

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2731

By: Toure

AS INTRODUCED

An Act relating to labor; enacting the Oklahoma Prevailing Wage Act; providing short title; stating public policy; defining terms; specifying application of the Oklahoma Prevailing Wage Act; defining term; requiring the payment of prevailing hourly rate of wages under certain conditions; authorizing certain enforcement powers; requiring promulgation of certain rules; referring violations of certain tax laws to certain authorities; requiring certain compliance by public bodies and contractors, and procedures related thereto; specifying certain liability; requiring certain notice of violations; authorizing the retention of certain payments; providing for an annual determination of wage rates, and procedures related thereto; mandating that certain findings of the Commissioner of Labor be final; stating that the act will not be construed as limiting wages paid or hours worked; authorizing oaths, depositions, subpoena powers and other powers of the Commissioner; requiring the court to compel certain obedience to such orders; authorizing a representative of the Commissioner to certify certain acts; requiring the keeping of certain

records and providing procedures related thereto; specifying such records; requiring the providing of certain copies of such records under certain conditions; authorizing certain investigations and audits, and procedures related thereto; providing for certain liability; authorizing certain waivers; declaring certain contractors ineligible to bid on public works contracts; requiring the Commissioner to compile certain list; specifying contents of such list; authorizing certain rights of action by workers; providing for certain attorney's fees and court costs; authorizing employment of certain registered apprentices and trainees; prohibiting certain acts; providing certain remedies; providing penalties; authorizing cease and desist orders; specifying enforcement of such orders; providing exemptions to the act; prohibiting kickbacks; providing penalties; authorizing contract provisions requiring percentage of certain workers to be residents of certain localities; authorizing stipulation of public body to apply act when not so required by law; repealing 40 O.S. 1991, Sections 196.1, 196.2, 196.2a, 196.3, 196.4, 196.5, 196.5b, 196.6, 196.7, 196.8, 196.9, 196.9a, 196.10, 196.10a, 196.11, 196.11a, 196.12, 196.13 and 196.14, which relate to prevailing wage; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.20 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Prevailing Wage Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.21 of Title 40, unless there is created a duplication in numbering, reads as follows:

It is hereby declared to be the policy of the State of Oklahoma that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed shall be paid to all workers employed by or on behalf of any public body engaged in public works exclusive of maintenance work.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.22 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Prevailing Wage 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 Section 9 of this act;

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 issuance of bonds when such bonds are to be used in whole or in part for construction and are supported by the faith and credit of the State of Oklahoma or any political subdivision or 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, whether or not done under public supervision or direction or paid for wholly or in part out of public funds;

8. "Worker" means laborers, workers, and mechanics;

9. "Apprentice" or "trainee" means a worker 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:

- a. 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,
- b. 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
- c. 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 or her representative or agent by any worker, his or her representative or agent as a refund of any part of the compensation to which such worker is entitled to pursuant to the provisions of the Oklahoma Prevailing Wage Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.23 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Prevailing Wage Act shall apply only where the total cost of the project to be performed by contractors in connection with construction of any public work is Six Hundred Thousand Dollars (\$600,000.00) or more.

B. No project involving sums in excess of Six Hundred Thousand Dollars (\$600,000.00) shall be split into partial contracts involving sums of less than Six Hundred Thousand Dollars (\$600,000.00) for the purpose of avoiding the provisions of this section. All such partial contracts involving less than Six Hundred Thousand Dollars (\$600,000.00) shall be void.

C. For purposes of this section, "project" means all work, materials, contracts, subcontracts or other things of value required to prepare the permanent facility of a public work for its intended use, including the erection, construction or improvement of any structure or building. "Project" shall not include land acquisition costs, architects' fees, engineering fees, planning and research costs or cost of furnishings not part of the permanent facility.

D. Additions to existing facilities shall be deemed to be separate projects if:

1. The existing facility has been in use for at least one (1) year; and

2. At least one (1) year has elapsed from the completion of the existing facility, or the most recent addition thereto, and the advertisement for bids for the contract or contracts for the addition.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.24 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Not less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed, and not less than the prevailing hourly rate of wages for legal holiday and overtime work, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work. Only such workers as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job shall be deemed to be employed upon public works.

B. When the hauling of materials or equipment includes some phase of construction other than the mere transportation to the site of the construction, workers engaged in this dual capacity shall be deemed employed directly on public works.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.25 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall investigate diligently as to any violations of the Oklahoma Prevailing Wage Act, shall institute actions for penalties prescribed in the Oklahoma Prevailing Wage Act, collect wages workers are entitled to, and generally enforce the provisions of the Oklahoma Prevailing Wage Act requiring or prohibiting any act or practice.

