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Local Government Interim Committee

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FINAL REPORT TO THE 68<sup>TH</sup> MONTANA LEGISLATURE

**-DRAFT-**

# **SJ13: STUDY OF PREVAILING WAGE LAWS**



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This report is a summary of the work of the Local Government Interim Committee, as outlined in the Local Government Interim Committee’s 2021-22 work plan and Senate Joint Resolution 13 (2021). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Local Government Interim Committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the Local Government Interim Committee website: <https://leg.mt.gov/committees/interim/lgic/>.

A full report, including links to the documents referenced in this print report, is available at the Local Government Interim Committee website: <https://leg.mt.gov/committees/interim/lgic/sj-13/>

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# SJ13: STUDY OF PREVAILING WAGE LAWS

## OVERVIEW

Montana's prevailing wage law applies to public works contracts for construction services or nonconstruction services funded by the state, county, municipality, school district, or political subdivision totaling \$25,000 or more. The Compliance and Investigations Bureau of the Department of Labor & Industry determines prevailing wage rates which are currently established using wage surveys, special project rates, valid collective bargaining agreements, and rates determined by the federal government. Prevailing wage rates impact not only the economies of local areas but also the state's workforce and economy generally.

## Study Directives

The [study resolution](#) suggested the committee:

- Review and examine the current method to establish prevailing wage rates;
- Compare Montana's prevailing wage rates to other states;
- Review the current responsibilities of parties involved and the methods to receive and respond to wage complaints; and
- Analyze the impact that prevailing wage determinations have on overall labor force earnings, statewide and local economies, the ability to secure public contracts, and the maximization of public dollars throughout the state's economy.

The study ranked 21<sup>st</sup> out of 28 study resolutions in the post-session poll of legislators. The Legislative Council assigned SJ13 to the Local Government Committee, the second of three assigned studies. The committee moved to devote roughly 15% of committee time to SJ13.

## BACKGROUND AND RECENT CHANGES

The "standard prevailing rate of wages" is defined 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 detailed in [18-2-412](#), MCA. The Department of Labor and Industry uses a methodology found in 18-2-413 and 18-2-414, MCA to determine prevailing wage rates for building construction or heavy and highway construction, 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 as "an amount added to the

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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. Travel pay includes travel both to and from, with exceptions, and 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."

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

Another key term is "dispatch city," defined as the city "closest to the center of the job and within the same prevailing wage district as the job..." In 2013, the Legislature revised the number of prevailing wage rate districts from no more than 10 to no more than five, as provided in [18-2-411](#), MCA. The intent was to make the pay structure in the construction industry 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 were also higher for those wanting new construction in less populated areas.

