

SENATE BILL No. 247

March 9, 1989, Introduced by Senators DILLINGHAM, POSTHUMUS, CRUCE and GAST and referred to the Committee on Human Resources and Senior Citizens.

A bill to amend the title and sections 1, 2, 3, 4, and 5 of Act No. 166 of the Public Acts of 1965, entitled

"An act to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; and to prescribe penalties,"

being sections 408.551, 408.552, 408.553, 408.554, and 408.555 of the Michigan Compiled Laws; and to add sections 4a and 4b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 2, 3, 4, and 5 of Act
2 No. 166 of the Public Acts of 1965, being sections 408.551,
3 408.552, 408.553, 408.554, and 408.555 of the Michigan Compiled
4 Laws, are amended and sections 4a and 4b are added to read as
5 follows:

TITLE

1

2 An act to require prevailing wages and fringe benefits on
3 state projects; to establish the requirements and responsibili-
4 ties of contracting agents and bidders; TO PRESCRIBE THE POWERS
5 AND DUTIES OF THE DEPARTMENT OF LABOR; TO PROVIDE FOR AN APPEALS
6 PROCESS FROM THE DETERMINATION OF PREVAILING WAGES AND FRINGE
7 BENEFITS; and to prescribe penalties.

8 Sec. 1. As used in this act:

9 (a) "Construction mechanic" means a skilled or unskilled
10 mechanic, laborer, worker, helper, assistant, or apprentice work-
11 ing on a state project but shall not include executive, adminis-
12 trative, professional, office, or custodial employees.

13 (b) "State project" means new construction, alteration,
14 repair, installation, painting, decorating, completion, demoli-
15 tion, conditioning, reconditioning, or improvement of public
16 buildings, schools, works, bridges, highways, or roads authorized
17 by a contracting agent.

18 (c) "Contracting agent" means any officer, school board,
19 board or commission of the state, or a state institution sup-
20 ported in whole or in part by state funds, authorized to enter
21 into a contract for a state project or to perform a state project
22 by the direct employment of labor.

23 (d) ~~"Commissioner"~~ "DEPARTMENT" means the department of
24 labor.

25 (e) "Locality" means the county, city, village, township, or
26 school district in which the physical work on a state project is
27 to be performed.

1 (F) "BOARD" MEANS THE WAGE APPEALS BOARD CREATED IN SECTION
2 4A.

3 Sec. 2. Every contract executed between a contracting agent
4 and a successful bidder as contractor and entered into pursuant
5 to advertisement and invitation to bid for a state project which
6 requires or involves the employment of construction mechanics,
7 other than those subject to the jurisdiction of the state civil
8 service commission, and which is sponsored or financed in whole
9 or in part by the state shall contain an express term that the
10 rates of wages and fringe benefits to be paid to each class of
11 mechanics by the bidder and all of his OR HER subcontractors,
12 shall be not less than the wage and fringe benefit rates prevail-
13 ing in the locality in which the work is to be performed.

14 Contracts on state projects which contain provisions requiring
15 the payment of prevailing wages as determined by the United
16 States secretary of labor pursuant to the federal Davis-Bacon act
17 (United States code, title 40, section 276a et seq) or which con-
18 tain minimum wage schedules which are the same as prevailing
19 wages in the locality as determined by collective bargaining
20 agreements or understandings between bona fide organizations of
21 construction mechanics and their employers are exempt from the
22 provisions of this act.

23 Sec. 3. A contracting agent, before advertising for bids on
24 a state project, shall have the ~~commissioner~~ DEPARTMENT deter-
25 mine the prevailing rates of wages and fringe benefits for all
26 classes of construction mechanics called for in the contract. A
27 schedule of these rates shall be made a part of the

1 specifications for the work to be performed and shall be printed
2 on the bidding forms where the work is to be done by contract.
3 If a contract is not awarded or construction undertaken within 90
4 days ~~of~~ AFTER the date of the ~~commissioner's~~ determination of
5 prevailing rates of wages and fringe benefits BY THE DEPARTMENT,
6 the ~~commissioner~~ DEPARTMENT shall make a redetermination before
7 the contract is awarded.

8 Sec. 4. (1) The ~~commissioner~~ DEPARTMENT shall establish
9 prevailing wages and fringe benefits at the same rate that pre-
10 vails on projects of a similar character in the locality under
11 collective agreements or understandings between bona fide organi-
12 zations of construction mechanics and their employers. Such
13 agreements and understandings, to meet the requirements of this
14 section, shall not be controlled in any way by either an employee
15 or employer organization. If the prevailing rates of wages and
16 fringe benefits cannot reasonably and fairly be applied in any
17 locality because no such agreements or understandings exist, the
18 ~~commissioner~~ DEPARTMENT shall determine the rates and fringe
19 benefits for the same or most similar employment in the nearest
20 and most similar neighboring locality in which such agreements or
21 understandings do exist. The ~~commissioner~~ DEPARTMENT may hold
22 public hearings in the locality in which the work is to be per-
23 formed to determine the prevailing wage and fringe benefit
24 rates. All prevailing wage and fringe benefit rates determined
25 under this section shall be filed ~~in the office of~~ WITH the
26 ~~commissioner of labor~~ DEPARTMENT and made available to the
27 public.