B. The Commissioner may promulgate rules for the purpose of carrying out the provisions of the Oklahoma Prevailing Wage Act, in conformity with the standards prescribed in the Oklahoma Prevailing Wage Act.

C. The Commissioner shall refer evidence to the Oklahoma Tax Commission, the Oklahoma Employment Security Commission, the Internal Revenue Service, the Social Security Administration, the Attorney General, and the appropriate district attorney of violations of the provisions of Sections 1701 through 1707 of Title 68 of the Oklahoma Statutes discovered during investigation by the Commissioner authorized by the provisions of the Oklahoma Prevailing Wage Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.26 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Before any public body awards a contract for public works, it shall notify the Commissioner to ascertain the prevailing hourly rate of wages in the locality in which the work is to be performed, for each craft or type of workers needed to execute the contract or project. The public body shall specify in the resolution or ordinance, and in the call for bids for the contract, what the prevailing hourly rate of wages in the locality is for each craft or type of workers needed to execute the contract, also the general prevailing rate for legal holiday and overtime work. It shall be mandatory upon the contractor to whom the contract is awarded, and upon any contractor under such contractor, to pay not less than the specified rates to all workers employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the Department or determined on review or on appeal to the district court, shall be paid to all workers performing work under the

contract. It shall also require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. The public body awarding the contract shall insert in the contract stipulations to effectuate the provisions of the Oklahoma Prevailing Wage Act, and provide that the responsibility of compliance is the obligation of the prime contractor. Provided, however, that once a contract has been advertised for bids, and a prevailing wage determined, such prevailing wage shall not be altered, until such time as the contract expires. Provided further, the contracting entity who awards a contract that is subject to the Oklahoma Prevailing Wage Act shall within ten (10) days forward a copy of the award to the Commissioner.

B. Any public body which violates the provisions of this section shall be liable to pay to workers the difference between the amount of wages actually paid to workers and the amount of wages workers are actually entitled to pursuant to the provisions of the Oklahoma Prevailing Wage Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.27 of Title 40, unless there is created a duplication in numbering, reads as follows:

It shall be the duty of the public body awarding the contract to take notice of all violations of the provisions of the Oklahoma Prevailing Wage Act committed in the course of the execution of the contract and when payments to the contractor become due pursuant to the provisions of the contract. The public body shall withhold and retain all sums and amounts due and owing as a result of any such violation. When the remaining funds are insufficient to cover such sums and amounts due, the Department shall determine whether the contractor is engaged in the construction of any other public works and shall notify the proper public body to withhold and cause to be

withheld such additional funds as may be necessary to complete payment of any sums and amounts.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.28 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. 1. The Commissioner shall investigate and determine the prevailing hourly rate of wages in the counties.

2. Determinations shall be made annually on or about July 1 of each year and shall remain in effect until superseded by a new determination.

3. In determining prevailing rates, the Commission shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, wage determinations by the United States Department of Labor, and such rates as are paid generally within the locality.

B. A certified copy of the determination shall be filed immediately with the Department and copies shall be furnished to all persons requesting them.

C. 1. At any time within thirty (30) days after the certified copies of the determinations have been filed with the Department, any person who may be affected by such determinations may object in writing to the determination, or such part by such determinations as he or she deems objectionable, by filing a written notice with the Commissioner stating the specific grounds of the objection.

2. Within thirty (30) days of the receipt of the objection, the Commissioner shall set a date for a hearing on the objection which date shall be within sixty (60) days of the receipt of the objection.

3. Written notice of the time and place of the hearing shall be given to the objectors and any other interested party at least ten (10) days prior to the date set for the hearing.

4. The Commissioner, at his or her discretion, may hear each written objection separately or consolidate for hearing any two or more written objections.

D. 1. At the hearing, the Commissioner shall introduce in evidence the investigation it instituted and other facts which were considered at the time of the original determination and which formed the basis for its determination.

2. The Commissioner, any objectors, or any other interested party may thereafter introduce any evidence material to the issues.

E. 1. Within ten (10) days of the conclusion of the hearing, the Commissioner shall rule on the written objections and make such final determination as the Commissioner believes the evidence warrants.

2. Immediately upon the final determination, the Commissioner shall file a certified copy of its final determination with the Department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

F. 1. The final decision by the Commissioner concerning the prevailing wages in the county shall be subject to review by the district court of the county in which the determination is made, but only if suit is commenced within thirty (30) days by any person who is a party thereto.

