

HOUSE BILL NO. 704
INTRODUCED BY J. KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO STANDARD PREVAILING RATE OF WAGES; PROVIDING A FUNDING MECHANISM FOR THE ENFORCEMENT OF THE PREVAILING WAGE RATE LAWS; PROVIDING FOR THE CALCULATION OF PREVAILING WAGE RATES FOR BUILDING CONSTRUCTION SERVICES AND NONCONSTRUCTION SERVICES; CLARIFYING THE CEILING ON STANDARD PREVAILING WAGE RATES WHEN THE TYPE OR CLASSIFICATION OF WORK IS SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING PROVISIONS RELATED TO PREVAILING WAGE RATE DISTRICTS; AMENDING SECTIONS 18-2-401, 18-2-402, 18-2-407, 18-2-411, 39-6-101, AND 39-6-108, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Standard prevailing rate of wages for building construction services.

(1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for building construction services using the process described in [section 3] and this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.

(3) (a) Except as provided in subsection (3)(b), the department shall survey each contractor who is obligated to pay the gross receipts tax provided for in 15-50-205.

(b) The department shall survey electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work and master plumbers who are licensed under Title 37, chapter 69, part 3, whose work is performed according to commercial building codes.

NEW SECTION. Section 2. Standard prevailing rate of wages for nonconstruction services. (1)

The department shall conduct a biennial survey to calculate the standard prevailing rate of wages for nonconstruction services using the process described in [section 3] and this section.

(2) The standard prevailing rate of wages adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.

(3) (a) The department shall survey those employers that the department determines provide

nonconstruction services to governmental entities in Montana in fulfillment of public works contracts. The department may also survey employers:

(i) that request to be included in the survey related to the nonconstruction services standard prevailing rate of wages; or

(ii) whose names and addresses are supplied by a Montana governmental entity as employers who have submitted bona fide bids or responses to requests for proposals for public works contracts for nonconstruction services.

(b) If the department does not survey an employer who is required to be surveyed or who is eligible to be surveyed under subsection (3)(a), the resulting survey and the rate-setting process remain valid.

NEW SECTION. Section 3. Calculation of standard prevailing rate of wages. (1) In calculating the standard prevailing rate of wages pursuant to [section 1 or 2], the department shall survey those wages, including fringe benefits for health, welfare, and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs approved by the U.S. department of labor and travel allowances, if applicable, that are paid in the applicable 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.

(2) The contractor survey must include information pertaining to the number of workers employed in the employer's peak month of employment and the wages and benefits paid for each craft, classification, or type of work. In setting the standard prevailing rate of wages from the survey for each craft, classification, or type of work, the department shall use the weighted average wage for each craft, classification, or type of work, except in those cases in which the survey shows that 50% of the skilled workers are receiving the same wage. If the survey shows that 50% of the skilled workers are receiving the same wage, that wage is the standard prevailing rate of wages for that craft, classification, or type of work.

(3) The work performed must be of a similar character to the work performed in the applicable district unless the survey in the applicable 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.

(4) 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 applicable 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 to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the standard prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as closely as possible to the original district.

(5) When work of a similar character is not being performed in the applicable district, the standard prevailing rate of wages, including fringe benefits for health, welfare, and pension contributions, that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs approved by the U.S. department of labor and travel allowances, if applicable, that are paid in the applicable district by other contractors must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of skilled worker needed to complete the contract.

NEW SECTION. Section 4. State special revenue account for enforcement of standard prevailing rate of wages. There is a state special revenue account to the credit of the department for use in enforcing the provisions of this part.

Section 5. 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 "bona fide resident of Montana" is ~~a person~~ an individual 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~~ individual's past habitation in this state has been coupled with an intention to make it the ~~person's~~ individual's home. ~~Persons~~ Individuals 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.

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

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

(8) "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, 29 U.S.C. 1001, et seq., and other bona fide programs approved by the ~~United States~~ U.S. department of labor and plus zone pay and travel ~~allowance~~ allowances 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) "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~~ aide 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) "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) (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) "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 rate district that contains the project location or that is located in a contiguous prevailing wage rate district.

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

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

(b) the rates calculated as provided in [section 1] for building construction services; and

(c) the rates calculated as provided in [section 2] for nonconstruction services.

~~(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 craftspersons employed 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 craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons 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) "Work of a similar character" means work on private commercial projects as well as work on public projects."

Section 6. Section 18-2-402, MCA, is amended to read:

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

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

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

Section 7. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing wage rate of wages. (1) (a) Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage rate of wages 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, total attorney fees and reimbursable costs, total audit fees, and court costs.

(b) Money collected by the department under this section must be deposited in ~~the general fund~~ the special revenue account established in [section 4] to be used for enforcement of the provisions of this part.

(c) 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~~ must be made directly to district court rather than to the board of personnel appeals."

Section 8. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) (a) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts for nonconstruction services and for electrical and plumbing work in building construction services.

(b) Subject to subsection (1)(a), the commissioner shall divide the state into not more than two districts for all other occupations and crafts in building construction services.

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

- (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 to employees, as provided in ~~18-2-401 and 18-2-402~~ [section 1 or 2]. The standard prevailing rate of wages for construction services, as determined by the commissioner in ~~this subsection~~ [section 1], must be used for calculating an apprentice's wage; as provided in 39-6-108."

Section 9. 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 apprenticeship agreements 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, taking into consideration performance of the agreement, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements;

(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 of wages determined according to [section 1] for construction services, as defined in 18-2-401, for a prevailing wage rate district ~~as provided in~~ established under 18-2-411 as a base on which an apprenticeship wage is calculated pursuant to 39-6-108 for apprentices;

(h) adopt rules necessary to carry out the intent and purposes of this chapter; and

(i) perform other duties that may be required by federal regulations, provided that 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 10. Section 39-6-108, MCA, is amended to read:

"39-6-108. Apprentice wage rate. (1) Except as provided in subsection (3), a wage paid to an apprentice employed for construction services, as defined in 18-2-401, under 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~~ determined in [section 1], for a prevailing wage rate district as provided in 18-2-411; and

(b) increase progressively to no more than the employer's lowest journeyman hourly wage from a starting wage of no less than 40% of the hourly wage paid to a journeyman in the same craft and working in the same area or region. A higher wage must be paid if required by federal 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 standard prevailing wage rate of wages 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 October 1, 2006, are excluded from the rate set in subsection (1).

(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."

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 1 through 4].

NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2007.

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