

PREVAILING WAGE LAW

ARTICLE 5A

WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

SECTION.

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§21-5A-1. Definitions.

(1) The term "public authority," as used in this article, shall mean any officer, board or commission or other agency of the state of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported in whole or in part by public funds of the state of West Virginia or its political subdivisions, and this article shall apply to expenditures of such institutions made in whole or in part from such public funds.

(2) The term "construction," as used in this article, shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. The term "construction" shall not be construed to include temporary or emergency repairs.

(3) The term "locality" means the county where the construction is to be performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workmen and mechanics to perform such construction efficiently and properly, and may include one or more counties in this state adjacent to the one in which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction. With respect to construction of public improvements with the state road commission, "locality" may be construed to include one or more counties in this state adjacent to the one in which the construction or public improvement is to be performed and from which skilled laborers, workmen and mechanics may be accessible for work on such construction on public improvements.

(4) The term "public improvement," as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the state of West Virginia or any political subdivision thereof.

(5) The term "construction industry," as used in this article, shall mean that industry which is composed of employees and employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures or works whether private or public on which construction work as defined in subsection (2) of this section is performed.

(6) The term "board" shall mean the minimum wage board as constituted in this article.

(7) The term "employee," for the purposes of this article, shall not be construed to include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

§21-5A-2. Policy declared.

It is hereby declared to be the policy of the state of West Virginia that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in this state in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements.

§5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.

The director shall contract for public printing and for printing paper for the use of spending units in the manner provided for contracts under sections ten through nineteen of this article, and in accordance with the specifications adopted as provided by section five of this article: *Provided*, That the provisions of this article shall not be construed to prohibit the state from maintaining printing plants for the purpose of instruction or for printing for a state spending unit at educational, benevolent, penal or correctional institutions.

§21-5A-4.

Repealed.

Acts, 1991 Reg. Sess., Ch. 149.

§21-5A-5. Prevailing wages established at regular intervals; how determined; filing; objections to determination; hearing; final determination; appeals to board; judicial review.

(1) The department of labor, from time to time, shall investigate and determine the prevailing hourly rate of wages in the localities in this state. Determinations thereof shall be made annually on January one of each year and shall remain in effect during the successive year: **Provided, however**, That such rates shall not remain in effect for a period longer than fifteen months from the date they are published.

In determining such prevailing rates, the department of labor may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality in this state where the construction of the public improvement is to be performed.

(2) A copy of the determination so made, certified by the secretary of the board, shall be filed immediately with the secretary of state and with the department of labor. Copies shall be supplied to all persons requesting same within ten days after such filing.

(3) At any time within fifteen days after the certified copies of the determination have been filed with the secretary of state and the department of labor, any person who may be affected thereby may object in writing to the determination or such part thereof as he deems objectionable by filing a written notice with the department of labor stating the specific grounds of the objection.

(4) Within ten days of the receipt of the objection, the department of labor shall set a date for a hearing on the objection. The date for the hearing shall be within thirty days after the receipt of the objection. Written notice of the time and place of the hearing shall be given to the objectors at least ten days prior to the date set for the hearing and at a time so as to enable the objectors to be present.

(5) The department of labor at its discretion may hear such written objection separately or consolidate for hearing any two or more written objections. At the hearing

the department of labor shall introduce into evidence the results of the investigation it instituted and such other facts which were considered at the time of the original determination of the fair minimum prevailing hourly rate including the sources which formed the basis for its determination. The department of labor or any objectors thereafter may introduce such further evidence as may be material to the issues.

(6) Within ten days of the conclusion of the hearing, the department must rule on the written objections and make such final determination as shall be established by a preponderance of the evidence. Immediately upon such final determination, the department of labor shall file a certified copy of its final determination with the secretary of state and with the department of labor and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(7) Any person affected by the final determination of the department of labor, whether or not such person participated in the proceedings resulting in such final determination, may appeal to the board from the final determination of the department of labor within ten days from the filing of the copy of the final determination with the secretary of state. The board shall hear the appeal within twenty days from the receipt of notice of appeal. The hearing by the board shall be held in Charleston. The hearing by the board shall be upon the record compiled in the hearing before the department of labor and the board shall have the authority to affirm, reverse, amend, or remand for further evidence, the final determination of the department of labor. The board shall render its decision within ten days after the conclusion of its hearing.

