

HOUSE BILL NO. 79

INTRODUCED BY HARPER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on Labor and Industry.
January 14, 1981	Committee recommend bill do pass as amended. Report adopted. Statement of intent attached.
January 15, 1981	Bill printed and placed on members' desks.
January 16, 1981	Second reading, pass consideration.
January 17, 1981	Second reading, do not pass.
January 19, 1981	Bill reconsidered and referred back to Committee on Labor and Industry.
February 5, 1981	Committee recommend bill do pass as amended. Report adopted. Statement of intent attached.
February 6, 1981	Bill printed and placed on members' desks.
February 9, 1981	Second reading, do pass.
February 10, 1981	Correctly engrossed.
February 11, 1981	Third reading, passed. Ayes, 69; Noes, 27. Transmitted to Senate.

IN THE SENATE

February 12, 1981

Introduced and referred to
Committee on Labor and Employment
Relations.

March 9, 1981

Committee recommend bill be
concurrent in. Report adopted.

March 10, 1981

Second reading, concurrent in.

March 12, 1981

Third reading, concurrent in.
Ayes, 46; Noes, 4.

IN THE HOUSE

March 13, 1981

Returned from Senate. Concurrent
in. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 79
 2 INTRODUCTION BY HARPER
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 6 THE LAW RELATING TO THE PREFERENCE OF MONTANA LABOR IN
 7 PUBLIC WORKS CONTRACTS; AMENDING SECTIONS 18-2-401 AND
 8 18-2-403, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 18-2-401, MCA, is amended to read:

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

14 (1) "Labor" is hereby defined to be all services
 15 performed in the construction, repair, or maintenance of all
 16 state, county, municipal, and school work and does not
 17 include engineering, superintendence, management, or office
 18 or clerical work.

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

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

23 (2)(4) A "bona fide resident of Montana" is hereby
 24 declared to be a person who, at the time of his employment
 25 and immediately prior thereto, has lived in this state in

1 such a manner and for such time as is sufficient to clearly
 2 justify the conclusion that his past habitation in this
 3 state has been coupled with intention to make it his home.
 4 Sojourners or persons who come to Montana solely in
 5 pursuance of any contract or agreement to perform such labor
 6 shall under no circumstance be deemed to be bona fide
 7 residents of Montana within the meaning and for the purpose
 8 of this part.

9 (3)(5) (a) "Standard prevailing rate of wages,
 10 including fringe benefits for health and welfare and pension
 11 contributions and travel allowance provisions applicable to
 12 the county or locality in which the work is being
 13 performed," means those wages, including fringe benefits for
 14 health and welfare and pension contributions and travel
 15 allowance provisions, which are paid in the county or
 16 locality by other contractors for work of a similar
 17 character performed in that county or locality by each
 18 craft, classification, or type of worker needed to complete
 19 a contract under this part.

20 (b) When work of a similar character is not being
 21 performed in the county or locality, the standard prevailing
 22 rate of wages, including fringe benefits for health and
 23 welfare and pension contributions and travel allowance
 24 provisions, shall be those rates established by collective
 25 bargaining agreements in effect in the county or locality

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1 for each craft, classification, or type of worker needed to
2 complete the contract."

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

4 "18-2-403. Preference of Montana labor in public works
5 -- wages -- federal exception. (1) In any contract let for
6 state, county, municipal, school, or heavy highway
7 construction, services, repair, or maintenance work under
8 any law of this state, there shall be inserted in the
9 contract a provision requiring the contractor to give
10 preference to the employment of bona fide Montana residents
11 in the performance of the work and to pay the standard
12 prevailing rate of wages, including fringe benefits for
13 health and welfare and pension contributions and travel
14 allowance provisions, in effect and applicable to the county
15 or locality in which the work is being performed.

16 (2) No contract may be let to any person, firm,
17 association, or corporation refusing to execute an agreement
18 with the above-mentioned provisions in it, provided that in
19 contracts involving the expenditure of federal-aid funds
20 this part may not be enforced in such a manner as to
21 conflict with or be contrary to the federal statutes
22 prescribing a labor preference to honorably discharged
23 veterans of the armed forces and prohibiting as unlawful any
24 other preference or discrimination among citizens of the
25 United States.

