

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chair Carolyn Squires, on January 10, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chairman (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzienried (D)
Tim Whalen (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chair Squires discussed the importance of the visitors signing in. People who do not sign in when they present their testimony will not be recorded in the minutes. She also discussed addressing the Chair so that the secretary can hear the names of the individuals and representatives that are addressing the questions.

HEARING ON HB 28

Presentation and Opening Statement by Sponsor:

REP. H.S. "SONNY" HANSON, House District 87, stated HB 28 is an attempt to reduce paperwork and costs to political subdivisions, which are state, cities, counties, school districts, etc. Presently, the design profession prepares a set of specifications for the construction of a project. The prevailing wage rates are

determined by the Department of Labor; a copy of those rates are given to the Architecture and Engineering Division of the Department of Administration. The designer then calls the A/E Division and requests a copy of the Prevailing Wage Rates. A copy is then forwarded to the architect or engineer. In a normal project for specifications on a school job, it will run 50 to 125 sets of specifications. About a year ago the Legislature created ten prevailing wage rate districts, and the new rates came out last fall. The rates came out initially in a format of The Prevailing Wage Rates. EXHIBIT 1 It has 214 pages of wage rates for all ten districts. The A/E Division worked with the Department of Labor so there are ten districts. If a contractor was designing a building in Great Falls, he would call the A/E Division and receive those rates for Great Falls. The problem with that arrangement is that a contractor will potentially work in more than one district. Consequently, there will be different wage rates in those specifications. There could be conflicts and variations. This bill is to reduce the overall cost and amount of material to all political subdivisions. The designer does not pay the printing costs; the contractor or the political subdivision pays the printing costs. There is no attempt to eliminate the prevailing wage rates. They will be furnished and available through the Department of Labor and noted in the specifications of their availability.

Proponents' Testimony:

Mike Micone, Commissioner of the Department of Labor, stated his support of HB 28. The Department of Administration's fiscal note estimated a cost savings of approximately \$10,500 for that Department. Since there is opposition, the Department of Labor developed and proposed an amendment. EXHIBIT 2 This is to make sure if the contractor does not pay the prevailing wage, the agency is responsible. REP. HANSON stressed the amount of paper that is used. The prevailing wages were traditionally distributed by the Department. Last November it was broken down into ten separate districts, but even in that publication there are about thirty pages. By law as interpreted today, each time the Department of Labor lets a contract for services that may include prevailing wage, it has to include the Prevailing Wage Rates document. In a contract a number of items are referenced that are not included: Equal Employment Opportunity, uniform building, fire codes, etc. If the law is referenced that the contractor will pay the prevailing wage, it is the responsibility of the contractor to insure that the prevailing wage is paid and to bid the proper rate in their proposal. If they fail to do so and the contracting agency agrees with the contract in their bid letting, then the contracting agency is responsible to pay the prevailing wage. Concern may be raised whether or not the rate is going to be paid. This process is to alleviate paperwork and eliminate costs. It would be a savings to all parties involved.

Tom O'Connell, Administrator of the Architect and Engineering Division, stated support for HB 28. His Division is responsible for the construction of state facilities and lets contracts for buildings or repair at universities, institutions, and state agencies statewide. There is no opposition to the wage rates; they have to be followed by the contractors. It is a matter of distribution. He showed the committee members a specification book for a project. Each year specifications are issued similar to this for about 200 projects statewide. For each project, an average of 30 specifications are sent out. So this is printed 30 times and multiplied by 100 or 200 projects per year. The costs are phenomenal. For each project one contractor is the successful bidder, but this information has been distributed to every contractor that wants to bid the project. The fiscal note was based upon the fact that the district level wage rates would be distributed in the specifications. Even then it would cost approximately \$10,000 to \$11,000 per year to bind them.

Joanne Chance, Montana Technical Council, stated the current requirement to reprint the entire Prevailing Wage Rate documents and all the bid specifications for public works projects is costly and time consuming because of its size. It generates an overly imposing bid document, labor concerns would be addressed by clearly referencing the Prevailing Wage Rates in the public bid documents. The contractors are notified of changes in the prevailing wage rates automatically if they have one or more employees and pay more than \$500 per year in wages. Free copies are available by phone requests. The rates change about once every other year. Private and government organizations would reduce paperwork and cost, and labor's interest would continue to be protected.

