

PROJECT LABOR AGREEMENTS IN MONTANA

BACKGROUND

The federal government currently defines a project labor agreement as "a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project."¹

The United States' history with project labor agreements began in the post-World War II era when the nation increased its atomic energy facilities and space and missile sites. The federal government increased funding for new construction, which in turn increased the demand for skilled labor from a labor force struggling to rebuild from the turbulent 1930s and 1940s. To entice workers to projects, especially those in isolated areas, the Office of Production Management (OPM) entered into "stabilization agreements." These agreements provided uniform standards, such as overtime rates, uniform shifts at regular rates, and standard prevailing wages in an attempt to create an atmosphere with limited jurisdictional, wage, and other benefit disputes.²

After these early "stabilization agreements," the use of project labor agreements at the federal level has varied, with multiple presidents issuing executive orders to either encourage or dissuade their use.

The state of Montana was quiet on project labor agreements until 1999 when Senator Fred Thomas introduced Senate Bill 305, signed by Governor Marc Racicot, which prohibited the mandatory use of project labor agreements on publicly funded projects.

Since 1999, Montana has prohibited the mandatory use of project labor agreements.

¹ [22.502, Federal Acquisition Regulation System](#) (FAR) definitions, effective Jan 30, 2022.

² Dunlop, J. T., "[Project Labor Agreements](#)", *Joint Center for Housing Studies, Harvard University*, 2002.

FEDERAL TIMELINE: PRE-1999 SESSION

In the 1960s and 1970s, several large-scale federal construction projects used project labor agreements and union labor, including Cape Canaveral, Disney World, and the Trans-Alaska Pipeline³.

By the 1980s, however, usage of project labor agreements shifted. The Boston Harbor reclamation project began in the 1980s and demonstrated a marked debate over the use of project labor agreements. The Massachusetts Water Resources Authority included union-only labor as a requirement in the Boston Harbor reclamation project labor agreement, igniting a legal battle that reached the First Circuit Federal Appeals Court in 1990. While the case was in litigation, President George H. W. Bush signed [Executive Order 12818](#) prohibiting federal agencies from exclusively contracting union labor for construction projects.⁴

President George H. W. Bush's action set a precedent other presidents followed. In February 1993, President Clinton rescinded the prior executive order and instated [Executive Order 12836](#) that allowed federal agencies to fund construction projects using project labor agreements.⁵ Shortly after, the Supreme Court ruled on the Boston Harbor reclamation case, upholding the use of project labor agreements in cases where the government acts as a market participant rather than a regulator. However, the court did not rule on a second question of whether government-mandated project labor agreements are lawful under federal or state competitive bidding laws.⁶

President Clinton attempted a second executive order in 1997 that would have required federal agencies to consider using project labor agreements for federally funded projects, but he withdrew the order when faced with strong opposition. Instead, President Clinton issued a [memorandum](#) on June 5, 1997, encouraging the use of project labor agreements for "large and significant" projects⁷.

PROJECT LABOR AGREEMENTS IN MONTANA: 1999 SESSION

During the [Senate Bill 305](#) opening statements provided to the Senate Committee on Labor and Employment Relations, Sen. Fred Thomas referenced the Clinton memorandum as one of the reasons for the bill. In his testimony, Sen. Thomas stated:

"project labor agreements are anti-competitive and create some problems for the union and open shop contractors. The open shop contractors might face the inability to use their own employees. There could be a disregard for the competitive bidding procedures with these project labor

³ "[Project Labor Agreements: The Extent of Their Use and Related Information](#)", US General Accounting Office, May 1998.

⁴ [Executive Order 12818](#) of October 23, 1992, President George H. W. Bush, *The American Presidency Project*.

⁵ [Executive Order 12836](#) of February 1, 1993, President Bill Clinton, *Federal Register* Vol 58, No. 2.

⁶ [Building and Construction Trades Council of the Metropolitan District v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc. et. al.](#), 507 U.S. 218, 113 S Ct. 1190 (1993).

⁷ "[Memorandum on Use of Project Labor Agreements for Federal Construction Projects](#)", President Bill Clinton, June 5, 1997.

agreements. The employer may have to take union benefit plans and the employees may never receive those benefits due to time vesting in qualifications and requirements.⁸