(8) Any party to the proceeding before the board or any person affected thereby may within thirty days after receipt of the notice of its decision, appeal the board's decision to the circuit court of the county wherever the construction of a public improvement is to be performed, which shall consider the case on the record made before the commissioner of labor and before the board. The decision of such circuit court may be appealed to the supreme court of appeals of West Virginia by any party to the proceedings or by any person affected thereby in the manner provided by law for appeals in civil actions.

(9) Pending the decision on appeal, the rates for the preceding year shall remain in effect.

§21-5A-6. Contracts to contain provisions relative to minimum wages to be paid.

In all cases where any public authority has ascertained a fair minimum rate or rates of wages as herein provided, and construction of a public improvement is let to contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages as provided by this article.

§21-5A-7. Wage rates to be kept posted.

A clearly legible statement of all fair minimum wage rates to be paid the several classes of skilled laborers, workmen and mechanics employed on the construction on the

public improvement shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor subject to the provisions of this article.

§21-5A-8. Wage records to be kept by contractor, subcontractor, etc.; contents; open to inspection.

The contractor and each subcontractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record showing the names and occupation of all such skilled laborers, workmen and mechanics employed by them, in connection with the construction on the public improvement and showing also the actual wages paid to each of the skilled laborers, workmen and mechanics, which record shall be open at all reasonable hours to the inspection of the department of labor and the public authority which let the contract, its officers and agents. It shall not be necessary to preserve such record for a period longer than three years after the termination of the contract.

§21-5A-9. Penalties for violation of article.

(a) Any contractor or subcontractor who wilfully and knowingly violates any provision of this article shall be fined not less than fifty nor more than two hundred and fifty dollars.

(b) Any skilled laborer, workman or mechanic who is engaged in construction on a public improvement let to contract, who is paid less than the posted fair minimum rate of wages applicable thereto, may recover from such contractor or subcontractor the difference between the same and the posted fair minimum rate of wages, and in addition thereto, a penalty equal in amount to such difference, and reasonable attorney fees. The venue of said action shall be in the county where the work is performed: **Provided,** however, That an honest mistake or error shall not be construed as a basis for recovery under this subsection.

(c) Where skilled laborers, workmen and mechanics are employed in construction on a public improvement and their posted rate of wages has been determined as provided by this article, it shall be unlawful for any person, for himself or another, to request, demand or receive, either before or after such skilled laborers, workmen and mechanics are employed in construction on a public improvement, that they or any one of them pay over money or other thing of value or pay back, return, donate, contribute or give any part or all of their said wages, or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment; and any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a misdemeanor and fined not less than fifty dollars and not more than two hundred fifty dollars.

§21-5A-10. Existing contracts.

This article shall apply only to contracts for construction on public improvements let after the effective date of this article, and to construction on public improvements for

which there has been determined the fair minimum wage rates as provided in this article, and such determination has not been appealed from as may be provided by this article.

§21-5A-11. Provisions of article severable.

Each section of this article and every part thereof is hereby declared to be an independent section or part of a section, and if any section, subsection, sentence, clause or phrase of this article shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, subsections, and sections of this article shall not be affected thereby.

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 7
RULES AND REGULATIONS FOR THE
WEST VIRGINIA PREVAILING WAGE ACT

'42-7-1. General.

1.1. Scope. -- Every contract to which the State of West Virginia, or any political subdivision thereof, or any authority created by the Legislature of the State of West Virginia, including any officer, board or commission or agency of the State of West Virginia, is a party, for construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration and/or repair work (other than temporary or emergency repairs) which requires or involves the employment by any contractor or subcontractor of laborers, mechanics, skilled and semiskilled laborers and apprentices, in the performances of services directly upon the public work project must include in its specifications a provision stating the Fair Minimum Wage Rates as determined by the Commissioner of Labor, which shall be paid for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed.

