AN ACT REVISING LAWS RELATED TO THE STANDARD PREVAILING RATE OF WAGES FOR PUBLIC WORKS CONTRACTS; PROVIDING FOR WAGE AND BENEFIT SURVEYS AND ALTERNATE METHODOLOGIES; SPECIFYING PAYMENT TERMS FOR APPRENTICES WORKING ON PUBLIC WORKS CONTRACTS; LIMITING TO 10 THE MAXIMUM NUMBER OF PREVAILING WAGE RATE DISTRICTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-157, 15-6-158, 15-6-159, 15-24-3111, 15-70-522, 18-2-401, 18-2-402, 18-2-403, 18-2-407, 18-2-411, 18-2-412, AND 69-3-2005, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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 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) 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 benefits paid for each craft, classification, or type of work. 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. If the survey shows that at least 50% of the skilled workers are receiving the same wage, that wage is the prevailing wage 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 2. 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.

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

(a) conduct a survey of construction contractors registered under Title 39, chapter 9, who perform heavy construction services or highway construction services; or

(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.

(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 and travel allowances 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 3. Standard prevailing rate of wages for nonconstruction services -- survey. (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for nonconstruction 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 under 18-2-411.

(3) (a) The department shall survey those employers that the department determines provide nonconstruction services in Montana in fulfillment of public works contracts.

(b) The department may survey employers that request to be included in the survey related to the nonconstruction services standard prevailing rate of wages or employers whose names and addresses are supplied by a political subdivision of the state as employers who have submitted bona fide bids or responses to requests for proposals for public works contracts for nonconstruction services.

(4) If the department does not survey an employer who is required to be surveyed under subsection (3)(a) or eligible to be surveyed under subsection (3)(b), the resulting survey and the ratesetting process remain valid.

(5) The survey must include:

(a) those wages, including fringe benefits and travel allowances if applicable, that are paid in the applicable district by other employers 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; and

(b) information pertaining to the number of workers employed in the employer's peak month of employment.

(6) In setting the standard prevailing rate of wages for nonconstruction services from the survey for each craft, classification, or type of work, the department shall use the weighted average wage for each craft, classification, or type of work, except in cases in which the survey shows that at least 50% of the workers are receiving the same wage. If the survey shows that at least 50% of the workers are receiving the same wage, that wage is the standard prevailing rate of wages for that craft, classification, or type of work.

(7) 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 standard prevailing rate of wages may be established by the use of other information or an alternate methodology as provided in subsection (8).

(8) (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.

(9) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits, 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. Wages paid to registered apprentices. (1) Only an apprentice whose indenture agreement

is registered with the department under Title 39, chapter 6, or recognized by the department as being registered with an appropriate registration agency of another state or the federal government may be paid as provided in subsection (2) when working on a public works contract. An apprentice whose indenture agreement is not registered with or recognized by the department must be paid the full amount of the standard prevailing rate of wages, including any applicable travel allowances.

(2) A recognized, registered apprentice must be paid the percentage of the standard prevailing rate of wages provided for in the apprenticeship standards applicable to that apprentice. The percentage amount applies to wage rates only and not to fringe benefits. The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract.

Section 5. Wage rate adjustments for multiyear contracts. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Section 6. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property -- description -- taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described

under 15-6-137;

(e) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(f) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(g) all property of a biomass gasification facility, as defined in 15-24-3102;

(h) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection (1)(k) of this section, that sequesters carbon dioxide;

(i) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(j) all property of a geothermal facility, as defined in 15-24-3102;

(k) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);

(l) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(m) all property of a natural gas combined cycle facility;

(n) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

(o) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

(p) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this

subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

(q) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection (1)(q) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property does not include facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ [section 2], was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(4) For the purposes of this section, "wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(o), (1)(p), or (1)(q), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(o), (1)(p), or (1)(q), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application

that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value."

Section 7. Section 15-6-158, MCA, is amended to read:

"15-6-158. Class fifteen property -- description -- taxable percentage. (1) Class fifteen property includes:

(a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;

(b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;

(c) carbon sequestration equipment;

(d) equipment used in closed-loop enhanced oil recovery operations; and

(e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.

(2) For the purposes of this section, the following definitions apply:

(a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.

(b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

(c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon dioxide in the sequestration location.

(d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for sequestration.

(e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after construction, installation, and testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic or unforeseen occurrences.

