

SB 271-FN-LOCAL - FINAL VERSION

03/14/2019 0873s

2019 SESSION

19-0989

05/04

SENATE BILL ***271-FN-LOCAL***

AN ACT relative to requiring prevailing wages on state-funded public works projects.

SPONSORS: Sen. Feltes, Dist 15; Sen. Cavanaugh, Dist 16; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5; Sen. Levesque, Dist 12; Sen. Rosenwald, Dist 13; Sen. Soucy, Dist 18; Sen. Watters, Dist 4; Rep. Merner, Coos 7; Rep. Ley, Ches. 9; Rep. Cushing, Rock. 21

COMMITTEE: Commerce

ANALYSIS

This bill requires certain workers employed in the construction of public works in the state of New Hampshire to be paid the prevailing minimum hourly wage and benefits.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/14/2019 0873s 19-0989

05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to requiring prevailing wages on state-funded public works projects.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Prevailing Wage on State-Funded Public Works Projects. Amend RSA by inserting after chapter 280 the following new chapter:

CHAPTER 280-A

PREVAILING WAGE ON STATE-FUNDED PUBLIC WORKS PROJECTS

280-A:1 Definitions. In this chapter:

I. "Authorizing agency" means the state of New Hampshire or any state agency, officer, board, commission, or designated agent of the state of New Hampshire with the authority to award a public works construction contract to a qualified bidder, or authorized to administer the execution of a public works construction contract awarded to a qualified bidder.

II. "Commissioner" means the labor commissioner.

III. "Contractor" means the prime or general construction contractor awarded a contract by the state of New Hampshire or its agencies, boards, commissions, or an authorized agent for the construction of a public works project.

IV. "Construction" means construction, demolition, deconstruction, reconstruction, restoration, improvement, enlargement, alteration, painting and decorating, landscaping, or major repair, where the cost of all labor and material meets or exceeds the threshold for executive council approval.

V. "County" means the county where the physical work upon the public works is performed.

VI. "Department" means the department of labor.

VII. "Employer-provided benefits" means any employee health, welfare, pension, or similar bona fide employee benefit plans to which an employer contributes funds as part of a total compensation package.

VIII. "Hiring agent" means any temporary service agency, day-labor hiring agent, or temporary staffing company that employs workers on behalf of a contractor or subcontractor performing work on a public works construction project.

IX. "Locality" means a specific county or a specific group of counties or county sub-divisions in the same geographic area of the state as determined by administrative regulation of the labor department.

X. "Public works" means all works constructed for public use, whether or not done under public supervision, paid for wholly or in part out of public revenues of the state of New Hampshire, or by grants or public funds awarded directly to the state or its agencies for the construction, demolition, deconstruction, reconstruction, restoration, improvement, enlargement, alteration, painting and decorating, landscaping, or major repair of any public work or building.

XI. "State entity" means the state of New Hampshire or any agency, officer, board, commission, or authorized agent of the state.

XII. "Subcontractor" means a construction contractor hired by the prime contractor to execute work on a public works construction project.

XIII. "Worker" means a laborer, mechanic, or worker in a construction-related occupation who is hired to perform labor or services on a public works construction project.

280-A:2 Payment Required.

I. All workers employed by or on behalf of any contractor, subcontractor, or hiring agent engaged in the construction of public works for the state of New Hampshire or any agency, officer, board, commission, or authorized agent of the state shall be paid a wage of not less than the minimum prevailing hourly rate of wages and benefits for work of a similar character in the county in which the work is performed.

II. This chapter shall only apply to public works construction projects funded wholly or in part by public revenues of the state of New Hampshire, or by grants and public funds awarded directly to the state or its agencies for the construction of public works, for which the cost of all labor and material meets or exceeds the threshold for executive council approval of the relevant state contract.

III. Nothing in this chapter shall be construed to prohibit the payment to any worker employed on any public works construction project more than the prevailing rate of wages and benefits.

