

Legislative Analysis



REQUIRE PREVAILING WAGE FOR STATE CONSTRUCTION

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House Bill 4007 as reported from committee

Sponsor: Rep. Brenda Carter

Committee: Labor

Revised 3-9-23

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

SUMMARY:

House Bill 4007 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 The new act would be substantively the same as 1965 PA 166, which was repealed in 2018 (see **Background**, below).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. A violation of the act would be a misdemeanor.

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 be required 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.

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 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

House Bill 4007 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.

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/laws-and-regulations/laws/dbra>.

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

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

Impact on State and Local Expenditures

House Bill 4007 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

House Bill 4007 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.

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 House Bill 4007, would appear to have a minimal fiscal impact on capital construction contracts administered by MDOT.

Impact on Corrections and the Judiciary

House Bill 4007 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, violations of the requirement for contracts for state construction projects to include prevailing wage provisions could result in misdemeanor convictions. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local

misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bill (3-8-23):

- American Federation of Labor and Congress of Industrial Organizations of Michigan (AFL-CIO Michigan)
- Clean Water Action
- International Brotherhood of Electrical Workers State Conference
- International Union of Operating Engineers Local 324
- Michigan Nurses Association
- Michigan Laborers' District Council (LiUNA)
- United Association of Employees (UA) Local 333

The following entities indicated support for the bill (3-8-23):

- Department of Labor and Economic Opportunity (LEO)
- American Federation of State, County and Municipal Employees (AFSCME) Council 25
- American Federation of Teachers Michigan
- Associated General Contractors of Michigan
- Bakery, Confectionery, Tobacco Workers and Grain Millers International Union
- Detroit Plumbers Union Local 98
- IBEW Locals 252, 665, and 948
- International Union of Elevator Constructors Local 85
- Michigan Association for Justice
- Michigan Building Trades Council
- Michigan League of Conservation Voters
- Michigan Pipe Trades Association
- Michigan Regional Council of Carpenters
- Michigan Workforce Development Institute
- Office and Professional Employees International Union Local 459
- Retail, Wholesale and Department Store Union
- Service Employees International Union Michigan
- UA Locals 174 and 636
- United Auto Workers (UAW) Coalition of Labor Union Women
- UAW Local 6000
- United Food & Commercial Workers Locals 951 and 876
- United Steelworkers
- Utility Workers Union of America
- West Michigan Area Labor Council

A representative of Associated Builders and Contractors of Michigan testified in opposition to the bill. (3-8-23)

The following entities indicated opposition to the bill (3-8-23):

- Detroit Regional Chamber of Commerce
- Grand Rapids Chamber of Commerce
- Great Lakes Education Project
- Heritage Action for America
- Home Builders Association of Michigan
- Mackinac Center for Public Policy
- Michigan Chamber of Commerce
- Michigan Freedom Fund
- National Federation of Independent Business
- Small Business Association of Michigan
- Southwest Michigan Regional Chamber
- West Michigan Policy Forum

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■ 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.