

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND SECOND LEGISLATURE

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**Legislative Document**

**No. 980**

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H. P. 743

House of Representatives, February 4, 1965

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Dumont of Augusta.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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### **AN ACT to Provide for Fair Minimum Wages for Construction of Public Improvements.**

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Be it enacted by the People of the State of Maine, as follows :

**Sec. 1. R. S., T. 26, § 1303, amended.** The 3rd sentence of section 1303 of Title 26 of the Revised Statutes is amended to read as follows :

~~The wages for a day's work~~ **hourly wage rate** paid to laborers employed in the construction of public works, including state highways, shall be not less than the ~~prevailing fair minimum rate paid by the State for similar work done by the State Highway Commission~~ **as determined by the Commissioner of Labor and Industry.**

**Sec. 2. R. S., T. 26, §§ 1304-1313, additional.** Title 26 of the Revised Statutes is amended by adding 10 new sections, 1304 to 1313, to read as follows :

**§ 1304. Definitions**

The listed terms as used in sections 1304 to 1313 are defined as follows, unless a different meaning is plainly required by the context :

1. **Board.** "Board" means the Minimum Wage Rate Board as constituted in sections 1304 to 1313.

2. **Construction.** "Construction" means any construction, reconstruction, demolition, improvement, enlargement, painting, decorating or repair of any public improvement let to contract. The term "construction" shall not be construed to include engineering or architectural services, temporary or emergency repairs or any contract of less than \$5,000.

3. **Construction industry.** "Construction industry" means that industry which is composed of employees and employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures or works whether private or public on which construction work, as defined in subsection 2, is performed.

4. **Employee.** "Employee" shall not include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

5. **Locality.** "Locality" means the county where the construction is to be performed, except that if there is not available in the county a sufficient number of competent laborers, workmen and mechanics to perform such construction efficiently and properly, it may include one or more counties in this State adjacent to the one in which the construction is to be performed and from which such laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction. With respect to construction of public improvements with the State Highway Commission, "locality" may be construed to include one or more counties in this State adjacent to the one in which the construction or public improvement is to be performed and from which laborers, workmen and mechanics may be accessible for work on such construction on public improvements.

6. **Public authority.** "Public authority" means any officer, board or commission or other agency of the State of Maine, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported in whole or in part by public funds of the State of Maine or its political subdivisions, and sections 1304 to 1313 shall apply to expenditures of such institutions made in whole or in part from such public funds.

7. **Public improvement.** "Public improvement" includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports and all other structures upon which construction may be let to contract by the State of Maine or any political subdivision thereof and which contract amounts to \$5,000 or more.

#### § 1305. Policy declared

It is declared to be the policy of the State of Maine that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in this State in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements.

#### § 1306. Fair minimum rate of wages; determination

Any public authority authorized to let to contract the construction of a public improvement, the estimated cost of which is \$5,000 or more, shall, before advertising for bids for the construction thereof, ascertain from the Commissioner of Labor and Industry the fair minimum rate of wages, including fair minimum overtime and holiday pay, to be paid by the successful bidder to the laborers,

workmen or mechanics in the various branches or classes of the construction to be performed; and such schedule of wages shall be attached to and made a part of the specifications for the construction and shall be printed on the bidding blanks. The "fair minimum rate of wages," for the intent and purposes of sections 1304 to 1313, shall be the rate of wages paid in the locality in this State as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry. The Commissioner of Labor and Industry or a member of his department designated by him shall assemble the data as to fair minimum wage rates and shall file wage rates. Rates shall be established and filed, as hereinafter provided, on January first of each year. These rates shall prevail as the minimum wage rate on all public improvements on which bids are asked during the year beginning with the date when such new rates are filed and until the new rates are filed, the rates for the preceding year shall remain in effect; provided that such rates shall not remain in effect for a period longer than 15 months from the date they are published. This provision shall not affect the construction of a public improvement then underway and as to the fair minimum wage rates established by the Commissioner of Labor and Industry, included and made a part of any contract, such rates shall remain unchanged during the time the contract is in effect.

§ 1307. Minimum Wage Rate Board; appointment; duties; secretary

A Minimum Wage Rate Board to consist of 5 members shall be appointed by the Governor with the advice and consent of the Council to serve at the will and pleasure of the Governor. The Governor, in making his appointments, shall name one representative from the State Highway Commission, one from organized labor in the building and construction trades, one from the highway and heavy contractors, one from the building contractors and one from a municipality in this State. The term of each member shall be for a period of 4 years.

The members of the board shall serve without compensation.

The Minimum Wage Rate Board shall annually elect a chairman from its membership and shall sit at the call of the chairman to hear and decide appeals arising from determinations of the Commissioner of Labor and Industry as to fair minimum wages. The Minimum Wage Rate Board shall be empowered to establish rules for the conduct of its proceedings.

The Commissioner of Labor and Industry shall designate an employee of the Department of Labor and Industry to be the permanent secretary to the Minimum Wage Rate Board who shall maintain a record of all proceedings of the board. The commissioner is empowered to employ, subject to the Personnel Law, any clerical or other employees necessary to carry out the functions of the board.

