

1 SENATE BILL NO. 346

2 INTRODUCED BY T. MANZELLA

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UPWARD THE AMOUNT AT WHICH THE
5 PREVAILING WAGE CONTRACT LAWS APPLY TO COUNTIES, CITIES, AND OTHER PUBLIC
6 CONTRACTS; PROVIDING AN INFLATION ADJUSTMENT; AMENDING SECTIONS 17-5-1526, 17-5-1527,
7 18-2-401, 18-2-403, AND 90-5-114, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY
8 DATE."

9

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

11

12 NEW SECTION. **Section 1. Public works inflation adjustment.** (1) A contract referenced in 17-5-
13 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-
14 of-living adjustment, as provided in subsection (2).

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

20 (b) The adjusted amount:

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

22 (ii) becomes effective on January 1 of the following year as the new contract, project, or public works
23 contract amount used in 17-5-1526, 17-5-1527, 18-2-401, 18-2-403, or 90-5-114, replacing the previously used
24 dollar amount. The adjusted amount applies to contracts signed on or after the January 1 date on which the
25 new rate takes effect, but does not impair contracts written prior to that date.

26

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

28 **"17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than

1 major projects, under this part only when it finds that:

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

4 (b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of
5 the cost or appraised value of the project, whichever is less;

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

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

10 (e) an applicant has submitted a statement indicating any contracts to construct the projects will
11 require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-
12 401, in the performance of the work on the projects if their qualifications are substantially equal to those of
13 nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom
14 the employer cannot make a reasonable determination that the qualifications held by one person are
15 significantly better suited for the position than the qualifications held by the other persons.

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

20 (g) an applicant has submitted a statement that indicates that any contract let for a project costing
21 more than ~~\$25,000~~ \$80,000, subject to the provisions of [section 1], and financed from the proceeds of bonds
22 issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the
23 standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless
24 the contractor performing the work has entered into a collective bargaining agreement covering the work to be
25 performed.

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

28 (a) the city or county in which the project will be located must be notified; and the city ~~and~~or county

1 shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

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

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

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

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

14 (6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with
15 bonds the interest on which is subject to federal income taxes."
16

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

18 **"17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects
19 under this part only when it finds that:

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

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

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

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

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

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

11 (g) an applicant has submitted a statement that indicates that any contract let for a project costing
12 more than ~~\$25,000~~ \$80,000, subject to the provisions of [section 1], and financed from the proceeds of bonds
13 issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the
14 standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless
15 the contractor performing the work has entered into a collective bargaining agreement covering the work to be
16 performed.

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

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

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

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

26 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a
27 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the
28 city or county where the hearing will be held. The notice must include the time and place of the hearing; the

1 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of
2 the project.

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

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

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

9

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

11 **"18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions
12 apply:

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

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

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

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

22 (b) The term does not include:

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

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

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

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

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

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

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

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

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

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

13 (c) grounds maintenance for publicly owned property;

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

15 (e) law enforcement, including janitors and prison guards;

16 (f) fire protection;

17 (g) public or school transportation driving;

18 (h) nursing, nurse's aid services, and medical laboratory technician services;

19 (i) material and mail handling;

20 (j) food service and cooking;

21 (k) motor vehicle and construction equipment repair and servicing; and

22 (l) appliance and office machine repair and servicing.

23 (10) "Project location" means the construction site where a public works project involving construction
24 services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and
25 specifications.

26 (11) (a) "Public works contract" means a contract for:

27 (i) construction services let by the state, county, municipality, school district, or political subdivision or
28 for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost

1 of the contract is in excess of ~~\$25,000~~ \$80,000, subject to the provisions of [section1]; or

2 (ii) nonconstruction services in which the total cost of the contract is in excess of \$80,000, subject to
 3 the provisions of [section 1]. The nonconstruction services classification does not apply to any school district
 4 that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction
 5 services on behalf of the district.

6 (b) The term does not include contracts entered into by the department of public health and human
 7 services for the provision of human services.

8 (12) "Special circumstances" means all work performed at a facility that is built or developed for a
 9 specific Montana public works project and that is located in a prevailing wage district that contains the project
 10 location or that is located in a contiguous prevailing wage district.

11 (13) "Standard prevailing rate of wages" or "standard prevailing wage" means the rates established as
 12 provided in:

13 (a) 18-2-413 for building construction services;

14 (b) 18-2-414 for heavy construction services and for highway construction services; and

15 (c) 18-2-415 for nonconstruction services.

16 (14) "Work of a similar character" means work on private commercial projects as well as work on public
 17 projects."

18

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

20 **"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal**

21 **exception.** (1) In every public works contract, there must be inserted in the bid specification and the public
 22 works contract a provision requiring the contractor to give preference to the employment of bona fide Montana
 23 residents in the performance of the work.

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

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

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

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

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

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

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

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

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

20 (7) A contract, other than a public works contract, let for a project costing more than ~~\$25,000~~ \$80,000,
21 subject to the provisions of [section 1], and financed from the proceeds of bonds issued under Title 17, chapter
22 5, part 15, or Title 90, chapter 5 or 7, must contain a provision requiring the contractor to pay the standard
23 prevailing wage rate in effect and applicable to the district in which the work is being performed unless the
24 contractor performing the work has entered into a collective bargaining agreement covering the work to be
25 performed.

26 (8) A public works contract may not be let to any person, firm, association, or corporation refusing to
27 execute an agreement with the provisions described in subsections (1) through (7) in it, ~~provided that~~ However,
28 in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a

1 manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably
 2 discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination
 3 among citizens of the United States.

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

7

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

9 **"90-5-114. Preference of Montana labor.** (1) ~~Any~~A contract to construct a project financed pursuant
 10 to this part must require all contractors to give preference to the employment of bona fide Montana residents,
 11 as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially
 12 equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more
 13 persons among whom the employer cannot make a reasonable determination that the qualifications held by
 14 one person are significantly better suited for the position than the qualifications held by the other persons.

15 (2) A contract let for a project costing more than ~~\$25,000~~ \$80,000, subject to the provisions of [section
 16 1], and financed from the proceeds of bonds issued under this part on or after July 1, 1993, must contain a
 17 provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the
 18 district in which the work is being performed."

19

20 NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an
 21 integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

22

23 NEW SECTION. **Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is
 24 effective July 1, 2021, and applies to contracts signed on or after July 1, 2021, for which prevailing wages must
 25 be paid.

26 (2) [Section 1] is effective July 1, 2023.

27

- END -