
11          alternative rate upon which overtime compensation is computed)  
12          shall be deemed to be the wage rate determined by the  
13          commissioner under section 15 of this chapter.

14          (c) Whenever the amount of payments, contributions, or costs  
15          described in subsection (a) made by a contractor or subcontractor  
16          for a worker exceeds the prevailing wage applicable to the worker,  
17          the worker's regular or basic hourly rate of pay (or an alternative  
18          rate) is determined by deducting from the payments, contributions,  
19          or costs actually paid for the worker, the greater of:

20           (1) the fringe benefit contributions or costs described in  
21           section 4(1) and 4(2) of this chapter actually paid for the  
22           worker; or

23           (2) the fringe benefit contributions or costs described in  
24           section 4(1) and 4(2) of this chapter determined but not  
25           actually paid for the worker.

26          Sec. 20. (a) Subject to subsection (b), all contractors and  
27          subcontractors shall make full payment of the prevailing wage  
28          required by this chapter in a form required by IC 22-2-5-1(a),  
29          without any deduction for food, sleeping accommodations,  
30          transportation, use of small tools, or any other thing of any kind or  
31          description, except for deductions required by federal or state law.

32          (b) Subsection (a) does not apply if:

33           (1) the contractor or subcontractor and the worker enter into  
34           a written agreement at the beginning of any term of  
35           employment covering deductions for food, sleeping  
36           accommodations, or other similar items; and

37           (2) the agreement is:

38           (A) submitted by the contractor or subcontractor to the  
39           contracting public body; and

40           (B) approved by the contracting public body as fair and  
41           reasonable.

42          Sec. 21. All contractors and subcontractors subject to this



1 chapter shall do the following:

2 (1) Post in a prominent and accessible place on the work site  
3 of the public improvement a legible statement of the schedule  
4 of wage rates specified in the contract for the various  
5 classifications of workers. The statement must remain posted  
6 on the work site until the completion of the public  
7 improvement.

8 (2) Keep full and accurate payroll records for the wages paid  
9 to each worker, the worker's wage rate, and the number of  
10 hours each worker worked.

11 (3) The payroll records described in subdivision (2) must be  
12 open to inspection by any authorized representative of the  
13 contracting public body, the commissioner, or the  
14 commissioner's authorized representative at reasonable times  
15 and as frequently as necessary.

16 (4) A contractor or subcontractor shall retain the payroll  
17 records described in subdivision (2) in Indiana for one (1)  
18 year following the completion of the public improvement for  
19 which the records were created.

20 Sec. 22. (a) The commissioner is authorized to do the following:

21 (1) Investigate and ascertain the wages of workers employed  
22 in the construction of public improvements in the state.

23 (2) Enter and inspect the place of business or the work site of  
24 any contractor, subcontractor, or worker employed for the  
25 construction of a public improvement in the state, for the  
26 purpose of:

27 (A) examining any or all of the books, registers, payrolls,  
28 and other records of the contractor or subcontractor that  
29 relate to or have a bearing upon the wages, hours, and  
30 other terms and conditions of employment of the workers;

31 (B) copying any or all of the books, registers, payrolls, and  
32 other records of the contractor or subcontractor as the  
33 commissioner or the commissioner's authorized  
34 representative considers necessary or appropriate; or

35 (C) questioning the workers to determine whether the  
36 contractor or subcontractor have been and are complying  
37 with the provisions of this chapter.

38 (3) Require from a contractor or subcontractor full and  
39 correct written statements, including sworn statements,  
40 concerning the contractor's or subcontractor's workers,  
41 including wages, hours, names, addresses, and any other  
42 information pertaining to the workers and their employment



1 as the commissioner, or the commissioner's authorized  
2 representative considers necessary or appropriate.

3 (4) Require a contractor or subcontractor to file, not later  
4 than ten (10) days after receiving a request, any records  
5 described in subdivision (2) or (3), with a sworn affirmation  
6 of the completeness and accuracy of the records provided.

