

HOUSE BILL NO. 836
INTRODUCED BY DRISCOLL

IN THE HOUSE

FEBRUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

FEBRUARY 22, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1991 PRINTING REPORT.

FEBRUARY 26, 1991 SECOND READING, DO PASS.

 ENGROSSING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
 AYES, 63; NOES, 37.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

APRIL 3, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 5, 1991 SECOND READING, CONCURRED IN.

APRIL 6, 1991 THIRD READING, CONCURRED IN.
 AYES, 39; NOES, 10.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS NOT
 CONCURRED IN.

APRIL 12, 1991 ON MOTION, CONFERENCE COMMITTEE

REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 18, 1991

CONFERENCE COMMITTEE REPORTED.

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 19, 1991

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 20, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 836
 2 INTRODUCED BY Ormsby

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE
 5 DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON
 6 PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS;
 7 AMENDING SECTIONS 18-2-401, 18-2-407, 18-2-423, 18-2-424,
 8 18-2-432, 39-3-201, AND 39-3-212, MCA; REPEALING SECTIONS
 9 39-3-216 AND 39-3-217, MCA; AND PROVIDING AN EFFECTIVE DATE
 10 AND AN APPLICABILITY DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 18-2-401, MCA, is amended to read:

14 "18-2-401. Definitions. Unless the context requires
 15 otherwise, in this part the following definitions apply:

16 (1) "Labor" is hereby defined to be all services in
 17 excess of \$25,000 performed in construction, maintenance, or
 18 remodeling work in all state, county, municipal, and school
 19 work district, or political subdivision projects and does
 20 not include engineering, superintendence, management, or
 21 office or clerical work.

22 (2) "Commissioner" means the commissioner of labor and
 23 industry provided for in 2-15-1701.

24 (3) "Department" means the department of labor and
 25 industry provided for in 2-15-1701.

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

3 (5) A "bona fide resident of Montana" is hereby
 4 declared to be a person who, at the time of his employment
 5 and immediately prior thereto, has lived in this state in
 6 such a manner and for such time as is sufficient to clearly
 7 justify the conclusion that his past habitation in this
 8 state has been coupled with intention to make it his home.
 9 Sojourners or persons who come to Montana solely in
 10 pursuance of any contract or agreement to perform such labor
 11 shall under no circumstance be deemed to be bona fide
 12 residents of Montana within the meaning and for the purpose
 13 of this part.

14 (6) "Heavy and highway construction wage rates" means
 15 wage rates, including fringe benefits for health and welfare
 16 and pension contributions and travel allowance provisions,
 17 determined and established statewide for heavy and highway
 18 construction projects such as alteration or repair of roads,
 19 streets, highways, alleys, runways, trails, parking areas,
 20 or utility rights-of-way.

21 (7) (a) "Standard prevailing rate of wages" or
 22 "standard prevailing wage" means:

23 (i) the heavy and highway construction wage rates
 24 applicable to heavy and highway construction projects; or

25 (ii) those wages, other than heavy and highway

1 construction wages, including fringe benefits for health and
 2 welfare and pension contributions and travel allowance
 3 provisions, which are paid in the district by other
 4 contractors for work of a similar character performed in
 5 that district by each craft, classification, or type of
 6 worker needed to complete a contract under this part. In
 7 each district, the standard prevailing rate of wages is a
 8 weighted-average-wage--rate the wage rate that is most
 9 commonly paid for that craft or labor based on all of the
 10 hours worked on work of a similar character performed in the
 11 district.

12 (b) When work of a similar character is not being
 13 performed in the district, the standard prevailing rate of
 14 wages, including fringe benefits for health and welfare and
 15 pension contributions and travel allowance provisions, shall
 16 be those rates established by collective bargaining
 17 agreements in effect in the district for each craft,
 18 classification, or type of worker needed to complete the
 19 contract.

20 (8) "Work of a similar character" means work on private
 21 or commercial projects as well as work on public projects."

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

23 **"18-2-407. Forfeiture for failure to pay prevailing**
 24 **wages.** (1) Any contractor, subcontractor, or employer who
 25 shall pay workers or employees at less than the standard

1 prevailing wage as established under the public works
 2 contract shall forfeit to the ~~contracting-agency-the-sum--of~~
 3 ~~\$25--a--day--for--each--worker--underpaid~~ department liquidated
 4 damages at the rate of 20% of the delinquent wages plus
 5 fringe benefits, attorney fees, and court costs. Money
 6 collected by the department under this section must be used
 7 for enforcement. A contractor, subcontractor, or employer
 8 shall also forfeit to the employee wages owed plus
 9 annualized interest on the unpaid wages at a rate of 5
 10 percentage points a year above the prime rate of major New
 11 York banks on the date of settlement.

12 (2) Whenever it shall appear to the contracting agency
 13 or to the Montana commissioner of labor that there are
 14 insufficient moneys due to the contractor or the employer
 15 under the terms of the contract to cover penalties, the
 16 Montana commissioner of labor may, within 90 days after the
 17 filing of notice of completion of the project and its
 18 acceptance by the contracting agency, maintain an action in
 19 district court to recover all penalties and forfeitures due.
 20 Nothing in this part shall prevent the individual worker who
 21 has been underpaid or the commissioner of labor on behalf of
 22 all the underpaid workers from maintaining an action for
 23 recovery of the wages due under the contract as provided in
 24 Title 39, chapter 3, part 2."

25 **Section 3.** Section 18-2-423, MCA, is amended to read:

1 "18-2-423. Submission of payroll records. ~~If a~~
 2 ~~complaint is filed with the department alleging~~
 3 ~~noncompliance with 18-2-422, the department may require the~~
 4 ~~project to submit to it certified copies of the payroll~~
 5 ~~records for workers employed on that project~~ Contractors and
 6 subcontractors shall pay hourly paid employees on a weekly
 7 basis and shall submit certified payrolls to the contracting
 8 agency on a weekly basis."

9 **Section 4.** Section 18-2-424, MCA, is amended to read:

10 "18-2-424. Enforcement. If a contractor or a
 11 subcontractor refuses or fails to submit certified payroll
 12 records requested by the department to the contracting
 13 agency pursuant to 18-2-423, the commissioner or his
 14 authorized representative may issue subpoenas compelling the
 15 production of those records."

