

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE ON SENATE BILL 342

Call to Order: By Senator Wilson, on April 19, 1993, at
11:02 a.m.

ROLL CALL

Members Present:

Sen. Bill Wilson, Chair (D)
Sen. Gary Aklestad (R)
Sen. Tom Towe (D)
Rep. Jerry Driscoll (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)

Members Excused: None.

Members Absent: None.

Staff Present:

Eddy McClure, Legislative Council
Roselyn Cooperman, Conference Committee Secretary

Discussion:

Senator Wilson asked Mr. Lloyd Lockram from the Montana Contractors Association and Trust to give an overview, from his perspective, on SB 342. Mr. Lockram stated there were two bills heard by the Senate Labor Committee, SB 342 and SB 62, which pertained to certified payrolls. He said that at the urging of Senator Towe, all parties, including the Montana Department of Labor, Montana Contractors and the AFL-CIO, agreed to meet to resolve their conflicts over certified payrolls. Mr. Lockram said the Department of Labor did not want certified payrolls for state projects. He said that while SB 342 requires certified payrolls be filed with local governments, local government representatives did not participate in any of the meetings. He noted SB 342, in its unamended form, would require all contractors working on state projects to file certified payrolls and to retain their own records. Mr. Lockram stated that because SB 342 would not substantially change the enforcement procedure, he believed the requirement to file certified payrolls is a waste of paper and time. He said his organization would support the requirement to file certified payrolls on all state jobs if the requirement was aggressively and equitably enforced. According to Mr. Lockram, as a contractor, he is required to file the following forms with federal and state government: federal

withholding, Social Security tax, Medicare, federal unemployment, state withholding, state unemployment and state worker's compensation. He noted he also collects money for a variety of things, including union dues, retirement, vacation pay, apprenticeship training and health care. He said that because SB 342 cannot offer any additional protection for the worker, his organization would not support the bill. Mr. Lockram added that SB 342 should address the problem of "breaking the base" which occurs when the cost of fringe benefits exceed their predetermined amount.

Senator Wilson asked Mr. Lockram if the issue of certified payrolls was the only item he did not support. Mr. Lockram replied yes and added he was philosophically opposed to the idea of allowing only union contractors to "break the base".

Senator Towe asked Mr. Lockram to state his position on each of the amendments offered to SB 342. He asked Mr. Lockram why he objected to the language on page 2, subsection 4. Mr. Lockram replied both subsections 4 and 5 need to be considered together and should not be separated. He said the problem with subsections 4 and 5 is resolved in subsection 1, part (c) which states the welfare and pension contributions must meet the requirements of the Employee Retirement Income Security Act (ERISA) of 1974.

Representative Driscoll asked Mr. Lockram if he would agree to add language which would prohibit non-union contractors from "breaking the base" of 100 hours per month on health insurance. Representative Driscoll stated the language would do the same thing union contractors are currently doing. Mr. Lockram replied Representative Driscoll's statement was not true.

Senator Towe suggested Mr. Gene Fenderson from the Montana District Council of Laborers make some general comments on SB 342. Mr. Fenderson stated SB 342 was substantially amended in the House where the Labor Committee removed nearly all of the pro-union amendments. He said his organization is willing to compromise on SB 342 and find a solution agreeable to both parties. Mr. Fenderson stated the language contained in Section 1, subsections 4 and 5 could be deleted. He added that "the worker's representative" as stated on page 8, lines 19-20 could also be deleted. Mr. Fenderson stated Section 9 of SB 342 should be deleted as well. He said he would like to see all the other stricken language to be reinserted back into SB 342. He said certified payrolls will help the current situation. Mr. Fenderson noted the certified payroll requirements outlined in SB 342 are no different than what is already done by a number of cities and what is also required by all federal projects. He said a number of employees do not pay workers the full amount of their salary which is a serious problem.

Senator Wilson stated he believed the issue of certified payrolls was the only barrier to a compromise on SB 342. He asked

Mr. Chuck Hunter from the Department of Labor to comment on SB 342. Mr. Hunter stated his department has taken no position on SB 342 and will implement or enforce any decision made by the Committee.

