

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 INTRODUCED BY *House* BILL NO. *772*
2 *Don Lewis to E. Brian Evers*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PREVAILING
5 WAGE RATE LAWS; PROVIDING FOR THE CREATION OF PREVAILING
6 WAGE RATE DISTRICTS; DEFINING STANDARD PREVAILING WAGE RATE
7 AS THE WEIGHTED AVERAGE WAGE RATE IN A DISTRICT; DEFINING
8 "HEAVY/HIGHWAY WAGE RATE" AND "WORK OF A SIMILAR CHARACTER";
9 AND AMENDING SECTIONS 18-2-401 AND 18-2-402, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 NEW SECTION. Section 1. Creation of prevailing wage
13 rate districts. (1) Without taking into consideration
14 heavy/highway wate rates, the commissioner shall divide the
15 state into at least 10 prevailing wage rate districts.
16 (2) In initially determining the districts, the
17 commissioner must:
18 (a) follow the rulemaking procedures in the Montana
19 Administrative Procedure Act; and
20 (b) publish the reasons supporting the creation of
21 each district.
22 (3) A district boundary may not be changed except for
23 good cause and in accordance with the rulemaking procedures
24 in the Montana Administrative Procedure Act.
25 (4) The presence of collective bargaining agreements

1 in a particular area may not be the sole basis for the
2 creation of boundaries of a district, nor may the absence of
3 collective bargaining agreements in a particular area be the
4 sole basis for changing the boundaries of a district.
5 Section 2. Section 18-2-401, MCA, is amended to read:
6 "18-2-401. Definitions. Unless the context requires
7 otherwise, in this part the following definitions apply:
8 (1) "Labor" is hereby defined to be all services in
9 excess of \$25,000 performed in the construction, ~~repair,~~ or
10 maintenance, or remodeling of in all state, county,
11 municipal, and school work and does not include engineering,
12 superintendence, management, or office or clerical work.
13 (2) "Commissioner" means the commissioner of labor and
14 industry provided for in 2-15-1701.
15 (3) "Department" means the department of labor and
16 industry provided for in 2-15-1701.
17 (4) A "bona fide resident of Montana" is hereby
18 declared to be a person who, at the time of his employment
19 and immediately prior thereto, has lived in this state in
20 such a manner and for such time as is sufficient to clearly
21 justify the conclusion that his past habitation in this
22 state has been coupled with intention to make it his home.
23 Sojourners or persons who come to Montana solely in
24 pursuance of any contract or agreement to perform such labor
25 shall under no circumstance be deemed to be bona fide



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1 residents of Montana within the meaning and for the purpose
2 of this part.

3 (5) "Heavy/highway wage rates" means wage rates
4 determined and established statewide for projects such as
5 alteration or repair of roads, streets, highways, alleys,
6 runways, trails, parking areas, or utility rights-of-way.

7 ~~(5)~~(6) (a) "Standard prevailing rate of wages,
8 including fringe benefits for health and welfare and pension
9 contributions and travel allowance provisions applicable to
10 the ~~county--or--locality~~ district in which the work is being
11 performed," means those wages, other than heavy/highway
12 wages, including fringe benefits for health and welfare and
13 pension contributions and travel allowance provisions, which
14 are paid in the ~~county--or--locality~~ district by other
15 contractors for work of a similar character performed in
16 that ~~county--or--locality~~ district by each craft,
17 classification, or type of worker needed to complete a
18 contract under this part. The standard prevailing rate of
19 wages is a weighted average wage rate based on all of the
20 hours worked on work of a similar character performed in the
21 district.

22 (b) When work of a similar character is not being
23 performed in the ~~county-or-locality~~ district, the standard
24 prevailing rate of wages, including fringe benefits for
25 health and welfare and pension contributions and travel

1 allowance provisions, shall be those rates established by
2 collective bargaining agreements in effect in the ~~county-or~~
3 ~~locality~~ district for each craft, classification, or type of
4 worker needed to complete the contract.

