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HOUSE FILE NO. 1443

FIRST COMMITTEE ENGROSSMENT

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Referred by Chair to Labor and Consumer Protection Division.

March 16, 2007

Returned to the Committee on Commerce and Labor as Amended.

1.1 A bill for an act
1.2 relating to employment; modifying requirements concerning contractors;
1.3 modifying prevailing wage provisions; providing penalties; amending Minnesota
1.4 Statutes 2006, sections 16C.03, subdivision 2; 161.315, subdivisions 1, 2;
1.5 177.27, subdivisions 1, 4, 8, 9, 10; 177.42; 177.43; 177.44; 471.345, by adding a
1.6 subdivision; proposing coding for new law in Minnesota Statutes, chapter 177.

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

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

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

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

1.13 (2) contract performance and failure to perform;

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

1.17 (4) contract cancellation;

1.18 (5) procurement from rehabilitation facilities; and

1.19 (6) organizational conflicts of interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.31 Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an
3.32 employer to comply with sections 177.21 to ~~177.35~~ 177.46, 181.02, 181.03, 181.031,
3.33 181.032, 181.101, 181.11, 181.12, 181.13, 181.14, 181.145, 181.15, and 181.79, or with
3.34 any rule promulgated under section 177.28. The department shall serve the order upon

4.1 the employer or the employer's authorized representative in person or by certified mail
4.2 at the employer's place of business. An employer who wishes to contest the order must
4.3 file written notice of objection to the order with the commissioner within 15 calendar
4.4 days after being served with the order. A contested case proceeding must then be held
4.5 in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being
4.6 served with the order, the employer fails to file a written notice of objection with the
4.7 commissioner, the order becomes a final order of the commissioner.

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

4.9 Subd. 8. **Court actions; suits brought by private parties.** An employee may bring
4.10 a civil action seeking redress for a violation or violations of sections 177.21 to ~~177.35~~
4.11 177.46 directly to district court. An employer who pays an employee less than the wages
4.12 and overtime compensation to which the employee is entitled under sections 177.21 to
4.13 ~~177.35~~ 177.46 is liable to the employee for the full amount of the wages, gratuities, and
4.14 overtime compensation, less any amount the employer is able to establish was actually
4.15 paid to the employee and for an additional equal amount as liquidated damages. In
4.16 addition, in an action under this subdivision the employee may seek damages and other
4.17 appropriate relief provided by subdivision 7 and otherwise provided by law. An agreement
4.18 between the employee and the employer to work for less than the applicable wage is not
4.19 a defense to the action.

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

4.21 Subd. 9. **District court jurisdiction.** Any action brought under subdivision 8 may
4.22 be filed in the district court of the county wherein a violation or violations of sections
4.23 177.21 to ~~177.35~~ 177.46 are alleged to have been committed, where the respondent resides
4.24 or has a principal place of business, or any other court of competent jurisdiction. The
4.25 action may be brought by one or more employees.

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

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

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

4.32 **177.42 DEFINITIONS.**

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

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

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

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

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

5.14 Subd. 6. **Prevailing wage rate.** "Prevailing wage rate" means the hourly basic rate
5.15 of pay plus the contribution for health and welfare benefits, vacation benefits, pension
5.16 benefits, and any other economic benefit considered by the commissioner to be a direct
5.17 benefit to the employee and paid to the largest number of workers engaged in the same
5.18 class of labor within the area and includes, for the purposes of section 177.44, rental
5.19 rates for truck hire paid to those who own and operate the truck. The prevailing wage
5.20 rate may not be less than a reasonable and living wage, that must be at least two times
5.21 the established state minimum wage rate.

5.22 Subd. 7. **Laborer or mechanic.** "Laborer or mechanic" includes all workers
5.23 performing manual and physical work on the project for the time spent performing the
5.24 duties of classifications of labor.

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

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

5.33 Subd. 10. **Contract.** "Contract" means the written agreement between the
5.34 contracting authority and the contractor setting forth each party's rights and obligations,
5.35 including, but not limited to, the performance of the work, type of work, furnishing

6.1 of labor and materials, basis of payment, work specifications, and other requirements
6.2 contained in the project documents.

6.3 Subd. 11. **Certified payroll.** "Certified payroll" is a form that contains:

6.4 (1) Payroll form. A form that contains information on all laborers and mechanics
6.5 that performed work under the contract, including the following payroll information:
6.6 full name, address, Social Security number, each classification of labor worked, daily
6.7 and weekly hours worked on the project, rates of pay, overtime hours and rates, taxes
6.8 withheld and other deductions, the project gross amount and net amounts earned, the total
6.9 gross amount and net amounts earned, in addition, the hourly costs of, and the provider
6.10 names and contact information of, the company's fringe benefits program, along with
6.11 project identification information, and any additional information determined by the
6.12 commissioner to be necessary to ensure compliance with this section.

6.13 (2) Certification form. A form that contains certification language approved by the
6.14 commissioner and a signature block. Certified payroll must be submitted to a contracting
6.15 authority on forms approved by the commissioner.

