

## HOUSE BILL NO. 500

INTRODUCED BY D. WANZENRIED, RYAN, CYR, G. FORRESTER, HARRINGTON, ROUSH, SMITH,  
TOOLE, KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF THE LITTLE DAVIS-BACON LAWS; CHANGING THE PREVAILING WAGE FROM ONE COMPUTED BASED ON A WEIGHTED AVERAGE TO ONE COMPUTED BASED ON WORK PERFORMED; REQUIRING POSTING OF PREVAILING WAGE AND FRINGE BENEFIT RATES; REQUIRING A CONTRACTING AGENCY TO NOTIFY A PUBLIC WORKS CONTRACTOR OR EMPLOYER OF THE REQUIREMENT TO KEEP CERTIFIED PAYROLL RECORDS FOR 3 YEARS AFTER COMPLETION OF WORK ON A PROJECT; REQUIRING SURVEYS OF CONTRACTORS AND EMPLOYERS; AMENDING SECTIONS 18-2-401, 18-2-406, AND 18-2-422, MCA; AND PROVIDING AN EFFECTIVE DATE AND 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 "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. ~~Sojourners or persons~~ 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.

~~(4)~~(5) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~(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.

~~(6)~~(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 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.

~~(7)~~(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 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.

~~(8)~~(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.

~~(9)~~(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.

~~(10)(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 district that contains the project location or that is located in a contiguous prevailing wage district.

~~(11)(13)~~ (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 ~~from a weighted average wage rate based on all of the hours worked on work by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes.~~ The work performed must be work of a similar character to the work performed in the district unless the annual survey of of CONSTRUCTION contractors employers 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 a 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.

~~(12)~~(14) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

**Section 2.** Section 18-2-406, MCA, is amended to read:

**"18-2-406. Posting wage scale and fringe benefits.** ~~Contractors, subcontractors, and employers who are~~ The contractor performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or ~~work area~~ staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees ~~employed on such site or work area~~. The contracting agency is responsible for ensuring that the required statement is posted and maintained."

**Section 3.** Section 18-2-422, MCA, is amended to read:

**"18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and certified payroll record notification.** All public works contracts and the bid specifications for those contracts must contain:

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

(2) a provision requiring the contracting agency to notify each contractor and employer of the requirement to maintain certified payroll records for not less than 3 years after the contractor's or employer's completion of work on the project."

**NEW SECTION. Section 4. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act].

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