

HF1859 - 0 - Construction Worker Wage Protection

Chief Author: **Sandra Feist**
 Committee: **Labor and Industry Finance & Policy**
 Date Completed: **3/7/2023 3:27:12 PM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Attorney General Supreme Court

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Attorney General						
General Fund	-	532	532	532	532	532
State Total						
General Fund	-	532	532	532	532	532
Total	-	532	532	532	532	532
Biennial Total			1,064			1,064

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Attorney General					
General Fund	-	2.66	2.66	2.66	2.66
Total	-	2.66	2.66	2.66	2.66

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 3/7/2023 3:27:12 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Attorney General						
General Fund		-	532	532	532	532
Total		-	532	532	532	532
Biennial Total				1,064		1,064
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Attorney General						
General Fund		-	532	532	532	532
Total		-	532	532	532	532
Biennial Total				1,064		1,064
2 - Revenues, Transfers In*						
Attorney General						
General Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

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 Agency: **Labor and Industry Dept**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karl Palm **Date:** 3/1/2023 2:52:04 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Section 1. M.S. 177.27, subd 1 is modified to provide the commissioner with authority to conduct inspections, examine records, and question employees to determine compliance with M.S. 181.165 (“Construction Workers Wage Protection Act” or “CWWPA”).

Section 2. M.S. 177.27, subd 4 is modified to provide the commissioner with authority to issue a compliance order for violations of the CWWPA; if a violation is repeated, the commissioner must issue a compliance order.

Section 3. M.S. 177.27, subd 8 is modified to provide an employee with the right to bring a civil action directly in district court for violations of the CWWPA. This section also establishes that a contractor that has assumed a subcontractor’s liability as required under the CWWPA is liable to employees for unpaid wages and an additional equal amount as liquidated damages, as well as damages and other appropriate relief.

Section 4. M.S. 177.27, subd 9 is modified to establish where civil actions can be filed for violations of the CWWPA.

Section 5. M.S. 177.27, subd 10 is modified to establish that employees may seek reasonable costs, disbursements, witness fees, and attorney fees in civil actions for violations of the CWWPA.

Section 6. The CWWPA (M.S. 181.165) is created and provides the following:

- Subd 1 defines various terms used in the CWWPA, including claimant, commissioner, construction contract, contractor, owner, and subcontractor.
- Subd 2 states that a contractor entering into a construction contract assumes liability for unpaid wages, fringe benefits and liquidated damages owed to a claimant by a subcontractor at any tier.
 - o Contractors cannot be indemnified or otherwise transfer liability under this section.
 - o This section does not prohibit a contractor or subcontractor from enforcing a contract against a subcontractor to recover monetary damages incurred by the contractor under this section.
 - o Contractors cannot avoid liability under this section by claiming a person is an independent contractor unless the criteria to establish that a person is an independent contractor under 181.723, subd 4 are met.
- Subd 3 states that an employee can designate a person, organization, or collective bargaining agent to file a complaint with the commissioner or file a private civil action on their behalf.
 - o When action is taken against a subcontractor, the contractor is jointly and severally liable for the

unpaid wages, benefits and other remedies available under this section.

- o The attorney general can also bring a civil action to collect unpaid wages, penalties, damages, costs and fees for employees under this section.

- o Claims under this section must be brought within the statute of limitations of 2 years, or 3 years if conduct is willful.

- Subd 4 states that contractors may require that subcontractors provide payroll records for all workers providing labor on a project. These records must have enough information to show subcontractors' payment of wages and fringe benefits. Only an employee's SSN may be redacted from records.

- o If requested by a contractor or subcontractor, a subcontractor shall provide:

- § the names of their employees and independent contractors, including indication of who is considered an independent contractor;

- § the anticipated contract start date;

- § the scheduled duration of work;

- § local unions with which the subcontractor is a signatory contractor if applicable; and

- § the name and phone number for a subcontractor contact.

- o Under this subdivision a contractor can withhold payments owed to a subcontractor at any tier if the requested information is not provided in a timely manner.

- o Under this subdivision a contractor or subcontractor may not disclose someone's personal identifying information to the general public but can confirm that a person works for them and provide that person's full name.

- Subd 5 clarifies that the CWWPA does not alter an owner's obligation to pay a contractor or a contractor's obligation to pay a subcontractor unless expressly allowed by the CWWPA.