16 **Section 5.** Section 18-2-432, MCA, is amended to read:

17 "18-2-432. Penalty for violation. (1) If any a person,
 18 firm, or corporation shall fail fails to comply with the
 19 provisions of this part, the state, county, municipal
 20 municipality, or school officers who have district, or
 21 officer of a political subdivision that executed the
 22 contract shall retain ~~\$1,000~~ 10% of the contract price as
 23 liquidated damages for the violation of the terms of the
 24 contract and said money shall be credited to the proper
 25 funds of the state, county, municipal municipality, or

1 school districts district, or a political subdivision.

2 (2) A person, firm, or corporation violating the
 3 provisions of this part on two or more projects within a
 4 3-year period may not be allowed to perform work on a
 5 publicly funded project covered under this part for 3 years.

6 ~~(3)~~ (3) Any Whenever a person, firm, or corporation
 7 violating violates the provisions of this part, the
 8 commissioner or his agent shall have his or its license
 9 suspended suspend the license in the manner prescribed by
 10 37-71-301 for a period of ~~1-year~~ 5 years after the date of
 11 final judgment of ~~said~~ the violation by any district court
 12 or the supreme court.

13 ~~(3)~~ (4) Whenever any action shall have been instituted
 14 in any district court in this state against any person,
 15 firm, or corporation for the violation of this part, the
 16 court in which said action is pending shall be and it is
 17 hereby authorized to issue an injunction to restrain any
 18 such person, firm, or corporation from proceeding with his
 19 or its contract with the state, county, municipal
 20 municipality, or school districts district, or political
 21 subdivision, pending the final determination of said the
 22 action so instituted."

23 **Section 6.** Section 39-3-201, MCA, is amended to read:

24 "39-3-201. Definitions. The following are the
 25 definitions used for the purpose of this part:

{1}--"Board"--means--the--board--of--personnel---appeals
provided-for-in-2-15-1705-

{2}{1} "Commissioner of labor" refers to the director,
commissioner, or chief of the department of labor and
industry as the department is defined by law, or any person
or persons designated by him for the purpose of this part.

{3}--"Department"--means--the--department--of--labor--and
industry-as-provided-for-in-2-15-1701-

{4}{2} "Employ" means permit or suffer to work.

{5}{3} "Employee" includes any person who works for
another for hire.

{6}{4} "Employer" includes any individual, partnership,
association, corporation, business trust, legal
representative, or any organized group of persons acting
directly or indirectly in the interest of an employer in
relation to an employee but shall not include the United
States.

{7}{5} "Wages" includes any money due an employee from
the employer or employers, whether to be paid by the hour,
day, week, semimonthly, monthly, or yearly and shall include
bonus, piecework, tips, and gratuities of any kind."

Section 7. Section 39-3-212, MCA, is amended to read:

"39-3-212. Court enforcement of administrative-decision
commissioner's determination. A ~~decision--of--the--hearings
officer,--if-the-decision-is-not-appealed-to-the-board,--or-a~~

~~decision-of-the-board,--if-judicial--review--is--not--sought,--
determination by the commissioner of labor made after a
hearing, as provided for in parts 2 and 4 of this chapter,
may be enforced by application by the commissioner to a
district court for an order or judgment enforcing the
decision determination if the time provided to initiate
judicial review by the employer has passed.~~ The commissioner
shall apply to the district court where the employer has its
principal place of business or in the first judicial
district of the state. A proceeding under this section is
not a review of the validity of the ~~administrative-decision
commissioner's determination.~~"

NEW SECTION. Section 8. Repealer. Sections 39-3-216
and 39-3-217, MCA, are repealed.

NEW SECTION. Section 9. Applicability. [This act]
applies to all wage claims filed with the department of
labor and industry on or after July 1, 1991.

NEW SECTION. Section 10. Effective date. [This act] is
effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0836, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

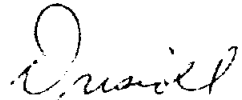
A bill revising the Little Davis-Bacon Act to provide penalties for wage violations on public contracts and revising procedures for wage claims.

FISCAL IMPACT:

No impact on state expenditures. The impact on revenues due to the penalty provision revisions is unknown.



ROD SUNDSTED, BUDGET DIRECTOR 2-18-91
Office of Budget and Program Planning DATE



JERRY DRISCOLL, PRIMARY SPONSOR 2/19/91
Fiscal Note for HB0836, as introduced. DATE
HB 836

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 836

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE
DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON
PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS;
PROVIDING FOR PROCEEDINGS ON PAYMENT OF PREVAILING WAGE
RATES BEFORE A DEPARTMENT OF LABOR AND INDUSTRY HEARING
OFFICER; PROVIDING A METHOD OF DETERMINING THE STANDARD
PREVAILING WAGE; AMENDING SECTIONS 18-2-401, 18-2-407,
18-2-423, 18-2-424, AND 18-2-432, 39-3-2017--AND--39-3-2127
MCA; REPEALING--SECTIONS--39-3-216--AND--39-3-2177-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) "Labor" is hereby defined to be all services in
excess of \$25,000 performed in construction, maintenance, or
remodeling work in all state, county, municipal, and school
work district, or political subdivision projects and does
not include engineering, superintendence, management, or
office or clerical work.

(2) "Commissioner" means the commissioner of labor and

industry provided for in 2-15-1701.

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

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

(5) A "bona fide resident of Montana" is hereby
declared to be a person who, at the time of his employment
and immediately prior thereto, has lived in this state in
such a manner and for such time as is sufficient to clearly
justify the conclusion that his past habitation in this
state has been coupled with intention to make it his home.
Sojourners or persons who come to Montana solely in
pursuance of any contract or agreement to perform such labor
shall under no circumstance be deemed to be bona fide
residents of Montana within the meaning and for the purpose
of this part.

(6) "Heavy and highway construction wage rates" means
wage rates, including fringe benefits for health and welfare
and pension contributions and travel allowance provisions,
determined and established statewide for heavy and highway
construction projects such as alteration or repair of roads,
streets, highways, alleys, runways, trails, parking areas,
or utility rights-of-way.