7 (5) If the contractor or subcontractor fails to provide the  
8 requested records within the ten (10) day period, the  
9 commissioner may, not later than fifteen (15) days after the  
10 expiration of the ten (10) day period, direct the fiscal or  
11 financial officer charged with the custody and disbursement  
12 of the funds of the public body that contracted for the  
13 construction of the public improvement to:

14 (A) immediately withhold from payment to the contractor  
15 or subcontractor up to twenty-five percent (25%) of the  
16 amount to be paid to the contractor or subcontractor  
17 under the terms of the contract for the construction of the  
18 public improvement; and

19 (B) pay directly to the workers employed by the contractor  
20 or subcontractor from the amount withheld from the  
21 contractor or subcontractor under clause (A) any wages  
22 and fringe benefits found to be due and payable to the  
23 workers.

24 (6) Amounts withheld under subdivision (5)(A) must be  
25 released immediately upon the fiscal or financial officer's  
26 receipt of a notice from the commissioner indicating that the  
27 request for records has been satisfied.

28 (b) The commissioner shall distribute to all public bodies in the  
29 state a list of the names of persons and firms whom the  
30 commissioner has determined have not met their obligation to pay  
31 the prevailing wage determined under this chapter. A public body  
32 may not award a contract or subcontract for the construction of a  
33 public improvement to a person or firm appearing on the list, or to  
34 any firm, corporation, partnership, or association in which the  
35 person or firm has an interest, for three (3) years after the date of  
36 the publication of the list containing the name of the person or  
37 firm.

38 (c) The commissioner may, without the necessity of an  
39 assignment, initiate legal proceedings against a contractor or  
40 subcontractor to:

41 (1) enjoin future failures to pay the prevailing wage or  
42 overtime pay required by this chapter; and



1           (2) require the payment of the prevailing wage or overtime  
2           pay due workers.

3           **The commissioner is entitled to recover, in addition to other costs,  
4           reasonable attorney's fees.**

5           **Sec. 23. (a) Every contractor and subcontractor shall file a  
6           certified written statement, in a form prescribed by the  
7           commissioner, with the contracting public body certifying:**

8                   (1) the hourly rate of wages paid to each worker whom the  
9                   contractor or a subcontractor has employed in the  
10                  construction of the public improvement; and

11                  (2) that no worker employed in construction of the public  
12                  improvement has been paid less than the greater of:

13                           (A) the prevailing wage rate; or

14                           (B) the minimum hourly wage rate specified in the  
15                           contract.

16           (b) The person filing a certified statement required under  
17           subsection (a) shall verify under oath that:

18                   (1) the contractor or subcontractor has read and knows the  
19                   contents of the statement; and

20                   (2) to the contractor or subcontractor's knowledge, the  
21                   contents of the statement are true and complete.

22           (c) A certified statement filed as required under subsection (a)  
23           must set out accurately and completely the payroll records  
24           covering the period since the last statement was filed (as required  
25           under subsection (e)), including the name and address of each  
26           worker, the worker's correct classification, rate of pay, the daily  
27           and weekly number of hours worked, deductions made, and actual  
28           wages paid.

29           (d) The contractor or subcontractor shall deliver or mail each  
30           certified statement required under subsection (a) to the contracting  
31           public body.

32           (e) Certified statements must be filed as follows:

33                   (1) For a project lasting not more than ninety (90) days from  
34                   the date of the award of the contract for the construction of a  
35                   public improvement to the date of the completion of the work  
36                   under the contract, a certified statement must be submitted  
37                   once before the first payment is made and once before the  
38                   final payment is made.

39                   (2) For a project lasting more than ninety (90) days from the  
40                   date of award of the contract for the construction of a public  
41                   improvement to the date of the completion of the work under  
42                   the contract, a certified statement must be submitted once



1 before the first payment is made, at intervals of not more than  
 2 ninety (90) days thereafter, and once before final payment is  
 3 made.

