

HB 1538-FN-LOCAL - AS INTRODUCED

2022 SESSION

22-2736

11/08

HOUSE BILL

***1538-FN-LOCAL***

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

SPONSORS: Rep. Abramson, Rock. 37

COMMITTEE: Labor, Industrial and Rehabilitative Services

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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.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough]~~.  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

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

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

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

3 CHAPTER 280-A

4 PREVAILING WAGE ON STATE-FUNDED PUBLIC WORKS PROJECTS

5 280-A:1 Payment Required.

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

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

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

18 280-A:2 Exemptions.

19 I. This chapter shall not apply to workers who are employed on public works construction  
20 projects for municipal bodies.

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

23 280-A:3 Definitions. In this chapter:

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

28 II. "Commissioner" means the labor commissioner.

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

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

5           V. “County” means the county where the physical work upon the public works is performed.

6           VI. “Department” means the department of labor.

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

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

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

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

21          XI. “State entity” means the state of New Hampshire or any agency, officer, board,  
22 commission, or authorized agent of the state.

23          XII. “Subcontractor” means a construction contractor hired by the prime contractor to  
24 execute work on a public works construction project.

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

27          280-A:4 Determination and Application of Prevailing Wage Rates.

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

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

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

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

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

16           280-A:5 Wage Rates, Contract Specifications and Stipulations.

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

19               (a) A schedule of prevailing wage and benefit rates in the county or locality in which the  
20 work is to be performed, pursuant to RSA 280-A:4, for each craft or classification of worker needed to  
21 execute the contract or project.

22               (b) A stipulation, with a citation to the relevant statute, stating that the state entity, if it  
23 is supervising the work, or the contractor to whom the contract is awarded, and any subcontractor or  
24 hiring agent under him or her, shall pay not less than the specified minimum rates to all workers  
25 employed by them in the execution of the project.

26               (c) A description of the potential fines and penalties for failure to pay the prevailing  
27 wage rates stipulated in the contract.

28           II. The state entity awarding the contract shall require in all the contractor's bonds that the  
29 contractor include such provisions as will guarantee the faithful performance of the prevailing  
30 hourly wage clause as provided in the contract.

31           280-A:6 Posting of Wage Scale at Worksite. A prime contractor awarded a contract for a public  
32 works construction project under this chapter shall post the prevailing wage rate scale for that  
33 project in an accessible and prominent location at the worksite where it may be freely seen and  
34 inspected by all workers employed on the project site, for the life of the contract.

35           280-A:7 Required Records and Reporting.

36           I. Every contractor, subcontractor, and hiring agent employing workers on a public works  
37 construction project under this chapter shall file weekly certified payroll reports with the state

1 government agency, board, commission, or authorized agent awarding, or responsible for  
2 administration of, the construction contract.

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

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

10 (a) The dates of the first and last days covered by the reporting period.

11 (b) The project name or project identification number of the public works construction  
12 project on which the reported workers are employed.

13 (c) The name, business address, phone number, and employer identification number of  
14 the employer.

15 (d) The name, address, and occupational classification of each worker employed on the  
16 project.

17 (e) The dates each employee worked on the project, and the total number of hours  
18 worked on each date.

19 (f) The hourly rate of wages paid to each worker.

20 (g) Whether or not a worker receives employer-provided benefits as defined in RSA 280-  
21 A:3, VII.

22 (h) The signature of the employer or the employer's authorized representative certifying  
23 that the information reported is true and accurate.

24 (i) A direct telephone number, mailing address, and email address for the employer or  
25 the employer's authorized agent serving as the signatory in subparagraph (h).

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

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

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

37 280-A:8 Confidentiality of Payroll Records.

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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

1 respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed the  
2 amount of the contract or subcontract.

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

4 280-A:11 Certain Contractors Ineligible to Bid.

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

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

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

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

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

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

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

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

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

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

37 2 Effective Date. This act shall take effect 60 days after its passage.

**HB 1538-FN-LOCAL- FISCAL NOTE  
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AN ACT requiring prevailing wages on state-funded public works projects.

**FISCAL IMPACT:**    ☒ **State**                    ☒ **County**                    ☐ **Local**                    ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

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.

The Department of Administrative Services indicates, a significant number of the Division of Public Works (DPW) projects receive federal funds for some or all of their funding. In addition, there is federal funding for capital projects included in the federal American Rescue Plan Act of 2021 (ARPA), which currently stands at about \$65 million. Projects complying with this bill would cost more due to increased labor costs and additional State funds will be needed to fund the State share for projects requiring state matching funds. The Department assumes compliance and enforcement for these projects will require 3 additional full-time Clerk of the Works positions to be employed by the DPW. The new staff would administer the compliance requirements, create records of compliance and maintain the records for a period of at least ten years. The Department estimates the cost of the additional 3 staff would be \$258,000 in FY 2023, \$261,000 in FY 2024 and \$276,000 in FY 2025. As the cost of projects funded wholly or in part by federal funds increases, the cost for projects requiring a state match would also increase. However, because projects requiring matching or shared funding vary significantly from biennium to biennium it is difficult to determine what the impact on capital matching funds



would be. Therefore the Department assumed the bill would result in a reduction in the number of projects funded with matching or shared funding.

This bill does not contain authorization or an appropriation for new positions.

**AGENCIES CONTACTED:**

Department of Administrative Services