



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 1, 2, and 3 (as introduced 1-20-15)  
Sponsor: Senator Arlan Meekhof (S.B. 1)  
Senator Peter MacGregor (S.B. 2)  
Senator Dave Robertson (S.B. 3)  
Committee: Michigan Competitiveness

Date Completed: 5-12-15

### **CONTENT**

**Senate Bill 3 would repeal Public Act 166 of 1965, commonly known as the prevailing wage law. Senate Bills 1 and 2 would amend the Revised School Code and the Economic Development Corporations Act, respectively, to delete requirements related to the prevailing wage law.**

Senate Bills 1 and 2 are tie-barred to Senate Bill 3.

#### **Senate Bill 3**

Under the prevailing wage law, contracts for construction projects that are financed or financially supported by the State must require the contractor to pay construction workers wages and fringe benefits that are not less than the wages and benefits prevailing in the locality where the work is to be performed. The prevailing wages and fringe benefits must be determined by the Department of Licensing and Regulatory Affairs based on the rates under collective bargaining agreements that cover the locations of the State projects. (The law is described in detail below.)

The bill would repeal the law effective July 4, 2015.

#### **Senate Bill 1**

The Revised School Code requires a public school academy, urban high school academy, school of excellence, and strict discipline academy to comply with all applicable laws, including statutes listed in the Code. The bill would delete the prevailing wage law from those listed.

#### **Senate Bill 2**

The Economic Development Corporations Act requires an economic development corporation to prepare a project plan and requires the plan to contain certain information, including a statement of the proposed method of financing the project. The statement must indicate the payment to construction workers of the prevailing wage and fringe benefit rates for the same or similar work in the locality where the work is to be performed. The bill would delete a requirement that those rates be determined under the prevailing wage law.

MCL 380.503 et al. (S.B. 1)  
125.1608 (S.B. 2)  
408.551-408.558 (S.B. 3)

## **BACKGROUND**

### Requirement to Pay Prevailing Wage

Public Act 166 of 1965, the prevailing wage law, contains the following language:

Every contract executed between a contracting agent and a successful bidder as contractor and entered into pursuant to advertisement and invitation to bid for a state project which requires or involves the employment of construction mechanics, other than those subject to the jurisdiction of the state civil service commission, and which is sponsored or financed in whole or in part by the state shall contain an express term that the rates of wages and fringe benefits to be paid to each class of mechanics by the bidder and all of his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed.

In other words, to be subject to the Act, a project must meet all of the following criteria:

- Be with a "contracting agent".
- Be entered into after advertisement or invitation to bid.
- Be a "state project".
- Require the employment of "construction mechanics".
- Be entirely or partly sponsored or financed by the State.

The Act defines "contracting agent" as any officer, school board, board or commission of the State, or a State institution supported in whole or in part by State funds, authorized to enter into a contract for a State project or to perform a State project by the direct employment of labor.

(According to the "Act 166 Policy Manual" of the Wage and Hour Division in the Department of Licensing and Regulatory Affairs, "Michigan's prevailing wage law covers State, public schools, charter schools, community colleges, state colleges and university projects, paid for by state funds or state backed bonds.<sup>1</sup> The manual also notes that the Act does not cover construction projects initiated by cities, townships, or counties, or by other entities not defined in the Act as "contracting agents".<sup>2</sup>)

Public Act 166 defines "state project" as new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a contracting agent.

"Construction mechanic" means a skilled or unskilled mechanic, laborer, worker, assistant, or apprentice working on a State project. The term does not include executive, administrative, professional, office, or custodial employees.

---

<sup>1</sup> A 1997 decision of the Michigan Supreme Court held that a State university is considered a contracting agent under the Act (*Western Michigan University Board of Control v. State of Michigan*, 455 Mich 531). The "Act 166 Policy Manual" cites this decision and states, "Projects of public Universities and colleges are generally considered state projects unless the documentation shows that the source of funding is federal funds."

<sup>2</sup> The manual also points out that political subdivisions or governmental units that are not contracting agents may have their own prevailing wage requirements, but those requirements are not subject to Public Act 166.

