

REQUIRE PREVAILING WAGE FOR STATE CONSTRUCTION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 6 (S-10) as passed by the Senate

Sponsor: Sen. Veronica Klinefelt

House Committee: Labor

Senate Committee: Labor

Complete to 3-21-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 6 would create a new act that would require a policy commonly known as “prevailing wage” for *state construction projects* receiving public funding. The new act would be similar to 1965 PA 166, which was repealed in 2018 (see **Background**, below). Under the new act, every contract for such a project that requires the employment of *construction mechanics* would have to include a term stating that the rates of wages and fringe benefits to be paid to each class of construction mechanics must equal or exceed the wage and benefit rates that are standard in the locality where the work is to be performed.

State construction project would mean any 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. It would not include projects that are subject to the jurisdiction of the Michigan Civil Service Commission.

Construction mechanic would mean a mechanic, laborer, worker, helper, assistant, or apprentice working on state projects. It would not include executive, administrative, professional, office, and custodial employees.

Prevailing wage determination

The Department of Labor and Economic Opportunity (LEO) would be required to establish wages and benefits at the rate that prevails on projects of a similar character in the relevant locality under collective bargaining agreements (CBAs) or understandings between labor organizations of construction mechanics and their employers. If no such CBAs or understandings exist, then LEO would determine the prevailing wage for that locality by using the rates and benefits that prevail in the same or most similar employment in the nearest and most similar neighboring locality in which a CBA agreement or understanding exists.

Before a *contracting agent* could advertise for bids on a state project, LEO would have to determine the prevailing rates for wages and fringe benefits for all classes of construction mechanics that would be included in the contract. A rate schedule would have to be included in the bidding forms. If a contract is not awarded or construction has not begun within 90 days of making the determination, LEO would have to redetermine the prevailing wage and fringe benefit rates.

Contracting agent would mean any officer, school board, state board or commission, or state institution supported by state funds that is authorized to enter into a contract for a state project or perform a state project by the direct employment of labor.

All determined wages and benefits would have to be filed with LEO and publicly accessible.

Compliance and recording requirements

Contractors and subcontractors would have to keep a copy of all prevailing wage and fringe benefit rates included in the contract posted in a conspicuous area at the construction site. They would also have to keep a record of the name and occupation of, and wages and benefits paid to, each construction mechanic employed in connection with the contract. This record would have to be available for inspection by the contracting agent and LEO.

If a lower rate than the prevailing wage or fringe benefit rate has been or will be paid, a contracting agent could terminate the contractor's right to proceed under that portion of the contract after providing a written notice. The agent could then complete the contract through a separate agreement with another contractor. The original contractor and any sureties would be liable for any excess costs resulting from the termination.

A violation of the act would be punishable by a civil fine of up to \$5,000, and the attorney general or relevant county prosecutor could bring an action to collect the fine. Contractors and their subcontractors would each be independently liable for any violations. Contractors and subcontractors could not discharge, discipline, or otherwise discriminate against a construction mechanic, or threaten to take any of those actions, for reporting a real or suspected violation of the act.

Work project appropriation

The bill would appropriate \$75,000 to LEO from the general fund as a one-time work project appropriation under section 451a of the Management and Budget Act. The purpose of the work project would be to implement and communicate information about the act, accomplished either by state employees or by contract, with an estimated completion date of December 31, 2024.

(This appropriation would have the effect of making the bill immune from referendum under section 9 of Article II of the state constitution.)

Exempt contracts

Contracts with provisions requiring prevailing wage payments determined by the federal government under the federal Davis-Bacon Act or with minimum wage schedules that are the same as the prevailing wages in the relevant locality would be exempt from the act.¹ The act would not apply to any contracts entered or bids made before the effective date of the act.

BACKGROUND:

1965 PA 166 required the use of prevailing wages for state-funded construction projects until 2018, when the Michigan legislature adopted an initiative petition repealing the act.² Supporters of the repeal argued that the 1965 law was outdated, and a repeal of prevailing wage would save taxpayer money on public works projects and increase competition for the projects. In 2021, however, Governor Whitmer announced that the Department of Technology, Management and Budget (DTMB) would resume the prevailing wage requirement for state

¹ The Davis-Bacon Act requires contractors and subcontractors working on federally funded construction projects to pay locally prevailing wages: <https://www.dol.gov/agencies/whd/law-and-regulations/laws/dbra>.