Every person paid by a contractor or a subcontractor in the manner prescribed by law under W. Va. Code '21-5 et seq. for his or her labor in the construction, reconstruction, demolition, alteration and/or repair work (other than temporary or emergency repairs) done under a bona fide rehabilitation program or a bona fide manpower training program is "Employed" and "Receiving Wages."

Work performed under a bona fide rehabilitation program arranged by and at a state institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions is not to be considered public work performed by a public body as defined in the Act and these regulations.

1.2. Authority. -- W. Va. Code '21-5A.

1.3. Filing Date. -- December 31, 1982.

1.4. Effective Date. -- December 31, 1982.

'42-7-2. Definitions.

2.1. Where the word "The Act" is used herein, it means the West Virginia Wages for Construction of Public Improvements Act or Fair Minimum Wage Act passed March 11, 1961, and made effective ninety (90) days from passage.

2.2. "Commissioner" means the Commissioner of Labor or his or her duly authorized representatives.

2.3. "Division" means the West Virginia Division of Labor.

2.4. "Maintenance Work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

2.5. "Public Body" or "Public Authority" means any officer, board or commission or other agency of the

State of West Virginia, or any political subdivision thereof, or any authority created by the Legislature of West Virginia.

2.6. "Public Work" means construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration and/or repair work whole or in part out of the funds of a public body, but shall not include work performed under a bona fide rehabilitation program or a bona fide manpower training program.

2.7. The term "Apprentice" means a person employed and working under a bona fide apprenticeship program, directly related to the particular craft involved in the construction industry. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program, registered with and approved by the Bureau of Apprenticeship Training, United States Department of Labor.

2.8. "Bona Fide" means that program which is made in good faith without interest of deceit. Rehabilitation programs are those under the jurisdiction of the Division of Vocational Rehabilitation of the Department of Education and Manpower. Training programs are those certified by the Department of Employment Security to the Division of Vocational Education, Department of Education.

2.9. "Emergency" means an unforeseen combination of circumstances which calls for immediate action, and is synonymous with crisis, pinch, strait and necessity.

2.10. "Temporary" means lasting for a time only; existing or continuing for a limited time, not permanent.

2.11. "Locality" means any political subdivision, or combination of the same, with the county in which the construction is to be performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workmen and mechanics to perform such construction work efficiently and properly, and may include one or more counties in this State adjacent to the one on which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction.

2.12. "Craft" means those special skills and trades which are recognized by custom and usage in the building and construction industry.

2.13. "Classification" means those specific categories of jobs which are performed within a "Craft" such as laborer who can be classified as a blacksmith, pipelayer, mucker-chucker, etc.

2.14. "Prevailing Wages," "Wage Rates," "Minimum Wage Rates" and "Fair Minimum Wage Rates" mean those rates as determined by the Commissioner as payable in the locality in which the public work is to be performed for the respective crafts and classifications, and shall include "Fringe Benefits" as required by the Act.

2.15. "Fringe Benefits" means those benefits granted by an employer that involves a money cost without affecting basic wage rates which include compensation for holidays and fair minimum overtime.

2.16. "Collective Bargaining Agreement" means the agreement or agreements negotiated between the historically established and recognized bargaining representatives for the employers and of the workmen for the particular crafts or classifications involved providing for applicable wage rates, hours of work, working conditions and contributions for employee benefits as defined in Subsection 2.15 of this section.

2.17. "Authorized Deduction" means those deductions which are authorized by W. Va. Code '21-5-3.

2.18. "Holdback Pay" means the wages earned during the days between the end of the pay period and payday.

2.19. "Nonwillful Violations" means the results of an honest misinterpretation, a valid dispute as to the meaning or application, or a mere erroneous preparation of the payroll document -- all not attributable to willful negligence.