Senator Towe asked Mr. Lockram if he objected to Mr. Fenderson's suggestion of reinserting the old Section 2 language pertaining to the definition of basic hourly wage. Mr. Lockram replied the language pertaining to the basic hourly wage was no longer necessary because of the deletion of the sections pertaining to "breaking the base". He added he did not agree with the bill's definition of "basic hourly wage".

Senator Towe asked Mr. Fenderson to respond to Mr. Lockram's comments. Mr. Fenderson stated that because the language contained in subsection 1(a) alludes to the basic hourly rate, it would be important to define the rate at some point in the bill. Mr. Lockram stated he agreed with Mr. Fenderson to the extent that "basic hourly rate" is defined in the Montana Prevailing Wage law. He said the prevailing wage is made up of the basic hourly wage plus any fringe benefits. Mr. Lockram suggested the Department of Labor define "basic hourly wage".

Senator Towe asked Mr. Hunter if "basic hourly rate" should be defined. Mr. Hunter replied a better definition would be helpful since the law is unclear on exactly what is a basic hourly wage. He said "basic hourly wage" as defined in SB 342 could be problematic since it is difficult to determine what is taxable and what is not. Senator Towe requested that Mr. Hunter come up with a definition of a "basic hourly rate".

Senator Towe asked Mr. Lockram why "and other bona fide programs approved by the United States Department of Labor" was deleted from page 5, lines 16-18. Mr. Lockram replied that language was reinstated on page 2, lines 17-19 so programs are required to either meet ERISA guidelines or be approved by the U.S. Department of Labor. Mr. Fenderson stated he did not object to the language reinstatement on page 2, lines 17-19.

Senator Towe asked Mr. Fenderson if similar language should be added if the old Section 2 was reinstated. Mr. Fenderson replied the language contained on pages 3 through 6 is clean-up language requested by Legislative Council. As an example, he noted that "and" had been inserted between "heavy" and "highway" to read "heavy and highway construction" instead of "heavy highway construction". Mr. Fenderson said the clean-up language on those pages should be retained.

Senator Towe asked Mr. Lockram why Section 3 had been stricken from SB 342. Mr. Lockram replied the section was stricken for the same reason Section 2 was deleted. He said he would not object to reinstating Section 3 as long as benefits are required to meet ERISA standards or be approved by the U.S. Department of

Labor. Mr. Fenderson added he would not object to the reinstatement of Section 3 under those conditions.

Senator Aklestad asked Senator Towe if he was requesting that all the underlined language in Section 3 be reinstated. Senator Towe replied that if both sides could agree upon a definition of "basic hourly wage", Sections 2 and 3 could be reinstated as long as the benefits are required to meet ERISA standards or be approved by the U.S. Department of Labor.

Mr. Lockram stated he was still concerned about the employer's ability to "break the base". He asked Mr. Hunter if the language contained in subsection (c) on page 2 could be interpreted as authorization to "break the base" if so required. Mr. Hunter replied the Department of Labor believes subsection (c) on page 2 would allow for the "breaking of the base". He said the language contained in subsection (c) would allow for payment by using any combination of methods. Mr. Hunter noted this language may "go further than the Committee wants to go".

Senator Towe asked Mr. Fenderson to respond to Mr. Hunter's comments. Mr. Fenderson replied that in the federal sector, the base may be broken up to any amount on insurance but can only be broken by 25 percent for pensions. He said there is some protection against this in federal law. Mr. Lockram agreed with Mr. Fenderson's comments but added that "breaking the base" is a serious problem because for every one dollar taken off of a wage, 40 cents goes directly to the contractor. He said the cap on fringe benefits is limited to the cost of the benefit. Mr. Lockram noted SB 342's interpretation of "breaking the base" is consistent with all federal programs administered in the state.

Representative Hanson asked Mr. Lockram if SB 342, in its current form, meets all federal regulations. Mr. Lockram replied that SB 342, in its current form, is consistent with the interpretation of the federal Davis/Bacon Law as it relates to the "breaking of the base". He added he is concerned that without SB 342, the Department of Labor will not permit the "breaking of the base".