Opponents' Testimony:

Gene Fenderson, Montana Construction and Building Trades, stated his opposition to HB 28 at least in its present form. Progress has been made with the printing of the small book. Under the federal system, the federal contracts also require insertion of the wage rates in specification documents. The reason for that dates back to 1982 with the Supreme Court case called The Yellow Bay case. A specification was left out, and the rates were not in the document. Pyramid Builders was issued the contract and proceeded not to pay the right rates. The Labor Department Commissioner, Dave Fuller, took them to task. Pyramid Builders argued the case on two different levels: 1. The Commissioner did not have the right to set the rates; the contractor could set the rates. 2. Because the rates were not in the specifications, he did not have to pay. On the first level the Montana Supreme Court found that the Commissioner did have the right to set the prevailing rates across the state. On the second level, the Court agreed with the contractor in essence. Mr. Fenderson quoted from the Supreme Court Decision, "We hold that even though the state's figures exist at a time of contracting, their mere existence cannot be held to constitute an agency decision."

Under the basic contract principles a party cannot be bound to terms he is not aware of. There must be a meeting of the minds or mutual absence of all of their essential terms. . . . He, the contractor, stated the standard prevailing rates of wage paid by other contractors in the area must be paid for work performed." Mr. Fenderson stated that the respondent said if an inexperienced contractor in public works projects were to read this language, he may conclude that his wage rates were within the range of rates prevailing in the area. Mr. Fenderson quoted again from the decision, "Respondent cannot be held to payments of specific rates that did not appear in the contract of which he had no knowledge but only existed somewhere within the bureaucracy." This problem has been corrected by the legislature. The current law requires all bid specifications and contracts to contain the specific rates payable by the contractors. It is correct to have very strong language in our law that says the specific rates have to be in those bid specifications. If the architects and engineers know that the job is in zone one, they list the rates in that zone for that project and specification.

Bob Murphy, Local Union No. 185, International Brotherhood of Electrical Workers, said many times the changes aren't necessarily annual. There are corrections as to each prevailing wage rate. Often the corrections will be for electricians only or a change for plumbers, or a combination. If this is not stipulated at the time of the bid and several contractors bid, nobody is certain what rate they are bidding on. The bidding process must include exactly what that wage rate will be. If there is a change that has come before the contractor, at that time he has the right and obligation to call and see if there has been a change.

Jim Stucky, Local 400 Operating Engineers, stood in opposition to HB 28.

Questions From Committee Members:

REP. DRISCOLL questioned REP. HANSON if the Section 18-2-422, MCA is being repealed which requires the standard prevailing wage to be in the contract, why hasn't this been amended to say the prevailing wage MUST be paid. REP. HANSON said there's ample areas in the Codes stating that.

REP. WHALEN asked Mr. Micone under this amendment does that put the obligation on the state to pay if it is a state job, or put the obligation on the local government if it is a local government job, etc. REP. WHALEN asked, "What are you attempting to do?" Mr. Micone said that it was an attempt to identify if the contractor fails to pay the prevailing wage then the contracting entity is obligated. REP. WHALEN asked if there was an easier approach. He referred back to Gene Fenderson's testimony in regard to pulling out a particular region that there will be four pages instead of 200 pages. He asked if it was possible. He also asked if all of this information is in the

computers of the architects that bid on the jobs so the wages of a specific project are automatically printed in the contract. Mr. Micone said that REP. WHALEN was making an even more valid argument why HB 28 should pass. In the age of computers, a contractor would only have to call up a district to get the wage rates. If a contractor is not paying a prevailing wage, a business agent will know. It will be corrected through the contractor or contracting agency.

REP. FAGG questioned REP. HANSON if the bill was trying to reference the wage rates in the contract and if it would still be a valid part of the contract. REP. HANSON said yes.

REP. FAGG asked Mr. Fenderson why it was a problem to reference the wage rates in the contract. Mr. Fenderson said for some reason, reference to other issues in contracts have been accepted for many years but on the prevailing rates, the Supreme Court specifically said that unless they are stated in the contract they don't have to be recognized.

REP. HOFFMAN asked Mr. Fenderson in the Pyramid Builder's Case, was there a statute in place requiring a prevailing wage rate be paid when the contract was made, and if so, what statute. Mr. Fenderson answered yes; the statute in place would be what Rep. Hanson is trying to include now. The law at that time did not require the publishing of the specific wage rate. It made a reference that they had to be paid. When the contractor refused to pay them, his grounds for argument was that the contract didn't specifically didn't tell him what he had to pay. REP. HOFFMAN stated under the current statute Title 18, Chapter 2, Section 401 there are certain definitions that pertain to the standard prevailing wage and those are referenced in REP. HANSON'S bill. He asked Mr. Fenderson if those definitions were in effect at the time of the Pyramid Builder's contract. Mr. Fenderson said no. That particular section was put in about two years ago. The section on how you calculate the prevailing rate was changed two to four years ago. How the rates were set years ago was never in question. REP. HOFFMAN asked Mr. Fenderson if he was comfortable with the amendment that Mr. Micone proposed stating that any contractor does have to comply with wage rates outlined in sections 401 etc. because they are actually defined. Whereas in the Pyramid Builder's Case, they weren't defined by statute. Mr. Fenderson stated that he felt very uncomfortable changing the law because we would be right back in litigation.