² A summary of the petition can be found [here](#).

construction contracts for projects greater than \$50,000 beginning in 2022.³ The governor argued that while the law requiring prevailing wage was no longer in place, DTMB still had the authority to adopt such a policy in overseeing state contracts.

FISCAL IMPACT:

Impact on Department of Labor and Economic Opportunity

Senate Bill 6 would likely result in increased costs for the Department of Labor and Economic Opportunity, for the implementation and administration of prevailing wage laws. LEO estimates that additional staff within the Wage and Hour Division would be required on an ongoing basis to administer and enforce prevailing wage on public projects, including specific projects conducted by school districts and local governments. Information technology (IT) updates would also be necessary to implement and administer the bill. Preliminary estimates from LEO indicate that costs in the first year could total approximately \$500,000, which would support the necessary staffing and IT modifications.

The bill would appropriate \$75,000 to LEO from the general fund as a one-time work project appropriation. The purpose would be to implement and communicate information about the act, accomplished either by state employees or by contract, with an estimated completion date of December 31, 2024.

Impact on State and Local Expenditures

Senate Bill 6 would have an indeterminate fiscal impact on state and local expenditures for construction projects (i.e., those by state departments, public and charter schools, community colleges, and universities financially sponsored by the state). As of March 1, 2022, the state has a prevailing wage requirement for any construction-based contracts issued by DTMB, which would limit any current fiscal impact on projects subject to that procurement policy. The provisions of the bill would broaden prevailing wage applicability to other state-funded projects. However, any fiscal impact would be project-specific and difficult to determine.

The vast academic and policy literature pertaining to the economic effects and fiscal impacts of prevailing wage laws, or lack thereof, is decidedly contested, lacking consensus on proper research methods and appropriate sources of data, let alone findings and conclusions drawn from such data via such methods. The House Fiscal Agency previously compiled a partial bibliography of studies of the impacts of prevailing wages laws, which can be accessed online at https://www.house.mi.gov/hfa/PDF/Alpha/Prevailing_Wage_Memo.pdf

Impact on Transportation

Senate Bill 6 would likely have a minimal fiscal impact on Michigan Department of Transportation (MDOT) construction contracts. Much of MDOT's transportation program is carried out by private construction contractors working under contract with MDOT. All of MDOT's state trunkline road and bridge capital construction, rehabilitation, and reconstruction program is performed by private contractors. Most of MDOT's Capital Preventive Maintenance (CPM) program is also performed by private contractors. MDOT also administers many capital construction and reconstruction projects on behalf of local road agencies, airport improvement projects on behalf of local airports, and capital rail projects.

³ Information on this requirement can be found [here](#), and wage rates for DTMB-funded construction projects for each county can be found [here](#).

Over the five fiscal years ending September 30, 2022, total MDOT construction contracts, based on awarded bid totals, have averaged \$2.15 billion—with a peak in FY 2021-22 at \$2.91 billion. All of these construction contracts are awarded through open competitive selection, and most of them were supported, at least in part, with federal funds.

Projects funded in any part with federal aid are subject to the prevailing wage requirements of the federal Davis-Bacon Act (40 USC 3141 et seq.), which requires that all contractors and subcontractors performing work on federal contracts or federally assisted contracts in excess of \$2,000 pay not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination. MDOT awards relatively few construction contracts that are not funded, at least in part, with federal aid, and thus almost all of MDOT's construction contracts, including projects administered by MDOT on behalf of local units of government, would be subject to the federal Davis-Bacon prevailing wage requirements. Consequently, the 2018 repeal of 1965 PA 166, and the restoration of prevailing wage requirements in Senate Bill 6, would appear to have a minimal fiscal impact on capital construction contracts administered by MDOT.

Impact on Corrections and the Judiciary

Senate Bill 6 would have an indeterminate fiscal impact on the state and on local units of government. The impact would depend on the number of individuals ordered to pay a fine. Because the bill does not specify where the revenue from a civil fine would be dedicated, it is assumed the majority of the revenue would increase funding for public and county law libraries, and a small portion of the revenue would be deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

Legislative Analyst: Holly Kuhn
Fiscal Analysts: Marcus Coffin
Ben Gielczyk
William E. Hamilton
Robin Risiko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.