- Subd 6 states that the CWWPA does not diminish rights under a collective bargaining agreement. The provisions of the CWWPA may be waived by a collective bargaining agreement with a labor organization if the waiver explicitly mentions the CWWPA and does not diminish rights of employees under any other sections of Chapter 181 of the Minnesota Statutes. This subdivision also clarifies that the CWWPA does not apply to prevailing wage projects.

Section 7 states the CWWPA is effective on 8/1/2023 and applies to contracts or agreements entered into, renewed, modified or amended on or after that date.

Assumptions

The CWWPA does not change the current standards in Minnesota wage and hour laws for wages owed to employees. This bill does not create new standards for DLI to enforce.

The CWWPA allows DLI to seek unpaid wages and liquidated damages owed to an employee from a contractor. This bill may increase the likelihood that DLI successfully recovers wages and damages on behalf of the employee.

For the purposes of this fiscal note, there is no change in FTE, expenditures, or revenue for DLI. DLI anticipates no impact to the quantity of complaints received or investigations by the agency, and no impact to the forecasted revenue from monetary compliance penalties paid to the state. The increased likelihood of successful recovery of wages and liquidated damages on behalf of the employee results in an immaterial amount of work for DLI's administrative and financial services staff.

Expenditure and/or Revenue Formula

NA

Long-Term Fiscal Considerations

NA

Local Fiscal Impact

NA

References/Sources

NA

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HF1859 - 0 - Construction Worker Wage Protection

Chief Author: **Sandra Feist**
 Committee: **Labor and Industry Finance & Policy**
 Date Completed: **3/7/2023 3:27:12 PM**
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

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Biennial Total			1,064			1,064

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	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	2.66	2.66	2.66	2.66
Total	-	2.66	2.66	2.66	2.66

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Susan Nelson **Date:** 3/7/2023 8:09:25 AM
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State Cost (Savings) Calculation Details

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General Fund	-	532	532	532	532	532
Total		-	532	532	532	532
Biennial Total		1,064			1,064	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total		-			-	

Bill Description

Section 181.165, subdivision 4 authorizes a general contractor to request a subcontractor’s payroll records and requires the payroll records to contain sufficient information to apprise the general contractor of each subcontractor’s payment of wages and fringe benefit contributions. This subdivision also lays out specific requirements for what information subcontractors must provide to general contractors under a request under this subdivision.

HF1859 provides wage protections for construction workers by adding an assumption of liability in section 181.165, subdivision 2 on a general contractor for unpaid wages, fringe benefits, and resulting liquidated damages acting under a subcontracting agreement with the general contractor. A general contractor is not liable for back wages if a person meets the criteria required by section 181.723.

Section 181.165, subdivision 3 grants enforcement with the commissioner via 177.27. Section 177.27 is also amended to include section 181.165. Section 181.165, subd. 3 also references and incorporates a private right of action via section 177.27, subd. 8 and allows a claimant to designate any person, organization, or collective bargaining agent to file a complaint with the commissioner or in court and make a wage claim on the claimant’s behalf. This subdivision also grants the Attorney General authority to enforce this section to collect unpaid wages and any other penalties, damages, costs, and fees.

Assumptions

The AGO estimates that it will expend 2,000 hours of investigator time monitoring compliance with the bill’s newly enacted prohibitions each fiscal year. The AGO estimates that it will also expend 2,000 attorney hours initiating investigations and enforcement action(s) pursuant to sections 181.165, subd. 3 and 8.31 as it identifies and litigates suspected violations each fiscal year.

The AGO estimates that the construction industry is a significant source of wage loss in the State of Minnesota because individual construction workers are often misclassified as independent contractors or are employees of undercapitalized subcontractors to insulate the general contractor and prime and second-tier subcontractors against liability under Minnesota’s wage protections. That this is a significant problem is evident from the fact that the Minnesota Department of Labor and Industry already has a division dedicated to construction industry misclassification. As a result, there would likely be a good deal of initial investigatory and litigation work for the AGO pursuant to its new authority.

contractors and subcontractors may be resistant to some of the bill's provisions, AGO assumes there may be a good deal of initial investigatory and litigation work pursuant to the new authority set out in the bill

The AGO estimates that after enactment of the bill and for the foreseeable future, its investigators will expend approximately 2,000 hours for the first fiscal year and each subsequent fiscal year monitoring compliance with the bill and identifying potential violations of the bill. The AGO will seek to gain compliance with the bill's requirements and initiate investigations into violations. Based on past hours expended in other wage and hour and consumer protection enforcement actions, particularly in relation to the construction industry, the AGO estimates that at least two matter will progress to a formal investigation and/or litigation that attorneys in its consumer protection section will expend at least 2,000 hours in the first fiscal year and 2,000 hours in each subsequent fiscal year.

