

## PREVAILING WAGE

### LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

**Legislation can be complex, and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.**

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### Background Materials and Research

**Topic Summary:** Prevailing wage is a term used in public contracts. The definition for prevailing wage is encompassed under the "standard prevailing rate of wages" in 18-2-401, MCA. The Department of Labor and Industry develops a prevailing wage rate for various occupations, as specified in 18-2-401(13) for:

- building construction services described in 18-2-413, MCA;
- heavy construction services and for highway construction services described in 18-2-414, MCA; and
- nonconstruction services as described in 18-2-415, MCA.

The payment of a standard prevailing rate of wages (including fringe benefits) is spelled out in 18-2-412, MCA. The methodology used by the Department of Labor and Industry to determine prevailing wage rates for building construction or heavy and highway construction is found in 18-2-413 and 18-2-414, MCA, while nonconstruction requirements are outlined in 18-2-415, MCA. The Administrative Rules of Montana 24.17.119 through 24.17.122 provide further details.

Payments include fringe benefits as well as "zone pay," per diem, and travel allowances, if applicable. Nonconstruction services do not include "zone pay." "Zone pay" is defined in rule (ARM 24.17.103) as "an amount added to the base pay; the combined sum then becomes the new base wage rate to be paid for all hours worked on the project. Zone pay must be determined by measuring the road miles one way over the shortest practical maintained route from the dispatch city to the center of the job." While "zone pay" includes a road measurement, it is not the same as "travel pay," although part of the definition is the same, except that travel pay includes travel both to and from, with exceptions, and also allows for determining the road miles from the employee's home or the "dispatch city." The definition reads that a travel allowance must be paid "both to and from the job site, except those with special provisions listed under the classification. The rate is determined by measuring the road miles one direction over the shortest practical maintained route from the dispatch city or the employee's home, whichever is closer, to the center of the job."

Another key term is "dispatch city." Dispatch cities are listed in rule (ARM [24.17.103](#)) as Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, and Missoula. The dispatch city must be "closest to the center of the job and within the same prevailing wage district, if any..." In 2013 the Legislature revised the number of prevailing wage rate districts from no more than 10 to no more than five, as provided by 18-2-411, MCA. The effort was to make the pay structure in the construction industry be more competitive by reducing the number of projects within "free" zones where workers would not receive travel/per diem or zone pay. One result was to increase a worker's overall compensation but perhaps an unintended consequence was that – with higher pay – the contract costs also were higher for those wanting new construction in less populated areas.

The prevailing wage rate in Montana is often called the Little Davis-Bacon Act because it is similar to the federal Davis-Bacon Act. Which act applies to a public project depends on the funding source – state or federal dollars. In Montana, payment of prevailing wage rates is required for most nonhighway public contracts of \$25,000 or more.

Montana's laws also include a preference for Montana labor, under 18-2-403, MCA, and 18-2-409, MCA. The Department of Labor and Industry [website](#) for public contracts and the prevailing wage laws says that for state contracts "... at least 50% of the employees of each contractor working on the jobs [are to] be bona fide Montana residents." (website accessed 10/7/2020).

**Legislative Services Division Materials:** None

**Other Materials:**

The Department of Labor and Industry has posted a [Prevailing Wage Guide](#) on Public Works Contracts, Frequently Asked [Questions](#), while the 2020 Prevailing Wage Rates for various Public Contracts are at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/prevailing-wage-guide-on-public-works-contracts>.

## Introduced Legislation

\*Chapter number assigned means bill was passed and approved.

### 2019

**[SB 272](#)** – (Died in Standing Committee) - "AN ACT REVISING DETERMINATION OF ZONE PAY AND PER DIEM RELATED TO PREVAILING WAGES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 18-2-419, MCA; AND PROVIDING AN EFFECTIVE DATE."

### 2017

**[HB 329](#)** – (Died in Process) - "AN ACT REVISING UPWARD THE AMOUNT AT WHICH THE PREVAILING WAGE CONTRACT LAWS APPLY TO COUNTIES, CITIES, AND OTHER PUBLIC CONTRACTS; PROVIDING AN INFLATION ADJUSTMENT; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-401, 18-2-403, AND 90-5-114, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

**[SB308](#)** – (Died in Standing Committee) – " AN ACT REVISING PREVAILING WAGE LAWS TO PROVIDE DISPATCH CITIES WITHIN 100 MILES OF COUNTY SEATS IN EACH DISTRICT; PROVIDING DEFINITIONS; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

**2015**

**SB 251** – (Died in Standing Committee) - "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, 18-2-103, 18-2-111, 18-2-201, 18-2-301, 18-2-302, 18-2-401, 18-2-403, 18-2-421, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

**2013**

**HB 464** – (Chapter Number Assigned) – "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."

**2011 (None introduced)**

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Oct. 23, 2020