

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1125

BY: GATES

AS INTRODUCED

AN ACT RELATING TO LABOR; AMENDING 40 O.S. 1981, SECTION 196.2, AS AMENDED BY SECTION 1, CHAPTER 49, O.S.L. 1985 (40 O.S. SUPP. 1990, SECTION 196.2), WHICH RELATES TO PREVAILING WAGE LAW DEFINITIONS; DELETING SCHOOL DISTRICTS FROM CERTAIN DEFINITIONS; AMENDING 40 O.S. 1981, SECTION 196.6, AS AMENDED BY SECTION 6, CHAPTER 49, O.S.L. 1985 (40 O.S. SUPP. 1990, SECTION 196.6), WHICH RELATES TO DETERMINATION OF PREVAILING RATES; MODIFYING LIST OF STRUCTURE IN THE BUILDING CONSTRUCTION CATEGORY; AMENDING 40 O.S. 1981, SECTION 196.12, WHICH RELATES TO EXEMPTIONS FROM PREVAILING WAGE LAW; EXEMPTING SCHOOL DISTRICTS FROM ACT; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 1981, Section 196.2, as amended by Section 1, Chapter 49, O.S.L. 1985 (40 O.S. Supp. 1990, Section 196.2), is amended to read as follows:

Section 196.2 As used in this act, unless the context indicates otherwise:

1. "Construction" includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repairs;

2. "Commissioner" means the Commissioner of Labor;

3. "Prevailing hourly rate of wages" means the wages and fringe benefits determined to be prevailing by the United States Department of Labor pursuant to the provisions of the Federal Davis-Bacon Act, Sections 276a through 276a-5 of Title 40 of the United States Code;

4. "Locality" means the county where the physical work upon public works is performed;

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. "Public body" means the State of Oklahoma or any officer, board, commission or authority of the state, or other political subdivision, county, municipality, ~~school district,~~ or industrial trust or other entity issuing or causing the issuing of bonds where such bonds are to be used in whole or in part for construction and such bonds are supported by the faith and credit of the State of Oklahoma or any political subdivision or such bonds could become the obligation of the State of Oklahoma or other political subdivision;

7. "Public works" means all fixed works constructed for public use except works constructed by or for any public utility company ~~or,~~ any drainage or conservation district or any school district, whether or not done under public supervision or direction or paid for wholly or in part out of public funds;

8. "Workmen" means laborers, workmen, and mechanics;

9. "Apprentice" or "Trainee" means a workman in a craft or trade who is approved for participation in an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training of the United States Department of Labor;

10. "Board" means the Wage Appeals Board;

11. "Contractor" means all prime and general contractors, subcontractors, independent contractors and persons engaged in contract labor who through negotiations or competitive bidding enter into contracts to furnish labor, materials, or both and the required equipment to perform the contract for a fixed price and who in pursuit of independent business undertake a job in whole or in part retaining substantial control of the method and manner of accomplishing the desired result and who possesses current identification numbers issued to them by the Oklahoma Tax Commission, the Oklahoma Employment Security Commission, the Internal Revenue Service, and the Social Security Administration;

12. "Construction on a force account basis" means construction of public works performed by a public body, using permanent personnel on its own payroll without hiring any outside supervision or direction; and

13. "Kickback" means the payment of money or any other thing of value to any contractor, his representative or agent by any workman, his representative or agent as a refund of any part of the compensation to which such workman is entitled to pursuant to the provisions of this act.

SECTION 2. AMENDATORY 40 O.S. 1981, Section 196.6, as amended by Section 6, Chapter 49, O.S.L. 1985 (40 O.S. Supp. 1990, Section 196.6), is amended to read as follows:

Section 196.6 A. The prevailing hourly rate of wages for this state shall be those filed in the Federal Register as determined by the U.S. Department of Labor, pursuant to the Federal Davis-Bacon Act and amendments thereto. Provided, in the absence of a Federal Davis-Bacon rate being determined in a given locality by the United States Department of Labor or if the rate for a rural locality is one that is determined by using metropolitan rates, the Commissioner shall investigate and determine the prevailing hourly rate of wages in the locality. Provided further, the Department of Labor of this

state shall not adopt a rate for a rural locality that is determined by using metropolitan rates. The schedule of wages shall be divided into four construction categories: Building, residential, heavy and highway.

1. The construction of any of the following structures shall be in the building construction category: Alterations and additions to buildings; apartment buildings of at least five stories; arenas (enclosed); auditoriums; automobile parking garages; banks and financial buildings; barracks; churches; city halls; civic centers; commercial buildings; court houses; detention facilities; dormitories; farm buildings; fire stations; hospitals; hotels; industrial buildings; institutional buildings; libraries; mausoleums; motels; museums; nursing and convalescent facilities; office buildings; out-patient clinics; passenger and freight terminal buildings; police stations; post offices; power plants; prefabricated buildings; remodeling buildings; renovating buildings; restaurants; ~~schools~~; service stations; shopping centers; stores; subway stations; theatres; warehouses; water and sewage treatment plants (buildings only); stadiums; chemical complexes or facilities; oil refineries; coke ovens; parking lots (incidental to a building or commercial project); and tunnels.

