

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4007**

A bill to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; to make appropriations for the implementation of this act; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Commissioner" means the department of labor and economic
3 opportunity.

4 (b) "Construction mechanic" means a skilled or unskilled
5 mechanic, laborer, worker, helper, assistant, or apprentice working
6 on a state project but shall not include executive, administrative,
7 professional, office, or custodial employees.

8 (c) "Contracting agent" means any officer, school board, board

1 or commission of the state, or a state institution supported in
2 whole or in part by state funds, authorized to enter into a
3 contract for a state project or to perform a state project by the
4 direct employment of labor.

5 (d) "Locality" means the county, city, village, township, or
6 school district in which the physical work on a state project is to
7 be performed.

8 (e) "State project" means new construction, alteration,
9 repair, installation, painting, decorating, completion, demolition,
10 conditioning, reconditioning, or improvement of public buildings,
11 schools, works, bridges, highways, or roads authorized by a
12 contracting agent.

13 Sec. 2. (1) Every contract executed between a contracting
14 agent and a successful bidder as contractor and entered into
15 pursuant to advertisement and invitation to bid for a state project
16 which requires or involves the employment of construction
17 mechanics, other than those subject to the jurisdiction of the
18 state civil service commission, and which is sponsored or financed
19 in whole or in part by the state shall contain an express term that
20 the rates of wages and fringe benefits to be paid to each class of
21 mechanics by the bidder and all of its subcontractors, shall be not
22 less than the wage and fringe benefit rates prevailing in the
23 locality in which the work is to be performed. Contracts on state
24 projects which contain provisions requiring the payment of
25 prevailing wages as determined by the United States Secretary of
26 Labor pursuant to 40 USC 3141 to 3148 or which contain minimum wage
27 schedules which are the same as prevailing wages in the locality as
28 determined by collective bargaining agreements or understandings
29 between bona fide organizations of construction mechanics and their

1 employers are exempt from the provisions of this act.

2 (2) A contractor or subcontractor shall pay to its
3 construction mechanics wages and fringe benefits at the rates
4 required under an applicable contract for a state project.

5 Sec. 3. A contracting agent, before advertising for bids on a
6 state project, shall have the commissioner determine the prevailing
7 rates of wages and fringe benefits for all classes of construction
8 mechanics called for in the contract. A schedule of these rates
9 shall be made a part of the specifications for the work to be
10 performed and shall be printed on the bidding forms where the work
11 is to be done by contract. If a contract is not awarded or
12 construction undertaken within 90 days of the date of the
13 commissioner's determination of prevailing rates of wages and
14 fringe benefits, the commissioner shall make a redetermination
15 before the contract is awarded.

16 Sec. 4. The commissioner shall establish prevailing wages and
17 fringe benefits at the same rate that prevails on projects of a
18 similar character in the locality under collective agreements or
19 understandings between bona fide organizations of construction
20 mechanics and their employers. Such agreements and understandings,
21 to meet the requirements of this section, shall not be controlled
22 in any way by either an employee or employer organization. If the
23 prevailing rates of wages and fringe benefits cannot reasonably and
24 fairly be applied in any locality because no such agreements or
25 understandings exist, the commissioner shall determine the rates
26 and fringe benefits for the same or most similar employment in the
27 nearest and most similar neighboring locality in which such
28 agreements or understandings do exist. The commissioner may hold
29 public hearings in the locality in which the work is to be

1 performed to determine the prevailing wage and fringe benefit
2 rates. All prevailing wage and fringe benefit rates determined
3 under this section shall be filed with the commissioner and made
4 available to the public.

5 Sec. 5. Every contractor and subcontractor shall keep posted
6 on the construction site, in a conspicuous place, a copy of all
7 prevailing wage and fringe benefit rates prescribed in a contract
8 and shall keep an accurate record showing the name and occupation
9 of and the actual wages and benefits paid to each construction
10 mechanic employed by it in connection with said contract. This
11 record shall be available for reasonable inspection by the
12 contracting agent or the commissioner.

13 Sec. 6. The contracting agent, by written notice to the
14 contractor and the sureties of the contractor known to the
15 contracting agent, may terminate the contractor's right to proceed
16 with that part of the contract, for which less than the prevailing
17 rates of wages and fringe benefits have been or will be paid, and
18 may proceed to complete the contract by separate agreement with
19 another contractor or otherwise, and the original contractor and
20 the original contractor's sureties shall be liable to the
21 contracting agent for any excess costs occasioned thereby.

22 Sec. 7. A contractor or subcontractor shall not discharge,
23 discipline, retaliate against, or otherwise discriminate against a
24 construction mechanic, or threaten to do any of these things,
25 because the construction mechanic reported or was about to report a
26 violation or suspected violation of this act.

