

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 548 OF 1995
SENATE BILL 482

4 **By: Senators Hopkins, Wilson, Gordon, Dowd, and Mahony**

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For An Act To Be Entitled

8 "AN ACT TO AMEND THE PREVAILING WAGE LAW, ARKANSAS CODE
9 22-9-301 ET. SEQ. TO REQUIRE PAYMENT OF PREVAILING WAGE
10 RATES IN THE COUNTY OR LOCALITY FOR PUBLIC WORKS
11 CONSTRUCTION; TO REPLACE CRIMINAL PENALTIES WITH CIVIL
12 MONEY PENALTIES; TO BROADEN THE ENFORCEMENT AUTHORITY OF
13 THE DIRECTOR OF LABOR; TO PROVIDE THAT VIOLATORS ARE
14 INELIGIBLE TO BID WORK ON PUBLIC WORKS CONSTRUCTION FOR
15 TWO (2) YEARS; TO PROVIDE FOR THE CONFIDENTIALITY OF WAGE
16 RECORDS SUBMITTED TO THE DEPARTMENT OF LABOR; AND FOR
17 OTHER PURPOSES."

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Subtitle

20 "AN ACT TO AMEND THE ARKANSAS PREVAILING
21 WAGE LAW, ARKANSAS CODE 22-9-301 ET
22 SEQ."

23

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

25

26 SECTION 1. Arkansas Code 22-9-301 is hereby amended to read as follows:

27 "22-9-301. Payment required. It is declared to be the policy of the
28 State of Arkansas that a wage of not less than the minimum
29 prevailing hourly rate of wages for work of a similar character in
30 the county or locality in which the work is performed and not less than the
31 prevailing hourly rate of wages for holiday and overtime work shall be paid to
32 all workmen employed by or on behalf of any public body engaged in the
33 construction of public works, exclusive of maintenance work."

34

35 SECTION 2. Arkansas Code 22-9-302 is hereby amended to add a new
36 subsection (9) to read as follows:

1 "(9) Locality means a specific county or a specific group of counties
2 in the same geographic area of the state as determined by administrative
3 regulation of the department."
4

5 SECTION 3. Arkansas Code 22-9-305 is hereby amended to read as follows:

6 "22-9-305. Penalties. (a) Any officer, agent, or representative of
7 any public body who knowingly violates, or omits to comply with, any of the
8 provisions of this subchapter, and any contractor or subcontractor, or agent
9 or representative thereof, doing public works who neglects to keep an accurate
10 record of the names, addresses, social security number, occupation or work
11 classification, hours worked and actual wages paid to each worker employed by
12 him in connection with the public works, or who refuses to allow access to the
13 records at any reasonable hour to any person authorized to inspect the records
14 under this subchapter, or who knowingly submits to the department false
15 payroll or wage information, shall be subject to a civil penalty of not less
16 than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00)
17 for each violation. Each day the violation continues shall with respect to
18 each employee constitute a separate offense. In no event shall the civil
19 penalty exceed ten percent (10%) of the contract or subcontract or ten percent
20 (10%) of any unpaid wages due employees under the provisions of this
21 subchapter, whichever sum is greater.

22 (b) Any workman who knowingly submits to the department a false claim
23 for unpaid wages under the provisions of this subchapter shall be subject to a
24 civil penalty of not less than fifty dollars (\$50.00) and not more than one
25 thousand dollars (\$1,000.00).

26 (c) The Director of the Department of Labor shall determine the amount
27 of any civil penalty due under this section. Such determination shall be
28 final, unless within fifteen (15) days after receipt of notice thereof, the
29 workman, contractor, subcontractor, or agent or representative thereof charged
30 with the violation notifies the Director of the Department of Labor in writing
31 that he contests the proposed penalty. Notice of a proposed penalty shall be
32 delivered by certified mail or by any other means authorized by law for
33 service of process. In the event a penalty is contested, a final
34 determination shall be made pursuant to the Arkansas Administrative Procedure
35 Act, § 25-15-201 et seq.

1 (d) The amount of such penalty when finally determined may be
2 recovered in a civil action brought by the Director of the Department of Labor
3 in a court of competent jurisdiction, without paying costs or giving bond for
4 costs.

5 (e) Sums collected under this section shall be paid into the general
6 fund of the State Treasury.

7 (f) Assessment of a civil penalty by the Director of the Department of
8 Labor shall be made no later than three (3) years from the date of the
9 occurrence of the violation.

10

11 SECTION 4. Arkansas Code 22-9-306 is hereby amended to read as follows:

12 "22-9-306. Powers of department.

13 (a) (1) The director or his authorized representatives shall have
14 authority to administer oaths, take, or cause to be taken, the depositions of
15 witnesses, and require by subpoena the attendance and testimony of witnesses
16 and the production of all books, records, and other evidence relative to any
17 matter under investigation or hearing.

18 (2) The subpoena shall be signed and issued by the department's
19 authorized representative.

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

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

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

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

9 (e) (1) The director is authorized to institute legal action in the name
10 of the State of Arkansas, without paying costs or giving bond for costs, to
11 recover any wages which he determines to
12 be due to employees or workmen under this subchapter.

13 (2) The director, if successful, shall be entitled to attorneys'
14 fees. Such sums shall be placed in the General Revenue Fund of the State.

