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Prevailing Wage Act for State Highway Construction Projects
Tenn. Code Ann. §§12-4-401 through 12-4-415
Effective on January 1, 2014

12-4-401. Short title.

This part shall be known and may be cited as the "Prevailing Wage Act for State Highway Construction Projects."

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-435; Acts 2013, ch. 280, § 1.

12-4-402. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commission" means the prevailing wage commission;

(2) "Highway contractor" means any contractor, subcontractor, person, firm or corporation engaged in a state construction project for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges;

(3) "Prevailing wage" means the rate of pay as determined according to this part;

(4) "State contract" means any contractual agreement, written or oral, entered into by any person, firm or corporation with this state for the performance of work on a state highway construction project; and

(5) "State highway construction project" means any construction project for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-436; Acts 2013, ch. 280, § 2.

12-4-403. Establishment and payment of prevailing wage.

(a) It is hereby declared to be the policy of this state that the prevailing wage rate be determined by defined standards and that such rate be paid workers on all state highway construction projects.

(b) Any highway contractor entering into a state contract for the performance of work on state highway construction projects shall pay not less than the prevailing wage rate for all types and classifications of such work as determined by this part.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-437; Acts 2013, ch. 280, §§ 3, 4.

12-4-404. Prevailing wage commission.

(a) There shall be a prevailing wage commission composed of five (5) members, including the commissioner of labor and workforce development, who shall serve as chair, the state architect, and the commissioner of transportation or the commissioner's designee. Two (2) members shall be appointed by the governor who shall serve terms of two (2) years.

(b) The commission has the duty of determining the prevailing wage rate for state

highway construction.

(c) All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

HISTORY: Acts 1975, ch. 368, § 1; 1976, ch. 806, § 1(54); T.C.A., § 12-438; Acts 1983, ch. 218, § 1; 1990, ch. 658, § 1; 1999, ch. 520, § 33; 2013, ch. 280, § 5.

12-4-405. Determination of prevailing wage.

For purposes of this part, the prevailing wage rate shall be determined as follows:

(1) Every highway contractor, as herein defined, in the state of Tennessee, shall have the right to certify, on contracts entered into, to the commission, on or before October 31 in each year that a determination is to be made, the following:

(A) Copies of payroll records for the immediate preceding calendar quarter by area as defined in subdivision (2); and

(B) The numbers of hours worked and the straight time rate per hour paid for such hours in each of the classifications referred to in this part by area as defined in subdivision (2) for the immediate preceding calendar quarter;

(2) (A) [Deleted by 2013 amendment, effective January 1, 2014.]

(B) For purposes of calculating the prevailing wage rate for workers employed by highway contractors, the state shall be deemed to consist of one (1) statewide area;

(3) (A) [Deleted by 2013 amendment, effective January 1, 2014.]

(B) For purposes of determining the prevailing wage rate for workers employed by highway contractors, the commission may issue classifications of crafts of workers including, but not limited to, the following: bricklayers; iron workers, structural; iron workers, reinforcing; carpenters or leadspersons; cement masons; nozzlepersons or gunpersons (gunite); painters or sandblasters; shovel operators; backhoe operators; crane operators; end loaders; pile driver operators; motor patrols, finish; concrete paver operators; mechanics, Class I; mechanics, Class II; motor patrols (rough); bulldozer or push dozer operators; scraper operators; trenching machine operators; central mixing (asphalt or concrete); tractors, booms and hoists; concrete finishing machines; soil cement machines; asphalt pavers; rollers, high type; spreaders, self propelled; distributors, bituminous; roller, other than finish; tractor, crawler, utility; dozers or loaders, stock piles only; concrete mixers, less than one (1) yard; mulchers or seeders; earth drills; scale operators; tractors, farm; curb machines; ditch pavers; pump operators; concrete saws; guardrail erectors; sign erectors; motor crane drivers; fence erectors; firefighters; asphalt rakers; tract drill operators; concrete edgers; powder persons; form setters, steel rods; air tool operators; mortar mixers; chain saws; pipe layers; concrete rubbers; laborers; flaggers; oilers; welder's helpers; mechanic's helpers; electricians; truck drivers, two (2) and three (3) axles; truck drivers, four (4) and five (5) axles or more or heavy duty off-the-road trucks; welders, receive rate for craft performing operation to which welding is incidental;

(4) The prevailing wage rate for each area specified in subdivisions (2)(A) and (B) shall be determined by calculating the average hourly rate of pay for each classification referred

to in subdivisions (3)(A) and (B). The commission shall determine the prevailing wage annually for highway construction from the documentation certified to the commission pursuant to subdivision (1). The commission, if it ascertains that current economic conditions warrant, can adjust the final wage determination as developed by the documentation certified to the commission by adding to or subtracting from the determination a percentage factor of not more than six percent (6%), based on the previous year's prevailing wage rates. Such determination shall be effective until the next determination of the prevailing wage rate pursuant to the terms hereof, unless herein otherwise specifically provided. The prevailing wage rate must be determined pursuant to this part and the failure of any highway contractor or contractors to provide the documentation referred to in subdivision (1) shall not affect such determination;

