

Stricken language would be deleted from and underlined language would be added to present law.
Act 1068 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/20/17
A Bill

SENATE BILL 601

By: Senator Hester
By: Representative Dotson

For An Act To Be Entitled

AN ACT TO REPEAL THE ARKANSAS PREVAILING WAGE LAW; TO PROVIDE FLEXIBILITY TO CITIES AND COUNTIES FOR CAPITAL CONSTRUCTION *PROJECTS*; TO DECLARE AN *EMERGENCY*; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL THE ARKANSAS PREVAILING WAGE LAW; AND TO PROVIDE FLEXIBILITY TO CITIES AND COUNTIES FOR CAPITAL CONSTRUCTION *PROJECTS*; AND TO DECLARE AN *EMERGENCY*.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §§ 22-9-301 – 22-9-315 are repealed.

~~22-9-301. Payment required.~~

~~It is declared to be the policy of the State of Arkansas that a wage of not less than the minimum prevailing hourly rate of wages for work of a similar character in the county or locality in which the work is performed and not less than the prevailing hourly rate of wages for holiday and overtime work shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.~~

~~22-9-302. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Construction" means construction, reconstruction,~~



~~improvement, enlargement, alteration, painting and decorating, or major repair, where the cost of all labor and material exceeds seventy five thousand dollars (\$75,000);~~

~~(2) "County" means the county where the physical work upon the public works is performed;~~

~~(3) "Department" means the Department of Labor;~~

~~(4) "Locality" means a specific county or a specific group of counties in the same geographic area of the state as determined by administrative regulation of the Department of Labor;~~

~~(5) "Maintenance work" means the repair, but not the replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased;~~

~~(6) "Minimum prevailing wage rates" means the wages paid, generally, in the county in which the public works are being performed, to workers engaged in work of a similar character;~~

~~(7) "Public body" means the State of Arkansas or any officer, board, or commission of the state, any county, city, municipality or other political subdivision, or any of the agencies thereof;~~

~~(8) "Public works" means all works constructed for public use, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, but it does not include any work done for or by any drainage, improvement, or levee district; and~~

~~(9) "Workers" means laborers, workers, and mechanics, but special rates for apprentices shall apply only when the apprentices are registered in a recognized management-labor apprenticeship training program.~~

~~22-9-303. Exceptions.~~

~~(a) The provisions of this subchapter shall not apply to workers who are employed as part-time or full-time employees of any public body; it is not the intent of this subchapter to prohibit any public body from performing necessary improvements of its public property, either by construction or maintenance, with public employees.~~

~~(b) Nothing contained in this subchapter shall be construed to apply to or affect highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department.~~

~~(c) This subchapter shall not affect any public school construction unless federal matching funds are employed in paying for the construction.~~

~~22-9-304. Construction of subchapter.~~

~~(a) Nothing in this subchapter shall be construed to prohibit the payment to any worker employed on any public works of more than the prevailing rate of wages.~~

~~(b) Nothing in this subchapter shall be construed to limit the hours of work which may be performed by any worker in any particular period of time.~~

~~22-9-305. Penalties.~~

~~(a) Any officer, agent, or representative of any public body who knowingly violates, or omits to comply with, any of the provisions of this subchapter and any contractor or subcontractor, or agent or representative thereof, doing public works who neglects to keep an accurate record of the name, address, Social Security number, occupation or work classification, hours worked, and actual wages paid to each worker employed by him or her in connection with the public works, who refuses to allow access to the records at any reasonable hour to any person authorized to inspect the records under this subchapter, or who knowingly submits to the Department or Labor false payroll or wage information shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000) for each violation. Each day the violation continues shall, with respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed ten percent (10%) of the contract or subcontract or ten percent (10%) of any unpaid wages due employees under the provisions of this subchapter, whichever sum is greater.~~

~~(b) Any worker who knowingly submits to the department a false claim for unpaid wages under the provisions of this subchapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000).~~

~~(c)(1) The Director of the Department of Labor shall determine the amount of any civil penalty due under this section.~~

~~(2)(A) Such determination shall be final, unless within fifteen (15) days after receipt of notice thereof, the worker, contractor,~~