1 ~~(3) Failure to include the provisions required by~~
2 ~~subsection (1) in a public works contract does not relieve~~
3 ~~the contractor from his obligation to pay the standard~~
4 ~~prevailing wage rate."~~

5 NEW SECTION. Section 3. Notice. (1) When a state
6 agency or any public entity of this state awards a public
7 works contract, the chief executive officer of the
8 contracting authority shall send to the department a notice
9 of the contract award and the expected date of completion of
10 the project.

11 (2) When the public works project is accepted by the
12 public contracting authority, a notice of acceptance and the
13 completion date of the project shall be sent to the
14 department. The 90-day limitation for filing an action in
15 district court as provided in 18-2-407 does not begin until
16 the public contracting agency notifies the department of its
17 acceptance of the public works project.

18 NEW SECTION. Section 4. Bid to contain prevailing
19 wage rate. All bids for public works projects must contain a
20 provision stating the prevailing wage rate that the
21 contractors and subcontractors must pay during construction
22 of the project.

23 NEW SECTION. Section 5. Submission of weekly payroll
24 to contracting authority. If requested by the commissioner,
25 all contractors and subcontractors on a public works project

1 shall submit to the department certified copies of their
2 weekly payrolls.

3 NEW SECTION. Section 6. Enforcement. (1) The
4 commissioner or his representative may enter and inspect
5 such places, question such employees, and investigate such
6 facts, conditions, or matters as considered appropriate to
7 determine whether any person has violated any provision of
8 this part or any rule adopted pursuant to this part.

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10 may administer oaths and examine witnesses under oath, issue
11 subpoenas, compel the attendance of witnesses and the
12 production of papers, books, accounts, records, payrolls,
13 documents, and testimony, and take depositions and
14 affidavits in any enforcement proceedings.

15 NEW SECTION. Section 7. Rulemaking authority. The
16 commissioner may adopt rules necessary for the
17 implementation, continuation, and enforcement of this part
18 in accordance with the Montana Administrative Procedure Act.

19 Section 8. Codification instruction. It is intended
20 that sections 3 through 7 be codified as an integral part of
21 Title 18, chapter 2, part 4, and the provisions contained in
22 Title 18, chapter 2, part 4, apply to sections 3 through 7.

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Approved by Committee
on Labor & Employment
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25 and immediately prior thereto, has lived in this state in

1 such a manner and for such time as is sufficient to clearly
2 justify the conclusion that his past habitation in this
3 state has been coupled with intention to make it his home.
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5 pursuance of any contract or agreement to perform such labor
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7 residents of Montana within the meaning and for the purpose
8 of this part.

9 ~~(3)(5)~~ (a) "Standard prevailing rate of wages,
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12 the county or locality in which the work is being
13 performed," means those wages, including fringe benefits for
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15 allowance provisions, which are paid in the county or
16 locality by other contractors for work of a similar
17 character performed in that county or locality by each
18 craft, classification, or type of worker needed to complete
19 a contract under this part.

20 (b) When work of a similar character is not being
21 performed in the county or locality, the standard prevailing
22 rate of wages, including fringe benefits for health and
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3 Section 2. Section 18-2-403, MCA, is amended to read:

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 9 ~~of the contract award and the expected date of completion of~~
 10 ~~the project.~~

11 ~~{2}~~ When the ~~A~~ public works project THAT EXCEEDS
 12 \$50,000 IN COST IS COMPLETED AND is accepted by the public
 13 contracting authority AGENCY, a notice of acceptance and the
 14 completion date of the project shall be sent to the
 15 department. IN THE CASE OF PROJECTS THAT AMOUNT TO \$50,000
 16 OR LESS IN COST, THE DEPARTMENT MAY REQUEST SUCH INFORMATION
 17 ON AN INDIVIDUAL CONTRACT BASIS. The 90-day limitation for
 18 filing an action in district court as provided in 18-2-407
 19 does not begin until the public contracting agency notifies
 20 the department of its acceptance of the public works
 21 project.

