

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1627

H.P. 1173

House of Representatives, May 10, 1989

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.

Cosponsored by Representative McHENRY of Madawaska, Representative McKEEN of Windham and Senator MATTHEWS of Kennebec.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act Concerning Protection from Unfair Competition.

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1 Be it enacted by the People of the State of Maine as follows:

3 Sec. 1. 26 MRSA §43, as amended by PL 1971, c. 620, §13, is  
5 further amended by adding at the end a new paragraph to read:

7 The director shall obtain from all contractors and  
9 subcontractors employing laborers, workers and mechanics in the  
11 State certified copies of the contractors' and subcontractors'  
13 collective bargaining agreements with the union representing  
15 those laborers, workers and mechanics. The director shall obtain  
17 this information before the first working day of July each year.

19 Sec. 2. 26 MRSA §1303, as amended by PL 1965, c. 406, §1, is  
21 further amended to read:

23 §1303. Public works

25 In the employment of laborers in the construction of public  
27 works, including state highways, by the State or by persons  
29 contracting therewith for such construction, preference shall  
31 first be given to citizens of the State who are qualified to  
33 perform the work to which the employment relates, and, if they  
35 cannot be obtained in sufficient numbers, then to citizens of the  
37 United States. Every contract for such work shall contain a  
39 provision to this effect. ~~The hourly wage rate paid to laborers~~  
41 ~~employed in the construction of public works, including state~~  
43 ~~highways, shall be not less than the fair minimum rate as~~  
45 ~~determined in accordance with section 1308. Any contractor who~~  
47 ~~knowingly and willfully violates this section shall be punished~~  
49 ~~by a fine of not more than \$100. Each day that any contractor~~  
51 ~~employs a laborer at less than the wage minimum herein stipulated~~  
~~shall constitute a separate violation of this section.~~

53 Sec. 3. 26 MRSA §1304, sub-§1, as repealed and replaced by PL  
55 1967, c. 403, is repealed.

57 Sec. 4. 26 MRSA §1304, sub-§§2 and 3, as repealed and replaced  
59 by PL 1967, c. 403, are amended to read:

61 2. Construction. "Construction" means any construction,  
63 reconstruction, demolition, improvement, enlargement, painting,  
65 decorating or repair, including emergency repair, of any public  
67 works let to contract. The term "construction" shall not be  
69 construed to include engineering or architectural services,  
71 ~~temporary or emergency repairs~~ or any contract of less than  
73 \$10,000 \$2,000.

75 3. Construction industry. "Construction industry" means  
77 that industry which is composed of employees and employers  
79 engaged in construction, demolition, repair or moving of  
81 buildings, roads, highways, bridges, streets, alleys, sewers,  
83 ditches, sewage disposal plants, waterworks, airports, schools,

1 universities, public utilities, rehabilitation centers, mental  
2 health facilities, public housing and all other structures or  
3 works whether private or public on which construction work, as  
4 defined in subsection 2, is performed.

5 **Sec. 5. 26 MRSA §1304, sub-§4, as repealed and replaced by PL**  
6 **1967, c. 403, is amended to read:**

7  
8 **4. Employee.** "Employee" shall not include such persons as  
9 are employed or hired by the public authority on a regular or  
10 temporary basis ~~or engaged in making temporary or emergency~~  
11 ~~repairs.~~

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13 **Sec. 6. 26 MRSA §1304, sub-§5, as amended by PL 1975, c. 59,**  
14 **§3, is repealed.**

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16 **Sec. 7. 26 MRSA §1304, sub-§8, as enacted by PL 1967, c. 403,**  
17 **is amended to read:**

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19 **8. Public works.** "Public works" includes all buildings,  
20 roads, highways, bridges, streets, alleys, sewers, ditches,  
21 sewage disposal plants, demolition, waterworks, airports,  
22 schools, universities, public utilities, rehabilitation centers,  
23 mental health facilities, public housing and all other structures  
24 upon which construction may be let to contract by the State of  
25 Maine and which contract amounts to \$10,000 ~~\$2,000~~ or more.