'42-7-3. Required Provisions To Be Contained In All Advertised Specifications And Contracts For Public Work.

3.1. The specifications for every contract for any public work as defined herein shall contain at least the following conditions, provisions and requirements:

(a) The fair minimum wage rates as shall have been determined by the Commissioner of Labor which must be paid to the workmen employed in the performance of the contract.

The contract shall specifically provide that the contractor and/or subcontractor or subcontractors shall pay no less than the wage rates as determined in the decision of the Commissioner and shall comply with the conditions of the West Virginia Act on wages for construction of public improvement, passed March 11, 1961, and made effective ninety (90) days from passage, and the regulations pursuant thereto, to assure the full and proper payment of said rates. Further, the wage rates as determined shall be printed on the bidding blanks and attention should be specifically noted to these facts within the body of the advertisement for bids.

(b) The contract shall contain the stipulation that such workmen shall be paid no less than such prevailing wage rates and such other provisions to assure payment thereof as heretofore set forth in this section.

(c) The contract provisions shall apply to all work performed on the contract by the contractor and/or subcontractor or subcontractors.

(d) The contractor shall insert in each of his or her subcontract or subcontracts all of the stipulations contained in these required provisions and such other stipulations as may be required.

(e) The contract shall provide that no workmen may be employed on the public work except in accordance with the classifications set forth in the decision of the Commissioner. In the event that additional different classifications are necessary, the procedure set forth in Section 10 of these regulations shall be followed.

(f) The contract shall provide that all workmen employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists of the nature of any contractual relationship which may be alleged to exist between any contractor, subcontractor(s) and either directly or indirectly, except authorized deductions, the full amounts due, less hold back pay of no more than three (3) days, computed at the rates applicable to the time worked in the appropriate classification.

Nothing in the contract, the Act or these regulations shall prohibit the payment of more than the fair minimum wage rates as determined by the Commissioner to any workman on public work.

(g) The contract shall provide that the contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Commissioner in a prominent and easily accessible

place or places at the site of the work. The posted notice of wage rates must contain the following information:

- (1) Name of project.
- (2) Name of public authority for which it is being constructed.
- (3) The crafts and classifications of workmen listed in the Commissioner's fair minimum wage rate determination for the particular locality.
- (4) The fair minimum wage rates determined for each craft and classification.
- (5) A statement advising workmen that if they have been paid less than the fair minimum wage rate for their job classification or that the contractor and/or subcontractor or subcontractors are not complying with the Act or these regulations in any manner whatsoever may recover from such contractor and/or subcontractor(s) the difference between the same and the posted fair minimum wage rate of wages, and in addition thereto a penalty equal in amount to such difference and a reasonable attorney's fee. The limitation to such civil action by the workman is a period of three (3) years and venue of such action shall be in the county where the work is performed.
- (h) The contract shall provide that the contractor and each subcontractor shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day and the actual hourly rate of wage paid (including fringe benefits) to each workman employed by him or her in connection with the public work and such record must include any deductions from each workman. The record shall be preserved for a period of at least three (3) years after termination of the contract, and shall be open at all reasonable hours to the inspector of the Commissioner and the public authority which let the contract, its officers and agents.
- (i) The contract shall provide that apprentices will be permitted to work only when they are registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft and/or classification shall not be greater than the ratio permitted to the contractor as to his or her entire work force under the registered program or the recognized ratio of the joint apprenticeship council having jurisdiction in the trade area, whichever is less. An employee listed on the payroll at an apprentice wage rate, who is not registered as above stated, shall be paid the fair minimum wage rate determined by the Commissioner for the classification of the work actually performed. Further, the contractor and/or subcontractors will be required to furnish to the Commissioner written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates, for the locality, prior to using any apprentices on the public work.
- (j) Wages shall be paid without any deductions except authorized deductions.
- (k) Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, unless such piece rate method, at the time of payment of the resultant wages, is computed on an hourly basis and are not less than the fair minimum wage rate determined to be prevailing.
- (l) The contract shall also provide that the contractor and each subcontractor shall file a statement at the request of the Commissioner and a final statement at the conclusion of the work on the contract with the Commissioner, under oath, certifying that all workmen have been paid wages in strict conformity with the provisions as prescribed by this Section 3 of these regulations, or if any wages remain unpaid to set forth the amount of wages due and owing each workman respectively.
- (m) No person, whether personally or for another, shall not request, demand or receive, either before