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

6.17 **177.43 CONTRACTS FOR STATE PROJECTS; PENALTY.**

6.18 Subdivision 1. **Hours of labor.** Any contract which provides for a project must
6.19 state that:

6.20 (1) no laborer or mechanic employed directly on the project work site by the
6.21 contractor or any subcontractor, agent, or other person doing or contracting to do all
6.22 or a part of the work of the project, is permitted or required to work more hours than
6.23 the prevailing hours of labor unless paid for all hours in excess of the prevailing hours
6.24 at a rate of at least 1-1/2 times the taxable hourly basic rate of pay paid to the laborer or
6.25 mechanic for the work performed under a contract; and

6.26 (2) a laborer or mechanic ~~may~~ must be paid unconditionally and not less often than
6.27 on a weekly basis and shall not be paid a lesser rate of wages than the prevailing wage rate
6.28 in the same or most similar trade or occupation in the area. Actual costs for providing
6.29 bona fide fringe benefit programs as defined in subdivision 8 to a laborer or mechanic
6.30 performing work under the contract may be deducted from the total prevailing wage rate
6.31 to obtain the taxable hourly basic rate to be paid to the laborer or mechanic; and

6.32 (3) the contractor, subcontractor, or agent shall not exceed their company
6.33 apprenticeship ratio established by a certified or registered program on any project subject
6.34 to this section.

7.1 Subd. 2. **Exceptions.** This section does not apply to wage rates and hours of
7.2 employment of laborers or mechanics who process or manufacture materials or products
7.3 or to the delivery of materials or products by or for commercial establishments which have
7.4 a fixed place of business from which they regularly supply processed or manufactured
7.5 materials or products. This section applies to laborers or mechanics who deliver mineral
7.6 aggregate such as sand, gravel, or stone which is incorporated into the work under the
7.7 contract by depositing the material substantially in place, directly or through spreaders,
7.8 from the transporting vehicle.

7.9 Subd. 3. **Contract requirements.** The contract must specifically state the
7.10 prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay. The
7.11 contracting authority shall incorporate into its proposals and contracts the appropriate
7.12 wage determinations for the contract along with contract language provided by the
7.13 commissioner of labor and industry to notify the contractor of the applicability of
7.14 sections 177.41 to 177.46. Failure to incorporate the determination or provided contract
7.15 language into the contracts shall make the contracting authority liable for making
7.16 whole the contractor for any increases in the wages paid, including employment taxes
7.17 and reasonable administrative costs based on the increase in wages, to the laborers or
7.18 mechanics working on the project. The contracting authority is authorized to incorporate
7.19 into the bid documents for each project a compliance monitoring surcharge provision. The
7.20 surcharge shall be a percentage of the engineers estimate of the project. The surcharge
7.21 percentage shall be either an amount set annually by the commissioner for all projects after
7.22 investigation to determine the expected costs of monitoring compliance, or an amount
7.23 requested by the contracting authority and authorized by the commissioner, and will be a
7.24 percentage sufficient to pay the estimated cost to the contracting authority of monitoring
7.25 compliance with sections 177.41 to 177.46. The surcharge shall be incorporated into the
7.26 contract for the project and paid by the contractor to the contracting authority within
7.27 two weeks of the payment by the contracting authority of the mobilization cost for the
7.28 project as specified in the successful bid. The contracting authority shall use this surcharge
7.29 exclusively to defray costs of monitoring compliance with sections 177.41 to 177.46.

7.30 These hours, rates, and classifications, along with contracting authority name,
7.31 project engineer or agency contact person, telephone number, and project identification
7.32 numbers, together with a summary of provisions of subdivision 5 and a summary of
7.33 provisions under section 177.46, shall be and remain posted directly on the project site
7.34 by the contractor in at least one conspicuous and accessible location acceptable to the
7.35 contracting authority for the information of all employees working on the project. The

8.1 contracting authority shall ensure the contractor keeps the required information on the
8.2 project from the start of work until all work is completed on the project.

8.3 All contracting authorities shall require weekly submittal of certified payrolls from
8.4 each contractor, subcontractor, or agent working on the project. The contractor shall
8.5 submit certified payrolls from the contractor's own workforce along with payrolls from
8.6 all subcontractors and agents working on the project. The contracting authority shall
8.7 maintain the payrolls under the contracting agency's normal record retention schedules for
8.8 a minimum of two years past the closing of the contract.

8.9 Each contracting authority shall redact the Social Security number and address of
8.10 each laborer or mechanic from each certified payroll before any person other than an
8.11 employee of the contracting authority or the department is allowed to review the certified
8.12 payroll.

8.13 Certified payrolls shall be submitted within one week after the week ending date of
8.14 the week in which the work was performed. Each subcontractor or agent shall furnish to
8.15 the contractor weekly certified payrolls to demonstrate compliance with this section. The
8.16 contractor may interview all laborers or mechanics on the project and review subcontractor
8.17 or agents' payroll information to ensure compliance with this section.

8.18 The contractor shall incorporate into all subcontract agreements, purchase orders,
8.19 or other written agreements that provide for work covered by this section, the contract
8.20 wage determinations and the contract language provided by the commissioner contained
8.21 in the contract. The contractor shall also ensure that all secondary subcontract agreements,
8.22 purchase orders, or other written agreements that provide for work covered by this section
8.23 contain the same language. The contractor shall provide a written certified confirmation
8.24 on a form provided by the contracting authority that all subcontractors and agents have
8.25 received the required contract wage determinations and contract language. The form shall
8.26 be provided to the contracting authority prior to any subcontractor or agent working on the
8.27 project. If the contractor does not provide the information required to the subcontractor
8.28 or agents, or the form to the contracting authority, the contractor shall be the sole entity
8.29 responsible for any contracting authority or commissioner's assessment.

