

HB 1592-FN – AS INTRODUCED

2014 SESSION

14-2448
06/10

HOUSE BILL ***1592-FN***

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

SPONSORS: Rep. Goley, Hills 8; Rep. Weed, Ches 16; Sen. Watters, Dist 4

COMMITTEE: Labor, Industrial and Rehabilitative Services

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

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 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 or locality in which the work is performed.

11 II. This chapter shall only apply to public works construction projects funded wholly by
12 public revenues of the state of New Hampshire, or by grants and public funds awarded directly to the
13 state or its agencies for the construction of public works, when the cost of all labor and material
14 exceeds \$500,000.

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 county or municipal bodies, or any political subdivision or the agencies thereof, unless
21 such a public works construction project is funded wholly with state-administered funds and exceeds
22 the cost of \$500,000.

23 II. This chapter shall not apply to public school construction.

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

26 280-A:3 Definitions. In this chapter:

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

31 II. "Commissioner" means the labor commissioner.

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

4 IV. “Construction” means construction, reconstruction, improvement, enlargement,
5 alteration, painting and decorating, landscaping, or major repair, where the cost of all labor and
6 material exceeds \$500,000.

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

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

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

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

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

18 X. “Minimum prevailing wage rates” mean the dollar value of wages and employer-provided
19 benefits paid, generally, in the county or locality where public works are being performed, to
20 corresponding classifications of workers engaged in a construction project of a similar character.

21 XI. “Modal” means the method of mathematical calculation used to determine prevailing
22 values by assessing the range of wages paid and the total number of workers engaged in a specific
23 class of construction work in a given locality, and calculating prevailing wage and benefit rates based
24 on the dollar value of wages and employer-provided benefits paid to the greatest number of workers
25 employed on works of similar character in that geographic area.

26 XII. “Public works” means all works constructed for public use, whether or not done under
27 public supervision, paid for wholly out of public revenues of the state of New Hampshire, or by
28 grants or public funds awarded directly to the state or its agencies for the construction of public
29 works.

30 XIII. “State entity” means the state of New Hampshire or any agency, officer, board,
31 commission, or authorized agent of the state.

32 XIV. “Subcontractor” means a construction contractor hired by the prime contractor to
33 execute work on a public works construction project.

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

36 280-A:4 Annual Determination of Wage Rates.

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1 I. The commissioner shall prepare and make available to state entities and the public an
2 accurate and comprehensive list of worker classifications for workers employed on public works
3 construction projects in the state of New Hampshire in the previous 5 years. This list shall be
4 reviewed annually and revised as the commissioner deems advisable.

5 II. The commissioner shall prepare and make available to state entities and the public a list
6 and map of all designated counties and localities in the state to be used for the purpose of
7 determining prevailing wage and benefit rates for public works projects to be constructed in those
8 counties and subdivisions.

9 III. The commissioner shall investigate and determine the prevailing hourly rate of wages
10 and employer-provided benefits in the counties and localities for all classifications of workers under
11 paragraph I.

12 IV. Determinations shall be made on or about July 1 of each year.

13 V. In determining prevailing rates, the commissioner shall adopt and use such appropriate
14 and applicable prevailing wage rate determinations for corresponding classes of workers as have
15 been made by the United States Secretary of Labor for public works construction performed in the
16 state of New Hampshire under a contract or agreement with the federal government or undertake a
17 local survey at any required time to determine the prevailing rates of wages and employer-provided
18 benefits on an hourly basis for the relevant classifications of workers generally employed on state-
19 funded public works construction projects.

20 VI. The rate of prevailing wages determined on the basis of periodic state of local surveys
21 shall not be less than the minimum prevailing wages paid under federal law to corresponding classes
22 of workers employed on public works projects in New Hampshire which are undertaken under a
23 contract or agreement with the government of the United States.

24 VII. A certified copy of the annual prevailing wage determinations shall be kept on file at
25 the department and made available to all persons requesting them.

26 280-A:5 Calculation and Application of Prevailing Wage Rates.

