

SENATE BILL NO. 510

INTRODUCED BY G. LIND

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CONTRACTORS AND SUBCONTRACTORS THAT ARE REQUIRED TO PAY THE STANDARD PREVAILING WAGE TO DEPOSIT THE PORTION OF FRINGE BENEFITS FOR HEALTH AND WELFARE INTO A HEALTH CARE TRUST OR ACCOUNT OR A HEALTH CARE POLICY, CERTIFICATE OF INSURANCE, OR MEMBERSHIP CONTRACT; REQUIRING CONTRACTOR SURVEYS TO INCLUDE INFORMATION RELATING TO HEALTH AND WELFARE BENEFITS; AMENDING SECTIONS 18-2-401 AND 18-2-412, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) (a) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home.

(b) Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.



1 (6) "District" means a prevailing wage rate district established as provided in 18-2-411.

2 (7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or
3 limited liability company engaged in nonconstruction services.

4 (8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health
5 and welfare ~~and contributions, as provided in [section 3]~~, pension contributions; that meet the requirements of
6 the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United
7 States department of labor, and zone pay and travel allowance that are determined and established statewide
8 for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys,
9 runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or
10 reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the
11 general public.

12 (9) "Nonconstruction services" means work performed by an individual, not including management,
13 office, or clerical work, for:

14 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets,
15 and alleys;

16 (b) custodial or security services for publicly owned buildings and facilities;

17 (c) grounds maintenance for publicly owned property;

18 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

19 (e) law enforcement, including janitors and prison guards;

20 (f) fire protection;

21 (g) public or school transportation driving;

22 (h) nursing, nurse's aid services, and medical laboratory technician services;

23 (i) material and mail handling;

24 (j) food service and cooking;

25 (k) motor vehicle and construction equipment repair and servicing; and

26 (l) appliance and office machine repair and servicing.

27 (10) "Project location" means the construction site where a public works project involving construction
28 services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and
29 specifications.

30 (11) (a) "Public works contract" means a contract for construction services let by the state, county,

1 municipality, school district, or political subdivision or for nonconstruction services let by the state, county,
2 municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The
3 nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999,
4 contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

5 (b) The term does not include contracts entered into by the department of public health and human
6 services for the provision of human services.

7 (12) "Special circumstances" means all work performed at a facility that is built or developed for a specific
8 Montana public works project and that is located in a prevailing wage district that contains the project location
9 or that is located in a contiguous prevailing wage district.

10 (13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

11 (i) the heavy and highway construction wage rates applicable to heavy and highway construction
12 projects; or

13 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for health
14 and welfare ~~and~~ contributions as provided in [section 3], pension contributions; that meet the requirements of the
15 Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States
16 department of labor, and travel allowance that are paid in the district by other contractors for work of a similar
17 character performed in that district by each craft, classification, or type of worker needed to complete a contract
18 under this part. In each district, the standard prevailing rate of wages, including fringe benefits for health and
19 welfare contributions, pension contributions that meet the requirements of the Employee Retirement Security Act
20 of 1974 and other bona fide programs approved by the United States department of labor, and the rate of travel
21 allowance must be computed by the department based on wages and contributions for work performed by
22 electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title
23 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work
24 is performed according to commercial building codes. The contractor survey must include information pertaining
25 to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and
26 benefits paid for each craft, including specific information on the amount of health and welfare benefits. In setting
27 the prevailing rate of wages, including the health and welfare portion of the benefits, from the survey for each
28 craft, the department shall use the weighted average wage for each craft, except in those cases in which the
29 survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of
30 the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work

1 performed must be work of a similar character to the work performed in the district unless the annual survey of
 2 construction contractors and the biennial survey of nonconstruction service employers in the district does not
 3 generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other
 4 information or methods that the commissioner determines fairly establish the standard prevailing rate of wages.
 5 The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages
 6 is determined, including the amount for the health and welfare portion of the benefits. The rules must establish
 7 a process for determining if there is insufficient data generated by the survey of employers in the district that
 8 requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify
 9 the amount of data that constitutes insufficient data and require the commissioner ~~of labor~~ to use other methods
 10 of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of
 11 determining the prevailing rate of wages must provide for review and the incorporation of data from work of a
 12 similar character that is conducted as near as possible to the original district.

13 (b) When work of a similar character is not being performed in the district, the standard prevailing rate
 14 of wages, including fringe benefits for health and welfare ~~and contributions~~, pension contributions; that ~~meets~~
 15 meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved
 16 by the United States department of labor, and the rate of travel allowance must be those rates established by
 17 collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed
 18 to complete the contract.

19 (14) "Work of a similar character" means work on private commercial projects as well as work on public
 20 projects."
 21

22 **Section 2.** Section 18-2-412, MCA, is amended to read:

23 **"18-2-412. Method for payment of standard prevailing wage rate of wages -- pension and travel**
 24 **portion of fringe benefit.** (1) To fulfill the obligation to pay the standard prevailing rate of wages for pension
 25 contributions and travel under 18-2-403, a contractor or subcontractor may:

26 (a) pay the amount of fringe benefits that are for pension contributions and travel and the basic hourly
 27 rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

28 (b) make an irrevocable contribution for pension contributions to a trustee or a third person pursuant to
 29 a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security
 30 Act of 1974 or that is a bona fide program approved by the United States department of labor; or

1 (c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that
 2 the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including
 3 fringe benefits for ~~health and welfare~~ and pension contributions that meet the requirements of the Employee
 4 Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States
 5 department of labor, that is applicable to the district for the particular type of work being performed.

6 (2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to
 7 workers or employees for ~~health care~~, pensions on retirement or death, life insurance, disability ~~and sickness~~
 8 insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act
 9 of 1974 or that are approved by the United States department of labor.

10 (3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program
 11 described in subsection (2) with the department."
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13 **NEW SECTION. Section 3. Method for payment of standard prevailing rate of wages -- health and**
 14 **welfare portion of fringe benefits.** (1) To fulfill the obligation to pay the health and welfare portion of the
 15 standard prevailing rate of wages under 18-2-403, a contractor or subcontractor shall make an irrevocable
 16 contribution for health and welfare as chosen by the employee:

17 (a) to a trust or account, such as a health savings account, a medical savings account as provided in Title
 18 15, chapter 61, part 2, or a flexible savings account that is set aside specifically for qualified medical expenses,
 19 as defined by 26 U.S.C. 223(d), for the employee or account holder or a dependent of the employee or account
 20 holder;

21 (b) to a group health plan, a multiple employer welfare arrangement, or a union health plan; or

22 (c) to a combination of a trust or account and a health care policy, certificate, or contract as provided in
 23 subsections (1)(a) and (1)(b).

24 (2) An employer shall provide employees with information regarding the advantages and disadvantages,
 25 including state and federal tax treatment, of each type of arrangement and any other applicable state or federal
 26 laws.

27 (3) Any unused dollars from a flexible savings account may be retained by the employer as provided in
 28 federal law.
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30 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as an

1 integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [section 2].

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3 NEW SECTION. **Section 5. Saving clause.** [This act] does not affect rights and duties that matured,
4 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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6 NEW SECTION. **Section 6. Applicability.** [This act] applies to contracts that are entered into on or after
7 October 1, 2007.

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