8.30 **Subd. 4. Determination by commissioner.** The prevailing wage rates, prevailing
8.31 hours of labor, and hourly basic rates of pay for all trades and occupations required in any
8.32 project under each contract must be ~~ascertained~~ obtained before ~~the state~~ any contracting
8.33 authority asks for bids. The wage determinations must also include future hours and rates
8.34 when they can be determined for classes of laborers or mechanics in an area. The wage
8.35 determination must specifically state the effective dates of future hours and rates when
8.36 they are certified. The commissioner of labor and industry shall investigate as necessary

9.1 to ascertain the information and shall develop and maintain classification definitions.
9.2 The contractor and contracting authority shall apply the classification definitions to the
9.3 laborers or mechanics performing work under the contract. Missing classifications,
9.4 classification disputes, and disputes arising from interpretations of this section shall be
9.5 resolved by the commissioner of labor and industry. ~~The commissioner shall keep the~~
9.6 information posted on the project in at least one conspicuous place for the information of
9.7 the employees working on the project. A person aggrieved by a final determination of the
9.8 commissioner may petition the commissioner for reconsideration of findings within 20
9.9 days of the publication or decision. A person aggrieved by a decision of the commissioner
9.10 after reconsideration may, within 20 days after the decision, petition the commissioner
9.11 for a public hearing in the manner of a contested case under sections 14.57 to 14.61. If
9.12 the commissioner finds that a change in the certified prevailing hours of labor, prevailing
9.13 wage rate, and the hourly basic rate of pay for a class of laborers or mechanics in any area
9.14 is required, the commissioner may at any time certify that change, and the certified change
9.15 will be effective on a project advertised for bid on or after the date of certification.

9.16 Subd. 5. **Penalty Penalties: criminal, civil, and debarment.** (a) It is a
9.17 misdemeanor violation for an officer or employee of the state ~~to~~ or contracting authority
9.18 to knowingly execute a contract for a project without complying with this section, or for
9.19 the wage determination or contract language provided by the commissioner of labor
9.20 and industry, or knowingly close a contract on a project with violations or assessments.
9.21 A willful violation may be subject to the penalties assigned under section 609.43. A
9.22 contractor, subcontractor, or agent to pay any laborer, worker, or mechanic employed
9.23 directly on the project site a lesser wage for work done under the contract than the
9.24 prevailing wage rate as stated in the contract. This misdemeanor is punishable by a fine
9.25 of who violates this section is guilty of a gross misdemeanor for the first conviction of
9.26 a criminal offense under this section and shall be fined for the violation not more than
9.27 ~~\$700~~ \$3,000, or imprisonment imprisoned for not more than ~~90 days~~ one year, or both.
9.28 ~~Each agent or subcontractor shall furnish to the contractor evidence of compliance with~~
9.29 ~~this section.~~

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

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

10.9 Any employee under this section who knowingly permits the contractor or
10.10 subcontractor to pay less than the prevailing wage rate set forth in the contract, or who
10.11 gives up any part of the compensation to which entitled under the contract, is guilty of a
10.12 misdemeanor and may be fined no more than \$40 or imprisoned not more than 30 days or
10.13 both. Each day any violation of this paragraph continues is a separate violation.

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

10.17 (b) Penalties to be assessed by the contracting authorities. The contracting authority
10.18 may deduct from what is owed the contractor on the project for civil penalties and
10.19 assessments as defined by this section and provisions of section 177.43.

10.20 (1) After written notification by the contracting authority, a civil penalty of \$100
10.21 per day shall be assessed against the contractor for each day work is performed on the
10.22 project and the poster board is not placed or maintained on the project work site at a
10.23 location acceptable to the contracting authority.

10.24 (2) After written notification by the contracting authority, a civil penalty of \$100 per
10.25 week against the contractor for each week the contractor's certified payrolls or any of the
10.26 individual subcontractor or agent-certified payrolls are not submitted.

10.27 (3) After written notification by the contracting authority, a civil penalty of \$50 per
10.28 week shall be assessed against the contractor for each week that the subcontractor or agent
10.29 forms as defined in section 177.43, subdivision 3, are not submitted.

10.30 (c) A contractor, subcontractor, or agent that is convicted criminally or held liable
10.31 civily under this section shall be deemed to have a lack of business integrity and shall be
10.32 debarred by the commissioner from working on any contract funded in whole or in part
10.33 with state funds as a contractor, subcontractor, agent, or material supplier for a period of at
10.34 least one year and not to exceed three years. The commissioner shall maintain and publish
10.35 a current list of the debarred entities. If any contracting authority has debarred an entity
10.36 for prevailing wage violations, the contracting authority shall report the debarment to the

11.1 commissioner, who will then include the contractor on the list of debarred entities. All
11.2 contracting authorities may not contract with a debarred entity or allow a debarred entity
11.3 to work on any project as a subcontractor, material supplier, or in any other capacity.

11.4 **Subd. 6. Examination of records and investigation by the department.** The
11.5 Department of Labor and Industry shall enforce this section. ~~The department may demand,~~
11.6 ~~and the contractor and subcontractor shall furnish to the department, copies of any or all~~
11.7 ~~payrolls.~~ All the contracting authorities that award a contract funded in whole or in part
11.8 with state funds shall notify the commissioner in writing of the project location, contractor,
11.9 and any other project information deemed necessary by the commissioner. All contracting
11.10 authorities shall notify the commissioner in writing when they finalize the project contract.
11.11 The department shall employ at least five investigators to perform on-site project reviews
11.12 and to receive and investigate complaints of violations of this section, and to conduct
11.13 training and outreach to contractors and contracting authorities. These investigators shall
11.14 be in addition to any investigators employed to conduct prevailing wage surveys. The
11.15 department may demand, and the contractor or subcontractor or agent shall furnish to
11.16 the department, copies of any or all payroll documentation deemed necessary by the
11.17 department. The department may also demand, and the contracting authority shall furnish
11.18 to the department, any or all project information. The department may examine all records
11.19 relating to wages paid or fringe benefits provided to laborers or mechanics on work to
11.20 ~~which~~ to ensure compliance with sections 177.41 to 177.44 apply 177.46.