22 NEW SECTION. Section 4. ~~Bids~~ CONTRACTS to contain
 23 prevailing wage rate. All ~~bids~~ CONTRACTS for public works
 24 projects must contain a provision stating the prevailing
 25 wage rate that the contractors and subcontractors must pay

1 during construction of the project.

2 NEW SECTION. Section 5. Submission of weekly payroll
3 ~~to--contracting--authority.~~ If requested by the commissioner
4 DEPARTMENT, all contractors and subcontractors on a public
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6 copies of their weekly payrolls.

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-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 79

3 House Labor and Industry Committee

4

5 A statement of intent is required for this bill because
6 it grants the Commissioner of Labor and Industry rulemaking
7 authority regarding the preference for Montana labor in
8 public works contracts. This bill intends that the
9 commissioner adopt rules concerning areas such as the use of
10 apprentices, methods of computing standard prevailing wage
11 rates, and geographical areas subject to the rates. The
12 commissioner shall also have the authority to adopt rules as
13 may be needed to ensure that reporting and enforcement
14 measures are complied with.

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4 ~~pay the standard prevailing wage rate AND PLACES SUCH~~
5 ~~OBLIGATION ON THE PUBLIC CONTRACTING AGENCY."~~

6 NEW SECTION. Section 3. Notice. ~~(1) When a state~~
7 ~~agency--or--any--public-entity-of-this-state-awards-a-public~~
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13 ~~\$50,000--IN--COST--IS--COMPLETED--AND~~ is accepted by the public
14 contracting authority AGENCY, a notice of acceptance and the
15 completion date of the project shall be sent to the
16 department. IN HOWEVER, IN THE CASE OF PROJECTS THAT AMOUNT
17 TO \$50,000 OR LESS IN COST, THE DEPARTMENT MAY REQUEST SUCH
18 INFORMATION--ON--AN--INDIVIDUAL--CONTRACT--BASIS NOTICE OF
19 ACCEPTANCE AND THE COMPLETION DATE OF THE PROJECT IS NOT
20 REQUIRED UNLESS THE DEPARTMENT REQUESTS THAT INFORMATION.
21 The 90-day limitation for filing an action in district court
22 as provided in 18-2-407 does not begin until the public
23 contracting agency notifies the department of its acceptance
24 of the public works project.

25 NEW SECTION. Section 4. Bid BID SPECIFICATION AND

1 CONTRACT to contain prevailing wage rate. All bids BID
2 SPECIFICATIONS AND CONTRACTS for public works projects must
3 contain a provision stating FOR EACH JOB CLASSIFICATION the
4 prevailing wage rate, INCLUDING FRINGE BENEFITS, that the
5 contractors and subcontractors must pay during construction
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7 NEW SECTION. Section 5. Submission of weekly payroll
8 to contracting authority RECORDS. If requested by the
9 commissioner DEPARTMENT, all contractors and subcontractors
10 on a public works project shall submit to the department
11 certified copies of their weekly payrolls. IF A COMPLAINT IS
12 FILED WITH THE DEPARTMENT ALLEGING NONCOMPLIANCE WITH
13 [SECTION 4], THE DEPARTMENT MAY REQUIRE THE PROJECT TO
14 SUBMIT TO IT CERTIFIED COPIES OF THE PAYROLL RECORDS FOR
15 WORKERS EMPLOYED ON THAT PROJECT.

16 NEW SECTION. Section 6. Enforcement. (1) -----The
17 commissioner or his representative may enter and inspect
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4 commissioner may adopt rules necessary for the
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7 IF A CONTRACTOR OR A SUBCONTRACTOR REFUSES TO SUBMIT PAYROLL
8 RECORDS REQUESTED BY THE DEPARTMENT PURSUANT TO [SECTION 5],
9 THE COMMISSIONER OR HIS AUTHORIZED REPRESENTATIVE MAY ISSUE
10 SUBPOENAS COMPELLING THE PRODUCTION OF THOSE RECORDS.

