

SENATE BILL NO. 342

INTRODUCED BY WILSON, DRISCOLL

IN THE SENATE

FEBRUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 22, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 24, 1993	THIRD READING, PASSED. AYES, 41; NOES, 7.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 92; NOES, 8.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 7, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 13, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 22, 1993

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 ~~Senate~~ BILL NO. 342
2 INTRODUCED BY William Russell
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; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-407,
10 18-2-411, 18-2-423, 18-2-424, AND 18-2-432, MCA; REPEALING
11 SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
12 DATE AND AN APPLICABILITY DATE."
13

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

15 NEW SECTION. **Section 1.** Method for payment of standard
16 prevailing wage. (1) To fulfill the obligation to pay the
17 standard prevailing rate of wages under 18-2-403, a
18 contractor or subcontractor may:

19 (a) pay the amount of fringe benefits and the basic
20 hourly rate of pay that is part of the standard prevailing
21 rate of wages directly to the worker or employee in cash;

22 (b) make an irrevocable contribution to a trustee or a
23 third person pursuant to a fringe benefit fund, plan, or
24 program that meets the requirements of the Employee
25 Retirement Income Security Act of 1974 or that is a bona

1 fide program approved by the United States department of
2 labor; or

3 (c) make payments using any combination of methods set
4 forth in subsections (1)(a) and (1)(b) so that the aggregate
5 of payments and contributions is not less than the standard
6 prevailing rate of wages, including fringe benefits for
7 health and welfare and pension contributions, travel, and
8 other bona fide programs approved by the United States
9 department of labor, that is applicable to the district for
10 the particular type of work being performed.

11 (2) The fringe benefit fund, plan, or program described
12 in subsection (1)(b) must provide benefits to workers or
13 employees for health care, pensions on retirement or death,
14 life insurance, disability and sickness insurance, or other
15 bona fide programs approved by the United States department
16 of labor.

17 (3) A private contractor or subcontractor shall file a
18 copy of the fringe benefit fund, plan, or program described
19 in subsection (2) with the department.

20 (4) Contractors or subcontractors subject to a
21 collective bargaining agreement may deduct from the total
22 wage package fringe benefits for health and welfare and
23 pension contributions, travel, and other bona fide programs
24 approved by the United States department of labor. This
25 section does not relieve a contractor or subcontractor not

subject to a collective bargaining agreement 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) 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, and travel allowance-provisions, and other bona fide programs approved by the United States department of labor, 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 travel allowance provisions, and other bona fide programs approved by the United States department of labor, 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, and travel allowance-provisions, and other bona fide programs approved by the United States department of labor, 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 the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, and travel allowance-provisions, and other bona fide programs approved by the United States department of labor, 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

1 to the federal statutes prescribing a labor preference to
2 honorably discharged veterans of the armed forces and
3 prohibiting as unlawful any other preference or
4 discrimination among citizens of the United States.

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

10 **Section 4.** Section 18-2-407, MCA, is amended to read:

11 "18-2-407. Forfeiture for failure to pay standard
12 prevailing wages wage. (1) Any contractor, subcontractor, or
13 employer who ~~shall--pay~~ pays workers or employees at less
14 than the standard prevailing wage as established under the
15 public works contract shall forfeit to the contracting
16 ~~agency the sum of--\$25--a--day--for--each--worker--underpaid~~
17 department a penalty at a rate of up to 20% of the
18 delinquent wages plus fringe benefits, attorney fees, audit
19 fees, and court costs. Money collected by the department
20 under this section must be deposited in the unemployment
21 insurance administration account, as provided in 39-51-406,
22 and must be used for enforcement. A contractor,
23 subcontractor, or employer shall also forfeit to the
24 employee the amount of wages owed plus \$25 a day for each
25 day that the employee was underpaid.

1 (2) Whenever it ~~shall--appear~~ appears to the contracting
2 agency or to the Montana commissioner of labor that there
3 ~~are is~~ insufficient ~~moneys~~ money due to the contractor or
4 the employer under the terms of the contract to cover
5 penalties, the Montana commissioner of labor may, within 90
6 days after the filing of notice of completion of the project
7 and its acceptance by the contracting agency, maintain an
8 action in district court to recover all penalties and
9 forfeitures due. ~~Nothing--in--this~~ This part shall does not
10 prevent the individual worker who has been underpaid, the
11 worker's representative, or the commissioner of labor on
12 behalf of all the underpaid workers from maintaining an
13 action for recovery of the wages due under the contract as
14 provided in Title 39, chapter 3, part 2."

15 **Section 5.** Section 18-2-411, MCA, is amended to read:

16 "18-2-411. Creation of prevailing wage rate districts.

17 (1) Without taking into consideration heavy and highway
18 construction wage rates, the ~~commissioner~~ shall divide the
19 state into at least 10 prevailing wage rate districts.