Senator Towe asked Mr. Lockram if he would object to reinstating Section 5 since it only serves to clean up existing language. Mr. Lockram replied he did not object.

Senator Towe asked Mr. Lockram if he was adamantly opposed to the notion of certified payrolls as defined in Section 6. Mr. Lockram replied he was not opposed to the idea of certified payrolls but said SB 342 does nothing to enforce the requirement that payrolls be certified. He said SB 342, as it is currently written, creates additional paperwork and nothing more.

Senator Towe asked Mr. Lockram if he believed that enforcement of current law would be improved with the requirement to file certified payrolls as stated in SB 342. Mr. Lockram replied no.

Senator Wilson asked Mr. Lockram how the enforcement mechanism in SB 342 could be improved. Mr. Lockram replied certified payrolls should be submitted to the Department of Labor who then audits the payrolls. He added that compliance officers should visit sites to ensure that abuses do not occur. Mr. Lockram said SB 342 creates additional paperwork and provides no adequate enforcement mechanism.

Representative Hanson stated he was adamantly opposed to Section 6 which pertains to certified payrolls. He said the requirement would only add people and expenses to the Department of Labor; something the state cannot afford.

Representative Mills stated the requirement to file certified payrolls should not be included in SB 342 unless adequate and affordable enforcement measures are guaranteed.

Mr. Fenderson stated he was in complete disagreement with Representatives Hanson and Mills. He said certified payrolls are the only proof a worker has in determining if s/he is being fairly compensated. Mr. Fenderson stated the Committee should either reinstate Section 6 or kill SB 342.

Representative Mills asked Mr. Fenderson who would resolve the problem with workers not being fairly compensated. Mr. Fenderson replied the Department of Labor would address the problem. He said that the main problem with the current system is the lag time in obtaining payroll records from employers who have been turned in by their employees. He said the employers delay transferring payroll information to the Department of Labor until they have had the opportunity to alter their books. Mr. Fenderson stated he believed the request for employers to certify that their payroll was "true and correct" was not asking for much.

Senator Towe asked Mr. Fenderson to respond to Mr. Lockram's statement that the requirement is not enough; the requirement must be enforced. Mr. Fenderson replied that certified payrolls have been invaluable to federal agencies in determining if an employer is paying his/her employees a fair wage. He added he hoped the money collected by prosecuting offenders would be reallocated to the Department for increased enforcement.

Mr. Lockram noted that under existing law, the Department of Labor can subpoena employer payroll records if a complaint is received by an employee. He suggested the penalties be increased for non-compliance and an amendment be adopted to read "whenever any contractor or subcontractor is found by the Commissioner to be in aggravated or willful violation of the labor standard provisions of this chapter, such contractor, subcontractor, or any firm, corporation, partnership or association in which such contractor or subcontractor has substantial interest, shall be ineligible, for a period not to exceed three years, to receive any contracts or subcontracts subject to the provision of this

chapter". Mr. Lockram said that in the absence of certified payrolls, the "cheaters" are the ones who should be penalized. Senator Towe asked Mr. Lockram if he recalled saying he did not object to certified payrolls when he testified in front of the Senate Labor Committee on SB 342. Mr. Lockram replied he did not object to the requirement to file certified payrolls as long as adequate enforcement could be guaranteed. He added that SB 342 does nothing for certified payrolls but makes them a public document.

Senator Towe asked Mr. Lockram if making certified payrolls a public document was better than leaving the current situation alone. Mr. Lockram replied no. Mr. Fenderson stated certified payrolls are already public documents and are required to be filed for all federal jobs.

Senator Towe asked Mr. Lockram why the requirement to file certified payrolls on all state jobs would be so objectionable since the payrolls are required to be filed for all federal jobs. Mr. Lockram replied that the requirement to file certified payrolls on federal jobs is aggressively enforced. He said SB 342, as currently written, would not aggressively enforce this requirement.

Senator Towe stated that while he appreciated Mr. Lockram's concerns, he believes that making certified payrolls public documents would be beneficial and would encourage the Department of Labor to devote more resources toward its enforcement. He asked Mr. Lockram to agree to the requirement for certified payrolls since Mr. Fenderson had agreed to allow for the "breaking of the base". Mr. Lockram replied the language regarding the "breaking of the base" had to be included in SB 342 or it would not be permitted.

