STATE OF MICHIGAN
COURT OF APPEALS

ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN,

Appellant-Plaintiff,

v.

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET,

Appellee-Defendant,

and

MICHIGAN BUILDING AND CONSTRUCTION TRADES COUNCIL,

Appellee-Intervening Defendant.

Court of Appeals Case No. 363601

L/C Case No. 22-000111-MZ
Hon. Douglas Shapiro

APPENDIX TO APPELLANT'S BRIEF

Appendix Index

EXHIBIT A

EXHIBIT A

EXHIBIT A

Michigan Compiled Laws Annotated
Chapter 408. Labor
Prevailing Wages on State Projects [Repealed]

This section has been updated. Click here for the updated version.

M.C.L.A. 408.551

408.551. Definitions

Effective: [See Text Amendments] to June 5, 2018

Sec. 1. As used in this act:

(a) “Construction mechanic” means a skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice working on a state project but shall not include executive, administrative, professional, office, or custodial employees.

(b) “State project” means 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.

(c) “Contracting agent” means 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.

(d) “Commissioner” means the department of labor.

(e) “Locality” means the county, city, village, township, or school district in which the physical work on a state project is to be performed.

M. C. L. A. 408.551, MI ST 408.551
The statutes are current through P.A.2022, No. 93, of the 2022 Regular Session, 101st Legislature. Some statute sections may be more current; see credits for details.

End of Document

Michigan Compiled Laws Annotated
Chapter 408. Labor
Prevailing Wages on State Projects [Repealed]

This section has been updated. Click here for the updated version.

M.C.L.A. 408.552

408.552. Contracts for state projects; provision as to minimum wage rates; exception

Effective: [See Text Amendments] to June 5, 2018

Sec. 2. 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. Contracts on state projects which contain provisions requiring the payment of prevailing wages as determined by the United States secretary of labor pursuant to the federal Davis-Bacon act (United States code, title 40, section 276a et seq.) or which contain minimum wage schedules which 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 are exempt from the provisions of this act.

M. C. L. A. 408.552, MI ST 408.552
The statutes are current through P.A.2022, No. 93, of the 2022 Regular Session, 101st Legislature. Some statute sections may be more current; see credits for details.

End of Document

Michigan Compiled Laws Annotated
Chapter 408. Labor
Prevailing Wages on State Projects [Repealed]

This section has been updated. Click here for the updated version.

M.C.L.A. 408.553

408.553. Contracts for state projects; prevailing rates of wages and fringe benefits; schedule of rates to be made part of specifications

Effective: [See Text Amendments] to June 5, 2018

Sec. 3. A contracting agent, before advertising for bids on a state project, shall have the commissioner 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 shall be made a part of the specifications for the work to be performed and shall be printed on the bidding forms where the work is to be done by contract. If a contract is not awarded or construction undertaken within 90 days of the date of the commissioner's determination of prevailing rates of wages and fringe benefits, the commissioner shall make a redetermination before the contract is awarded.

M. C. L. A. 408.553, MI ST 408.553
The statutes are current through P.A.2022, No. 93, of the 2022 Regular Session, 101st Legislature. Some statute sections may be more current; see credits for details.

End of Document

Michigan Compiled Laws Annotated
Chapter 408. Labor
Prevailing Wages on State Projects [Repealed]

This section has been updated. Click here for the updated version.

M.C.L.A. 408.554

408.554. Commissioner to establish prevailing wages; hearings

Effective: [See Text Amendments] to June 5, 2018

Sec. 4. The commissioner shall 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. Such agreements and understandings, to meet the requirements of this section, shall not be controlled in any way by either an employee or employer organization. If the prevailing rates of wages and fringe benefits cannot reasonably and fairly be applied in any locality because no such agreements or understandings exist, the commissioner shall determine the rates and fringe benefits for the same or most similar employment in the nearest and most similar neighboring locality in which such agreements or understandings do exist. The commissioner may hold public hearings in the locality in which the work is to be performed to determine the prevailing wage and fringe benefit rates. All prevailing wage and fringe benefit rates determined under this section shall be filed in the office of the commissioner of labor and made available to the public.

M. C. L. A. 408.554, MI ST 408.554
The statutes are current through P.A.2022, No. 93, of the 2022 Regular Session, 101st Legislature. Some statute sections may be more current; see credits for details.

End of Document

EXHIBIT B

EXHIBIT B

EXHIBIT B

PREVAILING WAGES ON STATE PROJECTS
Act 166 of 1965

408.551-408.558 Repealed. 2018, Act 171, Imd. Eff. June 6, 2018.

Compiler's note: Public Act 171 of 2018 was proposed by initiative petition pursuant to Const 1963, art 2, § 9. On June 6, 2018, the initiative petition was approved by an affirmative vote of the majority of the Senate and the House of Representatives, and filed with the Secretary of State.

Compiler's note: Enacting sections 2 and 3 of Act 171 of 2018 provide:

"Enacting section 2. For the fiscal year ending September 30, 2018, $75,000.00 is appropriated from the general fund to the department of licensing and regulatory affairs. The appropriation under this section is designated as a work project under section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for the purpose of implementing and communicating information about the repeal of 1965 PA 166, MCL 408.551 to 408.558, to be accomplished by state employees or by contract with an estimated cost not exceeding $75,000.00 and an estimated completion date by December 31, 2019."

"Enacting section 3. If any part or parts of this act are found to be in conflict with the State Constitution of 1963, the United States Constitution, or federal law, this act shall be implemented to the maximum extent that the State Constitution of 1963, the United States Constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

EXHIBIT C

EXHIBIT C

EXHIBIT C

Gov. Whitmer to Reinstate Prevailing Wage for State Construction Projects

October 07, 2021

FOR IMMEDIATE RELEASE

October 7, 2021

Contact: Press@Michigan.gov

Gov. Whitmer to Reinstate Prevailing Wage for State Construction Projects

State contractors and subcontractors required to pay prevailing wage, uplifting working people and ensuring Michigan has high-quality infrastructure

LANSING, Mich. -?Today, Governor Gretchen Whitmer announced that the State of Michigan will require state contractors and subcontractors to pay prevailing wage for construction projects. The move reinstates the prevailing wage requirement, which was repealed in June 2018, and ensures that any construction worker working on a state construction project receives a fair wage. The governor is proud to lead by example at the state-level and deliver real change for working people in Michigan.

"By reinstating prevailing wage, we are ensuring that working people get treated with dignity and respect, which starts with a fair wage," said **Governor Whitmer**. "As governor, I am proud to stand shoulder to shoulder with working people and unions who built the middle class. By reinstating prevailing wage, we are ensuring working people can earn a decent standard of living, saving taxpayers money and time on crucial infrastructure projects, and offering Michigan a highly-trained workforce to rely on as we build up our roads and bridges, replace lead pipes, install high-speed internet, and more."

"We applaud Governor Whitmer's decision to restore prevailing wage requirements on state projects." said **Tom Lutz**, Executive Secretary-Treasurer of the Michigan Regional Council of Carpenters and Millwrights. "This decision protects Michigan's investments in

infrastructure because when prevailing wages are the expectation, contractors have to compete on a level playing field based on quality of their skilled work, not on the exploitation of their workers."

"The actions that have been taken today, help to restore confidence by workers and employers alike," said **Steve Claywell**, President of the Michigan Building and Construction Trades Council. "The restoring of prevailing wage provides a fair and equal bidding process allowing for highly trained men and women to be paid a good wage. We appreciate the courage of this Governor and stand ready to build Michigan with her."

History of Prevailing Wage

Michigan's prevailing wage was repealed by the Michigan legislature in June 2018. A total of 24 states have repealed their prevailing wage laws. Michigan's repeal eliminated the state's prevailing wage requirement, but left the door open for DTMB to require prevailing wage under its authority to develop the terms of state contracts. Governor Whitmer is proud to make that call and reinstate prevailing wage.

Today's action rewards hard work and ensures working people can earn a decent standard of living, take care of their families, and have a secure retirement. By reinstating prevailing wage, Michigan can continue making progress on critical infrastructure, including roads, bridges, water infrastructure, high-speed internet, and more.

Budget

Last week, the governor signed the Fiscal Year 2022 budget bill that delivers on the kitchen-table fundamental issues that matter most to working families. The budget puts 167,000 Michiganders on a tuition-free path to higher-education or skills training through the Michigan Reconnect and Futures for Frontliners programs, expands low or no-cost childcare to 105,000 kids, repairs or replaces 100 bridges while creating 2,500 jobs, and more.

Earlier this year, Governor Whitmer and legislature worked together to put Michigan students first and passed the largest significant education investment in state history, closing the funding gap between schools in Michigan and delivering resources for schools to hire more nurses, counselors, and social workers.