~~subcontractor, or agent or representative thereof charged with the violation notifies the director in writing that he or she contests the proposed penalty.~~

~~(B) Notice of a proposed penalty shall be delivered by certified mail or by any other means authorized by law for service of process.~~

~~(3) In the event a penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(4) The amount of such penalty when finally determined may be recovered in a civil action brought by the director in a court of competent jurisdiction without paying costs or giving bond for costs.~~

~~(d) Sums collected under this section shall be paid into the General Revenue Fund Account of the State Apportionment Fund.~~

~~(e) Assessment of a civil penalty by the director shall be made no later than three (3) years from the date of the occurrence of the violation.~~

~~22-9-306. Powers of Department of Labor.~~

~~(a)(1) The Director of the Department of Labor or his or her authorized representatives shall have authority to:~~

~~(A) Administer oaths;~~

~~(B) Take, or cause to be taken, the depositions of witnesses; and~~

~~(C) Require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation or hearing.~~

~~(2) The subpoena shall be signed and issued by the Department of Labor's authorized representative.~~

~~(3) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of any circuit court or the judge thereof, upon application of the department's authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.~~

~~(b) The director or his or her authorized representatives shall have authority to enter and inspect any construction site, place of business, or place of employment of any public body or any contractor or any subcontractor doing public works for the purpose of examining, inspecting, and copying any or all books, registers, payrolls, and other records as he or she may deem necessary or appropriate, and questioning employees, for the purpose of ascertaining compliance with the provisions of this subchapter and regulations issued thereunder.~~

~~(c) The director or his or her authorized representatives shall have authority to require from any contractor or subcontractor doing public works full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, occupations, and such other information pertaining to his or her employees as the director or his or her authorized representative may deem necessary or appropriate.~~

~~(d) The authorized representative of the department shall have the power to certify to official acts.~~

~~(e)(1) The director is authorized to institute legal action in the name of the State of Arkansas, without paying costs or giving bond for costs, to recover any wages which he or she determines to be due to employees or workers under this subchapter. No legal action shall be brought by the director until after notice and opportunity for hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and entry of a final administrative order. Following any appeals taken pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the director shall be entitled to enforce his or her final administrative order in any court of competent jurisdiction. The director's findings of fact shall be conclusive in any such proceeding.~~

~~(2) The director, if successful, shall be entitled to attorney's fees. Such sums shall be placed in the General Revenue Fund Account of the State Apportionment Fund.~~

~~(3) Nothing in this subsection shall be construed so as to relieve an unsuccessful defendant from paying costs.~~

~~(f) The director or his or her authorized representatives shall have the authority to:~~

~~(1) Investigate as to any violation of this subchapter and the regulations issued thereunder;~~

~~(2) Institute actions for the penalties prescribed in this subchapter;~~

~~(3) Institute legal action to recover any wages which he or she determines to be due to employees or workers under this subchapter;~~

~~(4) Seek injunctive relief; and~~

~~(5) Enforce generally the provisions of this subchapter and the regulations issued thereunder.~~

~~22-9-307. Rules and regulations.~~

~~The Department of Labor shall establish rules and regulations for the purpose of carrying out the provisions of this subchapter.~~

~~22-9-308. Ascertainment of minimum prevailing wage before awarding contract—Specification of wage rate—Contractor's bonds.~~

~~(a) Before any public body, excluding the Arkansas State Highway and Transportation Department, awards a contract or begins supervised construction for public works, it shall notify the Department of Labor to ascertain the prevailing hourly rate of wages in the county in which the work is to be performed, for each craft or type of worker needed to execute the contract or project.~~

~~(b)(1) The public body shall specify in the resolution or ordinance and in the call for bids for the contract that the minimum prevailing wage rates for each craft or type of worker and the prevailing wage rate for holiday and overtime work shall be paid.~~

~~(2) There shall be included in every specification for work coming under the provisions of this subchapter the minimum prevailing wage rates for each craft or type of worker as determined by the Department of Labor, and it shall be mandatory upon the public body, if it is supervised work, or upon the contractor to whom the contract is awarded and upon any subcontractor under him or her, to pay not less than the specified rates to all workers employed by them in the execution of the contract.~~