27 Sec. 8. (1) A person that violates this act is subject to a
28 civil fine of not more than \$5,000.00. The prosecutor of the county
29 in which the violation occurred or the attorney general may bring

1 an action to collect the fine.

2 (2) A contractor and its subcontractor are jointly and
3 severally liable for a violation of this act.

4 Sec. 9. (1) Except as otherwise provided in subsection (2),
5 the provisions of this act shall not apply to contracts entered
6 into or the bids made before the effective date of this act.

7 (2) This act does not apply to a state project if the state
8 project was paid for, in whole or in part, from revenue from a
9 millage that meets both of the following conditions:

10 (a) The millage was authorized under the revised school code,
11 1976 PA 451, MCL 380.1 to 380.1852.

12 (b) The millage was authorized before the effective date of
13 this act.

14 Sec. 10. The commissioner has the authority to administer and
15 enforce this act, including the authority to establish and enforce
16 the payment of the prevailing wages and fringe benefits at the same
17 rate that prevails on projects of a similar character in the
18 locality under collective agreements or understandings between bona
19 fide organizations of construction mechanics and their employers.

20 Sec. 11. If a contracting agent does not include in the
21 contract documents or bidding forms the requirement to pay
22 prevailing wages and fringe benefits as required under section 2 or
23 the schedule of prevailing wages and fringe benefits as required
24 under section 3, the contracting agent, in addition to injunctive
25 relief, is liable for any loss of wages and fringe benefits
26 suffered by construction mechanics on the project as a result of
27 the contracting agents' violation. An aggrieved construction
28 mechanic, in addition to any other remedies provided in this act or
29 in law, may bring a civil action in a court of competent

1 jurisdiction against a contracting agent for the violation and may
2 recover actual damages, interest assessed up to 10% per annum,
3 costs, and attorney fees at trial and on appeal.

4 Sec. 12. Every contract for a state project must contain an
5 express term providing that construction mechanics are intended
6 beneficiaries of the contractual prevailing wage, fringe benefit,
7 and nondiscrimination nonretaliation requirements and further
8 providing that any construction mechanic aggrieved by the failure
9 of a contractor or subcontractor to pay prevailing wages or
10 benefits as specified in the contract, or by a violation of section
11 7, in addition to any other remedies provided in this act or by
12 law, may bring an action in a court of competent jurisdiction
13 against the contractor or subcontractor for damages or injunctive
14 relief and may be awarded reinstatement or other appropriate
15 relief, and all damages sustained, together with actual costs and
16 attorney fees at trial and on appeal.

17 Sec. 13. (1) In addition to any other penalty provided by law,
18 the commissioner may assess a civil penalty of not more than
19 \$5,000.00 for each violation of this act and an additional 10%
20 penalty as determined by the commissioner.

21 (2) A civil penalty issued must be paid to the commissioner,
22 made payable to the state of Michigan and credited to the State
23 General Fund.

24 (3) A civil penalty owed under this act is due to the
25 commissioner not later than 15 working days after the date the
26 penalty is issued and not subject to further appeals.

27 (4) If the penalty remains unpaid beyond the period specified
28 in subsection (3), the commissioner shall issue a letter to the
29 employer demanding payment not later than 20 days after the date of

1 the letter.

2 (5) If the penalty remains unpaid following the period
3 specified in subsection (4), the department of treasury shall
4 institute proceedings to collect the amount assessed as a civil
5 penalty. The department of treasury shall offset the amount of the
6 penalty against money owed by the state to the employer for any
7 reason. The department of treasury shall request the attorney
8 general recover the amount of the penalty remaining unpaid, after
9 offsets, by instituting a civil action in a court of competent
10 jurisdiction or in Ingham County.

11 Sec. 14. The commissioner or the commissioner's designee shall
12 administer and enforce this act and may investigate and ascertain
13 wages of employees of an employer subject to this act. The
14 commissioner or the commissioner's designee shall have the right to
15 enter any project covered by this act during normal hours of
16 operation of the project for the purposes of inspecting payroll
17 records, interviewing employees, conducting wage surveys of
18 employees, or all other actions reasonably related to the
19 enforcement of this act. The contracting agency, contractor, or
20 subcontractor shall provide to the commissioner or the
21 commissioner's designee any records requested necessary to enforce
22 this act, including certified payroll, fringe benefit information,
23 or other information necessary to ensure compliance with this act.

24 Sec. 15. For the purpose of an investigation or proceeding
25 under this act, the commissioner or the commissioner's designee may
26 administer oaths or affirmations, subpoena witnesses, compel their
27 attendance, take evidence, and require the production of records or
28 other documents that the commissioner considers relevant or
29 material to the inquiry.