280-A:3 Exemptions.

I. This chapter shall not apply to workers who are employed on public works construction projects for county or municipal bodies, or any political subdivision or the agencies thereof, unless such a public works construction project is funded wholly or in part with state-administered funds that meet or exceed the threshold for executive council approval for the relevant state contract.

II. Special pay rates for apprentices shall only apply when the apprentices are registered in a recognized management-labor apprenticeship training program.

280-A:4 Determination and Application of Prevailing Wage Rates.

I. The minimum prevailing hourly rate of wages and benefits for any class of workers employed on a public works construction project subject to this chapter shall be the rate set forth by the most recent wage determination issued by the United States Department of Labor for the corresponding class of workers, for the New Hampshire county in which such public works construction project shall take place, as made available by the United States Department of Labor on the department's website or wherever the United States Department of Labor may make available such wage determination.

II. The department may assist state agencies in obtaining the applicable wage determination from the United States Department of Labor.

III. Any contractor or subcontractor employing workers on a construction project subject to this chapter who pays into a health, welfare, pension, or other bona fide paid benefit plan for workers he or she employs on a public works construction project under this chapter, shall be credited for the amount of the employer contribution to employer-provided benefits, calculated as an hourly rate for corresponding classes of workers.

IV. Any contractor, subcontractor, or hiring agent employing workers on a construction project subject to this chapter, who does not pay into employer-provided benefit plans for workers he or she employs on a public works construction project meeting the requirements of this chapter, shall pay directly to such employees the minimum prevailing hourly wage rate for corresponding classes of workers pursuant to paragraph I, plus the prevailing rate of employer-provided benefits for corresponding classes of workers under paragraph I, calculated as an hourly rate.

V. The department may approve a request for an additional wage classification where all interested parties have agreed on the proposed wage classification, or where the department determines a proposed wage classification is reasonable when considering the most comparable existing wage classification.

280-A:5 Wage Rates, Contract Specifications and Stipulations.

I. Contract specifications prepared, to advertise for bidding for public works projects under this chapter shall provide the following information:

- (a) A schedule of prevailing wage and benefit rates in the county or locality in which the work is to be performed, pursuant to RSA 280-A:4, for each craft or classification of worker needed to execute the contract or project.
- (b) A stipulation, with a citation to the relevant statute, stating that the state entity, if it is supervising the work, or the contractor to whom the contract is awarded, and any subcontractor or hiring agent under him or her, shall pay not less than the specified minimum rates to all workers employed by them in the execution of the project.
- (c) A description of the potential fines and penalties for failure to pay the prevailing wage rates stipulated in the contract.

II. The state entity awarding the contract shall 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 in the contract.

280-A:6 Posting of Wage Scale at Worksite. A prime contractor awarded a contract for a public works construction project under this chapter shall post the prevailing wage rate scale for that project in an accessible and prominent location at the worksite where it may be freely seen and inspected by all workers employed on the project site, for the life of the contract.

280-A:7 Required Records and Reporting.

I. Every contractor, subcontractor, and hiring agent employing workers on a public works construction project under this chapter shall file weekly certified payroll reports with the state government agency, board, commission, or authorized agent awarding, or responsible for administration of, the construction contract.

II. The commissioner shall furnish electronic and paper versions of a standard reporting form for use by employers in filing the certified payroll reports under paragraph I. The commissioner shall, at his or her discretion, review and modify the reporting form as he or she deems necessary for facilitating the ease and accuracy of reporting.

