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\*\*\*\* BILL NO. \*\*\*\*

INTRODUCED BY \*\*\*\*

BY REQUEST OF THE \*\*\*\*

*The sections below are suggested amendments to be included in PD4.  
They are drafted with the intention of replacing the corresponding section in PD4*

**Section 4 (in original draft, PD4).** Section 18-2-401, MCA, is amended to read:

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

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

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

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

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

(b) The term does not include:

- (i) engineering, superintendence, management, office, or clerical work on a public works contract; or
- (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any individual, general contractor, subcontractor, firm, association,

1 partnership, corporation, limited liability partnership, or limited liability company engaged in construction  
2 services.

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

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

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

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

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

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

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

15 (c) grounds maintenance for publicly owned property;

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

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

18 (f) fire protection;

19 (g) public or school transportation driving;

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

21 (i) material and mail handling;

22 (j) food service and cooking;

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

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

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

28 (11) (a) "Public works contract" means a contract for construction services let by the state, county,

1 municipality, school district, or political subdivision or for nonconstruction services let by the state, county,  
2 municipality, or political subdivision in which the total cost of the contract is in excess of ~~\$25,000~~\$80,000,  
3 except as provided in 18-2-403 and 18-2-409. The nonconstruction services classification does not apply to any  
4 school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of  
5 nonconstruction 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."

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19 **Section 5 (in original draft, PD4).** 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 regardless of the total cost of the contract provided in 18-2-401,  
22 there must be inserted in the bid specification and the public works contract a provision requiring the contractor  
23 to give preference to the employment of bona fide Montana 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 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7,  
22 must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and  
23 applicable to the district in which the work is being performed unless the contractor performing the work has  
24 entered into a collective bargaining agreement covering the work to be performed.

25 (8) A public works contract may not be let to any person, firm, association, or corporation refusing to  
26 execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public  
27 works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to  
28 conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged

1 veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens  
2 of the United States.

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

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7 **Added as new Section 6 (in original draft, PD4).** Section 18-2-409, MCA, is amended to read:

8 **"18-2-409. Montana residents to be employed on state construction contracts.** (1) On any state  
9 construction project funded by state or federal funds [in any amount](#), except a project partially funded with  
10 federal aid money from the United States department of transportation or when residency preference laws are  
11 specifically prohibited by federal law and to which the state is a signatory to the construction contract, each  
12 contractor shall ensure that at least 50% of the contractor's workers performing labor on the project are bona  
13 fide Montana residents, as defined in 18-2-401.

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

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

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