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

1 (i) the heavy and highway construction wage rates
2 applicable to heavy and highway construction projects; or

3 (ii) those wages, other than heavy and highway
4 construction wages, including fringe benefits for health and
5 welfare and pension contributions and travel allowance
6 provisions, which are paid in the district by other
7 contractors for work of a similar character performed in
8 that district by each craft, classification, or type of
9 worker needed to complete a contract under this part. In
10 each district, the standard prevailing rate of wages is a
11 weighted--average--wage--rate the wage rate that is most
12 commonly paid for that craft or labor based on all of the
13 hours worked on work of a similar character performed in the
14 district.

15 (B) WHEN 30% OR MORE OF THE WORK IN A DISTRICT IS NOT
16 THE PREVAILING WAGE FOR THAT CRAFT OR LABOR BEING PERFORMED,
17 THE PREVAILING WAGE RATE IS THE WEIGHTED AVERAGE WAGE BASED
18 ON ALL HOURS WORKED OF A SIMILAR CHARACTER PERFORMED IN THE
19 DISTRICT.

20 (b)(C) When work of a similar character is not being
21 performed in the district, the standard prevailing rate of
22 wages, including fringe benefits for health and welfare and
23 pension contributions and travel allowance provisions, shall
24 be those rates established by collective bargaining
25 agreements in effect in the district for each craft,

1 classification, or type of worker needed to complete the
2 contract.

3 (8) "Work of a similar character" means work on private
4 or commercial projects as well as work on public projects."

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

6 "18-2-407. Forfeiture for failure to pay prevailing
7 wages. (1) Any contractor, subcontractor, or employer who
8 shall pay workers or employees at less than the standard
9 prevailing wage as established under the public works
10 contract shall forfeit to the contracting-agency-the-sum--of
11 \$25--a--day--for--each--worker--underpaid department liquidated
12 damages A PENALTY at the A rate of UP TO 20% of the
13 delinquent wages plus fringe benefits, attorney fees, and
14 court costs. Money collected by the department under this
15 section must be used for enforcement. A contractor,
16 subcontractor, or employer shall also forfeit to the
17 employee wages owed plus annualized interest on the unpaid
18 wages at a rate of 5 percentage points a year above the
19 prime rate of major New York banks on the date of
20 settlement.

21 (2) Whenever it shall appear to the contracting agency
22 or to the Montana commissioner of labor that there are
23 insufficient moneys due to the contractor or the employer
24 under the terms of the contract to cover penalties, the
25 Montana commissioner of labor may, within 90 days after the

1 filing of notice of completion of the project and its
 2 acceptance by the contracting agency, maintain an action in
 3 district court to recover all penalties and forfeitures due.
 4 Nothing in this part shall prevent the individual worker OR
 5 EMPLOYEE ORGANIZATION who has been underpaid or the
 6 commissioner of labor on behalf of all the underpaid workers
 7 from maintaining an action for recovery of the wages due
 8 under the contract as provided in Title 39, chapter 3, part
 9 2."

10 **Section 3.** Section 18-2-423, MCA, is amended to read:

11 "18-2-423. Submission of payroll records. ~~if--a~~
 12 ~~complaint---is---filed---with---the---department---alleging~~
 13 ~~noncompliance--with-18-2-4227-the-department-may-require-the~~
 14 ~~project-to-submit-to-it--certified--copies--of--the--payroll~~
 15 ~~records-for-workers-employed-on-that-project~~ Contractors and
 16 subcontractors shall pay hourly paid employees on a weekly
 17 basis and shall submit certified payrolls to the contracting
 18 agency on a weekly basis."

19 **Section 4.** Section 18-2-424, MCA, is amended to read:

20 "18-2-424. Enforcement. If a contractor or a
 21 subcontractor refuses or fails to submit certified payroll
 22 records ~~requested--by--the--department~~ to the contracting
 23 agency pursuant to 18-2-423, the commissioner or his
 24 authorized representative may issue subpoenas compelling the
 25 production of those records."

1 **Section 5.** Section 18-2-432, MCA, is amended to read:

2 "18-2-432. Penalty for violation. (1) If any a person,
 3 firm, or corporation ~~shall--fail~~ fails to comply with the
 4 provisions of this part, the state, county, ~~municipal~~
 5 municipality, or school officers--who--have district, or
 6 officer of a political subdivision that executed the
 7 contract shall retain \$1,000 ~~10%~~ 3% of the contract price as
 8 liquidated damages for the violation of the terms of the
 9 contract and said money shall be credited to the proper
 10 funds of the state, county, ~~municipal~~ municipality, or
 11 school districts district, or a political subdivision.

12 (2) A person, firm, or corporation violating the
 13 provisions of this part on two or more projects within a
 14 3-year period may not be allowed to perform work on a
 15 publicly funded project covered under this part for 3 years.

16 ~~(2)(3)~~ Any Whenever a person, firm, or corporation
 17 violating violates the provisions of this part, the
 18 commissioner or his agent shall have--his--or--its--license
 19 suspended DIRECT THE DEPARTMENT OF COMMERCE TO INITIATE
 20 PROCEEDINGS TO suspend the license in the manner prescribed
 21 by 37-71-301. IF THE DISTRICT COURT OR THE SUPREME COURT
 22 FINDS THAT A VIOLATION HAS OCCURRED, THE LICENSE MUST BE
 23 SUSPENDED for a period of ~~1-year~~ 5 3 years after the date of
 24 final judgment ~~of-said the violation-by-any-district-court~~
 25 ~~or-the-supreme-court.~~

1 ~~(3)~~(4) Whenever any action shall have been instituted
 2 in any district court in this state against any person,
 3 firm, or corporation for the violation of this part, the
 4 court in which said action is pending shall be and it is
 5 hereby authorized to issue an injunction to restrain any
 6 such person, firm, or corporation from proceeding with his
 7 or its contract with the state, county, ~~municipal~~
 8 municipality, or school districts district, or political
 9 subdivision, pending the final determination of said the
 10 action so instituted."

11 Section 67--Section 39-3-201, MCA, is amended to read:

12 "39-3-201--Definitions-----The---following---are---the
 13 definitions used for the purpose of this part:

14 ~~(1)~~--"Board"--means--the--board--of--personnel---appeals
 15 provided for in 2-15-1705.

