



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # SB0346

Title: Inflationary adjustments for prevailing wages

Primary Sponsor: Manzella, Theresa

Status: As Introduced

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
Expenditures:				
General Fund		-----	Unable to Determine	-----
State Special Revenue		-----	Unable to Determine	-----
Federal Special Revenue		-----	Unable to Determine	-----
Other		-----	Unable to Determine	-----
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:		-----	Unable to Determine	-----

Description of fiscal impact: SB 346 revises the amount at which the prevailing wage contract laws apply to counties, cities, and other public contracts and amends sections 17-5-1526, and 17-5-1527, MCA. For all the listed contracts signed on or after July 1, 2021, the bill requires inflationary adjustments be made after July 1, 2023 by the Department of Administration (DOA), regardless of the public contracting entity holding the contract, whether the entity is the Board of Investments (BOI), a state agency, local government, school district, or political subdivision. This inflationary adjustment is to be based upon changes in the national consumer price index (CPI) published by the Federal Bureau of Labor Statistics. It is anticipated the DOA will require additional FTE but the number of positions necessary is unquantifiable. The bill also has the potential to exceed capital project appropriations and public entity budgets depending upon the cost of inflationary increases mandated by the bill. The amount of any adjustments is unquantifiable and indeterminate as the quantity and value of all public works construction and non-construction services contracts from year-to-year among all public entities are unknown.

FISCAL ANALYSIS

Assumptions:

Department of Administration (DOA)

Architecture and Engineering Division

1. New Section 1 makes the DOA responsible for the determining the cost of the inflationary adjustment of all public works construction and non-construction services contracts entered after July 1, 2023, regardless of whether or not DOA is the public contracting entity.
2. For projects financed by BOI, after July 1, 2023, inflationary adjustments would be required by September 30, 2025 to all public works contracts greater than \$80,000 that are financed by the BOI as specified in Section 2 of the bill. The inflationary adjustment would not be payable by BOI until after January 1, 2026. This same inflationary adjustment would also be due on future public works contracts by September 30th of each subsequent odd numbered year and payable after January 1st of each subsequent even numbered year.
3. For all other projects not financed by BOI, after July 1, 2023, inflationary adjustments would be required by September 30, 2025 to all public works construction and non-construction services contracts greater than \$80,000 as specified in Section 4, new paragraph (11)(a)(i) and (ii) of the bill. The inflationary adjustment would not be payable until after January 1, 2026. This same inflationary adjustment would also be due on future public works contracts by September 30th of each subsequent odd numbered year and payable after January 1st of each subsequent even numbered year.
4. Inflationary adjustments would be required of all public works construction and non-construction services contracts entered after July 1, 2023, as specified in new Section 8, paragraph (2) of the bill.
5. The adjustments will apply to public works construction and non-construction services contracts that remain active after July 1, 2023 but are completed prior to September 30th of the second year of a biennium.
6. The inflationary adjustments will apply to public works construction and non-construction services contracts that are bid and entered during the period used to calculate the adjustments, whether or not they have been completed and closed.
7. The contract adjustment is to be applied to the entire contract amount, which includes materials, supplies, overhead, profit, and labor.
8. The number of FTE required by DOA to implement SB 346 will include several procurement/contract managers, legal counsel, and accounting staff which is based upon the requirement that DOA is making all contract amount adjustments. The number of FTE cannot be determined at this time and will be based upon the unknown quantities, values, durations, and magnitudes of all public works construction and non-construction services contracts by all public entities (state agencies, local governments, school districts, and political subdivisions).

State Financial Services Division – State Procurement Bureau

9. For contracts within State Procurement Bureau's authority for non-construction services like security guards, janitorial services, grounds maintenance, etc., the bureau includes cost adjustment language at the time of renewal, so there is already an opportunity to negotiate changes based on demonstrated CPI index increases, significant material cost increases, etc.
10. Statute already has a provision requiring a 3% increase on prevailing wages annually for any public works contract exceeding 30 months (18-2-417, MCA). The statute specifically states this is the contractor's responsibility, not the responsibility of the contracting agency. Contractors are aware of this when bidding and should account for this in their bid prices.