or after workmen are employed in construction on a public improvement, that they or anyone of them pay over money or other things of value or pay back, return, donate, contribute or give any part or all of their wage, or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment, and any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this Subsection (m) shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50.00) and not more than two hundred fifty dollars (\$250).

(n) Certain crafts traditionally have used laborers or helpers for journeymen training and it is recognized that this is the practice in certain geographic and craft trade areas. The use of laborers or helpers where apprentices' wages are determined is not authorized and constitutes a violation. In geographic areas where such laborers or helpers are recognized subclassifications to crafts, they will be included in the predetermined schedule of fair minimum wage rates.

(o) The provisions of the Act and these regulations may be incorporated by reference in the contract, except that the schedule of fair minimum wages shall be attached to and made a part of the specifications and contract.

'42-7-4. Duty Of The Public Authority.

4.1. Any public authority authorized to let to contract the construction of a public improvement shall before advertising for bids for construction thereof, the fair minimum rates of wages to be paid by the successful bidder to the workmen in the various categories, branches or classes of the construction to be performed; and such schedule of wages shall be attached to and made a part of the specifications for the construction and shall be printed on the bidding blanks.

4.2. The public authority shall submit a certified statement to the Commissioner when the contract is awarded to the effect that wage schedules had been attached to specifications and bidding blanks and made a part of the contract. The certification shall also include a statement of the cost, the name of the contractor, the starting date of the project and estimated time for completion.

4.3. The final payment to the contractor shall be withheld until such time as the public authority, who is charged with the disbursement of the funds has ascertained and so certified to the Commissioner that the wage rates as determined by the Commissioner are paid. Further, final payment shall be withheld if the Commissioner notifies public authority that the contractor is in violation of the Act or these regulations.

'42-7-5. Prevailing Wage Established At Regular Intervals; How Determined; Hearings On Objections; Judicial Review.

5.1. The Division of Labor, from time to time, shall investigate and determine the prevailing hourly rate of wages in the localities in this State. Determinations thereof shall be made annually on January 1 of each year and shall remain in effect during the successive year: Provided, however, That such rates shall not remain in effect for a period longer than fifteen (15) months from the date they are published.

In determining such prevailing wage rates, the Division of Labor may ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality of this State where the construction of the public work is to be performed.

5.2. A copy of the determination so made shall be filed with the Secretary of State under the provisions of this Act and W. Va. Code '29A et seq. (State Administrative Procedure). Copies shall be supplied to all

persons requesting same within ten (10) days after such filing or as provided for in W. Va. '29A et seq.

5.3. At any time within fifteen (15) days, after such filing, any affected person may object, in writing, to the determination by filing such written notice with the Commissioner stating specific grounds of the objection.

5.4. Within ten (10) days of the receipt of such objection, the Commissioner shall set a date for a hearing and that date shall be within thirty (30) days after receipt of the objection by written notice as to the time and place for said hearing, and such notice shall be at least ten (10) days prior to the date set so as to enable the objector to be present.

5.5. Within ten days of the conclusion of such hearing the Commissioner shall rule and make a decision based upon evidence presented. Such decision shall be filed with the Secretary of State and a copy to all parties by personal service or registered mail.

5.6. Any person affected may appeal the aforementioned decision to the minimum wage rate board within ten (10) days after such filing. The Board shall hear the appeal within twenty (20) days in Charleston and shall render its decision within ten (10) days after the conclusion of the hearing.