16 ~~(2)~~(1) "Commissioner--of--labor"--refers--to--the--director,
 17 commissioner, or--chief--of--the--department--of--labor--and
 18 industry--as--the--department--is--defined--by--law, or any person
 19 or persons designated by him for the purpose of this part:

20 ~~(3)~~--"Department"--means--the--department--of--labor--and
 21 industry as provided for in 2-15-1701:

22 ~~(4)~~(2) "Employ"--means--permit--or--suffer--to--work:

23 ~~(5)~~(3) "Employee"--includes--any--person--who--works--for
 24 another for hire:

25 ~~(6)~~(4) "Employer"--includes--any--individual, partnership,

1 ~~association,---corporation,---business---trust,---legal~~
 2 ~~representative,--or--any--organized--group--of--persons--acting~~
 3 ~~directly--or--indirectly--in--the--interest--of--an--employer--in~~
 4 ~~relation--to--an--employee--but--shall--not--include--the--United~~
 5 ~~States:~~

6 ~~(7)~~(5) "Wages"--includes--any--money--due--an--employee--from
 7 the--employer--or--employers, whether to be paid by the hour,
 8 day, week, semimonthly, monthly, or yearly and shall include
 9 bonus, piecework, tips, and gratuities of any kind."

10 Section 7--Section 39-3-212, MCA, is amended to read:

11 "39-3-212--Court--enforcement--of--administrative--decision
 12 commissioner's determination, A decision--of--the--hearings
 13 officer,--if--the--decision--is--not--appealed--to--the--board, or a
 14 decision--of--the--board, if--judicial--review--is--not--sought,
 15 determination--by--the--commissioner--of--labor--made--after--a
 16 hearing, as provided for in parts 2 and 4 of this chapter,
 17 may--be--enforced--by--application--by--the--commissioner--to--a
 18 district--court--for--an--order--or--judgment--enforcing--the
 19 decision determination--if--the--time--provided--to--initiate
 20 judicial review by the employer has passed. The commissioner
 21 shall apply to the district court where the employer has its
 22 principal--place--of--business--or--in--the--first--judicial
 23 district--of--the--state. A proceeding under this section is
 24 not--a--review--of--the--validity--of--the--administrative--decision
 25 commissioner's determination."

1 ~~NEW SECTION. Section 8. Repealer. Sections 39-3-216~~
2 ~~and 39-3-217, MCA, are repealed.~~

3 NEW SECTION. **SECTION 6.** PREVAILING WAGE RATE
4 PROCEEDING. PAYMENT OF STANDARD PREVAILING WAGE RATES MUST
5 BE ENFORCED PURSUANT TO 18-2-407, AND ALL PROCEEDINGS MUST
6 BE BROUGHT BEFORE A DEPARTMENT HEARING OFFICER. THE DECISION
7 OF THE HEARING OFFICER MAY BE APPEALED BY FILING A PETITION
8 IN DISTRICT COURT.

9 NEW SECTION. **SECTION 7.** CODIFICATION INSTRUCTION.
10 [SECTION 8] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
11 OF TITLE 18, CHAPTER 2, PART 4, AND THE PROVISIONS OF TITLE
12 18, CHAPTER 2, PART 4, APPLY TO [SECTION 8].

13 NEW SECTION. **Section 8.** Applicability. [This act]
14 applies to all wage claims filed with the department of
15 labor and industry on or after July 1, 1991.

16 NEW SECTION. **Section 9.** Effective date. [This act] is
17 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 836

2 INTRODUCED BY DRISCOLL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE
5 DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON
6 PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS;
7 PROVIDING FOR PROCEEDINGS ON PAYMENT OF PREVAILING WAGE
8 RATES BEFORE A DEPARTMENT OF LABOR AND INDUSTRY HEARING
9 OFFICER; PROVIDING A METHOD OF DETERMINING THE STANDARD
10 PREVAILING WAGE; AMENDING SECTIONS 18-2-401, 18-2-407,
11 18-2-423, 18-2-424, AND 18-2-432, 39-3-2017--AND--39-3-2127
12 MCA; REPEALING--SECTIONS--39-3-216--AND--39-3-217--MCA, AND
13 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

14

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

16 **Section 1.** Section 18-2-401, MCA, is amended to read:

17 "18-2-401. Definitions. Unless the context requires
18 otherwise, in this part the following definitions apply:

19 (1) "Labor" is hereby defined to be all services in
20 excess of \$25,000 performed in construction, maintenance, or
21 remodeling work in all state, county, municipal, and school
22 work district, or political subdivision projects and does
23 not include engineering, superintendence, management, or
24 office or clerical work.

25 (2) "Commissioner" means the commissioner of labor and

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.



SENATE STANDING COMMITTEE REPORT

Page 2 of 2
April 3, 1991

Page 1 of 2
April 3, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 836 (third reading copy -- blue), respectfully report that House Bill No. 836 be amended and as so amended be concurred in:

1. Title, line 9.
Following: "DETERMINING"
Insert: "AND PAYING"
2. Title, line 12.
Following: "MCA;"
Insert: "REPEALING SECTION 18-2-405, MCA;"
3. Title, line 13.
Following: first "AN"
Insert: "IMMEDIATE"
4. Page 1, line 16.
Insert: "NEW SECTION. Section 1. Method for payment of standard prevailing wage. (1) To fulfil his obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:
(a) pay directly to workers or employees in cash the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages;
(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974; or
(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments in cash and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the district for the particular type of work being performed.
(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or other bona fide fringe benefits as selected by the contractor or subcontractor.
(3) Nothing in this section relieves a contractor or subcontractor from paying workers or employees in cash the basic hourly rate of pay as determined by the commissioner pursuant to 18-2-402."
Renumber: subsequent sections

5. Page 9, line 9.
Insert: "NEW SECTION. Section 8. Repealer. Section 18-2-405, MCA, is repealed."
Renumber: subsequent sections
6. Page 9, line 10.
Following: line 9
Strike: "[SECTION 8] IS"
Insert: "[Sections 1 and 7] are"
7. Page 9, line 12.
Following: "TO"
Strike: "[SECTION 8]"
Insert: "[sections 1 and 7]"
8. Page 9, line 17.
Following: "effective"
Strike: "July 1, 1991"
Insert: "on passage and approval"

Signed Richard E. Manning
Richard E. Manning, Chairman

LR 4/3/91
Amd. Cobrd.

