

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

H.P. 1464 - L.D. 1969

An Act Concerning Equity in Renewable Energy Projects and Workforce Development

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

Sec. 1. 26 MRSA §1303, as amended by PL 1997, c. 757, §1, is further amended to read:

§1303. Public works; minimum wage and benefits; assisted projects

In the employment of laborers in the construction of public works, including state highways, or an assisted project by the State or by persons contracting for the construction, preference must first be given to citizens of the State who are qualified to perform the work to which the employment relates and, if they can not be obtained in sufficient numbers, then to citizens of the United States. Every contract for public works construction or an assisted project must contain a provision for employing citizens of this State or the United States. The hourly wage and benefit rate paid to laborers employed in the construction of public works, including state highways, 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 is subject to a fine of not less than \$250 per employee violation. Each day that any contractor employs a laborer at less than the wage and benefit minimum stipulated in this section constitutes a separate violation of this section.

Sec. 2. 26 MRSA §1304, sub-§1-A is enacted to read:

1-A. Assisted project. "Assisted project" means a construction project for which requests for bids or proposals are initiated on or after January 1, 2023, including requests for bids or proposals that supplement a process started on or before that date:

A. With a nameplate capacity of 2 megawatts or more that involves a renewable energy project or a project for the production of energy, including all phases of site preparation, construction, retrofitting and demolition work; and

B. For which the State or an agency of the State provides certifications that entitle the generator to renewable energy credits or provides other economic assistance, including, but not limited to, payments pursuant to power purchase agreements, rebates, grants, loans, commitments of funds or other assistance.

"Assisted project" does not include a project for which the Public Utilities Commission approved a term sheet or contract or otherwise provided project-specific authorization or approval pursuant to Title 35-A on or before June 29, 2021 or a project that is participating in net energy billing and that meets the requirements of Title 35-A, section 3209-A, subsection 7 or Title 35-A, section 3209-B.

Sec. 3. 26 MRSA §1304, sub-§9-A is enacted to read:

9-A. Renewable energy project. "Renewable energy project" means a project to construct a source of electrical generation that relies on one or more of the following:

A. Fuel cells;

B. Tidal power;

C. Solar arrays and installations;

D. Wind power installations;

E. Geothermal installations;

F. Hydroelectric generators;

G. Biomass generators that are fueled by wood or wood waste, landfill gas or anaerobic digestion of agricultural products, by-products or wastes; or

H. Generators fueled by municipal solid waste in conjunction with recycling.

Sec. 4. 26 MRSA §1305, as amended by PL 1997, c. 757, §4, is further amended to read:

§1305. Policy declared

It is declared to be the policy of the State that a wage of no less than the prevailing hourly rate of wages and benefits for work of a similar character in this State must be paid to all workers employed in the construction of public works or assisted projects.

Sec. 5. 26 MRSA §1306-A is enacted to read:

§1306-A. Assisted project

1. Wages and benefits. Beginning January 1, 2023, a contractor or subcontractor working on an assisted project shall pay all construction workers working on the assisted project no less than the prevailing rate for wages and benefits, as determined by the bureau as set forth in this chapter.

2. Apprentices. An entity responsible for an assisted project shall take reasonable steps to ensure that all contractors and subcontractors working on an assisted project meet the requirements of this section. A contractor or subcontractor working on an assisted project shall provide proof within 7 days of a request from the Department of Labor that any apprentices employed on the project are in a registered apprenticeship program. For purposes of this subsection, "entity responsible" includes any recipient of assistance for the assisted project and any corporations, joint ventures, partnerships or other persons and their successors or assigns that hire contractors or construction managers to perform work on the assisted project.

