

SENATE BILL 375

Introduced by Nathe

2/09	Introduced
2/09	Referred to Labor & Employment Relations
2/10	Fiscal Note Requested
2/16	Fiscal Note Received
2/16	Hearing
2/17	Fiscal Note Printed
2/17	Committee Report--Bill Passed as Amended
2/20	2nd Reading Pass/Amended Failed
2/20	2nd Reading Indefinitely Postponed

1 *Senate* BILL NO. 375
 2 INTRODUCED BY NATHAN
 3 BY REQUEST OF THE GOVERNOR
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE PREVAILING
 6 WAGE LAW TO PUBLIC WORKS CONTRACTS; REMOVING CONTRACT FOR
 7 SERVICES AND MAINTENANCE FROM THE OPERATION OF THE
 8 PREVAILING WAGE LAW; AMENDING SECTIONS 18-2-401, 18-2-403,
 9 18-2-406, 18-2-409, AND 18-2-421 THROUGH 18-2-423, MCA."
 10

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

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

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

15 ~~{1}--"Labor"--is--hereby--defined--to--be--all--services--in~~
 16 ~~excess--of--\$25,000--performed--in--construction,--maintenance,--or~~
 17 ~~remodeling--in--all--state,--county,--municipal,--and--school--work~~
 18 ~~and--does--not--include--engineering,--superintendence,~~
 19 ~~management,--or--office--or--clerical--work.~~

20 {2}(1) "Commissioner" means the commissioner of labor
 21 and industry provided for in 2-15-1701.

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

24 {4}(3) "District" means a prevailing wage rate district
 25 established as provided in 18-2-411.

1 {5}(4) A "bona fide resident of Montana" is hereby
 2 declared--to--be a person who, at the time of his employment
 3 and immediately prior thereto to his employment, has lived
 4 in this state in such a manner and for such a time as is
 5 sufficient to clearly justify the conclusion that his past
 6 habitation in this state has been coupled with intention to
 7 make it his home. Sojourners or persons who come to Montana
 8 solely in pursuance of any contract or agreement to perform
 9 such labor shall under no circumstance be deemed considered
 10 to be bona fide residents of Montana within the meaning and
 11 for the purpose of this part.

12 {6}(5) "Heavy highway construction wage rates" means
 13 wage rates, including fringe benefits for health and welfare
 14 and pension contributions and travel allowance provisions,
 15 determined and established statewide for heavy highway
 16 construction projects such as alteration or repair of roads,
 17 streets, highways, alleys, runways, trails, parking areas,
 18 or utility rights-of-way.

19 (6) "Public works contract" means a contract in excess
 20 of \$25,000 for the construction or remodeling of a state,
 21 county, municipal, or school building or facility. The term
 22 does not include a contract for services, engineering,
 23 superintendence, management, or office or clerical work.

24 (7) (a) "Standard prevailing rate of wages" or
 25 "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 construction
4 wages, including fringe benefits for health and welfare and
5 pension contributions and travel allowance provisions, which
6 are paid in the district by other contractors for work of a
7 similar character performed in that district by each craft,
8 classification, or type of worker needed to complete a
9 public works contract under this part. In each district, the
10 standard prevailing rate of wages is a weighted average wage
11 rate based on all of the hours worked on work of a similar
12 character performed in the district.

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

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

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

24 "18-2-403. Preference of Montana labor in public works
25 -- wages -- federal exception. (1) In any public works

1 ~~contract let for state, county, municipal, school, or heavy~~
2 ~~highway construction services, repair, or maintenance work~~
3 under any law of this state, there shall be inserted in the
4 bid specification and the contract a provision requiring the
5 contractor to give preference to the employment of bona fide
6 Montana residents in the performance of the work.

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

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

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

1 other preference or discrimination among citizens of the
2 United States.

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

8 **Section 3.** Section 18-2-406, MCA, is amended to read:

9 "18-2-406. Posting wage scale. Contractors,
10 subcontractors, and employers who are performing work ~~or~~
11 ~~providing--services~~ under public works contracts as provided
12 in this part shall post in a prominent and accessible site
13 on the project or work area, not later than the first day of
14 work, a legible statement of all wages to be paid to the
15 employees employed on such site or work area."

