

## CHAPTER 606

## H.B. No. 560

## AN ACT

relating to the payment of certain laborers, workers, and mechanics under public works contracts.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 2, Chapter 45, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 5159a, Vernon's Texas Civil Statutes), is amended as follows:

Sec. 2. (a) The public body awarding any contract for public work on behalf of the State, or on behalf of any county, city and county, city, town, district or other political subdivision thereof, or otherwise undertaking any public work, shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic needed to execute the contract, and shall specify in the call for bids for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workman needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen and mechanics employed by them in the execution of the contract. *Failure of the awarding body to ascertain and specify in the call for the contract the prevailing wage rate in that locality relieves the contractor or subcontractor from liability under this Act. To ascertain the general prevailing wage rate, the public body shall either conduct a survey to determine the prevailing wage based upon the wages received by classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, county or other political subdivision of the State in which the work is to be performed, or adopt the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act, if the survey on which the Davis-Bacon rate was founded was conducted within three years prior to the bidding of the project.*

(b) *A contractor or subcontractor in violation of this Act is liable for ~~the contractor shall forfeit as~~ a penalty. That contractor or subcontractor shall pay to the State, county, or city with more than 10,000 residents ~~[city and county, city, town],~~ district or other political subdivision on whose behalf the contract is made or awarded, ~~Sixty Dollars (\$60.00) [Ten Dollars (\$10.00)]~~ for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, ~~[by him, or by any subcontractor under him,]~~ and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. The money collected under this subsection shall be used by the awarding body to offset the costs incurred in the administration of this section.*

(c) *Upon receipt of a complaint by a laborer, workman, or mechanic or other pertinent information, the public body shall determine within 30 days whether good cause exists to*

believe that a contractor or subcontractor has committed a violation of this Act. The public body shall provide written notice of its determination to the contractor or subcontractor and any affected laborer, workman, or mechanic. The public body shall retain any amounts due under the contract pending a final determination of the violation.

(d) If the contractor or subcontractor and any affected laborer, workman, or mechanic fail to resolve the alleged violation by agreement within 14 days of the determination by the public body, the issues of the alleged violation, any penalties owed to the public body, and any amounts owed to any affected laborer, workman, or mechanic shall be submitted to binding arbitration in accordance with the provisions of the Texas General Arbitration Act (Art. 224 et seq., Revised Statutes). If the parties fail to agree upon an arbitrator within 10 days, the arbitrator shall be designated by the district court upon petition of any party. The decision and award of the arbitrator is final and binding upon all parties and may be enforced in any court of competent jurisdiction. The public body is not a party in the arbitration.

(e) The arbitrator shall assess and award all reasonable costs, including the arbitrator's fee, against the party or parties who fail to prevail in the proceeding. Costs may be assessed against the workman, laborer, or mechanic only if the arbitrator finds that the claim was frivolous. If the arbitrator does not find that the claim is frivolous and does not make an award to the laborer, workman, or mechanic, costs will be shared equally by the parties. If the arbitrator determines that a violation of the Act has occurred, the arbitrator shall assess and award penalties as provided in the Act and all amounts owed to the affected workman, laborer, or mechanic against the contractor or subcontractor.

(f) The public body shall use any amounts retained under this subsection to reimburse the laborer, workman, or mechanic for the amount owed to that person because of the failure to pay the person the general prevailing rate of per diem wages as provided in the arbitrators' award. The public body may adopt rules, orders, or ordinances relating to the manner in which the reimbursement is made to the laborer, workman, or mechanic. An officer, agent, or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing this Act unless the action was made in bad faith. The contractor is entitled to rely on a certificate by a subcontractor as to the payment of all sums due to those working for and under that subcontractor until the contrary has been determined.

(g) If the amounts withheld by, if any, the public body under Subsection (c) of this section are insufficient to fully reimburse the laborer, workman, or mechanic for amounts owed to that person under the terms of this Act, that person has a right of action against the contractor or subcontractor and the surety of that person to recover any amounts owed, reasonable attorney's fees and court costs.

(h) It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of complaints of all violations of the provisions of this Act committed in the course of the execution of the contract, and, when making payments to the contractor of monies becoming due under said contract, to withhold and retain ~~[therefrom]~~ all sums and amounts ~~[which shall have been]~~ forfeited or required to be retained under this section ~~[pursuant to the herein said stipulation and the terms of this Act]~~; provided, however, that no sum shall be so withheld, retained or forfeited, except from the final payment, without a determination ~~[full investigation]~~ by the awarding body that good cause exists to believe that a violation has occurred.

(i) It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any amounts ~~[penalties]~~ withheld from him by the awarding body on account of the said subcontractor's failure to comply with the terms of this Act, and if payment has already been made to the subcontractor, ~~[him]~~ the contractor may withhold the amount from any future payments owed to the subcontractor or recover from the subcontractor or the subcontractor's surety in a suit at law ~~[him]~~ the amount retained or forfeited ~~[the penalty or forfeiture in a suit at law]~~.

SECTION 2. This Act takes effect September 1, 1993, and applies only to a public works contract entered on or after that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 11, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 560 on May 24, 1993, by a non-record vote; the House adopted H.C.R. No. 172 authorizing certain corrections in H.B. No. 560 on May 28, 1993; passed by the Senate, with amendments, on May 22, 1993, by a viva-voce vote; the Senate adopted H.C.R. No. 172 authorizing certain corrections in H.B. No. 560 on May 29, 1993.

Approved June 15, 1993.

Effective Sept. 1, 1993.