REP. WANZENRIED questioned REP. HANSON if HB 28 eliminates the requirement that the Prevailing Wage Rates be in the bid specifications and the contract. REP. HANSON said it specifically eliminates the requirement for the rates themselves, but does not eliminate the requirement that they be referenced in the specifications. REP. WANZENRIED asked where in the bill it says they are to be referenced in bid specifications; it doesn't ever say that does it. REP. HANSON answered no; under the contract documents. On page 1, line 20 all public work contracts

under section 1, except those for the Highway, must contain a provision requiring the contractor to pay the standard prevailing wage rates. REP. WANZENRIED said to REP. HANSON the bill itself doesn't say that you are referencing the prevailing wage rates that are on file some place. I think that is where the confusion and the concern comes from. REP. HANSON said there would be no objection to taking for example line 23 that says the standard prevailing wage rates, but to go ahead and put parenthesis on that and put a specific updated version that is available or something of that nature. It is important that the designer include something dealing with wages in the specifications. The wage rates have to be referenced.

Closing by Sponsor:

REP. HANSON referred back to the Supreme Court ruling. He quoted from the 1979 law in effect before this, "The Montana Commissioner of Labor may determine the standard prevailing rate of wages in the country or locality in which the contract is to be performed." The 1989 Prevailing Rate of Wage says, "The Montana Commissioner of Labor may determine the standard prevailing rate of wages applicable to public work's contracts under this part." The key word is public work. The designer used the phrase, Standard Prevailing Rates. Consequently, rate wasn't defined. The Supreme Court found that the State claims that it considered three sources to determine the SPR: 1. Wage rate information compiled by the Employment Security Division. 2. Davis Bacon Act Rates published by the United States Department of Labor. 3. Local collective bargaining agreements. The rates established by the state were taken verbatim from number three. This contractor determined what the prevailing wage rates were in that district and used that in his case. The Supreme Court viewed the problem as one of contract interpretation where no specific government rates were in the contract. The Court focused on whether Respondent, as a contracting party, properly interpreted the term standard prevailing rate.

EXECUTIVE ACTION ON HB 28

Recommendation:

CHAIR SQUIRES deferred Executive Action on HB 28 until next Tuesday, January 15, 1991, to give Eddy McClure a chance to read the Yellow Bay Decision.

HEARING ON 85

Presentation and Opening Statement by Sponsor:

REP. BARRY STANG, House District 52, is sponsoring HB 85 for the Department of Highways. It establishes a 180-day period in which Highway employees may file a grievance. This would bring the Highway Department into compliance with the same schedule the National Labor Relations Board uses for private grievances for employees that have been dismissed.

Proponents' Testimony:

James Beck, Department of Highways, stated that currently there is no statute of limitations on when an employee can file a grievance. This establishes a 180-day statute of limitations in which to file a grievance or deem it waived.

Opponents' Testimony: none

Questions From Committee Members:

REP. O'KEEFE questioned REP. STANG if HB 85 put the Highway Department in compliance with the Department of Labor's standards. REP. STANG said he didn't know, but it corresponds with the Labor Relations Board's 180-day period for filing grievances. It brings them into the same standards set for filing grievances throughout the country.

Closing by Sponsor:

REP. STANG said the Department of Highways gave him five examples of grievances that were filed. Example: June 18, 1982, grievant and supervisor had a disagreement and the grievant left work and filed a complaint with the Board in March of 1984 alleging that he was fired by the supervisor.

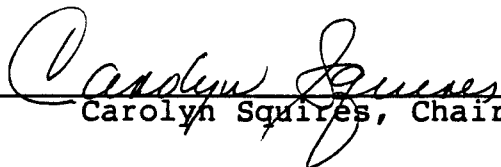
EXECUTIVE ACTION ON HB 85

Motion: REP. PAVLOVICH moved HB 85 DO PASS.

Recommendation and Vote: The motion CARRIED unanimously.

ADJOURNMENT

Adjournment: 3:50 p.m.


Carolyn Squires, Chairman


Jennifer Thompson, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE

1/10/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

STANDING COMMITTEE REPORT

January 10, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 85 (first reading copy -- white) do pass .

