

SENATE BILL NO. 251

INTRODUCED BY D. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STARTING TOTAL CONTRACT AMOUNT OF A PUBLIC WORKS PROJECT OR CERTAIN OTHER CONSTRUCTION AND NONCONSTRUCTION PROJECTS AT WHICH A STANDARD PREVAILING WAGE MUST BE PAID; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-401, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. 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;

(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, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; ~~"substantially.~~ "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;.

(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

1 the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and
2 expenses of issuing and servicing the bonds; and

3 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more
4 than ~~\$25,000~~ \$80,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993,
5 will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and
6 applicable to the district in which the work is being performed unless the contractor performing the work has
7 entered into a collective bargaining agreement covering the work to be performed.

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

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

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

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

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

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

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

26

27 **Section 2.** Section 17-5-1527, MCA, is amended to read:

28 **"17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects
29 under this part only when it finds that:

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

1 (b) the financing to be provided by the board for a project does not exceed either \$50 million or 90% of
2 the cost or appraised value of the project, whichever is less;

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

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

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

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

19 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more
20 than ~~\$25,000~~ \$80,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993,
21 will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and
22 applicable to the district in which the work is being performed unless the contractor performing the work has
23 entered into a collective bargaining agreement covering the work to be performed.

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

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

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

30 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of

1 the local government shall notify the board of its determination of whether the project is in the public interest within
2 14 days of the completion of the public hearing.

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

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

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

12 (7) The board is encouraged to consider applications for project financing related to infrastructure and
13 facilities necessary for the development of the state-owned coal assets."
14

15 **Section 3.** Section 18-2-401, MCA, is amended to read:

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

17 (1) (a) "Bona fide Montana resident" means an individual who, at the time of employment and
18 immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient
19 to clearly justify the conclusion that the individual's past habitation in this state has been coupled with an intention
20 to make this state the individual's home.

21 (b) Individuals who come to Montana solely in pursuit of a contract or an agreement to perform labor may
22 not be considered to be bona fide Montana residents within the meaning and for the purpose of this part.

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

24 (3) (a) "Construction services" means work performed by an individual in building construction, heavy
25 construction, highway construction, and remodeling work.

26 (b) The term does not include:

27 (i) engineering, superintendence, management, office, or clerical work on a public works contract; or

28 (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with
29 professionals licensed under state law.

30 (4) "Contractor" means any individual, general contractor, subcontractor, firm, association, partnership,

1 corporation, limited liability partnership, or limited liability company engaged in construction services.

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

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

4 (7) "Employer" means any individual, firm, association, partnership, corporation, limited liability
5 partnership, or limited liability company engaged in nonconstruction services.

6 (8) "Fringe benefits" means health, welfare, and pension contributions that meet the requirements of the
7 Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs
8 approved by the U.S. department of labor.

9 (9) "Nonconstruction services" means work performed by an individual, not including management,
10 office, or clerical work, for:

11 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets,
12 and alleys;

13 (b) custodial or security services for publicly owned buildings and facilities;

14 (c) grounds maintenance for publicly owned property;

15 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

16 (e) law enforcement, including janitors and prison guards;

17 (f) fire protection;

18 (g) public or school transportation driving;

19 (h) nursing, nurse's aid services, and medical laboratory technician services;

20 (i) material and mail handling;

21 (j) food service and cooking;

22 (k) motor vehicle and construction equipment repair and servicing; and

23 (l) appliance and office machine repair and servicing.

24 (10) "Project location" means the construction site where a public works project involving construction
25 services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and
26 specifications.

27 (11) (a) "Public works contract" means a contract ~~for construction services~~ let by the state, county,
28 municipality, school district, or political subdivision;

29 (i) for construction services in which the total cost of the contract is in excess of \$80,000; or

30 (ii) for nonconstruction services ~~let by the state, county, municipality, or political subdivision~~ in which the

1 total cost of the contract is in excess of ~~\$25,000~~ \$80,000. The nonconstruction services classification does not
2 apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the
3 provision of nonconstruction services on behalf of the district.

