

SENATE BILL NO. 175

INTRODUCED BY M. DUNWELL, C. KEOGH, M. FOX, J. GROSS, W. CURDY, E. BOLDMAN, S. MORIGEAU,
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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC WORKS
PROJECTS; REQUIRING A MONTANA WORKER PREFERENCE IN ALL PUBLIC WORKS PROJECTS; AND
AMENDING SECTIONS 18-2-403 AND 18-2-409, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception. (1) In every public works contract, regardless of the total cost of the contract as provided in 18-2-401(11), there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the standard prevailing wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being

1 performed; and

2 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable
3 to the district in which the work is being performed.

4 (5) An employer who, as a nonprofit organization providing individuals with vocational
5 rehabilitation, performs a public works contract for nonconstruction services and who employs an individual
6 whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages
7 that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of
8 the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or
9 above the minimum wage required in 39-3-409.

10 (6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from
11 the project location is not subject to payment of the standard prevailing rate of wages.

12 (7) A contract, other than a public works contract, let for a project costing more than \$25,000 and
13 financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must
14 contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to
15 the district in which the work is being performed unless the contractor performing the work has entered into a
16 collective bargaining agreement covering the work to be performed.

17 (8) A public works contract may not be let to any person, firm, association, or corporation refusing
18 to execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in
19 public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner
20 as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged
21 veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens
22 of the United States.

23 (9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the
24 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on
25 the public contracting agency."
26

27 **Section 2.** Section 18-2-409, MCA, is amended to read:

28 **"18-2-409. Montana residents to be employed on state construction contracts.** (1) On any state

1 construction project funded by state or federal funds in any amount, except a project partially funded with
2 ~~federal-aid~~ federal-aid money from the United States department of transportation or when residency
3 preference laws are specifically prohibited by federal law and to which the state is a signatory to the
4 construction contract, each contractor shall ensure that at least 50% of the contractor's workers performing
5 labor on the project are bona fide Montana residents, as defined in 18-2-401.

6 (2) For any contract awarded for a state construction project, except a project partially funded with
7 ~~federal-aid~~ federal-aid money from the United States department of transportation or when residency
8 preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the
9 contract a provision, in language approved by the commissioner of labor and industry, implementing the
10 requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the
11 workers on the project will be bona fide Montana residents. If due to a lack of qualified personnel each
12 contractor cannot guarantee that at least 50% of the contractor's workers on the project will be Montana
13 residents, the contract must provide that the percentage that the commissioner of labor and industry believes
14 possible will be Montana residents.

15 (3) The commissioner of labor and industry shall enforce this section and investigate complaints of
16 its violation and may adopt rules to implement this section."

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