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Governor Press Release 10 - October 2021

Related News

Whitmer Highlights Bipartisan Budget Investments in Working Families and Connected Communities

Whitmer Hosts Roundtable with Parents on Bipartisan Education Budget

Whitmer Calls on Federal Government to Protect Michiganders Seeking Reproductive Health Care or Prescription Medication in Canada

Governor Whitmer on Death of Detroit Police Officer Loren Courts

Community Revitalization Projects Bringing New Housing Options and Economic Growth to Communities

Whitmer and MDHHS Launch Effort to Educate Michiganders on Difference Between Emergency Contraception and Medication Abortion

Whitmer Celebrates Record Bipartisan Education Budget

Investments

Whitmer Continues to Fix the Damn Roads with Projects in Several Counties Starting Next Week

Gilchrist Kicks Off Thriving Seniors Tour with Event in Detroit

Whitmer Continues to Fix Roads and Bridges with Projects Starting This Week

STATE OF MICHIGAN
OFFICE of the GOVERNOR

Gov. Whitmer to Reinstate Prevailing Wage for State Construction Projects

EXHIBIT D

EXHIBIT D

EXHIBIT D

Michigan.gov

DTMB

Prevailing Wage for DTMB Construction Contracts

Beginning March 1, 2022, the State of Michigan will require state contractors and subcontractors to pay prevailing wage on construction-based contracts issued by the Department of Technology, Management & Budget. These changes do not impact or change any provisions in place to comply with the Federal Davis-Bacon act.

Administrative Guide Citation - Effective March 1, 2022

1.3.13 Prevailing Wage

With the exception of lease build-outs, if a project greater than $50,000 involves employing construction mechanics (e.g., asbestos, hazardous material handling, boilermaker, carpenter, cement mason, electrician, office reconstruction and installation, laborer including cleaning debris, scraping floors, or sweeping floors in construction areas, etc.) and is sponsored or financed in whole or in part by State funds, state contractors must pay prevailing wage.

Additional information on the requirements of prevailing wage can be found on the Labor and Economic Opportunity - Bureau of Employment Relations - Wage and Hour

Division website.

State-funded Project Prevailing Wage Requirements - Effective March 1, 2022

1. The Contractor (and its Subcontractors) represents and warrants that it pays all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications as prevailing wages based on locality, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics.
2. The Contractor represents and warrants that Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work.

Frequently Asked Questions

Q: Why is Michigan requiring prevailing wage rates for construction projects?

A: Prevailing wage rates are shown to support working people by ensuring that jobs created are well paid. Prevailing wage rates also support local employers by ensuring that all qualified bids received are competitive with area labor standards so local employers and workers are not underbid by low wage employers.

Q: How are Michigan's prevailing wage rates established?

A: Rates are established for each County in Michigan through a process of submission and review of established wages, benefits, and training investments from bona fide employee and employer organizations. The establishment of rates drills down to the smallest locality possible, so in some cases may be established for specific townships or cities as well. Further questions can be sent to WHINFO@michigan.gov.

Q: Do the established rates apply to any State or publicly funded construction projects?

A: The state of Michigan has made a change to procurement policy that requires vendors to pay prevailing wages on construction-based contracts issued by the Department of Technology, Management & Budget. If other entities apply prevailing wage rates to their projects they can visit Prevailing Wage page on the Labor & Economic Opportunity site for the most recent wage rate schedule.

Q: Don't prevailing wage rates increase the cost to the state for these projects?

A: Independent studies from organizations such as the Midwest Economic Policy Institute suggest have been conducted on the impact of prevailing wage rates in both Federal and other State contracts and no discernable cost savings are found when prevailing wages are eliminated.

Q: How do prevailing wages help workers?

A: Because prevailing wage rates are established based on local wages, fringe benefits, and training investments, prevailing wage ensures that all workers are paid according to local standards. Ensuring that workers are receiving strong wages and other benefits supports our local communities and enhances our ability to attract and retain critical workers in these industries.

Q: What is DTMB's policy?

A: DTMB will require prevailing wages to be paid in all construction-related contracts initially posted for bidding after March 1, 2022.

Q: What projects will be required to pay DTMB prevailing wage rates?

A: All construction-related projects initially posted for bidding after March 1, 2022. Any contract requiring prevailing wage will have that information clearly explained in the bidding documents so all potential vendors are aware when developing and submitting bids.

Q: When will this take effect?

A: All construction contracts initially posted for bidding after March 1, 2022 will require prevailing wage.

Q: What will be the penalties if a business does not comply with the DTMB contract requirements

A: Failure to pay prevailing wage would be a breach of contract and may result in contract termination.

Q: How can I find out if a DTMB contract requires prevailing wage?

A: Contracts requiring prevailing wage will include wage schedules and prevailing wage language in the bid documents. Further questions can be sent to zakrzewskik@michigan.gov.

Q: I am a worker on a State of Michigan construction project, how will I know if prevailing wages are required, and how will I know what the prevailing wage is if required?

A: Employers on covered projects will be required to notify workers of the prevailing wage obligation as well as the rates. Further, the rates must be posted on the project in a place that can be viewed by workers.

Q: Who can file a complaint, and how is a complaint filed?

A: A complaint may be filed by a person working on the project as well as by a third party on behalf of the worker. Complaints may be sent to WHINFO@michigan.gov.

Q: How long do I have to file a complaint?

A: Workers or third parties should file a complaint as soon as they become aware of the potential violation. Further, complaints are best filed while the project is in progress and still under contract.

Q: What happens if an employer is found to be in violation?

A: Following a complaint and investigation, Wage & Hour will send the determination to DTMB who may then pursue the issue under the terms of the contract.

Prevailing Wage for DTMB Construction Contracts

EXHIBIT E

EXHIBIT E

EXHIBIT E

STATE OF MICHIGAN

Informational Sheet: DTMB Prevailing Wages on State Projects

General Information Regarding Fringe Benefits

Certain fringe benefits **may** be credited toward the payment of the Prevailing Wage Rate:

- If a fringe benefit is paid directly to a construction mechanic
- If a fringe benefit contribution or payment is made on behalf of a construction mechanic
- If a fringe benefit, which may be provided to a construction mechanic**,** is pursuant to a written contract or policy
- If a fringe benefit is paid into a fund, for a construction mechanic

When a fringe benefit is not paid by an hourly rate, the hourly credit will be calculated based on the annual value of the fringe benefit divided by 2080 hours per year (52 weeks @ 40 hours per week). The following is an example of the types of fringe benefits allowed and how an hourly credit is calculated:

Vacation	40 hours X $14.00 per hour = $560/2080 =	$.27
Dental insurance	$31.07 monthly premium X 12 mos. = $372.84 /2080 =	$.18
Vision insurance	$5.38 monthly premium X 12 mos. = $64.56/2080 =	$.03
Health insurance	$230.00 monthly premium X 12 mos. = $2,760.00/2080 =	$1.33
Life insurance	$27.04 monthly premium X 12 mos. = $324.48/2080 =	$.16
Tuition	$500.00 annual cost/2080 =	$.24
Bonus	4 quarterly bonus/year x $250 = $1000.00/2080 =	$.48
401k Employer Contribution	$2000.00 total annual contribution/2080 =	$.96
	Total Hourly Credit	$3.65

Other examples of the types of fringe benefits allowed:

- Sick pay
- Holiday pay
- Accidental Death & Dismemberment insurance premiums

The following are examples of items that **will not** be credited toward the payment of the Prevailing Wage Rate

- Legally required payments, such as:
  - Unemployment Insurance payments
  - Workers' Compensation Insurance payments
  - FICA (Social Security contributions, Medicare contributions)
- Reimbursable expenses, such as:
  - Clothing allowance or reimbursement
  - Uniform allowance or reimbursement
  - Gas allowance or reimbursement
  - Travel time or payment
  - Meals or lodging allowance or reimbursement
  - Per diem allowance or payment
- Other payments to or on behalf of a construction mechanic that are not wages or fringe benefits, such as:
  - Industry advancement funds
  - Financial or material loans

OVERTIME PROVISIONS for MICHIGAN PREVAILING WAGE RATE COMMERCIAL SCHEDULE

1. Overtime is represented as a nine character code. Each character represents a certain period of time after the first 8 hours Monday thru Friday.

	Monday thru Friday	Saturday	Sunday & Holidays	Four 10s
First 8 Hours		**4**	**8**	**9**
9th Hour	**1**	**5**		
10th Hour	**2**	**6**		
Over 10 hours	**3**	**7**		

Overtime for Monday thru Friday after 8 hours:
the 1st character is for time worked in the 9th hour *(8.1 - 9 hours)*
the 2nd character is for time worked in the 10th hour *(9.1 - 10 hours)*
the 3rd character is for time worked beyond the 10th hour *(10.1 and beyond)*

Overtime on Saturday:
the 4th character is for time worked in the first 8 hours on Saturday *(0 - 8 hours)*
the 5th character is for time worked in the 9th hour on Saturday *(8.1 - 9 hours)*
the 6th character is for time worked in the 10th hour *(9.1 - 10 hours)*
the 7th character is for time worked beyond the 10th hour *(10.01 and beyond)*

Overtime on Sundays & Holidays
The 8th character is for time worked on Sunday or on a holiday

Four Ten Hour Days
The 9th character indicates if an optional 4-day 10-hour per day workweek can be worked ***between Monday and Friday*** **without paying overtime after 8 hours worked, unless otherwise noted in the rate schedule. To *utilize a 4 ten workweek, notice is required from the employer to employee prior to the start of work on the project.***

2. Overtime Indicators Used in the Overtime Provision:
   H - means TIME AND ONE-HALF due
   X - means TIME AND ONE-HALF due after 40 HOURS worked
   D - means DOUBLE PAY due
   Y - means YES an optional 4-day 10-hour per day workweek can be worked without paying overtime after 8 hours worked
   N - means NO an optional 4-day 10-hour per day workweek *cannot* be worked without paying overtime after 8 hours worked

3. EXAMPLES:
   HHHHHHHDN - This example shows that the 1½ rate must be used for time worked after 8 hours Monday thru Friday *(characters 1 - 3);* for all hours worked on Saturday, 1½ rate is due *(characters 4 - 7).* Work done on Sundays or holidays must be paid double time *(character 8).* The N *(character 9)* indicates that 4 ten-hour days is not an acceptable workweek at regular pay.