2. The construction of any of the following structures shall be in the residential construction category: Town or row houses; apartment buildings of less than five stories; single family houses; mobile home developments; multifamily houses; and married student housing.

3. The construction of any of the following structures shall be in the heavy construction category: Antenna towers; bridges (bascule, suspension and spandrel arch bridges, bridges designed for commercial navigation, bridges involving marine construction and other major bridges); breakwaters; caissons (other than building or highway); canals; channels; channel cut-offs; cofferdams; dams;

dikes; docks; drainage projects; dredging projects; electrification projects (not incidental to building or commercial project); flood control projects; industrial incinerators (other than building); irrigation projects; jetties; kilns; land drainage (not incidental to other construction); land reclamation; levees; locks; pipelines; ponds; pumping stations (prefabricated drop-in units); railroad construction (not incidental to a building or commercial project); reservoirs; revetments; sewage collection and disposal lines; sewers (sanitary, storm, etc.); shoreline maintenance; ski tows; storage tanks; swimming pools (outdoor); subways (other than stations and buildings); tipples; unsheltered piers and wharves; viaducts (other than highway); watermains; waterway construction; water supply lines (not incidental to building); wells; and water and sewage treatment plants (other than buildings).

4. The construction of any of the following structures shall be in the highway construction category: Alleys; base courses; bituminous treatments; bridle paths; concrete pavement; curbs; excavation and embankment (for road construction); fencing (highway); grade crossing elimination (overpasses or underpasses); guard rails on highway; highway signs; highway bridges (overpasses, underpasses, grade separation); medians; parking lots (not incidental to a building or commercial project); parkways; resurfacing streets and highways; roadbeds; roadways; runways; shoulders; stabilizing courses; storm sewers (incidental to road construction); street paving; surface courses; taxiways; and trails. A certified copy of periodic prevailing hourly rate of wages determinations shall be filed with the Secretary of State and with the Department of Labor in Oklahoma City. Copies shall be supplied to all persons requesting them within ten (10) days after such filing.

B. At any time within thirty (30) days after the certified copies of the determinations have been filed with the Secretary of

State and the department, any person who may be affected thereby may object in writing to the determination or such part thereof as he deems objectionable by filing a written notice with the Board, stating the specific grounds of the objection. Within thirty (30) days of the receipt of the objection, the Board shall set a date for a hearing on the objection. The date for the hearing shall be within sixty (60) days of the receipt of the objection. Written notice of the time and place of the hearing shall be given to the objectors at least ten (10) days prior to the date set for the hearing.

C. The Board at its discretion may hear each written objection separately or consolidate for hearing any two or more written objections. At the hearing, the Commissioner shall introduce in evidence the investigation he instituted and such other facts which were considered at the time of the original determination which formed the basis for his determination. The Commissioner or any objectors thereafter may introduce such evidence as is material to the issues.

D. Within ten (10) days of the conclusion of the hearing, the Board must rule on the written objection and make such final determination as it believes the evidence warrants. Immediately upon such final determination, the Board shall file a certified copy of such final determination with the Secretary of State and in the records of 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.

E. The final decision of the Board of the determined prevailing wages shall be subject to review when a copy of such final determination is filed in the district court where the work concerned is to be done. Any person affected, whether or not such person participated in the proceedings resulting in such final determination, may have the decision of the Board reviewed, in

compliance with the provisions hereof. The filing of the final determination with the Secretary of State shall be considered a service of the final determination on persons not participating in the administrative proceeding resulting in such final determination. Any such appellant shall file in such court, in addition to the copy of final determination above required, a petition alleging that the determination was not within the Board's jurisdiction hereunder, or that such determination was not supported by substantial evidence, or both. The court may modify such determination, set it aside and remand the matter for new determination, or dismiss the appeal.

F. At any time before trial, any person affected by the final determination of the Board may intervene in the proceedings to review and be made a party to such proceedings.

G. Appeals from all final orders and judgments entered by a court in review of the final administrative decision of the Board may be taken directly to the Supreme Court. All proceedings in any court effecting a determination of the Board under the provisions of this act shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

SECTION 3. AMENDATORY 40 O.S. 1981, Section 196.12, is amended to read as follows:

Section 196.12 The provisions of this act shall not apply to:

1. the Department of Transportation of this state. ~~The provisions of this act shall not apply to;~~

2. the Oklahoma Turnpike Authority in the construction of roads; or

3. any school district of this state.

SECTION 4. This act shall become effective July 1, 1991.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-5514

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