Department of Commerce – Board of Investments

11. Section 17-5-1526, MCA, currently restricts the Board of Investments from financing projects, other than major projects, until an applicant has submitted a statement indicating that any contract let for a project costing more than \$25,000 and financed from proceeds of Montana Economic Development bonds will require the contractor to pay the applicable standard prevailing wage rate. Under SB 346 the project cost threshold would be raised to \$80,000.

12. Section 17-5-1527, MCA, currently restricts the Board of Investments from financing major projects until an applicant has submitted a statement indicating that any contract let for a project costing more than \$25,000 and financed from proceeds of Montana Economic Development bonds will require the contractor to pay the applicable standard prevailing wage rate. Under SB 346 the project cost threshold would be raised to \$80,000.

Montana Department of Transportation

13. The Montana Department of Transportation (MDT) engages in public works contracts for construction and non-construction activities. These include, but are not limited to, pavement preservation contracts such as crack seals, chip seals, thin-lift overlays, scrub seals, janitorial contracts for state-maintained rest areas, and facility projects.
14. MDT would be responsible for providing the funding for all adjustments to MDT public works contracts. There is no provision, authority, or appropriation made available to provide for the inflationary adjustments.
15. The fiscal impact of SB 346 for MDT’s public works contracts is currently unknown.
16. MDT’s public works contract costs may increase depending on the CPI. If the CPI did increase it may impact the number of future projects funded. The amount of any increase is unquantifiable and indeterminate.

Effect on County or Other Local Revenues or Expenditures:

1. The fiscal impact on future public works construction projects and non-construction services budgets for non-state governmental entities that could result in exceeding project appropriations or budgets cannot be determined. The bill does not specify how exceeding capital project appropriations or budgets is to be managed by DOA or the affected non-state governments.

Long-Term Impacts:

1. The bill creates an indeterminable expense to future public works construction projects and non-construction services budgets that could result in exceeding project appropriations. The bill does not explain how exceeding capital project or budgetary appropriations is to be managed by DOA and affected agencies, or how these costs would be appropriated by the Legislature.

Technical Notes:

Department of Labor and Industry

1. Section 1 is ambiguous in that it refers to a cost-of-living adjustment for “the amounts of the contracts.” The provision therefore appears to increase the monetary value of multiyear contracts based on inflation. However, the remainder of the bill sets thresholds for applicability of the procurement provisions, implying that those thresholds are to increase based on inflation.

Department of Administration

2. New section 1, subsection (2)(a), requires “. . . the department of administration . . .” to adjust amounts of public works contracts. However, the DOA does not issue or hold all public works contracts defined in 18-2-401, MCA. A public works contract is presently defined in 18-2-401(11), MCA, as “. . . a contract for construction services let *by the state, county, municipality, school district, or political subdivision* or for non-construction services let *by the state, county, municipality, or political subdivision* in which the total cost of the contract is in excess of \$25,000.” (emphasis added). The bill requires DOA to adjust all contracts for all public entities noted above and for the Board of Investments in 17-5-1526, MCA. The DOA is not a party to the vast majority of such public works contracts under the definition in 18-2-401(11), MCA. It is unknown how DOA will be able to legally make changes to contracts to which DOA is not a party.
3. It is unclear whether or not the DOA is responsible to provide the funding for all adjustments to contracts or if the increases are the responsibility of the public entities who hold those contracts. There is no provision, authority, or appropriation made available to provide for the inflationary adjustments.

