

SENATE BILL NO. 217

INTRODUCED BY LARSON, BERGREN, COCCHIARELLA, COHENOUR, JACOBSON, KEANE,
KITZENBERG, LANGE, WILSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING APPRENTICE TRAINING LAWS TO ESTABLISH AN APPRENTICE WAGE RATE TIED TO THE STANDARD PREVAILING WAGE RATE FOR CONSTRUCTION SERVICES FOR A PREVAILING WAGE RATE DISTRICT; EXCLUDING CERTAIN APPRENTICE WAGES; DEFINING "APPRENTICE"; AMENDING SECTIONS ~~18-2-401~~, 18-2-411, 39-6-101, AND 39-6-106, MCA; ~~AND~~ REPEALING ARM 24.21.414; AND PROVIDING A DELAYED EFFECTIVE DATE."

WHEREAS, the Legislature has required the creation of at least 10 prevailing wage rate districts in 18-2-411, and these districts cover the entire state and use an annual survey to establish prevailing wage rates; and

WHEREAS, the Department of Labor and Industry has created a separate biennial survey of journeyman's wages in districts outside of Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties for a building construction occupation and has used this wage rate rather than the standard prevailing wage rate as a base for calculating the wages of apprentices, thus duplicating efforts.

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

NEW SECTION. Section 1. Apprentice wage rate. (1) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (3), A wage paid to an apprentice employed FOR CONSTRUCTION SERVICES, AS DEFINED IN 18-2-401, under this part TITLE 18, CHAPTER 2, PART 4, must:

(a) be based on the standard prevailing rate of wages FOR CONSTRUCTION SERVICES, AS DEFINED IN 18-2-401, for a prevailing wage rate district as provided in 18-2-411; and

(b) increase progressively to no more than ~~an applicable~~ THE EMPLOYER'S LOWEST journeyman hourly wage from a starting wage of no less than ~~50%~~ 40% of the hourly wage paid to a journeyman in the same craft and working in the same area or region ~~unless a lower rate is provided by a collective bargaining agreement.~~ A higher wage ~~may~~ MUST be paid if required by federal ~~or~~ LAW, BY other state law, OR BY CONTRACT. IF THE APPRENTICE PERFORMS LABOR IN MORE THAN ONE LOCALITY, THE APPRENTICE MUST BE PAID BASED ON THE PROGRESSIVE WAGE SCHEDULE FOR THE JOURNEYMAN WAGE RATE IN THE AREA IN WHICH THE APPRENTICE IS WORKING.

~~(2) The wage does not include a travel allowance OR BENEFITS. BENEFITS MUST BE PAID TO AN APPRENTICE IF WORK IS BEING PERFORMED ON A PROJECT THAT IS COVERED BY REQUIREMENTS TO PAY THE MONTANA PREVAILING WAGE OR A PROJECT COVERED BY THE FEDERAL DAVIS-BACON ACT, PURSUANT TO 29 CFR, PARTS 1, 3, AND 5.~~

~~(3) WAGES PAID UNDER AN INDIVIDUAL'S WRITTEN APPRENTICESHIP AGREEMENT REGISTERED WITH THE DEPARTMENT OF LABOR AND INDUSTRY AS OF [THE EFFECTIVE DATE OF THIS ACT] ARE EXCLUDED FROM THE RATE SET IN SUBSECTION (1).~~

~~(3)(4) FOR PURPOSES OF THIS SECTION, "APPRENTICE" MEANS A WORKER EMPLOYED TO LEARN A SKILLED TRADE UNDER A WRITTEN APPRENTICESHIP AGREEMENT REGISTERED WITH THE DEPARTMENT OF LABOR AND INDUSTRY.~~

~~Section 2. 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) "Apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department or the bureau of apprenticeship and training of the United States department of labor.~~

~~(1)(2) 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 state the person's home. 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)(3) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.~~

~~(3)(4) (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)(5) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.~~

~~(5)(6) "Department" means the department of labor and industry provided for in 2-15-1701.~~

