

*McCurry Emerson*

1 *Dick Hill* *11/8/14* SENATE BILL NO. 85 *Burnett*  
2 INTRODUCED BY BENEDICT ORR *Burnett* *Dean* *Seitel* *Lash* *McKee*  
3 *Day* *Swygoo* *Rebber* *Strode* *Land* *Johnson*  
4 *Knox* *Treit* *Aoster* *AKLESTAD* *Simpkins* *Clark* *LUMÉ* *Benariski* *York*

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE DAVIS-BACON ACT; REMOVING THE  
6 REQUIREMENT THAT THE STANDARD PREVAILING WAGE RATE BE PAID ON PUBLIC WORKS PROJECTS  
7 SPONSORED BY A CITY, COUNTY, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION; REMOVING  
8 THE REQUIREMENT THAT THE STANDARD PREVAILING WAGE RATE BE PAID ON A CONTRACT FOR A  
9 PROJECT FINANCED BY CERTAIN BOND ISSUES; AND AMENDING SECTIONS 7-14-2404, 7-14-2406,  
10 7-14-2716, 17-5-1526, 18-2-401, 18-2-403, 18-2-404, 18-2-432, 90-5-114, AND 90-7-302, MCA."

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

12  
13 **Section 1.** Section 7-14-2404, MCA, is amended to read:

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

19  
20 **Section 2.** Section 7-14-2406, MCA, is amended to read:

21 "7-14-2406. **Contracts for bridges.** (1) All bids for construction or repair of bridges shall must meet  
22 ~~these~~ the following requirements:

23 (a) If the department of transportation has adopted or established a standard plan and  
24 specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

25 (b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part  
26 2.

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



1 the board.

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

6

7 **Section 3.** Section 7-14-2716, MCA, is amended to read:

8 **"7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a  
9 contract, it shall do so in accordance with the requirements of 18-1-102, and 18-1-112, ~~and Title 18,~~  
10 ~~chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee~~  
11 ~~shall determine the prevailing rate to be stated in the contract.~~

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

14

15 **Section 4.** Section 17-5-1526, MCA, is amended to read:

16 **"17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than  
17 major projects, under this part only when it finds that:

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

20 (b) the financing to be provided by the board for a project does not exceed either \$800,000 or  
21 90% of the cost or appraised value of the project, whichever is less;

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

24 (d) the financing for the project is insured or guaranteed in whole or in part by a private or  
25 governmental insurer or guarantor;

26 (e) an applicant has submitted a statement indicating that any contracts to construct the projects  
27 will require all contractors to give preference to the employment of bona fide Montana residents, as defined  
28 in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal  
29 to those of nonresidents; ~~substantially.~~ "Substantially equal qualifications" means the qualifications of  
30 two or more persons among whom the employer cannot make a reasonable determination that the

1 qualifications held by one person are significantly better suited for the position than the qualifications held  
2 by the other persons;

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

7 ~~(g) an applicant has submitted a statement that indicates that any contract let for a project costing~~  
8 ~~more than \$25,000 and financed from the proceeds of bonds issued under this part on or after July 1,~~  
9 ~~1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect~~  
10 ~~and applicable to the district in which the work is being performed unless the contractor performing the~~  
11 ~~work has entered into a collective bargaining agreement covering the work to be performed.~~

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

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

17 (b) if a request for a local hearing is not received, the board may hold the hearing at a time and  
18 place it prescribes.

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

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

25 (a) the time and place of the hearing;

26 (b) the general nature of the project;

27 (c) the name of the lessee, borrower, or user of the project; and

28 (d) the estimated cost of the project.

29 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not  
30 secured by the capital reserve account authorized by 17-5-1515.

1           (6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with  
2 bonds the interest on which is subject to federal income taxes."

3

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

5           **"18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
6 apply:

7           (1) A ~~"bona fide resident of Montana"~~ "Bona fide resident of Montana" ~~is~~ means a person who, at the time of employment  
8 and immediately prior to the time of employment, has lived in this state in a manner and for a time that is  
9 sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled  
10 with an intention to make it the person's home. Sojourners or persons who come to Montana solely in  
11 pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents  
12 of Montana within the meaning and for the purpose of this part.