5 (7) "Work of a similar character" means work on
6 private or commercial projects as well as work on public
7 projects."

8 Section 3. Section 18-2-402, MCA, is amended to read:

9 "18-2-402. Standard prevailing rate of wages. (1) The
10 Montana commissioner of labor may determine the standard
11 prevailing rate of wages in the ~~county-or-locality~~ district
12 in which the contract is to be performed. The commissioner
13 shall undertake to keep and maintain copies of collective
14 bargaining agreements and other information ~~from-which-rates~~
15 ~~and--jurisdictional--areas--applicable---to---public---works~~
16 ~~contracts--under--this--part--may--be--ascertained~~ on which the
17 rates for a district are based.

18 (2) The provisions of this part do not apply in those
19 instances where the standard prevailing rate of wages is
20 determined pursuant to federal law.

21 (3) In no instances where this part is applicable
22 shall the standard prevailing rate of wage be determined to
23 be greater than the applicable rate of wage in the area for
24 the particular work in question as negotiated under existing
25 and current collective bargaining agreements."

1 NEW SECTION. Section 4. Codification instruction.
2 Section 1 is intended to be codified as an integral part of
3 Title 18, chapter 2, part 4, and the provisions of Title 18,
4 chapter 2, part 4, apply to section 1.

5 NEW SECTION. Section 5. Extension of authority. Any
6 existing authority of the commissioner of labor and industry
7 to make rules on the subject of the provisions of this act
8 is extended to the provisions of this act.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 772

INTRODUCED BY BRANDEWIE, GLASER, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PREVAILING WAGE RATE LAWS; PROVIDING FOR THE CREATION OF PREVAILING WAGE RATE DISTRICTS; DEFINING STANDARD PREVAILING WAGE RATE AS THE WEIGHTED AVERAGE WAGE RATE IN A DISTRICT; DEFINING "HEAVY/HIGHWAY WAGE RATE" AND "WORK OF A SIMILAR CHARACTER"; AND AMENDING SECTIONS 18-2-401 AND 18-2-402, MCA."

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

NEW SECTION. Section 1. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy/highway wate WAGE rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements

in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

Section 2. 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) "Labor" is hereby defined to be all services in excess of \$25,000 performed in the construction, ~~repair--or~~ maintenance, or remodeling of in all state, county, municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

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

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

(4) A "bona fide resident of Montana" is hereby declared to be a person who, at the time of his employment and immediately prior thereto, has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state has been coupled with intention to make it his home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor shall under no circumstance be deemed to be bona fide



1 residents of Montana within the meaning and for the purpose
2 of this part.

3 (5) "Heavy/highway wage rates" means wage rates,
4 INCLUDING FRINGE BENEFITS FOR HEALTH AND WELFARE AND PENSION
5 CONTRIBUTIONS AND TRAVEL ALLOWANCE PROVISIONS, determined
6 and established statewide for projects such as alteration or
7 repair of roads, streets, highways, alleys, runways, trails,
8 parking areas, or utility rights-of-way.

9 ~~(5)~~(6) (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~~ district in which the work is being
13 performed," means those wages, other than heavy/highway
14 wages, including fringe benefits for health and welfare and
15 pension contributions and travel allowance provisions, which
16 are paid in the ~~county-or-locality~~ district by other
17 contractors for work of a similar character performed in
18 that ~~county-or-locality~~ district by each craft,
19 classification, or type of worker needed to complete a
20 contract under this part. The standard prevailing rate of
21 wages is a weighted average wage rate based on all of the
22 hours worked on work of a similar character performed in the
23 district.

24 (b) When work of a similar character is not being
25 performed in the ~~county-or-locality~~ district, the standard

1 prevailing rate of wages, including fringe benefits for
2 health and welfare and pension contributions and travel
3 allowance provisions, shall be those rates established by
4 collective bargaining agreements in effect in the ~~county--or~~
5 ~~locality~~ district for each craft, classification, or type of
6 worker needed to complete the contract.

7 (7) "Work of a similar character" means work on
8 private or commercial projects as well as work on public
9 projects."

