

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 688

S.P. 217

In Senate, February 25, 1993

**An Act Requiring Certification for the Payment of Subminimum Wages
to Disabled Workers.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.
Cosponsored by Representatives: ADAMS of Portland, DAGGETT of Augusta, PARADIS of
Augusta, TRACY of Rome, WINN of Glenburn.

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

2
4 Sec. 1. 5 MRSA §1826-B, sub-§2, ¶¶A, C and D, as enacted by PL 1985, c. 359, §3, are amended to read:

6 A. Is certified as a regular work program or work activity
8 center by the wage and hour division of the United States
Department of Labor ~~or--by~~ and has received annual
10 certification from the State Department of Labor under Title
26, section 666-A;

12 C. Employs during the fiscal year in commodity production
14 or service provision disabled persons at a quota of not less
than 66% of the total hours of direct labor on all
16 production, whether or not government related; and

18 D. Has, or is part of, an ongoing placement program which
that includes at least preadmission evaluation and annual
20 review to determine each worker's capability for normal
competitive employment and maintenance of liaison with the
22 appropriate community services for the placement in the
employment of any of its workers who may qualify for that
24 placement; and

26 Sec. 2. 5 MRSA §1826-B, sub-§2, ¶E is enacted to read:

28 E. Pays disabled workers the prevailing wage rate for work
performed under contract with the State and has a written
30 procedure for determining the prevailing wage rate annually.

32 Sec. 3. 5 MRSA §1826-C, sub-§1, as enacted by PL 1985, c. 359,
§3, is amended to read:

34 1. **Committee established.** There is established the Work
36 Center Purchases Committee, consisting of the State Purchasing
Agent, the Director of the Bureau of Rehabilitation, a
38 representative of the Department of Mental Health and Mental
Retardation, a representative of work centers, a disabled person
40 and a representative of the business community. Beginning
October 1, 1993, at least 50% of the members of the Work Center
Purchases Committee must be individuals with disabilities.

42 Sec. 4. 5 MRSA §12004-I, sub-§54-A is enacted to read:

44 54-A. Work Center Expenses 26 MRSA
46 Labor Oversight Only §666-A
48 Committee

50 Sec. 5. 26 MRSA §666, as amended by PL 1971, c. 620, §13, is
further amended to read:

2 **§666. Handicapped workers**

4 For any employment in which the minimum wage is applicable,
6 the director may issue to any person physically handicapped by
8 age, or otherwise, a special certificate authorizing the
10 employment of such that person for a training period not to
12 exceed one-year 6 months at a wage less-than of at least 50% the
14 minimum prevailing wage established-by-this-subchapter for that
 type of employment. The director may hold such hearings and
 conduct such investigations ~~as--he--shall--deem~~ the director
 considers necessary for the purpose of fixing the special minimum
 wage ~~for-the-licensee.~~ ~~Such-license-may-be-renewed-from-time-to~~
 ~~time-by-the-director.~~

16 If the director determines that an individual is so severely
18 impaired that the impairment is likely to prevent the individual
20 from becoming competitively employed, the director may issue a
22 special certificate to that individual authorizing employment of
 that person for up to 6 months in noncompetitive employment at a
 wage no less than 50% of the minimum wage established by this
 subchapter. The special certificate issued under this paragraph
 may be renewed by the director.

24 Sec. 6. 26 MRSA §666-A is enacted to read:

26 §666-A. Work center certification; wage rates; oversight
28 committee

30 1. Work center certificate. The director may issue to any
32 work center certified by the United States Department of Labor
34 under Section 14(c) of the Fair Labor Standards Act, 29 United
36 States Code, Section 214(c), an annual certificate authorizing
38 the employment of disabled persons at wages set below the minimum
40 wage required by this subchapter. A certificate authorizes a
 work center to pay the wages specified for one year from the date
 the certificate was issued. An employer or work center may not
 employ a disabled person at less than the minimum wage required
 by this subchapter after October 1, 1993 without a certificate
 issued pursuant to this section or section 666.

42 2. Wages at work centers. A certificate issued by the
44 director must provide, at a minimum, that a training wage may be
46 paid to a disabled individual for 6 months only, that the
48 training wage must be at least 50% of the prevailing wage rate
50 for comparable work and that no other subminimum wage may be paid
 to a disabled person unless that individual has been issued a
 certificate by the director under section 666. The certificate
 must also provide that wages for work performed in connection
 with products or services purchased by the State must be the
 prevailing wage rates in the area for comparable work performed
 by employees not disabled.

2 3. Requirements for certification. For certification the
work center must show on an annual basis that the work center:

4
6 A. Pays a training wage to disabled individuals that is
minimum wage or at least 50% of the prevailing wage rate in
the area for comparable work performed by employees not
8 disabled, whichever is greater;

10 B. Does not pay a disabled person a subminimum wage for a
training period longer than 6 months;

12
14 C. Performs a time study or another generally accepted work
measurement technique for each disabled person in training
every 2 months and adjusts that worker's pay to reflect
16 improvements in productivity;

18 D. Does not employ any disabled person at a subminimum wage
after the 6-month training period has expired unless that
person has received a special certificate for noncompetitive
employment from the director pursuant to section 666 and
20 that person's work is restricted to noncompetitive
22 employment;

24
26 E. Performs a time study or another generally accepted work
measurement technique at least every 6 months for each
disabled person paid a subminimum wage under a special
certificate for noncompetitive employment from the director
28 pursuant to section 666 and adjusts that worker's pay to
30 reflect improvements in productivity; and

32 F. Determines the prevailing wage rate for each job and
adjusts the training wage annually to reflect any changes.

34
36 4. Work Center Oversight Committee. The Work Center
Oversight Committee is established.

38 A. The Work Center Oversight Committee consists of 8
members, of which 4 members are people with disabilities or
40 advocates for people with disabilities, 2 members have
advanced training in industrial engineering or generally
42 accepted work measurement techniques and 2 members are
experienced in methods for determining prevailing wage rates.

44
46 B. The members of the Work Center Oversight Committee are
appointed by and serve at the pleasure of the Governor. All
members of the committee serve without compensation, except
48 for reimbursement of necessary expenses incurred in the
performance of their duties.

50

2 C. The Work Center Oversight Committee has the authority to
4 visit each work center issued or seeking certification from
6 the director to interview disabled workers and review
8 documentation of work measurement methods employed by the
center and prevailing wage-rate studies. The Work Center
Oversight Committee may recommend to the director that a
work center be denied a special certificate under this
section.

10 5. Denial of certification. The director shall promptly
12 notify the Work Center Oversight Committee and the Work Center
14 Purchases Committee when a request for an annual certificate is
denied.

16 **STATEMENT OF FACT**

18 This bill establishes new standards under which the State's
20 Department of Labor may issue certificates authorizing the
22 payment of subminimum wages to disabled workers and amends the
24 provisions governing state contracts with work centers. The bill
26 requires certification for the payment of subminimum wages to
28 disabled workers at a work center, establishes the criteria for
30 that certification, limits the payment of a subminimum wage to a
32 6-month training period and provides for continued payment of a
34 subminimum wage to certified individuals performing
noncompetitive employment. The bill establishes the Work Center
Oversight Committee to review work center compliance with these
provisions. The bill also provides that the Work Center
Purchases Committee may not enter into contracts with a work
center unless that center is certified by the State's Department
of Labor and the United States Department of Labor and the center
pays the prevailing wage rate for work performed to fulfill that
contract. The membership of that committee must include at least
3 disabled persons.