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

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

24 (b) publish the reasons supporting the creation of each
25 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 and shall submit certified payroll records to the contracting agency on a weekly basis. For contracts let by a state agency, a contractor and a subcontractor shall develop and maintain certified weekly payroll records and shall provide the records to the department within 5 days if requested. Records filed with the department become

public documents."

Section 7. Section 18-2-424, MCA, is amended to read:

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

Section 8. 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~~ 3% 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 A person, firm, or corporation violating the provisions of this part on two or more projects within a 3-year period ~~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~~ may not perform work on a

publicly funded project covered under this part for 3 years.

(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.~~"

NEW SECTION. Section 9. Prevailing wage rate proceeding. Payment of standard prevailing wage rates must be enforced pursuant to 18-2-407, and all proceedings must be brought before a department hearing officer. The decision of the hearing officer may be appealed by filing a petition in district court.

NEW SECTION. Section 10. Repealer. Section 18-2-405, MCA, is repealed.

NEW SECTION. Section 11. Codification instruction. [Sections 1 and 9] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 1 and 9].

NEW SECTION. Section 12. Applicability. [This act]

applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993.

NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0342, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the Little Davis-Bacon Act to provide penalties for wage violations on public contracts; revising procedures for wage claims and providing for proceedings on payment of prevailing wage rates before a Department of Labor and Industry hearing officer.

ASSUMPTIONS:

1. Section 9 of the proposed legislation requires that all proceedings on payment of prevailing wage must be brought before a Department of Labor & Industry (DOL) hearing officer. An employee will be allowed to directly file proceedings with the hearings unit. No investigation or determination will be made by the wage and hour unit of the DOL, pursuant to Title 39, Chapter 3, part 2.
2. One entry level Hearings Officer III grade 16, will be required to conduct the (proceedings) additional administrative contested cases without the benefit of an investigation or determination that is required under current law.
3. One entry level Legal Secretary grade 9, will be needed to support the additional staff requirements.
4. One time start up costs for the positions include office equipment and a PC.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0	2.00	2.00	0	2.00	2.00
Personal Services	0	57,012	57,012	0	57,961	57,961
Operating Expenses	0	22,452	22,452	0	18,776	18,776
Equipment	0	9,000	9,000	0	0	0
Total	0	88,464	88,464	0	76,737	76,737

Funding:

UI Admin Tax	0	88,464	88,464	0	76,737	76,737
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Net Impact: UI Adm Tax expenditures will increase by \$88,464 (FY94) and \$76,737 (FY95).

(Continued)

David Lewis 2-13-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Bill Wilson 2/18/93
 WILLIAM F. WILSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0342, as introduced

SB 342

TECHNICAL NOTES:

There appears to be a conflict between Section 9 which requires all proceedings must be brought before a department hearings officer, and Section 4 (Pg 8, Ln 9 to 14) which allows an individual worker, a worker's representative or the commissioner of labor to maintain an action for recovery of wages due under the contract as provided in Title 39, chapter 3, part 2.

Title 39, chapter 3, part 2 requires the department to investigate a wage claim and to make a determination. A person can then appeal the department's determination to a hearings officer. Section 9 requires all proceedings be brought before a department hearings officer even though the department has not investigated or issued a determination.

Section 4 requires an employer to forfeit the amount of wages owed plus \$25 a day for each day that the employee was underpaid. Section 39-3-206, MCA, requires the employer to pay a penalty of an amount not to exceed 100% of the wages due and unpaid, plus interest. One may interpret that an employee can collect both amounts.

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 342

INTRODUCED BY WILSON, 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; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-407, 18-2-411, 18-2-423, 18-2-424, AND 18-2-432, 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 the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(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 that is a bona

fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, travel, and other bona fide programs approved by the United States department of labor, that is 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 programs approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

(4) Contractors or subcontractors subject to a collective bargaining agreement may deduct from the total wage package fringe benefits for health and welfare and pension contributions, travel, and other bona fide programs approved by the United States department of labor.

(5) This section does not relieve a contractor or

subcontractor ~~not---subject---to---a---collective---bargaining~~
~~agreement, EXCEPT THOSE DESCRIBED IN SUBSECTION (4),~~ from
 paying workers or employees in cash the basic hourly rate-of
 pay--as--determined-by-the-commissioner-pursuant-to-18-2-402
 WAGE AS DEFINED IN 18-2-401.

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) "BASIC HOURLY WAGE" MEANS THAT PORTION OF THE
STANDARD PREVAILING WAGE THAT IS TAXABLE.

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

(3)(4) "Department" means the department of labor and

industry provided for in 2-15-1701.

