

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1454

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H.P. 1037

House of Representatives, March 11, 1997

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**An Act to Amend the Prevailing Wage Laws.**

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative WRIGHT of Berwick.  
Cosponsored by President LAWRENCE of York and  
Representatives: CLARK of Millinocket, HATCH of Skowhegan, LEMONT of Kittery,  
MAYO of Bath, RINES of Wiscasset, SAMSON of Jay, SAXL of Portland, STANLEY of  
Medway.

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

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

6           **§1303. Public works; minimum wage and benefits**

8           In the employment of laborers in the construction of public  
10 works, including state highways, by the State or by persons  
12 contracting ~~therewith~~ for ~~such~~ the construction, preference shall  
14 must first be given to citizens of the State who are qualified to  
16 perform the work to which the employment relates, and, if they  
18 ~~cannot~~ can not be obtained in sufficient numbers, then to  
20 citizens of the United States. Every contract for ~~such-work~~  
22 shall public works construction must contain a provision ~~to-this~~  
24 effect for employing citizens of this State or the United  
26 States. The hourly wage and benefit rate paid to laborers  
employed in the construction of public works, including state  
highways, ~~shall-be~~ may not be less than the fair minimum rate as  
determined in accordance with section 1308. Any contractor who  
knowingly and willfully violates this section ~~shall-be-punished~~  
by is subject to a fine of not ~~more-than-\$100~~ less than \$250 per  
employee violation. Each day that any contractor employs a  
laborer at less than the wage and benefit minimum ~~herein~~  
stipulated ~~shall-constitute in this section~~ constitutes a  
separate violation of this section.

28           **Sec. 2. 26 MRSA §1304, sub-§5**, as corrected by RR 1995, c. 2,  
30 §65, is amended to read:

32           **5. Fair minimum wage and benefits.** "Fair minimum wage and  
34 benefits" means the prevailing wage and benefits as determined by  
the Director of the Bureau of Labor Standards according to  
section 1306.

36           **Sec. 3. 26 MRSA §1304, sub-§9**, as enacted by PL 1967, c. 403,  
38 is amended to read:

40           **9. Prevailing wage and benefits.** "Prevailing wage and  
42 benefits" ~~shall-be~~ means the hourly wage and benefits paid to the  
median number of workers employed in a trade or occupation on the  
2nd and 3rd week in September.

44           **Sec. 4. 26 MRSA §1305**, as repealed and replaced by PL 1967,  
46 c. 403, is amended to read:

48           **§1305. Policy declared**

50           It is declared to be the policy of the State ~~of-Maine~~ that a  
52 wage of no less than the prevailing hourly rate of wages and  
benefits for work of a similar character in this State ~~shall must~~  
be paid to all ~~workmen~~ workers employed in the construction of  
public works.

2           **Sec. 5. 26 MRSA §1306**, as corrected by RR 1995, c. 2, §66, is  
4 amended to read:

6           **§1306. Fair minimum rate of wages and benefits; determination**

8           The public authority shall, before advertising for bids for  
10 a public contract, ascertain from the Director of the Bureau of  
12 Labor Standards the fair minimum rate of wages and benefits to be  
14 paid by the successful bidder to the laborers, workers or  
16 mechanics employed in the performance of the contract. A  
18 schedule of minimum wages and benefits must be attached to and  
20 made a part of the specifications for the construction and must  
22 be included in the bidding documents. The "fair minimum rate of  
24 wages and benefits," for the intent and purposes of sections 1304  
26 to 1313, is the prevailing wage and benefits 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 and benefits for the following calendar year  
must be determined by the director. ~~A minimum wage~~ Minimum wages  
and benefits may not be established for any trade or occupation  
if fewer than 10 workers are employed in such a trade or  
occupation in the State in the 2nd and 3rd week of September.