   XXXHHHHDY - This example shows that the 1½ rate must be used for time worked after 40 hours are worked Monday thru Friday *(characters 1-3);* for hours worked on Saturday, 1½ rate is due *(characters 4 – 7)*. Work done on Sundays or holidays must be paid double time *(character 8).* The Y *(character 9)* indicates that 4 ten-hour days is an acceptable alternative workweek.

ENGINEERS - CLASSES OF EQUIPMENT LIST

UNDERGROUND ENGINEERS

CLASS I

Backfiller Tamper, Backhoe, Batch Plant Operator, Clam-Shell, Concrete Paver (2 drums or larger), Conveyor Loader (Euclid type), Crane (crawler, truck type or pile driving), Dozer, Dragline, Elevating Grader, End Loader, Gradall (and similar type machine), Grader, Power Shovel, Roller (asphalt), Scraper (self propelled or tractor drawn), Side Broom Tractor (type D-4 or larger), Slope Paver, Trencher (over 8' digging capacity), Well Drilling Rig, Mechanic, Slip Form Paver, Hydro Excavator.

CLASS II

Boom Truck (power swing type boom), Crusher, Hoist, Pump (1 or more 6" discharge or larger gas or diesel powered by generator of 300 amps or more, inclusive of generator), Side Boom Tractor (smaller than type D-4 or equivalent), Tractor (pneu-tired, other than backhoe or front end loader), Trencher (8' digging capacity and smaller), Vac Truck.

CLASS III

Air Compressors (600 cfm or larger), Air Compressors (2 or more less than 600 cfm), Boom Truck (non-swinging, non-powered type boom), Concrete Breaker (self-propelled or truck mounted, includes compressor), Concrete Paver (1 drum, ½ yard or larger), Elevator (other than passenger), Maintenance Man, Mechanic Helper, Pump (2 or more 4" up to 6" discharge, gas or diesel powered, excluding submersible pump), Pumpcrete Machine (and similar equipment), Wagon Drill Machine, Welding Machine or Generator (2 or more 300 amp or larger, gas or diesel powered).

CLASS IV

Boiler, Concrete Saw (40HP or over), Curing Machine (self-propelled), Farm Tractor (w/attachment), Finishing Machine (concrete), Firemen, Hydraulic Pipe Pushing Machine, Mulching Equipment, Oiler (2 or more up to 4", exclude submersible), Pumps (2 or more up to 4" discharge if used 3 hrs or more a day-gas or diesel powered, excluding submersible pumps), Roller (other than asphalt), Stump Remover, Vibrating Compaction Equipment (6' wide or over), Trencher (service) Sweeper (Wayne type and similar equipment), Water Wagon, Extend-a-Boom Forklift.

HAZARDOUS WASTE ABATEMENT ENGINEERS

CLASS I

Backhoe, Batch Plant Operator, Clamshell, Concrete Breaker when attached to hoe, Concrete Cleaning Decontamination Machine Operator, Concrete Pump, Concrete Paver, Crusher, Dozer,
Elevating Grader, Endloader, Farm Tractor (90 h.p. and higher),
Gradall, Grader, Heavy Equipment Robotics Operator, Hydro Excavator, Loader, Pug Mill, Pumpcrete Machines, Pump Trucks, Roller, Scraper (self-propelled or tractor drawn), Side Boom Tractor, Slip Form Paver, Slope Paver, Trencher, Ultra High Pressure Waterjet Cutting Tool System Operator, Vactors, Vacuum Blasting Machine Operator, Vertical Lifting Hoist, Vibrating Compaction Equipment (self-propelled), and Well Drilling Rig.

CLASS II

Air Compressor, Concrete Breaker when not attached to hoe, Elevator, End Dumps, Equipment Decontamination Operator, Farm Tractor (less than 90 h.p.), Forklift, Generator, Heater, Mulcher, Pigs (Portable Reagent Storage Tanks), Power Screens, Pumps (water), Stationary Compressed Air Plant, Sweeper, Water Wagon and Welding Machine.

CARPENTER CRAFT JURISDICTION

Michigan recognizes the Carpenters for any and all work related to weatherization that has historically been the work of the Carpenter. This work shall include, but not be limited to: all work defined under the Federal Weatherization Assistance Program.

The jurisdiction of Carpenters, as to all work that has historically and traditionally been performed consisting of the milling, fashioning, joining, assembling, erecting, fastening or dismantling of all materials of wood, plastic, metal, fiber, cork, or composition and all other substitute materials, as well as the handling, cleaning, erecting, installing and dismantling of all machinery, equipment and all materials used by Carpenters.

The jurisdiction, therefore, extends over the following divisions and subdivisions of the trade: Carpenters and Joiners, Millwrights, Pile Drivers, Bridge, Dock and Wharf Carpenters, Underpinners, Timbermen, and Core-drillers, Shipwrights, Boat Builders, Ship- hand, Stair-Builders, Millmen, Wood and Resilient Floor Decorators, Floor Finishers, Carpet-layers, Shinglers, Siders, Insulators, Acoustic and Drywall Applicators, Sharers and House Movers, Loggers, Lumber and Sawmill Workers, Reed and Rattan Workers, Shingle Weavers, Casket and Coffin Makers, Railroad Carpenters and Car Builders, regardless of material used and all those engaged in the operation of woodworking or other machinery required in fashioning, milling or manufacturing of products used in the trade, and the handling, erecting and installing materials on any of the above divisions or sub-divisions, burning, welding and rigging incidental to the trade. When the term "Carpenter and Joiner" is used, it shall mean all the subdivisions of the trade. The trade autonomy of Carpenters therefore extends over the divisions and subdivisions of the trade, which are set forth as follows:

(a) The framing, erecting and prefabrication of roofs, partitions, floors and other parts of buildings of wood, metal, plastic or other substitutes; application of all metal flashing used for hips, valleys and chimneys; the erection of Stran Steel section or its equal. The building and setting of all forms and centers for brick and masonry. The fabrication and erection of all forms for concrete and decking, the dismantling of same (as per International Agreement) when they are to be re-used on the job or stored for re-use. The cutting and handling of all falsework for fireproofing and slabs. Where power is used in the setting or dismantling of forms, all signaling and handling shall be done by carpenters. The setting of templates for anchor bolts for structural members and for machinery, and the placing, leveling and bracing of these bolts. All framing in connection with the setting or metal columns. The setting of all bulkheads, footing forms and the setting of and fabrication of, screeds and stakes for concrete and mastic floors where the screed is notched or fitted, or made up of more than one member. The making of forms for concrete block, bulkheads, figures, posts, rails, balusters and ornaments, etc.

(b) The handling and erecting of rough material and drywall, the handling, assembly, setting and leveling of all fixtures, display cases, all furniture such as tables, chairs, desks, coat racks, etc., all de-mountable or moveable partitions such as Von wall, E Wall, Steel Case, Herman Miller, Haworth, American Seating, Westinghouse, Lazy Boy, rosewood, etc. All rebuilding, remodeling and setting up of all kinds of partitions, finished lumber, metal and plastic trim to be erected by Carpenters shall be handled from the truck or vehicle delivering same to the job by Carpenters.

CARPENTER CRAFT JURISDICTION

(c) The building and moving of all scaffolding runways and staging where carpenters' tools are used, the building from the ground up of all scaffolds over fourteen (14) feet in height including metal and specially designed scaffolding. The building and construction of all hoists and derricks made of wood; the making of mortar boards, boxes, trestles, all shoring, razing and moving of buildings. Lift type trucks are to be considered a tool of the trade. Metal siding and metal roofing fall within the scope of jurisdiction for the carpenters.

(d) The cutting or framing and fireproofing of the openings for pipes, conduits, ducts, etc., where they pass through floors, partitions, walls, roofs or fixtures composed in whole or in part of wood. The laying out of making and installation of all inserts and sleeves for pipes, ducts, etc., where carpenters' tools and knowledge are required. The making and installing of all wooden meter boards, crippling and backing for fixtures. The welding of studs and other fastenings to receive material being applied by carpenters.

(e) The installation of all grounds, furring or stripping, ceilings and sidewalks, application of all types of shingling and siding, etc.

(f) The installation of all interior and exterior trim or finish of wood, aluminum, kalamein, hollow or extruded metal, plastic, doors, transoms, thresholds, mullions and windows. The setting of jambs, bucks, window frames of wood or metal where braces or wedges are used. The installation of all wood, metal or other substitutes of casing, molding, chair rail, wainscoting, china closets, base of mop boards, wardrobes, metal partitions as per National Decisions or specific agreements, etc. The complete laying out, fabrication and erection of stairs. The making and erecting of all fixtures, cabinets, shelving, racks, louvers, etc. The mortising and application of all hardware in connection with our work. The sanding and refinishing of all wood, cork or composition floors to be sanded or scraped, filled, sized and buffed, either by hand or power machines. The assembling and setting of all seats in theaters, halls, churches, schools, auditorium, grandstands and other buildings. All bowling alley work.