SB 4/3 1:50
Sec. of Senate

701328SC.SLB

SENATE
HB836

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 4, 1991 6:23 pm

Mr. Chairman: I move to amend House Bill No. 836 (third reading copy -- blue) as follows:

1. Page 5, lines 15 through 18.

Following: "~~project~~" on line 15

Insert: "If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project"

Strike: "Contractors" on line 15 through "basis" on line 18

ADOPT

REJECT

Signed: _____


Senator Keating

4-4-91
And. Coord.

LB 4-4-91 6:35
Sec. of Senate

SENATE
HB 836

HOUSE BILL NO. 836
INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS; PROVIDING FOR PROCEEDINGS ON PAYMENT OF PREVAILING WAGE RATES BEFORE A DEPARTMENT OF LABOR AND INDUSTRY HEARING OFFICER; PROVIDING A METHOD OF DETERMINING AND PAYING THE STANDARD PREVAILING WAGE; AMENDING SECTIONS 18-2-401, 18-2-407, 18-2-423, 18-2-424, AND 18-2-432, 39-3-2017 AND 39-3-2127, MCA; REPEALING SECTIONS 39-3-216 AND 39-3-217, MCA; REPEALING SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. SECTION 1. METHOD FOR PAYMENT OF STANDARD PREVAILING WAGE. (1) TO FULFILL HIS OBLIGATION TO PAY THE STANDARD PREVAILING RATE OF WAGES UNDER 18-2-403, A CONTRACTOR OR SUBCONTRACTOR MAY:

(A) PAY DIRECTLY TO WORKERS OR EMPLOYEES IN CASH THE AMOUNT OF FRINGE BENEFITS AND THE BASIC HOURLY RATE OF PAY THAT IS PART OF THE STANDARD PREVAILING RATE OF WAGES;

(B) MAKE AN IRREVOCABLE CONTRIBUTION TO A TRUSTEE OR A THIRD PERSON PURSUANT TO A FRINGE BENEFIT FUND, PLAN, OR

PROGRAM THAT MEETS THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974; OR

(C) MAKE PAYMENTS USING ANY COMBINATION OF METHODS SET FORTH IN SUBSECTIONS (1)(A) AND (1)(B) SO THAT THE AGGREGATE OF PAYMENTS IN CASH AND CONTRIBUTIONS IS NOT LESS THAN THE STANDARD PREVAILING RATE OF WAGES, INCLUDING FRINGE BENEFITS FOR HEALTH AND WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE PROVISIONS, IN EFFECT AND APPLICABLE TO THE DISTRICT FOR THE PARTICULAR TYPE OF WORK BEING PERFORMED.

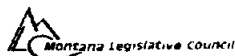
(2) THE FRINGE BENEFIT FUND, PLAN, OR PROGRAM DESCRIBED IN SUBSECTION (1)(B) MUST PROVIDE BENEFITS TO WORKERS OR EMPLOYEES FOR HEALTH CARE, PENSIONS ON RETIREMENT OR DEATH, LIFE INSURANCE, DISABILITY AND SICKNESS INSURANCE, OR OTHER BONA FIDE FRINGE BENEFITS AS SELECTED BY THE CONTRACTOR OR SUBCONTRACTOR.

(3) NOTHING IN THIS SECTION RELIEVES A CONTRACTOR OR SUBCONTRACTOR FROM PAYING WORKERS OR EMPLOYEES IN CASH THE BASIC HOURLY RATE OF PAY AS DETERMINED BY THE COMMISSIONER PURSUANT TO 18-2-402.

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) "Labor" is hereby defined to be all services in excess of \$25,000 performed in construction, maintenance, or remodeling work in all state, county, municipal, and school



1 work district, or political subdivision projects and does
2 not include engineering, superintendence, management, or
3 office or clerical work.

4 (2) "Commissioner" means the commissioner of labor and
5 industry provided for in 2-15-1701.

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

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

10 (5) A "bona fide resident of Montana" is hereby
11 declared to be a person who, at the time of his employment
12 and immediately prior thereto, has lived in this state in
13 such a manner and for such time as is sufficient to clearly
14 justify the conclusion that his past habitation in this
15 state has been coupled with intention to make it his home.
16 Sojourners or persons who come to Montana solely in
17 pursuance of any contract or agreement to perform such labor
18 shall under no circumstance be deemed to be bona fide
19 residents of Montana within the meaning and for the purpose
20 of this part.

21 (6) "Heavy and highway construction wage rates" means
22 wage rates, including fringe benefits for health and welfare
23 and pension contributions and travel allowance provisions,
24 determined and established statewide for heavy and highway
25 construction projects such as alteration or repair of roads,

1 streets, highways, alleys, runways, trails, parking areas,
2 or utility rights-of-way.

3 (7) (a) "Standard prevailing rate of wages" or
4 "standard prevailing wage" means:

5 (i) the heavy and highway construction wage rates
6 applicable to heavy and highway construction projects; or

7 (ii) those wages, other than heavy and highway
8 construction wages, including fringe benefits for health and
9 welfare and pension contributions and travel allowance
10 provisions, which are paid in the district by other
11 contractors for work of a similar character performed in
12 that district by each craft, classification, or type of
13 worker needed to complete a contract under this part. In
14 each district, the standard prevailing rate of wages is a
15 weighted--average--wage--rate the wage rate that is most
16 commonly paid for that craft or labor based on all of the
17 hours worked on work of a similar character performed in the
18 district.

19 (B) WHEN 30% OR MORE OF THE WORK IN A DISTRICT IS NOT
20 THE PREVAILING WAGE FOR THAT CRAFT OR LABOR BEING PERFORMED,
21 THE PREVAILING WAGE RATE IS THE WEIGHTED AVERAGE WAGE BASED
22 ON ALL HOURS WORKED OF A SIMILAR CHARACTER PERFORMED IN THE
23 DISTRICT.

24 (b) (C) When work of a similar character is not being
25 performed in the district, the standard prevailing rate of

1 wages, including fringe benefits for health and welfare and
 2 pension contributions and travel allowance provisions, shall
 3 be those rates established by collective bargaining
 4 agreements in effect in the district for each craft,
 5 classification, or type of worker needed to complete the
 6 contract.

7 (8) "Work of a similar character" means work on private
 8 or commercial projects as well as work on public projects."

