

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 1016

4
5 By: Representative Lendall
6
7

For An Act To Be Entitled

8
9 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE
10 TITLE 22 CHAPTER 9 SUBCHAPTER 3, CONCERNING THE
11 DETERMINATION OF THE PREVAILING WAGE FOR PURPOSES OF
12 PUBLIC WORKS; AND FOR OTHER PURPOSES."
13

Subtitle

14
15 "AN ACT TO AMEND VARIOUS SECTIONS OF
16 ARKANSAS CODE CONCERNING THE
17 DETERMINATION OF THE PREVAILING WAGE FOR
18 PURPOSES OF PUBLIC WORKS."
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas code 22-9-301 is amended to read as follows:

23 "22-9-301. Payment required.

24 It is declared to be the policy of the State of Arkansas that a wage of
25 not less than the minimum prevailing hourly rate of wages for work of a
26 similar character in the ~~county or locality~~ congressional district in which
27 the work is performed and not less than the prevailing hourly rate of wages
28 for holiday and overtime work shall be paid to all ~~workmen~~ workers employed by
29 or on behalf of any public body engaged in the construction of public works,
30 exclusive of maintenance work."
31

32 SECTION 2. Arkansas Code 22-9-302 is amended to read as follows:

33 "22-9-302. Definitions.

34 As used in this subchapter, unless the context otherwise requires:

35 (1) 'Construction' means construction, reconstruction,
36 improvement, enlargement, alteration, painting and decorating, or major

1 repair, where the cost of all labor and material exceeds seventy-five thousand
 2 dollars (\$75,000);

3 (2) 'Department' means the Arkansas Department of Labor;

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

7 (4) '~~County~~ Congressional District' means the ~~county~~ United
 8 States House of Representatives' district where the physical work upon the
 9 public works is performed;

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

13 (6) 'Public body' means the State of Arkansas or any officer,
 14 board, or commission of the state, any county, city, municipality or other
 15 political subdivision, or any of the agencies thereof;

16 (7) 'Public works' means all works constructed for public use,
 17 whether or not done under public supervision or direction or paid for wholly
 18 or in part out of public funds, but it does not include any work done for or
 19 by any drainage, improvement, or levee district;

20 (8) '~~Workmen~~ Workers' means laborers, ~~workmen~~ workers, and
 21 mechanics, but special rates for apprentices shall apply only when the
 22 apprentices are registered in a recognized management-labor apprenticeship
 23 training program; ~~and.~~

24 ~~(9) 'Locality' means a specific county or a specific group of counties in the~~
 25 ~~same geographic area of the state as determined by administrative regulation~~
 26 ~~of the department."~~

27
 28 SECTION 3. Arkansas Code 22-9-306 is amended to read as follows:

29 "22-9-306. Powers of department.

30 (a)(1) The director or his authorized representatives shall have
 31 authority to:

32 (A) Administer oaths;

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

35 (C) Require by subpoena the attendance and testimony of
 36 witnesses and the production of all books, records, and other evidence

1 relative to any matter under investigation or hearing.

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

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

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

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

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

28 (e)(1) The director is authorized to institute legal action in the name
29 of the State of Arkansas, without paying costs or giving bond for costs, to
30 recover any wages which he determines to be due to employees or ~~workmen~~
31 workers under this subchapter. No legal action shall be brought by the
32 director until after notice and opportunity for hearing pursuant to the
33 Arkansas Administrative Procedure Act (beginning at § 25-15-201 et seq.), and
34 entry of a final administrative order. Following any appeals taken pursuant to
35 the Administrative Procedure Act, the director shall be entitled to enforce
36 his final administrative order in any court of competent jurisdiction. The

1 director's findings of fact shall be conclusive in any such proceeding.

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

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

7 (f) The director or his authorized representatives shall have the
 8 authority to:

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

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

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

15 (4) Seek injunctive relief; and

16 (5) Enforce generally the provisions of this subchapter and the
 17 regulations issued thereunder."

18
 19 SECTION 4. Arkansas Code 22-9-308(a) is amended to read as follows:

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

26
 27 SECTION 5. Arkansas Code 22-9-313 is amended to read as follows:

28 "22-9-313. Annual determination of wage rates - Procedure.

29 (a)(1) The department shall investigate and determine the prevailing
 30 hourly rate of wages in the ~~counties~~ congressional districts.

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

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

1 congressional district.

2 (b) A certified copy of the determination shall be filed immediately in
 3 the department in Little Rock, and copies shall be furnished to all persons
 4 requesting them.

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

10 (2) Within thirty (30) days of the receipt of the objection, the
 11 department shall set a date for a hearing on the objection, which date shall
 12 be within sixty (60) days of the receipt of the objection.

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

16 (4) The department, at its discretion, may hear each written
 17 objection separately or consolidate for hearing any two (2) or more written
 18 objections.

19 (d)(1) At the hearing, the department shall introduce in evidence the
 20 investigation it instituted and other facts which were considered at the time
 21 of the original determination and which formed the basis for its
 22 determination.

23 (2) The department, any objectors, or any other interested party
 24 may thereafter introduce any evidence material to the issues.

25 (e)(1) Within ten (10) days of the conclusion of the hearing, the
 26 department must rule on the written objections and make such final
 27 determination as it believes the evidence warrants.

28 (2) Immediately upon the final determination, the department
 29 shall file a certified copy of its final determination with the department and
 30 shall serve a copy of the final determination on all parties to the
 31 proceedings by personal service or by registered mail.

32 (f)(1) The final decision by the department concerning the prevailing
 33 wages in the ~~county~~ congressional district shall be subject to review by the
 34 circuit court of the county in which the ~~determination is made~~ public work is
 35 performed, but only if suit is started within thirty (30) days by any person
 36 who is a party thereto.

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

5 (3) The review by the circuit court shall be on the record made
6 before the department, and the decision of the department shall be sustained
7 if supported by substantial evidence.

8 (4) The finding of the department ascertaining and declaring the
9 prevailing hourly rate of wages shall be final unless reviewed under the
10 provisions of this section.”

11
12 SECTION 6. All provisions of this Act of a general and permanent nature
13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
14 Revision Commission shall incorporate the same in the Code.

15
16 SECTION 7. If any provision of this Act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the Act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 Act are declared to be severable.

21
22 SECTION 8. All laws and parts of laws in conflict with this Act are
23 hereby repealed.