11.21 The commissioner shall determine the amount of back wages owed to the affected
11.22 laborer or mechanic, shall assess a 100 percent penalty based on the amount of back
11.23 wages owed to be paid to the affected laborer or mechanic, and an additional civil penalty
11.24 equal to 100 percent of the back wages owed to be paid to the department and deposited
11.25 into a dedicated fund for future prevailing wage enforcement efforts and assess the total
11.26 amount of back wages owed and penalties against the violating contractor, subcontractor,
11.27 or agent accordingly. If it is determined that a violation has occurred, the commissioner
11.28 may investigate all other open or closed contracts requiring payment of prevailing wages
11.29 on which that contractor, subcontractor, or agent performed any work within the previous
11.30 two years. The department shall notify both the contractor and the contracting authority of
11.31 its findings and assessment. If the violating contractor, subcontractor, or agent does not
11.32 comply with the department's assessment within 20 days of receipt of written notification,
11.33 the department shall notify the contracting authority to withhold from any payment due to
11.34 the contractor a reasonable amount to ensure compliance with the department's assessment.
11.35 The contracting authority shall require adherence to the department's assessments by the
11.36 contractor. The contracting authority shall report back to the commissioner when the

12.1 contractor complies with the commissioner's findings and assessment. After 60 days of
12.2 written notification, the commissioner shall deem any unpaid department assessment as an
12.3 unresolved violation of this section and handle as required under subdivision 6a.

12.4 If a contractor is deemed to be insolvent by the commissioner, the contracting
12.5 authority shall deduct the department's assessed amount from funds owed the contractor or
12.6 assess the bonding company for department's assessment.

12.7 Subd. 6a. **Prevailing wage rate violations.** (a) All contracting authorities shall
12.8 monitor compliance with sections 177.41 to 177.46 on all contracts funded in whole or in
12.9 part with state funds. The contracting authority shall interview employees working on
12.10 the project during working hours. The contracting authority shall randomly review the
12.11 weekly certified payrolls, subcontract agreements, project documentation, and employee
12.12 interviews to determine if the contractor has demonstrated compliance with this section.
12.13 The contracting authority has authority to request all records relating to the hours of work,
12.14 wages paid, or cost of providing fringe benefits, to laborers and mechanics performing
12.15 work under a contract to determine compliance with sections 177.41 to 177.46. The
12.16 contracting authority shall hold confidential any written or verbal complaint of violation of
12.17 this section filed by a laborer or mechanic or filed on behalf of a laborer or mechanic. The
12.18 contracting authority shall notify the contractor in writing of any violations of this section.
12.19 The contracting authority shall report any unresolved violations of this section to the
12.20 commissioner of labor and industry after 20 days of a written notification to the contractor
12.21 to resolve the violations, or the contracting authority has knowledge that it is the violating
12.22 contractor's, subcontractor's, or agent's second offense of a similar nature. The contracting
12.23 authority shall not close a contract with any unresolved violations of this section.

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

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

12.34 (c) If the attorney general does not receive notice of the commencement of an action
12.35 by a county attorney, as required by paragraph (b), within six months of receiving a report
12.36 under paragraph (a) from the commissioner of labor and industry, the attorney general shall

13.1 pursue the suspected violation, unless the attorney general and commissioner agree that
13.2 civil enforcement will be sufficient to effectuate the policies of sections 177.41 to 177.46.

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

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

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

13.9 Subd. 8. **Fringe benefit programs.** The prevailing wage rate shall be paid for all
13.10 hours worked on the project. The contractor, subcontractor, or agent may take credit
13.11 toward the prevailing wage rate for the recovery of the costs of providing bona fide
13.12 fringe benefits that have been approved by the commissioner prior to working on a
13.13 contract subject to this section and deemed a direct benefit to the laborer or mechanic.
13.14 The contractor, subcontractor, or agent shall not take credit for the company's incurred
13.15 administrative costs of providing a bona fide fringe benefits program or the costs of legally
13.16 required plans or insurance including but not limited to workers' compensation and
13.17 unemployment insurance, as well as program or plan costs deemed by the commissioner
13.18 to be incurred for the benefit of the contractor, subcontractor, or agent.

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

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

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

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

14.1 benefit. Company vehicles are not considered a fringe benefit as it is to the advantage of
14.2 the contractor.

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

14.10 Nothing in this section shall supersede provisions of any collective bargaining
14.11 agreement or the provisions of the Employment Retirement Income Security Act.