4 (b) The term does not include contracts entered into by the department of public health and human
5 services for the provision of human services.

6 (12) "Special circumstances" means all work performed at a facility that is built or developed for a specific
7 Montana public works project and that is located in a prevailing wage district that contains the project location
8 or that is located in a contiguous prevailing wage district.

9 (13) "Standard prevailing rate of wages" or "standard prevailing wage" means the rates established as
10 provided in:

11 (a) 18-2-413 for building construction services;

12 (b) 18-2-414 for heavy construction services and for highway construction services; and

13 (c) 18-2-415 for nonconstruction services.

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

16

17 **Section 4.** 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 every public works contract, there must be inserted in the bid specification and the public works
20 contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents
21 in the performance of the work.

22 (2) All public works contracts for construction services under subsection (1), except those for heavy and
23 highway construction, that are conducted at the project location or under special circumstances must contain a
24 provision requiring the contractor to pay:

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

27 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the
28 district in which the work is being performed.

29 (3) In every public works contract for heavy and highway construction, there must be inserted a provision
30 to require the contractor to pay the standard prevailing wage rates established statewide for heavy and highway

1 construction services conducted at the project location or under special circumstances.

2 (4) Except as provided in subsection (5), all public works contracts for nonconstruction services under
3 subsection (1) must contain a provision requiring the contractor to pay:

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

6 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the
7 district in which the work is being performed.

8 (5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation,
9 performs a public works contract for nonconstruction services and who employs an individual whose earning
10 capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than
11 the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor
12 Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the
13 minimum wage required in 39-3-409.

14 (6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the
15 project location is not subject to payment of the standard prevailing rate of wages.

16 (7) A contract, other than a public works contract, let for a project costing more than ~~\$25,000~~ \$80,000
17 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7,
18 must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable
19 to the district in which the work is being performed unless the contractor performing the work has entered into
20 a collective bargaining agreement covering the work to be performed.

21 (8) A public works contract may not be let to any person, firm, association, or corporation refusing to
22 execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public
23 works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to
24 conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans
25 of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the
26 United States.

27 (9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the
28 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on
29 the public contracting agency."
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1 **Section 5.** Section 90-5-114, MCA, is amended to read:

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

8 (2) A contract let for a project costing more than ~~\$25,000~~ \$80,000 and financed from the proceeds of
9 bonds issued under this part on or after July 1, 1993, must contain a provision that requires the contractor to pay
10 the standard prevailing wage rate in effect and applicable to the district in which the work is being performed."
11

12 **Section 6.** Section 90-7-302, MCA, is amended to read:

13 **"90-7-302. Bonds and notes of authority.** (1) The authority may in each biennium borrow money and
14 issue bonds and notes in an aggregate principal amount not to exceed \$500 million, exclusive of bonds or notes
15 issued to refund outstanding bonds or notes.

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

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

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

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

- 28 (a) pay the principal of and interest on the bonds as they become due;
29 (b) create and maintain the reserves for payment of the principal and interest;
30 (c) meet all obligations in connection with the lease or other agreement; and

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

3 (6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that
4 indicates that any contract let for a public project costing more than ~~\$25,000~~ \$80,000 and financed from the
5 proceeds of bonds issued under this part will contain a provision requiring the contractor to pay the standard
6 prevailing wage rate in effect and applicable to the district in which the work is being performed unless the
7 contractor performing the work has entered into a collective bargaining agreement covering the work to be
8 performed.

9 (7) The authority may combine, for the purposes of a single offering, bonds financing more than one
10 eligible facility under this chapter."

11
12 **NEW SECTION. Section 7. Effective date -- applicability.** [This act] is effective July 1, 2015, and
13 applies to contracts signed on or after July 1, 2015.

14 - END -