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

(5)(6) "Heavy and highway construction wage rates"
 means wage rates, including fringe benefits for health and
 welfare and pension contributions, and travel allowance
 provisions, and other bona fide programs approved by the
United States department of labor, 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)(7) "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)(8) (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 travel allowance

provisions, and other bona fide programs approved by the United States department of labor, 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, and travel allowance--provisions, and other bona fide programs approved by the United States department of labor, ~~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)~~(9) "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 the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, and travel allowance--provisions, and other bona fide programs approved by the United States department of labor, 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."

Section 4. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing wages wage. (1) Any contractor, subcontractor, or employer who ~~shall-pay~~ pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the contracting agency--the--sum--of--\$25--a--day--for--each--worker--underpaid department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department

under this section must be deposited in the unemployment insurance administration account, as provided in 39-51-406, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

(2) Whenever it ~~shall-appear~~ appears to the contracting agency or to the Montana commissioner of labor that there ~~are is~~ insufficient ~~moneys~~ money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. ~~Nothing-in-this~~ This part shall does not prevent the individual worker who has been underpaid, the worker's representative, or the commissioner of labor on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2."

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 and shall submit certified payroll records to the contracting agency on a weekly basis. For contracts let by a state agency, a contractor and a subcontractor shall develop and maintain certified weekly payroll records and shall provide the records to the department within 5 days if requested. Records filed with the department become public documents."

Section 7. Section 18-2-424, MCA, is amended to read:

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

Section 8. 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 \$17,000 3% 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 A person, firm, or corporation violating the provisions of this part on two or more projects within a 3-year period ~~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~~ may not perform work on a publicly funded project covered under this part for 3 years.

(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."

NEW SECTION. Section 9. Prevailing wage rate proceeding. Payment of standard prevailing wage rates must be enforced pursuant to 18-2-407, and all proceedings must be brought before a department hearing officer. The decision of the hearing officer may be appealed by filing a petition in district court.

NEW SECTION. Section 10. Repealer. Section 18-2-405, MCA, is repealed.

NEW SECTION. Section 11. Codification instruction.

[Sections 1 and 9] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 1 and 9].

NEW SECTION. Section 12. Applicability. [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993.

NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

-End-

SENATE BILL NO. 342

INTRODUCED BY WILSON, 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; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-407, 18-2-411, 18-2-423, 18-2-424, AND 18-2-432, 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 the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(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 that is a bona

fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, travel, and other bona fide programs approved by the United States department of labor, that is 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 programs approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE STANDING COMMITTEE REPORT

March 12, 1993
Page 2 of 2

March 12, 1993
Page 1 of 2

Mr. Speaker: We, the committee on Labor report that Senate Bill 342 (third reading copy -- blue) be concurred in as amended.

Signed: 
Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Driscoll

1. Title, lines 6 through 9.
Following: "CONTRACTS;" on line 6
Strike: the remainder of line 6 through "OFFICER;" on line 9
2. Title, line 9.
Strike: "SECTIONS" through "18-2-403,"
Insert: "SECTION"
3. Title, line 10.
Following: line 9
Strike: "18-2-411" through "18-2-432,"
4. Title, line 12.
Following: the first "DATE"
Strike: "AND" through the second "DATE"
5. Page 2, line 7.
Following: "contributions"
Insert: "that meet the requirements of the Employee Retirement Income Security Act of 1974"
Strike: "and"
Insert: "or"
6. Page 2, line 14.
Strike: "other"
7. Page 2, line 15.
Following: "programs"
Insert: "that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are"
8. Page 2, line 20 through page 7, line 15.
Strike: subsections (4) and (5) and sections 2 and 3 in their

entirety
Renumber: subsequent sections

9. Page 8, lines 16 and 17.
Following: "underpaid" on line 16
Strike: the remainder of line 16 through "I" on line 17
10. Page 8, line 20.
Following: "2"
Insert: ", except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals"
11. Page 8, line 21 through page 11, line 23.
Strike: sections 5 through 9 in their entirety
Renumber: subsequent sections
12. Page 12, line 2.
Strike: "[Sections 1 and 9] are"
Insert: "[Section 1] is"
13. Page 12, line 5.
Strike: "sections"
Insert: "section"
Strike: "and 9"
14. Page 12, lines 6 through 8.
Strike: section 12 in its entirety
Renumber: subsequent section

Committee Vote:
Yes 14, No 0.

561652SC.Hss

SB 342
HOUSE

SENATE BILL NO. 342

INTRODUCED BY WILSON, 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; AMENDING SECTIONS--18-2-401,--18-2-403, SECTION 18-2-407, 18-2-411,--18-2-423,--18-2-424,--AND-18-2-432, 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 the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(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 that is a bona

fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions THAT MEET THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, travel, and OR other bona fide programs approved by the United States department of labor, that is 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 programs THAT MEET THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 OR THAT ARE approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

~~(4) Contractors or subcontractors subject to a collective bargaining agreement may deduct from the total wage package fringe benefits for health and welfare and~~

pension--contributions, travel, and other bona fide programs approved by the United States department of labor.