10 Section 3. Section 18-2-402, MCA, is amended to read:

11 "18-2-402. Standard prevailing rate of wages. (1) The
12 Montana commissioner of labor may determine the standard
13 prevailing rate of wages in the ~~county-or-locality~~ district
14 in which the contract is to be performed. The commissioner
15 shall undertake to keep and maintain copies of collective
16 bargaining agreements and other information ~~from-which-rates~~
17 ~~and---jurisdictional---areas---applicable---to---public---works~~
18 ~~contracts-under-this-part-may-be-ascertained~~ on which the
19 rates for a district are based.

20 (2) The provisions of this part do not apply in those
21 instances where the standard prevailing rate of wages is
22 determined pursuant to federal law.

23 (3) In no instances where this part is applicable
24 shall the standard prevailing rate of wage be determined to
25 be greater than the applicable rate of wage in the area for

1 the particular work in question as negotiated under existing
2 and current collective bargaining agreements."

3 NEW SECTION. Section 4. Codification instruction.
4 Section 1 is intended to be codified as an integral part of
5 Title 18, chapter 2, part 4, and the provisions of Title 18,
6 chapter 2, part 4, apply to section 1.

7 NEW SECTION. Section 5. Extension of authority. Any
8 existing authority of the commissioner of labor and industry
9 to make rules on the subject of the provisions of this act
10 is extended to the provisions of this act.

-End-

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

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13 rate districts. (1) Without taking into consideration
14 heavy/highway wate WAGE rates, the commissioner shall divide
15 the state into at least 10 prevailing wage rate districts.

16 (2) In initially determining the districts, the
17 commissioner must:

18 (a) follow the rulemaking procedures in the Montana
19 Administrative Procedure Act; and

20 (b) publish the reasons supporting the creation of
21 each district.

22 (3) A district boundary may not be changed except for
23 good cause and in accordance with the rulemaking procedures
24 in the Montana Administrative Procedure Act.

25 (4) The presence of collective bargaining agreements

1 in a particular area may not be the sole basis for the
2 creation of boundaries of a district, nor may the absence of
3 collective bargaining agreements in a particular area be the
4 sole basis for changing the boundaries of a district.

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

6 "18-2-401. Definitions. Unless the context requires
7 otherwise, in this part the following definitions apply:

8 (1) "Labor" is hereby defined to be all services in
9 excess of \$25,000 performed in the construction, ~~repair~~--or
10 maintenance, or remodeling of in all state, county,
11 municipal, and school work and does not include engineering,
12 superintendence, management, or office or clerical work.

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

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

17 (4) A "bona fide resident of Montana" is hereby
18 declared to be a person who, at the time of his employment
19 and immediately prior thereto, has lived in this state in
20 such a manner and for such time as is sufficient to clearly
21 justify the conclusion that his past habitation in this
22 state has been coupled with intention to make it his home.
23 Sojourners or persons who come to Montana solely in
24 pursuance of any contract or agreement to perform such labor
25 shall under no circumstance be deemed to be bona fide

1 residents of Montana within the meaning and for the purpose
2 of this part.

3 (5) "Heavy/highway wage rates" means wage rates,
4 INCLUDING FRINGE BENEFITS FOR HEALTH AND WELFARE AND PENSION
5 CONTRIBUTIONS AND TRAVEL ALLOWANCE PROVISIONS, determined
6 and established statewide for projects such as alteration or
7 repair of roads, streets, highways, alleys, runways, trails,
8 parking areas, or utility rights-of-way.

9 ~~(5)~~(6) (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 district in which the work is being
13 performed," means those wages, other than heavy/highway
14 wages, including fringe benefits for health and welfare and
15 pension contributions and travel allowance provisions, which
16 are paid in the county--or--locality district by other
17 contractors for work of a similar character performed in
18 that county---or---locality district by each craft,
19 classification, or type of worker needed to complete a
20 contract under this part. The standard prevailing rate of
21 wages is a weighted average wage rate based on all of the
22 hours worked on work of a similar character performed in the
23 district.