| Proponents | Opponents |
|--|--|
| <p>Montana Contractors Association, Helena Sand & Gravel, Maronick Construction, Gilman Construction, Quality Concrete, and JTL Group.</p> <p><i>Summary of testimony:</i></p> <p>Proponents stated that project labor agreements demonstrate an overreach of government interaction and unnecessarily inject politics into labor negotiations.</p> <p>Project labor agreements may produce less competition and add additional, unnecessary bureaucracy. Complications may arise in union vs. nonunion pension systems and funding. Nonunion companies may choose to opt out of bidding on publicly funded projects to avoid union involvement.</p> <p>Wages are already set by federal and state prevailing wage laws, so the bulk of negotiations are already established without project labor agreements.</p> <p>Lastly, owners of government projects may not have the knowledge and expertise to adequately create project labor agreements that encourage efficiencies rather than add additional costs.</p> | <p>Montana Building Trades Council, Montana Joint Heavy & Highway Committee, and International Brotherhood of Electrical Workers.</p> <p><i>Summary of testimony:</i></p> <p>Opponents stated that project labor agreements are voluntary under President Clinton's 1997 memorandum and are used to contain costs and meet budgets and deadlines through guarantees against strikes, walkouts, and other disruptions.</p> <p>Removing project labor agreements would take away a tool for local governments and schools to maintain budgets and deadlines.</p> <p>Opponents also stated that on very complicated jobs that require many different job types, project labor agreements are sometimes the only way to encourage cooperation between multiple contractors and subcontractors.⁹</p> |

SB 305 passed Third Reading in the Senate 28-22, the House 53-46, was signed by the governor, and is now codified as [18-2-425, MCA](#).

18-2-425. Prohibition — project labor agreement. (1) Except as otherwise provided in this chapter, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works execute or otherwise become a party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract.

⁸ Senate Committee on Labor and Employment Relations, February 9, 1999 Minutes, Hearing on SB 305.

⁹ Ibid.

(2) For the purposes of this section, "public works" means:

- (a) a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, or other facility owned or to be contracted for by the state or a political subdivision and that is paid for in whole or in part with tax revenue paid by residents of the state; or
- (b) any other construction service or nonconstruction service as defined in 18-2-401.

FEDERAL TIMELINE CONTINUED: POST-1999 SESSION

President George W. Bush signed [Executive Order 13202](#) on February 17, 2001, prohibiting the use of project labor agreements on federally funded construction projects and revoking all previous executive orders related to project labor agreements.¹⁰ However, the U.S. District Court ruled Executive Order 13202 invalid in a case involving the Woodrow Wilson Bridge replacement project, finding that the order conflicted with the National Labor Relations Act. In November 2001, the judge issued a permanent injunction to block the enforcement of Executive Order 13202. That ruling was overturned in July 2002 by the U.S. Court of Appeals for the District of Columbia. Following the 2002 court ruling, multiple federal agencies recognized and used project labor agreements.¹¹

President Barack Obama signed [Executive Order 13502](#) on February 6, 2009, urging federal agencies to consider the use of mandatory project labor agreements on federal construction projects costing \$25 million or more.¹² The order allows nonunion contractors to compete for projects with project labor agreements, granted they agree to the terms and conditions outlined in the project labor agreement. The 2009 stimulus bill pumped large amounts of federal funds into various federal, state, and local construction projects, leading to many battles over the use of project labor agreements.¹³ In response, many states followed Montana and passed legislation to either mandate or prohibit the use of project labor agreements.

Lastly, President Joe Biden signed [Executive Order 14063](#) on February 9, 2022, which requires project labor agreements on any federal "large-scale construction projects" costing \$35 million or more.¹⁴ Federal agencies that complete projects under the \$35 million threshold may use project labor agreements at their discretion. Executive Order 14063 will not go into effect until rules are finalized, most likely in early June 2022.

¹⁰ [Executive Order 13202](#) of February 17, 2001, President George W. Bush, *Federal Register*, Vol. 66, No. 36.

¹¹ Bachman, Paul; Tuerck, David G., "[Project Labor Agreements and Public Construction Costs in New York State](#)", Beacon Hill Institute at Suffolk University, April 2006.

¹² [Executive Order 13502](#) of February 6, 2009, President Barack Obama, *Federal Register*.

¹³ Mayer, Gerald, "[Project Labor Agreements](#)", *Congressional Research Service*, June 28, 2012.

¹⁴ [Executive Order 14063](#) of February 4, 2022, President Joe Biden, *Federal Register*.

Project Labor Agreements Timeline

Post-WWII era

The turbulent 1930s and 40s depleted the labor force, prompting the federal gov't to utilize "stabilization agreements" to encourage uniform standards on a plethora of new projects including atomic energy facilities and space and missile sites.



1960s & 70s

Continued high-level government construction spending prompted wide use of project labor agreements (PLAs).



1990

The Boston Harbor reclamation project ignited a battle over the legality of PLAs.



1993

Pres. Clinton rescinded earlier EO and issued EO 12836 allowing federal agencies to use PLAs.



2001

Pres. George W. Bush signed EO 13202 prohibiting PLAs on all federally funded projects and rescinding all prior EOs.



Judge initially issued permanent injunction blocking EO 13202 but was overturned on appeal in 2002.



1999

Montana enacted SB305, prohibiting the mandatory use of PLAs.



1997

Pres. Clinton attempted an EO to mandate PLAs on federal projects, but ultimately failed.

Instead, Clinton issued a memorandum encouraging the use of PLAs.

2009

Pres. Obama signed EO 13502 urging federal agencies to consider using mandatory PLAs on projects over \$25 mill.



2022

Pres. Biden signed EO 14063 requiring PLAs on any federal project costing \$35 mill or more.

