



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

Sponsor: Senator Veronica Klinefelt

Senate Committee: Labor

House Committee: Labor

Date Completed: 8-21-23

RATIONALE

Prior to 2018, Public Act (PA) 166 of 1965 required State construction projects to pay workers' wages and benefits that were not less than the wages and benefits prevailing in the locality where the work was performed. The Michigan Legislature adopted an initiative petition in 2018 that repealed PA 166 of 1965. Some people believe that prevailing wage laws improve construction standards by requiring contractors to employ skilled labor on projects. Additionally, some people believe that a system without prevailing wage or a suitable alternative incentivizes taxpayer dollars to go toward sub-quality work. Accordingly, it has been recommended that the prevailing wage laws be reenacted.

CONTENT

Senate Bill 6 (S-10) would enact a new law to do the following:

- **Require prevailing wages and fringe benefits on State projects.**
- **Prescribe the process by which the Department of Labor and Economic Opportunity (LEO) would have to establish prevailing wages and fringe benefits.**
- **Prescribe a penalty for a violation of the bill's provisions.**
- **Prohibit a contractor or subcontractor from discharging, disciplining, retaliating against, or otherwise discriminating against a construction mechanic, or threatening to do any of those things, because the construction mechanic reported or was about to report a violation of the bill's provisions.**
- **For fiscal year (FY) 2022-2023, appropriate a maximum of \$75,000 from the General Fund to LEO.**

State Project Bids

Under the bill, 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 that required or involved the employment of construction mechanics, other than those subject to the jurisdiction of the State Civil Service Commission, and that was sponsored or financed in whole or in part by the State, would have to 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 its subcontractors could not be less than the wage and fringe benefit rates prevailing in the locality in which the work was to be performed.

Contracts on State projects that contained provisions requiring the payment of prevailing wages as determined by the United States Secretary of Labor under the Davis-Bacon Act, or that contained minimum wage schedules that were 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, would be exempt under the bill. (Generally, the Davis-Bacon Act governs public buildings, properties, and works. The

Davis-Bacon prevailing wage is a combination of the basic hourly wage rate and any fringe benefit rate listed for a specific classification of worker.)

"Contracting agent" would mean 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.

State project" would mean 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.

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

"Construction mechanic" would mean a skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice working on a State project but would not include executive, administrative professional, office, or custodial employees.

Prevailing Wages and Fringe Benefits

Under the bill, a contracting agent, before advertising for bids on a State project, would have to have LEO determine the prevailing rates of wages and fringe benefits for all classes of construction mechanics called for in the contract. A schedule of these rates would have to be made a part of the specifications for the work to be performed and would have to be printed on the bidding forms where the work was to be done by contract. If a contract were not awarded or construction undertaken within 90 days after the date of LEO's determination of prevailing rates of wages and fringe benefits, LEO would have to make a redetermination before the contract is awarded.

The Department would have to establish prevailing wages and fringe benefits at the same rate that prevailed on projects of a similar character in the locality under collective agreements or understandings between bona fide organizations of construction mechanics and their employers. These agreements and understandings could not be controlled in any way by either an employee or employer organization. If the prevailing rates of wages and fringe benefits could not reasonably and fairly be applied in any locality because no such agreements or understandings existed, LEO would have to determine the rates and fringe benefits for the same or most similar employment in the nearest and most similar neighboring locality in which agreements or understandings did exist. The Department could hold public hearings in the locality in which the work was to be performed to determine the prevailing wage and fringe benefit rates. All prevailing wage and fringe benefit rates determined would have to be filed with LEO and made available to the public.

Every contractor and subcontractor would have to keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates prescribed in a contract and would have to keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic employed by it in connection with the contract. This record would have to be available for reasonable inspection by the contracting agent or LEO.

