

HB 119 INTRODUCED BY NATHE, ET AL.
ELIMINATE PREVAILING WAGE REQUIREMENTS IN PUBLIC
WORKS CONTRACTS

1/08 INTRODUCED
1/08 REFERRED TO BUSINESS & LABOR
1/15 HEARING
2/11 TABLED IN COMMITTEE

1 H.B. BILL NO. 119
 2 INTRODUCED BY NATHAN SALES
 3 Devlin Thopt Jenkins Buehler
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE
 5 REQUIREMENT THAT CONTRACTORS PAY THE STANDARD PREVAILING
 6 RATE OF WAGES FOR WORKERS EMPLOYED IN A PUBLIC WORKS
 7 PROJECT; AMENDING SECTIONS 7-14-2404, 7-14-2406, 7-14-2716,
 8 18-2-401, 18-2-403, 18-2-421, AND 60-2-111, MCA; REPEALING
 9 SECTIONS 18-2-402, 18-2-405 THROUGH 18-2-407, AND 18-2-422
 10 THROUGH 18-2-424; AND PROVIDING AN IMMEDIATE EFFECTIVE
 11 DATE."
 12

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

14 Section 1. Section 7-14-2404, MCA, is amended to read:
 15 "7-14-2404. Competitive bids for county road
 16 contracts. Each bidder shall comply with the requirements of
 17 Title 18, chapter 1, part 2. The contract shall be awarded
 18 to the lowest responsible bidder in accordance with the
 19 requirements of 18-1-102, 18-1-112, and Title 18, chapter 2,
 20 part 4 and the board may reserve the right to reject any and
 21 all bids. ~~When there is no prevailing rate of wages set by~~
 22 ~~collective bargaining, the board shall determine the~~
 23 ~~prevailing rate to be stated in the contract."~~

24 Section 2. Section 7-14-2406, MCA, is amended to read:
 25 "7-14-2406. Contracts for bridges. (1) All bids for

1 construction or repair of bridges shall meet these
2 requirements:

3 (a) If the department of highways has adopted or
 4 established a standard plan and specifications, the bids
 5 must be submitted thereon.

6 (b) All bids must be sealed. Each bidder shall meet
 7 the requirements of Title 18, chapter 1, part 2.

8 (2) The board may reject any and all bids. If a
 9 contract is awarded, the board shall do so in accordance
 10 with the requirements of 18-1-102, 18-1-112, and Title 18,
 11 chapter 2, part 4. ~~When there is no prevailing rate of wages~~
 12 ~~set by collective bargaining, the board shall determine the~~
 13 ~~prevailing rate to be stated in the contract.~~ The contract
 14 must be entered with the unanimous consent of the members of
 15 the board.

16 (3) Before entering upon performance of the work, the
 17 contractor shall comply with the requirements of Title 18,
 18 chapter 2, part 2. For the purposes of those sections with
 19 relation to contracts with the board, a contract shall not
 20 be completed until the board, while formally convened,
 21 affirmatively accepts all of the work thereunder."

22 Section 3. Section 7-14-2716, MCA, is amended to read:
 23 "7-14-2716. Award of contract by local improvement
 24 district. (1) If the committee awards a contract, it shall
 25 do so in accordance with the requirements of 18-1-102,

1 18-1-112, and Title 18, chapter 2, part 4. ~~When there is no~~
 2 ~~prevailing rate of wages set by collective bargaining, the~~
 3 ~~committee shall determine the prevailing rate to be stated~~
 4 ~~in the contract.~~

5 (2) Partial payments may be provided for in the
 6 contract and paid when certified by the county surveyor and
 7 committee."

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

9 "18-2-401. Definitions. Unless the context requires
 10 otherwise, in this part the following definitions apply:

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

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

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

20 (4) A "bona fide resident of Montana" is hereby
 21 declared to be a person who, at the time of his employment
 22 and immediately prior thereto, has lived in this state in
 23 such a manner and for such time as is sufficient to clearly
 24 justify the conclusion that his past habitation in this
 25 state has been coupled with intention to make it his home.

1 Sojourners or persons who come to Montana solely in
 2 pursuance of any contract or agreement to perform such labor
 3 shall under no circumstance be deemed to be bona fide
 4 residents of Montana within the meaning and for the purpose
 5 of this part.

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

17 ~~(b) When work of a similar character is not being~~
 18 ~~performed in the county or locality, the standard prevailing~~
 19 ~~rate of wages, including fringe benefits for health and~~
 20 ~~welfare and pension contributions and travel allowance~~
 21 ~~provisions, shall be those rates established by collective~~
 22 ~~bargaining agreements in effect in the county or locality~~
 23 ~~for each craft, classification, or type of worker needed to~~
 24 ~~complete the contract."~~

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

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

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

23 ~~(3)--Failure--to--include--the--provisions--required--by~~
 24 ~~18-2-422--in--a--public--works--contract--relieves--the--contractor~~
 25 ~~from--his--obligation--to--pay--the--standard--prevailing--wage--rate~~

1 ~~and--places--such--obligation--on--the--public--contracting~~
 2 ~~agency."~~

3 Section 6. Section 18-2-421, MCA, is amended to read:

4 "18-2-421. Notice. When a public works project is
 5 accepted by the public contracting agency, a notice of
 6 acceptance and the completion date of the project shall be
 7 sent to the department. However, in the case of projects
 8 that amount to \$50,000 or less in cost, the notice of
 9 acceptance and the completion date of the project is not
 10 required unless the department requests that information.
 11 ~~The--90--day--limitation--for--filing--an--action--in--district--court~~
 12 ~~as--provided--in--18-2-407--does--not--begin--until--the--public~~
 13 ~~contracting--agency--notifies--the--department--of--its--acceptance~~
 14 ~~of--the--public--works--project."~~

15 Section 7. Section 60-2-111, MCA, is amended to read:

16 "60-2-111. Letting of contracts on state and
 17 federal-aid highways. (1) Except as provided in subsection
 18 (2), all contracts for work on state and federal-aid
 19 highways, including portions in cities and towns, and all
 20 contracts entered into under 7-14-4108 shall be let by the
 21 commission. Except as otherwise specifically provided, the
 22 commission may enter such types of contracts and upon such
 23 terms as it may decide. All contracts shall meet the
 24 requirements of Title 18, chapter 2, part 4. ~~When--there--is~~
 25 ~~no--prevailing--rate--of--wages--set--by--collective--bargaining,~~

1 ~~the commission shall determine the prevailing rate to be~~
2 ~~stated in the contract.~~

3 (2) The commission may delegate the authority, with
4 all applicable statutory restrictions, to award any contract
5 covered by this section to the department or to a unit of
6 local government."

7 NEW SECTION. Section 8. Repealer. Sections 18-2-402,
8 18-2-405 through 18-2-407, and 18-2-422 through 18-2-424,
9 MCA, are repealed.

10 NEW SECTION. Section 9. Saving clause. This act does
11 not affect rights and duties that matured, penalties that
12 were incurred, or proceedings that were begun before the
13 effective date of this act.

14 NEW SECTION. Section 10. Effective date. This act is
15 effective on passage and approval.

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