~~(c) The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the Department of Labor or determined by the court on appeal shall be paid to all workers performing work under the contract.~~

~~(d) The public body awarding the contract shall require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract.~~

~~22-9-309. Posting of wage scale—Withholding of payments.~~

~~(a) The scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.~~

~~(b) There may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer or agency to pay to laborers and mechanics employed by the contractor or subcontractor, if any, of the work, the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor, subcontractor, or their agents.~~

~~(c) Payment for the withholding required under subsection (b) of this section shall be made upon entry of a written final administrative order by the Department of Labor directing the public body or agency to release such funds to the department.~~

~~22-9-310. Records.~~

~~(a) The contractor and each subcontractor shall keep an accurate record showing the names, addresses, Social Security numbers, occupations or work classifications, and hours worked of all workers employed by them in connection with the public works, and showing the actual wages paid to each of the workers.~~

~~(b) These records shall be open at all reasonable hours to the inspection of the Department of Labor or the public body awarding the contract, its officers, and agents.~~

~~(c) The contractor and each subcontractor shall, within ten (10) days after receipt of a written request from the department, the public body awarding the contract, or both, forward a certified copy of these records to the person making the request.~~

~~22-9-311. Workers receiving less than stipulated rates.~~

~~(a) Any worker employed by a public body or by a contractor or~~

~~subcontractor who shall be paid for his or her services a sum less than the stipulated rates for work done under the contract shall have the right to file a complaint with the Department of Labor for whatever differences there may be between the amount so paid and the rates provided by the contract.~~

~~(b) After investigation by the Department of Labor, if the complaint is found to be just, it shall be prosecuted by the department without cost to the worker.~~

~~(c)(1) All claims shall be filed with the department not more than thirty (30) days after the certificate of substantial completion is submitted to the public body.~~

~~(2) If a claim is timely filed, a worker shall be entitled to recover any unpaid wages due over the life of the public works project, but in no event shall an action be brought more than three (3) years after the date the wages became due and owing.~~

~~(d) Nothing in this section shall be construed to limit or restrict the Director of the Department of Labor's authority to seek recovery of unpaid wages pursuant to § 22-9-306.~~

~~22-9-312. Termination of contractor upon failure to pay wage rate—
Void contracts.~~

~~(a) Every contract within the scope of this subchapter shall contain the provision that in the event it is found by the contracting officer or public body that any laborer or mechanic employed by the public body or by the contractor or subcontractor, if any, directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the public body concerned may, by written notice to the contractor, terminate the contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his or her sureties shall be liable to the public body concerned for any excess costs occasioned thereby.~~

~~(b) Any contract made and entered into within the scope of this subchapter in violation thereof shall be void.~~

~~22-9-313. Annual determination of wage rates—Procedure.~~

~~(a)(1) The Department of Labor shall investigate and determine the prevailing hourly rate of wages in the counties.~~

~~(2) Determinations shall be made annually on or about July 1 of each year and shall remain in effect until superseded by a new determination.~~

~~(3) In determining prevailing rates, the Department of Labor shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, wage determinations by the United States Department of Labor, and such rates as are paid generally within the locality.~~

~~(b) A certified copy of the determination shall be filed immediately in the Department of Labor in Little Rock, and copies shall be furnished to all persons requesting them.~~

~~(c)(1) At any time within thirty (30) days after the certified copies of the determinations have been filed with the Department of Labor, any person who may be affected thereby may object in writing to the determination, or such part thereof as he or she deems objectionable, by filing a written notice with the Department of Labor stating the specific grounds of the objection.~~

~~(2) Within thirty (30) days of the receipt of the objection, the Department of Labor shall set a date for a hearing on the objection, which date shall be within sixty (60) days of the receipt of the objection.~~

~~(3) Written notice of the time and place of the hearing shall be given to the objectors and any other interested party at least ten (10) days prior to the date set for the hearing.~~

~~(4) The Department of Labor, at its discretion, may hear each written objection separately or consolidate for hearing any two (2) or more written objections.~~

~~(d)(1) At the hearing, the Department of Labor shall introduce in evidence the investigation it instituted and other facts which were considered at the time of the original determination and which formed the basis for its determination.~~

