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Local Government Interim Committee

Toni Henneman

FINAL REPORT TO THE 68TH MONTANA LEGISLATURE

SJ 13: STUDY OF PREVAILING WAGE LAWS



P.O. Box 201706
Helena, MT 59620-1706
Phone: (406) 444-3064
Fax: (406) 444-3971

WEBSITE: [HTTPS://LEG.MT.GOV/COMMITTEES/INTERIM/LGIC](https://leg.mt.gov/committees/interim/lgic)

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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 2021-2022 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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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 and 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 21st out of 28 study resolutions in the postsession poll of legislators. The Legislative Council assigned SJ 13 to the Local Government Interim Committee, the second of three assigned studies. The committee moved to devote roughly 15% of committee time to SJ 13.

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), MCA, for:

- building construction services described in [18-2-413](#), MCA;
- heavy construction services and 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 construction and highway construction, while nonconstruction requirements are outlined in 18-2-415, MCA. The Administrative Rules of Montana (ARM) [24.17.119](#), [24.17.120](#), [24.17.121](#), and [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 base pay; the combined sum then becomes the new base wage rate to be paid for all hours worked on

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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 allowances, although part of the definition is the same. "Travel allowance" 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," which is 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.

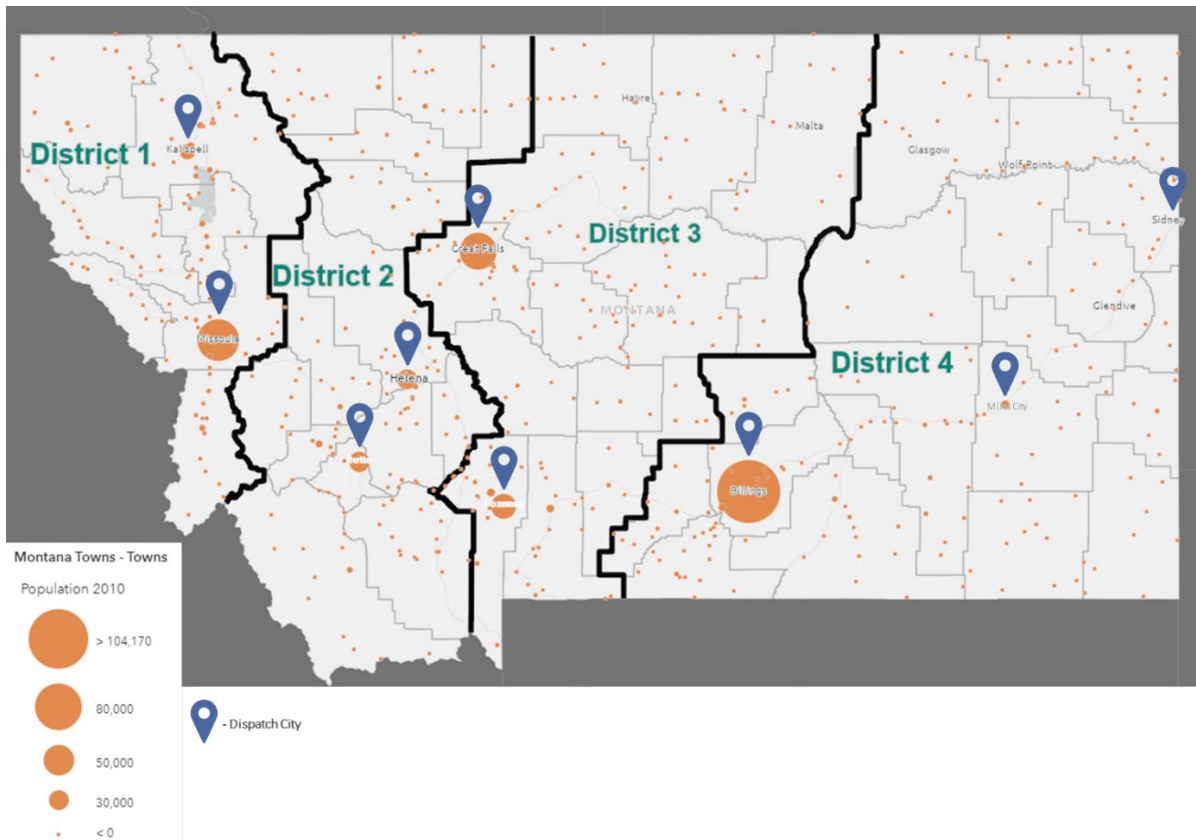
Prior to the 2021 legislative session, the definitions of "zone pay," "travel allowances," and a list of "dispatch cities" was promulgated in rule. However, [HB 201](#), enacted during the 2021 legislative session, added the calculation of zone pay, the rate of travel allowances, and a list of dispatch cities to statute, which was 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 include a preference for Montana labor, under [18-2-403](#) 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.

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States with Contract Threshold Amounts¹

State	Threshold Amount
California	\$1,000 ²
Rhode Island	\$1,000
Hawaii	\$2,000
New Jersey	\$16,263 for municipalities \$2,000 for nonmunicipal public bodies
Alaska	\$25,000
Minnesota	\$25,000 when more than one trade is involved \$2,500 when a single trade is involved
Montana	\$25,000
Pennsylvania	\$25,000
Maine	\$50,000
Tennessee	\$50,000, but only for highway construction. No prevailing wage on nonhighway construction.
New Mexico	\$60,000
Missouri	\$75,000
Nevada	\$100,000
Vermont	\$100,000 or at least 50% funded by a capital construction act and costing more than \$200,000
Washington, D.C.	\$100,000
Wyoming	\$100,000
Ohio ³	\$250,000 for new construction

¹ Information in table taken from U.S. Department of Labor, Wage and Hour Division. (2021, January 1). "Dollar Threshold Amount for Contract Coverage". Retrieved from <https://www.dol.gov/agencies/whd/state/prevailing-wages>.

