

IC 5-16-7

Chapter 7. Wage Scale of Contractors' and Subcontractors' Employees

IC 5-16-7-1

Common construction wage; committee to determine; classification; exemptions

Sec. 1. (a) Any firm, individual, partnership, limited liability company, or corporation that is awarded a contract by the state, a political subdivision, or a municipal corporation for the construction of a public work, and any subcontractor of the construction, shall pay for each class of work described in subsection (c)(1) on the project a scale of wages that may not be less than the common construction wage.

(b) For the purpose of ascertaining what the common construction wage is in the county, the awarding governmental agency, before advertising for the contract, shall set up a committee of five (5) persons as follows:

(1) One (1) person representing labor, to be named by the president of the state federation of labor.

(2) One (1) person representing industry, to be named by the awarding agency.

(3) A third member to be named by the state president of the Associated Builders and Contractors.

(4) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.

(5) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The legislative body (as defined in IC 36-1-2-9) for the county where the project is located shall make the appointment under this subdivision.

(c) As soon as appointed, the committee shall meet in the county where the project is located and determine in writing the following:

(1) A classification of the labor to be employed in the performance of the contract for the project, divided into the following three (3) classes:

(A) Skilled labor.

(B) Semiskilled labor.

(C) Unskilled labor.

(2) The wage per hour to be paid each of the classes.

The committee is not required to consider information not presented to the committee at the meeting. IC 5-14-1.5 (open door law) applies to a meeting of the committee.

(d) The rate of wages determined by the committee under subsection (c) applies to any contract for which the awarding governmental agency lets not later than three (3) months after the date the committee determines the rate of wages. The committee shall establish wages for all classifications of work that may be employed

on projects subject to contracts let by the awarding agency for three (3) months after the date the committee determines the rate of wages. If an awarding agency advertises for a contract that includes classifications that are not listed on the existing wage scale, the awarding agency shall form a new committee under subsection (b) to determine the classifications and wages on the contract.

(e) If the awarding government agency lets for a contract later than three (3) months after the committee determines the rate of wages, the awarding government agency shall form a new committee under subsection (b) to determine a rate of wages for the contract. The rate of wages determined under this subsection applies to any contract for which the awarding government agency lets not later than three (3) months after the rate of wages is determined under this subsection.

(f) The rate of wages determined under subsection (c) shall not be less than the common construction wage for each of the three (3) classes of wages described in subsection (c) that are currently being paid in the county where the project is located.

(g) This chapter does not apply to contracts let by the Indiana department of transportation for the construction of highways, streets, and bridges. IC 8-23-9 applies to state highway projects.

(h) A determination under subsection (c) shall be made and filed with the awarding agency at least two (2) weeks prior to the date fixed for the letting, and a copy of the determination shall be furnished upon request to any person desiring to bid on the contract. The schedule is open to the inspection of the public.

(i) If the committee appointed under subsection (b) fails to act and to file a determination under subsection (c) at or before the time required under subsection (h), the awarding agency shall make the determination, and its finding shall be final.

(j) It shall be a condition of a contract awarded under this chapter that the successful bidder and all subcontractors shall comply strictly with the determination made under this section.

(k) This chapter does not apply to public projects in Indiana that would otherwise be subject to this chapter that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant consents in writing that this chapter is applicable to the project.

(l) Notwithstanding any other law, this chapter applies to projects that will be:

- (1) owned entirely; or
- (2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

(m) Notwithstanding any other law, this chapter does not apply to projects in which the actual construction costs are less than the following:

- (1) For contracts awarded after December 31, 2011, and before January 1, 2013, two hundred fifty thousand dollars (\$250,000).
- (2) For contracts awarded after December 31, 2012, three hundred fifty thousand dollars (\$350,000).

(Formerly: Acts 1935, c.319, s.1.) As amended by Acts 1980, P.L.74, SEC.12; Acts 1981, P.L.41, SEC.3; P.L.18-1990, SEC.14; P.L.8-1993, SEC.65; P.L.25-1995, SEC.8; P.L.81-1995, SEC.1; P.L.18-2011, SEC.1; P.L.195-2011, SEC.1.

