

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1446

S. P. 548

In Senate, March 8, 1967

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

JERROLD B. SPEERS, Secretary

Presented by Senator Good of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Relating to Fair Minimum Wages for Construction of Public Improvements by State of Maine.

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

R. S., T. 26, §§ 1304-1313, repealed and replaced. Sections 1304 to 1313 of Title 26 of the Revised Statutes, as enacted by section 2 of chapter 406 of the public laws of 1965, are repealed and the following enacted in place thereof:

§ 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 Advisory Minimum Wage Rate on Construction Projects 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 works 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 \$7,500.

3. **Construction industry.** "Construction industry" means that industry which is composed of employees and employers engaged in construction, demolition, repair or moving 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. Fair minimum wage. "Fair Minimum Wage" shall be the prevailing wage as determined by the Commissioner of Labor and Industry according to section 1306.

6. Locality. "Locality" means where the construction is to be performed and the adjacent areas from which labor would be recruited for work on the project.

7. Public authority. "Public authority" means any officer, board or commission or other agency of the State of Maine, authorized by law to enter into contracts for the construction of public works, supported in whole or in part by public funds of the State of Maine, and sections 1304 to 1313 shall apply to expenditures made in whole or in part from such public funds.

8. Public works. "Public works" includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, water-works, airports and all other structures upon which construction may be let to contract by the State of Maine and which contract amounts to \$7,500 or more.

9. Prevailing wage. "Prevailing wage" shall be the hourly wage paid to the median number of workers employed in a trade or occupation on the 3rd and 4th week in August.

§ 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 this State shall be paid to all workmen employed in the construction of public works.

§ 1306. Fair minimum rate of wages; determination

The public authority shall, before advertising for bids for a public contract, ascertain from the Commissioner of Labor and Industry the fair minimum rate of wages to be paid by the successful bidder to the laborers, workmen or mechanics employed in the performance of the contract. A schedule of minimum wages shall be attached to and made a part of the specifications for the construction and shall be included in the bidding documents. The "fair minimum rate of wages," for the intent and purposes of section 1304 to 1313, shall be the prevailing wages paid in the locality in like construction. The Commissioner of Labor and Industry or a delegated member of that department shall assemble the data as to wages paid by contractors employing 5 or more construction workers in the State during the 3rd or 4th week of August of each year. From these data, the fair minimum wage for the following calendar year shall be determined by the Commissioner of Labor and Industry. No minimum wage shall be established for any trade or occupation if less than 10 workers are employed in such trade or occupation in the State in the 3rd or 4th week of August.

The minimum wage shall be established and filed as requested by the public authority within 30 days after such request is received by the Commissioner of Labor and Industry. No minimum wage shall be determined until January 1, 1968 and shall not apply to the construction of public works then underway. When fair minimum wage rates are included and made a part of any contract, such rate shall remain unchanged during the time the contract is in effect.

§ 1307. Advisory Minimum Wage Rate on Construction Projects Board; appointment; duties

An Advisory Minimum Wage Rate on Construction Projects 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 from organized labor engaged in the building trades, one from organized labor engaged in the highway and heavy construction trades, one from the highway and heavy contractors, one from the building contractors and one public member. The term of each member shall be for a period of 4 years.

The members of the board shall serve without compensation.

The board shall annually elect a chairman from its membership. The board shall advise the Commissioner of Labor and Industry on problems and their solutions in the matters covered by sections 1304 to 1313.

The Commissioner of Labor and Industry shall designate an employee of the Department of Labor and Industry to be the permanent secretary to the Advisory Minimum Wage Rate on Construction Projects Board who shall maintain a record of all proceedings of the board.

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

1. Determination of wage rates. The Department of Labor and Industry shall investigate and determine the prevailing hourly rate paid in the construction industry in this State during the 3rd or 4th week of August of each year. 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 in the locality where the construction of the public works is to be performed.

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

3. Appeal. When any appeal is made to the courts under authority of section 7, the minimum wage rate or rates upon which the appeal is made will be suspended and any bidding documents may exclude such minimum wage rates for that particular trade or occupation.

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

In all cases where a fair minimum wage has been established, the contract 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 wage.

§ 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 work 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 work shall keep an accurate record showing the names and occupation of each and all laborers, workmen and mechanics employed by them in connection with the construction on the public works showing the hours worked, the title of the job, the hourly rate and the actual wages paid to each of the laborers, workmen and mechanics. A copy of such record shall be kept at the job site and 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 records 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 engaged in construction of public works 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 such action shall be in the county where the work is performed. 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 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 punished by a fine of not less than \$50 nor more than \$250.

§ 1313. Existing contracts

Sections 1304 to 1313 shall apply only to contracts for construction on public works let after January 1, 1968, and to construction on public works 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 provided by section 7.

§ 1314. Exceptions

Whenever a public works construction is built in whole or in part by federal funds and is under the jurisdiction of the Davis-Bacon or other Federal Act which requires the Secretary of Labor to establish the minimum wage and such minimum wages are established by him, sections 1304 to 1313 shall not apply.