

HOUSE BILL NO. 315
INTRODUCED BY LAWSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT TO PAY STANDARD PREVAILING WAGES FOR ~~A CONTRACTOR~~ AN EMPLOYER WHO, AS A NONPROFIT ORGANIZATION PROVIDING VOCATIONAL REHABILITATION, PERFORMS A PUBLIC WORKS CONTRACT FOR NONCONSTRUCTION SERVICES AND WHO EMPLOYS AN INDIVIDUAL WHOSE EARNING CAPACITY IS IMPAIRED BY A MENTAL, EMOTIONAL, OR PHYSICAL DISABILITY IF THE ~~CONTRACTOR~~ EMPLOYER CONFORMS WITH THE FEDERAL FAIR LABOR STANDARDS ACT AND PAYS THE INDIVIDUAL WAGES THAT ARE EQUAL TO OR ABOVE THE STATE'S MINIMUM WAGE; AMENDING SECTIONS 18-2-403 AND 18-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for heavy

and highway construction services conducted at the project location or under special circumstances.

(4) ~~All~~ Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(5) A contractor AN EMPLOYER who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the contractor EMPLOYER complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in 39-3-404.

~~(5)(6)~~ Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

~~(6)(7)~~ A contract, other than a public works contract, let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, ~~on or after July 1, 1993~~, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(7)(8)~~ A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through ~~(6)~~ (7) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

~~(8)(9)~~ Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on

the public contracting agency."

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

"18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) ~~Any~~ Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

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

NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

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