{5}--This section does not relieve a contractor or subcontractor not subject to a collective bargaining agreement, EXCEPT THOSE DESCRIBED IN SUBSECTION (4), from paying workers or employees in cash the basic hourly rate of pay as determined by the commissioner pursuant to 18-2-402 WAGE AS DEFINED IN 18-2-401.

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}--"BASIC HOURLY WAGE" MEANS THAT PORTION OF THE STANDARD PREVAILING WAGE THAT IS TAKABLE.

{2}--"Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

{3}{4}--"Department" means the department of labor and industry provided for in 2-15-1701.

{4}{5}--"District" means a prevailing wage rate district established as provided in 18-2-411.

{5}{6}--"Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, and other bona fide programs approved by the United States department of labor, 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}{7}--"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}{8}--{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

1 ~~{11} those wages, other than heavy and highway~~
 2 ~~construction wages, including fringe benefits for health and~~
 3 ~~welfare and pension contributions, and travel allowance~~
 4 ~~provisions, and other bona fide programs approved by the~~
 5 ~~United States department of labor, which that are paid in~~
 6 ~~the district by other contractors for work of a similar~~
 7 ~~character performed in that district by each craft,~~
 8 ~~classification or type of worker needed to complete a~~
 9 ~~contract under this part. In each district, the standard~~
 10 ~~prevailing rate of wages is a weighted average wage rate~~
 11 ~~based on all of the hours worked on work of a similar~~
 12 ~~character performed in the district.~~

13 ~~{b} When work of a similar character is not being~~
 14 ~~performed in the district, the standard prevailing rate of~~
 15 ~~wages, including fringe benefits for health and welfare and~~
 16 ~~pension contributions, and travel allowance provisions, and~~
 17 ~~other bona fide programs approved by the United States~~
 18 ~~department of labor, shall must be those rates established~~
 19 ~~by collective bargaining agreements in effect in the~~
 20 ~~district for each craft, classification or type of worker~~
 21 ~~needed to complete the contract.~~

22 ~~{8}{9} "Work of a similar character" means work on~~
 23 ~~private or commercial projects as well as work on public~~
 24 ~~projects."~~

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

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

10 ~~{2} All public works contracts under subsection {1},~~
 11 ~~except those for heavy and highway construction, must~~
 12 ~~contain a provision requiring the contractor to pay the~~
 13 ~~standard prevailing rate of wages, including fringe benefits~~
 14 ~~for health and welfare and pension contributions, and travel~~
 15 ~~allowance provisions, and other bona fide programs approved~~
 16 ~~by the United States department of labor, in effect and~~
 17 ~~applicable to the district in which the work is being~~
 18 ~~performed.~~

19 ~~{3} In every contract for heavy and highway~~
 20 ~~construction, there must be inserted a provision to require~~
 21 ~~the contractor to pay the heavy and highway construction~~
 22 ~~wage rates established statewide for such the project.~~

23 ~~{4} A contract let for a project costing more than~~
 24 ~~\$25,000 and financed in whole or in part by tax exempt~~
 25 ~~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;"

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

"18-2-407. Forfeiture for failure to pay standard
prevailing wages wage. (1) Any contractor, subcontractor, or
employer who shall-pay pays workers or employees at less
than the standard prevailing wage as established under the
public works contract shall forfeit to the contracting
agency--the--sum--of--\$25--a--day--for--each-worker-underpaid

department a penalty at a rate of up to 20% of the
delinquent wages plus fringe benefits, attorney fees, audit
fees, and court costs. Money collected by the department
under this section must be deposited in the unemployment
insurance administration account, as provided in 39-51-406,
and must be used for enforcement. A contractor,
subcontractor, or employer shall also forfeit to the
employee the amount of wages owed plus \$25 a day for each
day that the employee was underpaid.

(2) Whenever it shall-appear appears to the contracting
agency or to the Montana commissioner of labor that there
are is insufficient moneys money due to the contractor or
the employer under the terms of the contract to cover
penalties, the Montana commissioner of labor may, within 90
days after the filing of notice of completion of the project
and its acceptance by the contracting agency, maintain an
action in district court to recover all penalties and
forfeitures due. ~~Nothing-in-this~~ This part shall does not
prevent the individual worker who has been underpaid,-the
~~worker's-representative,~~ or the commissioner of labor on
behalf of all the underpaid workers from maintaining an
action for recovery of the wages due under the contract as
provided in Title 39, chapter 3, part 2, EXCEPT THAT APPEAL
OF THE HEARING OFFICER'S DECISION IS MADE DIRECTLY TO
DISTRICT COURT RATHER THAN TO THE BOARD OF PERSONNEL

1 APPEALS."

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

3 "18-2-411. Creation of prevailing wage rate districts:

4 (1) Without taking into consideration heavy and highway
5 construction wage rates, the commissioner shall divide the
6 state into at least 10 prevailing wage rate districts:

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

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

11 (b) publish the reasons supporting the creation of each
12 district:

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

16 (4) The presence of collective bargaining agreements in
17 a particular area may not be the sole basis for the creation
18 of boundaries of a district, nor may the absence of
19 collective bargaining agreements in a particular area be the
20 sole basis for changing the boundaries of a district:

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

25 **Section 6.** 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. A contractor or
6 a subcontractor shall pay employees receiving an hourly wage
7 on a weekly basis and shall submit certified payroll records
8 to the contracting agency on a weekly basis. For contracts
9 let by a state agency, a contractor and a subcontractor
10 shall develop and maintain certified weekly payroll records
11 and shall provide the records to the department within 5
12 days if requested. Records filed with the department become
13 public documents."

14 **Section 7.** Section 18-2-424, MCA, is amended to read:--

15 "18-2-424. Enforcement: If a contractor or a
16 subcontractor refuses or fails to submit certified payroll
17 records requested by to the department or to the contracting
18 agency pursuant to 18-2-423, the commissioner or his an
19 authorized representative may issue subpoenas compelling the
20 production of those records."

21 **Section 8.** Section 18-2-432, MCA, is amended to read:--

22 "18-2-432. Penalty for violation: (1) If any a person,
23 firm, or corporation shall fail fails to comply with the
24 provisions of this part, the state, county, municipal
25 municipality or school officers who have district or

officer--of--a--political--subdivision--that--executed--the
 contract--shall--retain--\$1,000 3% 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 A--person, firm, or corporation violating the
 provisions of this part on two or more projects within a
 3-year period 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 may not perform work on a
 publicly funded project covered under this part for 3 years.

{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."

NEW SECTION. Section 9. Prevailing wage rate.
 Proceeding. Payment of standard prevailing wage rates must

be enforced pursuant to 18-2-407 and all proceedings must
 be brought before a department hearing officer. The decision
 of the hearing officer may be appealed by filing a petition
 in district court.

NEW SECTION. Section 3. Repealer. Section 18-2-405,
 MCA, is repealed.

NEW SECTION. Section 4. Codification instruction.
 {Sections 1 and 9} are [SECTION 1] IS intended to be
 codified as an integral part of Title 18, chapter 2, part 4,
 and the provisions of Title 18, chapter 2, part 4, apply to
 [sections SECTION 1 and 9].

NEW SECTION. Section 12. Applicability. [This act]
 applies to all prevailing wage claims filed with the
 department of labor and industry on or after July 1, 1993.

NEW SECTION. Section 5. Effective date. [This act] is
 effective on passage and approval.

-End-

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

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 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.

ADOPT

REJECT

(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 aggravated 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

April 21, 1993
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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."

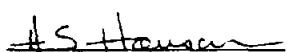
Renumber: subsequent section

And that this Conference Committee report be adopted.

For the Senate:

For the House:


Senator Wilson, Chair


Representative H. S. Hanson, Chair


Senator Aklestad


Representative Driscoll


Senator Towe


Representative Mills

M-
Amd. Coord.
M
Sec. of Senate

SENATE BILL NO. 342

INTRODUCED BY WILSON, 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; REVISING PROCEDURES FOR WAGE CLAIMS; AMENDING SECTIONS--18-2-401,--18-2-403, SECTION SECTIONS 18-2-401, 18-2-403, 18-2-407, 18-2-411, 18-2-423, AND 18-2-432, 18-2-411,--18-2-423,--18-2-424,--AND--18-2-432, MCA; REPEALING SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY 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 the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or

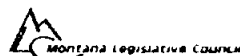
program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions THAT MEET THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, travel, and OR other bona fide programs approved by the United States department of labor, that is 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 programs THAT MEET THE REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 OR THAT ARE approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

~~(4)--Contractors--or--subcontractors--subject--to--a~~



collective--bargaining--agreement--may deduct from the total wage package fringe benefits--for--health--and--welfare--and pension--contributions, travel, and other bona-fide programs approved by the United States department of labor.

{5}--This section--does--not--relieve--a--contractor--or subcontractor---not---subject--to--a--collective--bargaining agreement, EXCEPT THOSE DESCRIBED IN--SUBSECTION--{4}--from paying workers or employees in cash the basic hourly rate of pay--as--determined by the commissioner pursuant to 18-2-402 WAGE AS DEFINED IN 18-2-401.

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}--"BASIC HOURLY WAGE"--MEANS--THAT--PORTION--OF--THE STANDARD PREVAILING WAGE THAT IS TAKABLE.

{2}--"Commissioner"--means the commissioner of labor and industry provided for in 2-15-1701.

{3}{4}--"Department"--means the department of labor and industry provided for in 2-15-1701.

{4}{5}--"District"--means a prevailing wage rate district established as provided in 18-2-411.