IC 5-16-7-2

Filing schedule of wages

Sec. 2. The state or any municipal corporation thereof letting any such contracts shall require any contractor or subcontractor performing such public work to file a schedule of the wages to be paid to such laborers, workmen, or mechanics thereon with the state or with such municipal corporation. Such schedule shall be filed before any work is performed on such contract or subcontract; provided, such scale shall not be less than the scale determined as provided in section 1 of this chapter; provided further, that nothing in this chapter provided shall prevent such contractor or subcontractor from paying a higher rate of wages than set out in the schedule of wages filed by him.

(Formerly: Acts 1935, c.319, s.2.) As amended by P.L.25-1986, SEC.92.

IC 5-16-7-3

Violations; penalties

Sec. 3. A contractor or subcontractor who knowingly fails to pay the rate of wages determined under this chapter commits a Class B misdemeanor. If the contractor or subcontractor has committed a prior offense under this section, the contract on which the instant offense occurred shall be forfeited and the contractor or subcontractor may not receive any further payment on the contract nor may the state or the municipal corporation making the contract make any further payments on the contract from any of the funds under its charge or control.

(Formerly: Acts 1935, c.319, s.3.) As amended by Acts 1978, P.L.2, SEC.519.

IC 5-16-7-4

Definitions

Sec. 4. The following definitions apply throughout this chapter:

(1) "Common construction wage" means a scale of wages for each class of work described in section 1(c)(1) of this chapter that is not less than the common construction wage of all construction wages being paid in the county where a project is located, as determined by the committee described in section 1(b) of this chapter after having considered the following:

(A) Any reports with respect to wage scales submitted by the Indiana State Building and Construction Trades Council.

(B) Any reports with respect to wage scales submitted by the Associated Builders and Contractors of Indiana.

(C) Any other information submitted by any person to the committee established under section 1(b) of this chapter.

(2) "State" includes any officer, board, commission, or other agency authorized by law to award contracts for the performance of public work on behalf of the state, except as otherwise provided in this chapter.

(3) "Municipal corporation" includes any county, city, town, school corporation, or any officer, board, commission, or other agency authorized by law to award contracts for the performance of public work on behalf of a municipal corporation. The term also includes a redevelopment commission established under IC 36-7-14-3.

(4) "Public work" includes any public building, highway, street, alley, bridge, sewer, drain, improvement, or any other work of any nature or character that is paid for out of public funds, except as otherwise provided in this chapter.

(Formerly: Acts 1935, c.319, s.4.) As amended by P.L.25-1986, SEC.93; P.L.35-1990, SEC.6; P.L.25-1995, SEC.9; P.L.81-1995, SEC.2; P.L.18-2011, SEC.2; P.L.195-2011, SEC.2.

IC 5-16-7-5

Nonapplicability of chapter

Sec. 5. (a) This chapter does not apply to contractors or subcontractors performing public work for Purdue University on agricultural or forestry land owned or occupied by the university and used by it for educational or research purposes if the cost of the work is estimated to be less than fifty thousand dollars (\$50,000).

(b) Except as provided in IC 5-23, this chapter does not apply to a person that has entered into an operating agreement with the state, a municipal corporation, or another political subdivision for the management or operation of a public facility under IC 5-23.

As added by Acts 1977, P.L.250, SEC.6. Amended by P.L.82-1995, SEC.1; P.L.49-1997, SEC.30.

IC 5-16-7-6

Artificial division of project to avoid statute; prohibition; Class A infraction; 2 year contract debarment

Sec. 6. (a) A public work project may not be artificially divided into two (2) or more projects to avoid the application of this chapter.

(b) A bidder, quoter, or other person who is a party to a public work contract who knowingly violates this section commits a Class A infraction and may not be a party to, or benefit from, a public work contract for two (2) years after the date of the adjudication.

(c) An officer or employee of the state or a municipal corporation who knowingly violates this section commits a Class A infraction.

As added by P.L.195-2011, SEC.3.