The AGO can recover attorney's fees and costs of investigation if successful in proving violations of the bill, and also potentially other penalties or damages. Recoveries for the State including civil penalties are deposited into the general fund pursuant to section 16A.151. Recognizing the uncertainties inherent in any litigation, and the uncertainties of predicting the fiscal year of recovery of such funds (which necessarily is at the end of litigation), the AGO assumes that recovery of fees and civil penalties will begin in FY24, and therefore does not project revenue in FY23. Starting in FY24, the AGO assumes it will bring and successfully litigate or settle at least one case each fiscal year that will provide revenue to the State, in addition to addressing the violation. The AGO estimates in each case it will, at a minimum, recover its costs and fees. Because the recovery of penalties is reliant on the number of proven violations as well as the consideration of equitable factors by a court the AGO is presently unable to estimate the amount of penalties or costs and fees it will recover that will provide revenue to the State.

Expenditure and/or Revenue Formula

The Office of the Attorney General uses billing rates to calculate revenue and costs. The billing rates effective from July 1, 2024-June 30, 2025 are \$163/hour for attorneys and \$103/hour for legal assistants (including investigators, paralegals, mediators, financial analysts, and support staff). The billable hour rate reflects the cost of providing legal services. One FTE is 1500 billable hours per year.

	Hourly Billing Rate	Hours	Total Cost to AGO
Attorney, [division]	\$163	2,000	326,000
Legal assistant, [Investigator/other non-attorney staff]	\$103	2,000	206,000
<i>Other</i>			
Total	N/A		\$532,000

Long-Term Fiscal Considerations

n/a

Local Fiscal Impact

n/a

References/Sources

n/a

Agency Contact: Laura Sayles

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HF1859 - 0 - Construction Worker Wage Protection

Chief Author: **Sandra Feist**
 Committee: **Labor and Industry Finance & Policy**
 Date Completed: **3/7/2023 3:27:12 PM**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 3/1/2023 12:47:53 PM
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State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill amends chapter 181, Employment, to add a new section, 181.165, providing wage protections for construction workers by making contractors who enter into construction contracts assume liability for unpaid wages, benefits and damages owed by subcontractors to their employees. In an action against a subcontractor, the contractor is jointly and severally liable for the unpaid wages, benefits, and damages. The attorney general also may bring civil actions to collect unpaid wages and any other penalties, damages, costs and fees on behalf of subcontractors' employees. The two or three year statute of limitations in section 541.07(5) applies.

This bill also amends chapter 171, the Minnesota Fair Labor Standards Act, to enable an employee of a subcontractor to bring a private cause of action against the contractor who has assumed a subcontractor's liability under section 181.165.

The bill is effective August 1, 2023, and applies to contracts or agreements entered into, renewed, modified, or amended on and after that date.

Assumptions

Currently, employees of construction subcontractors can bring a private cause of action under sections 171.27 and 181.171 for violations under those chapters, including for unpaid wages, overtime compensation, benefits.

Actions for unpaid wages and benefits have a case type of Employment. The average number of actions for unpaid wages and benefits filed by employees of construction subcontractors is unknown and cannot reasonably be estimated.

It is unknown how many actions for unpaid wages and benefits will be brought by or on behalf of employees of construction subcontractors as a result of this bill. It is assumed that it will not be more than currently are filed under sections 171.27 and 181.171.

The action against the construction contractor will be in the same case as the action against the subcontractor.

The civil filing fee and county law library fee will be paid by the construction contractor in each case. As the number of cases is unknown and cannot be reasonably estimated, the estimated increase in filing fees paid by construction contractors cannot be estimated. It is assumed that there will not be a significant increase in filing fee revenue.

The construction contractors also may file actions against subcontractors seeking indemnification for any monetary damages they may incurred as a result of this bill. It is assumed that most contractors will file cross claims against subcontractors in the same case brought by the employee. The increase in the number of separate contract cases that may be filed is unknown and cannot reasonably be estimated.

It is assumed that this bill will not result in an increase in the number of judges or staff needed to process the cases.

Expenditure and/or Revenue Formula

It is assumed this bill will have minimal fiscal impact to the Judicial Branch.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

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