{5}{6}--"Heavy--and--highway--construction--wage--rates" means wage rates, including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, and other bona-fide programs approved by the United States department of labor, 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}{7}--"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}{8}--{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; and--other--bona--fide--programs--approved--by--the
 7 United--States--department--of--labor; which that--are--paid--in
 8 the--district--by--other--contractors--for--work--of--a--similar
 9 character---performed---in--that--district--by--each--craft;
 10 classification; or--type--of--worker--needed--to--complete--a
 11 contract--under--this--part;--in--each--district; the--standard
 12 prevailing--rate--of--wages--is--a--weighted--average--wage--rate
 13 based--on--all--of--the--hours--worked--on--work--of--a--similar
 14 character--performed--in--the--district;
 15 (b)--When--work--of--a--similar--character--is--not--being
 16 performed--in--the--district; the--standard--prevailing--rate--of
 17 wages; including--fringe--benefits--for--health--and--welfare--and
 18 pension--contributions; and--travel--allowance--provisions; and
 19 other--bona--fide--programs--approved--by--the--United--States
 20 department--of--labor; shall must--be--those--rates--established
 21 by--collective--bargaining--agreements--in--effect--in--the
 22 district--for--each--craft; classification; or--type--of--worker
 23 needed--to--complete--the--contract;
 24 (8)(9)--"Work--of--a--similar--character"--means--work--on
 25 private--or--commercial--projects--as--well--as--work--on--public

1 projects;"

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

3 "18-2-403.--Preference-of-Montana-labor-in-public--works
 4 ---wages---tax-exempt-project---federal-exception;--(1)--in
 5 any--contract--let--for--state; county;--municipal;--school;--or
 6 heavy---and---highway--construction;--services;--repair;--or
 7 maintenance--work--under--any--law--of--this--state;--there--shall
 8 must--be--inserted--in--the--bid--specification--and--the--contract--a
 9 provision--requiring--the--contractor--to--give--preference--to--the
 10 employment--of--bona--fide--Montana--residents--in--the--performance
 11 of--the--work;

12 (2)--All--public--works--contracts--under--subsection--(1);
 13 except--those--for--heavy--and--highway--construction;--must
 14 contain--a--provision--requiring--the--contractor--to--pay--the
 15 standard--prevailing--rate--of--wages; including--fringe--benefits
 16 for--health--and--welfare--and--pension--contributions; and--travel
 17 allowance--provisions; and--other--bona--fide--programs--approved
 18 by--the--United--States--department--of--labor;--in--effect--and
 19 applicable--to--the--district--in--which--the--work--is--being
 20 performed;

21 (3)--In--every--contract--for--heavy--and--highway
 22 construction; there--must--be--inserted--a--provision--to--require
 23 the--contractor--to--pay--the--heavy--and--highway--construction
 24 wage--rates--established--statewide--for--such--the--project;

25 (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."~~

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 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

1 areas, or utility rights-of-way.

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

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

10 (i) the heavy and highway construction wage rates
11 applicable to heavy and highway construction projects; or

12 (ii) those wages, other than heavy and highway
13 construction wages, including fringe benefits for health and
14 welfare and pension contributions, that meet the
15 requirements of the Employee Retirement Security Act of 1974
16 and other bona fide programs approved by the United States
17 department of labor and travel allowance provisions,--which
18 that are paid in the district by other contractors for work
19 of a similar character performed in that district by each
20 craft, classification, or type of worker needed to complete
21 a contract under this part. In each district, the standard
22 prevailing rate of wages is a weighted average wage rate
23 based on all of the hours worked on work of a similar
24 character performed in the district.

25 (b) When work of a similar character is not being

1 performed in the district, the standard prevailing rate of
2 wages, including fringe benefits for health and welfare and
3 pension contributions, that meets the requirements of the
4 Employee Retirement Security Act of 1974 and other bona fide
5 programs approved by the United States department of labor
6 and the rate of travel allowance provisions,--shall must be
7 those rates established by collective bargaining agreements
8 in effect in the district for each craft, classification, or
9 type of worker needed to complete the contract.

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

12 **SECTION 3. SECTION 18-2-403, MCA, IS AMENDED TO READ:**

13 "18-2-403. Preference of Montana labor in public works
14 -- wages -- tax-exempt project -- federal exception. (1) In
15 any contract let for state, county, municipal, school, or
16 heavy and highway construction, services, repair, or
17 maintenance work under any law of this state, there shall
18 must be inserted in the bid specification and the contract a
19 provision requiring the contractor to give preference to the
20 employment of bona fide Montana residents in the performance
21 of the work.

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

25 (a) the travel allowance that is in effect and

1 applicable to the district in which the work is being
2 performed; and

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

6 (i) meets the requirements of the Employee Retirement
7 Income Security Act of 1974 and other bona fide programs
8 approved by the United States department of labor; and

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

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

15 (4) A contract let for a project costing more than
16 \$25,000 and financed in whole or in part by tax-exempt
17 industrial revenue bonds must contain a provision requiring
18 the contractor to pay the standard prevailing wage rate in
19 effect and applicable to the district in which the work is
20 being performed.