9 **Section 3.** Section 18-2-407, MCA, is amended to read:

10 "18-2-407. Forfeiture for failure to pay prevailing
 11 wages. (1) Any contractor, subcontractor, or employer who
 12 shall pay workers or employees at less than the standard
 13 prevailing wage as established under the public works
 14 contract shall forfeit to the contracting agency the sum of
 15 \$25 a day for each worker underpaid department liquidated
 16 damages A PENALTY at the A rate of UP TO 20% of the
 17 delinquent wages plus fringe benefits, attorney fees, and
 18 court costs. Money collected by the department under this
 19 section must be used for enforcement. A contractor,
 20 subcontractor, or employer shall also forfeit to the
 21 employee wages owed plus annualized interest on the unpaid
 22 wages at a rate of 5 percentage points a year above the
 23 prime rate of major New York banks on the date of
 24 settlement.

25 (2) Whenever it shall appear to the contracting agency

1 or to the Montana commissioner of labor that there are
 2 insufficient moneys due to the contractor or the employer
 3 under the terms of the contract to cover penalties, the
 4 Montana commissioner of labor may, within 90 days after the
 5 filing of notice of completion of the project and its
 6 acceptance by the contracting agency, maintain an action in
 7 district court to recover all penalties and forfeitures due.
 8 Nothing in this part shall prevent the individual worker OR
 9 EMPLOYEE ORGANIZATION who has been underpaid or the
 10 commissioner of labor on behalf of all the underpaid workers
 11 from maintaining an action for recovery of the wages due
 12 under the contract as provided in Title 39, chapter 3, part
 13 2."

14 **Section 4.** Section 18-2-423, MCA, is amended to read:

15 "18-2-423. Submission of payroll records. ~~if a~~
 16 ~~complaint is filed with the department alleging~~
 17 ~~noncompliance with 18-2-422, the department may require the~~
 18 ~~project to submit to it certified copies of the payroll~~
 19 ~~records for workers employed on that project Contractors and~~
 20 ~~subcontractors shall pay hourly paid employees on a weekly~~
 21 ~~basis and shall submit certified payrolls to the contracting~~
 22 ~~agency on a weekly basis."~~

23 **Section 5.** Section 18-2-424, MCA, is amended to read:

24 "18-2-424. Enforcement. If a contractor or a
 25 subcontractor refuses or fails to submit certified payroll

1 records requested--by--the--department to the contracting
 2 agency pursuant to 18-2-423, the commissioner or his
 3 authorized representative may issue subpoenas compelling the
 4 production of those records."

5 **Section 6.** Section 18-2-432, MCA, is amended to read:

6 "18-2-432. Penalty for violation. (1) If any a person,
 7 firm, or corporation shall--fail fails to comply with the
 8 provisions of this part, the state, county, ~~municipal~~
 9 municipality, or school officers--who--have district, or
 10 officer of a political subdivision that executed the
 11 contract shall retain ~~91,000 ±0%~~ 3% of the contract price as
 12 liquidated damages for the violation of the terms of the
 13 contract and said money shall be credited to the proper
 14 funds of the state, county, ~~municipal~~ municipality, or
 15 school districts district, or a political subdivision.

16 (2) A person, firm, or corporation violating the
 17 provisions of this part on two or more projects within a
 18 3-year period may not be allowed to perform work on a
 19 publicly funded project covered under this part for 3 years.

20 ~~(2)(3)~~ (3) Any Whenever a person, firm, or corporation
 21 violating violates the provisions of this part, the
 22 commissioner or his agent shall have--his--or--its--license
 23 suspended DIRECT THE DEPARTMENT OF COMMERCE TO INITIATE
 24 PROCEEDINGS TO suspend the license in the manner prescribed
 25 by 37-71-301. IF THE DISTRICT COURT OR THE SUPREME COURT

1 FINDS THAT A VIOLATION HAS OCCURRED, THE LICENSE MUST BE
 2 SUSPENDED for a period of ~~1-year~~ 5 3 years after the date of
 3 final judgment of-said ~~the~~ violation-by-any-district-court
 4 or-the-supreme-court.

5 ~~(3)(4)~~ Whenever any action shall have been instituted
 6 in any district court in this state against any person,
 7 firm, or corporation for the violation of this part, the
 8 court in which said action is pending shall be and it is
 9 hereby authorized to issue an injunction to restrain any
 10 such person, firm, or corporation from proceeding with his
 11 or its contract with the state, county, ~~municipal~~
 12 municipality, or school districts district, or political
 13 subdivision, pending the final determination of said the
 14 action so instituted."

15 Section-6--Section-39-3-201--MCA--is-amended-to-read:

16 "39-3-201--Definitions----The----following---are---the
 17 definitions-used-for-the-purpose-of-this-part:

18 ~~(1)~~ "Board"--means--the--board--of--personnel---appeals
 19 provided-for-in-2-15-1705.

20 ~~(2)(1)~~ "Commissioner--of-labor"--refers-to-the-director,
 21 commissioner--or--chief--of--the--department--of--labor--and
 22 industry--as-the-department-is-defined-by-law--or-any-person
 23 or-persons-designated-by-him-for-the-purpose-of-this-part.

24 ~~(3)~~ "Department"--means--the--department--of--labor--and
 25 industry-as-provided-for-in-2-15-1701.

1 {4}{2} "Employ" means permit or suffer to work.
 2 {5}{3} "Employee" includes any person who works for
 3 another for hire.

4 {6}{4} "Employer" includes any individual, partnership,
 5 association, corporation, business, trust, legal
 6 representative, or any organized group of persons acting
 7 directly or indirectly in the interest of an employer in
 8 relation to an employee but shall not include the United
 9 States.

10 {7}{5} "Wages" includes any money due an employee from
 11 the employer or employers, whether to be paid by the hour,
 12 day, week, semimonthly, monthly, or yearly and shall include
 13 bonus, piecework, tips, and gratuities of any kind."

14 Section 7, Section 39-3-212, MCA, is amended to read:

15 "39-3-212. Court enforcement of administrative decision
 16 commissioner's determination. A decision of the hearings
 17 officer, if the decision is not appealed to the board, or a
 18 decision of the board, if judicial review is not sought,
 19 determination by the commissioner of labor made after a
 20 hearing as provided for in parts 2 and 4 of this chapter,
 21 may be enforced by application by the commissioner to a
 22 district court for an order or judgment enforcing the
 23 decision determination if the time provided to initiate
 24 judicial review by the employer has passed. The commissioner
 25 shall apply to the district court where the employer has its

1 principal place of business or in the first judicial
 2 district of the state. A proceeding under this section is
 3 not a review of the validity of the administrative decision
 4 commissioner's determination."