² 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.

³ 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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	\$75,000 for remodeling School construction exempt
Delaware	\$500,000 for new construction \$45,000 for alteration, repair, demolition, reconstruction, etc.
Maryland	\$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)
Connecticut	\$1,000,000 for new construction \$100,000 for remodeling

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
- Oregon⁵
- Washington⁴
- Texas

⁴ Washington law does have a contract threshold of \$25,000 only for state college/university construction.

⁵ 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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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.

While the full report provides additional information, the executive summary included the following main points:

- 78 percent of studies based on school, highway, assorted municipal building, and affordable housing construction found that prevailing wage standards are not associated with increased costs;
- the U.S. Census Bureau indicates that blue-collar construction worker wages and benefits average 23 percent of the total cost of all types of construction, while overall labor costs account for roughly 60 percent of total production costs;
- studies of school, highway, and a variety of other public structure construction projects indicate that prevailing wage standards are not associated with reduced bid competition;
- prevailing wage policies may play a role in economic development since the spending of local construction wages stimulates local retail and service industries;
- while little specific research exists, one study from Nevada indicates the economic impacts of changes in minimum project contract thresholds are associated with reductions in the value of all construction work in a state with low contract thresholds;
- veteran construction workers in states with prevailing wage laws of at least average strength earn approximately 9 percent more in wage and salary income compared to veteran construction workers in states with relatively weak or no prevailing wage laws;
- typical apprentice wage rates under prevailing wage laws are based on a fraction of the corresponding journeyman rate, resulting in wage savings that create a high demand for apprentices on public works projects and drive skill development for the entire construction industry; and
- prevailing wage laws in Montana require contractors to submit weekly certified payroll records, which discourages contractors who engage in underground labor market practices from participating in projects that are covered by the prevailing wage standard.

For the [full report](#) and a copy of Professor Duncan's [presentation](#), see the [SJ 13 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

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utilizes five field officers who travel to project job sites. The department may also audit projects and receives voluntary complaints from the public.

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 MDT also reviewed AASHTOWare, a program recently implemented in 2019. The MDT and Montana contractors testified the program creates efficiencies at both department levels and on-the-job levels and quickly alerts parties to discrepancies, allowing for a more effective compliance process.

The committee considered the implementation of a prevailing wage compliance software system for general construction public works projects to aid the compliance process and capture data for future policy study. To meet that end, the committee requested that the Department of Labor and Industry research available software systems that may meet general construction needs and elicit bids from software system companies that meet the needs of the department.

CONCLUSIONS

The committee drafted [PD 4](#), a bill to raise the contract threshold amount from \$25,000 to \$80,000. After the committee discussed the draft at length and received public comment, the draft was tabled at the July 13, 2022, meeting.

The committee 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.

At the final Local Government Interim Committee meeting on September 7, 2022, Eric Strauss, Employee Relations and Business Standards Division Administrator, updated the committee on the compliance software system search. At least one company was identified to meet the needs of the department. Subscription and licensing costs for the software is roughly \$250,000 per year with no need for additional full-time employees. Mr. Strauss testified the department could utilize an existing software program, but the system would require additional customization and would not be as robust as other offerings.

Mr. Strauss also recommended if the committee pursues requiring the use of a prevailing wage compliance software system, it should also consider a funding mechanism to offset software costs and add policy that requires all contractors to submit certified payroll records to the department. When asked whether a new compliance system would provide savings to the state, Mr. Strauss commented that the system itself may not be considered an immediate cost-savings tool, but the system may produce enhanced compliance which could provide future benefits.

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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
July 2021-May 2022**

PO Box 681
Philipsburg, MT 59858-0681

**Senator Christopher Pope (D), Vice Chair
June 2022-September 2022**

PO Box 6546
Bozeman, MT 59771-6546
Ph: (406) 581-8739
Email: Chris.Pope@mtleg.gov

Senator Kenneth Bogner (R)

1017 Pleasant St
Miles City, MT 59301-3414
Ph: (406) 916-9690
Email: kenneth.bogner@mtleg.gov

Senator Ellie Boldman (D)

1125 Helen Ave
Missoula, MT 59801
Ph: (406) 218-9608
Email: EllieMarieBoldman@gmail.com

Senator John Esp (R)

PO Box 1024
Big Timber, MT 59011
Ph: (406) 932-5662
Email: johnesp2001@yahoo.com

House Members

Representative Geraldine Custer (R), Chair

PO Box 1075
Forsyth, MT 59327-1075
Ph: (406) 351-1235
Email: jericester@yahoo.com

Representative Larry Brewster (R)

1216 Babcock Blvd
Billings, MT 59105
Ph: (406) 670-0929
Email: Larry.Brewster@mtleg.gov

Representative Mary Ann Dunwell (D)

2811 Alexis Ave
Helena, MT 59601-8655
Ph: (406) 461-5358
Email: maryann.dunwell@mtleg.gov

Representative Dave Fern (D)

211 Dakota Ave
Whitefish, MT 59937
Ph: (406) 212-0674
Email: fern@montanasky.net

Representative Steve Gist (R)

339 1st St N
Cascade, MT 59421
Ph: (406) 231-4050
Email: steve.gist@mtleg.gov

Representative Kathy Kelker (D)

2438 Rimrock Rd.
Billings, MT 59102
Ph: (406) 652-6716
Email: Kathy.Kelker@mtleg.gov

Local Government Interim Committee Staff

Julie Johnson, Attorney | Toni Henneman, Legislative Research Analyst | Fong Hom, Secretary