21 (5) No A contract may not be let to any person, firm,
22 association, or corporation refusing to execute an agreement
23 with the above-mentioned provisions of subsections (1)
24 through (4) in it, provided that in contracts involving the
25 expenditure of federal-aid funds this part may not be

1 enforced in such a manner as to conflict with or be contrary
2 to the federal statutes prescribing a labor preference to
3 honorably discharged veterans of the armed forces and
4 prohibiting as unlawful any other preference or
5 discrimination among citizens of the United States.

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

11 **Section 4.** Section 18-2-407, MCA, is amended to read:

12 "18-2-407. Forfeiture for failure to pay standard
13 prevailing wages wage. (1) Any contractor, subcontractor, or
14 employer who ~~shall--pay~~ pays workers or employees at less
15 than the standard prevailing wage as established under the
16 public works contract shall forfeit to the contracting
17 ~~agency-the-sum-of--\$25--a--day--for--each--worker--underpaid~~
18 department a penalty at a rate of up to 20% of the
19 delinquent wages plus fringe benefits, attorney fees, audit
20 fees, and court costs. Money collected by the department
21 under this section must be deposited in the unemployment
22 insurance administration account, as provided in 39-51-406,
23 and must be used for enforcement. A contractor,
24 subcontractor, or employer shall also forfeit to the
25 employee the amount of wages owed plus \$25 a day for each

1 day that the employee was underpaid.

2 (2) Whenever it ~~shall appear~~ appears to the contracting
3 agency or to the Montana commissioner of labor that there
4 ~~are is~~ insufficient moneys money due to the contractor or
5 the employer under the terms of the contract to cover
6 penalties, the Montana commissioner of labor may, within 90
7 days after the filing of notice of completion of the project
8 and its acceptance by the contracting agency, maintain an
9 action in district court to recover all penalties and
10 forfeitures due. ~~Nothing--in--this~~ This part shall does not
11 prevent the individual worker who has been underpaid,--the
12 worker's--representative, or the commissioner of labor on
13 behalf of all the underpaid workers from maintaining an
14 action for recovery of the wages due under the contract as
15 provided in Title 39, chapter 3, part 2, EXCEPT THAT APPEAL
16 OF THE HEARING OFFICER'S DECISION IS MADE DIRECTLY TO
17 DISTRICT COURT RATHER THAN TO THE BOARD OF PERSONNEL
18 APPEALS."

19 **Section 5.--** Section 18-2-411, MCA, is amended to read:--

20 "18-2-411.--Creation of prevailing wage rate--districts:
21 {1}--Without--taking--into--consideration--heavy--and--highway
22 construction wage rates, the commissioner shall--divide--the
23 state into at least 10 prevailing wage rate districts.

24 {2}--In--initially--determining--the--districts,--the
25 commissioner must:

1 {a}--follow the rulemaking procedures--in--the--Montana
2 Administrative Procedure Act, and

3 {b}--publish the reasons supporting the creation of each
4 district;

5 {3}--A--district--boundary may not be changed except for
6 good cause and in accordance with the rulemaking--procedures
7 in the Montana Administrative Procedure Act;

8 {4}--The presence of collective bargaining agreements in
9 a particular area may not be the sole basis for the creation
10 of--boundaries--of--a--district, nor--may--the--absence--of
11 collective bargaining agreements in a particular area be the
12 sole basis for changing the boundaries of a district;

13 {5}--For--each prevailing wage rate district established
14 under this section, the commissioner shall--determine--the
15 standard--prevailing--rate of wages to be paid employees, as
16 provided in 18-2-401 and 18-2-402."

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

18 "18-2-423.--Submission--of--payroll--records: if--a
19 complaint--is--filed--with--the--department--alleging
20 noncompliance with 18-2-422, the department may require--the
21 project--to--submit--to--it--certified copies of the payroll
22 records for workers employed on that project A contractor or
23 a subcontractor shall pay employees receiving an hourly wage
24 on a weekly basis and shall submit certified payroll records
25 to the contracting agency on a weekly basis. For--contracts

1 ~~let--by--a--state--agency,--a--contractor--and--a--subcontractor~~
 2 ~~shall--develop--and--maintain--certified--weekly--payroll--records~~
 3 ~~and--shall--provide--the--records--to--the--department--within--5~~
 4 ~~days--if--requested,--Records--filed--with--the--department--become~~
 5 ~~public--documents."~~