Sec. 6. 26 MRSA §1311, as amended by PL 2003, c. 432, §1, is further amended to read:

§1311. Wage and benefit record of contractor

The contractor and each subcontractor in charge of the construction of a public work or assisted project shall keep an accurate record showing the names and occupation of all laborers, workers and mechanics employed by them and all independent contractors working under contract with them in connection with the construction on the public works or assisted project. The record must also show for all laborers, workers, mechanics and independent contractors the hours worked, the title of the job, the hourly rate or other method of remuneration and the actual wages or other compensation paid to each of the laborers, workers, mechanics and independent contractors. A copy of such a record must be kept at the job site and must be open at all reasonable hours to the inspection of the Bureau of Labor Standards and the public authority that let the contract and its officers and agents. It is not necessary to preserve those records for a period longer than 3 years after the termination of the contract. A copy of each such record must also be filed monthly with the public authority that let the contract or with the agency of the State providing economic assistance to the assisted project. The filed record is a public record pursuant to Title 1, chapter 13, except that the public authority letting a contract shall adopt rules to protect the privacy of personal information contained in the records filed with the public authority under this section, such as Social Security numbers and taxpayer identification numbers. The rules may not prevent the disclosure of information regarding the classification of workers or independent contractors and the remuneration they receive. Such rules are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 7. 26 MRSA §1312, sub-§2, as amended by PL 1997, c. 757, §10, is further amended to read:

2. Employees' remedies. Any laborer, worker or mechanic engaged in construction of public works let to contract; or an assisted project who is paid less than the posted fair minimum rate of wages and benefits applicable; may recover from such a contractor or subcontractor the difference between the same and the posted fair minimum rate of wages and benefits a penalty equal in amount to the difference and reasonable attorney's fees; however, the surety for the contractor or subcontractor is not liable for the penalty or attorney's fees.

Sec. 8. 26 MRSA §1312, sub-§4 is enacted to read:

4. Sanctions for violations by assisted project. Failure of an entity that receives state assistance for an assisted project to comply with this chapter constitutes a material breach of the agreement, grant, loan, commitment of funds or other instrument pursuant to which state assistance is provided. Upon finding a violation of this section, the relevant agency of the State may impose any available and appropriate penalties for that breach, including, but not limited to, fines, administrative penalties authorized under Title 35-A, section 1508-A, ending the assistance and recouping all or part of any assistance already provided for the assisted project or directing that, in order for the entity to receive continued assistance, the entity must meet the requirements of this section and pay remedial compensation to any employees who were not paid at least the prevailing rate for wages and benefits.

Sec. 9. 26 MRSA §1314, as amended by PL 1997, c. 757, §11, is repealed and the following enacted in its place:

§1314. Exceptions

1. Certain federal funds. Whenever a public works construction is built in whole or in part using federal funds and is under the jurisdiction of the federal Davis-Bacon Act or other federal act that requires the United States Secretary of Labor to establish the minimum wage and benefits and those minimum wages and benefits are established by the United States Secretary of Labor, sections 1304 to 1313 do not apply.

2. Exceptions for registered apprenticeship programs. A contractor or subcontractor working on a public works project or assisted project subject to this chapter may hire a worker at the rate recognized for registered apprentices working in the pertinent classification only if the worker is a participant in a registered apprenticeship program. For purposes of this subsection, "registered apprenticeship program" means a program that is registered pursuant to 29 Code of Federal Regulations, Section 29.3 (2016) with the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship or a state apprenticeship agency recognized by the Office of Apprenticeship.

Sec. 10. 26 MRSA §3201, sub-§15-A is enacted to read:

15-A. Preapprenticeship training program. "Preapprenticeship training program" means a program that:

A. Is designed to prepare individuals to enter and succeed in a registered apprenticeship program; and

B. Has a documented partnership agreement that includes arrangements for facilitated entry of graduates of the preapprenticeship training program with at least one registered apprenticeship program.

Sec. 11. 26 MRSA §3209, sub-§4, ¶A, as enacted by PL 2011, c. 491, §13, is amended to read:

A. Developing, approving and registering new apprenticeship programs and certifying preapprenticeship training programs;

Sec. 12. 26 MRSA §3213 is enacted to read:

§3213. Preapprenticeship training programs

1. Application; eligibility. A sponsor may apply with the Maine Apprenticeship Program for review and certification of a preapprenticeship training program.