14.12 Subd. 9. **Keeping records, penalty.** Every employer subject to sections 177.41 to
14.13 177.46 must make and keep a record of:

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

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

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

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

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

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

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

14.30 **177.44 HIGHWAY TRANSPORTATION CONTRACTS; HOURS OF LABOR;**
14.31 **WAGE RATES; PENALTY.**

14.32 Subdivision 1. **Hours, wages permitted.** A laborer or mechanic employed by a
14.33 contractor, subcontractor, agent, or other person doing or contracting to do all or part
14.34 of the work under a contract based on bids as provided in Minnesota Statutes ~~1971,~~
14.35 section 161.32, ~~to which the state is a party,~~ or for contracts for which the Department

15.1 of Transportation has a delegation of authority to be the contracting authority, or for
 15.2 contracts that the Department of Transportation oversees under its authority to oversee
 15.3 constitutionally mandated state funding to other local governmental bodies, or units of
 15.4 government, or political subdivisions that are the contracting authority, for the construction
 15.5 or maintenance of a highway or other public work projects, may not be permitted or
 15.6 required to work longer than the prevailing hours of labor unless the laborer or mechanic
 15.7 is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the
 15.8 taxable hourly basic rate of pay of paid to the laborer or mechanic for the work performed
 15.9 on the project. The laborer or mechanic must be paid at least unconditionally and not
 15.10 less often than on a weekly basis and shall not be paid a lesser rate of wages than the
 15.11 prevailing wage rate in the same or most similar trade or occupation in the area. The costs
 15.12 of providing fringe benefit programs as defined in section 177.43, subdivision 8, to the
 15.13 laborers or mechanics working on the project may be deducted from the total prevailing
 15.14 wage rate. Contractors, subcontractors, agents, or other persons performing work under
 15.15 the contract must maintain records as defined in section 177.43, subdivision 9.

15.16 The contractor, subcontractor, or agent shall not exceed their company apprenticeship
 15.17 ratio established by a certified or registered program on any project subject to this section.

15.18 Subd. 2. **Applicability Exceptions.** This section does not apply to wage rates and
 15.19 hours of employment of laborers or mechanics engaged in the processing or manufacture
 15.20 of materials or products, or to the delivery of materials or products by or for commercial
 15.21 establishments which have a fixed place of business from which they regularly supply
 15.22 the processed or manufactured materials or products. This section applies to laborers
 15.23 or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is
 15.24 incorporated into the work under the contract by depositing the material substantially in
 15.25 place, directly or through spreaders, from the transporting vehicle.

15.26 Subd. 3. **Investigations by Department of Labor and Industry.** The Department
 15.27 of Labor and Industry shall conduct investigations and hold public hearings necessary
 15.28 to define classes of laborers ~~and~~ or mechanics and to determine the hours of labor and
 15.29 wage rates prevailing in all areas of the state for all classes of ~~labor and~~ laborers or
 15.30 mechanics commonly employed in highway, heavy, or building construction work, so as
 15.31 to determine prevailing hours of labor, prevailing wage rates, and hourly basic rates of
 15.32 pay. If a contract contains multiple types of construction work, the contract must contain
 15.33 all appropriate wage determinations and the laborer or mechanic must be paid at a rate
 15.34 for all hours worked under the type of work performed on the project. The contractors,
 15.35 subcontractors, and agents and Department of Transportation and other contracting
 15.36 authorities must apply the classification definitions certified by the commissioner of labor

16.1 and industry to the laborers or mechanics working on the project. Missing classifications,
16.2 classification disputes, and other questions arising from the interpretations of this section
16.3 must be resolved by the commissioner of labor and industry as specified in section 177.43,
16.4 subdivision 4.

16.5 The ~~Department~~ commissioner of labor and industry shall determine the nature of
16.6 the equipment furnished by truck drivers who own and operate trucks on contract work to
16.7 determine minimum rates for the equipment, and shall establish by rule minimum rates
16.8 to be computed into the prevailing wage rate. The contracting agency must incorporate
16.9 the minimum rates into its contracts for bid. The contractor, subcontractor, or agent must
16.10 pay the minimum rate established by the commissioner of labor and industry directly
16.11 to the person who owns and operates the truck without any deductions or rebates. The
16.12 contracting authority must receive evidence from the contractor, subcontractor, or agent
16.13 that the proper minimum rate has been paid to the person who owns and operates the truck
16.14 in a form approved by the Department of Transportation.

16.15 Subd. 4. **Certification of hours and rate.** The commissioner of labor and industry
16.16 shall at least once a year certify the prevailing hours of labor, the prevailing wage rate,
16.17 and the hourly basic rate of pay for all classes of laborers ~~and~~ or mechanics referred to
16.18 in subdivision 3 in each area. The certification must also include future hours and rates
16.19 when they can be determined for classes of laborers ~~and~~ or mechanics in an area. The
16.20 certification must specifically state the effective dates of future hours and rates when they
16.21 are certified. If a construction project extends into more than one area ~~there shall be only~~
16.22 ~~one standard of hours of labor and wage rates for the entire project,~~ all applicable area
16.23 wage determinations must be contained in the contract and the hours of labor and wage
16.24 rates paid the laborer or mechanic must be specific to the areas in which the work is
16.25 performed. A person aggrieved by a final determination of the commissioner may petition
16.26 the commissioner for reconsideration of findings within 20 days of the publication or
16.27 decision. A person aggrieved by a decision of the commissioner after reconsideration may
16.28 within 20 days after the decision petition the commissioner for a public hearing as in a
16.29 contested case under sections 14.57 to 14.61. If the commissioner finds that a change in
16.30 the certified prevailing hours of labor, prevailing wage rate, and the hourly basic rate of
16.31 pay for a class of laborers or mechanics in any area is required, the commissioner may at
16.32 any time certify that change and the certified change is effective on a project advertised
16.33 for bid on or after the date of certification.

