

HOUSE BILL NO. 329

INTRODUCED BY T. MANZELLA

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UPWARD THE AMOUNT AT WHICH THE PREVAILING WAGE CONTRACT LAWS APPLY TO COUNTIES, CITIES, AND OTHER PUBLIC CONTRACTS; PROVIDING AN INFLATION ADJUSTMENT; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-401, 18-2-403, AND 90-5-114, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Public works inflation adjustment.** (1) A contract referenced in 17-5-1526, 17-5-1527, 18-2-403, or 90-5-114 or a public works contract as defined in 18-2-401 is subject to a cost-of-living adjustment, as provided in subsection (2).

(2) (a) No later than September 30 of each biennium, the department of administration shall adjust the amounts of the contracts referenced in subsection (1) to reflect an inflationary increase, if any, from August in the first year of the preceding biennium to August in the current biennium. The calculation must be based on the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(b) The adjusted amount:

(i) must be rounded to the nearest \$500; and

(ii) becomes effective on January 1 of the following year as the new contract, project, or public works contract amount used in 17-5-1526, 17-5-1527, 18-2-401, 18-2-403, or 90-5-114, replacing the previously used dollar amount.

Section 2. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. Procedure prior to financing projects. (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of



1 the cost or appraised value of the project, whichever is less;

2 (c) a financial institution will participate in financing the project, either directly or through a letter of credit,
3 to the extent of at least 10% of the financing to be provided by the board;

4 (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental
5 insurer or guarantor;

6 (e) an applicant has submitted a statement indicating any contracts to construct the projects will require
7 all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in
8 the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents.
9 "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer
10 cannot make a reasonable determination that the qualifications held by one person are significantly better suited
11 for the position than the qualifications held by the other persons.

12 (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a
13 project or projects being financed to provide for payment of debt service on bonds of the board issued to finance
14 the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and
15 expenses of issuing and servicing the bonds; and

16 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more
17 than ~~\$25,000~~ \$55,000, subject to the provisions of [section 1], and financed from the proceeds of bonds issued
18 under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard
19 prevailing wage rate in effect and applicable to the district in which the work is being performed unless the
20 contractor performing the work has entered into a collective bargaining agreement covering the work to be
21 performed.

22 (2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the
23 following manner:

24 (a) the city or county in which the project will be located must be notified; and the city ~~and~~ or county shall,
25 within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

26 (b) if a request for a local hearing is not received, the board may hold the hearing at a time and place
27 it prescribes.

28 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of
29 the local government shall notify the board of its determination of whether the project is in the public interest within
30 14 days of the completion of the public hearing.

1 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a
 2 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the
 3 city or county where the hearing will be held. The notice must include the time and place of the hearing; the
 4 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of
 5 the project.

6 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by
 7 the capital reserve account authorized by 17-5-1515.

8 (6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds
 9 the interest on which is subject to federal income taxes."
 10

11 **Section 3.** Section 17-5-1527, MCA, is amended to read:

12 **"17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects
 13 under this part only when it finds that:

14 (a) the financing is in the public interest and is consistent with legislative purposes and findings;

15 (b) the financing to be provided by the board for a project does not exceed either \$50 million or 90% of
 16 the cost or appraised value of the project, whichever is less;

17 (c) a financial institution will participate in financing the project if the cost or appraised value is less than
 18 \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided
 19 by the board, ~~provided, however, that participation.~~ Participation by a financial institution in projects of ~~over more~~
 20 than \$1 million is at the discretion of the board;.

21 (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental
 22 insurer or guarantor;

23 (e) any contracts to construct the projects require all contractors to give preference to the employment
 24 of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their
 25 qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the
 26 qualifications of two or more persons among whom the employer cannot make a reasonable determination that
 27 the qualifications held by one person are significantly better suited for the position than the qualifications held by
 28 the other persons.

29 (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a
 30 project or projects being financed to provide for payment of debt service on bonds of the board issued to finance

1 the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and
2 expenses of issuing and servicing the bonds; and

3 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more
4 than ~~\$25,000~~ \$55,000, subject to the provisions of [section 1], and financed from the proceeds of bonds issued
5 under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard
6 prevailing wage rate in effect and applicable to the district in which the work is being performed unless the
7 contractor performing the work has entered into a collective bargaining agreement covering the work to be
8 performed.

9 (2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the
10 following manner:

11 (a) the city or county in which the project will be located must be notified, and within 14 days shall advise
12 the board if it elects to conduct the hearing; or

13 (b) if a request for a local hearing is not received, the board may hold the hearing at a time and place
14 it prescribes.

15 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of
16 the local government shall notify the board of its determination of whether the project is in the public interest within
17 14 days of the completion of the public hearing.

18 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a
19 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the
20 city or county where the hearing will be held. The notice must include the time and place of the hearing; the
21 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of
22 the project.

23 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by
24 the capital reserve account authorized by 17-5-1515.

25 (6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with
26 bonds the interest on which is subject to federal income taxes.

27 (7) The board is encouraged to consider applications for project financing related to infrastructure and
28 facilities necessary for the development of the state-owned coal assets."
29

30 **Section 4.** Section 18-2-401, MCA, is amended to read:

1 **"18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

2 (1) (a) "Bona fide Montana resident" means an individual who, at the time of employment and
3 immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient
4 to clearly justify the conclusion that the individual's past habitation in this state has been coupled with an intention
5 to make this state the individual's home.