1 (2) THE DEPARTMENT SHALL PROMULGATE RULES NOT LATER THAN
2 JANUARY 1, 1990 TO ENFORCE THIS ACT PURSUANT TO THE ADMINISTRA-
3 TIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF
4 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED
5 LAWS.

6 SEC. 4A. (1) A WAGE APPEALS BOARD IS CREATED WITHIN THE
7 DEPARTMENT.

8 (2) THE DIRECTOR OF THE DEPARTMENT SHALL APPOINT 3 PERSONS
9 TO THE WAGE APPEALS BOARD. THESE PERSONS SHALL NOT BE EMPLOYEES
10 OF THE DEPARTMENT OR A CONTRACTING AGENT, AND SHALL CONSIST OF
11 THE FOLLOWING:

12 (A) ONE PERSON REPRESENTING THE GENERAL PUBLIC WHO SHALL NOT
13 BE A MEMBER OF A TRADE OR PROFESSIONAL ASSOCIATION.

14 (B) ONE PERSON REPRESENTING CONSTRUCTION INDUSTRY
15 EMPLOYERS.

16 (C) ONE PERSON REPRESENTING CONSTRUCTION INDUSTRY
17 EMPLOYEES.

18 (3) MEMBERS SHALL SERVE TERMS OF 2 YEARS AND MAY BE
19 REAPPOINTED.

20 (4) THE BOARD SHALL CHOOSE A CHAIRPERSON FROM THEIR NUMBER.

21 (5) THE BOARD SHALL MEET NOT LESS THAN 6 TIMES DURING A CAL-
22 ENDAR YEAR. THE CHAIRPERSON OR ANY 2 MEMBERS MAY CALL FOR A SPE-
23 CIAL MEETING. THE BOARD SHALL RECEIVE A PER DIEM FOR EACH MEET-
24 ING AND EXPENSES AS ESTABLISHED ANNUALLY BY THE LEGISLATURE.

25 (6) MEETING TIMES AND LOCATIONS SHALL BE PUBLISHED IN THE
26 LABOR REGISTER OR ANY OTHER PUBLICATION CONSIDERED APPROPRIATE BY
27 THE BOARD.

1 (7) THE BUSINESS WHICH THE BOARD MAY PERFORM SHALL BE
2 CONDUCTED AT A PUBLIC MEETING OF THE BOARD HELD IN COMPLIANCE
3 WITH ACT NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS
4 15.261 TO 15.275 OF THE MICHIGAN COMPILED LAWS. PUBLIC NOTICE OF
5 THE TIME, DATE, AND PLACE OF THE MEETING SHALL BE GIVEN IN THE
6 MANNER REQUIRED BY ACT NO. 267 OF THE PUBLIC ACTS OF 1976.

7 (8) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
8 OR RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNC-
9 TION SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH ACT
10 NO. 442 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.231 TO
11 15.246 OF THE MICHIGAN COMPILED LAWS.

12 SEC. 4B. (1) THE BOARD SHALL REVIEW APPEALS STEMMING FROM
13 VIOLATIONS OF THIS ACT, EXAMINE THE EVIDENCE SUPPLIED BY THE CON-
14 TRACTOR, CONTRACTING AGENT, AND THE DEPARTMENT, AND ISSUE THEIR
15 FINDINGS TO THE DEPARTMENT.

16 (2) ACTIONS OF THE BOARD REQUIRE APPROVAL BY A MAJORITY OF
17 BOARD MEMBERS SERVING.

18 (3) ANY MEMBER OF THE BOARD MAY GRANT THE CONTRACTOR, CON-
19 TRACTING AGENCY, OR THE DEPARTMENT AN APPEAL.

20 (4) ACTION BY THE BOARD SUPERSEDES ANY ACTION BY THE CON-
21 TRACTING AGENT OR THE DEPARTMENT REGARDING ENFORCEMENT OF THIS
22 ACT.

23 (5) DURING AN APPEAL, ALL MEASURES TAKEN BY THE CONTRACTING
24 AGENT OR THE DEPARTMENT FOR ENFORCEMENT OF THIS ACT SHALL BE
25 SUSPENDED.

26 Sec. 5. Every contractor and subcontractor shall keep
27 posted on the construction site, in a conspicuous place, a copy

1 of all prevailing wage and fringe benefit rates prescribed in a
2 contract and shall keep an accurate record showing the name and
3 occupation of and the actual wages and benefits paid to each con-
4 struction mechanic employed by him OR HER in connection with
5 ~~said~~ THE contract. This record shall be available for reason-
6 able inspection by the contracting agent or the ~~commissioner~~
7 DEPARTMENT.