Signed: _____
Carolyn Squires, Chairman

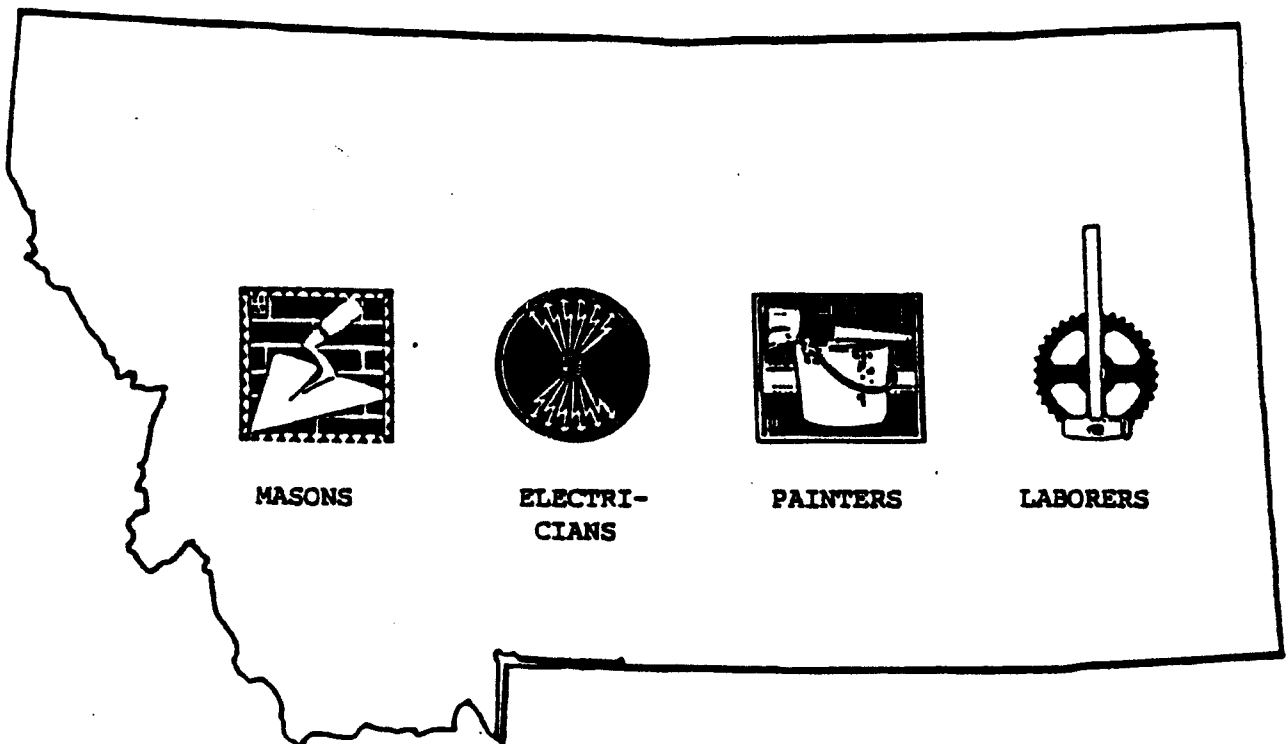
EXHIBIT 1
DATE 1/10/91
HB 28

STATE OF MONTANA

PREVAILING WAGE RATES

BUILDING CONSTRUCTION

EFFECTIVE SEPTEMBER 1, 1990



MASON

ELECTRICIANS

PAINTERS

LABORERS

Department of Labor and Industry
Employment Relations Division
P.O. Box 1728
Helena, MT 59624
(406) 444-5600

EXHIBIT 2

DATE 1/10/91

DEPARTMENT OF LABOR AND INDUSTRY HB

COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 59624

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
JANUARY 10, 1990

PROPOSED AMENDMENTS TO HB 28

1. Page 2.

Following: line 15

Insert: "(5) Failure of the contractor to pay the rate of wages referenced in subsections (2) and (3) obligates the public contracting agency to assume responsibility for the payment.

VISITORS' REGISTER

Salmon & Employment COMMITTEE

BILL NO. 28

DATE 1/10/91

SPONSOR H. Hanson

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<u>Dewey Abel</u>	<u>Helena</u>		<u>X</u>
<u>Tom O'Connell</u>	<u>Helena</u>	<u>X</u>	
<u>Ralph DeCunzio</u>	<u>CLANCY</u>		
<u>Piley Johnson</u>	<u>WTB</u>	<u>X</u>	
<u>Heel</u>	<u>HADO Helena</u>		
<u>J. Oanne Chance PE</u>	<u>Helena</u>	<u>X</u>	
<u>Nike Pusane</u>	<u>DLI</u>	<u>X</u>	
<u>F.H. BOCK BOLES</u>	<u>MONTANA CHAMBER Helena</u>	<u>X</u>	
<u>JAY REARDON</u>	<u>Big Sky Central Labor Council Helena</u>		<u>X</u>
<u>Jim Stucky</u>	<u>ICU Local 400</u>		<u>X</u>
<u>Eugene Jensen</u>	<u>State Bldg. Trades</u>		<u>X</u>
<u>Robert Murphy</u>	<u>LU 185 IBEW</u>		<u>X</u>

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Labor & Employment

COMMITTEE

BILL NO.

HB 85

DATE _____

1/10/91

SPONSOR

Barry Stang

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

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