24 (b) When work of a similar character is not being
25 performed in the county-or-locality district, the standard

1 prevailing rate of wages, including fringe benefits for
2 health and welfare and pension contributions and travel
3 allowance provisions, shall be those rates established by
4 collective bargaining agreements in effect in the county--or
5 locality district for each craft, classification, or type of
6 worker needed to complete the contract.

7 (7) "Work of a similar character" means work on
8 private or commercial projects as well as work on public
9 projects."

10 Section 3. Section 18-2-402, MCA, is amended to read:

11 "18-2-402. Standard prevailing rate of wages. (1) The
12 Montana commissioner of labor may determine the standard
13 prevailing rate of wages in the county-or-locality district
14 in which the contract is to be performed. The commissioner
15 shall undertake to keep and maintain copies of collective
16 bargaining agreements and other information ~~from which rates~~
17 ~~and---jurisdictional---areas---applicable--to--public--works~~
18 ~~contracts-under-this-part-may-be-ascertained~~ on which the
19 rates for a district are based.

20 (2) The provisions of this part do not apply in those
21 instances where the standard prevailing rate of wages is
22 determined pursuant to federal law.

23 (3) In no instances where this part is applicable
24 shall the standard prevailing rate of wage be determined to
25 be greater than the applicable rate of wage in the area for

1 the particular work in question as negotiated under existing
2 and current collective bargaining agreements."

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5 Title 18, chapter 2, part 4, and the provisions of Title 18,
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8 existing authority of the commissioner of labor and industry
9 to make rules on the subject of the provisions of this act
10 is extended to the provisions of this act.

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1 HOUSE BILL NO. 772

2 INTRODUCED BY BRANDEWIE, GLASER, DRISCOLL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 PREVAILING WAGE RATE LAWS; PROVIDING FOR THE CREATION OF
6 PREVAILING WAGE RATE DISTRICTS; DEFINING STANDARD PREVAILING
7 WAGE RATE AS ~~THE WEIGHTED-AVERAGE-WAGE-RATE-IN-A-DISTRICT;~~
8 ~~DEFINING--"HEAVY/HIGHWAY-WAGE-RATE"--AND--" TO MEAN EITHER THE~~
9 HEAVY HIGHWAY CONSTRUCTION WAGE RATE OR THOSE WAGES PAID IN
10 THE PREVAILING WAGE RATE DISTRICT FOR WORK OF A SIMILAR
11 CHARACTER"; AND AMENDING SECTIONS 17-5-1526, 17-5-1527,
12 17-6-325, 18-2-401 AND--18-2-402 THROUGH 18-2-403, AND
13 90-5-114, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. Creation of prevailing wage
17 rate districts. (1) Without taking into consideration
18 ~~heavy/highway~~ HEAVY HIGHWAY CONSTRUCTION ~~wate~~ WAGE rates,
19 the commissioner shall divide the state into at least 10
20 prevailing wage rate districts.

21 (2) In initially determining the districts, the
22 commissioner must:

23 (a) follow the rulemaking procedures in the Montana
24 Administrative Procedure Act; and

25 (b) publish the reasons supporting the creation of

1 each district.

2 (3) A district boundary may not be changed except for
3 good cause and in accordance with the rulemaking procedures
4 in the Montana Administrative Procedure Act.

5 (4) The presence of collective bargaining agreements
6 in a particular area may not be the sole basis for the
7 creation of boundaries of a district, nor may the absence of
8 collective bargaining agreements in a particular area be the
9 sole basis for changing the boundaries of a district.

10 (5) FOR EACH PREVAILING WAGE RATE DISTRICT ESTABLISHED
11 UNDER THIS SECTION, THE COMMISSIONER SHALL DETERMINE THE
12 STANDARD PREVAILING RATE OF WAGES TO BE PAID EMPLOYEES, AS
13 PROVIDED IN 18-2-401 AND 18-2-402.