2. All proceedings in any court affecting a determination of the Commissioner under the provisions of this section shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

3. The review by the district court shall be on the record made before the Commissioner, and the decision of the Commissioner shall be sustained if supported by substantial evidence.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.29 of Title 40, unless there is created a duplication in numbering, reads as follows:

The findings of the Commissioner ascertaining and declaring the prevailing hourly rate of wages shall be final for the locality unless reviewed under the provisions of the Oklahoma Prevailing Wage Act. Nothing herein shall be construed to prohibit the payment to any workers employed on any public work of more than the prevailing hourly rate of wages. Nothing herein shall be construed to limit the hours of work which may be performed by any worker in any particular period of time.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.30 of Title 40, unless there is created a duplication in numbering, reads as follows:

The authorized representative of the Commissioner may administer oaths, take or cause to be taken the depositions of witnesses and require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation or hearing. The subpoena shall be signed and issued by the Commissioner's authorized representative. In case of failure of any person to comply with any subpoena lawfully issued pursuant to this section, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of any district court, or the judge thereof, upon application of the Commissioner's authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by such court or refusal to testify therein. The authorized representative of the Commissioner shall have the power to certify the official acts.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.31 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The contractor or the officer of the public body in charge of the project shall keep an accurate record of each worker showing his or her name, address, social security number, work classification, hourly wage paid, total paid and overtime hourly wage paid and total paid and the occupation of each worker employed by them, in connection with the public work, and showing also the actual wages paid to each worker, which record shall be certified and shall be open at all reasonable hours to the inspection of the Department or public body awarding the contract, its officers and agents at the principal office of the contractor.

B. Each contractor, within ten (10) days after receipt of a written request from the Commissioner, the public body who awarded the contract, or both, shall forward a certified copy of the records to the person making the request. A worker shall receive, upon written request to a contractor or the Commissioner, a certified copy of the record of said worker.

C. If the Commissioner, after investigation and audit of payroll records, finds that workers were paid less than the prevailing hourly rate of wages provided by the contract, the Commissioner shall send written notice to the contractor and the awarding entity of the noncompliance. Said written notice of noncompliance shall specify in detail all violations disclosed during such investigation and audit. The contractor shall have ten (10) days after receipt of the written notice of noncompliance in which to comply or to object to said findings by submitting a written request for an administrative hearing before the Commissioner. An objection to the finding shall be submitted in writing at the same time said hearing request is submitted and the objection shall contain specific, detailed and sufficient grounds

for such objection. The Commissioner shall make the final determination as to the merits of any objection. Upon conclusion of said hearing and determination by the Commissioner that the contractor is in noncompliance, the contractor shall be liable to pay any worker the amount of wages due or the difference between the amount of wages actually paid and the amount of wages actually entitled to, as the case may be, in addition to interest accrued on such amount at an annual rate of twenty percent (20%). The contractor shall also be liable for the sum of One Hundred Dollars (\$100.00) for each day such contractor fails to comply with such order issued pursuant to the provisions of Section 17 of this act.

D. Upon final determination of noncompliance of a contractor with the provisions of the Oklahoma Prevailing Wage Act, the Commissioner may, to recover the cost of such audit, hold such contractor liable for an additional amount equal to ten percent (10%) of the amount of deficiencies found as the result of said audit. The Commissioner shall waive such amount if the amount of deficiencies is satisfied within ten (10) days after such contractor has been notified by certified mail of the findings of the Commissioner. All monies recovered pursuant to the provisions of this subsection shall be placed in the General Revenue Fund of this state.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.32 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any contractor convicted of violating the provisions of the Oklahoma Prevailing Wage Act, Sections 1701 through 1707 of Title 68 of the Oklahoma Statutes or determined by the Commissioner to have violated the provisions of the Oklahoma Prevailing Wage Act, shall be ineligible to bid on or be awarded any public works contract or to perform any construction work in any manner for any public body for a period of two (2) years from the date of such conviction or

determination. Any firm, partnership, corporation or other entity in which such ineligible contractor is an officer, stockholder or has a financial interest or supervises or directs work shall be ineligible to bid on or be awarded any public works contract or perform any construction work in any manner for any public body for a period of two (2) years from the date of such conviction or determination.

B. A contractor shall not be eligible to bid on a public works project unless the contractor has submitted valid payroll information to the Wage and Hour Division of the Employment Standards Administration of the United States Department of Labor and to the Department. The information required to be submitted pursuant to the provisions of this subsection shall be the same as that information solicited by the United States Department of Labor pursuant to the Federal Davis-Bacon Act. All bids submitted on a public works project by a contractor shall include an affidavit from the contractor that the contractor is in compliance with the provisions of this subsection.