4 (f) Each contractor or subcontractor shall preserve the certified  
 5 statements filed under subsection (a) for a period of three (3) years  
 6 after the date of completion of the contract.

7 (g) Certified statements filed by a contractor or subcontractor  
 8 under this section are public records in accordance with IC 5-14-3.

9 **Sec. 24. (a)** A contractor or subcontractor that fails to pay  
 10 workers the prevailing wage required during the construction of  
 11 a public improvement in violation of section 14 of this chapter is  
 12 liable to the workers affected for the amount of the unpaid  
 13 prevailing wages, including all fringe benefits, plus an additional  
 14 amount equal to the unpaid wages as liquidated damages.

15 (b) A worker employed during the construction of a public  
 16 improvement who is paid less than the applicable prevailing wage  
 17 rate or any interested party may file a complaint in writing with  
 18 the commissioner on a form prescribed by the commissioner.

19 (c) After an investigation of a complaint filed under subsection  
 20 (b), the commissioner shall notify the person who filed the  
 21 complaint of the results of the commissioner's investigation,  
 22 including whether the commissioner has determined that there has  
 23 been a violation of this chapter.

24 (d) Not less than sixty (60) days after the date the commissioner  
 25 determines under subsection (c) that a violation of this chapter has  
 26 occurred, and if:

27 (1) no worker or interested party has brought suit under  
 28 section 26 of this chapter; and

29 (2) no worker has requested that the commissioner take an  
 30 assignment of a wage claim under section 25 of this chapter;  
 31 the commissioner shall bring a legal action to collect the amounts  
 32 owed to the workers as the result of a contractor's or  
 33 subcontractor's violation of this chapter. The commissioner shall  
 34 pay to the affected workers the amounts collected to which the  
 35 affected workers are entitled under subsection (a). In a legal action  
 36 in which the commissioner prevails under this subsection, the  
 37 contractor or subcontractor shall pay the costs of the suit plus  
 38 reasonable attorney's fees as determined by the court.

39 **Sec. 25.** At the written request of a worker paid less than the  
 40 prevailing wage rate required under this chapter, the  
 41 commissioner shall take an assignment of a claim in trust for the  
 42 worker and bring a legal action against the contractor or



1 subcontractor that employed the worker, including the  
 2 contractor's or subcontractor's surety, if necessary, to collect the  
 3 unpaid wages. If the commissioner prevails in a legal action  
 4 brought under this section, the contractor, subcontractor, or if  
 5 applicable, the contractor's or subcontractor's surety, shall pay the  
 6 costs of the suit and reasonable attorney's fees as determined by  
 7 the court.

8 **Sec. 26.** A worker employed on any public improvement who is  
 9 paid less than the prevailing wage rate required under this chapter  
 10 or any interested party may file a legal action against a contractor  
 11 or subcontractor that employed the worker, including the  
 12 contractor's or subcontractor's surety, if necessary, to recover the  
 13 unpaid wages. A suit under this section must be filed not later than  
 14 sixty (60) days after the date the commissioner determines that  
 15 there has been a violation of this chapter, or the worker or  
 16 interested party is barred from taking action under this section. If  
 17 the worker or interested party prevails in the legal action filed  
 18 under this section, the contractor or subcontractor shall pay the  
 19 costs of the suit and reasonable attorney's fees as determined by  
 20 the court.

21 **Sec. 27.** An action to enforce a contractor's or subcontractor's  
 22 obligations to workers under sections 24, 25, or 26 of this chapter  
 23 may be brought as an action on the contractor's or subcontractor's  
 24 bonds.