6 (b) Individuals who come to Montana solely in pursuit of a contract or an agreement to perform labor may
7 not be considered to be bona fide Montana residents within the meaning and for the purpose of this part.

8 (2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

9 (3) (a) "Construction services" means work performed by an individual in building construction, heavy
10 construction, highway construction, and remodeling work.

11 (b) The term does not include:

12 (i) engineering, superintendence, management, office, or clerical work on a public works contract; or

13 (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with
14 professionals licensed under state law.

15 (4) "Contractor" means any individual, general contractor, subcontractor, firm, association, partnership,
16 corporation, limited liability partnership, or limited liability company engaged in construction services.

17 (5) "Department" means the department of labor and industry provided for in 2-15-1701.

18 (6) "District" means a prevailing wage rate district established as provided in 18-2-411.

19 (7) "Employer" means any individual, firm, association, partnership, corporation, limited liability
20 partnership, or limited liability company engaged in nonconstruction services.

21 (8) "Fringe benefits" means health, welfare, and pension contributions that meet the requirements of the
22 Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs
23 approved by the U.S. department of labor.

24 (9) "Nonconstruction services" means work performed by an individual, not including management,
25 office, or clerical work, for:

26 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets,
27 and alleys;

28 (b) custodial or security services for publicly owned buildings and facilities;

29 (c) grounds maintenance for publicly owned property;

30 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

- 1 (e) law enforcement, including janitors and prison guards;
- 2 (f) fire protection;
- 3 (g) public or school transportation driving;
- 4 (h) nursing, nurse's ~~aid~~ aide services, and medical laboratory technician services;
- 5 (i) material and mail handling;
- 6 (j) food service and cooking;
- 7 (k) motor vehicle and construction equipment repair and servicing; and
- 8 (l) appliance and office machine repair and servicing.
- 9 (10) "Project location" means the construction site where a public works project involving construction
- 10 services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and
- 11 specifications.
- 12 (11) (a) "Public works contract" means a contract ~~for construction services~~ let by the state, county,
- 13 municipality, school district, or political subdivision;
- 14 (i) for construction services in which the total cost of the contract is in excess of \$55,000, subject to the
- 15 provisions of [section 1]; or
- 16 (ii) ~~for nonconstruction services let by the state, county, municipality, or political subdivision~~ in which the
- 17 total cost of the contract is in excess of ~~\$25,000~~ \$55,000, subject to the provisions of [section 1]. The
- 18 nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999,
- 19 contracted with a private contractor for the provision of nonconstruction services on behalf of the district.
- 20 (b) The term does not include contracts entered into by the department of public health and human
- 21 services for the provision of human services.
- 22 (12) "Special circumstances" means all work performed at a facility that is built or developed for a specific
- 23 Montana public works project and that is located in a prevailing wage district that contains the project location
- 24 or that is located in a contiguous prevailing wage district.
- 25 (13) "Standard prevailing rate of wages" or "standard prevailing wage" means the rates established as
- 26 provided in:
- 27 (a) 18-2-413 for building construction services;
- 28 (b) 18-2-414 for heavy construction services and for highway construction services; and
- 29 (c) 18-2-415 for nonconstruction services.
- 30 (14) "Work of a similar character" means work on private commercial projects as well as work on public

1 projects."

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3 **Section 5.** Section 18-2-403, MCA, is amended to read:

4 **"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal**
5 **exception.** (1) In every public works contract, there must be inserted in the bid specification and the public works
6 contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents
7 in the performance of the work.

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

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

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

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

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

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

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

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

30 (6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the

1 project location is not subject to payment of the standard prevailing rate of wages.

2 (7) A contract, other than a public works contract, let for a project costing more than ~~\$25,000~~ \$55,000,
3 subject to the provisions of [section 1], and financed from the proceeds of bonds issued under Title 17, chapter
4 5, part 15, or Title 90, chapter 5 or 7, must contain a provision requiring the contractor to pay the standard
5 prevailing wage rate in effect and applicable to the district in which the work is being performed unless the
6 contractor performing the work has entered into a collective bargaining agreement covering the work to be
7 performed.

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

14 (9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the
15 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on
16 the public contracting agency."
17

18 **Section 6.** Section 90-5-114, MCA, is amended to read:

19 **"90-5-114. Preference of Montana labor.** (1) ~~Any~~ A contract to construct a project financed pursuant
20 to this part must require all contractors to give preference to the employment of bona fide Montana residents, as
21 defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal
22 to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons
23 among whom the employer cannot make a reasonable determination that the qualifications held by one person
24 are significantly better suited for the position than the qualifications held by the other persons.

25 (2) A contract let for a project costing more than ~~\$25,000~~ \$55,000, subject to the provisions of [section
26 1], and financed from the proceeds of bonds issued under this part on or after July 1, 1993, must contain a
27 provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the
28 district in which the work is being performed."
29

30 NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

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3 NEW SECTION. **Section 8. Effective date -- applicability.** (1) Except as provided in subsection (2),
4 [this act] is effective July 1, 2017, and applies to contracts signed on or after July 1, 2017, for which prevailing
5 wage rates must be paid.

6 (2) [Section 1] is effective July 1, 2019.

7 - END -