



AN ACT GENERALLY REVISING LAWS PERTAINING TO PREVAILING WAGES; CLARIFYING THE CEILING FOR WAGE RATES AND FRINGE BENEFIT RATES; REDUCING THE NUMBER OF PREVAILING WAGE RATE DISTRICTS FROM A MAXIMUM OF 10 DISTRICTS TO A MAXIMUM OF 5 DISTRICTS; REVISING THE METHOD OF DETERMINING PREVAILING FRINGE BENEFITS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ESTABLISH THE PREVAILING WAGE RATES FOR HEAVY CONSTRUCTION SERVICES, HIGHWAY CONSTRUCTION SERVICES, AND BUILDING CONSTRUCTION SERVICES ANNUALLY; REVISING PROVISIONS RELATED TO PREVAILING WAGES FOR HEAVY CONSTRUCTION SERVICES AND HIGHWAY CONSTRUCTION SERVICES; ESTABLISHING A METHOD FOR CALCULATING ZONE PAY OR PER DIEM; AND AMENDING SECTIONS 18-2-402, 18-2-411, 18-2-413, AND 18-2-414, MCA.

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

**Section 1.** Section 18-2-402, MCA, is amended to read:

**"18-2-402. Standard prevailing rate of wages.** (1) The commissioner may determine the standard prevailing rate of wages, including fringe benefits, applicable to public works contracts under this part. The commissioner shall keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances in which the standard prevailing rate of wages is determined by federal law.

(3) Whenever this part is applicable, the standard prevailing rate of wages, including fringe benefits, is ~~the may be equal to but not greater than~~ of the highest applicable rate of wages in the area for the particular work in question as negotiated under existing and current collective bargaining agreements or the rate determined by the applicable survey under this part."

**Section 2.** Section 18-2-411, MCA, is amended to read:

**"18-2-411. Creation of prevailing wage rate districts.** (1) Without taking into consideration heavy

construction services and highway construction services wage rates, the commissioner shall divide the state into not more than ~~40~~ 5 prevailing wage rate districts for building construction services and nonconstruction services.

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

- (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.

(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 this part. The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in 39-6-108."

**Section 3.** Section 18-2-413, MCA, is amended to read:

**"18-2-413. Standard prevailing rate of wages for building construction services.** (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for building construction services using the process described in this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.

(3) The department shall survey:

- (a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work;
- (b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to commercial building codes; and
- (c) construction contractors registered under Title 39, chapter 9, whose work is performed according to commercial building codes.

(4) The surveys required under subsection (3) must include those wages, including fringe benefits plus zone pay, per diem, and travel allowances if applicable, that are paid in the applicable 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 contract under this part.

(5) (a) The contractor survey must include information pertaining to the number of skilled workers employed in the contractor's peak month of employment and the wages and fringe benefits paid for each craft, classification, or type of work.

(b) (i) In setting the prevailing wages from the survey for each craft, classification, or type of work, the department shall use a weighted average wage for each craft, classification, or type of work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving the same wage.

(ii) If the survey shows that at least 50% of the skilled workers are receiving the same wage, ~~that wage~~ then the higher of the collective bargaining agreement rate or the surveyed rate is the prevailing wage for that craft, classification, or type of work.

(c) (i) In setting the prevailing fringe benefits from the survey for each craft, classification, or type of work, the department shall use a weighted average fringe benefit for each craft, classification, or type of work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by the U.S. department of labor.

(ii) If the survey shows that at least 50% of the skilled workers are receiving fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by the U.S. department of labor, the higher of fringe benefits received under collective bargaining agreements and employers' fringe benefit funds, plans, or programs is the prevailing fringe benefit for that craft, classification, or type of work.

(6) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages.

(7) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules

must identify the amount of data that constitutes insufficient data.

(b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

(c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.

(8) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits and the rate of travel allowance, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract."

**Section 4.** Section 18-2-414, MCA, is amended to read:

**"18-2-414. Standard prevailing rate of wages for heavy construction services and for highway construction services -- definition.** (1) The department shall establish ~~from time to time~~ the standard prevailing rate of wages for heavy construction services and for highway construction services annually.

(2) In establishing the standard prevailing rate of wages for heavy construction services and for highway construction services, the department may ~~either~~:

~~(a)~~(a) conduct a survey of construction contractors registered under Title 39, chapter 9, who perform heavy construction services or highway construction services, electrical contractors licensed under Title 37, chapter 68, who perform commercial work, or plumbers licensed under Title 37, chapter 69, whose work is performed according to commercial building codes; ~~or~~

~~(b)~~(b) adopt by reference through rulemaking the rates established by the U.S. department of labor under the federal Davis-Bacon Act, 29 CFR 1, et seq., for projects in Montana; or

(c) use, as provided by rule, a combination of surveyed rates, as provided in subsection (2)(a), and rates adopted by reference, as provided in subsection (2)(b).

(3) For the purposes of this section, the term "standard prevailing rate of wages for heavy construction services and for highway construction services" means wage rates, including fringe benefits plus zone pay, per diem, and travel allowances, if applicable, that are determined and established statewide for heavy construction projects and highway construction projects. The department may define by rule the terms heavy construction

projects and highway construction projects. The definitions of heavy construction projects and highway construction projects must include but are not limited to projects the same as or similar to the construction, alteration, or repair of roads, streets, highways, alleys, runways, airport runways and ramps, dams, powerhouses, canals, channels, pipelines, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public."

**Section 5. Wage rates based on project classification.** (1) The contracting agency shall determine, based on the preponderance of labor hours to be worked, whether the public works construction services project is classified as a highway construction project, a heavy construction project, or a building construction project.

(2) Once the project has been classified, employees in each trade classification who are working on that project must be paid at the rate for that project classification.

**Section 6. Zone pay and per diem.** If there is not sufficient data reported to establish zone pay or per diem for a trade classification, the department may establish a zone pay or a per diem amount that reasonably approximates an applicable average zone pay or per diem rate that is payable for the trade classification.

**Section 7. Codification instruction.** [Sections 4 and 5] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 4 and 5].

- END -

I hereby certify that the within bill,  
HB 0464, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

HOUSE BILL NO. 464

INTRODUCED BY CLARK, HUNTER, KEANE, TUTVEDT

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