5 NEW SECTION. Section 8. Repealer. Sections 39-3-216
 6 and 39-3-217, MCA, are repealed.

7 NEW SECTION. SECTION 7. PREVAILING WAGE RATE
 8 PROCEEDING. PAYMENT OF STANDARD PREVAILING WAGE RATES MUST
 9 BE ENFORCED PURSUANT TO 18-2-407, AND ALL PROCEEDINGS MUST
 10 BE BROUGHT BEFORE A DEPARTMENT HEARING OFFICER. THE DECISION
 11 OF THE HEARING OFFICER MAY BE APPEALED BY FILING A PETITION
 12 IN DISTRICT COURT.

13 NEW SECTION. SECTION 8. REPEALER. SECTION 18-2-405,
 14 MCA, IS REPEALED.

15 NEW SECTION. SECTION 9. CODIFICATION INSTRUCTION.
 16 {SECTION 8} IS [SECTIONS 1 AND 7] ARE INTENDED TO BE
 17 CODIFIED AS AN INTEGRAL PART OF TITLE 18, CHAPTER 2, PART 4,
 18 AND THE PROVISIONS OF TITLE 18, CHAPTER 2, PART 4, APPLY TO
 19 {SECTION 8} [SECTIONS 1 AND 7].

20 NEW SECTION. Section 10. Applicability. [This act]
 21 applies to all wage claims filed with the department of
 22 labor and industry on or after July 1, 1991.

23 NEW SECTION. Section 11. Effective date. [This act] is
 24 effective July 1, 1991 ON PASSAGE AND APPROVAL.

HOUSE BILL NO. 836
INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS; PROVIDING FOR PROCEEDINGS ON PAYMENT OF PREVAILING WAGE RATES BEFORE A DEPARTMENT OF LABOR AND INDUSTRY HEARING OFFICER; PROVIDING A METHOD OF DETERMINING AND PAYING THE STANDARD PREVAILING WAGE; AMENDING SECTIONS 18-2-401, 18-2-407, 18-2-423, 18-2-424, AND 18-2-432, 39-3-2017--AND 39-3-2127, MCA; REPEALING--SECTIONS--39-3-216-AND-39-3-217, MCA; REPEALING SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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(B) MAKE AN IRREVOCABLE CONTRIBUTION TO A TRUSTEE OR A THIRD PERSON PURSUANT TO A FRINGE BENEFIT FUND, PLAN, OR

PROGRAM THAT MEETS THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974; OR

(C) MAKE PAYMENTS USING ANY COMBINATION OF METHODS SET FORTH IN SUBSECTIONS (1)(A) AND (1)(B) SO THAT THE AGGREGATE OF PAYMENTS IN CASH AND CONTRIBUTIONS IS NOT LESS THAN THE STANDARD PREVAILING RATE OF WAGES, INCLUDING FRINGE BENEFITS FOR HEALTH AND WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE PROVISIONS, IN EFFECT AND APPLICABLE TO THE DISTRICT FOR THE PARTICULAR TYPE OF WORK BEING PERFORMED.

(2) THE FRINGE BENEFIT FUND, PLAN, OR PROGRAM DESCRIBED IN SUBSECTION (1)(B) MUST PROVIDE BENEFITS TO WORKERS OR EMPLOYEES FOR HEALTH CARE, PENSIONS ON RETIREMENT OR DEATH, LIFE INSURANCE, DISABILITY AND SICKNESS INSURANCE, OR OTHER BONA FIDE FRINGE BENEFITS AS SELECTED BY THE CONTRACTOR OR SUBCONTRACTOR.

(3) NOTHING IN THIS SECTION RELIEVES A CONTRACTOR OR SUBCONTRACTOR FROM PAYING WORKERS OR EMPLOYEES IN CASH THE BASIC HOURLY RATE OF PAY AS DETERMINED BY THE COMMISSIONER PURSUANT TO 18-2-402.

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 5 industry provided for in 2-15-1701.

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 7 industry provided for in 2-15-1701.

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

10 (5) A "bona fide resident of Montana" is hereby
 11 declared to be a person who, at the time of his employment
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 13 such a manner and for such time as is sufficient to clearly
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 15 state has been coupled with intention to make it his home.
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 17 pursuance of any contract or agreement to perform such labor
 18 shall under no circumstance be deemed to be bona fide
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21 (6) "Heavy and highway construction wage rates" means
 22 wage rates, including fringe benefits for health and welfare
 23 and pension contributions and travel allowance provisions,
 24 determined and established statewide for heavy and highway
 25 construction projects such as alteration or repair of roads,

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 2 or utility rights-of-way.

3 (7) (a) "Standard prevailing rate of wages" or
 4 "standard prevailing wage" means:

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 6 applicable to heavy and highway construction projects; or

7 (ii) those wages, other than heavy and highway
 8 construction wages, including fringe benefits for health and
 9 welfare and pension contributions and travel allowance
 10 provisions, which are paid in the district by other
 11 contractors for work of a similar character performed in
 12 that district by each craft, classification, or type of
 13 worker needed to complete a contract under this part. In
 14 each district, the standard prevailing rate of wages is a
 15 weighted--average--wage--rate the wage rate that is most
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19 (B) WHEN 30% OR MORE OF THE WORK IN A DISTRICT IS NOT
 20 THE PREVAILING WAGE FOR THAT CRAFT OR LABOR BEING PERFORMED,
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 25 performed in the district, the standard prevailing rate of

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 3 be those rates established by collective bargaining
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 8 or commercial projects as well as work on public projects."

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 12 shall pay workers or employees at less than the standard
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 16 damages A PENALTY at the A rate of UP TO 20% of the
 17 delinquent wages plus fringe benefits, attorney fees, and
 18 court costs. Money collected by the department under this
 19 section must be used for enforcement. A contractor,
 20 subcontractor, or employer shall also forfeit to the
 21 employee wages owed plus annualized interest on the unpaid
 22 wages at a rate of 5 percentage points a year above the
 23 prime rate of major New York banks on the date of
 24 settlement.

25 (2) Whenever it shall appear to the contracting agency

1 or to the Montana commissioner of labor that there are
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 4 Montana commissioner of labor may, within 90 days after the
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 11 from maintaining an action for recovery of the wages due
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 13 2."