(g) The manufacture, fabrication and installation of all screens, storm sash, storm doors and garage doors; the installation of wood, canvas, plastic or metal awnings or eye shades, door shelters, jalousies, etc. The laying of wood, wood block and wood composition in floors.

(h) The installation of all materials used in drywall construction, such as plasterboard, all types of asbestos boards, transite and other composition board. The application of all material which serves as base for acoustic tile, except plaster. All acoustical applications as per National Agreement or specific agreement.

(i) The building and dismantling of all barricades, hand rails, guard rails, partitions and temporary partitions. The erection and dismantling of all temporary housing on construction projects.

(j) The installation of rock wool, cork and other insulation material used for sound or weatherproofing. The removal of caulking and placing of staff bead and brick mold and all Oakum caulking, substitutes, etc., and all caulking in connection with carpentry work.

(k) The installation of all chalk boards/marker boards.

CARPENTER CRAFT JURISDICTION

(l) The operation of all hand operated winches used to raise wooden structures.

(m) The erection of porcelain enameled panels and siding.

(n) The unloading and distribution of all furnished, prefabricated and built-up sections such as door bucks, window frames, cupboards, cabinets, store fixtures, counters and show cases or comparably finished or prefabricated materials, to the job sites or points of installation as used in the construction, alteration and remodeling industry.

(o) The handling of doors, metal, wood or composite, partitions and other finished bulk materials used for trim from the point of delivery.

(p) All processing of these materials and handling after processing.

(q) The making up of panels and fitting them into walls, all bracing and securing, all removal of panels from the casting including all braces, whalers, hairpins, etc.

(r) The handling and setting of all metal pans and sections from the stock piles of reasonable distance as required by job needs shall be performed by carpenters. The stripping of such metal pans, panels or sections is to be performed by carpenters.

(s) The sharpening of all carpenter hand or power tools, or those used by carpenters.

(t). The layout, fabrication, assembling of and erection and dismantling of all displays made of wood, metal, plastic, composition board or any substitute material; the covering of same with any type of material, the crating and un-crating, the handling from the point of unloading and back to the point of loading of all displays and other materials or components.

(u) The same shall apply to all other necessary component parts used for display purposes such as turntables, platforms, identification towers and fixtures, regardless of how constructed, assembled or erected or dismantled.

(v) The make-up, handling, cutting and sewing of all materials used in buntings, flags, banners, decorative paper, fabrics and similar materials used in the display decorative industry for draperies and back drops. The decorative framing of trucks, trailers and autos used as floats or moving displays. The slatting of walls to hand fabrics and other decorative materials, drilling of all holes to accommodate such installations. Setting up and removal of booths constructed of steel or aluminum tubing as stanchions, railings, etc., handling and placing of furniture, appliances, etc., which are being used to complete the booth at the request of the exhibitor. Fabricating and application of leather, plastic and other like materials used for covering of booths. The handling of all materials, fabricating of same. The loading and unloading, erecting and assembling at the exhibit of show area, also in or out of storage when used in booth decorations.

CARPENTER CRAFT JURISDICTION

(w) A display shall be construed as any exhibit or medium of advertising, open to private or public showing, which is constructed of wood, metal, plastic or any other substitute to accomplish the objectives of advertising or displaying.

(x) Handling, fitting, draping, measuring and installation of fixtures and other hardwares for draperies, all manner of making, measuring, repairing, sizing, hanging and installation of necessary fixtures and hardware for shades and Venetian blinds.

(y) Work consisting of cutting and/or forming of all materials in preparation for installing of floors, walls and ceilings; the installation of all resilient floor and base; wall and ceiling materials to include cork, linoleum, prefabricated, laminated, rubber, asphalt, vinyl, metal, plastic, seamless floors and all other similar materials in sheet, interlocking liquid or tile form; the installation of all artificial turf, the installation, cutting and/or fitting of carpets; installation of padding, matting, linen crash and all preformed resilient floor coverings; the fitting of all devices for the attachment of carpet and other floor, wall and ceiling coverings; track sewing of carpets, drilling of holes for sockets and pins, putting in dowels and slats; and all metal trimmings used; the installation of all underlayments, sealants in preparation of floors, walls and ceilings, the unloading and handling of all materials to be installed and the removal of all materials in preparing floors when contracted for by the employer, shall be done only by employees covered under this Agreement.

(z) The installation of all sink-tops and cabinets, to include all metal trim and covering for same. All cork, linoleum, congo-wall, linewall, veos tile, plexiglass, vinawall tile, composition tile, plastic tile, aluminum tile and rubber in sheets or tile form and the application thereof. All bolta-wall and bolta-wall tile and similar products.

(aa) The handling and placing of all pictures and frames and the assembly of bed frames and accessories. The hanging and placing of all signage.

(bb) The installation of all framework partitions and trim materials for toilets and bathrooms made of wood, metal, plastics or composition materials; fastening of all wooden, plastic or composition cleats to iron or any other material for accessories.

(cc) The erection of cooling towers and tanks.

(dd) The setting, lining, leveling and bracing of all embedded plates, rails and angles. The setting of all stay in place forms.

(ee) Environmental: Clean room, any type of environmental chamber, walk in refrigerated coolers and all refrigerated rooms or buildings.

CARPENTER CRAFT JURISDICTION

PILE DRIVING AND CAISSON DRILLING

(ff) All unloading, handling, signaling and driving of piles, whether wood, steel, pipe, beam pile, composite, concrete or molded in place, wood and steel sheeting, cofferdam work, trestle work, dock work, floating derricks, caisson work, foundation work, bridge work, whether old or new, crib work, pipe line work and submarine work. Cutting of all wood, steel or concrete pile, whether by machine or hand; welding and cutting, peeling, and heading of all wood pile, steel sheeting and wood sheeting. The erecting and dismantling of all pile driving rigs, also derricks whether on land or water; also the moving, shoring and underpinning of all buildings. The loading and unloading of all derricks, cranes and pile driving materials. The tending, maintenance and operation of all valves pertaining to the operation of driving of pile. All diving and tending essential to the completion of jurisdictional claims.

All work done in the established yards of the Company and all work not enumerated above, shall be handled and manned as the Employer decides.

The pile driver will unload all material shipped in by rail from the point that the rail car is spotted.

All cleaning and preparation of all piling prior to driving.

The welding and attachment of all boot plates, pile points, splice plates, connectors, rock crosses, driving crosses, driving rigs, point reinforcements and overboots.

The construction, reconstruction, repair, alteration, demolition and partial or complete removal of all marine work including, but not limited to, docks, piers, wharves, quays, jetties, cribs, causeways, breakwaters, lighthouses and permanent buoys, etc. (mixing and placing of concrete excepted).

The driving and pulling of all wood, steel and concrete foundation piles and sheet piling.

The heading, pointing, splicing, cutting and welding of all piles.

The placing of all wales, bolts, studs, lagging, rods and washers including the cutting, drilling, boring or breaking of all holes or openings thereof.

The removal of all materials and/or obstructions of any nature (rip-rap included) that retard or interfere with the driving of piles or with the placing of wales, bolts and rods.

CARPENTER CRAFT JURISDICTION

This is to be subject to the discretion of the contractor who may choose to use blasting specialists or other demolition specialists.

The handling on the job of all materials used in the work.

The manning of all floating equipment (towing equipment excepted) engaged in the work enumerated, including deck engines, except machinery manned by Operating Engineers.

The placing of all rip-rap, fill stone, bedding stone, cover stone and concrete blocks in connection with marine construction. Work normally performed by Employers, such as soil tests, shoring, underpinning of buildings, cribbing, driving of sheet piling, marine divers, tenders, underwater construction workers and similar operations shall continue to be included in the jurisdiction of this Agreement.

All burning, cutting, welding and fabrication of pipe, H-beams, sheet pile (metal or wood), done on the job site or in the yard of the Employer shall be done by pile drivers. The driving of bearing piles, sheet piling with heavy equipment, caissons, pile caps, auger drilling and boring, the setting up for load testing for any type of piling, all layout and spotting for piling, caisson and boring work, all earth retention, ditch boarding, installing tiebacks.

ASBESTOS ABATEMENT CARPENTERS

(gg) All erection and maintenance of barriers and partitions used in the removing of asbestos or any abatement work. The abatement of any materials previously installed by the carpenter such as transite, ceiling and floor tiles. All operating and maintaining of current equipment used in any abatement work.

ELECTRICIAN – SOUND AND COMMUNICATION / DATA/ VOICE JURISDICTION

The installation, testing, service and maintenance, of systems which utilize the transmission and/or transference of voice, sound, vision or digital for commercial, education, security and entertainment purposes for the following: TV monitoring and surveillance, CATV and CCTV, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, radio page, school intercom and sound, burglar alarms, low voltage fire alarm systems, low voltage master clock systems, distributed antenna systems (DAS), IP data networks, and all surface-mounted (non-power) telecommunications wiremold. Shall additionally include the installation of all raceway systems of unlimited length in telecommunications rooms, entrance facilities, equipment rooms, and similar areas. Energy management systems. Security systems; perimeter, vibration, card access, access control and sonar/infrared monitoring equipment. Communications systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; SCADA (Supervisory Control and Data Acquisition), PCM (Pulse Code Modulation), Digital Data Systems, Broadband and Baseband and Carriers, POS (Point of Sale systems), VSAT Data Systems, RF and Remote Control Systems, Fiber Optic Data Systems and Voice and Data Infrastructure and Backbone.