16.34 Subd. 5. **Hours and rates to be posted.** The prevailing hours of labor, the
16.35 prevailing wage rates, the hourly basic rates of pay, and classifications for all labor as
16.36 certified by the commissioner must be specifically stated in the proposals and contracts

17.1 ~~for each highway construction contract to which the state is a party.~~ transportation
17.2 contract which is funded in whole or in part with state funds. In addition to the wage
17.3 determinations issued by the Department of Labor and Industry, the contracting authority
17.4 must incorporate into its proposals and contracts the contract language provided by the
17.5 commissioner of transportation to notify the contractor of the application of sections
17.6 177.41 to 177.46. Failure to incorporate the proper determination into the contracts makes
17.7 the contracting authority liable for making the contractor whole for the increases in the
17.8 wages paid, including employment taxes and reasonable administrative costs based on the
17.9 increased wages, to the laborers or mechanics working on the project. The contracting
17.10 authority is authorized to incorporate into the bid documents for each project a compliance
17.11 monitoring surcharge provision. The surcharge shall be a percentage of the engineer's
17.12 estimate of the project. The surcharge percentage shall be either an amount set annually
17.13 by the commissioner for all projects after investigation to determine the expected costs
17.14 of monitoring compliance, or an amount requested by the contracting authority and
17.15 authorized by the commissioner, and will be a percentage sufficient, to pay the estimated
17.16 cost to the contracting authority of monitoring compliance with sections 177.41 to 177.46.
17.17 The surcharge shall be incorporated into the contract for the project and paid by the
17.18 contractor to the contracting authority within two weeks of the payment by the contracting
17.19 authority of the mobilization cost for the project as specified in the successful bid. The
17.20 contracting authority shall use this surcharge exclusively to defray costs of monitoring
17.21 compliance with sections 177.41 to 177.46.

17.22 These hours, rates, and classifications, together with the name of the project engineer
17.23 or agency contact person, telephone number, project identification numbers, and a
17.24 summary of the provisions of subdivision 6, and a summary of section 177.46, must be
17.25 kept posted directly on the project by the ~~employer~~ contractor in at least one conspicuous
17.26 place and accessible location for the information of ~~employees~~ all laborers or mechanics
17.27 working on the project. The contracting authority must ensure the contractor keeps the
17.28 required information on the project from the start of work until all work is completed
17.29 on the project.

17.30 Subd. 6. **~~Penalties~~ Penalties: criminal, civil, and debarment.** (a) It is a violation
17.31 for an officer or employee of the state or contracting authority to knowingly execute
17.32 a contract for a project without the wage determination or contract language provided
17.33 by the commissioner of transportation on the application of this section, or knowingly
17.34 close a contract with violations of this section or assessments by the commissioner of
17.35 transportation. A violation may be subject to the penalties under section 609.43.

18.1 A contractor, subcontractor, or agent who violates this section is guilty of a gross
18.2 misdemeanor for the first conviction of a criminal offense under this section and ~~may~~
18.3 must be fined for each violation not more than ~~\$300~~ \$3,000 or imprisoned not more than
18.4 90 days one year or both, and required to reimburse the county attorney or attorney
18.5 general for the cost of prosecution. Each day that the violation continues is a separate
18.6 offense. It is a felony for the second criminal conviction of a contractor, subcontractor,
18.7 or agent for violations of this section, or for a criminal conviction of a total unpaid back
18.8 wage assessment by the commissioner of transportation against the violating contractor,
18.9 subcontractor, or agent in excess of \$100,000, and must be fined for the violation not more
18.10 than \$10,000, or imprisoned no more than five years, or both, and required to reimburse
18.11 the county attorney or the attorney general for the cost of prosecution. Each day that the
18.12 violation continues is a separate offense.

18.13 Whoever induces a job applicant or employee on any project subject to this section
18.14 to give up or forego any part of the wages to which entitled under the contract governing
18.15 the project by threat not to employ, by threat of dismissal from employment, or by any
18.16 other means, or knowingly alters official company employment or time records to falsely
18.17 report the employee's pay, may be fined not exceeding ~~\$1,000~~ \$3,000 or imprisoned not
18.18 more than one year, or both. Each day that the violation continues is a separate offense.

18.19 Any employee under this section who knowingly permits the contractor ~~or,~~
18.20 subcontractor, or agent to pay less than the prevailing wage rate set forth in the contract,
18.21 or who gives up any part of the compensation to which entitled under the contract, may
18.22 be fined not exceeding \$40 or imprisoned not more than 30 days, or both. Each day any
18.23 violation of this paragraph continues is a separate offense.

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

18.27 (b) Penalties to be assessed by the contracting authorities. The contracting authority
18.28 may deduct from what is owed the contractor on the project for civil penalties and
18.29 assessments as defined by this section and provisions of section 177.44.

18.30 (1) After written notification by the contracting authority, a civil penalty of \$100
18.31 per day shall be assessed against the contractor for each day work is performed on the
18.32 project and the poster board is not placed or maintained on the project work site at a
18.33 location acceptable to the contracting authority.

18.34 (2) After written notification by the contracting authority, a civil penalty of \$100 per
18.35 week against the contractor for each week the contractor's certified payrolls or any of the
18.36 individual subcontractor or agent-certified payrolls are not submitted.

19.1 (3) After written notification by the contracting authority, a civil penalty of \$50 per
19.2 week shall be assessed against the contractor for each week that the subcontractor or agent
19.3 forms as defined in section 177.44, subdivision 7, are not submitted.