(5) (A) The commission shall determine the prevailing wage rate pursuant to the terms of this part and give notice thereof on or before December 1 of each year a determination is to be made. The commission shall give notice of such prevailing wage rate to all highway contractors who submitted documentation in accordance with subdivision (1) and to any others making written request for such notice. Such notice shall include the time and place of the public hearing required by § 12-4-406. The commission shall take all reasonable steps to verify the survey results submitted to it by highway contractors pursuant to this part, and may, at any time, after first holding a public hearing thereon, adjust wage rates so that they reflect only survey data which has been verified by the commission;

(B) The prevailing wage commission is urged to continue its efforts to develop an Internet application for the submission of survey forms by highway contractors and periodically update the general assembly on the progress of such development; and

(6) Until such time as the commission makes a prevailing wage rate determination pursuant to this part, the prevailing wage rate in effect on April 23, 1975, shall be considered to be the prevailing wage rate.

HISTORY: Acts 1975, ch. 368, §§ 1, 3; 1978, ch. 696, §§ 1-3; T.C.A., § 12-439; Acts 1983, ch. 218, § 2; 1991, ch. 36, § 1; 2004, ch. 538, § 1; 2013, ch. 280, §§ 4, 6, 8-10.

12-4-406. Review of prevailing wage determination.

(a) The commission shall conduct a public hearing within ten (10) days of the notice required in § 12-4-405. At such public hearing, the commission shall present the documentation provided for in this part other than payroll records, and any other facts upon which the prevailing wage determination was made. Any interested party may present any other facts or documentation material to the determination of the prevailing wage rate at such hearing. Within ten (10) days after such public hearing, the commission shall give notice of its final determination on such prevailing wage rate to all highway contractors who submitted documentation in accordance with this part and to any others making written request for such notice.

(b) Judicial review of such final determination of the prevailing wage rate shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-440; Acts 2013, ch. 280, § 6.

12-4-407. Rates set out in specifications.

Before advertising for bids or entering into any contract for a state highway construction

project, every state agency under whose jurisdiction such work is to be performed shall ascertain from the commission prevailing wage rates for all classifications as herein provided in the areas where the work is to be performed. This schedule of wages shall be attached to and made a part of the specifications for the work, and shall be printed on the bidding blanks and made a part of every contract for the construction of any state highway construction project.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-441; Acts 2013, ch. 280, § 7.

12-4-408. Wage rates promulgated -- Contract provision required.

After the prevailing wage determination has been made by the commission, the same shall be furnished to all state agencies which may be charged with the responsibility of entering into any state contract, and shall specify what wage rates shall be paid on all classifications of work that may be used by such person, highway contractors, firm or corporation in carrying out such contractual agreement. In all cases where the commission has established a prevailing rate of wages, the contract executed between any state agency and the successful bidder or highway contractors shall contain a provision requiring the successful bidder and all of the successful bidder's subcontractors to pay the rate of wages so established. The successful bidder or highway contractors and all subcontractors shall strictly comply with these provisions of the contract.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-442; Acts 2013, ch. 280, § 4.]

12-4-409. Bond for compliance.

In all cases where any state agency awards a contract for any state highway construction project under this part, the bond of the highway contractor or subcontractor shall contain a provision obligating such highway contractor or subcontractor to a faithful performance of each and every requirement imposed upon such highway contractor or subcontractor under the terms of this part.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-443; Acts 2013, ch. 280, §§ 7, 11.

12-4-410. Posting of wage rates.

Each highway contractor and subcontractor subject to this part shall post and keep posted in a conspicuous place at the site of the construction work a copy of the prevailing wage rates prescribed in the state contract.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-444; Acts 2013, ch. 280, § 13.

12-4-411. Payroll records of contractors.

(a) Any person, highway contractor, firm or corporation who may enter into any state contract shall furnish to the state agency entering into such contractual agreement any necessary forms, papers, payroll copies or any other information that may be required of any such person, highway contractor, firm or corporation by the state agency to show compliance with this part.

(b) Payroll records shall not be destroyed for one (1) year following the completion of the state highway construction project.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-445; Acts 2013, ch. 280, §§ 4, 7.

12-4-412. Breach of contract provisions -- Actions against contractors -- Advertising and reletting contract.

The commission or any employee of any highway contractor or subcontractor whose wages are determined pursuant to this part may maintain an action against any highway contractor or subcontractor for the breach of any condition of any performance bond given under this part, and, in case of breach of any provision of such bond, the particular state agency which awarded the contract may advertise the work and relet the contract in the same manner as the original letting.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-446; Acts 2013, ch. 280, § 11.

12-4-413. Delegation of administrative responsibilities.

The commission may delegate administrative responsibilities conferred hereunder to the department of labor and workforce development.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-447; Acts 1999, ch. 520, § 33.

12-4-414. Inspection of records.

All records and documentation provided for in this part, other than payroll records, shall be made available for public inspection by the commission and the department of labor and workforce development during normal business hours.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-448; Acts 1999, ch. 520, § 33.

12-4-415. Rules and regulations.

The commission may promulgate such rules and regulations, neither inconsistent nor contradictory with this part, which it deems necessary to effectuate this part.

HISTORY: Acts 1975, ch. 368, § 1; T.C.A., § 12-449.