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

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

15           (4) "District" means a prevailing wage rate district established as provided in 18-2-411.

16           (5) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for  
17 health and welfare and pension contributions, that meet the requirements of the Employee Retirement  
18 Income Security Act of 1974 and other bona fide programs approved by the United States department of  
19 labor and the rate of travel allowance that as those rates are determined and established statewide for  
20 heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys,  
21 runways, trails, parking areas, or utility rights-of-way.

22           (6) "Labor" means all services in excess of \$25,000 performed in construction, maintenance, or  
23 remodeling work in a ~~state, county, municipal, school district, or political subdivision~~ public works project  
24 and does not include engineering, superintendence, management, or office or clerical work.

25           (7) "Public works project" means a project initiated by the state and financed with state money.  
26 It does not include a project initiated by a municipality, county, school district, or other political subdivision  
27 and financed in part with state money.

28           ~~(7)~~(8) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

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

1 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for  
 2 health and welfare and pension contributions, that meet the requirements of the Employee Retirement  
 3 Security Act of 1974 and other bona fide programs approved by the United States department of labor and  
 4 the rate of travel allowance that as those rates are paid in the district by other contractors for work of a  
 5 similar character performed in that district by each craft, classification, or type of worker needed to  
 6 complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted  
 7 average wage rate based on all of the hours worked on work of a similar character performed in the district.

8 (b) When work of a similar character is not being performed in the district, the standard prevailing  
 9 rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the  
 10 requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by  
 11 the United States department of labor and the rate of travel allowance must be those rates established by  
 12 collective bargaining agreements in effect in the district for each craft, classification, or type of worker  
 13 needed to complete the contract.

14 ~~(8)(9)~~ "Work of a similar character" means work on private or commercial projects as well as work  
 15 on public projects."  
 16

17 **Section 6.** Section 18-2-403, MCA, is amended to read:

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

23 (2) ~~All public works contracts under subsection (1).~~ A public works contract let by the state for  
 24 services, repair, or maintenance, except those a contract for heavy and highway construction, must contain  
 25 a provision requiring the contractor to pay:

26 (a) the travel allowance that is in effect and applicable to the district in which the work is being  
 27 performed; and

28 (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and  
 29 pension contributions, that:

30 (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other

1 bona fide programs approved by the United States department of labor; and

2 (ii) is in effect and applicable to the district in which the work is being performed.

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

6 ~~(4) A contract let for a project costing more than \$25,000 and financed from the proceeds of~~  
7 ~~bonds issued under Title 17, chapter 5, part 16, or Title 90, chapter 5 or 7, on or after July 1, 1993, must~~  
8 ~~contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable~~  
9 ~~to the district in which the work is being performed unless the contractor performing the work has entered~~  
10 ~~into a collective bargaining agreement covering the work to be performed.~~

11 ~~(5)(4)~~ A contract may not be let to any person, firm, association, or corporation refusing to execute  
12 an agreement ~~with~~ containing the provisions described in subsections (1) through ~~(4)(3)~~ in it, provided that  
13 in contracts involving the expenditure of federal-aid funds this part may not be enforced in a manner as to  
14 conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged  
15 veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among  
16 citizens of the United States.

17 ~~(6)(5)~~ Failure to include the provisions required by 18-2-422 in a public works contract relieves the  
18 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the  
19 obligation on the ~~public~~ state contracting agency."

20

21 **Section 7.** Section 18-2-404, MCA, is amended to read:

22 "**18-2-404. Approval of contract -- bond.** (1) ~~All public works contracts~~ A public works contract  
23 under this part ~~shall~~ must be approved in writing by the legal adviser of the contracting state, ~~county,~~  
24 ~~municipal corporation, school district, assessment district, or special improvement district body or officer~~  
25 agency prior to execution ~~by the contracting public officer or officers.~~

26 (2) In ~~all contracts~~ a contract entered into under the provisions of this part, at least \$1,000 of the  
27 contract price ~~shall~~ must be withheld at all times until the termination of the contract."