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27 **Sec. 8. 26 MRSA §1304, sub-§9, as enacted by PL 1967, c. 403,**  
28 **is repealed.**

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30 **Sec. 9. 26 MRSA §1305, as repealed and replaced by PL 1967,**  
31 **c. 403, is amended to read:**

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33 **§1305. Policy declared**

34  
35 It is declared to be the policy of the State of Maine that a  
36 wage of no less than the ~~prevailing hourly rate of wages for work~~  
37 ~~of a similar character in this State~~ prevailing union rate shall  
38 be paid to all laborers, workmen workers and mechanics employed  
39 in the construction of public works in this State.

40  
41 The hourly wage rate paid to laborers, workers and mechanics  
42 employed in the construction of public works shall not be less  
43 than the prevailing union rate as determined under section 1306.  
44 Each day that a contractor employs a laborer, worker or mechanic  
45 at less than the prevailing union rate constitutes a separate  
46 violation of this section.

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48 **Sec. 10. 26 MRSA §1306, as amended by PL 1975, c. 59, §3, is**  
49 **further amended to read:**

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51 **§1306. Prevailing union wage rate; determination**

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The public authority shall, before advertising for bids for a public contract, ascertain from the Director of the Bureau of Labor the fair minimum rate of wages prevailing union wage to be paid by the successful bidder to the laborers, ~~workmen~~ workers or mechanics employed in the performance of the contract. A schedule of minimum wages prevailing union rates shall be attached to and made a part of the specifications for the construction and shall be included in the bidding documents. ~~The "fair minimum rate of wages," for the intent and purposes of sections 1304 to 1313, shall be the prevailing wages paid in the locality in like construction. The director or a delegated member of that bureau shall assemble the data as to wages paid by contractors employing 5 or more construction workers in the State during the 2nd and 3rd week of September of each year. From these data, the fair minimum wage for the following calendar year shall be determined by the director. No minimum wage shall be established for any trade or occupation if less than 10 workers are employed in such trade or occupation in the State in the 2nd and 3rd week of September.~~

~~The minimum wage shall be established and filed as requested by the public authority within 30 days after such request is received by the director. No minimum wage shall be determined until January 1, 1968 and shall not apply to the construction of public works then underway. When fair minimum wage rates are included and made a part of any contract, such rate shall remain unchanged during the time the contract is in effect.~~

The prevailing union wage rate for laborers, workers and mechanics shall be the rate agreed to the trade unions representing the corresponding classes of laborers, workers and mechanics employed on projects of a character similar to the contract work in the locality where the work is to be performed. The rate shall be ascertained by reference to the collective bargaining agreements filed with the Bureau of Labor pursuant to section 43. The union rate shall be established by the Director of the Bureau of Labor on the first working day of July each year and shall be the sum of:

1. Hourly rate. The basic hourly rate of pay:
2. Amount. The amounts of the:
  - A. Rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a 3rd person pursuant to a fund, plan or program; and
  - B. Rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers, workers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or

1           program which was communicated in writing to the laborers,  
2           workers and mechanics affected; and

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4           3. Fringe benefits. The rates for medical or hospital  
5           care, pensions on retirement or death, compensation for injuries  
6           or illness resulting from occupational activity, or insurance to  
7           provide any of the foregoing, for unemployment benefits, life  
8           insurance, disability and sickness insurance or accident  
9           insurance, for vacation and holiday pay, for defraying costs of  
10           apprenticeship or other similar programs or for other bona fide  
11           fringe benefits.

12           Sec. 11. 26 MRSA §1307-A, as enacted by PL 1987, c. 786, §15,  
13           is repealed.

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15           Sec. 12. 26 MRSA §1308, as amended by PL 1987, c. 786, §16,  
16           is repealed.

17           Sec. 13. 26 MRSA §1309, as repealed and replaced by PL 1967,  
18           c. 403, is amended to read:

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20           §1309. Contract to contain provisions relative to rate of wages  
21           to be paid

22           In all cases where a ~~fair--minimum--~~wage prevailing union rate  
23           has been established, the contract between the public authority  
24           and the successful bidder shall contain a provision requiring the  
25           successful bidder and all ~~his~~ the successful bidder's  
26           subcontractors to pay a rate or rates of wages which shall not be  
27           less than the ~~fair--minimum--~~wage prevailing union rate. The  
28           contract shall contain a provision that there may be withheld  
29           from the contractor a sum as is considered necessary by the  
30           contracting public authority to pay laborers, workers and  
31           mechanics employed by the contractor or subcontractor in charge  
32           of the construction of a public work which is the difference  
33           between the rate of wages required by the contract to be paid to  
34           those laborers, workers and mechanics and the rate of wages  
35           received by them.