Under the bill, the contracting agent, by written notice to the contractor and the sureties of the contractor known to the contracting agent, could terminate the contractor's right to proceed with that part of the contract, for which less than the prevailing rates of wages and fringe benefits had been or would be paid, and could proceed to complete the contract by separate agreement with another contractor or otherwise, and the original contractor and its

sureties would be liable to the contracting agent for any excess costs occasioned by the termination.

The bill would prohibit a contractor or subcontractor from discharging, disciplining, retaliating against, or otherwise discriminating against a construction mechanic, or threatening to do any of those things, because the construction mechanic reported or was about to report a violation of the provisions above.

Under the bill a person that violated the provisions above would be subject to a civil fine of no more than \$5,000. The bill would allow the prosecutor of a county in which the violation occurred or the Attorney General to bring an action to collect the fine.

A contractor and its subcontractor would be jointly and severally liable for a violation of the provisions above.

Under the bill, the provisions above would not apply to contracts entered into, or the bids made, before the bills effective date.

Appropriation

Under the bill, for the FY ending September 30, 2023, \$75,000 would have to be appropriated from the General Fund to LEO. The appropriation would be designated as a work project under the Management and Budget Act to implement and communicate information about the bill's enactment, to be accomplished by State employees or by contract with a maximum estimated cost of \$75,000 and an estimated completion date of December 31, 2024.

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

The bill would reenact a prevailing wage law that was repealed by an initiative petition adopted by the Michigan Legislature in 2018. The bill is a companion bill to House Bill 4007, which became Public Act 10 of 2023.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan's lack of prevailing wage contributes to income inequality. According to testimony before the Senate Committee on Labor, the wealth of Michigan's top 10% of residents by income grew from 33% to 50% of all new income coming into Michigan in the previous decade, partially as a result of the deletion of Michigan's prevailing wage policies. The savings that corporations make from contracts in states with "right-to-work" laws go directly to corporate profits, not to Michigan communities. Therefore, deleting "right-to-work" laws would lessen income inequality and keep money in Michigan communities.

Response: Reinstating prevailing wage doesn't have to do with the wealthiest individuals in Michigan. By retaining "right-to-work" laws, the State is making sure it doesn't unnecessarily spend taxpayer dollars to boost wages for a certain class of organization.

Supporting Argument

Workers want to be in collective bargaining agreements and support expanding workers' rights statewide. According to testimony before the Senate Committee on Labor, public approval of labor unions is at 70% and public support for expanding workers' rights is at 75% among Michigan residents. Additionally, a laborer covered by a union contract earns 10.2% more than a peer with similar education and experience. Finally, peer employees in states

with "right-to-work" laws make 3.1% less than in states without. There is also a big difference paid days off and days off on holidays offered from union work and non-union work. These disparities are especially pronounced for women and workers of color. Prevailing wage encourages workers to join the workforce generally, and especially unions. When unions are strong, they help counteract disparate wage and benefit outcomes. Restoring prevailing wage will aid in strengthening collective bargaining agreements and expanding workers' rights statewide.

Supporting Argument

Municipalities do not spend more money for prevailing wage than they would if prevailing wage did not exist. According to testimony before the Senate Committee on Labor, prevailing wage has a positive impact on public budgets because money stays in Michigan communities and keeps people off public support programs. It shifts the cost of the project from the materials, tooling, manufacturing, technology, and building routines of the project to the wages of the project. In addition, requiring prevailing wage deters contractors from using out-of-area workers that will work for less and then return to their communities with their wages. Prevailing wage should be reinstated because it keeps skilled labor and high wages in Michigan.

Supporting Argument

Instituting prevailing wage uses a strong, democratic process. The process involves taking a survey of the wages in an area, calculating the prevailing wage, and paying the construction labor force a wage equal to that in the community. Michigan should strive for a strong democratic process in its labor laws.

