

1 HOUSE BILL NO. 614

2 INTRODUCED BY M. MCCANN

3 BY REQUEST OF THE HOUSE JOINT APPROPRIATIONS SUBCOMMITTEE ON LONG-RANGE

4 PLANNING

5

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7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING PREVAILING WAGE RATES
8 ON PUBLIC PROJECTS; PROVIDING FOR A WRITTEN DETERMINATION OF PREVAILING WAGES FOR
9 BIDDERS; CLARIFYING THE PERIOD FOR WITHHOLDING OF A PORTION OF A PAYMENT; REQUIRING
10 PREVAILING WAGE RATES TO BE PUBLISHED AND DISTRIBUTED TO REGISTERED CONTRACTORS;
11 AMENDING SECTIONS 18-2-402, 18-2-404, 18-2-407, 18-2-422, AND 18-2-432, MCA; AND
12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 **Section 1.** Section 18-2-402, MCA, is amended to read:

17 **"18-2-402. Standard prevailing rate of wages.** (1) The Montana commissioner of labor may
18 determine the standard prevailing rate of wages applicable to public works contracts under this part. The
19 commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other
20 information on which the rates are based.

21 (2) The provisions of this part do not apply in those instances where the standard prevailing rate
22 of wages is determined pursuant to federal law.

23 (3) In ~~no~~ instances where this part is applicable ~~shall~~ the standard prevailing rate of wage may not
24 be determined to be greater than the applicable rate of wage in the area for the particular work in question
25 as negotiated under existing and current collective bargaining agreements.

26 (4) Prior to bidding and at the request of a contracting agency, the department shall provide a
27 written determination of the prevailing wages to be used on a public works project. The department may
28 request information from the contracting agency that is necessary to make the determination. The
29 determination is binding upon the department for all complaints on the public works project."

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1 **Section 2.** Section 18-2-404, MCA, is amended to read:

2 **"18-2-404. Approval of public works contract -- bond.** (1) All public works contracts under this
3 part must be approved in writing by the legal adviser of the contracting county, municipal corporation,
4 school district, assessment district, or special improvement district body or officer prior to execution by
5 the contracting public officer or officers.

6 (2) In all public works contracts entered into under the provisions of this part, at least \$1,000 of
7 the contract price must be withheld at all times until the termination or final acceptance of the public
8 works contract excluding any warranty period."

9

10 **Section 3.** Section 18-2-407, MCA, is amended to read:

11 **"18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor,
12 subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as
13 established under the public works contract shall forfeit to the department a penalty at a rate of up to 20%
14 of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected
15 by the department under this section must be deposited in the general fund. A contractor, subcontractor,
16 or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that
17 the employee was underpaid.

18 (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and
19 industry that there is insufficient money due to the contractor or the employer under the terms of the
20 contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after
21 the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an
22 action in district court to recover all penalties and forfeitures due. This part does not prevent the individual
23 worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid
24 workers from maintaining an action for recovery of the wages due under the contract as provided in Title
25 39, chapter 3, part 2, except that appeal of the hearings officer's decision is made directly to district court
26 rather than to the board of personnel appeals.

27 (3) A contracting agency relying upon a determination made by the department pursuant to
28 18-2-402(4) is exempt from any penalty, forfeiture, fee, interest, or assessment under this part."

29

30 **Section 4.** Section 18-2-422, MCA, is amended to read:

1 **"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate.**

2 All public works contracts and the bid specifications for those contracts must contain:

3 (1) a provision stating for each job classification the standard prevailing wage rate, including fringe
4 benefits, that the contractors and subcontractors shall pay during construction of the project;

5 (2) a provision requiring the contractors and subcontractors to obtain from the department the
6 current standard prevailing wage rate, including fringe benefits, that must be paid during the construction
7 of the project; and

8 (3) a provision requiring the contractor to post and maintain the wage scale and fringe benefits.

9 This provision must be the full extent of the contracting agency's responsibility to ensure compliance with
10 18-2-406."

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12 **Section 5. Section 18-2-432, MCA, is amended to read:**

13 **"18-2-432. Penalty for violation. (1) (a) If a person, firm, or corporation fails to comply with the**
14 **provisions of this part, the state, county, municipality, school district, or officer of a political subdivision**
15 **that executed the public works contract shall retain \$1,000 of the contract price as liquidated damages**
16 **a penalty for the violation of the terms of the public works contract, and the money must be credited to**
17 **the proper funds of the state, county, municipality, school district, or political subdivision.**

18 **(b) If a person, firm, or corporation fails to comply with the provisions of this part due to gross**
19 **negligence, as determined by the commissioner, the commissioner may retain up to an additional \$10,000**
20 **above the amount provided for in subsection (1)(a) as a penalty for the violation of the terms of the public**
21 **works contract. The money retained pursuant to this subsection (1)(b) must be credited to the proper**
22 **funds of the state, county, municipality, school district, or other political subdivision.**

23 **(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly**
24 **or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any**
25 **firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial**
26 **interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any**
27 **public works contracts or subcontracts that are subject to the provisions of this chapter.**

28 **(3) Whenever an action has been instituted in a district court in this state against any person, firm,**
29 **or corporation for the violation of this part, the court in which the action is pending is authorized to issue**
30 **an injunction to restrain the person, firm, or corporation from proceeding with a public works contract with**

1 the state, county, municipality, school district, or political subdivision, pending the final determination of
2 the instituted action.

3 (4) A contracting agency relying upon a determination made by the department pursuant to
4 18-2-402(4) is exempt from any penalty, forfeiture, fee, interest, or assessment under this part."

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6 **NEW SECTION. Section 6. Publication and distribution of rules and wage scales.** The department
7 shall:

8 (1) publish all standard prevailing wage rate scales and distribute the scales to all construction
9 contractors registered pursuant to Title 39, chapter 9;

10 (2) develop and publish rules to assist contracting agencies in differentiating between the use of
11 heavy and highway construction wage rates and building construction wage rates on public works
12 projects.

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14 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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