27 I. Prevailing wage and employer-paid benefit rates shall be determined by worker
28 classification and locality on projects that are similar in scope and character to the contract work.
29 Wage and employer-provided benefit rates shall be ascertained for each worker classification and
30 locality, and calculated separately as hourly rates.

31 II. The state prevailing wage rate as determined by the commissioner shall be the sum of
32 the basic hourly wage rate and the dollar value, calculated as an hourly rate for corresponding
33 classes of workers, of the prevailing cost to an employer of providing a worker with paid health,
34 welfare, pension, or other bona fide paid benefit plans.

35 III. In determining prevailing rates of hourly wages and employer-provided benefits, the
36 commissioner shall use the modal rate, which shall be:

1 (a) The rate of wages paid to the greatest number of workers employed in the locality for
2 corresponding classifications of workers on projects that are similar to the contract work, with wages
3 calculated as a basic hourly rate of pay; and

4 (b) The dollar value of employer-provided benefits based on the contribution paid by an
5 employer into employee health, welfare, pension, or other bona fide paid benefit plans for the
6 greatest number of those employed in the locality for corresponding classifications of workers on
7 projects that are similar to the contract work, calculated as an hourly rate.

8 IV. Any contractor or subcontractor employing workers on a construction contract for or with
9 the state of New Hampshire or its authorized agents who pays into a health, welfare, pension, or
10 other bona fide paid benefit plan for workers he or she employs on a public works construction
11 project under this chapter, shall be credited for the amount of the employer contribution to employer-
12 provided benefits, calculated as an hourly rate for corresponding classes of workers, when
13 determining the minimum prevailing wage rate for those employees.

14 V. Any contractor, subcontractor, or hiring agent employing workers on a construction
15 contract for or with the state of New Hampshire or its authorized agents, who does not pay into
16 employer-provided benefit plans for workers he or she employs on a public works construction project
17 meeting under this chapter, shall pay directly to such employees the minimum prevailing hourly
18 wage rate for corresponding classes of workers employed on similar projects in the same locality,
19 plus the determined prevailing rate of employer-provided benefits for corresponding classes of
20 workers employed on similar projects in the same locality, calculated as an hourly rate.

21 280-A:6 Wage Rates, Contract Specifications and Stipulations.

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

24 (a) A schedule of prevailing wage and benefit rates in the county or locality in which the
25 work is to be performed, as determined by the department, for each craft or classification of worker
26 needed to execute the contract or project.

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

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

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

36 280-A:7 Posting of Wage Scale at Worksite. A prime contractor awarded a contract for a public
37 works construction project under this chapter shall post the prevailing wage rate scale for that

1 project in an accessible and prominent location at the worksite where it may be freely seen and
2 inspected by all workers employed on the project site, for the life of the contract.

3 280-A:8 Required Records and Reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 V. Certified weekly payroll reports for the preceding week shall be delivered or transmitted
36 to the authorizing state agency, or to an authorized recipient or repository designated by the

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1 authorizing agency, not less than 2 times every calendar month or at the interval established in the
2 contract or by written agreement with the authorizing agent.

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

6 280-A:9 Confidentiality of Payroll Records.

7 I. For all public works construction projects under this chapter, the commissioner may make
8 records of wages, hours, and occupational classifications of employees available for public inspection,
9 so long as the records are provided in such a manner that retracts or removes all names and
10 personal information that identifies individual employees.

11 II. Private individuals, organizations, businesses, or agencies that wish to inspect the
12 complete records of the original certified payroll reports for a specific public works project shall be
13 granted the right of inspection upon request.

14 280-A:10 Workers Paid Less Than Stipulated Rate.

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

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

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

32 IV. Payment for withholding under this section shall be made on written order by the
33 commissioner directing the administrating agency to release the funds to the department.

34 280-A:11 Penalties.