(f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production facility, or ethanol production facility.

(g) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide.

(3) Class fifteen property does not include a carbon dioxide pipeline, liquid pipeline, or closed-loop enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ [section 2], were not paid during the construction phase.

(4) Class fifteen property is taxed at 3% of its market value."

Section 8. Section 15-6-159, MCA, is amended to read:

"15-6-159. Class sixteen property -- description -- taxable percentage. (1) Class sixteen property includes high-voltage direct-current converter stations that are constructed in a location and manner so that the converter station can direct power to two different regional power grids.

(2) Class sixteen property does not include property described in subsection (1) for which the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ [section 2], was not paid during the construction phase.

(3) (a) The department shall determine whether to certify that the property meets the criteria of subsection (1).

(b) If the department finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time

that the certification was in effect.

(4) Class sixteen property is taxed at 2.25% of its market value."

Section 9. Section 15-24-3111, MCA, is amended to read:

"15-24-3111. Energy production or development -- tax abatement -- eligibility. (1) A facility listed in subsection (3), clean advanced coal research and development equipment, and renewable energy research and development equipment may qualify for an abatement of property tax liability pursuant to this part.

(2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be assessed at 50% of its taxable value for the qualifying period.

(b) If the abatement is granted for clean advanced coal research and development equipment or renewable energy research and development equipment, the qualifying equipment, up to the first $1 million of the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There is no abatement for any portion of the value of equipment at a facility in excess of $1 million.

(c) The abatement applies to all mills levied against the qualifying facility or equipment.

(3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement allowed under this part:

(a) biodiesel production facilities;

(b) biogas production facilities;

(c) biomass gasification facilities;

(d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

(e) ethanol production facilities;

(f) geothermal facilities;

(g) renewable energy manufacturing facilities;

(h) clean advanced coal research and development equipment and renewable energy research and development equipment;

(i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through carbon credit offsets;

(j) transmission lines and associated equipment and structures classified in 15-6-157;

(k) converter stations classified under 15-6-159;

(l) carbon sequestration equipment as defined in 15-6-158; and

(m) pipelines classified under 15-6-158.

(4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet the following requirements:

(i) commencement of construction of the facility must occur after June 1, 2007; and

(ii) the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ [section 2], must be paid during the construction phase of the facility.

(b) In order to qualify for the abatement under this part, clean advanced coal research and development equipment and renewable energy research and development equipment must be placed into service after June 30, 2007.

(c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification process must be sequestered at a rate that is practically obtainable but may not be less than 65%.

(d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied for after December 31, 2014, do not qualify under subsection (3)(d).

(e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage determined in 15-24-3116.

(5) To qualify for an abatement, the facility or clean advanced coal research and development equipment and renewable energy research and development equipment must be certified as provided in 15-24-3112.

(6) Upon termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be assessed at 100% of its taxable value.

(7) For the purposes of this section, "qualifying period" means the construction period and the first 15 years after the facility commences operation or the clean advanced coal research and development equipment or renewable energy research and development equipment is purchased. The total time of the qualifying period may not exceed 19 years."

Section 10. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of ethanol -- rules. (1) (a) If the ethanol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ethanol was produced from non-Montana agricultural products when Montana products are not available, there is a tax

incentive payable to ethanol distributors for distilling ethanol that:

(i) is to be blended with gasoline for sale as ethanol-blended gasoline in Montana;

(ii) was exported from Montana to be blended with gasoline for sale as ethanol-blended gasoline; or

(iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ethanol. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ethanol tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ [section 2], during the construction phase; and

(c) an ethanol distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce ethanol at the facility in the first year of production;

(ii) 25% Montana product is used to produce ethanol at the facility in the second year of production;

(iii) 35% Montana product is used to produce ethanol at the facility in the third year of production;

(iv) 45% Montana product is used to produce ethanol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ethanol at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce ethanol at the facility in the sixth year of production.

(4) (a) An ethanol distributor may not receive tax incentive payments under subsection (2) that exceed $2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ethanol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall

report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of ethanol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ethanol tax incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall adopt rules necessary to carry out the provisions of this section. The department shall coordinate and request information and input from the ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 11. Section 18-2-401, MCA, is amended to read:

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

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

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

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

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

(b) The term does not include:

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

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

(4) "Contractor" means any individual, general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

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

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

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

~~(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, 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.~~

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

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

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

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

(c) grounds maintenance for publicly owned property;

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

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

(f) fire protection;

(g) public or school transportation driving;

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

(i) material and mail handling;

(j) food service and cooking;

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

(l) appliance and office machine repair and servicing.