1 Sec. 16. An employee believing that a violation of this act
2 has occurred, or a third party having credible information that a
3 violation has occurred, may file a complaint with the commissioner
4 that a violation may have occurred. Employees filing a complaint
5 may keep their identity confidential from release to the employer
6 upon request to the commissioner. Upon filing, the commissioner may
7 initiate an investigation to ascertain whether a violation of the
8 act has occurred, and may order the contracting agent, contractor,
9 or subcontractor, or any of the foregoing parties jointly and
10 severally to make employees' amounts determined to be owing whole.

11 Sec. 17. The commissioner must not accept or investigate
12 complaints received more than 3 years after the date of the alleged
13 violation or the last date on which a violation could have
14 occurred, whichever is later.

15 Sec. 18. During the course of an investigation, the
16 commissioner shall have the right to interview employees,
17 supervisors, and others, in private without third parties to
18 ascertain the wages, benefits, classification, or other information
19 relevant to enforcement of this act.

20 Sec. 19. An employee who believes they have been discharged,
21 disciplined, or otherwise experienced a detrimental change in their
22 employment status due to filing a complaint, participating in an
23 investigation, or having raised concerns with their payment of
24 wages and fringe benefits covered by this act with their employer,
25 may file a complaint with the commissioner not later than 90 days
26 after the believed retaliatory act. There is a rebuttable
27 presumption of retaliation if an employee was removed from the
28 project or not provided similar overtime, work hours, or other
29 opportunities available prior to the retaliatory action. If the

1 commissioner determines that retaliation has occurred, the
2 commissioner may order rehiring, reinstatement, or other equitable
3 remedy, including full back pay or lost earnings as a result of the
4 retaliatory act.

5 Sec. 20. Unless an appeal is in process, the commissioner may
6 enforce a final order under this act in a court of competent
7 jurisdiction or in Ingham County.

8 Sec. 21. (1) The employer or employee may request a review of
9 the department's determination not later than 14 days after
10 notification is issued. If a request for a review by the employer
11 or employee is not received by the department within 14 days, in
12 the absence of a showing of good cause for a late request, the
13 department's determination is final.

14 (2) For the purpose of an investigation or proceeding under
15 this act, the commissioner or an authorized representative of the
16 commissioner may administer oaths and affirmations, subpoena
17 witnesses, compel their attendance, take evidence, and require the
18 production of records or other documents that the department
19 considers relevant or material to the inquiry.

20 (3) The employee, employer, and the department shall be
21 parties to a proceeding before a hearings officer brought pursuant
22 to this section.

23 (4) The commissioner shall appoint hearings officers to make
24 determinations in proceedings brought pursuant to this section. All
25 proceedings in a hearing shall be conducted pursuant to the
26 procedures applicable to contested cases under the administrative
27 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The
28 hearings officer shall affirm, modify, or rescind the order of the
29 department and may assess costs as provided for in this act.

1 (5) The hearings officer shall issue a determination, which
2 constitutes a final disposition of the proceedings, to each party
3 not later than 30 days after the conclusion of the hearing. The
4 determination of the hearings officer shall become the final agency
5 order upon receipt by the parties.

6 (6) A party to the proceeding may obtain judicial review of
7 the determination of the hearings officer pursuant to the
8 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
9 24.328. Venue for an appeal under this act shall only be in the
10 circuit where the employee is a resident, where the employment
11 occurred, or where the employer has a principal place of business.

12 Sec. 22. Contracting agents, contractors, and subcontractors
13 shall maintain certified payroll records and other records required
14 under this act for a minimum of 3 years. Failure to maintain
15 records may result in application of the applicable civil penalties
16 provided for under this act.

17 Sec. 23. The commissioner may promulgate rules to implement
18 this act under the administrative procedures act of 1969, 1969 PA
19 306, MCL 24.201 to 24.328.

20 Sec. 24. It is not be a defense to any civil action by a
21 construction mechanic under this act that the construction mechanic
22 has failed to exhaust any administrative remedies before the
23 commissioner.

24 Sec. 25. For the fiscal year ending September 30, 2023,
25 \$75,000.00 is appropriated from the general fund to the department
26 of labor and economic opportunity. The appropriation under this
27 section is designated as a work project under section 451a of the
28 management and budget act, 1984 PA 431, MCL 18.1451a, to implement
29 and communicate information about the enactment of this act, to be

1 accomplished by state employees or by contract with an estimated
2 cost not exceeding \$75,000.00 and an estimated completion date of
3 December 31, 2024.

4 Sec. 26. If any portion of this act is declared invalid or
5 unenforceable by a court of competent jurisdiction, the remaining
6 provisions shall remain in full force and effect.