

## 1 HOUSE BILL NO. 464

2 INTRODUCED BY C. CLARK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO PREVAILING  
5 WAGES; REDUCING THE NUMBER OF PREVAILING WAGE RATE DISTRICTS FROM A MAXIMUM OF 10  
6 DISTRICTS TO A MAXIMUM OF 5 DISTRICTS; REVISING THE METHOD OF DETERMINING PREVAILING  
7 FRINGE BENEFITS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ESTABLISH THE  
8 PREVAILING WAGE RATES FOR HEAVY CONSTRUCTION SERVICES AND HIGHWAY CONSTRUCTION  
9 SERVICES ANNUALLY; REVISING PROVISIONS RELATED TO PREVAILING WAGES FOR HEAVY  
10 CONSTRUCTION SERVICES AND HIGHWAY CONSTRUCTION SERVICES; ESTABLISHING A METHOD FOR  
11 CALCULATING ZONE PAY OR PER DIEM; AND AMENDING SECTIONS 18-2-411, 18-2-413, AND 18-2-414,  
12 MCA."

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

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16 **Section 1.** Section 18-2-411, MCA, is amended to read:

17 **"18-2-411. Creation of prevailing wage rate districts.** (1) Without taking into consideration heavy  
18 construction services and highway construction services wage rates, the commissioner shall divide the state into  
19 not more than ~~10~~ 5 prevailing wage rate districts for heavy construction and building construction services and  
20 nonconstruction services.

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

22 (a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

23 (b) publish the reasons supporting the creation of each district.

24 (3) A district boundary may not be changed except for good cause and in accordance with the  
25 rulemaking procedures in the Montana Administrative Procedure Act.26 (4) The presence of collective bargaining agreements in a particular area may not be the sole basis for  
27 the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular  
28 area be the sole basis for changing the boundaries of a district.29 (5) For each prevailing wage rate district established under this section, the commissioner shall  
30 determine the standard prevailing rate of wages to be paid employees, as provided in this part. The standard

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

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

5 **"18-2-413. Standard prevailing rate of wages for building construction services.** (1) The  
6 department shall conduct an annual survey to calculate the standard prevailing rate of wages for building  
7 construction services using the process described in this section.

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

10 (3) The department shall survey:

11 (a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work;

12 (b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to  
13 commercial building codes; and

14 (c) construction contractors registered under Title 39, chapter 9, whose work is performed according to  
15 commercial building codes.

16 (4) The surveys required under subsection (3) must include those wages, including fringe benefits plus  
17 travel allowances if applicable, that are paid in the applicable district by other contractors for work of a similar  
18 character performed in that district by each craft, classification, or type of worker needed to complete a contract  
19 under this part.

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

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

28 (c) (i) In setting the prevailing fringe benefits from the survey for each craft, classification, or type of work,  
29 the department shall use a weighted average fringe benefit for each craft, classification, or type of work, except  
30 in those cases in which the survey shows that at least 50% of the skilled workers are receiving fringe benefits

1 pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program  
 2 that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by  
 3 the U.S. department of labor.

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

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

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

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

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

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

26

27 **Section 3.** Section 18-2-414, MCA, is amended to read:

28 **"18-2-414. Standard prevailing rate of wages for heavy construction services and for highway**  
 29 **construction services -- definition.** (1) The department shall establish ~~from time to time~~ the standard prevailing  
 30 rate of wages for heavy construction services and for highway construction services annually.

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

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

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

9 (b) In establishing the standard prevailing rate of wages as provided in subsection (2)(a) for any trade  
 10 classification in any district, the department shall adopt the higher standard prevailing rate of wages if there is  
 11 a difference in the rates determined under subsection (2)(a)(i) and (2)(a)(ii).

12 (3) For the purposes of this section, the term "standard prevailing rate of wages for heavy construction  
 13 services and for highway construction services" means wage rates, including fringe benefits plus zone pay and  
 14 travel allowances that are determined and established statewide for heavy construction projects and highway  
 15 construction projects. The department may define by rule the terms heavy construction projects and highway  
 16 construction projects. The definitions of heavy construction projects and highway construction projects must  
 17 include but are not limited to projects the same as or similar to the construction, alteration, or repair of roads,  
 18 streets, highways, alleys, runways, airport runways and ramps, dams, powerhouses, canals, channels, pipelines,  
 19 parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that  
 20 produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public."  
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22 **NEW SECTION. Section 4. Wage rates based on project classification -- zone pay or per diem.**

23 (1) Once the department, based upon a preponderance of labor hours to be worked, determines that a public  
 24 works project is to be classified as heavy construction services, highway construction services, or building  
 25 construction services, employees in each trade classification who are working on the project must be paid at the  
 26 rate for that classification.

27 (2) If there is not sufficient data for a trade classification, zone pay or per diem must be based on the  
 28 statewide average for all trade classifications.

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 30 **NEW SECTION. Section 5. Codification instruction.** [Section 4] is intended to be codified as an

1 integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [section 4].

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