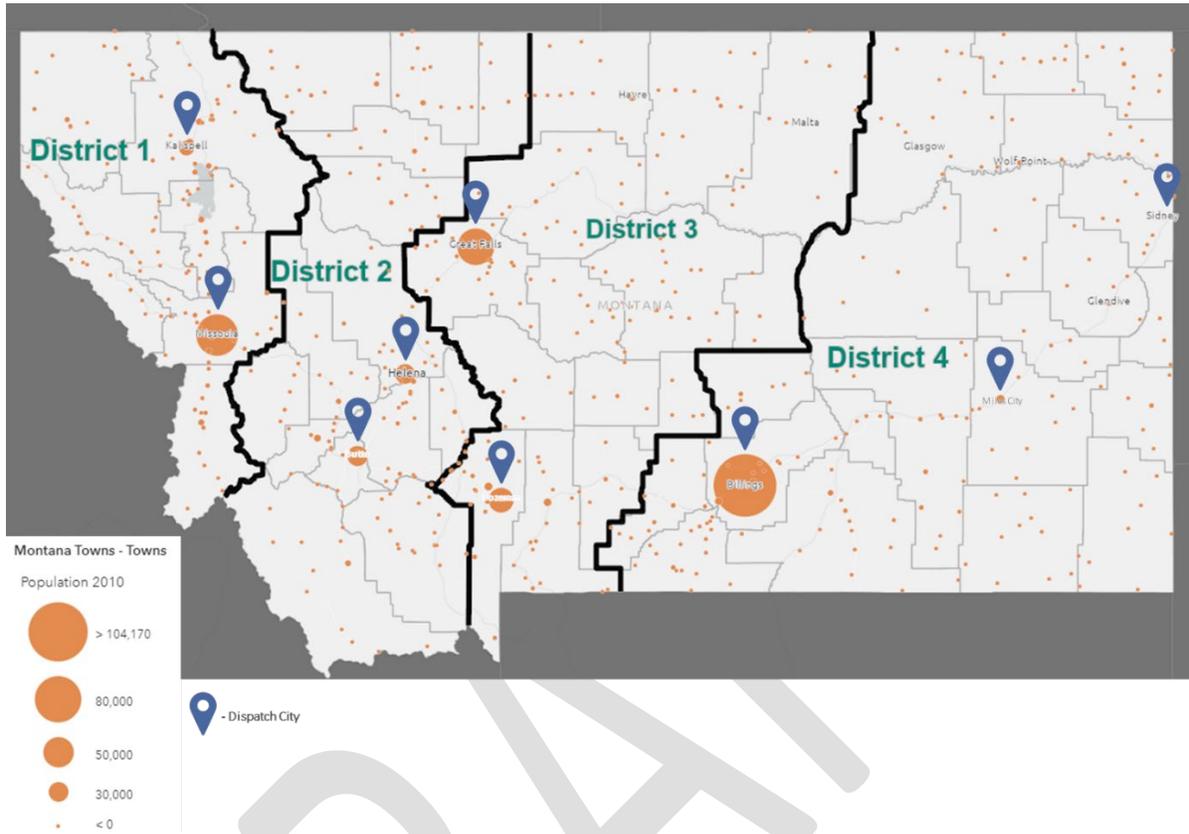
Prior to the 2021 session, the definitions of "zone pay", "travel allowances", and a list of "dispatch cities" was promulgated in rule. However, [HB201](#) enacted during the 2021 session added the calculation of zone pay, the rate of travel allowances, and a list of dispatch cities to statute, codified in [18-2-411](#), MCA. The current dispatch cities are: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Miles City, Missoula, and Sidney.

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 includes 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 8/18/2021).

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Map of Prevailing Wage Districts and Dispatch Cities



## CONTRACT THRESHOLDS

A "contract threshold" is the dollar amount of a public works contract that "triggers" prevailing wage requirements. In Montana, any public works project costing \$25,000 or more must comply with state prevailing wage requirements. The committee expressed interest in the contract threshold amount and its sufficiency, questioning how Montana stacks up to other states.

States with Contract Threshold Amounts

State	Threshold Amount
California	\$1,000 <sup>1</sup>
Rhode Island	\$1,000

<sup>1</sup> California. Labor Code Section 1771 provides a minimum threshold of over \$1,000. Labor Code Section 1771.5 provides a higher threshold of over \$25,000 for construction work or over \$15,000 for alteration, demolition, repair or maintenance work under certain circumstances.

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<b>Hawaii</b>	\$2,000
<b>New Jersey</b>	\$16,263 for municipalities \$2,000 for non-municipal public bodies
<b>Alaska</b>	\$25,000
<b>Minnesota</b>	\$25,000 where more than one trade is involved \$2,500 where a single trade is involved
<b>Montana</b>	\$25,000
<b>Pennsylvania</b>	\$25,000
<b>Maine</b>	\$50,000
<b>Tennessee</b>	\$50,000, but only for highway construction. No prevailing wage on non-highway construction.
<b>New Mexico</b>	\$60,000
<b>Missouri</b>	\$75,000
<b>Nevada</b>	\$100,000
<b>Vermont</b>	\$100,000 or at least 50% funded by a capital construction act and costs more than \$200,000.
<b>Washington D.C.</b>	\$100,000
<b>Wyoming</b>	\$100,000
<b>Ohio<sup>2</sup></b>	\$250,000 for new construction \$75,000 for remodeling School construction exempt
<b>Delaware</b>	\$500,000 for new construction \$45,000 for alteration, repair, demolition, reconstruction, etc.
<b>Maryland</b>	\$500,000 and one of the following scenarios: 1. the contracting entity is the state, or 2. the contracting entity is a political subdivision and the state funds at least 50% of the project (school construction must be funded at least 25% by the state)
<b>Connecticut</b>	\$1,000,000 for new construction \$100,000 for remodeling

<sup>2</sup> Ohio has distinct thresholds - \$78,258 for new construction and \$23,447 for remodeling - for work that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction. Also, the Ohio director of commerce must adjust all contract threshold amounts in accordance with a statutorily set formula every even-numbered year.