4. New Section 8, subsection (2), makes new Section 1 effective July 1, 2023. The inflationary adjustments would take effect in the first fiscal year of the 2025 biennium. However, the applicable dates of executed contracts that are to receive an inflationary adjustment are indeterminate as the bill does not delineate whether the inflationary adjustment is due on existing public works contracts or only those entered into after the effective date of new Section 1.
5. New Section 1, subsection(2)(a), requires contracts to receive an adjustment “No later than September 30th of the second year of the biennium” but new Section 1, paragraph (2)(b)(ii) states the adjustment is not effective until January 1 of the year following the calculated adjustment. This suggests that prime contractors can neither invoice nor be paid for the adjustment until three months after the contract amount is increased.
6. All contracts greater than \$80,000 entered after July 1, 2023 will require an adjustment for the entire calculation period regardless of the contract’s duration. The bill does not distinguish between currently active contracts and those that have been completed during the contemplated adjustment period. For instance, a public works contract entered into and completed in the first year of a biennium will still require an adjustment to be made no later than three months into the second year of the biennium, even though the work may have been completed and the contract closed.
7. As stated in new Section 1, subsection (2)(a), inflationary adjustments would have to be calculated from August in the first year of the *preceding* biennium through August of the first year of the *current* biennium. To illustrate the technical difficulty:
 - a. A one-year contract entered into in December 2023 (FY 2024) and completed on December 2024 (FY 2025) would be due an inflationary adjustment calculated from August 2021 through August 2023, which is an adjustment that occurred before the public works contract was bid and entered into by a public agency.
 - b. The contract adjustment would be due no later than September 30, 2024 (the third month of the second year in the biennium) and not effective or payable to the prime contractor until after January 2025.
 - c. It is not clear why public works contracts will be due inflationary adjustments for calculation periods that occur two years before a contract is bid, entered, and the work performed. Additionally, because the applicable dates of contracts completed or active is not delineated in the bill, it is feasible that long duration public works construction and non-construction services contracts could receive more than one inflationary adjustment for overlapping periods of work.
8. New Section 1, subsection (2)(b)(ii), creates a conflict regarding whether an inflationary adjustment is applicable. For reference:
 - a. Page 1, line 16, the DOA is required to provide inflationary adjustments to *existing* contracts; but,
 - b. Page 1, lines 24 and 25 state the inflationary adjustments apply to contracts signed *on or after* a “new rate takes effect.”
9. The bill requires fiscal adjustments to public works construction and non-construction services contracts that result in unknowable and indeterminate contract increases. Such adjustments have the potential to exceed appropriations, authorizations, and/or budgets.
10. The adjustment is to be applied to the entire contract amount, including portions which have already been paid by a public entity and for which the contract amount will have already incorporated portions of the calculation adjustment period within the amount bid.
11. The bill requires only adjustment in the contracted amount (which will include the full amount of materials, supplies, labor for all suppliers and subcontractors, overhead and profit). The adjusted contract amount would be made solely to the prime contractor. The bill does not indicate whether or how the adjustment to the contracted amount is to be disbursed by the prime contractor.
12. It is unclear if the bill applies to contracts that are completed excluding the warranty period. As construction contracts typically contain a one-year warranty period, it is unclear whether or how DOA should calculate adjustments during the warranty period.

- 13. The bill requires adjustments to those public works construction and non-construction services contracts that may have already been fully completed and compensated, and which have already incorporated any likely CPI inflationary factors in the bid/contracted amount.
- 14. It is unclear whether the adjustments to contracts are to be based upon the initial contract value or the initial value plus or minus additional adjustments made by change orders.

Department of Transportation

- 15. MDT's highway construction contracts are exempted from Title 18 Chapter 2 and the applicable Montana prevailing wage rates when federal law is determining the appropriate prevailing wage rates, per 18-2-402(2), MCA. MDT relies on this exemption to assume these contracts are not covered under this legislation.

NO SPONSOR SIGNATURE 3/1
Sponsor's Initials *Date*

RF for KA
Budget Director's Initials

3/1/21
Date