EXHIBIT F

EXHIBIT F

EXHIBIT F

STATE OF MICHIGAN

Wage and Hour Division
PO Box 30476
Lansing, MI 48909
517-284-7800

Informational Sheet: Prevailing Wages on DTMB Projects

REQUIREMENTS

The purpose of establishing prevailing rates is to provide minimum rates of pay that must be paid to workers on Department of Technology, Management and Budget (DTMB) construction projects that are financed or financially supported by the state Prevailing rates are compiled from the rates contained in collectively bargained agreements which cover the locations of the state projects. While the DTMB prevailing wage rates are compiled though surveys of collectively bargained agreements, a collective bargaining agreement is not required for contractors to be on or be awarded state projects. The prevailing rate schedule provides an hourly rate which includes wage and fringe benefit totals for designated construction mechanic classifications. The overtime rates also include wage and fringe benefit totals. Please pay special attention to the overtime and premium pay requirements. The DTMB prevailing wage is satisfied when wages plus fringe benefits are equal to or greater than the required rate.

State of Michigan responsibilities:

- The department establishes the prevailing rate for each classification of construction mechanic requested by DTMB prior to contracts being let out for bid on a state project.

DTMB responsibilities

- If a contract is not awarded or construction does not start within 90 days of the date of the issuance of rates, a re- determination of rates must be requested by DTMB
- Rates for classifications needed but not provided on the DTMB Prevailing Rate Schedule, ***must*** be obtained ***prior*** to contracts being let out for bid on a state project.

Contractor responsibilities:

- Every contractor and subcontractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing rates prescribed in a contract.
- Every contractor and subcontractor shall keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic. This record shall be available for reasonable inspection by DTMB or the department.
- Each contractor or subcontractor is separately liable for the payment of the prevailing rate to its employees.
- The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work.
- A construction mechanic *shall only* be paid the apprentice rate if registered with the United States Department of Labor, Bureau of Apprenticeship and Training and the rate is included in the contract.

Enforcement:

A person who has information of an alleged prevailing wage violation on a DTMB project may file a complaint with the State of Michigan. The department will investigate and attempt to resolve the complaint informally. During the course of an investigation, if the requested records and posting certification are not made available in compliance with contractual requirements, the State may consider the Contactor to be in material breach of the contract and may terminate the contract for cause at the States sole discretion.

EXHIBIT G

EXHIBIT G

EXHIBIT G

From: Skorup, Jarrett
To: DTMB
Subject: FOIA - DTMB prevailing wage directive
Date: Wednesday, October 20, 2021 1:15:33 PM

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

October 20, 2021
FOIA Request for prevailing wage directive
Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

- The executive directive issued by Governor Whitmer requiring the Department to implement prevailing wage requirements for state construction projects.

To assist you in your search, this action was announced by Governor Whitmer on October 7, 2021. See, https://www.michigan.gov/whitmer/0,9309,7-387-90499-569931--,00.html. The directive was also mentioned in contemporaneous media coverage. See, https://www.freep.com/story/news/politics/elections/2021/10/07/whitmer-prevailing-wage-michigan-union/6032968001/.
I request this information be delivered via email.
Jarrett Skorup
140 W. Main St.
Midland, Michigan 48640

EXHIBIT H

EXHIBIT H

EXHIBIT H

STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
LANSING

JULIA DALE
DIRECTOR

FREEDOM OF INFORMATION ACT (FOIA) RESPONSE

October 25, 2021

Mr. Jarrett Skorup
140 W. Main St.
Midland, Michigan 48640

Dear Mr. Skorup:

This notice is in response to your request dated October 20, 2021 (attached), for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Your request was received by the Department of Technology, Management and Budget on October 21, 2021.

You requested:

1. The executive directive issued by Governor Whitmer requiring the Department to implement prevailing wage requirements for state construction projects.

The following action has been taken in response to your request:

REQUEST DENIED. It is hereby certified that, to the best of the undersigned's knowledge, information, and belief, records do not exist within the Department of Technology, Management and Budget, under the description you provided or under another name reasonably known to the department.

As to the denial determination, pursuant to section 10 of the FOIA, you may do either of the following:

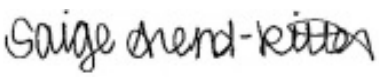
1. Appeal this decision in writing to the Director of the Department, Julia Dale, Elliott-Larsen Building, 320 South Walnut, P.O. Box 30026, Lansing, Michigan 48909.The writing must specifically state the word "appeal" and must identify the reasons you believe the denial should be reversed. The head of the department must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.

2. File an action in the Court of Claims within 180 days after the final denial determination. If you prevail in such an action the court is to award reasonable attorney fees, costs, disbursements, and possible damages.

ADDITIONAL COMMENTS:

The Department's written procedures and guidelines and a summary can be viewed at: www.michigan.gov/foia-dtmb.

Sincerely,



Saige Arend-Ritter
DTMB FOIA Coordinator

Enclosure(s)

EXHIBIT I

EXHIBIT I

EXHIBIT I

Arend-Ritter, Saige (DTMB)

Subject: FW: FOIA - DTMB prevailing wage

From: Skorup, Jarrett <Skorup@mackinac.org>
Sent: Wednesday, March 2, 2022 1:48 PM
To: DTMB-ORS-FOIA-Requests <DTMB-ORS-FOIA-Requests@michigan.gov>
Subject: FOIA - DTMB prevailing wage

March 2, 2022

FOIA Request for funding information

Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

- Any instruction from Governor Whitmer to the Department of Technology, Management, and Budget (DTMB) regarding prevailing wage requirements.
- The executive directive issued by Governor Whitmer requiring the Department to implement prevailing wage requirements for state construction projects.
- Any document with DTMB which demonstrates their ability to enforce “prevailing wage” requirements.

I request this information be delivered via email.

Jarrett Skorup
Mackinac Center
140 W. Main St.
Midland, Michigan 48640

EXHIBIT J

EXHIBIT J

EXHIBIT J

STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
LANSING

MICHELLE LANGE
ACTING DIRECTOR

FREEDOM OF INFORMATION ACT (FOIA) RESPONSE

May 12, 2022

Mr. Jarrett Skorup
140 W. Main St.
Midland, Michigan 48640

Dear Mr. Skorup:

This notice is in response to your request dated March 2, 2022 (attached), for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Your request was received by the Department of Technology, Management and Budget on March 3, 2022. A statutorily-permitted extension of time to respond, was taken through March 24, 2022.

You requested:

1. Any instruction from Governor Whitmer to the Department of Technology, Management, and Budget (DTMB) regarding prevailing wage requirements.
2. The executive directive issued by Governor Whitmer requiring the Department to implement prevailing wage requirements for state construction projects.
3. Any document with DTMB which demonstrates their ability to enforce “prevailing wage” requirements.

On March 23, 2022 DTMB sent an invoice requesting the deposit amount of $346.30 to begin the processing of this request. The deposit was received on March 31, 2022. The DTMB is accepting this amount as payment in full and no balance is due.

The following action has been taken in response to this request:

REQUEST GRANTED IN PART, DENIED IN PART, as follows:

Request Granted In Part. As to items 1 and 3 listed above, responsive documents non-exempt from disclosure, are being mailed to you on a flashdrive. Please use Skorup_MC2022 to unlock it.

Request Denied In Part. As to item 2 listed above, it is hereby certified that, to the best of the undersigned's knowledge, information, and belief, records do not exist within the

department under the description you provided or under another name reasonably known to the department.

As to item 3 listed above, redactions have been made under the following statutory exemptions:

MCL 15.243(1)(g) – "Information or records subject to the attorney-client privilege."

MCL 15.243(1)(m) – "Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure."

In further explanation, the attorney client privileged parts of records are readily noted within the enclosed documents.

As to the deliberative process privilege recognized under MCL 15.243(1)(m), the exempted material is composed of non-factual, deliberative opinions and candid communications of agency employees. Thus, to encourage such communications of agency employees, the statute allows the exemption; however, the factual parts of the communications remain intact.

As to the partial denial determination, pursuant to section 10 of the FOIA, you may do either of the following:

1. Appeal this decision in writing to the Acting Director of the Department, Michelle Lange, Elliott-Larsen Building, 320 South Walnut, P.O. Box 30026, Lansing, Michigan 48909. The writing must specifically state the word "appeal" and must identify the reasons you believe the partial denial should be reversed. The head of the department must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.

2. File an action in the Court of Claims within 180 days after the final denial determination. If you prevail in such an action the court is to award reasonable attorney fees, costs, disbursements, and possible damages.

ADDITIONAL COMMENTS:

The Department's written procedures and guidelines and a summary can be viewed at: www.michigan.gov/foia-dtmb.

