



State of Tennessee

PUBLIC CHAPTER NO. 68

SENATE BILL NO. 330

By Johnson

Substituted for: House Bill No. 226

By Doss

AN ACT to amend Tennessee Code Annotated, Title 12, Chapter 4, relative to certain wage requirements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-4-402, is amended by deleting subdivisions (2) and (5) and substituting instead:

(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 public highway;

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

SECTION 2. Tennessee Code Annotated, Section 12-4-402, is further amended by adding the following new, appropriately designated subdivision:

() "Public highway" means any street, road, highway, expressway, bridge, or viaduct, including an adjacent right-of-way, that is constructed or maintained by the state, or any municipality or political subdivision of the state, and that is funded in whole or in part with federal or state highway funds;

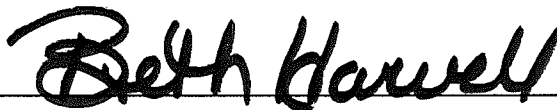
SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 330

PASSED: March 23, 2015



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6th day of April 2015



BILL HASLAM, GOVERNOR

January 1, 2014 Prevailing Wage Bulletin

- It has been confirmed that Labor Standards (LS) will no longer have the authority to inspect or regulate state building projects effective January 1, 2014. Under the old law a “state contract” was defined as “any contractual agreement, written or oral, entered into by any person, firm or corporation with the state of Tennessee for the performance of work on a state construction project”. Under the new law “state contract” means any contractual agreement, written or oral, entered into by any person, firm or corporation with the state of Tennessee for the performance of work on a state highway construction project. TCA 12-4-411 requires person, firms or corporations “who may enter into any state contract” shall provide to the state agency payroll records or any other information that may be required by the state agency to show compliance with the provisions of this part. Therefore, under the new law LS does not have the authority to require a state building construction contractor to provide payroll records or other information to show compliance. Also, under the old law TCA 12-4-412 authorize the PW Commission or any affected employee to bring a civil action against any contractor or subcontractor for a violation of the PW law. Under the new law the PW Commission only has the authority to bring an action if there is non-compliance on a state highway project. New statutory language TCA 12-4-906(c) permits “any interested party” to bring an action in Davidson Chancery court for violation of this new section pertaining to state building projects. Since the PW Commission will no longer have the authority beginning January 1st to set the wage rates or to require the production of payroll records or other information to confirm compliance then the PW Commission (and by default LS) is no longer an “interested party”. Therefore, LS will no longer be required to inspect or regulate state building construction projects beginning January 1, 2014.
- If a contract for a state building project is entered prior January 1, 2014, prevailing wage rates apply and inspection and regulation is necessary. See Agency Rule 0800-3-2.07 to determine what we are required to inspect and regulate. The prevailing wage rates apply throughout the duration of the contact. The contract date not the advertisement date dictates.
- If a contract for a state building project is entered on January 1, 2014 or thereafter, the prevailing wage rates do not apply. However, if any of the other laws we regulate apply (i.e. wage regulation, child labor, illegal alien), then we will pursue.
- These changes do not apply to contracts for state roads, highways, and bridges. See Agency Rule 0800-3-2.07 to determine what our agency is required to inspect and regulate on state highway projects. Current rules are being modified to reflect the new changes.
- If an employee has a wage dispute on or after January 1, 2014 (as to non-highway/bridges or horizontal construction projects), his/her recourse is to file a claim in the Davidson County Chancery Court. The employer is not bound by rates set by the Prevailing Wage Commission or the Labor Market Information Section (LMI) of the Tennessee Department of Labor and Workforce Development (as to non-

highway/bridges or horizontal construction projects). This policy applies to contracts entered into on or after January 1, 2014.

- **For the law as it relates to state-funded highways, bridges and roads projects, refer to Public Chapter No. 280.**

Public Chapter No. 280 11 7 13.pdf

<http://www.tn.gov/labor-wfd/regscompl/forms/PublicChapter280.pdf>

Prevailing Wage Act for State Highway Construction Projects - Effective Date January 1, 2014.pdf

<http://www.tn.gov/labor-wfd/regscompl/forms/PrevailingWageAct2014.pdf>

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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.



State of Tennessee

PUBLIC CHAPTER NO. 280

SENATE BILL NO. 1209

By Johnson; Mr. Speaker Ramsey; Kelsey

Substituted for: House Bill No. 850

By Marsh, McCormick, Hawk, Doss, Casada, Durham, Ryan Williams, Carter, Hall, Holt

AN ACT to amend Tennessee Code Annotated, Title 4; Title 7; Title 12; Title 41; Title 50; Title 58 and Title 62, relative to certain wage requirements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-4-401, is amended by deleting the section and substituting instead the following:

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

SECTION 2. Tennessee Code Annotated, Section 12-4-402, is amended by deleting the section and substituting instead the following:

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.

