

# TRIBAL CODE

## CHAPTER 97:

### PREVAILING WAGE ORDINANCE

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#### HISTORY NOTE:

##### Current Ordinance:

Currently, housing projects undertaken by the Sault Tribe Housing Authority are governed by Davis-Bacon wage rules. *See* 40 U.S.C. 276a *et seq.* (1931). The amendment granting tribes a preemption of Davis-Bacon wage rates is self-implementing as written and requires no subsequent regulation. 25 U.S.C.A. 4114(b)(3) (1996).

Enacted by Tribal Resolution No. 2002-129 , on December 18, 2002 , effective immediately.

# TRIBAL CODE

## CHAPTER 97:

### PREVAILING WAGE ORDINANCE

#### **97.101 Purpose and Authority.**

The purpose of this Chapter is to authorize the Tribe to determine area prevailing wages to the extent permitted under federal law so that the Davis-Bacon area prevailing wage determination will not apply to covered agreements.

#### **97.102 Scope.**

This Chapter shall cover all federally funded construction projects that would fall under the scope of the Davis-Bacon Act.

#### **97.103 Definitions.**

(1) "Agreement" means any contract or agreement using federal funds covered under the Davis-Bacon Act.

(2) "Authority" shall mean the Sault Tribe Housing Authority.

(3) "Board" shall mean the governing body of the Tribe.

(4) "Construction" includes alteration, maintenance or repair, including, but not limited to, painting and decorating, of public buildings, public housing or public works.

(5) "Contractor" means anyone who is awarded a contract or agreement using federal funds, or otherwise subject to the Davis-Bacon Act.

(6) "Davis-Bacon Act" means 40 U.S.C. §276a *et seq.*

(7) "Prevailing Wage" shall mean the wages, as determined by the Board, or its designee, prevailing on the Tribe's Reservation or within the Tribe's or Authority's seven county service area for each existing and future category of employees including, but not limited to: architects, technicians, engineers, draftsmen, technicians, laborers, mechanics, contractors, and subcontractors. The above list of employees requiring payment of Prevailing Wages does not apply to any unpaid volunteer, intern or any volunteer who receives a nominal fee, expenses, or reasonable benefits and who is not otherwise employed at any time in the construction of affordable housing projects.

(8) "Subcontractor" means anyone who is awarded a portion of a contract using

federal funds, or otherwise subject to the Davis-Bacon Act.

(9) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

**97.104 Payment of Prevailing Wage Required.**

(1) Any agreement for construction funded by federal funds by the Tribe, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe to be paid to the Contractor, Subcontractor, or other covered employees.

**97.105 Determination of Tribal Prevailing Wage.**

(1) The Tribe may periodically commission a wage survey from time-to-time to determine the Prevailing Wage.

(a) The Tribe shall obtain wage rates from available sources of each class of profession or trade and shall establish the prevailing wage comparable to survey data.

(b) The Tribe shall retain for not less than three years the survey report and the wage rates reported by each source.

(c) Wage rates shall include base hourly rate and may include the value of benefits paid to or on behalf of employees based upon eligibility.

(d) Any survey commissioned by the Board, or designee of Prevailing Wages shall contain a list of each covered class of profession, trade and trainees and the hourly rate for each and the collective dates of the schedule.

(2) The Board may delegate its authority to conduct and establish the Prevailing Wage under this Chapter to any outside agency, or agency of the Tribe, including, but not limited to, the Authority, or the Sault Tribe Human Resources Department, but the Board shall approve the schedule of prevailing wages by motion or resolution.

**97.106 Employer Requirements.**

(1) An agreement for Construction using federal funds, shall contain a provision requiring not less than Prevailing Wages, as determined by the Tribe. Each employer, including the Tribe, the Authority, Contractors, and Subcontractors, shall pay Prevailing Wages and shall maintain certified payroll records reporting the hourly rates paid to each employee. Any employee falling under the covered Agreement shall be entitled to inspect and copy his or her certified payroll record during regular office hours.

(2) The Tribe shall provide every employer at the time bids or proposals are solicited with a copy of the most current schedule of prevailing wages.

(3) At all times each employer shall post at the job site and its principal office a copy of the schedule of prevailing wages furnished by the Tribe.

**97.107 Tribal Court Action and Remedies.**

(1) Any covered Agreement may contain a provision stating the remedies for failure to pay Tribally determined Prevailing Wages ("Wage Penalty") or for failing to maintain records ("Records Penalty").

(2) Any adversely affected employee covered under this Chapter, may bring an action in the Sault Chippewa Tribal Court against any covered employer to recover the amount of the Wage or Records penalty and may receive reasonable attorney's fees under this Chapter.

(3) No action under this Chapter shall be allowed more than two (2) years after the date such wages became due and payable under the Agreement.

(4) Any adversely affected employee covered under this Chapter, shall first be required to exhaust all reasonable administrative remedies prior to bringing an action under this Chapter.

**97.108 Sovereign Immunity.**

(1) This Chapter provides only those remedies and damages identified above. This Chapter provides for no other damages or remedies. This Chapter shall not be construed or interpreted to grant jurisdiction to any other Court or individuals acting in their official Tribal Capacity. Nothing in the Chapter shall be construed to be a waiver of any Tribal sovereign immunity except as specifically provided in this Chapter.