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

36           **Sec. 6. 26 MRSA §1307-A**, as enacted by PL 1987, c. 786, §15,  
38 is amended to read:

40           **§1307-A. Minimum wage and benefits rate on construction projects**

42           The Director of the Bureau of Labor Standards ~~may~~ shall form  
44 an informal, ad hoc advisory board to advise the director with  
46 respect to issues relating to wage rates on construction  
48 projects. In forming this advisory board, the director shall  
select a person from labor engaged in the building trades, a  
person from labor engaged in the highway and heavy construction  
trades, a person from the highway and heavy contractors and a  
person from the building contractors. The board must consist  
equally of persons and contractors covered by collectively

1 bargained labor agreements and those not covered by collectively  
2 bargained labor agreements.

4       **Sec. 7. 26 MRSA §1308**, as corrected by RR 1995, c. 2, §67, is  
amended to read:

6  
8       **§1308. Prevailing wages and benefits established at regular  
intervals; how determined**

10       **1. Determination of wage and benefit rates.** The Bureau of  
Labor Standards shall investigate and determine the prevailing  
12 hourly wage and benefits rate paid in the construction industry  
in this State during the 2nd and 3rd week of September of each  
14 year. Prevailing wages and benefits must be determined in  
September 1997 and become effective upon determination. In  
16 determining ~~sueh~~ the prevailing rates, the bureau may ascertain  
and consider the applicable wage and benefits rates established  
18 by collective bargaining agreements, if any, and those rates that  
are paid generally in the locality where the construction of the  
20 public works is to be performed. For purposes of this  
subsection, "benefits" means health and welfare contributions,  
22 pension or individual retirement account contributions and  
vacation and annuity contributions, per diem in lieu of wages and  
24 any other form of payment, except for wages, made to or on behalf  
of the employee. If a defined contribution amount is not  
26 established, the most accurate estimated value of contributions  
must be included.

28       **2. Certified copies.** A copy of any determination made at  
the request of the public authority shall must be certified by  
30 the director and ~~shall--be~~ filed immediately with the public  
authority and with the Secretary of State. Copies shall must be  
32 supplied by the bureau to all persons requesting same within 10  
34 days after ~~sueh~~ the filing.

36       **3. Appeal.** Any person affected by the determination of the  
director, whether or not ~~sueh~~ that person participated in the  
38 proceedings resulting in ~~sueh~~ the determination, may appeal to  
the commissioner from ~~sueh~~ that determination by filing a written  
40 notice with the commissioner stating the specific grounds of that  
person's objection within 10 days from the filing of the copy of  
42 the determination with the Secretary of State. The commissioner  
shall hold a hearing on the appeal, pursuant to Title 5, chapter  
44 375, subchapter IV, within 20 days from the receipt of notice of  
appeal. The hearing by the commissioner must be held in  
46 Augusta. The commissioner has the authority to affirm, reverse  
or amend the determination of the director. The commissioner  
48 shall render a decision within 10 days after the conclusion of  
the hearing.

50

2           **Sec. 8. 26 MRSA §§1309 and 1310**, as repealed and replaced by  
PL 1967, c. 403, are amended to read:

4           **§1309. Contract to contain provisions relative to rate of wages  
and benefits to be paid**

6  
8           In all cases where when a fair minimum wage has and benefits  
10           have been established, the contract between the public authority  
and the successful bidder shall must contain a provision  
12           requiring the successful bidder and all his subcontractors of the  
successful bidder to pay a rate or rates of wages which-shall and  
benefits that are not be less than the fair minimum wage and  
benefits.

14           **§1310. Wage and benefits rates to be kept posted**

16           A clearly legible statement of all fair minimum wage and  
18           benefits rates to be paid the several classes of laborers,  
workmen workers and mechanics employed on the construction on the  
20           public work shall must be kept posted in a prominent and easily  
22           accessible place at the site thereof by each contractor and  
subcontractor subject to sections 1304 to 1313.

24           **Sec. 9. 26 MRSA §1311**, as amended by PL 1975, c. 59, §3, is  
further amended to read:

26           **§1311. Wage and benefit record of contractor**

28           The contractor and each subcontractor in charge of the  
30           construction of a public work shall keep an accurate record  
showing the names and occupation of each and all laborers,  
32           workmen workers and mechanics employed by them in connection with  
the construction on the public works showing the hours worked,  
34           the title of the job, the hourly rate and the actual wages paid  
to each of the laborers, workmen workers and mechanics. A copy  
36           of such a record shall must be kept at the job site and shall  
must be open at all reasonable hours to the inspection of the  
38           Bureau of Labor Standards and the public authority which that let  
the contract, its officers and agents. It shall is not be  
40           necessary to preserve such those records for a period longer than  
3 years after the termination of the contract.