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

17 (f) The director or his authorized representatives shall have the
18 authority to investigate as to any violation of this subchapter and the
19 regulations issued thereunder; to institute actions for the penalties
20 prescribed in this subchapter; to institute legal action to recover any wages
21 which he determines to be due to employees or workmen under this subchapter;
22 to seek injunctive relief; and to enforce generally the provisions of this
23 subchapter and the regulations issued thereunder."
24

25 SECTION 5. Arkansas Code 22-9-309 is hereby amended by adding a new
26 subsection (c) to read as follows.

27 "(c) Payment for the withholding required under subsection (b) shall be
28 made upon entry of a written final administrative order by the Arkansas
29 Department of Labor directing the public body or agency to release such funds
30 to the Arkansas Department of Labor.
31

32 SECTION 6. Arkansas Code 22-9-310 is hereby amended to read as follows:

33 "22-9-310. Records. (a) The contractor and each subcontractor shall
34 keep an accurate record showing the names, addresses,
35 social security numbers, occupations, or work classifications, and hours

1 worked of all workers employed by them, in connection with the public works,
2 and showing the actual wages paid to each of the workers.

3 (b) These records shall be open at all reasonable hours to the
4 inspection of the department or the public body awarding the contract, its
5 officers, and agents.

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

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11 SECTION 7. Arkansas Code 22-9-311 is hereby amended to read as follows:

12 "22-9-311. Workers receiving less than stipulated rates.

13 (a) Any worker employed by a public body or by a contractor or
14 subcontractor who shall be paid for his services a sum less than the
15 stipulated rates for work done under the contract shall have
16 the right to file a complaint with the department for whatever differences
17 there may be between the amount so paid and the rates provided by the
18 contract.

19 (b) After investigation by the department, if the complaint is found to
20 be just, it shall be prosecuted by the department without cost to the worker.

21 (c) All claims shall be filed with the department not more than thirty
22 (30) days after the certificate of substantial completion is submitted to the
23 public body. If a claim is timely filed, a worker shall be entitled to
24 recover any unpaid wages due over the life of the public works project, but in
25 no event shall an action be brought more than three (3) years after the date
26 the wages became due and owing.

27 (d) Nothing in this section shall be construed to limit or restrict the
28 director's authority to seek recovery of unpaid wages pursuant to 22-9-306."

29

30 SECTION 8. Subchapter 3 of Chapter 9 of Title 22 of the Arkansas Code
31 is hereby amended by adding a new section 22-9-314 to read as follows:

32 "22-9-314. Certain contractors ineligible to bid on public works
33 contracts - Quarterly lists. (a) Any contractor or subcontractor determined
34 by the department to have violated the provisions of this subchapter shall be
35 ineligible to bid on or be awarded any public works contract or to perform any

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

8 (b) Notwithstanding the provisions of subsection (a), any contractor or
9 subcontractor may complete any work in progress or contract awarded prior to
10 the date of the contractor or subcontractor's ineligibility.

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

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

17 (B) the dates on which the latest violations of such contractors
18 occurred.

19 (2) Upon request, the department shall mail such quarterly list to any
20 public body in this state which may award public works contracts. It shall be
21 the duty of the public body to hold such contractor ineligible to bid on or to
22 be awarded any public works contract or to perform any construction work in
23 any manner for the public body pursuant to subsection (a) of this section.

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

29 (e) Any public works contract awarded to an ineligible contractor or on
30 which an ineligible subcontractor performs, may be declared in default by the
31 public body. Additionally, the public body may require the bonding company or
32 the general contractor to furnish a replacement contractor at no additional
33 cost to the public body. In such an event, the bonding company or general
34 contractor shall be expeditious in maintaining the original schedule for
35 completion of the contract, allowing no more than thirty (30) days to lapse

1 between notice and furnishing a replacement contractor or subcontractor
2 satisfactory to the public body.

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

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7 SECTION 9. Subchapter 3 of Chapter 9 of Title 22 of the Arkansas Code
8 is hereby amended to add a new section 22-9-315 to read as follows:

9 "22-9-315. Confidentiality of payroll records. All payroll records or
10 wage records submitted to the department pursuant to the provisions of this
11 subchapter for the purpose of determining prevailing wage rates or determining
12 compliance with the provisions of this subchapter and the administrative
13 regulations issued thereunder are confidential and shall not be disclosed to
14 any unauthorized person, or be taken or withdrawn, copied, or removed from the
15 custody of the department or its employees."

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17 SECTION 10. All provisions of this act of general and permanent nature
18 are amendatory to the Arkansas Code 1987 Annotated and the Arkansas Code
19 Revision Commission shall incorporate the same in the Code.

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21 SECTION 11. If any provision of this act or the application thereof to
22 any person or circumstance is held invalid, such invalidity shall not affect
23 other provisions or applications of the act which can be given effect without
24 the invalid provisions or application, and to this end the provisions of this
25 act are declared to be severable.

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27 SECTION 12. All laws or parts of laws in conflict with this act are
28 hereby repealed.

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30 SECTION 13. Emergency. It has been found and determined by the General
31 Assembly of Arkansas that additional authority is needed by the Arkansas
32 Department of Labor to effectively enforce the prevailing wage law; that
33 effective enforcement of the law is necessary for the public health, safety,
34 and welfare; and that such additional authority should be effective on July 1,
35 1995, when the Department of Labor is required to determine prevailing wage

1 rates. Therefore, an emergency is declared to exist and this act shall take
2 effect on July 1, 1995.

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APPROVED: 3-8-95