Representative Hanson stated that the wage rates are already included in current law. He said SB 342 would adversely affect smaller contractors who do not have the manpower available to deal with the increased paperwork. Representative Hanson stated he would rather see SB 342 die than adopt the requirements for filing certified payrolls. Senator Towe replied that killing SB 342 could potentially endanger Mr. Lockram's business.

Representative Hanson stated he refused to concede on the issue of certified payrolls.

Senator Aklestad asked Mr. Fenderson if, under current law, an individual can file a complaint which must then be processed by the Department of Labor. Mr. Fenderson agreed but stated the problem of cheating on the payroll lies, in general, with the smaller contractors, not the larger ones.

Senator Aklestad asked Mr. Hunter how long the Department of Labor takes to pursue an employee wage complaint. Mr. Hunter

replied it varied from case to case but estimated the average time would be between three to five weeks.

Senator Towe asked Mr. Fenderson to expand on his comments about contractors who falsify payrolls. Mr. Fenderson replied that problems usually occur when contractors do not pay their employees the correct wage for their task. He said it is easy for employers to find employees who will work for lower wages because of current economic conditions.

Senator Aklestad asked Mr. Lockram if he would support SB 342 if the requirement for certified payrolls was reinstated. Mr. Lockram replied he would because of Mr. Fenderson's concession to retain language permitting the "breaking of the base".

Senator Wilson stated he was adamantly in favor of retaining Sections 6 and 7 and asked the other Committee members to state their opinion on SB 342.

Senator Towe stated that during the Senate hearing, Mr. Lockram did not object to the certified payrolls as long as they were able to "break the base". He reminded Representative Hanson that Mr. Lockram's business could be lost if SB 342 was killed by this Committee. Representative Hanson replied he would not support the certified payroll requirement.

Senator Aklestad stated he was not adamantly opposed to certified payrolls as long as the requirement to file them did not create additional paperwork or expense.

Senator Towe asked Mr. Hunter if he had come up with a definition for a "basic hourly wage". Mr. Hunter replied he had a definition but added he was not entirely comfortable with its wording. He said he defined a "basic hourly wage" as "the gross remuneration paid to a worker for services rendered but excluding those payments for fringe benefits for which the worker has no ability to direct or receive". He said the basic hourly wage should define the total hourly rate of pay the worker is able to take home. Mr. Hunter said only those fringe benefits for which the worker has no control over should be excluded.

Senator Towe asked the Committee to delay action on SB 342 until the wording of a "basic hourly wage" could be specifically defined. Senator Aklestad agreed and asked the Committee meet one more time to resolve the issue of certified payrolls.

Note:

After informal discussion, the Conference Committee members agreed on 21 April 1993 to accept a series of amendments to SB 342 (Exhibit #1).

ADJOURNMENT

Adjournment: 12:05 p.m.



SENATOR BILL WILSON, Chair



ROSALYN COOPERMAN, Secretary

BW/rc

Conference Committee
on Senate Bill No. 342
Report No. 1, April 21, 1993

Page 1 of 5

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 342, met and considered: House amendments to Senate Bill No. 342. We recommend that Senate Bill No. 342 (reference copy - salmon) be amended as follows:

1. Title, line 9.

Following: "~~OFFICER,~~"

Insert: REVISING PROCEDURES FOR WAGE CLAIMS;

Strike: "SECTION"

Insert: "SECTIONS 18-2-401, 18-2-403,"

2. Title, line 10.

Following: "18-2-407,"

Insert: "18-2-411, 18-2-423, AND 18-2-432,"

3. Title, line 12.

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

4. Page 7, line 19.

Following: line 18

Insert: "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) A "bona fide resident of Montana" is hereby ~~declared to be a person who, at the time of his employment and immediately prior thereto to the time of employment, has lived in this state in such a manner and for such a time as that is sufficient to clearly justify the conclusion that his the person's past habitation in this state has been coupled with an intention to make it his the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor shall under no circumstance may not be deemed 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) "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) "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

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Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance provisions 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, or utility rights-of-way.