19.4 (4) After written notification by the contracting authority, a civil penalty of \$100
19.5 may be assessed against the contractor for each week the approved trucking form as
19.6 described in section 177.44, subdivision 3, is not submitted.

19.7 (c) A contractor, subcontractor, or agent that is convicted criminally or held liable
19.8 civilly under this section must be debarred by the commissioner of transportation under
19.9 section 161.315 from working on any contracts funded in whole or in part with state funds
19.10 as a contractor, subcontractor, agent, or material supplier for a period of at least one year
19.11 and not more than three years. The commissioner of transportation shall report a debarred
19.12 entity to the commissioner of labor and industry for publication. If any contracting
19.13 authority has debarred an entity for prevailing wage violations, the contracting authority
19.14 must report the debarment to the commissioner of labor and industry. All contracting
19.15 authorities are required to review the list of debarred entities and may not contact with a
19.16 debarred entity or allow a debarred entity to work on any project as a subcontractor,
19.17 material supplier, or in any other capacity.

19.18 **Subd. 7. Department of Transportation to enforce.** The Department of
19.19 Transportation shall require adherence to ~~this section. The commissioner of transportation~~
19.20 ~~may demand and every contractor and subcontractor shall furnish copies of payrolls. all~~
19.21 sections relating to sections 177.41 to 177.46 on active project contracts for which the
19.22 Department of Transportation is the contracting authority, or on active contracts that
19.23 the commissioner of transportation has been delegated authority to be the contracting
19.24 authority, or on active contracts that the commissioner of transportation has been delegated
19.25 authority to be the contracting authority, or on active contracts that the commissioner
19.26 of transportation has authority to oversee the distribution of constitutional mandated
19.27 state funding to other local governmental bodies, or units of government, or political
19.28 subdivisions who act as the contracting authority. The Department of Transportation
19.29 shall maintain a staff of at least five investigators to ensure compliance on the projects.
19.30 The commissioner of transportation or contracting authority shall hold confidential any
19.31 complaint filed by a laborer or mechanic or filed on behalf of a laborer or mechanic.

19.32 The contracting authority must require weekly submittal of certified payrolls from
19.33 every contractor and subcontractor or agent performing work under the contract. The
19.34 contractor must submit certified payrolls for the contractor's own workforce along with
19.35 payrolls from all subcontractors and agents working on the project. The contracting
19.36 authority must maintain the payrolls under the contracting agency's normal record

20.1 retention schedules for a minimum of two years past the closing of the contract. Each
20.2 contracting authority must redact the Social Security number and address of each laborer
20.3 or mechanic from each certified payroll before any person other than an employee of the
20.4 contracting authority, the Department of Transportation, or the Department of Labor and
20.5 Industry is allowed to review the certified payroll. Certified payrolls must be submitted
20.6 within one week after the week ending date of the week in which the work was performed.
20.7 Each subcontractor or agent must furnish to the contractor weekly certified payrolls that
20.8 demonstrate compliance with this section. The commissioner of transportation may
20.9 deduct from what is owed the contractor on the project or after written notification, any
20.10 other state-funded projects under the commissioner of transportation's authority that the
20.11 contractor is working on, any penalties or back wage assessments. The contracting
20.12 authority may deduct from what is owed the contractor on the project for civil penalties
20.13 and assessments for violations on the project. The contracting authority shall interview
20.14 laborers or mechanics on the project site and shall randomly review the weekly certified
20.15 payrolls, subcontract agreements, project documentation, and employee interviews if the
20.16 contractor has demonstrated compliance with this section. The contracting authority
20.17 has authority to request all records relating to the hours of work, wages paid, or cost of
20.18 providing fringe benefits, to laborers and mechanics performing work under a contract
20.19 to determine compliance with sections 177.41 to 177.46. In addition, the contractor
20.20 may interview all laborers or mechanics on the project and review subcontractor or
20.21 agents' payroll information to ensure compliance with this section. If a contracting
20.22 authority is unable to achieve or determine compliance on a project, the commissioner of
20.23 transportation must be notified in writing of the problems or violations.

20.24 The contractor must incorporate into all subcontract agreements, purchase orders, or
20.25 other written agreements which provide for work covered by this section the contract wage
20.26 determination and the contract language provided by the commissioner of transportation
20.27 contained in the contract. The contractor must also ensure that all secondary subcontract
20.28 agreements, purchase orders, or other written agreements which provide for work covered
20.29 by this section contain the same language. The contractor must provide a written certified
20.30 confirmation on a form provided by the contracting authority that all subcontractors and
20.31 agents have received the required contract wage determinations and contract language.
20.32 The form must be provided to the contracting authority prior to any subcontractor or agent
20.33 working on the project. If the contractor does not provide the information required to the
20.34 subcontractor or agents, or the form to the contracting authority, the contractor must be the
20.35 sole entity responsible for any contracting authority or commissioner's assessment.