28

29 **Section 8.** Section 18-2-432, MCA, is amended to read:

30 "**18-2-432. Penalty for violation.** (1) If a person, firm, or corporation fails to comply with the

1 provisions of this part, the state, ~~county, municipality, school district, or officer of a political subdivision~~  
 2 agency that executed the contract shall retain \$1,000 of the contract price as liquidated damages for the  
 3 violation of the terms of the contract and the money must be credited to the proper funds of the state,  
 4 ~~county, municipality, school district, or political subdivision.~~

5 (2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly  
 6 or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any  
 7 firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial  
 8 interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any  
 9 contracts or subcontracts that are subject to the provisions of this chapter.

10 (3) Whenever an action has been instituted in a district court in this state against ~~any~~ a person,  
 11 firm, or corporation for ~~the~~ a violation of this part, the court in which the action is pending is authorized  
 12 to issue an injunction to restrain the person, firm, or corporation from proceeding with a contract with the  
 13 state, ~~county, municipality, school district, or political subdivision,~~ pending the final determination of the  
 14 instituted action."

15

16 **Section 9.** Section 90-5-114, MCA, is amended to read:

17 **"90-5-114. Preference of Montana labor.** ~~(1) Any~~ A contract to construct a project financed  
 18 pursuant to this part must require all contractors to give preference to the employment of bona fide  
 19 Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their  
 20 qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means  
 21 the qualifications of two or more persons among whom the employer cannot make a reasonable  
 22 determination that the qualifications held by one person are significantly better suited for the position than  
 23 the qualifications held by the other persons.

24 ~~(2) A contract let for a project costing more than \$25,000 and financed from the proceeds of~~  
 25 ~~bonds issued under this part on or after July 1, 1993, must contain a provision that requires the contractor~~  
 26 ~~to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being~~  
 27 ~~performed."~~

28

29 **Section 10.** Section 90-7-302, MCA, is amended to read:

30 **"90-7-302. Bonds and notes of the authority.** (1) The authority may in each biennium borrow

1 money and issue bonds and notes in an aggregate principal amount not to exceed \$150 million, exclusive  
2 of bonds or notes issued to refund its outstanding bonds or notes.

3 (2) Bonds must be authorized, must be dated, and must mature as the authority may specify,  
4 except that a bond may not mature more than 40 years from the date of its issue. Bonds must bear interest  
5 at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the  
6 manner, be payable in the medium of payment, at the place or places, and be subject to the terms of  
7 redemption that the authority may provide.

8 (3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the  
9 Uniform Commercial Code, subject to requirements as to registration.

10 (4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the  
11 time or times ~~which~~ that the authority may determine.

12 (5) Before the issuance of any bonds, the authority shall make provisions, by lease or other  
13 agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other  
14 considerations sufficient, in the judgment of the authority, to:

15 (a) pay the principal of and interest on the bonds as they become due;

16 (b) create and maintain the reserves for payment of the principal and interest;

17 (c) meet all obligations in connection with the lease or other agreement; and

18 (d) meet all costs necessary to service the bonds unless the lease or agreement provides that the  
19 obligations are to be met or costs are to be paid by a party other than the authority.

20 ~~(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a~~  
21 ~~statement that indicates that any contract let for a project costing more than \$25,000 and financed from~~  
22 ~~the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision requiring the~~  
23 ~~contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work~~  
24 ~~is being performed unless the contractor performing the work has entered into a collective bargaining~~  
25 ~~agreement covering the work to be performed.~~

26 ~~(7)(6)~~ The authority may combine, for the purposes of a single offering, bonds financing more than  
27 one facility under this chapter."