Sincerely,

Saige Arend-Ritter

Saige Arend-Ritter
DTMB FOIA Coordinator

Enclosure(s)

EXHIBIT K

EXHIBIT K

EXHIBIT K

[redacted]

From: Kolodin, Zach <KolodinZ@michigan.gov>
Sent: Wednesday, October 6, 2021 6:21 PM
To: Lange, Michelle (DTMB) <LangeM3@michigan.gov>
Subject: Re: FAQ

The biggest question is:
what jobs does this actually apply to?

From: Kolodin, Zach
Sent: Wednesday, October 6, 2021 6:20:24 PM
To: Lange, Michelle (DTMB) <LangeM3@michigan.gov>
Subject: FAQ

- What projects will this cover? Will cover any local contracts?
- Would DTMB maintain a list of contractors who violate the requirement?
- How will the state investigate complaints?
- How will prevailing wage be determined for each county?
-

EXHIBIT L

EXHIBIT L

EXHIBIT L

Lansing, Michigan 48909
tottenm1@michigan.gov
(517) 241-0061

From: Stibitz, Brom (DTMB) <StibitzB@michigan.gov>
Sent: Friday, June 4, 2021 4:28 PM
To: Totten, Mark <TottenM1@michigan.gov>
Cc: Kolodin, Zach <KolodinZ@michigan.gov>; Teegardin, Rachel <TeegardinR1@michigan.gov>; Lange, Michelle (DTMB) <LangeM3@michigan.gov>
Subject: RE: Prevailing Wage

Mark,

Per your request, we engaged in discussion with the AG's Office [redacted]

According to Suzanne Hassan, AAG- State Operations Division, [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Happy to discuss further.

Brom Stibitz (he/him/his)
Director and Chief Information Officer
Michigan Department of Technology, Management and Budget
stibitzb@michigan.gov
Cell: 517-927-1647

HELP. CONNECT. SOLVE.

From: Totten, Mark <TottenM1@michigan.gov>
Sent: Tuesday, May 25, 2021 11:46 AM
To: Stibitz, Brom (DTMB) <StibitzB@michigan.gov>
Cc: Kolodin, Zach <KolodinZ@michigan.gov>; Teegardin, Rachel <TeegardinR1@michigan.gov>
Subject: RE: Prevailing Wage

Sounds good!

Mark Totten
Chief Legal Counsel
Office of the Governor, State of Michigan
George W. Romney Building
111 S. Capitol Avenue
Lansing, Michigan 48909
tottenm1@michigan.gov
(517) 241-0061

EXHIBIT M

EXHIBIT M

EXHIBIT M

STATE OF MICHIGAN
COURT OF CLAIMS

ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN (aka ABC OF MICHIGAN), a nonprofit Michigan Corporation

Plaintiff,

v.

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET, a state government agency.

Case No.: 22-_____-MZ

Hon.

Affidavit of Jimmy E. Greene

Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)
Patrick J. Wright (P54052)
Mackinac Center Legal Foundation
Attorneys for Plaintiff
140 West Main Street
Midland, MI 48640
(989) 631-0900 – voice
wilcox@mackinac.org

AFFIDAVIT OF JIMMY E. GREENE

1. I am over 18 years of age and competent to testify. If called to testify I would state the same as herein.
2. I make this affidavit based on personal knowledge.
3. I am the President of plaintiff, ABC of Michigan, and have the authority to speak on its behalf.

4. The prevailing wage policy has the effect of rewarding less efficient companies than those represented by ABC.
5. The prevailing wage policy locks companies into craft demarcations and training policies which happened to be in effect a half-century ago. Again, this favors companies that are less up-to-date than those represented by ABC.
6. For example, prevailing wage does not set a rate for "helpers," which is a category that contains more workers than the total number of drywall installers, concrete finishers, insulation workers, roofers, ceiling tile installers, tapers, lathers, plasterers and stucco masons, carpet installers, floor layers, glaziers, stone masons, tile setters, pipelaying fitters, and pipelayers, combined. If a contractor uses helpers, they must be paid journeymen rates. Again, this results in an advantage for companies that operate in often outdated ways; and hurts the more streamlined and up-to-date contractors represented by ABC.
7. If the prevailing wage rules are not enjoined, the contractors represented by ABC will lose state contracts and business opportunities. There is no adequate remedy under law for contractors who lose out on bids, even if they bid a lower price. Our courts have said their redress is through an injunction.

Further, Affiant sayeth naught.

Dated: July 21, 2022

Jimmy E. Greene, President of ABC of Michigan

STEPHEN DELIE
Notary Public, State of Michigan
County of Ingham
My Commission Expires 07-29-2025
Acting in the County of Midland

EXHIBIT N

EXHIBIT N

EXHIBIT N

2006 WL 1711423
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Kathleen M. BUCKNER and Salvatore D. Palombo, Plaintiffs–Appellants,
v.
CITY OF CENTERLINE, Defendant–Appellee.

Docket No. 267652.
|
June 22, 2006.

Synopsis

Background: After city council voted, in anticipation of vacancy for city attorney position, to retain current city attorney at a rate of $100 per hour, member of city council brought action for mandamus or superintending control, seeking to compel council to open a permanent city attorney position to competitive bids or to vote specifically to avoid the bidding process in accordance with city ordinance. City moved for summary disposition. Prospective city attorney applicant joined the action. The Circuit Court, Macomb County, granted the city's motion. City council member and prospective applicant appealed.

Holdings: The Court of Appeals held that:

[1] attorney who was prospective city attorney applicant lacked standing to compel city council to open position to competitive bids, and

[2] city council member lacked standing to compel city council to open the position.

Affirmed.

West Headnotes (4)

[1] Municipal Corporations
Compelling action by municipality or officers

Taxpayer status of attorney who was a prospective applicant for city attorney position did not confer standing for prospective applicant to bring action against city council, after city council voted to retain the current city attorney at a rate of $100 per hour in anticipation of position vacancy, to compel council to open a permanent city attorney position to competitive bids or to vote specifically to avoid the bidding process, where council's action would not cause prospective applicant to suffer loss or damage as a taxpayer through increased taxation.

[2] **Municipal Corporations** Award to lowest bidder
Public Contracts Parties; standing

Attorney who was interested in applying for city attorney position, which position city council expected to become vacant when it voted to retain the current city attorney at a rate of $100 per hour, did not have standing, as a frustrated bidder, to bring action against the city council to compel it to open a permanent city attorney position to competitive bids or to vote specifically to avoid the bidding process; any injury in the form of a frustrated contract expectation was not actionable by an unsuccessful bidder.

[3] **Municipal Corporations**
Compelling action by municipality or officers

City council member did not suffer a concrete and particularized injury when city council voted to retain current city attorney at a rate of $100 per hour in anticipation of position vacancy, and thus, did not have standing to compel council to open a permanent city attorney position to competitive bids or to vote specifically to avoid the bidding process in accordance with city ordinance, even if council member suffered negative publicity on the matter; to the extent that council member benefited from city's bidding scheme, such benefit was incidental to the public benefit, and criticism of public official was not actionable.

[4] **Municipal Corporations** Rights of action

City council member's duties as public official did not confer standing for council member to bring action against city council on behalf of the general public, after city council voted to retain the current city attorney at a rate of $100 per hour in anticipation of position vacancy, to compel council to open a permanent city attorney position to competitive bids or to vote specifically to avoid the bidding process in accordance with city ordinance, where council member's duties did not entail policing the council as a whole.

Macomb Circuit Court; LC No.2005–

003718–CZ.

Before: DAVIS, P.J., and SAWYER and SCHUETTE, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiffs appeal as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

In May 2006, defendant's City Council, in response to an anticipated vacancy for the position of City Attorney, voted "to retain Mr. David Viviano as the City Attorney for the City of Center Line at an hourly rate of $100 per hour until City Council decides otherwise ..." (Defendant's exhibit D, p 2).

At the time in question, defendant's code of ordinances included the following provision:

> Any expenditure or any contract obligating the city, in an amount over $1,000.00, shall be made or awarded only on written contract and approved by the city council. Notice soliciting sealed competitive bids shall be published.... Such notice shall briefly state the specifications of the ... service ... required ..., and shall further state the time and place for filing and opening of bids and the general terms and conditions of the award of the contract.... [Center Line Ordinances, § 2–342 (reproduced by plaintiffs as Exhibit B, and by defendant as Exhibit G).]

The code also provides an avenue for avoiding the bidding procedure:

> If the city council shall determine by a majority vote of the members present at any regular or special meeting that no advantage would result to the city from competitive bidding relative to a particular purchase or sale, the purchasing agent shall not be required to comply with the provisions of this division requiring competitive bidding. [*Id.*, § 2–352.]

Asserting that the vote to engage Mr. Viviano was interim in nature, and that the City Council was obliged to open the permanent position to competitive bids, or else vote specifically to avoid the bidding process, plaintiff Buckner, a member of the City Council, brought an action for mandamus or superintending control, seeking to compel such action on the Council's part.

Defendant moved for summary disposition. Before the motion was heard, plaintiff Palombo, an attorney interested in the City Attorney position, joined the action. The trial court granted defendant's motion, on the grounds that neither plaintiff had standing to bring the action, and that the court could not in any event act as a legislative body superior to defendant's City Council.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v. Titan Ins. Co.*, 233 Mich.App. 685, 688, 593 N.W.2d 215

(1999). Whether a party has standing to bring an action likewise involves a question of law, subject to review de novo. *In re KH*, 469 Mich. 621, 627–628, 677 N.W.2d 800 (2004).