6 **Section 7.** ~~Section 18-2-424, MCA, is amended to read:--~~

7 ~~"18-2-424. Enforcement.---if---a---contractor---or---a~~
 8 ~~subcontractor--refuses--or--fails--to--submit--certified--payroll~~
 9 ~~records--requested--by--to--the--department--or--to--the--contracting~~
 10 ~~agency--pursuant--to--18-2-423,--the--commissioner--or--his--an~~
 11 ~~authorized--representative--may--issue--subpoenas--compelling--the~~
 12 ~~production--of--those--records."~~

13 **Section 8.** ~~Section 18-2-432, MCA, is amended to read:--~~

14 ~~"18-2-432. Penalty for violation.-(1) If any a--person,~~
 15 ~~firm,--or--corporation--shall--fail--fails--to--comply--with--the~~
 16 ~~provisions--of--this--part,--the--state,--county,--municipal~~
 17 ~~municipality,--or--school--officers--who--have--district,--or~~
 18 ~~officer--of--a--political--subdivision--that--executed--the~~
 19 ~~contract--shall--retain--\$17,000--3%--of--the--contract--price--as~~
 20 ~~liquidated--damages--for--the--violation--of--the--terms--of--the~~
 21 ~~contract--and--said--the--money--shall--must--be--credited--to--the~~
 22 ~~proper--funds--of--the--state,--county,--municipal--municipality,~~
 23 ~~or--school--districts--district,--or--political--subdivision."~~

24 ~~(2)--Any--A--person,--firm,--or--corporation--violating--the~~
 25 ~~provisions--of--this--part--on--two--or--more--projects--within--a~~

1 ~~3-year-period shall have his or its license suspended in the~~
 2 ~~manner prescribed by 37-71-301 for a period of 1 year after~~
 3 ~~the date of final judgment of said violation by any district~~
 4 ~~court--or--the--supreme--court may not perform work on a~~
 5 ~~publicly funded project covered under this part for 3 years.~~

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

16 ~~**NEW SECTION.** Section 9. Prevailing wage rate~~
 17 ~~proceeding. Payment of standard prevailing wage rates must~~
 18 ~~be enforced pursuant to 18-2-407, and all proceedings must~~
 19 ~~be brought before a department hearing officer. The decision~~
 20 ~~of the hearing officer may be appealed by filing a petition~~
 21 ~~in district court.~~

22 **SECTION 5.** ~~SECTION 18-2-411, MCA, IS AMENDED TO READ:~~

23 ~~"18-2-411. Creation of prevailing wage rate districts.~~
 24 ~~(1) Without taking into consideration heavy and highway~~
 25 ~~construction wage rates, the commissioner shall divide the~~

1 state into at least 10 prevailing wage rate districts.

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

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

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

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

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

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

20 **SECTION 6. SECTION 18-2-423, MCA, IS AMENDED TO READ:**

21 "18-2-423. Submission of payroll records. If a
22 complaint is filed with the department alleging
23 noncompliance with 18-2-422, the department may require the
24 project to submit to it certified copies of the payroll
25 records for workers employed on that project. A contractor

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

7 **SECTION 7. SECTION 18-2-432, MCA, IS AMENDED TO READ:**

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

18 (2) ~~Any firm or corporation violating the provisions of~~
19 ~~this part shall have his or its license suspended in the~~
20 ~~manner prescribed by 37-71-301 for a period of 1 year after~~
21 ~~the date of final judgment of said violation by any district~~
22 ~~court--or--the--supreme--court~~ Whenever a contractor or
23 subcontractor is found by the commissioner to have
24 aggravatedly or willfully violated the labor standards
25 provisions of this chapter, the contractor or subcontractor

1 or any firm, corporation, partnership, or association in
 2 which the contractor or subcontractor has a substantial
 3 interest is ineligible, for a period not to exceed 3 years
 4 after the date of the final judgment, to receive any
 5 contracts or subcontracts that are subject to the provisions
 6 of this chapter.

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

17 NEW SECTION. Section 8. Repealer. Section 18-2-405,
 18 MCA, is repealed.

19 NEW SECTION. Section 9. Codification instruction.
 20 ~~{Sections--1--and--9}--are~~ [SECTION 1] IS intended to be
 21 codified as an integral part of Title 18, chapter 2, part 4,
 22 and the provisions of Title 18, chapter 2, part 4, apply to
 23 ~~{sections SECTION 1 and-9}.~~

24 ~~NEW-SECTION--Section-12--Applicability--{This--act}--~~
 25 ~~applies--to--all--prevailing--wage--claims--filed--with--the~~

1 ~~department-of-labor-and-industry-on-or-after-july-17-1993-~~

2 NEW SECTION. SECTION 10. APPLICABILITY. [THIS ACT]
 3 APPLIES TO ALL PREVAILING WAGE CLAIMS FILED WITH THE
 4 DEPARTMENT OF LABOR AND INDUSTRY ON OR AFTER JULY 1, 1993.

5 NEW SECTION. Section 11. Effective date. [This act] is
 6 effective on passage and approval.

-End-