Response: According to testimony before the Senate Committee on Labor, it is a more democratic process to let the market play out naturally. Additionally, under the Davis-Bacon and Related Acts and Reorganization Plan No. 14 of 1950, the United States Department of Labor is responsible for determining prevailing wages in United States communities.¹ Senate Bill 6 and House Bill 4007 unnecessarily author a new bureaucratic system run by the State to determine prevailing wage – the same job that the U.S. Department of Labor can do for significantly cheaper. The State prevailing wage program would inflate State administrative costs. Relying on the Federal government to determine these wages would improve the program's efficiency.

Opposing Argument

According to testimony before the Senate Committee on Labor, the cost of road construction is raised by 8.5% to 14.3% in quality-adjusted road miles. As of 2018, Michigan's former prevailing wage law added between \$5,900 and \$9,200 per mile in additional costs. These costs are paid for by taxpayers. They also transfer wealth from Michigan's many workers to Michigan's few workers. Additionally, the bill would inflate wages among several Michigan communities, such as rural communities which don't have a construction base or presence. Testimony also indicates that when a prevailing wage cannot be established in a community, it is often taken from urban communities like Detroit and focuses solely on unionized construction firms. This practice inflates prices for construction in rural communities whose prevailing wage are often not as high as many urban communities with a robust marketplace of unionized construction firms. Instituting a mandatory prevailing wage would artificially inflate the cost of construction projects.

Response: Reinstating prevailing wage does not inflate, and may even decrease, the cost of projects. Higher wages translate into higher levels of training, higher quality outcomes, and more productive workers, resulting in more efficient construction. In addition, according to testimony before the Senate Committee on Labor, many firms that are hired in areas

¹ Wage and Hour Division, United States Department of Labor, *Davis-Bacon and Related Acts*, 2023.

without prevailing wage often do a job poorly and greatly inflate the cost of the project. In some cases, construction crews may even have to do a job twice.

Opposing Argument

According to testimony before the Michigan Senate, after the 2018 repeal of prevailing wage, construction wages in Michigan have increased on average by \$2 and the State saw an increase of 3,000 construction jobs. This demonstrates the market's success in determining appropriate wages for workers. Reinstating prevailing wage prevent the market from increasing wages for workers in an efficient and uninflated manner.

Response: According to testimony before the Senate Committee on Labor, despite the \$2 wage increase seen since 2018 for construction firms, the wage has nonetheless fallen below the national median because of the deletion of prevailing wage policies. In 2005, Michigan wages for construction work were 6% higher than the national median – a wage accompanied by a unionization rate that was 1.69 times the national median. The absence of a prevailing wage policy does not cause wages to increase.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

The bill would eliminate the misdemeanor penalty for violation of certain provisions in the Act. A violation of a misdemeanor when no penalty is specifically provided carries a sentence of up to 90 days' imprisonment, a maximum fine of \$500, or both. The misdemeanor that the bill would eliminate does not specify a penalty; thus, the State could save on the cost of imprisonment but could lose revenue from fines. Fine revenue goes to fund local libraries.

Prison sentences of a year or less generally are served in a local jail. The local jail is reimbursed by the State on a per diem rate that ranges from \$40 to \$65 per day, depending on the custody level required. The elimination of the misdemeanor could result in a savings for the State of the aforementioned \$40 to \$65 per day of incarceration, per prisoner.

The loss in revenue for local libraries and potential savings for the State are indeterminate and would depend on the number of violations that would be averted under the bill. The bill could have a positive fiscal impact on the State and local units of government. The bill provides for imposition of a civil fine of up to \$5,000 for violation of the Act. Revenue collected from civil fines is used to support local libraries. Additionally, \$10 of the civil fine would be deposited into the state Justice System Fund. This fund supports justice-related activities across state government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

The bill also includes a \$75,000 fiscal year (FY) 2023-24 work project appropriation to LEO for implementation costs related to the bill. It is not clear what the actual amount of these costs would be, or how much, if any, of this appropriation would be spent.

Fiscal Analyst: Joe Carrasco, Jr.

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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.