42           **Sec. 10. 26 MRSA §§1312 and 1313**, as repealed and replaced by  
44           PL 1967, c. 403, are amended to read:

46           **§1312. Penalties for violation**

48           **1. Violation by contractor or subcontractor.** Any  
contractor or subcontractor who willfully and knowingly violates  
50           sections 1304 to 1313 ~~shall-be-punished-by-a-fine~~ is subject to a  
forfeiture of not less than \$50-~~nor-more-than~~ \$250.

2           **2. Employees' remedies.** Any laborer, ~~workman~~ worker or  
mechanic engaged in construction of public works let to contract,  
4 who is paid less than the posted fair minimum rate of wages and  
benefits applicable thereto, may recover from such a contractor  
6 or subcontractor the difference between the same and the posted  
fair minimum rate of wages, and ~~in addition thereto,~~ benefits a  
8 penalty equal in amount to such the difference, and reasonable  
attorney's fees; ~~provided that~~ however, the surety for such the  
10 contractor or subcontractor ~~shall~~ is not be liable for such the  
penalty or attorney's fees. ~~The venue of such action shall be in~~  
12 ~~the county where the work is performed. An honest mistake or~~  
~~error shall not be construed as a basis for recovery of the~~  
14 ~~penalty sums and reasonable attorney fees under this subsection.~~

16           **3. Unfair agreement.** No A person shall may not request,  
demand or receive money or other thing of value from an employee  
18 whose rate is determined by sections 1304 to 1313 upon the  
statement, representation or understanding that failure to comply  
20 with such request or demand will prevent the employee from  
procuring or retaining employment. No A person shall may not  
22 aid, directly or indirectly, assist or abet another to violate  
the ~~above prohibition~~ prohibitions of this subsection. Any  
24 person violating the prohibitions of this subsection ~~shall be~~  
~~punished by a fine~~ is subject to a forfeiture of not less than  
26 \$50 ~~nor more than~~ \$250.

28           **4. Investigations and enforcement.** The Office of the  
Attorney General is responsible for investigating and enforcing  
30 violations of this chapter.

32           ~~Nothing herein shall~~ This section may not be construed to  
make unlawful any provision in a collective bargaining agreement  
34 between an employer and a labor organization ~~which~~ that relates,  
in any manner, to the conditioning of employment on union  
36 membership or on the payment of regular and periodic dues, or of  
initiation fees, to a labor organization.

38           **§1313. Existing contracts**

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

48           **Sec. 11. 26 MRSA §1314,** as enacted by PL 1967, c. 403, is  
amended to read:

50

**§1314. Exceptions**

2 Whenever a public works construction is built in whole or in  
part by federal funds and is under the jurisdiction of the  
4 Davis-Bacon or other Federal Act ~~which~~ that requires the  
Secretary of Labor to establish the minimum wage and benefits and  
6 ~~such~~ those minimum wages and benefits are established by ~~him~~ the  
Secretary of Labor, sections 1304 to 1313 shall do not apply.

8  
10 **Sec. 12. 26 MRSA §1315**, as corrected by RR 1995, c. 2, §68,  
is amended to read:

12 **§1315. Cooperation with United States Department of Labor**

14 The Bureau of Labor Standards may exchange wage and benefits  
finding information with the United States Department of Labor  
16 ~~where~~ when the Secretary of Labor is required to establish the  
minimum wage and benefits rates as defined in section 1314.

18  
20 **SUMMARY**

22 Current law requires workers employed in the construction of  
public works to be paid at least the prevailing hourly rate of  
24 wages paid for work of a similar nature in the State.

26 This bill requires that workers additionally be given at  
least the prevailing rate of benefits given for similar work  
28 performed in the State. This bill also gives the Office of the  
Attorney General jurisdiction to investigate and enforce  
30 violations of the wage and benefits provisions.