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## States without Prevailing Wage Laws

- Alabama – *repealed in 1980*
- Arizona – *invalidated by 1980 court decision, repealed in 1984*
- Arkansas – *repealed in 2017*
- Colorado – *repealed in 1985*
- Florida – *repealed in 1979*
- Georgia
- Idaho – *repealed in 1985*
- Indiana – *repealed in 2015*
- Iowa
- Kansas – *repealed in 1987*
- Kentucky – *repealed in 2017*
- Louisiana – *repealed in 1988*
- Michigan – *repealed in 2018*
- Mississippi
- New Hampshire – *repealed in 1985*
- North Carolina
- North Dakota
- Oklahoma – *invalidated by 1995 court decision*
- South Carolina
- South Dakota
- Utah – *repealed in 1981*
- Wisconsin – *repealed in 2017*
- Virginia
- West Virginia – *repealed in 2016*

## States with Prevailing Wage Laws but no Contract Threshold

- Illinois
- Massachusetts
- Nebraska
- New York
- Oregon<sup>4</sup>
- Washington<sup>3</sup>
- Texas

## ECONOMIC IMPACTS OF PREVAILING WAGES

The committee received a report from Kevin Duncan, Ph. D., Professor of Economics at Colorado State University-Pueblo. His report examined the costs and benefits of prevailing wage laws, reviewing data and research regarding the effect of prevailing wage laws for local contractors, formal training and injuries, payroll tax revenue, and military veterans employed in construction. The study also addressed the effect of changes to contract thresholds on work for local contractors and construction costs.

For the [full report](#) and a copy of Professor Duncan's [presentation](#), see the [SJ13 Study Page](#).

## COMPLIANCE SYSTEMS

The committee investigated how the department ensures contractors meet prevailing wage law requirements. The Department of Labor and Industry testified the primary compliance mechanism utilizes 5 field officers who travel to project job sites. The department may also audit projects and receives voluntary complaints from the public.

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<sup>3</sup> Washington law does have a contract threshold of \$25,000 only for state college/university construction.

<sup>4</sup> Oregon does not list a specific contract threshold but does specify that major renovations over \$50,000 and any project that uses \$750,000 of public funds are considered public works.

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The committee received presentations from the Washington State Department of Labor and Industries and the Montana Department of Transportation (MDT) regarding the software systems used for prevailing wage compliance. Washington recently implemented a custom-built software system to house certified payroll and other accounting information for public works projects. Testimony stated the system allows the department to run compliance checks more efficiently and effectively while building a datastore of project information. The Montana Department of Transportation (MDT) also reviewed AASHTOWare, a program recently implemented in 2019. The MDT and Montana contractors testified the program creates efficiencies at both department and on-the-job levels and quickly alerts parties to discrepancies, allowing for a more effective compliance process.

The committee determined implementing a prevailing wage compliance software system for general construction public works projects may not only aid the compliance process but also capture useful data for future policy study. To meet that end, the committee requested that the Department of Labor and Industries research available software systems that may meet general construction needs and illicit bids from software system companies that meet the needs of the department.

*[To be updated after the July & September meetings]*

### CONCLUSIONS

The committee moved to introduce *[insert bill name and link here]* to the 68<sup>th</sup> Legislature. *[Additional bill draft information included after the July meeting]*

The committee also moved to send a letter to the Economic Affairs Interim Committee, who oversees the Department of Labor and Industry, to direct the department to investigate prevailing wage compliance software systems.

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## APPENDIX A:

### LOCAL GOVERNMENT INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Local Government Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

#### Senate Members

**Senator Mark Sweeney (D) Vice Chair  
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