21.1 The commissioner of transportation may examine all business, employment,
21.2 and time records and other documents relating to hours of work and the wages paid
21.3 laborers ~~and or~~ mechanics on work to which ~~considered necessary by the commissioner~~
21.4 of transportation to ensure compliance with this section applies. ~~Upon request of the~~
21.5 ~~Department of Transportation or upon complaint of alleged violation, the county attorney~~
21.6 ~~of the county in which the work is located shall investigate and prosecute violations in a~~
21.7 ~~court of competent jurisdiction.~~

21.8 If the commissioner of transportation determines that a violation has occurred, the
21.9 commissioner of transportation shall determine the amount of back wages owed to the
21.10 affected laborer or mechanic, plus a civil penalty equal to 100 percent of the back wages
21.11 owed, to be paid to the affected laborer or mechanic, and an additional civil penalty equal
21.12 to 100 percent of the back wages owed to be paid to the commissioner of transportation
21.13 and to be deposited into a dedicated fund to be used by the Department of Transportation
21.14 for future prevailing wage enforcement, educational, and outreach programs and assess
21.15 the total amount of back wages owed and penalties against the violating contractor,
21.16 subcontractor, or agent accordingly. If there is a determination that a violation has
21.17 occurred, the commissioner of transportation may investigate all other open and closed
21.18 contracts, requiring payment of prevailing wages, on which that contractor, subcontractor,
21.19 or agent performed any work within the previous two years.

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

21.27 (2) For investigations where the contracting authority is a local governmental body
21.28 or political subdivision of the state, the commissioner of transportation shall notify in
21.29 writing the contracting authority and the contractor of the violations and determination of
21.30 assessments and the contracting authority shall withhold a reasonable amount to ensure
21.31 compliance with the commissioner of transportation's determination. The contracting
21.32 authority must require adherence to the commissioner of transportation's assessment.

21.33 After 60 days of written notification, the commissioner of transportation shall
21.34 consider the unpaid assessment as an unresolved violation of this section. The
21.35 commissioner of transportation shall report any unresolved violations, willful violations,
21.36 or second offense violations of a similar nature, of this section to both the county attorney

22.1 where the alleged violation occurred and to the attorney general. A county attorney shall
22.2 notify the commissioner of transportation and the attorney general upon commencing an
22.3 action for a violation of this section. The county attorney shall also give notice to the
22.4 commissioner of transportation and the attorney general of the outcome of the action,
22.5 including detailed reasons for the dismissal or settlement of an action pursuant to a plea
22.6 agreement that awards less than the maximum penalties for a violation of this section. The
22.7 commissioner of transportation shall notify the contracting authority.

22.8 If the attorney general does not receive notice of the commencement of an action
22.9 by a county attorney, as required by this subdivision, within six months of receiving
22.10 an unresolved violation report from the commissioner of transportation, the attorney
22.11 general shall pursue the suspected violation in a court of competent jurisdiction, unless the
22.12 attorney general and commissioner of transportation agree that civil enforcement will be
22.13 sufficient to effectuate the policies of sections 177.41 to 177.46.

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

22.15 Subdivision 1. **General powers.** For the purposes of this section, "commissioner"
22.16 means the commissioner of labor and industry with respect to duties and responsibilities
22.17 entrusted to the commissioner of labor and industry by sections 177.41 to 177.46, and
22.18 the commissioner of transportation with respect to duties and responsibilities entrusted to
22.19 the commissioner of transportation by sections 177.41 to 177.46. In connection with the
22.20 duties and responsibilities entrusted to each commissioner pursuant to sections 177.41 to
22.21 177.46, each commissioner may:

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

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

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

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

22.31 (5) examine the books, accounts, records, and files of every contractor, subcontractor,
22.32 or agent and of every person who is engaged in work under a contract subject to sections
22.33 177.41 to 177.46; the commissioner or a designated representative must have free access
22.34 during normal business hours to the offices and places of business of the person, and to

23.1 all books, accounts, papers, records, files, safes, and vaults maintained in the place of
23.2 business; and

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

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

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

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

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

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

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

25.1 in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow
25.2 accounts for purposes of distributing damages.

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

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

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

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

25.22 Subdivision 1. **Civil action; damages.** A laborer or mechanic may bring a civil
25.23 action seeking redress for violations of sections 177.41 to 177.46 directly to district court.
25.24 A contractor, subcontractor, or agent who is found to have violated sections 177.41 to
25.25 177.46 is liable to the aggrieved party for all unpaid wages. A contractor, subcontractor,
25.26 or agent who is found to have violated sections 177.41 to 177.46 is also liable for
25.27 compensatory damages, interest on the unpaid wages at the statutory rate, liquidated
25.28 damages equal to three times the wages owed, punitive damages for repeated or willful
25.29 violations, and any other appropriate relief including, but not limited to, injunctive relief.
25.30 The contracting authority must provide the laborer or mechanic bringing the action any
25.31 and all requested project records, including certified payrolls with Social Security numbers
25.32 and employee addresses redacted, after written notice, and that has been deemed to be a
25.33 public record, at a reasonable cost.

25.34 Subd. 2. **District court jurisdiction.** An action brought under subdivision 1 may be
25.35 filed in the district court of the county where a violation is alleged to have been committed,

26.1 where the respondent resides or has a principal place of business, where the contracting
26.2 authority has its main office, or any other court of competent jurisdiction.

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

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

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

26.22 Subd. 6. **Civil penalty.** In an action brought under subdivision 1, the court shall
26.23 order any entity who is found to have committed a violation to pay a civil penalty equal
26.24 to 100 percent of the total damages awarded to all plaintiffs in the action, including the
26.25 fees and costs awarded under subdivision 5, to the commissioner of labor and industry
26.26 or the commissioner of transportation whichever agency is responsible for enforcement
26.27 with respect to the project to be deposited into a dedicated fund to be used in future
26.28 enforcement efforts of sections 177.43 and 177.44.

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

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