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6 it grants the Commissioner of Labor and Industry rulemaking
7 authority regarding the preference for Montana labor in
8 public works contracts. This bill intends that the
9 commissioner adopt rules concerning areas such as the use of
10 apprentices, methods of computing standard prevailing wage
11 rates, and geographical areas subject to the rates. The
12 commissioner shall also have the authority to adopt rules as
13 may be needed to ensure that reporting and enforcement
14 measures are complied with.

1 HOUSE BILL NO. 79
 2 INTRODUCED BY HARPER
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 6 THE LAW RELATING TO THE PREFERENCE OF MONTANA LABOR IN
 7 PUBLIC WORKS CONTRACTS; AMENDING SECTIONS 18-2-401 AND
 8 18-2-403, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 18-2-401, MCA, is amended to read:
 12 "18-2-401. Definitions. Unless the context requires
 13 otherwise, in this part the following definitions apply:

14 (1) "Labor" is hereby defined to be all services
 15 performed in the construction, repair, or maintenance of all
 16 state, county, municipal, and school work and does not
 17 include engineering, superintendence, management, or office
 18 or clerical work.

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

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

23 (4) A "bona fide resident of Montana" is hereby
 24 declared to be a person who, at the time of his employment
 25 and immediately prior thereto, has lived in this state in

1 such a manner and for such time as is sufficient to clearly
 2 justify the conclusion that his past habitation in this
 3 state has been coupled with intention to make it his home.
 4 Sojourners or persons who come to Montana solely in
 5 pursuance of any contract or agreement to perform such labor
 6 shall under no circumstance be deemed to be bona fide
 7 residents of Montana within the meaning and for the purpose
 8 of this part.

9 (5) (a) "Standard prevailing rate of wages,
 10 including fringe benefits for health and welfare and pension
 11 contributions and travel allowance provisions applicable to
 12 the county or locality in which the work is being
 13 performed," means those wages, including fringe benefits for
 14 health and welfare and pension contributions and travel
 15 allowance provisions, which are paid in the county or
 16 locality by other contractors for work of a similar
 17 character performed in that county or locality by each
 18 craft, classification, or type of worker needed to complete
 19 a contract under this part.

20 (b) When work of a similar character is not being
 21 performed in the county or locality, the standard prevailing
 22 rate of wages, including fringe benefits for health and
 23 welfare and pension contributions and travel allowance
 24 provisions, shall be those rates established by collective
 25 bargaining agreements in effect in the county or locality

1 for each craft, classification, or type of worker needed to
2 complete the contract."

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

4 "18-2-403. Preference of Montana labor in public works
5 -- wages -- federal exception. (1) In any contract let for
6 state, county, municipal, school, or heavy highway
7 construction, services, repair, or maintenance work under
8 any law of this state, there shall be inserted in the BID
9 SPECIFICATION AND THE contract a provision requiring the
10 contractor to give preference to the employment of bona fide
11 Montana residents in the performance of the work and to pay
12 the standard prevailing rate of wages, including fringe
13 benefits for health and welfare and pension contributions
14 and travel allowance provisions, in effect and applicable to
15 the county or locality in which the work is being performed.

16 (2) No contract may be let to any person, firm,
17 association, or corporation refusing to execute an agreement
18 with the above-mentioned provisions in it, provided that in
19 contracts involving the expenditure of federal-aid funds
20 this part may not be enforced in such a manner as to
21 conflict with or be contrary to the federal statutes
22 prescribing a labor preference to honorably discharged
23 veterans of the armed forces and prohibiting as unlawful any
24 other preference or discrimination among citizens of the
25 United States.

1 (3) Failure to include the provisions required by
2 subsection (1) [SECTION 4] in a public works contract does
3 not-relieve RELIEVES the contractor from his obligation to
4 pay the standard prevailing wage rate AND PLACES SUCH
5 OBLIGATION ON THE PUBLIC CONTRACTING AGENCY."