SECTION 3. Tennessee Code Annotated, Section 12-4-403, is amended by deleting the language "state construction projects" wherever it may appear and substituting instead "state highway construction projects".

SECTION 4. Tennessee Code Annotated, Sections 12-4-403, 12-4-405(1), 12-4-408 and 12-4-411(a), are amended by deleting the language "contractor" wherever it may appear and substituting instead "highway contractor".

SECTION 5. Tennessee Code Annotated, Section 12-4-404(b), is amended by deleting the language "state construction" and substituting instead the language "state highway construction".

SECTION 6. Tennessee Code Annotated, Sections 12-4-405(5) and 12-4-406(a), are amended by deleting the language "contractors" wherever it may appear and substituting instead "highway contractors".

SECTION 7. Tennessee Code Annotated, Sections 12-4-407, 12-4-409 and 12-4-411(b) are amended by deleting the language "state construction project" wherever it may appear and substituting instead "state highway construction project".

SECTION 8. Tennessee Code Annotated, Section 12-4-405(2)(A), is amended by deleting the subdivision and redesignating existing subdivisions accordingly.

SECTION 9. Tennessee Code Annotated, Section 12-4-405(3)(A), is amended by deleting the subdivision and redesignating existing subdivisions accordingly.

SECTION 10. Tennessee Code Annotated, Section 12-4-405(4), is amended by deleting the language "and biennially for building construction", and further amended by adding the word "highway" immediately before the language "contractor or contractors".

SECTION 11. Tennessee Code Annotated, Sections 12-4-409 and 12-4-412, are amended by deleting the language "contractor or subcontractor" wherever it may appear and substituting instead the language "highway contractor or subcontractor".

SECTION 12. Tennessee Code Annotated, Section 12-4-903(3)(C)(i), is amended by deleting the subdivision and substituting instead the following:

(i) Wages that exceed:

(a) The state's most current prevailing wage scale established pursuant to part 4 of this chapter if the agreement involves a state highway construction project, as defined by § 12-4-402; or

(b) The Tennessee Occupational Wages Report, as defined by § 12-4-907, if the agreement involves a construction project other than a project described in subdivision (3)(C)(i)(a); or

SECTION 13. Tennessee Code Annotated, Section 12-4-410, is amended by deleting the language "contractor and subcontractor" wherever it may appear and substituting instead the language "highway contractor and subcontractor".

SECTION 14. Tennessee Code Annotated, Title 12, Chapter 4, Part 9, is amended by adding the following new sections thereto:

12-4-906.

If compliance with this part by the state and its political subdivisions, agencies and instrumentalities, relative to a specific contract, project, or program would result in the denial of federal funds that would otherwise be available to the state and its political subdivisions, agencies and instrumentalities, then the state or its political subdivisions, agencies or instrumentalities may require a private employer to pay its employees a wage necessary to meet the federal requirements to obtain the federal funds, but only relative to such contract, project or program.

12-4-907.

For purposes of this part, Tennessee Occupational Wages Report means the applicable report that is published by the department of labor and workforce development, employment security division.

SECTION 15. Tennessee Code Annotated, Section 41-6-204, is amended by deleting the language "prescribed by the Prevailing Wage Act of 1975, compiled in title 12, chapter 4, part 4" and substituting instead the language "the mean wage for the applicable occupation under the "construction and extraction occupations" published in the Tennessee Occupational Wages Report, as defined in § 12-4-907".

SECTION 16. Tennessee Code Annotated, Section 7-4-205(a), is amended by deleting the language:

the prevailing wage rate for all types and classifications of work for contractors entering into a state contract pursuant to the Prevailing Wage Act of 1975, compiled in title 12, chapter 4, part 4

and substituting instead the language:

the mean wage for the applicable occupation under the "construction and extraction occupations" published in the Tennessee Occupational Wages Report, as defined in § 12-4-907

SECTION 17. Tennessee Code Annotated, Section 7-4-205(b), is amended by deleting the language:

an average of the prevailing wage rate for all types and classifications of work for contractors entering into a state contract pursuant to the Prevailing Wage Act of 1975, compiled in title 12, chapter 4, part 4

and substituting instead the language:

the mean wage for the applicable occupation under the "construction and extraction occupations" published in the Tennessee Occupational Wages Report, as defined in § 12-4-907

SECTION 18. This act shall take effect January 1, 2014, the public welfare requiring it, and shall apply to contracts entered into or renewed on or after that date.

SENATE BILL NO. 1209

PASSED: April 11, 2013



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 25th day of April 2013



BILL HASLAM, GOVERNOR