§ 1308. Prevailing wages established at regular intervals; how determined; hearings on objections; judicial review

1. Determination of wage rates. The Department of Labor and Industry, from time to time, shall investigate and determine the prevailing hourly rate of wages in the localities in this State.

In determining such prevailing rates, the Department of Labor and Industry may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality in this State where the construction of the public improvement is to be performed.

2. Certified copies. A copy of the determination so made, certified by the Commissioner of Labor and Industry shall be filed immediately with the Secretary of State. Copies shall be supplied to all persons requesting same within 10 days after such filing.

3. Appeal. Any person affected by the determination of the Commissioner of Labor and Industry, whether or not such person participated in the proceedings resulting in such determination, may appeal to the Minimum Wage Rate Board from such determination by filing a written notice with the board stating the specific grounds of his objection within 10 days from the filing of the copy of the determination with the Secretary of State. The board shall hear the appeal within 20 days from the receipt of notice of appeal. The hearing by the board shall be held in Augusta. The board shall have the authority to affirm, reverse or amend the determination of the Commissioner of Labor and Industry. The board shall render its decision within 10 days after the conclusion of its hearing.

4. Appeal to courts. Any party to the proceeding before the board or any person affected thereby may within 30 days after receipt of the notice of its decision, appeal the board's decision to the Superior Court of the county wherever the construction of a public improvement is to be performed, which shall consider the case on the record made before the Commissioner of Labor and Industry and before the board. The decision of the Superior Court may be appealed to the Supreme Judicial Court by any party to the proceedings or by any person affected thereby in the manner provided by law for appeals in civil actions.

5. Rates pending appeal. The rates for the preceding year shall remain in effect, pending the appeal of a determination of the Commissioner of Labor and Industry.

#### § 1309. Contract to contain provisions relative to rate of wages to be paid

In all cases where a fair minimum rate or rates of wages has been established as herein provided, and construction of a public improvement is let to contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages as provided in sections 1304 to to 1313.

#### § 1310. Wage rates to be kept posted

A clearly legible statement of all fair minimum wage rates to be paid the several classes of laborers, workmen and mechanics employed on the construction on the public improvement shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor subject to sections 1304 to 1313.

§ 1311. Wage record of contractor

The contractor and each subcontractor in charge of the construction of a public improvement shall keep an accurate record showing the names and occupation of all laborers, workmen and mechanics employed by them, in connection with the construction on the public improvement and showing also the actual wages paid to each of the laborers, workmen and mechanics, which record shall be open at all reasonable hours to the inspection of the Department of Labor and Industry and the public authority which let the contract, its officers and agents. It shall not be necessary to preserve such record for a period longer than 3 years after the termination of the contract.

§ 1312. Penalties for violation

1. Violation by contractor or subcontractor. Any contractor or subcontractor who willfully and knowingly violates sections 1304 to 1313 shall be punished by a fine of not less than \$50 nor more than \$250.

2. Employees' remedies. Any laborer, workman or mechanic who is engaged in construction on a public improvement let to contract, who is paid less than the posted fair minimum rate of wages applicable thereto, may recover from such contractor or subcontractor the difference between the same and the posted fair minimum rate of wages, and in addition thereto, a penalty equal in amount to such difference, and reasonable attorney's fees. The venue of said action shall be in the county where the work is performed; provided that an honest mistake or error shall not be construed as a basis for recovery of the penalty sums and reasonable attorney fees under this subsection.

3. Unfair agreements. No person shall request, demand or receive money or other thing of value from an employee whose wage rate is determined by sections 1304 to 1313 upon the statement, representation or understanding that failure to comply with such request or demand will prevent the employee from procuring or retaining employment. No person shall aid, directly or indirectly, assist or abet another to violate the above prohibition. Any person violating the prohibitions of this subsection shall be fined not less than \$50 nor more than \$250.

§ 1313. Existing contracts

Sections 1304 to 1313 shall apply only to contracts for construction on public improvements let after the effective date of this Act, and to construction on public improvements for which there has been determined the fair minimum wage rates as provided in sections 1304 to 1313, and such determination has not been appealed from as may be provided by sections 1304 to 1313.'

Sec. 3. Appropriation. There is appropriated from the General Fund the sum of \$8,382.50 for the fiscal year ending June 30, 1966 and the sum of \$9,951 for the fiscal year ending June 30, 1967 to carry out the purposes of this Act. The breakdown shall be as follows:

|                                 | 1965-66    | 1966-67 |
|---------------------------------|------------|---------|
| LABOR & INDUSTRY, DEPARTMENT OF |            |         |
| Personal Services               | \$5,657.50 | \$7,151 |
| All Other                       | 2,150.00   | 2,800   |
| Capital Expenditures            | 575.00     | —       |
|                                 | <hr/>      | <hr/>   |
|                                 | \$8,382.50 | \$9,951 |