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

15 "18-2-401. Definitions. Unless the context requires
16 otherwise, in this part the following definitions apply:

17 (1) "Labor" is hereby defined to be all services in
18 excess of \$25,000 performed in the construction, ~~repair,~~ or
19 maintenance, or remodeling of in all state, county,
20 municipal, and school work and does not include engineering,
21 superintendence, management, or office or clerical work.

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

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

1 (4) "DISTRICT" MEANS A PREVAILING WAGE RATE DISTRICT
2 ESTABLISHED AS PROVIDED IN [SECTION 1].

3 ~~(4)~~(5) A "bona fide resident of Montana" is hereby
4 declared to be a person who, at the time of his employment
5 and immediately prior thereto, has lived in this state in
6 such a manner and for such time as is sufficient to clearly
7 justify the conclusion that his past habitation in this
8 state has been coupled with intention to make it his home.
9 Sojourners or persons who come to Montana solely in
10 pursuance of any contract or agreement to perform such labor
11 shall under no circumstance be deemed to be bona fide
12 residents of Montana within the meaning and for the purpose
13 of this part.

14 ~~(5)~~(6) "Heavy/highway HEAVY HIGHWAY CONSTRUCTION wage
15 rates" means wage rates, INCLUDING FRINGE BENEFITS FOR
16 HEALTH AND WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL
17 ALLOWANCE PROVISIONS, determined and established statewide
18 for HEAVY HIGHWAY CONSTRUCTION projects such as alteration
19 or repair of roads, streets, highways, alleys, runways,
20 trails, parking areas, or utility rights-of-way.

21 ~~(5)~~(6)(7) (a) "Standard prevailing rate of wages,
22 including-fringe-benefits-for-health-and-welfare-and-pension
23 contributions-and-travel-allowance-provisions-applicable--to
24 the--county--or--locality-district-in-which-the-work-is-being
25 performed," OR "STANDARD PREVAILING WAGE" means:

1 (I) THE HEAVY HIGHWAY CONSTRUCTION WAGE RATES
2 APPLICABLE TO HEAVY HIGHWAY CONSTRUCTION PROJECTS; OR

3 (II) those wages, other than heavy/highway HEAVY
4 HIGHWAY CONSTRUCTION wages, including fringe benefits for
5 health and welfare and pension contributions and travel
6 allowance provisions, which are paid in the county--or
7 locality district by other contractors for work of a similar
8 character performed in that county-or-locality district by
9 each craft, classification, or type of worker needed to
10 complete a contract under this part. ~~The~~ IN EACH DISTRICT,
11 THE standard prevailing rate of wages is a weighted average
12 wage rate based on all of the hours worked on work of a
13 similar character performed in the district.

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

22 (7) "Work of a similar character" means work on
23 private or commercial projects as well as work on public
24 projects."

25 Section 3. Section 18-2-402, MCA, is amended to read:

1 "18-2-402. Standard prevailing rate of wages. (1) The
 2 Montana commissioner of labor may determine the standard
 3 prevailing rate of wages ~~in-the-county-or-locality-district~~
 4 ~~in-which-the-contract-is-to-be-performed~~ APPLICABLE TO
 5 PUBLIC WORKS CONTRACTS UNDER THIS PART. The commissioner
 6 shall undertake to keep and maintain copies of collective
 7 bargaining agreements and other information ~~from-which-rates~~
 8 ~~and-jurisdictional-areas-applicable-to-public-works~~
 9 ~~contracts-under-this-part-may-be-ascertained~~ on which the
 10 rates for-a-district are based.

11 (2) The provisions of this part do not apply in those
 12 instances where the standard prevailing rate of wages is
 13 determined pursuant to federal law.

14 (3) In no instances where this part is applicable
 15 shall the standard prevailing rate of wage be determined to
 16 be greater than the applicable rate of wage in the area for
 17 the particular work in question as negotiated under existing
 18 and current collective bargaining agreements."