III. Every contractor, subcontractor, or hiring agent employing workers on a public works construction project under this chapter shall keep a true and accurate weekly register of all workers employed on such project, which shall include:

- (a) The dates of the first and last days covered by the reporting period.
- (b) The project name or project identification number of the public works construction project on which the reported workers are employed.
- (c) The name, business address, phone number, and employer identification number of the employer.
- (d) The name, address, and occupational classification of each worker employed on the project.
- (e) The dates each employee worked on the project, and the total number of hours worked on each date.
- (f) The hourly rate of wages paid to each worker.
- (g) Whether or not a worker receives employer-provided benefits as defined in RSA 280-A:1, VII.
- (h) The signature of the employer or the employer's authorized representative certifying that the information reported is true and accurate.
- (i) A direct telephone number, mailing address, and email address for the employer or the employer's authorized agent serving as the signatory in subparagraph (h).

IV. Certified weekly payroll reports for public works construction projects under this chapter shall be made available for inspection by the commissioner or a designated representative from the department at any reasonable time and as often as necessary to ascertain compliance and identify the need for adjustments.

V. Certified weekly payroll reports for the preceding week shall be delivered or transmitted to the authorizing state agency, or to an authorized recipient or repository designated by the authorizing agency, not less than 2 times every calendar month or at the interval established in the contract or by written agreement with the authorizing agent.

VI. All such records and reports shall be kept by the employer for no less than 5 years and thereafter shall be archived as electronic documents for a period of time to be determined by the commissioner.

280-A:8 Confidentiality of Payroll Records.

I. For all public works construction projects under this chapter, the commissioner may make records of wages, hours, and occupational classifications of employees available for public inspection, so long as the records are provided in such a manner that redacts all names and personal information that identifies individual employees, pursuant to RSA 91-A, the right-to-know law.

II. Private individuals, organizations, businesses, or agencies that wish to inspect the complete records of the original certified payroll reports for a specific public works project shall be granted the right of inspection upon request, pursuant to RSA 91-A, the right-to-know law.

280-A:9 Workers Paid Less Than Stipulated Rate.

I. Any contractor, subcontractor, or hiring paying less than the established prevailing wage to a worker employed on a public works construction project under this chapter shall be subject to a fine of \$250 per violation. Each day that any contractor, subcontractor, or hiring agent employs a worker for less than the wage and benefit minimum stipulated in the contract shall constitute a separate violation of this section.

II. Any worker employed by a contractor, subcontractor, or hiring agent who is paid less than the stipulated rates for the work done under the contract for the same classification of worker, or any interested party, may file a complaint with the department for the difference between the amount paid and the prevailing wage rate required by the contract.

III. The commissioner of labor shall readjust wages for employees insofar as it may be necessary in view of the provisions of this chapter.

IV. A portion of stipulated contract payments may be withheld from the contractor as considered necessary by the department or authorizing agency for the purpose of compensating workers hired to perform work on a public works construction project under this chapter when such workers were paid less than the minimum prevailing wage stipulated in the contract. The amount withheld shall equal the difference between the rates of wages required by the contract to be paid, and the rates of wages actually paid to affected workers on the project. Funds recovered for wage adjustments through withholding of contract payments shall be paid directly to the affected workers and shall not be refunded to the contractor, subcontractor, or their agents.

V. Payment for withholding under this section shall be made on written order by the commissioner directing the administering agency to release the funds to the department.

280-A:10 Penalties.

I. Any contractor, subcontractor, hiring agent, or its designated representative who is under contract with the state of New Hampshire or its authorized agent for the execution of a public works construction project under this chapter, who neglects to keep and submit accurate certified payroll records under RSA 280-A:8, or refuses to allow access to the records at any reasonable hour to a person authorized to inspect such records, or knowingly submits false payroll information to the agency administering the execution of the contract shall be subjected to a civil penalty of not less than \$250 and not more than \$2,500 per violation. Each day the violation continues shall, with respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed the amount of the contract or subcontract.

II. The commissioner shall determine the amount of any civil penalty under this section.

280-A:11 Certain Contractors Ineligible to Bid.

I. This section shall apply to any public works construction project funded wholly by public revenues of the state of New Hampshire, or by grants and public funds awarded directly to the state government or its agencies for the construction of public works, irrespective of the estimated total cost of labor and materials on the project.