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37           Sec. 14. 26 MRSA §1310, as repealed and replaced by PL 1967,  
38           c. 403, is amended to read:

39           §1310. Wage rates to be kept posted

40           A clearly legible statement of all ~~fair--minimum--~~wage  
41           prevailing union wage rates to be paid the several classes of  
42           laborers, ~~workmen~~ workers and mechanics employed on the  
43           construction on the public work shall be kept posted in a  
44           prominent and easily accessible place at the site thereof by each  
45           contractor and subcontractor subject to sections 1304 to 1313 and  
46           a copy of the statement shall be given by each contractor or  
47           subcontractor to all nonunion laborers, workers and mechanics.

48

1           **Sec. 15. 26 MRSA §1311**, as amended by PL 1975, c. 59, §3, is  
3 further amended to read:

5           **§1311. Wage record of contractor**

7           The contractor and each subcontractor in charge of the  
9 construction of a public work shall keep an accurate record  
11 showing the names and occupation of each and all laborers,  
13 ~~wor~~k~~men workers~~ and mechanics employed by them in connection with  
15 the construction on the public works showing the hours worked,  
17 the title of the job, the hourly rate and the actual wages paid  
19 to each of the laborers, ~~wor~~k~~men workers~~ and mechanics. A copy of  
21 such record shall be kept at the job site and shall be open at  
all reasonable hours to the inspection of the Bureau of Labor and  
the public authority which let the contract, its officers and  
agents. It shall not be necessary to preserve such records for a  
period longer than 3 years after the termination of the  
contract. The contractor and each subcontractor in charge of the  
construction of a public work shall send a certified copy of that  
record to the Bureau of Labor on the first working day of each  
month.

23           **Sec. 16. 26 MRSA §1312, sub-§§1 and 2**, as repealed and replaced  
25 by PL 1967, c. 403, are amended to read:

27           1. **Violation by contractor or subcontractor.** Any  
29 contractor or subcontractor who willfully and knowingly violates  
31 sections 1304 to 1313 shall be punished by a fine of not less  
33 than \$50 nor more than \$250 \$100 and shall also be liable to a  
35 term of imprisonment of not more than 6 months. Any contractor  
or subcontractor who willfully and knowingly violates sections  
1304 to 1313 may not be awarded a contract for the construction  
of public works by a public authority for a period of 10 years  
from when the violation occurs.

37           2. **Employees' remedies.** Any laborer, ~~wor~~k~~man worker~~ or  
39 mechanic engaged in construction of public works let to contract,  
41 who is paid less than the posted ~~fair-minimum-rate~~ prevailing  
43 union rate of wages applicable thereto, may recover from such  
45 contractor or subcontractor the difference between the same and  
47 the posted ~~fair-minimum-rate~~ prevailing union rate of wages, and  
49 in addition thereto, a penalty equal in amount to double such  
difference, and reasonable attorney's fees; provided that the  
surety for such contractor or subcontractor shall not be liable  
for such penalty or attorney's fees. The venue of such action  
shall be in the county where the work is performed. An honest  
mistake or error shall not be construed as a basis for recovery  
of the penalty sums and reasonable attorney fees under this  
subsection.

51           **Sec. 17. 26 MRSA §1313**, as repealed and replaced by PL 1967,  
53 c. 403, is amended to read:

**§1313. Existing contracts**

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Sections 1304 to 1313 shall not apply only to contracts for construction on public works let after ~~January 1, 1968, and to construction on public works for which there has been determined the fair minimum wage rates as provided in sections 1304 to 1313, and such determination has not been appealed from as provided by section 7~~ prior to the effective date of this section.

Sec. 18. 26 MRSA §1315, as amended by PL 1975, c. 59, §3, is repealed.

### STATEMENT OF FACT

This bill amends the Maine Revised Statutes, Title 26, chapter 15, by requiring contractors and subcontractors who secure contracts for the construction of public works to pay wage rates that are not less than the prevailing union rates as established by collective bargaining agreements. The prior requirement was the payment of a fair minimum wage which was the prevailing wage paid in the locality as determined by the Bureau of Labor. This also increases the penalties for violations of Title 26, chapter 15.