19 SECTION 4. SECTION 18-2-403, MCA, IS AMENDED TO READ:

20 "18-2-403. Preference of Montana labor in public works
 21 -- wages -- federal exception. (1) In any contract let for
 22 state, county, municipal, school, or heavy highway
 23 construction, services, repair, or maintenance work under
 24 any law of this state, there shall be inserted in the bid
 25 specification and the contract a provision requiring the

1 contractor to give preference to the employment of bona fide
 2 Montana residents in the performance of the work.

3 (2) All public works contracts under subsection (1),
 4 except those for heavy highway construction, must contain a
 5 provision requiring the contractor and to pay the standard
 6 prevailing rate of wages, including fringe benefits for
 7 health and welfare and pension contributions and travel
 8 allowance provisions, in effect and applicable to the county
 9 or-locality district in which the work is being performed.

10 (3) In every contract for heavy highway construction,
 11 there must be inserted a provision to require the contractor
 12 to pay the heavy highway construction wage rates established
 13 statewide for such project.

14 ~~(2)(4)~~ (4) No contract may be let to any person, firm,
 15 association, or corporation refusing to execute an agreement
 16 with the above-mentioned provisions in it, provided that in
 17 contracts involving the expenditure of federal-aid funds
 18 this part may not be enforced in such a manner as to
 19 conflict with or be contrary to the federal statutes
 20 prescribing a labor preference to honorably discharged
 21 veterans of the armed forces and prohibiting as unlawful any
 22 other preference or discrimination among citizens of the
 23 United States.

24 ~~(3)(5)~~ (5) Failure to include the provisions required by
 25 18-2-422 in a public works contract relieves the contractor

1 from his obligation to pay the standard prevailing wage rate
 2 and places such obligation on the public contracting
 3 agency."

4 SECTION 5. SECTION 17-5-1526, MCA, IS AMENDED TO READ:

5 "17-5-1526. Procedure prior to financing projects. (1)

6 The board may finance projects [other than major projects]
 7 under this part only when it finds that:

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

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

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

18 (d) the financing for the project is insured or
 19 guaranteed in whole or in part by a private or governmental
 20 insurer or guarantor, including but not limited to a
 21 guaranty by the board pursuant to 17-5-1519;

22 (e) an applicant has submitted a statement indicating
 23 any contracts to construct the projects will require all
 24 contractors to give preference to the employment of bona
 25 fide Montana residents, as defined in 18-2-401(4), in the

1 performance of the work on the projects if their
 2 qualifications are substantially equal to those of
 3 nonresidents; "substantially equal qualifications" means the
 4 qualifications of two or more persons among whom the
 5 employer cannot make a reasonable determination that the
 6 qualifications held by one person are significantly better
 7 suited for the position than the qualifications held by the
 8 other persons; and

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

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

19 (a) the city or county in which the project will be
 20 located must be notified; and the city and county must,
 21 within 14 days after receipt of the notice, notify the board
 22 if it elects to conduct the hearing; or

23 (b) if no request for a local hearing is received, the
 24 board may hold the hearing at a time and place it
 25 prescribes.

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

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

14 (5) The requirements of subsections (1)(b) through
15 (1)(d) do not apply to bonds that are not secured by the
16 board's guarantee under 17-5-1519 or the capital reserve
17 account authorized by 17-5-1515."

18 SECTION 6. SECTION 17-5-1527, MCA, IS AMENDED TO READ:

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

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

24 (b) the financing to be provided by the board for a
25 project does not exceed either \$10 million or 90% of the

1 cost or appraised value of the project, whichever is less;
2 (c) a financial institution will participate in
3 financing the project if the cost or appraised value is less
4 than \$1 million, either directly or through a letter of
5 credit, to the extent of at least 10% of the financing to be
6 provided by the board, provided, however, that participation
7 by a financial institution in projects of over \$1 million is
8 at the discretion of the board;

9 (d) the financing for the project is insured or
10 guaranteed in whole or in part by a private or governmental
11 insurer or guarantor, including but not limited to a
12 guaranty by the board pursuant to 17-5-1519;