5.7. Any party affected by the proceedings in Subsection 5.6 of these rules may, within thirty (30) days, appeal the Board's decision to the Circuit Court of the county wherever the project is to be performed. The decision of such circuit court may be appealed to the Supreme Court of West Virginia by any person affected thereby in the manner provided by law for appeals in civil action.

5.8. This subsection will illustrate the proceedings set forth in Subsections 5.1 through 5.8.

(a) The Commissioner files the determined wage rates on January 1. If by January 16 (within fifteen (15) days) an affected party protests or objects, then the Commissioner by January 26 (within ten (10) days) sets a date for the hearing. This hearing cannot be set for a date later than February 5 (ten (10) days prior to hearing date).

(b) If the hearing is concluded on February 15, a decision must be rendered by February 25 (within ten (10) days) and certified as provided.

(c) Any person affected may appeal to the minimum wage rate board no later than March 7 (within ten (10) days) and the Board shall hear the appeal by March 27 (within twenty (20) days) and the Board shall render a decision by April 6 (within ten (10) days).

(d) Any person affected by the Board's decision may appeal to the circuit court of the county wherein the project is contemplated at a date no later than May 6 (within thirty (30) days) and the circuit court's decision may be appealed to the Supreme Court of Appeals of West Virginia in the manner provided by law for appeals in civil action.

5.9. To further simplify this procedure, the following table should be studied:

January 1 - Wage rates are determined

January 16 - Objection (within fifteen (15) days)

January 26 - Commissioner sets hearing date (within ten (10) days)

February 5 - Objector notified (ten (10) days prior to hearing)

February 15 - Hearing (within thirty (30) days after objection)

March 7 - Appeal to Minimum Wage Rate Board (within ten (10) days)

March 27 - Hearing by Board (within twenty (20) days)

April 6 - Decision by Board (within ten (10) days)

May 6 - Objector's appeal to Circuit Court (within thirty (30) days)

Further appeal as provided by law.

Explanation: Maximum periods are used to illustrate and this does not mean that an objection cannot be made on January 1 (the same date on which rates were filed) and a hearing set on the same day (if the objectors agree that they can be present), and the Commissioner can render a decision on the same day.

5.10. Pending the decision on appeal, the rates for the preceding year shall remain in effect.

42-7-6. Posting Of Wage Rates.

6.1. The contractors and subcontractor(s) on the public work project shall post, in a prominent and easily accessible place, a clearly legible statement of all fair minimum rates to be paid the several classes of workmen employed on the public improvement.

42-7-7. Records And Inspection.

7.1. The contractor and each subcontractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record.

There is no mandatory format; however, all payrolls must contain the following information:

(a) The employee's full name, address and social security number (This is necessary on the first payroll on which his or her name appears; thereafter, only his or her name, unless a change of name or address.);

(b) The employee's classification;

(c) The employee's hourly wage rate and, where applicable, his or her overtime hourly wage rate;

(d) The daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted);

(e) The itemized deductions made;

(f) The net wages paid;

(1) If space on the payroll form is limited, supplemental data may be recorded, if it is easily accessible to the payroll form.

(2) Appropriate codes are permissible to replace classification names on payrolls: Provided, That

a key to such code is submitted to the Commissioner for retention in his or her files.

(3) All records pertaining to the Public Improvement Project shall be preserved for a period of no less than three (3) years.

'42-7-8. Penalties For Violation Of Act.

8.1. Any contractor or subcontractor who willfully and knowingly violates any provision of the Act or these regulations shall be fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).

8.2. Any workmen, on the public improvement, who is paid less than the posted fair minimum rate of wages, may recover from his or her employer the difference between the same and the posted rate, plus a penalty equal in amount to such difference, and a reasonable attorney's fee or fees. The venue of such action shall be in the county where the work is performed.

8.3. It shall be unlawful for any person, whether personally or for another, to request, demand or receive, either before or after workmen are employed on a public work project, that they (workmen) pay back, return, donate, contribute or give any part or all of their wages, or thing of value to any person, upon the statement, representation or understanding that failure to comply with such request or demand will prevent them or any one of them from procuring or retaining employment; and any person who directly or indirectly aids, requests or authorizes such a violation shall also be guilty of a misdemeanor and fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250).