For a plaintiff to have standing to press a civil claim, that plaintiff must show an actual or imminent, concrete and particularized, invasion of a legally protected interest. *Lee v. Macomb Co. Bd. of Comm'rs*, 464 Mich. 726, 739–740, 629 N.W.2d 900 (2001), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

***2** [1] Plaintiffs assert that Palombo has standing on the grounds that he is both a taxpayer and a practicing attorney who has shown an interest in applying for the position in question. But "taxpayer standing is contingent upon a showing of a 'threat that he will sustain substantial injury or suffer loss or damage as a taxpayer, through increased taxation and the consequences thereof." ' *Killeen v. Wayne Co. Rd. Comm.*, 137 Mich.App. 178, 190, 357 N.W.2d 851 (1984), quoting *Menendez v. Detroit*, 337 Mich. 476, 482, 60 N.W.2d 319 (1953). Accordingly, "The plaintiff must allege with particularity how the alleged illegal act will result in such injury ." *Killeen, supra.* Because plaintiffs do not show that Palombo's taxpayer-based concerns over how defendant's City Council has filled the position of City Attorney are other than of a general and speculative nature, that status does not confer standing in this instance. *Id.*

[2] Nor does a Palombo's status as frustrated bidder.[1] Systems of bidding for governmental contracts exist to benefit the general public, not prospective bidders. *Talbot Paving Co. v. Detroit*, 109 Mich. 657, 660, 662, 67 N.W. 979 (1896). See also *Detroit v. Wayne Circuit Judge*, 128 Mich. 438, 439, 87 N.W. 376 (1901) ("As a bidder, the complainant has no standing."). In governmental bidding situations, injury in the form of frustrated contract expectations is not actionable by an unsuccessful bidder, because the bidder is but an incidental beneficiary of a scheme that exists mainly in furtherance of public rights or advantage. See *Talbot, supra* at 660–661, 67 N.W. 979.

[3] Plaintiff Buckner likewise fails to show concrete and particularized injury in connection with the City Council's actions. In an action for breach of statutory duties, " 'the party bringing it must show that he had an interest in the performance of the duty, and that the duty was imposed for his benefit." ' *Id.* at 566, 67 N.W. 979, quoting *Strong v. Campbell*, 11 Barb 135, 138 (N.Y. S Ct, 1851). The obvious and direct purpose of the system of competitive bidding, lax enforcement of which plaintiff Bucker complains, is to give the public the benefit of paying competitive prices for needed goods or services. To the extent that plaintiff Buckner benefits from that scheme as a member of defendant's City Council, those benefits are incidental to that major public benefit, and thus not actionable by her. *Id.* For these reasons, the trial court correctly held that Palombo lacks standing in this instance.

[4] Plaintiffs argue that Buckner is exposed to lawsuits over defendant's unauthorized actions, but cite no authority for the proposition that an individual city council member faces personal liability of that sort.

Plaintiffs further complain that Buckner has suffered negative publicity in the matter, but cite no authority for the proposition that such natural consequences of seeking and obtaining public office as public criticism can constitute actionable injury.

***3** However, "public officials have standing to sue commensurate with their public duties and trusts. *Killeen, supra* at 189–190, 357 N.W.2d 851. Plaintiffs assert that Buckner, as an elected member of the City Council, has a duty to ensure that it acts in a lawful manner. But Buckner's duties as a member of that body involve entertaining petitions, making motions, and casting votes, not policing the Council as a whole, or coercing it to entertain certain issues, or vote in certain ways. Because Buckner, as but one voice in that legislative body, does not have administrative responsibility for defendant's expenditures of funds, or handling of legal affairs, her official duties to not confer standing to sue the City on behalf of the general public.

Because we agree with the trial court that neither plaintiff in this case had standing to maintain this cause of action, we need not address the trial court's conclusion that it lacked the authority to intrude into the City Council's business as plaintiffs requested.

Affirmed.

All Citations

Not Reported in N.W.2d, 2006 WL 1711423

Footnotes

1 For purposes of this opinion, we are assuming, but not deciding, that filling the position of City Attorney invokes the duty to engage the bidding process as set forth in defendant's ordinances.

End of Document

EXHIBIT O

EXHIBIT O

EXHIBIT O

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC OPPORTUNITY

Michigan Department of Labor and Economic Opportunity
Wage and Hour Division
PO Box 30476, Lansing, MI 48909
Telephone: 1 (855) 464-9243

WHPWSurvey@michigan.gov

DTMB Prevailing Wage Commercial Survey

Beginning March 1, 2022, the State of Michigan will require state contractors and subcontractors to pay prevailing wage on construction-based contracts issued by the Department of Technology, Management & Budget.

Please provide name and address above.

I certify that the information I have provided on this survey form and attachments is true and correct to the best of my knowledge and belief. I further understand that the information provided is subject to verification by the Wage and Hour Division.

Printed Name: _____

Title: _____

Business Telephone: _____

Signature: _____

Date: _____

Please provide prevailing wages and fringe benefits currently in effect under the applicable collective bargaining agreement, and under any applicable understandings associated with the agreement. List rates separately for each geographic area and, if applicable, for each size of project for which there are different rates in effect.

On each rate sheet you complete, if there is only one pay rate in effect for a job classification, list that rate as the prevailing wage. If there is more than one pay rate in effect, list as the prevailing wage the one that has been the most frequently or commonly paid during the 60 days prior to completing this Survey. In determining the most common or frequent wage, include the pay rates in effect in the area even if a collective bargaining agreement or understanding excludes those rates from prevailing wage projects.

It is critical that you provide a copy of the pertinent collective bargaining agreement and the applicable understanding or understandings, if any, for each listed rate, and that you indicate the page numbers where all information is found as requested on the form.

Rates cannot be included in the state prevailing wage schedules if they are not submitted with a current collective bargaining agreement or understanding.

PREVAILING WAGE COMMERCIAL SURVEY
ATTACHMENT PAGE

1
Trade Classification Listed on this Page

* Attach additional sheets if necessary

2
A. Geographic boundaries of Collective Bargaining Agreement (county, city, township, etc.) for classifications on this page

Page number(s) of Agreement or Understanding where geographic boundaries are defined:

B. If applicable, indicate size or dollar value of projects corresponding to rates listed on this page:

☐ Not Applicable

Page number(s) of Agreement or Understanding where such information is found:

3 Listing of Classifications Example: Journeyman – construction mechanic	4 Base Hourly Rate	5 Fringe Benefits (not including Industry Advancement Fund contributions)					6 Total
		a Health and Welfare	b Vacation/ Holiday	c Pension	d Training	e Other	

Geographic boundaries of Collective Bargaining Agreement (county, city, township, etc.) for classification on this page.	If applicable, indicate size or dollar value of projects corresponding to rates listed on this page:
_____	☐ Not Applicable _____

* Attach additional sheets if necessary

7. Overtime Provisions

Indicate what page from the attached collective bargaining agreement or understanding this information is from . . . ☐

Mark the area that applies:		Time and ½	Time and ½ after 40	Double Time	Not Applicable
Monday - Friday	9th hour				
	10th hour				
	beyond 10 hours				
Saturday	First 8 hours				
	9th hour				
	10th hour				
	beyond 10 hours				
Sundays & Holidays					

Does the collective bargaining agreement allow an alternative of 4 ten-hour days without overtime payment? ☐

On what page is that information found? ☐

List each fringe benefit which is paid at a premium rate for overtime hours:

PREVAILING WAGE COMMERCIAL SURVEY

Local Union ________

Michigan Department of Labor and Economic Opportunity

Wage and Hour Division

Geographic boundaries of Collective Bargaining Agreement (county, city, township, etc.) for classification on this page.

____

* Attach additional sheets if necessary

If applicable, indicate size or dollar value of projects corresponding to rates listed on this page:

☐ Not Applicable

____

Classification Description: ________ Apprentice % of Base Rate: ________

	Straight Hourly	Time and a one half	Double Time
Health and Welfare			
Vacation			
Pension			
Training			
Other			
Total Apprentice Rate			

Classification Description: ________ Apprentice % of Base Rate: ________

	Straight Hourly	Time and a one half	Double Time
Health and Welfare			
Vacation			
Pension			
Training			
Other			
Total Apprentice Rate			

Classification Description: ________ Apprentice % of Base Rate: ________

	Straight Hourly	Time and a one half	Double Time
Health and Welfare			
Vacation			
Pension			
Training			
Other			
Total Apprentice Rate			

PREVAILING WAGE COMMERCIAL SURVEY
Michigan Department of Labor and Economic Opportunity
Wage and Hour Division

Local Union ________

Geographic boundaries of Collective Bargaining Agreement (county, city, township, etc.) for classification on this page.