~~(6)(7) "District" means a prevailing wage rate district established as provided in 18-2-411.~~

~~(7)(8)~~ "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

~~(8)(9)~~ "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet 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 zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

~~(9)(10)~~ "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

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

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

~~(c)~~ grounds maintenance for publicly owned property;

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

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

~~(f)~~ fire protection;

~~(g)~~ public or school transportation driving;

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

~~(i)~~ material and mail handling;

~~(j)~~ food service and cooking;

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

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

~~(10)(11)~~ "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(11)(12)~~ (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999,

~~contracted with a private contractor for the provision of nonconstruction services on behalf of the district.~~

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

~~—— (12)(13) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.~~

~~—— (13)(14) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:~~

~~—— (i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or~~

~~—— (ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspeople workers employed in a craft in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspeople skilled workers in a craft are receiving the same wage. When the survey shows that 50% of the craftspeople skilled workers in a craft are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and~~

~~require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.~~

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

~~———(14)(15) "Work of a similar character" means work on private commercial projects as well as work on public projects."~~

Section 2. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

- (a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and
- (b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402. The standard prevailing rate of wages for employees CONSTRUCTION SERVICES, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in [section 1]."

Section 3. Section 39-6-101, MCA, is amended to read:

"39-6-101. Duties of department. (1) The department of labor and industry shall:

- (a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;
- (b) register ~~such~~ apprenticeship agreements ~~as that~~ are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;
- (c) keep a record of apprenticeship agreements and, ~~upon taking into consideration performance thereof of the agreement,~~ issue certificates of completion of apprenticeship;
- (d) terminate or cancel any apprenticeship agreements in accordance with the provisions of ~~such the~~ agreements; ~~and~~
- (e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;
- (f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;
- (g) use the standard prevailing wage rate FOR CONSTRUCTION SERVICES, AS DEFINED IN 18-2-401, for a prevailing wage rate district as provided in 18-2-411 as a base on which an apprenticeship wage is calculated pursuant to [section 1] for apprentices ONLY FOR CONSTRUCTION SERVICES, AS DEFINED IN 18-2-401;
- ~~(h) FOR ALL OTHER CONSTRUCTION SERVICES, USE THE AVERAGE JOURNEYMAN WAGE PAID TO THE APPRENTICE'S EMPLOYER'S JOURNEYMAN. THE DEPARTMENT MAY REQUIRE THE EMPLOYER TO PROVIDE CERTIFIED PAYROLLS FROM WHICH THE AVERAGE JOURNEYMAN'S SALARY IS CALCULATED.~~
- ~~(g)(h)(i)(H)~~ issue ~~such~~ adopt rules ~~as may be~~ necessary to carry out the intent and purposes of this chapter; and
- ~~(h)(i)(j)(l)~~ perform ~~such~~ other duties ~~as that~~ may be required by federal regulations, provided that ~~such the~~ federal regulations are not in conflict with this chapter.

(2) Not less often than once every 2 years, the department shall make a report of its activities and findings to the governor and, as provided in 5-11-210, to the legislature. The department shall also make the report available to the public."

Section 4. Section 39-6-106, MCA, is amended to read:

"39-6-106. Contents of apprenticeship agreements -- credit for prior training or experience. (1) Apprenticeship agreements ~~shall~~ must contain:

- (a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;
- (b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and

the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice using the criteria established in [section 1];

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any participating party ~~thereto~~. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be ~~utilized~~ used for consultation regarding the settlement of differences arising out of the apprenticeship agreement ~~where such~~ if the differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that, if an employer is unable to fulfill ~~his~~ an obligation under the apprenticeship agreement, ~~he~~ the employer may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department ~~will~~ shall continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) ~~such~~ additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which ~~he~~ the apprentice is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department."

NEW SECTION. Section 5. Repealer. ARM 24.21.414 is repealed.

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title ~~48~~ 39, chapter ~~26~~, ~~part 4~~, and the provisions of Title ~~48~~ 39, chapter ~~26~~, ~~part 4~~, apply to [section 1].

NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE OCTOBER 1, 2006.

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