

HOUSE BILL NO. 565

INTRODUCED BY C. SCHREINER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN PROJECTS FUNDED BY THE STATE BUT  
5 NOT WITH FEDERAL MONEY TO ASSIGN A PERCENTAGE OF HOURS WORKED TO APPRENTICES;  
6 ALLOWING EXCEPTIONS; PROVIDING RETENTION OF RETAINAGE AS A PENALTY; AMENDING SECTION  
7 18-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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11 NEW SECTION. **Section 1. Procurement apprenticeship requirement -- penalty -- definitions. (1)**

12 (a) Public projects valued in the aggregate at more than \$500,000 in any fiscal year must use, for at least 10%  
13 of its project hours, apprentices registered with an apprenticeship program under Title 39, chapter 6.

14 (b) A public project valued at less than \$500,000 may include an agreement to use apprentices in the  
15 project hours.

16 (2) A contractor using a project workforce that has no apprenticeable jobs is not subject to subsection  
17 (1)(a) or (4).

18 (3) (a) A subcontractor's registered apprentice hours count as part of the project hours.

19 (b) The contractor may use certified payrolls from the subcontractor to verify the percentage of registered  
20 apprentice hours that meet the project hours.

21 (4) The state shall include in the contract awarded under subsection (1)(a) a notification that failure to  
22 comply or make a good faith effort toward compliance may result in forfeiture of retainage.

23 (5) (a) After completion of a public project and prior to receiving the final payment, a contractor shall  
24 provide to the state an affidavit documenting that the contractor:

- 25 (i) fulfilled the requirement of subsection (1)(a);
- 26 (ii) had no apprenticeable jobs; or
- 27 (iii) made a good faith effort but was unable to fulfill the requirement of subsection (1)(a).

28 (b) An affidavit affirming fulfillment of subsection (1)(a) must include the names of the registered  
29 apprentices who worked on the public project, the specific apprenticeship programs under which the apprentices  
30 were registered, and the total number of apprentice hours and project hours.

1 (c) If the state has met the notification requirements under subsection (4) and has determined that a  
 2 contractor has failed to comply with the requirements of this section or failed to make a good faith effort to comply  
 3 with this section, the state may keep the retainage allowed under 18-2-316 and shall notify the contractor of the  
 4 reason for withholding the retainage.

5 (6) For the purposes of this section, the following definitions apply:

6 (a) "Apprenticeable job" means an occupation in any industry that:

7 (i) involves skills customarily learned in a practical way through a structured, systematic program of  
 8 on-the-job supervised learning;

9 (ii) involves the progressive attainment of manual, mechanical, or technical skills and knowledge that,  
 10 in accordance with the industry standard for the occupation, requires the completion of at least 2,000 hours of  
 11 on-the-job learning to attain;

12 (iii) requires related instruction to supplement the on-the-job learning; and

13 (iv) uses an apprenticeship agreement that is registered as provided in 39-6-101 and meets the  
 14 requirements of 39-6-106.

15 (b) "Project hours" means recorded payroll time spent by each person employed by the contractor and  
 16 all subcontractors to work on a public project.

17 (c) (i) "Public project" means an undertaking by the state for the procurement of technical or special  
 18 services on a bid basis, including services subject to the Montana Procurement Act under Title 18, chapter 4, and  
 19 architectural, engineering, and land surveying services under Title 18, chapter 8, part 2.

20 (ii) The term does not include an undertaking for which federal funds are used in whole or in part.

21

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

23 **"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal**  
 24 **exception.** (1) In every public works contract, there must be inserted in the bid specification and the public works  
 25 contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents  
 26 in the performance of the work.

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

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

1 and

2 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the  
3 district in which the work is being performed.

4 (3) In every public works contract for heavy and highway construction, there must be inserted a provision  
5 to require the contractor to pay the standard prevailing wage rates established statewide for heavy and highway  
6 construction services conducted at the project location or under special circumstances.

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

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

10 and

11 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the  
12 district in which the work is being performed.

13 (5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation,  
14 performs a public works contract for nonconstruction services and who employs an individual whose earning  
15 capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than  
16 the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor  
17 Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the  
18 minimum wage required in 39-3-409.

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

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

26 (8) A public works contract by the state for more than \$500,000 that has apprenticeable jobs and that  
27 does not use federal funds must include a provision requiring the contractor to include apprentices in the project  
28 hours, as provided in [section 1].

29 ~~(8)~~(9) A public works contract may not be let to any person, firm, association, or corporation refusing to  
30 execute an agreement ~~with~~ that includes the provisions described in subsections (1) through (7) or, if applicable,

1 subsection (8) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part  
2 may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor  
3 preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference  
4 or discrimination among citizens of the United States.

5 ~~(9)~~(10) Failure to include the provisions required by 18-2-422 in a public works contract relieves the  
6 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on  
7 the public contracting agency."

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9 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
10 integral part of Title 18, and the provisions of Title 18 apply to [section 1].

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12 **NEW SECTION. Section 4. Effective date -- applicability.** [This act] is effective July 1, 2019, and  
13 applies to contracts for public projects signed on or after July 1, 2019.

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