6 NEW SECTION. Section 3. Notice. (1) ~~When a state~~
7 ~~agency or any public entity of this state awards a public~~
8 ~~works contract, the chief executive officer of the~~
9 ~~contracting authority shall send to the department a notice~~
10 ~~of the contract award and the expected date of completion of~~
11 ~~the projects~~

12 (2) When the A public works project ~~THAT EXCEEDS~~
13 ~~\$50,000 IN COST IS COMPLETED AND~~ is accepted by the public
14 contracting authority AGENCY, a notice of acceptance and the
15 completion date of the project shall be sent to the
16 department. IN HOWEVER, IN THE CASE OF PROJECTS THAT AMOUNT
17 TO \$50,000 OR LESS IN COST, THE DEPARTMENT MAY REQUEST SUCH
18 INFORMATION ON AN INDIVIDUAL CONTRACT BASIS NOTICE OF
19 ACCEPTANCE AND THE COMPLETION DATE OF THE PROJECT IS NOT
20 REQUIRED UNLESS THE DEPARTMENT REQUESTS THAT INFORMATION.
21 The 90-day limitation for filing an action in district court
22 as provided in 18-2-407 does not begin until the public
23 contracting agency notifies the department of its acceptance
24 of the public works project.

25 NEW SECTION. Section 4. ~~8+d~~ BID SPECIFICATION AND

1 CONTRACT to contain prevailing wage rate. All bids BID
 2 SPECIFICATIONS AND CONTRACTS for public works projects must
 3 contain a provision stating FOR EACH JOB CLASSIFICATION the
 4 prevailing wage rate, INCLUDING FRINGE BENEFITS, that the
 5 contractors and subcontractors must pay during construction
 6 of the project.

7 NEW SECTION. Section 5. Submission of weekly payroll
 8 to ~~contracting authority~~ RECORDS. ~~if requested by the~~
 9 ~~commissioner~~ DEPARTMENT, ~~all contractors and subcontractors~~
 10 ~~on a public works project shall submit to the department~~
 11 ~~certified copies of their weekly payrolls.~~ IF A COMPLAINT IS
 12 FILED WITH THE DEPARTMENT ALLEGING NONCOMPLIANCE WITH
 13 [SECTION 4], THE DEPARTMENT MAY REQUIRE THE PROJECT TO
 14 SUBMIT TO IT CERTIFIED COPIES OF THE PAYROLL RECORDS FOR
 15 WORKERS EMPLOYED ON THAT PROJECT.

16 NEW SECTION. Section 6. Enforcement. ~~{1}~~ ~~-----The~~
 17 ~~commissioner or his representative may enter and inspect~~
 18 ~~such places, question such employees, and investigate such~~
 19 ~~facts, conditions, or matters as considered appropriate to~~
 20 ~~determine whether any person has violated any provision of~~
 21 ~~this part or any rule adopted pursuant to this part.~~

22 ~~{2}~~ ~~The commissioner or his authorized representative~~
 23 ~~may administer oaths and examine witnesses under oath, issue~~
 24 ~~subpoenas, compel the attendance of witnesses, and the~~
 25 ~~production of papers, books, accounts, records, payrolls,~~

1 ~~documents, and testimony, and take depositions, and~~
 2 ~~affidavits in any enforcement proceedings.~~

3 NEW SECTION. ~~Section 7. Rulemaking authority. The~~
 4 ~~commissioner may adopt rules necessary for the~~
 5 ~~implementation, continuation, and enforcement of this part~~
 6 ~~in accordance with the Montana Administrative Procedure Act.~~
 7 IF A CONTRACTOR OR A SUBCONTRACTOR REFUSES TO SUBMIT PAYROLL
 8 RECORDS REQUESTED BY THE DEPARTMENT PURSUANT TO [SECTION 5],
 9 THE COMMISSIONER OR HIS AUTHORIZED REPRESENTATIVE MAY ISSUE
 10 SUBPOENAS COMPELLING THE PRODUCTION OF THOSE RECORDS.

11 Section 7. Codification instruction. It is intended
 12 that sections 3 through 7 6 be codified as an integral part
 13 of Title 18, chapter 2, part 4, and the provisions contained
 14 in Title 18, chapter 2, part 4, apply to sections 3 through
 15 7 6.

-End-