13 (e) any contracts to construct the projects require
14 all contractors to give preference to the employment of bona
15 fide Montana residents, as defined in 18-2-401(4), in the
16 performance of the work on the projects if their
17 qualifications are substantially equal to those of
18 nonresidents; "substantially equal qualifications" means the
19 qualifications of two or more persons among whom the
20 employer cannot make a reasonable determination that the
21 qualifications held by one person are significantly better
22 suited for the position than the qualifications held by the
23 other persons; and

24 (f) adequate provision is made in the loan agreement,
25 lease, or other credit arrangement regarding a project or

1 projects being financed to provide for payment of debt
2 service on bonds of the board issued to finance such project
3 or projects, to create and maintain reserves therefor, and
4 to meet all costs and expenses of issuing and servicing the
5 bonds.

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

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

12 (b) if no request for a local hearing is received, the
13 board may hold the hearing at a time and place it
14 prescribes.

15 (3) If the hearing required by subsection (2) is
16 conducted by a local government, the governing body of the
17 local government must notify the board of its determination
18 of whether the project is in the public interest within 14
19 days of the completion of the public hearing.

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

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

3 (5) The requirements of subsections (1)(b) through
4 (1)(d) do not apply to bonds that are not secured by the
5 board's guarantee under 17-5-1519 or the capital reserve
6 account authorized by 17-5-1515."

7 SECTION 7. SECTION 17-6-325, MCA, IS AMENDED TO READ:

8 "17-6-325. Preference of Montana labor. Any contract
9 to construct a project financed pursuant to this part must
10 require all contractors to give preference to the employment
11 of bona fide Montana residents, as defined in 18-2-401~~+~~,
12 in the performance of the work on the projects if their
13 qualifications are substantially equal to those of
14 nonresidents. "Substantially equal qualifications" means the
15 qualifications of two or more persons among whom the
16 employer cannot make a reasonable determination that the
17 qualifications held by one person are significantly better
18 suited for the position than the qualifications held by the
19 other persons."

20 SECTION 8. SECTION 90-5-114, MCA, IS AMENDED TO READ:

21 "90-5-114. Preference of Montana labor. Any contract
22 to construct a project financed pursuant to this part must
23 require all contractors to give preference to the employment
24 of bona fide Montana residents, as defined in 18-2-401~~+~~,
25 in the performance of the work on the projects if their

1 qualifications are substantially equal to those of
 2 nonresidents. "Substantially equal qualifications" means the
 3 qualifications of two or more persons among whom the
 4 employer cannot make a reasonable determination that the
 5 qualifications held by one person are significantly better
 6 suited for the position than the qualifications held by the
 7 other persons."

8 NEW SECTION. Section 9. Codification instruction.
 9 Section 1 is intended to be codified as an integral part of
 10 Title 18, chapter 2, part 4, and the provisions of Title 18,
 11 chapter 2, part 4, apply to section 1.

12 NEW SECTION. SECTION 10. COORDINATION INSTRUCTION. IF
 13 SENATE BILL NO. 103 AND THIS ACT ARE BOTH PASSED AND
 14 APPROVED, SECTION (1)(C) OF SENATE BILL NO. 103 IS AMENDED
 15 SO THAT THE LANGUAGE REFERRING TO "THE STANDARD PREVAILING
 16 RATE OF WAGES, INCLUDING FRINGE BENEFITS FOR HEALTH AND
 17 WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE
 18 PROVISIONS APPLICABLE TO THE COUNTY OR LOCALITY IN WHICH THE
 19 WORK IS BEING PERFORMED" WILL READ "THE STANDARD PREVAILING
 20 RATE OF WAGES, INCLUDING FRINGE BENEFITS FOR HEALTH AND
 21 WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE
 22 PROVISIONS APPLICABLE TO THE PUBLIC WORKS PROJECT".

23 NEW SECTION. Section 11. Extension of authority. Any
 24 existing authority of the commissioner of labor and industry
 25 to make rules on the subject of the provisions of this act

1 is extended to the provisions of this act.

