

contractor and subcontractors must post the prevailing wage rates and allow the commissioner's agents to question employees in respect to wages, hours worked, and duties.

HB 509 also provides for a civil penalty of not less than \$100, nor more than \$1,000 for each offense listed below*. Additionally, the contractor shall make full restitution to all employees to whom he or she is indebted. The prime contractor is also jointly and severally liable with a subcontractor for wages due a subcontractor employee. For repeated violations, the contractor and subcontractor shall be prohibited from bidding for a period of two years from the date of the last offense. Likewise, any public authority or representative thereof who fails to comply with or require compliance with the following offenses* shall be assessed an identical civil penalty, each day of violation being a separate offense.

*The offenses referred to above are as follows:

- Failure of a contractor/subcontractor to pay the "prevailing wage" for each classification of employee based on the basic hourly rate per the commissioner's most recent wage determination in each classification of construction in the locality plus any fringe benefits.
- Failure of a public authority to include in the proposal and contract a stipulation requiring a prevailing wage. The contractor's bonds must include a guarantee to pay prevailing wage. The public authority may withhold amounts resulting from violations from payments made to the contractor; and a contractor may withhold amounts from the subcontractors to cover penalties due to the subcontractors' failure to comply.

No public official shall advertise for bids, undertake construction, or vote for the award of any contract, or vote for disbursement of funds without obtaining the prevailing wage for each class of work to be performed from the commissioner.

The commissioner is charged with the following:

- Making the initial determinations and subsequent revisions of schedules of rates of prevailing wages, the amount of fringe benefits, and the number of hours applicable. A list of criteria to be used in making this determination is provided.
- Within ten days of signing, all wage contracts of all employees in this state which have been agreed to between organizations of labor and employer or association of employers must be filed with the Commissioner.
- The wage rates to be used by the public authority in a contract shall be the rate as of the date the project was advertised and offered for bid. This rate is good for 90 days, at which time the public authority shall ascertain an updated wage rate before the contract is signed. The scale of prevailing wages shall be incorporated in the contract.
- Promulgating administrative regulations authorizing the employment of apprentices and trainees in skilled trades at wages lower than the applicable prevailing wage.

If the federal government or any of its agencies furnishes a predetermined prevailing minimum wage as part of a loan or grant process, the higher of those wages or the wages provided by the commissioner shall prevail.

The commissioner shall conduct a public hearing in the locality of the project for determining or revising a prevailing wage; the findings to be published within 60 days. The commissioner may use a prevailing wage issued by the United States Department of Labor, in which instance a public hearing is not required. However, a public authority or any interested person may request a hearing of a prevailing wage review board solely for a review of the commissioner's prevailing wage schedule. Guidance is provided as to the makeup of this board, their revision of a prevailing wage schedule, as well as public notification of a hearing.

A final decision by the board may be appealed to the Franklin Circuit Court. The court may affirm, set aside, or remand the decision back to the board for further review. A decision for the Franklin Circuit Court may be appealed to the Court of Appeals. Guidance as to the appeals procedure and what must be included in the appeal is provided.

Every public authority, prior to bids, shall include with the schedule of wages a provision that employees are limited to 8 hours a day and 40 hours a week, except in cases of emergencies. These requirements shall be incorporated as a part of each contract. By written agreement between the employee and employer, or as part of a collective bargaining agreement, the employee may work up to 10 hours in one calendar day. Any employee working beyond 8 hours a day or 40 hours per week except in cases of emergency shall be paid not less than 1-1/2 times the basic hourly rate of pay. An employee working in excess of 10 hours a day may be paid more than 1-1/2 times the basic hourly rate without being in violation.

If a public authority is found not to have complied then the commissioner may bring suit in the Circuit Court of the county in which the public body is located. The court may issue a temporary restraining order to the defendant. The court may further issue an order enjoining the defendant from awarding a contract or enjoining further payment until compliance is made. Both the plaintiff and the defendant may appeal.

An employee on a public works project may file a complaint with the department who shall assist the employee in the collection of wages due. If the contractor or subcontractor is in violation, then the contractor or subcontractor will not be eligible to bid on public work projects until they are in compliance. The employee may take civil action to recover wages due. Likewise, the commissioner may bring any legal action necessary to collect on the employee's behalf. No employer may take punitive action against an employee.

The fiscal impact of HB 509 on local governments is inconclusive. Numerous studies have been conducted in order to determine whether a prevailing wage requirement increases or decreases the costs of constructing public works projects. A 2014 report by the Legislative Research Commission's Program Review and Investigations Committee,

while noting several limitations of their research methodology, concluded that Kentucky's prevailing wage requirements in force at the time increased labor costs (not total construction costs) for a sample of school projects by 51 percent and by 6.7 percent on Finance Cabinet projects, relative to what labor costs would have been if workers were paid the same rate they earn on private construction projects. Other studies have concluded that prevailing wage does not increase the cost of public construction, and assert that lower cost labor results in substandard construction, more injuries which drives pressure on the workers compensation system, and economically insecure workers, which ultimately drives up costs and increases pressure on social services.

In a study done by the Kentucky League of Cities (KLC) regarding RS 20 HB 77, the KLC estimated that based on cities' FY 2018 construction expenditures, a prevailing wage requirement would have increased total construction costs approximately 11% per year over a 5-year period. The KLC confirmed that percentage is still valid today, although it might be a bit lower due to the increase in non-personnel construction costs. Cities spent \$574 million on construction costs in fiscal year 2020.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to HB 509 as introduced. There are no prior versions.

Data Source(s): LRC Staff; Kentucky League of Cities; Draft Report, Program Review and Investigations Committee, "How Kentucky's Prevailing Wage Laws Affect Public Construction," 2014;

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