

1973 Assembly Bill 265

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CHAPTER 181, Laws of 1973

AN ACT to repeal 66.293 (4); to amend 66.293 (2) and (3); and to create 66.293 (3) (e) to (m) of the statutes, relating to wage rates in municipal public works projects.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.293 (2) and (3) of the statutes are amended to read:

66.293 (2) Whenever any city, town, village or county, school board, school district, sewer district, drainage district, commission, public or quasi-public corporation or any governmental unit, by ordinance, resolution, rule or bylaw, establishes a rate of wage scale to be paid to employes upon any highway, street or bridge construction by a contractor and it is found upon due proof that the contractor is not paying or has failed to pay the wage scale established or is directly or indirectly, by a system of rebates or otherwise, violating the ordinance, rule, resolution or bylaw of the city, town, village or county, school board, school district, sewer district, drainage district, commission, public or quasi-public corporation or any governmental unit, the contractor may be fined not to exceed \$500 for each offense. The failure to pay the required wage to an employe for any one week or part thereof constitutes a separate offense.

(3) Every municipality, before making a contract by direct negotiation or soliciting bids on a contract, for any project of public works except highway, street or bridge construction, shall apply to the department of industry, labor and human relations to ascertain the prevailing wage rate, hours of labor and hourly basic pay rates in all trades and occupations required in the work contemplated. The department ~~of industry, labor and human relations~~ shall determine the prevailing wage rate, hours of labor and hourly basic pay rates for each trade or occupation pursuant to s. 103.49, ~~shall~~ make its determination within 30 days after receiving the request and ~~shall~~ file

the same with the municipality applying therefor. Reference to such prevailing wage rates and hours of labor determined by the department or a municipality exempted under par. (d) shall be published in the notice issued for the purpose of securing bids for the project. Whenever any contract for a project of public works except highway, street or bridge construction is entered into, the wage rate rates and hours determined by the department or exempted municipality shall be incorporated into and made a part of the contract. ~~All employes working on the project shall be paid by the contractor in accordance with the wage rate incorporated in the contract. Such wage rate shall not be altered during the time that the contract is in force. No laborer, workman or mechanic employed directly upon the site of the project by the contractor or by a subcontractor, agent or other person, doing or contracting to do any part of the work, may be paid less than the prevailing wage rate in the same or most similar trade or occupation; nor may he be permitted to work a greater number of hours per day or per calendar week than the prevailing hours of labor determined under this subsection, unless he is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times his hourly basic rate of pay.~~

(a) Any contractor, subcontractor or agent thereof, who fails to pay the prevailing rate of wages determined by the department ~~of industry, labor and human relations~~ under this ~~section~~ subsection or pays less than 1-1/2 times the hourly basic rate of pay for hours worked on the project in excess of the prevailing hours determined under this subsection, shall be liable to the employes affected in the amount of their unpaid minimum wages or their unpaid overtime compensation and an additional equal amount as liquidated damages. Action to recover the liability may be maintained in any court of competent jurisdiction by any one or more employes for and in behalf of himself and other employes similarly situated. No employe shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and the consent is filed in the court in which the action is brought. The court shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee and costs to be paid by the defendant.

(b) In this subsection, "municipality" means any city, town, village or county, vocational, technical and adult education district, common school district, union high school district, unified school district, county-city hospital established under s. 66.47, sewerage commission organized under s. 144.07 (4), metropolitan sewerage district organized under ss. 66.20 to 66.26, public or quasi-public corporation, or any other unit of government, or any agency or instrumentality of 2 or more units of government in this state.

(c) This subsection ~~shall~~ does not apply to any highway, street or bridge construction or to any public works project for which the estimated project cost of completion is below ~~\$2,500~~ \$3,500 where a single trade is involved and ~~\$25,000~~ \$35,000 where more than one trade is involved on such project (after hearing these dollar amounts shall be adjusted by the department every 2 years, the first adjustment to be made not sooner than January 1, 1976. The adjustments shall be in proportion to any changes in construction costs since the effective date of the dollar amounts established under this subsection immediately prior to each adjustment); nor does this subsection apply to wage rates and hours of employment of laborers, workmen or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products, except that this subsection does apply to laborers, workmen or mechanics

delivering mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(d) The department of industry, labor and human relations, upon petition of any municipality, shall issue an order exempting the municipality from applying to the department for a determination under this subsection when it is shown that an ordinance or other enactment of the municipality sets forth the standards, policy, procedure and practice ~~that results~~ resulting in standards as high or higher than those under s. 103.49.

SECTION 2. 66.293 (3) (e) to (m) of the statutes are created to read:

66.293 (3) (e) Each contractor, subcontractor or agent thereof participating in a project covered by this subsection shall keep full and accurate records clearly indicating the name and trade or occupation of every laborer, workman or mechanic employed by him in connection with the project and an accurate record of the number of hours worked by each employe and the actual wages paid therefor.

(f) For the information of the employes working on the project, the wage rates and hours determined by the department or exempted municipality and the provisions of pars. (a) and (e) shall be kept posted by the employer in at least one conspicuous and easily accessible place at the site of the project.

(g) Each agent or subcontractor shall furnish the contractor with evidence of compliance with this subsection.

(h) Upon completion of the project and prior to final payment therefor, each contractor shall file with the municipality an affidavit stating that he has complied fully with the provisions and requirements of this subsection and that he has received evidence of compliance from each of his agents and subcontractors. No municipality may authorize final payment until such an affidavit is filed in proper form and order.

(i) The department of industry, labor and human relations or the contracting municipality may demand and examine copies of any payrolls and other records and information relating to the wages paid laborers, workmen or mechanics on work to which this subsection applies. The department may inspect records in the manner provided in ch. 101. Every contractor, subcontractor or agent is subject to the requirements of ch. 101 relating to examination of records.

(j) When the department of industry, labor and human relations finds that a municipality has not requested a prevailing wage rate determination or has not incorporated a prevailing wage rate determination into the contract as required under this subsection, the department shall notify the municipality of such noncompliance and shall file the prevailing wage rate determination with the municipality within 30 days after such notice.

(k) The provisions of s. 101.02 (5) (f), (12), (13) and (14) apply to this subsection.

(m) Upon the request of any person the department shall inspect the payroll records of the contractors, subcontractors or agents to ensure compliance with this section. The cost of this inspection shall be paid by the person making the request.

SECTION 3. 66.293 (4) of the statutes is repealed.