-End-

STANDING COMMITTEE REPORT

SENATE

March 26, 1987

Labor
HB 772
Page 2 of 8

March 26, 1987

MR. PRESIDENT

LABOR AND EMPLOYMENT RELATIONS

We, your committee on

HOUSE BILL

having had under consideration No. 772

third reading copy (blue color)

REVISE PREVAILING WAGE RATE LAWS

BRANDEWIE (BROWN)

Respectfully report as follows: That HOUSE BILL No. 772 be amended as follows:

- 1. Title, line 4.
Following: "ACT"
Insert: "GENERALLY"
- 2. Title, lines 7 and 8.
Following: line 6
Strike: line 7 in its entirety through "AND " on line 8
Insert: "TO MEAN EITHER THE HEAVY HIGHWAY CONSTRUCTION WAGE RATE OR THOSE WAGES PAID IN THE PREVAILING WAGE RATE DISTRICT FOR"
Following: "CHARACTER"
Strike: ""
- 3. Title, line 9.
Following: "SECTIONS"
Insert: "17-5-1526, 17-5-1527, 17-6-325,"
Following: "18-2-401"
Strike: "AND 18-2-402"
Insert: "THROUGH 18-2-403, AND 90-5-114"
- 4. Page 1, line 14.
Strike: "heavy/highway"
Insert: "heavy highway construction"

- 5. Page 2, line 5.
Following: line 4
Insert: "(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."
- 6. Page 2, line 17.
Following: line 16
Insert: "(4) "District" means a prevailing wage rate district established as provided in [section 1]."
Renumber: subsequent subsections
- 7. Page 3, line 3.
Following: "(5) "
Strike: "Heavy/highway"
Insert: "Heavy highway construction"
- 8. Page 3, line 6.
Following: "for"
Insert: "heavy highway construction"
- 9. Page 3, lines 9 through 13.
Following: "wages"
Strike: remainder of line 9 through "performed," on line 13
Following: "" on line 13
Insert: "or "standard prevailing wage"
Following: "means" on line 13
Insert: "
(i) the heavy highway construction wage rates applicable to heavy highway construction projects; or
(ii) "
Following: "than"
Strike: "heavy/highway"
Insert: "heavy highway construction"
- 10. Page 3, line 20.
Following: "."
Strike: "The"
Insert: "In each district, the"

DO PASS

DO NOT PASS

CONTINUED

Chairman

CONTINUED

3-30

5-21

March 26, 1987

March 26,

87

11. Page 4, lines 13 and 14.

Following: "wages"

Strike: remainder of line 13 through "performed" on line 14

Insert: "applicable to public works contracts under this part"

12. Page 4, line 19.

Following: "rates"

Strike: "for a district"

13. Page 5, line 3.

Following: line 2

Insert: "Section 4. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- federal exception. (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the county--or--locality district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.

~~(4)~~ (4) No contract may be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such

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

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

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

"17-5-1526. Procedure prior to financing projects. (1) The board may finance projects [other than major projects] under this part only when it finds that:

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

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

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

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401~~(4)~~, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the

CONTINUED

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position than the qualifications held by the other persons; and

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

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

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

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

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

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 6. Section 17-5-1527, MCA, is amended to read:

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

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

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the cost or appraised value of the project, whichever is less;

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

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

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

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

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

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

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

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

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

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 7. Section 17-6-325, MCA, is amended to read:

"17-6-325. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401~~4~~, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one

person are significantly better suited for the position than the qualifications held by the other persons."

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

"90-5-114. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401~~4~~, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons." Renumber: subsequent sections

14. Page 5, line 7.
Following: line 6

Insert: "NEW SECTION. Section 10. Coordination instruction. If Senate Bill No. 103 and this act are both passed and approved, section 1 (c) of Senate Bill No. 103 is amended so that the language referring to "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed" will read "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the public works project." Renumber: subsequent sections

KAC
AND AS AMENDED,
BE CONCURRED IN

CONTINUED

J. Lynch
Senator Lynch, Chairman