'42-7-9. Severability.

9.1. Each section and subsection of the Act and these regulations is hereby declared to be an independent section or subsection, and if any section, subsection, sentence, clause or phrase of the Act or these regulations shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, subsections and sections shall not be affected thereby.

'42-7-10. Amendments Or Regulations.

10.1. Any person wishing a revision of any of the terms of the regulations in this part with respect to classifications or any other pertinent facts may submit to the Commissioner a written petition setting forth the changes desired and the reasons for proposing them.

10.2. The Commissioner, upon inspection of the petition and believing that the grounds are reasonable, may schedule a hearing with due notice to interested persons, or make other provisions for affording interested persons an opportunity to present data, views and arguments relating to any proposed changes.

'42-7-11. Adopted Definitions.

11.1. Definitions have been adopted as follows:

(a) "Highway Construction" work is defined as all work ordinarily included in highway construction projects. It includes highway tunnels, bridges, highway and street grading, paving and drainage, culverts, manholes, water and other utility pipelines (when included in the contract), sidewalks (when included in the contract), retaining walls, underpasses and overpasses (when included in a highway contract), highway viaducts, clover-leaf structures, curbs and sidewalks, seeding and landscaping, clearing (when included in the contract), guard rails and fences, and including the erection, dismantling, operation maintenance and repair of

all equipment, vehicles and other facilities used in connection with or serving the aforementioned work.

(b) "Heavy Construction and Railroad Construction" is defined as construction, substantially in its entirety, any fixed structures, improvement or modification thereof, addition or repair thereto, including any structure or operation which is an incidental part of a contract thereof (not including building or highway construction), including without limitation, railroad and street railway construction projects, sewers and watermain, retaining walls, viaducts, drainage projects, flood control projects, reclamation projects, airports, athletic fields, reservoirs, water supply projects, water power developments, hydroelectric developments, transmission lines, duct lines, pipe lines, locks, dams, dikes, levees, revetments, channels, channel cutoffs, intakes, dredging projects, jetties, breakwaters, docks, harbors, roads, bridges, parking lots, sidewalks, building construction sites, industrial plant sites, sewage disposal and water treatment plants, excavation and disposal of earth and rock, including the assembly, operation, maintenance and repair of all equipment, vehicles and other facilities used in connection with or servicing the aforementioned works and services.

(c) "Building Construction" - Building trades rates and conditions shall apply to any building which may be required in the construction, renovation or demolition of any of the work included where such buildings are customarily constructed under building trades conditions.

42-7-12. Coverage Of Specific Classes Of Work.

12.1. Coverage of specific classes of work is defined as follows:

(a) Exploratory drilling:

(1) Where the drilling was for the purpose of obtaining core borings to be used in engineering studies and planning the work, "Works" refers to improvements, such as buildings, canals or roads, rather than to refer to progress or activity. Consequently, mere digging would not appear to be within the term, because it relates to an activity as distinguished from a product or improvement.

(2) Where the soil samples are taken prior to or during construction for the construction contractor for the purpose of setting foundations, the Commissioner of Labor has held that contracts for such work are considered covered by the prevailing wage law if they may be fairly characterized as being directly related and incidental to or an integral part of the actual construction process.

(b) Incidental crafts:

(1) Watchman. -- Watchmen, where their work is nonmanual in nature or where they are acting purely in administrative capacities, are not "laborers and mechanics" within the contemplation of the prevailing wage law. However, the mere fact that an employee is called a guard, watchman or security policeman does not necessarily mean he is not a laborer. If he or she actually performs physical or manual work in addition to or in connection with his guarding activities, it may well be that he or she should properly be classified as a laborer or mechanic for such hours during which he performs laborer's or mechanic's duties. For example, where the duties of a watchman require him to wet down concrete walls and unload materials, the watchman is considered a laborer since performing these acts is a laborer's work.