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

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

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

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

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

(a) [section 1] for building construction services;

(b) [section 2] for heavy construction services and for highway construction services; and

(c) [section 3] for nonconstruction services.

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

~~(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that 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 contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the 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. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original 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, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must 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 contract.~~

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

Section 12. Section 18-2-402, MCA, is amended to read:

"18-2-402. Standard prevailing rate of wages. (1) The ~~Montana~~ commissioner ~~of labor~~ may determine the standard prevailing rate of wages applicable to public works contracts under this part. The commissioner shall ~~undertake to~~ 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 ~~where~~ in which the standard prevailing rate of wages is determined ~~pursuant to~~ by federal law.

(3) ~~In no instances where~~ Whenever this part is applicable, ~~shall~~ the standard prevailing rate of ~~wage be determined to~~ wages may be equal to but not greater than the highest applicable rate of ~~wage~~ wages in the area for the particular work in question as negotiated under existing and current collective bargaining agreements."

Section 13. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents ~~of Montana~~ in the performance of the work.

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

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

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

~~(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide~~

~~programs approved by the United States department of labor; and~~

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

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the ~~heavy and highway construction~~ standard prevailing wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

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

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

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

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

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

(5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in ~~39-3-404~~ 39-3-409.

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

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

(8) A public works contract may not be let to any person, firm, association, or corporation refusing to

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

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

Section 14. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing ~~wage~~ rate of wages. (1) Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing ~~wage~~ rate of wages as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the ~~Montana~~ commissioner ~~of labor and industry~~ that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the ~~Montana~~ commissioner ~~of labor and industry~~ may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner ~~of labor and industry~~ on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2~~, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals~~."

Section 15. 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

~~at least~~ not more than 10 prevailing wage rate districts for building construction services and nonconstruction services.

(2) In initially determining the districts, the commissioner ~~must~~ 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 ~~18-2-401 and 18-2-402~~ 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 16. Section 18-2-412, MCA, is amended to read:

"18-2-412. Method for payment of standard prevailing wage. (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the ~~United States~~ U.S. department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits ~~for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974,~~ and travel~~, or other bona fide programs approved by the United States department of labor, that is~~ allowances, applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to

workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the ~~United States~~ U.S. department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department."

Section 17. Section 69-3-2005, MCA, is amended to read:

"69-3-2005. Procurement -- cost recovery -- reporting. (1) In meeting the requirements of this part, a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

(3) (a) Contracts signed for projects located in Montana must 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 the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in ~~18-2-401(13)(a)~~ [section 2], during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans

to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

~~(a) January 1, 2007, for the standard required in 69-3-2004(2);~~

~~(b) June 1, 2008, for the standard required in 69-3-2004(3);~~

~~(c)~~(a) June 1, 2013, for the standard required in 69-3-2004(4); and

~~(d)~~(b) any additional future dates as required by the commission.

(6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

Section 18. Codification instruction. [Sections 1 through 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 1 through 5].

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,

SB 0308, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day

of _____, 2009.

Speaker of the House

Signed this _____ day

of _____, 2009.

SENATE BILL NO. 308

INTRODUCED BY KEANE, ANKNEY, BRUEGGEMAN, COHENOUR, COONEY, GEBHARDT, GLASER, HAMLETT, KLOCK, LASLOVICH, A. NOONAN, O'HARA, STAHL, VILLA, WILSON

AN ACT REVISING LAWS RELATED TO THE STANDARD PREVAILING RATE OF WAGES FOR PUBLIC WORKS CONTRACTS; PROVIDING FOR WAGE AND BENEFIT SURVEYS AND ALTERNATE METHODOLOGIES; SPECIFYING PAYMENT TERMS FOR APPRENTICES WORKING ON PUBLIC WORKS CONTRACTS; LIMITING TO 10 THE MAXIMUM NUMBER OF PREVAILING WAGE RATE DISTRICTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-157, 15-6-158, 15-6-159, 15-24-3111, 15-70-522, 18-2-401, 18-2-402, 18-2-403, 18-2-407, 18-2-411, 18-2-412, AND 69-3-2005, MCA; AND PROVIDING AN EFFECTIVE DATE.