"Locality" means the county, city, village, township, or school district in which the physical work on a State project is to be performed.

### Determination of Prevailing Rates

Before a contracting agent advertises for bids on a State project, the contractor must have the Department of Licensing and Regulatory Affairs (LARA) determine the prevailing rates of wages and fringe benefits for all classes of construction mechanics called for by the contract.<sup>3</sup> A schedule of these rates must be included in the specifications for the work to be performed. If a contract is not awarded or construction is not begun within 90 days after LARA's determination, the Department must make a redetermination before the contract is awarded.

The Department is required to establish prevailing wages and fringe benefits "at the same rate that prevails on projects of a similar character in the locality under collective agreements or understandings between bona fide organizations of construction mechanics and their employers". That is, prevailing rates are compiled from the rates contained in collectively bargained agreements that cover the locations of the State projects.

### Exemption

The Act does not apply to contracts on State projects that require the payment of prevailing wages as determined by the U.S. Secretary of Labor under the Federal Davis-Bacon Act, or that contain minimum wage schedules that are the same as prevailing wages in the locality as determined by collective bargaining agreements or understandings between bona fide organizations of construction mechanics and their employers.

### Other Provisions

The Act requires every contractor and subcontractor to conspicuously post on the construction site a copy of all prevailing wages and fringe benefit rates prescribed in a contract. Every contractor and subcontractor also must keep an accurate record of the name and occupation of, and the actual wages and benefits paid to, each construction mechanic employed by the contractor or subcontractor in connection with the contract.

A contracting agent, by giving written notice to the contractor and its sureties known to the agent, may terminate the contractor's right to proceed under the part of the contract for which less than the prevailing wage and benefits have been or will be paid. The contracting agent may complete the contract by an agreement with another contractor or otherwise, and the original contractor and its sureties are liable for any excess cost that results.

The Act makes it a misdemeanor to violate the Act but does not prescribe a penalty. (Under the Michigan Penal Code, a misdemeanor for which a penalty is not prescribed is punishable by imprisonment for up to 90 days or a maximum fine of \$500, or both.)

### Complaints

According to the Department, a person who has not been paid the prevailing rate on a State project may file a complaint with the Wage and Hour Division within LARA. The Department will investigate and attempt to resolve the dispute informally. If voluntary resolution is not successful, the complaint will be referred to the prosecuting attorney for enforcement action.

Legislative Analyst: Suzanne Lowe

---

<sup>3</sup> The Act requires the rates to be determined by the "Commissioner", which originally referred to a former Department of Labor. As a result of transfers made under several Executive Orders, the Wage and Hour Division in LARA currently is responsible for determining prevailing rates.

## **FISCAL IMPACT**

The bills would have an indeterminate, but likely positive, fiscal impact on the State and local units of government. The bills would eliminate the requirement that workers on State-funded construction projects be paid wages and fringe benefits that meet or exceed levels established by the Wage and Hour Division within the Department of Licensing and Regulatory Affairs. Affected construction projects include State buildings, universities, roads, and public schools. Additionally, projects undertaken by economic development corporations, public school academies, and certain other types of schools are currently subject to these requirements as well. The bills would remove the prevailing wage requirements, and could produce potential savings on these types of projects. The amount of potential savings is indeterminate and dependent on the wages ultimately paid to workers who otherwise would have been paid at the prevailing wage rates. Additionally, lack of available data makes it difficult to estimate with any certainty how much would be saved if the bills were enacted. Factors that could affect the amount of actual savings include the degree of competition among contractors in bidding on projects and the strength of the labor market.

It should be noted that projects funded with Federal funds still would be subject to the Federal Davis-Bacon Act, which establishes prevailing wages for construction projects over \$2,000 that are funded wholly or in part with Federal funds. Prevailing wages under the Davis-Bacon Act are fairly similar to Michigan's prevailing wages, so it is unlikely that the bills would produce significant savings for State or local projects that receive Federal funds. The largest category of projects that would continue to be affected by prevailing wages due to the use of Federal funds is construction and maintenance of State trunkline highways; most of these projects receive Federal funds.

Fiscal Analyst: Joe Carrasco  
Josh Sefton

S1516\1sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.