16 **Section 4.** Section 18-2-409, MCA, is amended to read:

17 "18-2-409. Montana residents to be employed on state
18 ~~construction public works~~ contracts. (1) On any state
19 ~~construction--project~~ public works contract funded by state
20 or federal funds, except a project partially funded with
21 federal aid money from the United States department of
22 transportation or where residency preference laws are
23 specifically prohibited by federal law and to which the
24 state is a signatory to the construction public works
25 contract, at least 50% of the work must be performed by bona

1 fide Montana residents, as defined in 18-2-401.

2 (2) For any public works contract awarded for a state
3 ~~construction~~ project, except a project partially funded with
4 federal aid money from the United States department of
5 transportation or where residency preference laws are
6 specifically prohibited by federal law, there must be
7 inserted in the bid specification and the contract a
8 provision, in language approved by the commissioner ~~of-labor~~
9 ~~and-industry~~, implementing the requirements of subsection
10 (1). The bid specification and the contract must provide
11 that at least 50% of the workers on the project will be bona
12 fide Montana residents. If there are two or more contracts
13 and due to a lack of qualified personnel a contractor cannot
14 guarantee that at least 50% of his workers will be Montana
15 residents, his contract must provide that the percentage the
16 commissioner ~~of-labor-and-industry~~ believes possible will be
17 Montana residents and one or more of the other contracts
18 must provide for a higher percentage of Montana residents so
19 that 50% of the workers on the project will be Montana
20 residents.

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

24 **Section 5.** Section 18-2-421, MCA, is amended to read:

25 "18-2-421. Notice. When work under a public works

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

13 **Section 6.** Section 18-2-422, MCA, is amended to read:

14 "18-2-422. Bid specification and contract to contain
 15 prevailing wage rate. All bid specifications and contracts
 16 for public works projects contracts must contain a provision
 17 stating for each job classification the prevailing wage
 18 rate, including fringe benefits, that the contractors and
 19 subcontractors must pay during construction ~~of-the-project.~~"

20 **Section 7.** Section 18-2-423, MCA, is amended to read:

21 "18-2-423. Submission of payroll records. If a
 22 complaint is filed with the department alleging
 23 noncompliance with 18-2-422, the department may require the
 24 project to submit to it certified copies of the payroll
 25 records for workers employed on that project contract."

1 NEW SECTION. **Section 8.** Extension of authority. Any
 2 existing authority to make rules on the subject of the
 3 provisions of [this act] is extended to the provisions of
 4 [this act].

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 375

INTRODUCED BY NATHE

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE PREVAILING
WAGE LAW TO PUBLIC WORKS CONTRACTS; REMOVING CONTRACT FOR
SERVICES AND MAINTENANCE FROM THE OPERATION OF THE
PREVAILING WAGE LAW; AMENDING SECTIONS 18-2-401, 18-2-403,
18-2-406, 18-2-409, AND 18-2-421 THROUGH 18-2-423, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
APPLICABILITY DATE."

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and---does---not---include---engineering,---superintendence,
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and industry provided for in 2-15-1701.

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industry provided for in 2-15-1701.

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and immediately prior ~~thereto to his employment~~, has lived
in this state in such a manner and for such a 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~~ considered
to be bona fide residents of Montana within the meaning and
for the purpose of this part.

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(i) the heavy highway construction wage rates applicable to heavy highway construction projects; or

(ii) those wages, other than heavy highway construction wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, which are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a public works contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

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

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(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor 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 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 the project.

(4) No A contract may not 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

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

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4 fide Montana residents, as defined in 18-2-401.

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19 commissioner ~~of-labor-and-industry~~ believes possible will be
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23 UNDER THE PUBLIC WORKS CONTRACT."

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1 complaint is filed with the department alleging
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3 project to submit to it certified copies of the payroll
4 records for workers employed on--that project UNDER THE
5 PUBLIC WORKS contract."

6 **NEW SECTION. Section 8.** Extension of authority. Any
7 existing authority to make rules on the subject of the
8 provisions of [this act] is extended to the provisions of
9 [this act].

10 **NEW SECTION. SECTION 9.** EFFECTIVE DATE. [THIS ACT] IS
11 EFFECTIVE ON PASSAGE AND APPROVAL.

12 **NEW SECTION. SECTION 10.** APPLICABILITY. [THIS ACT]
13 APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO
14 PROCEEDINGS COMMENCED PRIOR TO [THE EFFECTIVE DATE OF THIS
15 ACT].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB375, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled: "An Act limiting the prevailing wage Act to public construction contracts; removing contract for services and maintenance from the operation of the prevailing wage law; and amending Sections 18-2-401, 18-2-403, 18-2-406, 18-2-409, and 18-2-421 through 18-2-423, MCA."