~~(2) The Department of Labor, any objectors, or any other interested party may thereafter introduce any evidence material to the issues.~~

~~(e)(1) Within ten (10) days of the conclusion of the hearing, the Department of Labor must rule on the written objections and make such final~~

~~determination as it believes the evidence warrants.~~

~~(2) Immediately upon the final determination, the Department of Labor shall file a certified copy of its final determination with the Department of Labor and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.~~

~~(f)(1) The final decision by the Department of Labor concerning the prevailing wages in the county shall be subject to review by the circuit court of the county in which the determination is made, but only if suit is started within thirty (30) days by any person who is a party thereto.~~

~~(2) All proceedings in any court affecting a determination of the Department of Labor under the provisions of this subchapter shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.~~

~~(3) The review by the circuit court shall be on the record made before the Department of Labor, and the decision of the Department of Labor shall be sustained if supported by substantial evidence.~~

~~(4) The finding of the Department of Labor ascertaining and declaring the prevailing hourly rate of wages shall be final unless reviewed under the provisions of this section.~~

~~22-9-314. Certain contractors ineligible to bid on public works contracts—Quarterly lists.~~

~~(a)(1) Any contractor or subcontractor determined by the Department of Labor to have violated the provisions of this subchapter shall be ineligible to bid on or be awarded any public works contract or to perform any construction work in any manner for any public body for a period of two (2) years from the date of the final administrative determination.~~

~~(2) Any firm, partnership, corporation, or other entity in which such ineligible contractor is an officer, stockholder, or has a financial interest, or supervises or directs work shall be ineligible to bid on or be awarded any public works contract or perform any construction work in any manner for any public body for a period of two (2) years after the date of the determination.~~

~~(b) Notwithstanding the provisions of subsection (a) of this section, any contractor or subcontractor may complete any work in progress or contract awarded prior to the date of the contractor's or subcontractor's~~

ineligibility.

~~(c)(1) The department shall compile a quarterly list which shall include:~~

~~(A) The names of all contractors which, by a final administrative determination, have been found to be in noncompliance with the provisions of this subchapter after January 1, 1996, and within the previous two (2) years as of the date of such list; and~~

~~(B) The dates on which the latest violations of such contractors occurred.~~

~~(2)(A) Upon request, the department shall mail the quarterly list to any public body in this state which may award public works contracts.~~

~~(B) It shall be the duty of the public body to hold the contractor ineligible to bid on or to be awarded any public works contract or to perform any construction work in any manner for the public body pursuant to subsection (a) of this section.~~

~~(d) Any contractor or subcontractor who shall submit a bid, be awarded a contract, or begin performance of construction while ineligible pursuant to the provisions of this section may have its state contractor's license suspended for a period of time as set by the Contractors Licensing Board.~~

~~(e)(1) Any public works contract awarded to an ineligible contractor, or on which an ineligible subcontractor performs, may be declared in default by the public body.~~

~~(2)(A) Additionally, the public body may require the bonding company or the general contractor to furnish a replacement contractor at no additional cost to the public body.~~

~~(B) In such an event, the bonding company or general contractor shall be expeditious in maintaining the original schedule for completion of the contract, allowing no more than thirty (30) days to lapse between notice and furnishing a replacement contractor or subcontractor satisfactory to the public body.~~

~~(f) Nothing in this section shall be construed as a waiver of sovereign immunity or as creating a cause of action for money damages against any public body.~~

~~22-9-315. Confidentiality of payroll records.~~

~~All payroll records or wage records submitted to the Department of~~

~~Labor pursuant to the provisions of this subchapter for the purpose of determining prevailing wage rates or determining compliance with the provisions of this subchapter and the administrative regulations issued thereunder are confidential and shall not be disclosed to any unauthorized person or be taken, or withdrawn, copied, or removed, from the custody of the department or its employees.~~

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the present law regarding prevailing wages for public works projects places a substantial burden on Arkansas taxpayers; that repealing the prevailing wage law will require substantial work by state agencies in revising contracts and requests for proposals and in notifying potential contactors; and that this act is immediately necessary because the fiscal year ends on June 30, 2017, making it urgent that affected agencies have sufficient time to prepare for changes required under this act. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Hester

APPROVED: 04/06/2017