28

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0085, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the Little Davis-Bacon Act; removing the requirement that the standard prevailing wage rate be paid on public works projects sponsored by a city, county, school district, or other political subdivision; removing the requirement that the standard prevailing wage rate be paid on a contract for a project financed by certain bond issues; and amending various statutes.

ASSUMPTIONS:

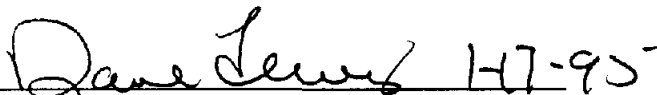
1. The bill would not affect the requirement to pay prevailing wage on state public works projects.
2. The bill would eliminate the prevailing wage requirement on county road contracts, county bridge construction and repair, local improvement district contracts, projects financed by economic development bonds, and projects financed by the health facility authority.

FISCAL IMPACT:

There is no discernible or material impact on state expenditures or revenues.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

SB0085 would tend to increase the number of bidders and reduce contract costs on contracts identified under assumption #2 for local governments.

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
STEVE BENEDICT, PRIMARY SPONSOR      DATE

Fiscal Note for SB0085, as introduced

**SB 85**

## SENATE BILL NO. 85

INTRODUCED BY BENEDICT, ORR, BARNETT, TOEWS, HERTEL, TASH, MCKEE, BURNETT, EMERSON,  
GREEN, FISHER, GAGE, SWYSGOOD, REHBEIN, TREXLER, FELAND, BAER, KNOX, TVEIT, KASTEN,  
AKLESTAD, SIMPKINS, CLARK, DEVLIN, BOHARSKI, ZOOK, M. HANSON, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LITTLE DAVIS-BACON ACT; REMOVING THE  
REQUIREMENT THAT THE STANDARD PREVAILING WAGE RATE BE PAID ON A STATE PUBLIC WORKS  
PROJECTS CONTRACT SPONSORED BY A CITY, COUNTY, SCHOOL DISTRICT, OR OTHER POLITICAL  
SUBDIVISION; REMOVING THE REQUIREMENT THAT THE STANDARD PREVAILING WAGE RATE BE PAID  
ON A CONTRACT FOR A PROJECT FINANCED BY CERTAIN BOND ISSUES; ~~AND~~ DEFINING "PUBLIC  
WORKS" AND "STATE PUBLIC WORKS"; AMENDING SECTIONS 7-14-2404, 7-14-2406, 7-14-2716,  
17-5-1526, 18-1-101, 18-2-401, 18-2-403, 18-2-404, 18-2-432, 90-5-114, AND 90-7-302, MCA; AND  
PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 7-14-2404, MCA, is amended to read:

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

**Section 2.** Section 7-14-2406, MCA, is amended to read:

**"7-14-2406. Contracts for bridges.** (1) All bids for construction or repair of bridges ~~shall~~ must meet  
~~these~~ the following requirements:

(a) If the department of transportation has adopted or established a standard plan and  
specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

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

2.

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

6 (3) Before entering upon performance of the work, the contractor shall comply with the  
 7 requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts  
 8 with the board, a contract ~~shall~~ may not be completed until the board, while formally convened,  
 9 affirmatively accepts all of the work ~~thereunder~~ under the contract."

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 11 **Section 3.** Section 7-14-2716, MCA, is amended to read:

12 **"7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a  
 13 contract, it shall do so in accordance with the requirements of 18-1-102, and 18-1-112, ~~and Title 18,~~  
 14 ~~chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee~~  
 15 ~~shall determine the prevailing rate to be stated in the contract.~~

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

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 19 **Section 4.** Section 17-5-1526, MCA, is amended to read:

20 **"17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than  
 21 major projects, under this part only when it finds that:

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

24 (b) the financing to be provided by the board for a project does not exceed either \$800,000 or  
 25 90% of the cost or appraised value of the project, whichever is less;

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

28 (d) the financing for the project is insured or guaranteed in whole or in part by a private or  
 29 governmental insurer or guarantor;

30 (e) an applicant has submitted a statement indicating that any contracts to construct the projects

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

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

11 ~~(g) an applicant has submitted a statement that indicates that any contract let for a project costing~~  
 12 ~~more than \$25,000 and financed from the proceeds of bonds issued under this part on or after July 1,~~  
 13 ~~1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect~~  
 14 ~~and applicable to the district in which the work is being performed unless the contractor performing the~~  
 15 ~~work has entered into a collective bargaining agreement covering the work to be performed.~~

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

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

21 (b) if a request for a local hearing is not received, the board may hold the hearing at a time and  
 22 place it prescribes.