DEPARTMENT OF LABOR AND INDUSTRYASSUMPTIONS:


1. In 1988 the Montana Attorney General issued a legal opinion as to the breadth of application of Montana's Prevailing Wage Act, MCA 18-2-401; that opinion widened the interpretation of this statute to include services and contracts.
2. Based on that Attorney General's opinion, the Department of Labor and Industry requested a budget modification to increase its staff by 2.5 FTE, to include additional prevailing wage staff to address increased workloads that will be created by the AG opinion; OBPP and the Joint Appropriations Committee approved these increases in staff, personal services and operating costs to meet these increased workloads.
3. Cost calculations provided are based on the following:
 - a.) Numbers of staff required are based on experience in staff increases in other, similar programs.
 - b.) Grade levels for staff are based on equivalent staff in similar positions, and on the state pay scale for level two (new) staff.
 - c.) Operating costs are based on costs for equivalent staff in similar positions.
4. This law reduces the scope of the Prevailing Wage Law to the extent that the AG's opinion expanded the Department's original interpretation of the law.

FISCAL IMPACT:

	FY90			FY91		
	Current	Proposed		Current	Proposed	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Personal	\$53,168	\$13,905	(\$39,263)	\$62,912	\$ 225	(\$62,687)
Operating Expenses	\$18,408	\$ 6,660	(\$11,748)	\$ 8,750	\$ 772	(\$7,978)
<u>Fund Impact:</u>						
General Fund	\$20,564	\$ -0-	(\$20,564)	\$ 997	\$ -0-	(\$997)
Federal- UI Administration						
Tax Fund	\$51,012	\$20,565	(\$30,447)	\$70,665	\$ 997	(\$69,668)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This proposed legislation will eliminate the projected increase in caseloads associated with the Attorney General's opinion, thereby eliminating the need for the additional required 2.5 FTE and associated costs described in 1. above.


 RAY SHACKLEFORD, BUDGET DIRECTOR
 OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/16/89


 DENNIS G. NATHE, PRIMARY SPONSOR

DATE 2/17/89

Fiscal Note for SB375, as introduced

SB 375

Fiscal Note Request, SB375 as introduced
Form BD-15
Page 2

DEPARTMENT OF HIGHWAYS:
ASSUMPTIONS:

1. Assume during FY88 the Department of Highways awarded approximately \$396,000 worth of labor related projects in compliance with the prevailing wage requirements detailed under Section 18-2-401, 18-2-403, 18-2-406, 18-2-409, and 18-2-421 through 18-2-423 MCA.
2. Assume that as much as 50% of the costs of those projects directly represented labor costs. Therefore, approximately \$198,000 was spent on labor in FY88.
3. Assume that SB375 will reduce the cost of all Title 18 originated labor related work to \$3.35 per hour.
4. Assume the current minimum wage is \$3.35 per hour.
5. Assume the average prevailing wage rate is \$9.97 per hour.
6. Assume a 62% average decrease cost of labor.

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Personal*	\$198,000	\$ 75,240	(\$122,760)	\$198,000	\$ 75,240	\$122,760
Operating Expenses	\$198,000	\$198,000	\$ -0-	\$198,000	\$198,000	\$ -0-

*This calculation is based on the three predominating prevailing wage categories involved in the Department's FY88 activity. Here are the State of Montana prevailing wage rates as supplied by the Department of Labor and Industry.

<u>Classification</u>	<u>Zone 1 - Prevailing Wage</u>	<u>Minimum Wage</u>	<u>Percent of Difference</u>
Carpenter	\$12.78	\$3.35	(74%)
Janitor	5.78	3.35	(42%)
General Labor	11.35	3.35	(70%)
Average	\$ 9.97	\$3.35	(62%)

Note above wage rates contain no fringe benefits. The average is a 62% decrease in labor costs.

FUND IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
State Special Revenue	\$396,000	\$273,240	(\$122,760)	\$396,000	\$273,240	\$122,760

LOCAL IMPACT:

The taxes paid by persons doing the work will go down, but it is impossible to measure the impact.

LONG RANGE IMPACT:

Overall the cost of the contract will decrease.

SB 375