35 I. Any contractor, subcontractor, hiring agent, or its designated representative who is under
36 contract with the state of New Hampshire or its authorized agent for the execution of a public works
37 construction project under this chapter, who neglects to keep and submit accurate certified payroll

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1 records under RSA 280-A:8, or refuses to allow access to the records at any reasonable hour to a
2 person authorized to inspect such records, or knowingly submits false payroll information to the
3 agency administering the execution of the contract shall be subjected to a civil penalty of not less
4 than \$250 and not more than \$2,500 per violation. Each day the violation continues shall, with
5 respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed 10
6 percent of the contract or subcontract.

7 II. Any worker who knowingly submits to the department a false claim for unpaid wages
8 under this chapter shall be subject to a civil penalty of not less than \$100 and not more than \$1,000.

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

10 280-A:12 Certain Contractors Ineligible to Bid.

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

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

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

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

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

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

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

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

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

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

7 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1592-FN - FISCAL NOTE

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

FISCAL IMPACT:

The Department of Administrative Services, Department of Transportation, and Department of Labor state this bill, **as introduced**, will increase state expenditures by an indeterminable amount in FY 2015 and each year thereafter. There is no fiscal impact on county and local expenditures, or state, county and local revenue.

METHODOLOGY:

The Department of Administrative Services states this bill requires workers employed in the construction of state-funded public works projects exceeding \$500,000 be paid the prevailing minimum hourly wage and benefits. The Department states the bureau of public works averages 22 projects greater than \$500,000 per year, with the greatest number of projects greater than \$500,000 at one time being 18. The average number of subcontractors on a project is 17. This would result in the need to monitor approximately 306 contractors at any one time. The Department estimates it will need to hire two full-time labor compliance officers, a part-time compliance officer and a part-time clerk of the works to meet the requirements of this bill. Position costs contained in the table adjust for the 2.25 percent salary increases in July 2014 and January 2015.

	FY 2015	FY 2016	FY 2017	FY 2018
Compliance Officer II (LG 21)	\$42,381	\$44,581	\$46,493	\$48,363
Compliance Officer I (LG 17)	36,089	37,951	39,451	41,059
Compliance Officer I (LG 17, part-time 20 hours wk)	18,044	18,976	19,725	19,725
Clerk of the Works II (LG 22, part-time 30 hours wk)	33,076	33,436	34,870	34,870
Benefits	56,393	59,668	63,007	66,255
Current Expenses	8,461	8,461	8,461	8,461
Equipment	68,636	0	0	0
Computer	4,800	3,000	3,000	3,000
Telecommunications	3,600	3,600	3,600	3,600
Total	\$271,480	\$209,673	\$218,607	\$225,333

The Department anticipates this bill will result in an increase in the cost of contracts as contractors pass the increased costs along. The Department estimates the cost for contractors to hire personnel to process and oversee labor compliance documents will be \$1,100,000 per year based on the assumption that each of the 22 projects will need to expend an additional \$50,000 a year on salary and benefits for this function. The Department has not estimated the potential increase in costs for other state agencies that may oversee state-funded projects exceeding \$500,000 to determine the statewide impact of this bill.

The Department of Transportation states this bill is similar to the federal Davis-Bacon wage rate requirements. The Department states federal contracts tend to have higher labor costs versus state contracts that do not have the wage rate requirements. The Department assumes this bill will result in an increase in cost to state funded contracts. The Department has no information to determine how a prevailing wage would be determined or what the rates might be to determine the impact. The Department assumes the cost to administer and monitor compliance of the requirements contained in this bill will result in the need for one field compliance officer (labor grade 22) at a salary and benefit cost of \$70,223 in FY 2015, \$74,233 in FY 2016, \$77,676 in FY 2017 and \$81,404 in FY 2018.

The Department of Labor states this bill will have an indeterminable increase on state expenditures. The Department states it would be able to absorb the cost of posting requirements and drafting required forms as a result of this bill. The Department would need to add an executive secretary position (labor grade 11) to address an increased workload associated with calculating and reporting requirements of this bill. The executive secretary position salary and benefit will cost \$49,555 in FY 2015, \$52,264 in FY 2016, \$54,714 in FY 2017 and \$57,434 in FY 2108.

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