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

26 (4) When a hearing is required either locally or at the state level, notice must be given, at least  
 27 once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general  
 28 circulation in the city or county where the hearing will be held. The notice must include:

29 (a) the time and place of the hearing;

30 (b) the general nature of the project;

- 1           (c) the name of the lessee, borrower, or user of the project; and  
 2           (d) the estimated cost of the project.

3           (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not  
 4 secured by the capital reserve account authorized by 17-5-1515.

5           (6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with  
 6 bonds the interest on which is subject to federal income taxes."

7

8           **SECTION 5. SECTION 18-1-101, MCA, IS AMENDED TO READ:**

9           **"18-1-101. Definitions.** (1) Unless the context requires otherwise, in this title "department" means  
 10 the department of administration provided for in Title 2, chapter 15, part 10.

11           (2) Unless the context requires otherwise, in this part the following definitions apply:

12           (a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured  
 13 products.

14           (b) "Montana-made" means manufactured or produced in this state and made with the:

15           (i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in  
 16 this state; or

17           (ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined  
 18 in 18-2-401.

19           (c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under  
 20 18-1-103.

21           (d) "Public agency" means a department, commission, council, board, bureau, committee,  
 22 institution, agency, government corporation, or other entity, instrumentality, or official of the legislative,  
 23 executive, or judicial branch of this state and its political subdivisions, including the board of regents and  
 24 the Montana university system.

25           (e) "Public works" means heavy and highway construction or construction of a building, facility,  
 26 or structure by a public agency.

27           ~~(e)~~(f) "Resident bidder" means a bidder whose residence is in this state as determined under  
 28 18-1-103."

29

30           **Section 6. Section 18-2-401, MCA, is amended to read:**

1 "18-2-401. **Definitions.** Unless the context requires otherwise, in this part, the following definitions  
2 apply:

3 (1) ~~A "bona~~ "Bona fide resident of Montana" ~~is~~ means a person who, at the time of employment  
4 and immediately prior to the time of employment, has lived in this state in a manner and for a time that is  
5 sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled  
6 with an intention to make it the person's home. Sojourners or persons who come to Montana solely in  
7 pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents  
8 of Montana within the meaning and for the purpose of this part.

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

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

11 (4) "District" means a prevailing wage rate district established as provided in 18-2-411.

12 (5) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for  
13 health and welfare and pension contributions, that meet the requirements of the Employee Retirement  
14 Income Security Act of 1974 and other bona fide programs approved by the United States department of  
15 labor and the rate of travel allowance ~~that as those rates~~ are determined and established statewide for  
16 heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys,  
17 runways, trails, parking areas, or utility rights-of-way.

18 (6) "Labor" means all services in excess of \$25,000 performed in construction, maintenance, or  
19 remodeling work in a ~~state, county, municipal, school district, or political subdivision~~ public works project  
20 CONTRACT and does not include engineering, superintendence, management, or office or clerical work.

21 ~~(7) "Public works project" means a project initiated by the state and financed with state money.~~  
22 ~~It does not include a project initiated by a municipality, county, school district, or other political subdivision~~  
23 ~~and financed in part with state money.~~

24 ~~(7)(8)(7)~~ (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

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

27 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for  
28 health and welfare and pension contributions, that meet the requirements of the Employee Retirement  
29 Security Act of 1974 and other bona fide programs approved by the United States department of labor and  
30 the rate of travel allowance ~~that as those rates~~ are paid in the district by other contractors for work of a

1 similar character performed in that district by each craft, classification, or type of worker needed to  
 2 complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted  
 3 average wage rate based on all of the hours worked on work of a similar character performed in the district.