II. Any contractor or subcontractor determined by the department to have violated the provisions of this chapter shall be ineligible to bid on or be awarded any public works contract or perform any construction work for or with the state of New Hampshire or a state agency for a period of 3 years from the date of the final administrative determination.

III. Any firm, partnership, corporation, or other entity in which such ineligible contractor is an officer, stockholder, or has financial interests, or supervises and directs work, shall be ineligible to bid on or be awarded any public works contract or perform any construction work for or with the state of New Hampshire or a state agency for a period of 3 years from the date of the final administrative determination.

IV. Notwithstanding the provisions of this section, any contractor or subcontractor may complete any work in progress or contract awarded prior to the date of the contractor's or subcontractor's ineligibility, unless a contract has been voided for non-compliance under the terms of such contract.

V. The department shall compile and make public a quarterly list which shall include:

(a) The names of all contractors and subcontractors which, by final administrative determination, have been found to be in non-compliance with this chapter within the previous 3 years as of the date of the list; and

(b) The dates on which the latest violations of such contractors occurred.

VI. The state government or authorized agency soliciting bids for a public works construction contract shall hold ineligible to bid or to perform any construction work on a public works project any contractor or subcontractor determined to be disqualified for reasons of noncompliance under this chapter.

VII. Any public works construction contract awarded to an ineligible contractor, or on which an ineligible subcontractor performs any work, may be declared in default by the state of New Hampshire or the authorizing agency.

VIII. The authorizing agency may require the bonding company or the general contractor to furnish a replacement contractor at no additional cost to the state, within 30 days of the notice of default.

2 Effective Date. This act shall take effect 60 days after its passage.

VETOED July 19, 2019 -- Veto Sustained September 19, 2019

LBAO
19-0989
Amended 3/21/19

SB 271-FN-LOCAL- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2019-0873s)

AN ACT relative to requiring prevailing wages on state-funded public works projects.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	Potential Increase of \$83,000+	Potential Increase of \$84,000+	Potential Increase of \$88,000+	Potential Increase of \$89,000+
Funding Source:	☒ General ☐ Education ☒ Highway ☒ Other - RSA 273:1-b (Department of Labor restricted fund)			

METHODOLOGY:

This bill requires certain workers employed in the construction of public works projects in the state of New Hampshire to be paid the prevailing minimum hourly wage and benefits.

The Department of Transportation assumes it would be responsible for compliance with the prevailing wage requirement for its own projects and not those managed by the Department of Administrative Services. The Department indicates the bill would increase its oversight responsibilities for active construction field audits by approximately 33%. The current workload for federal projects is performed by one full-time and one temporary part-time Compliance Officer. The Department has the necessary processes, procedures and training in place to handle state-aid prevailing wage duties. The Department states it would need an additional full-time compliance officer at a cost of \$83,000 in FY 2020, \$84,000 in FY 2021, \$88,000 in FY 2022 and \$89,000 in FY 2023. The Department indicates many contractors on federal projects are currently paying higher than the minimum prevailing Davis Bacon wage decision rates. The Department assumes the additional costs would be funded by general funds and highway funds.

The Department of Administrative Services, Division of Public Works indicates the bill would require contractors awarded State-funded construction projects to pay prevailing wages. Contractors would be required to submit regular payroll reports to the authorizing state agency. The Division indicates, because the compliance and reporting requirements would be performed by the Department of Labor, there would not be a significant increase in expenditures.

The Department of Labor indicates it is possible there could be an increase in revenue from fees and fines, but it is not possible estimate potential revenue from prospective penalties. The revenue, if any would be deposited in the Department's restricted fund established in RSA 273:1-b to pay for the costs of operating the Department. The Department assumes the need for additional resources would depend on the volume of projects covered and the number of additional requests for additional or enhanced wage classifications received by the Department.

AGENCIES CONTACTED:

Departments of Transportation, Administrative Services and Labor