(6) "Labor" ~~is hereby defined to be means~~ all services in excess of \$25,000 performed in construction, maintenance, or remodeling work in ~~at~~ a state, county, municipal, ~~and~~ school work district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.

(7) (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 provisions which 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 is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the 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 provisions, shall 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.

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

Section 3. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception. (1) In any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay:

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

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, that:

(i) meets 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

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for such the project.

(4) A contract let for a project costing more than \$25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions of subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

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

Renumber: subsequent sections

5. Page 12.

Following: line 4

Insert: ""Section 5. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

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

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

Section 6. Section 18-2-423, MCA, is amended to read:

"18-2-423. Submission of payroll records. 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. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department."

Section 7. Section 18-2-432, MCA, is amended to read:

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

(2) Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any

contracts or subcontracts that are subject to the provisions of this chapter.

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

Renumber: subsequent sections

6. Page 12, line 15.

Following: line 14

Insert: "NEW SECTION. Section 10. Applicability. [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Renumber: subsequent section

And that this Conference Committee report be adopted.

For the Senate:

For the House:

Bill Wilson
Senator Wilson, Chair

H. S. Hanson
Representative H. S. Hanson, Chair

Akilestad
Senator Aklestad

Driscoll
Representative Driscoll

Thomas E. Towe
Senator Towe

James Mills
Representative Mills

M-
Amd. Coord.
M
Sec. of Senate

Amendments to Senate Bill No. 342 Exhibit #1
Reference Reading Copy

Date 4-19-93

Requested by the Joint Conference Committee
For the Committee on

Bill No. SB 342

Prepared by Eddy McClure
April 19, 1993

JOINT CONFERENCE COMMITTEE REPORT NO. 1
ON SENATE BILL NO. 342

Mr. President and Mr. Speaker:

We, your Joint Conference Committee on Senate Bill 342, met April 19, 1993, and considered:

(1) House Committee on Labor and Employee Relations Amendments to the third reading copy, dated March 12, 1993.

We recommend that Senate Bill No. 342, reference copy, be amended as indicated in the INSTRUCTIONS.

INSTRUCTIONS:

1. Title, line 9.

Following: "OFFICER,"

Insert: REVISING PROCEDURES FOR WAGE CLAIMS;

Strike: "SECTION"

Insert: "SECTIONS 18-2-401, 18-2-403,"

2. Title, line 10.

Following: "18-2-407,"

Insert: "18-2-411, 18-2-423, AND 18-2-432,"

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meaning and for the purpose of this part.

(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) "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 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.

(6) "Labor" ~~is hereby defined to be~~ means all services in excess of \$25,000 performed in construction, maintenance, or remodeling work in all a state, county, municipal, and school work district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.

(7) (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 and , 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 provisions ~~which are~~ that is 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 is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the 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, and travel allowance provisions 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 ~~shall~~ 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.

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

Section 3. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception. (1) In any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under

any law of this state, there shall must be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay:

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

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, that:

(i) 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

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for ~~such~~ the project.

(4) A contract let for a project costing more than \$25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

(5) ~~No~~ A contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions of subsections (1) through (4) in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

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

Renumber: subsequent sections

5. Page 12.

Following: line 4

Insert: ""Section 5. Section 18-2-411, MCA, is amended to read:

"18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

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

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

Section 6. Section 18-2-423, MCA, is amended to read:

"18-2-423. **Submission of payroll records.** 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. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department."

Section 7. Section 18-2-432, MCA, is amended to read:

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

(2) Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever any an action shall have has been instituted in any a district court in this state against any person, firm, or corporation for the violation of this part, the court in which said the action is pending shall be and it is hereby authorized to issue an injunction to restrain any such the person, firm, or corporation from proceeding with his or its a contract with the state, county, municipal municipality, or school districts

district, or political subdivision, pending the final determination of said the instituted action ~~so instituted~~."

Renumber: subsequent sections

6. Page 12, line 15.

Following: line 14

Insert: "NEW SECTION. Section 10. Applicability. [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Renumber: subsequent section