4 (b) When work of a similar character is not being performed in the district, the standard prevailing  
 5 rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the  
 6 requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by  
 7 the United States department of labor and the rate of travel allowance must be those rates established by  
 8 collective bargaining agreements in effect in the district for each craft, classification, or type of worker  
 9 needed to complete the contract.

10 (8) "STATE PUBLIC WORKS CONTRACT" MEANS A CONTRACT LET BY THE STATE AND  
 11 FINANCED WITH STATE MONEY FOR HEAVY AND HIGHWAY CONSTRUCTION OR CONSTRUCTION OF  
 12 A BUILDING, FACILITY, OR STRUCTURE. THE TERM DOES NOT INCLUDE A CONTRACT THAT IS LET  
 13 BY A MUNICIPALITY, COUNTY, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION AND THAT IS  
 14 FINANCED IN PART WITH STATE MONEY. AS USED IN THIS SUBSECTION, "CONSTRUCTION" INCLUDES  
 15 THE CONSTRUCTION, ALTERATION, REPAIR, MAINTENANCE, AND REMODELING OF A BUILDING AND  
 16 THE EQUIPPING AND FURNISHING OF A BUILDING DURING CONSTRUCTION, ALTERATION, REPAIR,  
 17 MAINTENANCE, AND REMODELING.

18 ~~(8)~~(9) "Work of a similar character" means work on private or commercial projects as well as work  
 19 on public projects."  
 20

21 **Section 7.** Section 18-2-403, MCA, is amended to read:

22 **"18-2-403. Preference of Montana labor in STATE public works -- wages -- tax-exempt project --**  
 23 **federal exception.** (1) In any contract let for state, county, municipal, school, or heavy and highway  
 24 construction, services, repair, or maintenance work under any law of this state, there must be inserted in  
 25 the bid specification and the contract a provision requiring the contractor to give preference to the  
 26 employment of bona fide Montana residents in the performance of the work.

27 (2) ~~All public works contracts under subsection (1),~~ A STATE public works contract let by the state  
 28 for services, repair, or maintenance CONSTRUCTION, except those a contract for heavy and highway  
 29 construction, must contain a provision requiring the contractor to pay:

30 (a) the travel allowance that is in effect and applicable to the district in which the work is being

1 performed; and

2 (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and  
3 pension contributions, that:

4 (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other  
5 bona fide programs approved by the United States department of labor; and

6 (ii) is in effect and applicable to the district in which the work is being performed.

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

10 ~~(4) A contract let for a project costing more than \$25,000 and financed from the proceeds of~~  
11 ~~bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993, must~~  
12 ~~contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable~~  
13 ~~to the district in which the work is being performed unless the contractor performing the work has entered~~  
14 ~~into a collective bargaining agreement covering the work to be performed.~~

15 ~~(5)(4)~~ (4) A contract may not be let to any person, firm, association, or corporation refusing to execute  
16 an agreement ~~with~~ containing the provisions described in subsections (1) through ~~(4)(3)~~ in it, provided that  
17 in contracts involving the expenditure of federal-aid funds this part may not be enforced in a manner as to  
18 conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged  
19 veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among  
20 citizens of the United States.

21 ~~(6)(5)~~ (5) Failure to include the provisions required by 18-2-422 in a public works contract relieves the  
22 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the  
23 obligation on the ~~public~~ state contracting agency."

24

25 **Section 8.** Section 18-2-404, MCA, is amended to read:

26 "**18-2-404. Approval of contract -- bond.** (1) ~~All public works contracts~~ A STATE public works  
27 contract under this part ~~shall~~ must be approved in writing by the legal adviser of the contracting state,  
28 county, municipal corporation, school district, assessment district, or special improvement district body or  
29 officer agency prior to execution ~~by the contracting public officer or officers.~~

30 (2) In ~~all contracts~~ a contract entered into under the provisions of this part, at least \$1,000 of the



1 contract price ~~shall~~ must be withheld at all times until the termination of the contract."