25 **Sec. 28.** A contractor or subcontractor that fails to pay the  
 26 prevailing wage rate required by this chapter shall also pay as a  
 27 civil penalty to the commissioner an amount equal to seventy-five  
 28 percent (75%) of the difference between the prevailing wage rate  
 29 determined under this chapter and the wages paid to the workers  
 30 on the public improvement. The commissioner shall deposit all  
 31 money received from civil penalties paid under this section to the  
 32 prevailing wage penalty enforcement fund created by section 29 of  
 33 this chapter.

34 **Sec. 29. (a)** The prevailing wage penalty enforcement fund is  
 35 created for the purpose of paying the expenses incurred by the  
 36 commissioner in the administration and enforcement of this  
 37 chapter.

38 **(b)** The commissioner shall administer the fund.

39 **(c)** The fund consists of:

- 40 (1) appropriations by the general assembly;
- 41 (2) civil penalties assessed under section 28 of this chapter;
- 42 (3) donations, gifts, and grants in money, property, or any



1 other form made to the fund;

2 (4) all earnings on investments or deposits of the fund; and

3 (5) money received from any other source, including transfers  
4 from other funds or accounts.

5 (d) The treasurer of state shall invest the money in the fund not  
6 currently needed to meet the obligations of the fund in the same  
7 manner as other public funds may be invested.

8 (e) Money in the fund at the end of a state fiscal year does not  
9 revert to the state general fund but remains in the fund to be used  
10 exclusively for the purposes of this chapter.

11 Sec. 30. (a) This section does not apply to an agent or  
12 representative of a duly constituted labor organization acting to  
13 collect dues or assessments for the labor organization.

14 (b) This subsection applies to workers who are employed on a  
15 public improvement. A person, either on the person's own behalf  
16 or on behalf of another person, may not request or demand, with  
17 a statement, representation, or understanding that the worker's  
18 failure to comply with the person's request or demand will result  
19 in the worker not being employed or retained to work on the public  
20 improvement, either before or after a worker is hired, that the  
21 worker pay back, return, donate, contribute, or give all or any  
22 portion of the worker's wages, salary, or thing of value, to the  
23 person.

24 (c) A person may not directly or indirectly:

25 (1) request or authorize another person to violate subsection

26 (b); or

27 (2) aid another person in violating subsection (b).

28 Sec. 31. For the purpose of supplementing existing resources  
29 and to assist in enforcing this chapter, the commissioner may  
30 contract with a certified public accountant certified under  
31 IC 25-2.1 to conduct an audit of a person, firm, corporation, or  
32 public authority.

33 Sec. 32. (a) A public body may not divide the construction of a  
34 public improvement into more than one (1) contract for the  
35 purpose of avoiding payment of the prevailing wage under this  
36 chapter.

37 (b) Whenever the commissioner determines that a public body  
38 has divided the construction of a public improvement for the  
39 purpose of avoiding payment of the prevailing wage under this  
40 chapter, the commissioner shall issue an order compelling  
41 compliance.

42 (c) In making a determination under subsection (b), the



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**commissioner shall consider:**

- (1) The physical separation of the public improvement structures.**
- (2) The timing of the work on the phases or structures of the construction of the public improvement.**
- (3) The continuity of the contractors and subcontractors working on the parts or phases of the construction of the public improvement.**
- (4) The manner in which the public body and the contractors administer and implement the construction of the public improvement.**

**Sec. 33. (a) A public body that knowingly does any of the following is liable, either individually or jointly and severally with any contractor or subcontractor that also knowingly does any of the following:**

- (1) Fails to include in an advertisement for bids, a request for bids, the contract specifications, or elsewhere in the contract documents a provision required under section 17 of this chapter that the contractor and any subcontractor shall comply with section 14 of this chapter concerning the payment of prevailing wage.**
- (2) Fails to pay the prevailing wage determined under this chapter when required to do so.**
- (3) Divides the construction of a public improvement into more than one (1) contract for the purpose of avoiding payment of the prevailing wage under this chapter.**

**(b) The commissioner may enforce subsection (a) by a civil action under section 24 or 25 of this chapter.**

