

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

A Bill

SENATE BILL 482

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

5

6

7

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."

18

19

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
27 follows:

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

35

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

3 "(9) Locality means a specific county or a specific group of
4 counties in the same geographic area of the state as determined by
5 administrative regulation of the department."
6

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

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

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

29 (c) The Director of the Department of Labor shall determine the
30 amount of any civil penalty due under this section. Such determination shall
31 be final, unless within fifteen (15) days after receipt of notice thereof,
32 the workman, contractor, subcontractor, or agent or representative thereof
33 charged with the violation notifies the Director of the Department of Labor
34 in writing that he contests the proposed penalty. Notice of a proposed
35 penalty shall be delivered by certified mail or by any other means authorized

1 by law for service of process. In the event a penalty is contested, a final
2 determination shall be made pursuant to the Arkansas Administrative Procedure
3 Act, § 25-15-201 et seq.

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

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

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

13

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

16 "22-9-306. Powers of department.

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

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

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

32 (b) The director or his authorized representatives shall have
33 authority to enter and inspect any construction site, place of business, or
34 place of employment of any public body or any contractor or any subcontractor
35 doing public works for the purpose of examining, inspecting, and copying any

1 or all books, registers, payrolls, and other records as he may deem necessary
2 or appropriate and questioning employees for the purpose of ascertaining
3 compliance with the provisions of this subchapter and regulations issued
4 thereunder.

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

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

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

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

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

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

28

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

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

35

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

3 "22-9-310. Records. (a) The contractor and each subcontractor shall
4 keep an accurate record showing the names, addresses,
5 social security numbers, occupations, or work classifications, and hours
6 worked of all workers employed by them, in connection with the public works,
7 and showing the actual wages paid to each of the workers.

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

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

15

16 SECTION 7. Arkansas Code 22-9-311 is hereby amended to read as
17 follows: "22-9-311. Workers receiving less than stipulated rates.

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

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

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

33 (d) Nothing in this section shall be construed to limit or restrict
34 the director's authority to seek recovery of unpaid wages pursuant to 22-9-
35 306."

1

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

4 "22-9-314. Certain contractors ineligible to bid on public works
5 contracts - Quarterly lists. (a) Any contractor or subcontractor
6 determined by the department to have violated the provisions of this
7 subchapter shall be ineligible to bid on or be awarded any public works
8 contract or to perform any construction work in any manner for any public
9 body for a period of two (2)

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

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

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

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

25 (B) the dates on which the latest violations of such contractors
26 occurred.

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

33 (d) Any contractor or subcontractor who shall submit a bid, be awarded
34 a contract, or begin performance of construction while ineligible pursuant to
35 the provisions of this section, may have its State Contractors' license

1 suspended for a period of time as set by the State Contractors Licensing
2 Board.

3 (e) Any public works contract awarded to an ineligible contractor or
4 on which an ineligible subcontractor performs, may be declared in default by
5 the public body. Additionally, the public body may require the bonding
6 company or the general contractor to furnish a replacement contractor at no
7 additional cost to the public body. In such an event, the bonding company or
8 general contractor shall be expeditious in maintaining the original schedule
9 for completion of the contract, allowing no more than thirty (30) days to
10 lapse between notice and furnishing a replacement contractor or subcontractor
11 satisfactory to the public body.

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

15

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

18 "22-9-315. Confidentiality of payroll records. All payroll records or
19 wage records submitted to the department pursuant to the provisions of this
20 subchapter for the purpose of determining prevailing wage rates or
21 determining compliance with the provisions of this subchapter and the
22 administrative regulations issued thereunder are confidential and shall not
23 be disclosed to any unauthorized person, or be taken or withdrawn, copied, or
24 removed from the custody of the department or its employees."

25

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

29

30 SECTION 11. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provisions or application, and to this end the provisions of this
34 act are declared to be severable.

35

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

3

4 SECTION 13. Emergency. It has been found and determined by the
5 General Assembly of Arkansas that additional authority is needed by the
6 Arkansas Department of Labor to effectively enforce the prevailing wage law;
7 that effective enforcement of the law is necessary for the public health,
8 safety, and welfare; and that such additional authority should be effective
9 on July 1, 1995, when the Department of Labor is required to determine
10 prevailing wage rates. Therefore, an emergency is declared to exist and this
11 act shall take effect on July 1, 1995.

12

13

14

15