2

3 **Section 9.** Section 18-2-432, MCA, is amended to read:

4 **"18-2-432. Penalty for violation.** (1) If a person, firm, or corporation fails to comply with the  
5 provisions of this part, the state, ~~county, municipality, school district, or officer of a political subdivision~~  
6 agency that executed the contract shall retain \$1,000 of the contract price as liquidated damages for the  
7 violation of the terms of the contract and the money must be credited to the proper funds of the state,  
8 ~~county, municipality, school district, or political subdivision.~~

9 (2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly  
10 or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any  
11 firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial  
12 interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any  
13 contracts or subcontracts that are subject to the provisions of this chapter.

14 (3) Whenever an action has been instituted in a district court in this state against ~~any~~ a person,  
15 firm, or corporation for ~~the~~ a violation of this part, the court in which the action is pending is authorized  
16 to issue an injunction to restrain the person, firm, or corporation from proceeding with a contract with the  
17 state, ~~county, municipality, school district, or political subdivision,~~ pending the final determination of the  
18 instituted action."

19

20 **Section 10.** Section 90-5-114, MCA, is amended to read:

21 **"90-5-114. Preference of Montana labor.** (1) ~~Any~~ A contract to construct a project financed  
22 pursuant to this part must require all contractors to give preference to the employment of bona fide  
23 Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their  
24 qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means  
25 the qualifications of two or more persons among whom the employer cannot make a reasonable  
26 determination that the qualifications held by one person are significantly better suited for the position than  
27 the qualifications held by the other persons.

28 ~~(2) A contract let for a project costing more than \$25,000 and financed from the proceeds of~~  
29 ~~bonds issued under this part on or after July 1, 1993, must contain a provision that requires the contractor~~  
30 ~~to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being~~

1 performed."

2

3 **Section 11.** Section 90-7-302, MCA, is amended to read:

4 **"90-7-302. Bonds and notes of the authority.** (1) The authority may in each biennium borrow  
5 money and issue bonds and notes in an aggregate principal amount not to exceed \$150 million, exclusive  
6 of bonds or notes issued to refund its outstanding bonds or notes.

7 (2) Bonds must be authorized, must be dated, and must mature as the authority may specify,  
8 except that a bond may not mature more than 40 years from the date of its issue. Bonds must bear interest  
9 at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the  
10 manner, be payable in the medium of payment, at the place or places, and be subject to the terms of  
11 redemption that the authority may provide.

12 (3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the  
13 Uniform Commercial Code, subject to requirements as to registration.

14 (4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the  
15 time or times ~~which~~ that the authority may determine.

16 (5) Before the issuance of any bonds, the authority shall make provisions, by lease or other  
17 agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other  
18 considerations sufficient, in the judgment of the authority, to:

19 (a) pay the principal of and interest on the bonds as they become due;

20 (b) create and maintain the reserves for payment of the principal and interest;

21 (c) meet all obligations in connection with the lease or other agreement; and

22 (d) meet all costs necessary to service the bonds unless the lease or agreement provides that the  
23 obligations are to be met or costs are to be paid by a party other than the authority.

24 ~~(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a~~  
25 ~~statement that indicates that any contract let for a project costing more than \$25,000 and financed from~~  
26 ~~the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision requiring the~~  
27 ~~contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work~~  
28 ~~is being performed unless the contractor performing the work has entered into a collective bargaining~~  
29 ~~agreement covering the work to be performed.~~

30 ~~(7)~~(6) The authority may combine, for the purposes of a single offering, bonds financing more than

1 one facility under this chapter."

2

3 NEW SECTION. SECTION 12. APPLICABILITY. [THIS ACT] APPLIES TO A PUBLIC WORKS  
4 CONTRACT ENTERED INTO ON OR AFTER OCTOBER 1, 1995.

5

-END-