2. Eligibility. To be eligible for certification, a preapprenticeship training program must:

A. Meet the requirements of this section and any rules adopted by the department under this section;

B. Have a documented outreach plan to increase registered apprenticeship opportunities for underrepresented, disadvantaged or low-skilled individuals and members of historically marginalized communities;

C. Conform to standards identified by the United States Department of Labor for a quality framework for preapprenticeship;

D. Comply with state and federal law regarding equal employment opportunity in apprenticeship and training;

E. Have a training program and curriculum based on industry standards and approved by the Maine Apprenticeship Program, upon recommendation by the Maine Apprenticeship Council, that will prepare individuals with the skills and competencies needed to enter a registered apprenticeship program;

F. Have supervised hands-on training and workplace safety training; and

G. Have a formalized agreement with a registered apprenticeship sponsor that enables preapprenticeship graduates to enter directly into a registered apprenticeship program and includes articulation agreements for earning credit for skills and competencies already acquired.

3. Certification. The Maine Apprenticeship Program shall review an application for certification of a preapprenticeship training program and shall give a preapprenticeship training program that meets the standards for certification a provisional certification for a period of one year. The Maine Apprenticeship Program shall review a preapprenticeship training program for quality and conformity with the requirements of this section at the end of the first year after certification. A program that conforms to the requirements may have its provisional certification made permanent or may continue to be provisionally certified through the first full training cycle.

4. Evaluation. The Maine Apprenticeship Program shall evaluate the performance of a certified preapprenticeship training program. The evaluation must include:

A. An assessment of the preapprenticeship training program's educational content;

B. A review of the preapprenticeship training program's compliance with state and federal law regarding equal employment opportunity in apprenticeship and training;

C. A review of the preapprenticeship training program's efforts to achieve equity goals for recruitment and training of preapprentices from historically marginalized communities; and

D. A summary of completion rates and rates of enrollment in and graduation from registered apprenticeship programs following completion of the preapprenticeship training program.

5. Decertification. The Maine Apprenticeship Program may decertify a preapprenticeship training program upon a finding of reasonable cause or by request of the program.

6. Funding. As funds are available, the Maine Apprenticeship Program, through the department, shall make available grants to support preapprenticeship training programs under this section. A preapprenticeship training program shall use the grants to provide meaningful support and stipends to facilitate enrollment and participation in the program. Support may include funding for child care, transportation, training materials and reimbursement of other expenses that may be incurred by a student to facilitate the student's attendance and participation in the program. Stipends may include cash payments. In allocating grants among preapprenticeship training programs, the Maine Apprenticeship Program shall give priority to programs that have demonstrated successful enrollment of students from historically marginalized communities.

7. Rulemaking. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement the provisions of this section.

Sec. 13. 35-A MRSA §3209-A, sub-§7, as enacted by PL 2021, c. 370, §1 and reallocated by RR 2021, c. 1, Pt. A, §37, is reallocated to 35-A MRSA §3209-A, sub-§8.

Sec. 14. 35-A MRSA §3210-G, sub-§1, ¶C, as enacted by PL 2019, c. 477, §2, is amended by amending subparagraph (2) to read:

(2) A weight of 30% must be given to benefits to the economy, which may include, but are not limited to:

- (a) Capital investments by the Class IA resource to improve long-term viability of an existing facility;
- (b) Payments by the Class IA resource for the harvest of wood fuel;
- (c) Employment resulting from the Class IA resource;
- (d) Payments by the Class IA resource to a host community, whether or not required by law or rule;
- (e) Excise, income, property and sales taxes paid by the Class IA resource;
- (f) Purchases of goods and services by the Class IA resource; ~~and~~
- (g) Avoided emissions resulting from the operation of the Class IA resource; ~~and~~

(h) With respect to requests for bids or proposals for assisted projects, as defined in Title 26, section 1304, subsection 1-A:

- (i) Whether the Class IA resource has entered into a project labor agreement with a labor organization to supply construction workers in all crafts needed for the assisted project where the assisted project is located. For purposes of this subdivision, a project labor agreement must conform to the requirements of section 3210-H, subsection 2; and
- (ii) Whether an entity is employee-owned, including but not limited to an entity that offers employee stock ownership plans or is structured as a worker cooperative.