14 **Section 4.** Section 18-2-423, MCA, is amended to read:

15 "18-2-423. Submission of payroll records. ~~if--a~~
 16 ~~complaint---is---filed---with---the---department---alleging~~
 17 ~~noncompliance--with--18-2-422--the-department-may-require-the~~
 18 ~~project-to-submit-to-it--certified--copies--of--the--payroll~~
 19 ~~records-for-workers-employed-on-that-project~~ Contractors and
 20 subcontractors shall pay hourly paid employees on a weekly
 21 basis and shall submit certified payrolls to the contracting
 22 PROFESSIONAL CONSULTANTS OF THE LETTING agency on a weekly
 23 basis."

24 **Section 5.** Section 18-2-424, MCA, is amended to read:

25 "18-2-424. Enforcement. If a contractor or a

1 subcontractor refuses or fails to submit certified payroll
2 records ~~requested--by--the--department~~ to the contracting
3 agency pursuant to 18-2-423, the commissioner or his
4 authorized representative may issue subpoenas compelling the
5 production of those records."

6 **Section 6.** Section 18-2-432, MCA, is amended to read:

7 "18-2-432. Penalty for violation. (1) If any a person,
8 firm, or corporation ~~shall-fail~~ fails to comply with the
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10 municipality, or school officers--who--have district, or
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12 contract shall retain \$1,000 ~~±0%~~ 3% of the contract price as
13 liquidated damages for the violation of the terms of the
14 contract and said money shall be credited to the proper
15 funds of the state, county, ~~municipal~~ municipality, or
16 school districts district, or a political subdivision.

17 (2) A person, firm, or corporation violating the
18 provisions of this part on two or more projects within a
19 3-year period may not be allowed to perform work on a
20 publicly funded project covered under this part for 3 years.

21 (2)(3) Any Whenever a person, firm, or corporation
22 violating violates the provisions of this part, the
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25 PROCEEDINGS TO suspend the license in the manner prescribed

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2 FINDS THAT A VIOLATION HAS OCCURRED, THE LICENSE MUST BE
3 SUSPENDED for a period of ~~1-year~~ 5 3 years after the date of
4 final judgment ~~of-said the violation-by-any--district--court~~
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6 ~~(3)(4)~~ Whenever any action shall have been instituted
7 in any district court in this state against any person,
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9 court in which said action is pending shall be and it is
10 hereby authorized to issue an injunction to restrain any
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13 municipality, or school districts district, or political
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15 action so instituted."

16 Section-6--Section-39-3-201, MCA, is amended to read:
17 "39-3-201--Definitions--The--following--are--the
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19 (1)--"Board"--means--the--board--of--personnel--appeals
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21 (2)(1) "Commissioner-of-labor"--refers-to-the--director,
22 commissioner,--or--chief--of--the--department--of--labor-and
23 industry-as-the-department-is-defined-by-law,or-any-person
24 or-persons-designated-by-him-for-the-purpose-of-this-part:

25 (3)--"Department"--means--the--department--of--labor-and

1 industry-as-provided-for-in-2-15-1781-

2 {4}{2} "Employ" means permit or suffer to work;

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4 another for hire;

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6 association, corporation, business trust, legal

7 representative, or any organized group of persons acting

8 directly or indirectly in the interest of an employer in

9 relation to an employee but shall not include the United

10 States;

11 {7}{5} "Wages" includes any money due an employee from

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16 "39-3-212. Court enforcement of administrative decision

17 commissioner's determination. A decision of the hearings

18 officer, if the decision is not appealed to the board, or a

19 decision of the board, if judicial review is not sought,

20 determination by the commissioner of labor made after a

21 hearing, as provided for in parts 2 and 4 of this chapter,

22 may be enforced by application by the commissioner to a

23 district court for an order or judgment enforcing the

24 decision determination if the time provided to initiate

25 judicial review by the employer has passed. The commissioner

1 shall apply to the district court where the employer has its

2 principal place of business or in the first judicial

3 district of the state. A proceeding under this section is

4 not a review of the validity of the administrative decision

5 commissioner's determination."

6 NEW SECTION. Section 8. Repealer. Sections 39-3-216

7 and 39-3-217, MCA, are repealed.

8 NEW SECTION. SECTION 7. PREVAILING WAGE RATE

9 PROCEEDING. PAYMENT OF STANDARD PREVAILING WAGE RATES MUST

10 BE ENFORCED PURSUANT TO 18-2-407, AND ALL PROCEEDINGS MUST

11 BE BROUGHT BEFORE A DEPARTMENT HEARING OFFICER. THE DECISION

12 OF THE HEARING OFFICER MAY BE APPEALED BY FILING A PETITION

13 IN DISTRICT COURT.

14 NEW SECTION. SECTION 8. REPEALER. SECTION 18-2-405,

15 MCA, IS REPEALED.

16 NEW SECTION. SECTION 9. CODIFICATION INSTRUCTION.

17 {SECTION 8} IS [SECTIONS 1 AND 7] ARE INTENDED TO BE

18 CODIFIED AS AN INTEGRAL PART OF TITLE 18, CHAPTER 2, PART 4,

19 AND THE PROVISIONS OF TITLE 18, CHAPTER 2, PART 4, APPLY TO

20 {SECTION 8} [SECTIONS 1 AND 7].

21 NEW SECTION. Section 10. Applicability. [This act]

22 applies to all wage claims filed with the department of

23 labor and industry on or after July 1, 1991.

24 NEW SECTION. Section 11. Effective date. [This act] is

25 effective July 1, 1991 ON PASSAGE AND APPROVAL.

Conference Committee
on House Bill 836
Report No. 1, April 18, 1991

4-18-91
3:55 PM
JDL

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered House Bill 836 and recommend that House Bill 836 (reference copy -- salmon) be amended as follows:

1. Page 6, line 21.
Following: "the"
Strike: "contracting"
Insert: "professional consultants of the letting"

And this Conference Committee report be adopted.

For the House:

Driscoll
Rep. Driscoll, Chair

Beck
Rep. Beck

Thomas
Rep. Thomas

For the Senate:

Lynch
Sen. Lynch, Chair

Doherty
Sen. Doherty

Keating
Sen. Keating

ADOPT
REJECT

FCC # 1
HB 836
830952CC.HSF