C. The Commissioner shall compile a monthly list which shall include:

1. The names of all contractors which the Commissioner has found to be in noncompliance with the provisions of the Oklahoma Prevailing Wage Act within the previous two (2) years as of the date of such list;

2. The names of all contractors which the Commissioner has found to have failed to submit said payroll information as set forth in subsection B of this section within the previous two (2) years as of the date of such list;

3. The dates on which the latest violations of such contractors occurred; and

4. The names of all persons who have been convicted of violating the provisions of Section 19 of this act.

Upon request, the Commissioner shall mail such monthly list to any public body in this state which may award public works contracts. It shall be the duty of the public body to hold such contractor ineligible to bid on or to be awarded any public works contract for said period of time required in subsection A of this section and to hold such person ineligible to perform any construction work in any manner for any public body pursuant to subsection B of Section 19 of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.33 of Title 40, unless there is created a duplication in numbering, reads as follows:

Any worker employed by the contractor or by any subcontractor under the contractor who shall be paid for his or her services in a sum less than the stipulated rates for work done under the contract shall have a right of action for whatever difference there may be between the amount so paid and the rates provided by the contract and an action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages. The prevailing party in any such action shall be entitled to reasonable attorney's fee and court costs.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.34 of Title 40, unless there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Prevailing Wage Act shall prevent the employment of registered apprentices or trainees as defined in Section 3 of this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.35 of Title 40, unless there is created a duplication in numbering, reads as follows:

Any officer, agent or representative of any public body who knowingly violates or omits to comply with any of the provisions of

Sections 1 through 18 of this act, any contractor, or agent or representative thereof, doing public work who neglects to keep an accurate record of the names, occupation, and actual wages paid to each worker employed by him or her, in connection with the public work pursuant to the provisions of Section 12 of this act, or who refuses to allow access to same at any reasonable hour to any person authorized pursuant to the provisions of Section 12 of this act to inspect same, and any contractor, or agent or representative thereof, doing public work who refuses to allow access to any public works project to the Commissioner or his or her duly authorized representative authorized pursuant to the provisions of Section 6 of this act to investigate violations of the provisions of the Oklahoma Prevailing Wage Act, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not to exceed six (6) months, or by both such fine and imprisonment. In addition, such person shall be subject to a cease and desist order of the Commissioner, court injunction or mandamus, and any other remedy of law provided by Sections 1 through 18 of this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.36 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. In addition to other powers confirmed by the Oklahoma Prevailing Wage Act, the Commissioner shall have power to order any person, firm, corporation, corporate officers, trustees, or any managing official of any municipal corporation, state agency or political subdivision to cease violating any provision of the Oklahoma Prevailing Wage Act, or lawful rule issued pursuant to the Oklahoma Prevailing Wage Act. A certified copy of such order shall be mailed to the person so violating the provisions of the Oklahoma Prevailing Wage Act.

B. Any order issued by the Commissioner may be enforced in the district court in any action for an injunction or writ of mandamus upon the petition of the district attorney or Attorney General. Provided, further, an injunction, without bond, may be granted by the district court to the Commissioner, for the purpose of enforcing the Oklahoma Prevailing Wage Act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.37 of Title 40, unless there is created a duplication in numbering, reads as follows:

The provisions of the Oklahoma Prevailing Wage Act shall not apply to:

1. The Department of Transportation; or
2. The Oklahoma Turnpike Authority in the construction of roads.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.38 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly makes or receives, directly or indirectly, a kickback, upon conviction, shall be guilty of a felony and shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00) or double the amount of the kickback or by imprisonment in the State Penitentiary for a period not to exceed five (5) years, or by both such fine and imprisonment.

B. Any person who is convicted of violating the provisions of subsection A of this section shall be ineligible to perform any construction work in any manner for any public body.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 196.39 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of paragraph 4 of Section 3 of this act, a public body may write into a contract provisions requiring a certain percentage of laborers and mechanics in each

craft, or a total percent of all workers employed on the public works project be residents of a school district, or municipality, or county commissioner district as the case may be, without a resolution or ordinance.

B. Notwithstanding Section 4 of this act, a public body may stipulate in a contract that prevailing wages shall be applicable on a public works project.

SECTION 21. REPEALER 40 O.S. 1991, Sections 196.1, 196.2, 196.2a, 196.3, 196.4, 196.5, 196.5b, 196.6, 196.7, 196.8, 196.9, 196.9a, 196.10, 196.10a, 196.11, 196.11a, 196.12, 196.13 and 196.14, are hereby repealed.

SECTION 22. This act shall become effective November 1, 1996.

45-2-8724 MCD