____

* Attach additional sheets if necessary

If applicable, indicate size or dollar value of projects corresponding to rates listed on this page:

☐ Not Applicable

____

Classification Description: ____________

Apprentice % of Base Rate: ____________

	Straight Hourly	Time and a one half	Double Time
Health and Welfare			
Vacation			
Pension			
Training			
Other			
Total Apprentice Rate			

Classification Description: ____________

Apprentice % of Base Rate: ____________

	Straight Hourly	Time and a one half	Double Time
Health and Welfare			
Vacation			
Pension			
Training			
Other			
Total Apprentice Rate			

Classification Description: ____________

Apprentice % of Base Rate: ____________

	Straight Hourly	Time and a one half	Double Time
Health and Welfare			
Vacation			
Pension			
Training			
Other			
Total Apprentice Rate			

PREVAILING WAGE COMMERCIAL SURVEY

Local Union _____

Michigan Department of Labor and Economic Opportunity
Wage and Hour Division

Geographic boundaries of Collective Bargaining Agreement (county, city, township, etc.) for classification on this page.

_____

If applicable, indicate size or dollar value of projects corresponding to rates listed on this page:

☐ Not Applicable

_____

* Attach additional sheets if necessary

Classification Description	Apprentice % of Base Rate		Straight Hourly	Time and a one half	Double Time
		Health and Welfare			
		Vacation			
		Pension			
		Training			
		Other			
		Total Apprentice Rate			

Classification Description	Apprentice % of Base Rate		Straight Hourly	Time and a one half	Double Time
		Health and Welfare			
		Vacation			
		Pension			
		Training			
		Other			
		Total Apprentice Rate			

EXHIBIT P

EXHIBIT P

EXHIBIT P

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street
Lansing, MI 48909
Phone: 517-335-8658 Fax: 517-335-9512

REQUEST FOR RULEMAKING (RFR)

1. Department:
Technology, Management and Budget

2. Bureau:
Purchasing Division

3. Promulgation type:
Full Process

4. Title of proposed rule set:
Vendor Debarment

5. Rule numbers or rule set range of numbers:
R 18.101 - R 18.120

6. Estimated time frame:
6 months

Name of person filling out RFR:
Stephen Davis

E-mail of person filling out RFR:
daviss1@michigan.gov

Phone number of person filling out RFR:
517-242-9464

Address of person filling out RFR:
525 W Allegan Street
Lansing, MI 48933

7. Describe the general purpose of these rules, including any problems the changes are intended to address.

Most State of Michigan vendors are upstanding corporate citizens that provide needed goods and services to the State, create jobs, and make Michigan a better place to live. However, vendors that commit serious or repetitive violations of the law present significant risks to the State and its citizenry, as well as reputational harm.

The purpose of this rule is to allow the Department of Technology, Management and Budget (DTMB) to exercise its authority under MCL 18.1264. That statute allows DTMB to debar a vendor from participating in the bid process and from contract award upon notice and a finding that the vendor is not able to perform responsibly, or that the vendor, or an officer or an owner of a 25% or greater share of the vendor, has demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

DTMB has rulemaking authority under MCL 18.1131(2), which states that DTMB "…may promulgate rules as necessary to implement this act. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328."

This rule is necessary to implement DTMB's debarment authority under MCL 18.1264.

MCL 24.239

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

PA 431 of 1988, section 18.1131 and 18.1264 of the Michigan Compiled Laws.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

No.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The proposed rule does not conflict with any known rules or regulations. The federal General Services Administration processes suspension and debarment cases as required by federal law.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

No.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

No.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The proposed rule provides for up to 5 years of debarment, where the comparable Federal rule limits it to 3 years. The difference is due to the fact that the majority of State of Michigan contracts end up lasting 5 years, so a 3 year debarment would likely not be much of a penalty as it would allow the debarred vendor to bid again on the next contract cycle. This would put the debarred vendor in the same situation as a vendor that simply did not win the contract.

Additionally, the proposed rule allows DTMB to debar a vendor for "serious or repetitive failure to perform contractual obligations" and for "any other cause so serious and compelling as to affect responsibility as a state supplier, including debarment by another government entity." The federal rule focuses soley on criminal behavior, convictions and fraud.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

DTMB has not received any complaints or comments on the topic from the public.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

No.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No

MCL 24.239

EXHIBIT Q

EXHIBIT Q

EXHIBIT Q

STATE OF MICHIGAN

COURT OF CLAIMS

MOTHERING JUSTICE, MICHIGAN ONE FAIR WAGE, MICHIGAN TIME TO CARE, RESTAURANT OPPORTUNITIES CENTER OF MICHIGAN, JAMES HAWK, and TIA MARIE SANDERS,

Plaintiffs,

v

DANA NESSEL, in her official capacity as the Attorney General and head of the Department of Attorney General, and the STATE OF MICHIGAN,

Defendants.
_____/

OPINION AND ORDER

Case No. 21-000095-MM

Hon. Douglas B. Shapiro

At a session of said Court held in the City of Lansing, County of Ingham, State of Michigan.

The question before the Court is whether the adopt-and-amend strategy that the Legislature employed to enact and, in the same legislative session, substantially amend two voter-initiated laws violated Article 2, § 9 of Michigan's 1963 Constitution (the Michigan Constitution). The parties have each moved for summary disposition. The Court heard the motions on June 27, 2022. For the reasons discussed herein, the Court concludes that the adopt-and-amend strategy the Legislature used to enact 2018 PA 368 and 2018 PA 369 was unconstitutional. Article 2, § 9 grants the Legislature three options to address a law proposed through the initiative process—enact the law, reject the law, or propose an alternative. Article 2, § 9 does not permit the Legislature to adopt a proposed law and, in the same legislative session, substantially amend or repeal it. Were

the Court to adopt the state's argument, it would mean that anytime a simple majority of the Legislature opposed the content of an initiative, it could, by legislative sleight-of-hand, prevent the initiative from ever becoming law without ever allowing the People to vote on it. This would plainly violate Article 2, § 9 of our Constitution, which reserves such power to the People. While the Legislature has the power to pass, amend, and repeal statutes, that power does not authorize it to do so in a manner that destroys the People's right to initiative defined in the Constitution. The Court therefore GRANTS plaintiffs' and the Attorney General's motions for summary disposition, and DENIES defendant state of Michigan's motion for summary disposition.

I. BACKGROUND

The Court notes that the relevant factual background is not in dispute. Justice CLEMENT detailed the factual background in her concurring opinion in *In re House of Representatives Request for Advisory Opinion regarding Constitutionality of 2018 PA 368 & 369*, 505 Mich 884, 884-885; 936 NW2d 241 (2019) (CLEMENT, J., concurring), as follows:

> The Michigan Constitution allows Michigan voters to exercise various forms of direct democracy, one of which is to initiate legislation via petitions signed by a requisite number of voters. See Const. 1963, art. 2, § 9. Groups known as "Michigan One Fair Wage" and "MI Time to Care" sponsored, respectively, proposals known as the "Improved Workforce Opportunity Wage Act" and the "Earned Sick Time Act." Pursuant to MCL 168.473, they filed those petitions with the Secretary of State in the summer of 2018. The Secretary of State then notified the Board of State Canvassers, MCL 168.475(1), which canvassed the petitions to determine whether an adequate number of signatures was submitted, MCL 168.476(1). The Board ultimately certified both petitions as sufficient, MCL 168.477(1), and, pursuant to Const. 1963, art. 2, § 9, the proposals were submitted to the Legislature. This constitutional provision required that the proposals were to "be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition [was] received by the legislature," with enactment not "subject to the veto power of the governor." The Legislature ultimately adopted both "without change or amendment" on September 5, 2018. 2018 PAs 337 and 338. Enacting them meant that they were not "submit[ted] . . . to the people for approval or rejection at the next general election." Const. 1963, art. 2, § 9. Had they been submitted to the people and adopted, they

would only have been amendable with a three-fourths majority in the Legislature. *Id.*

> After the 2018 elections, the Legislature turned its attention to these policy areas once again. Although Attorney General Frank Kelley had, several decades ago, opined that "the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session," . . . a member of the Michigan Senate asked for an opinion on that issue and Attorney General Bill Schuette issued a new opinion which superseded the prior opinion and concluded that the Legislature could enact amendments to an initiated law during the same session at which the initiated law was itself enacted. . . . The Legislature thereafter did adopt certain amendments to these proposals with a simple majority, which—as ordinary legislation—the Governor signed into law. See 2018 PA 368 and 369. Because neither law contained a more specific effective date, both took effect on the 91st day after the 99th Legislature adjourned *sine die*. . . . The Legislature adjourned on December 28, 2018 . . . so the effective date of 2018 PA 368 and 369 was March 29, 2019. [Citations omitted; alteration in original).]

Following the enactment of 2018 PA 368 and 2018 PA 369, the Michigan Supreme Court denied the Michigan House of Representatives' and the Michigan Senate's request for an advisory opinion regarding the constitutionality of the two statutes. *Id*. (order of the Court). Plaintiffs then sued in this Court. Because the Attorney General is aligned with plaintiff on the substantive issues, the Court ordered plaintiffs to amend their complaint to add the state of Michigan (the State) as a party defendant and to indicate that the Attorney General is named as a representative of the State, only. The Department of Attorney General created a conflict wall allowing the Department to argue both sides of the substantive issue. Plaintiffs amended their complaint in accordance with this Court's order. The Court also permitted the House of Representatives and Senate to submit an amicus curiae brief.

The parties have filed cross-motions for summary disposition under MCR 2.116(C)(10), requesting that this Court determine whether the Legislature enacted 2018 PA 368 and 2018 PA 369 in accordance with Article 2, § 9 of the Michigan Constitution. In short, plaintiffs and the Attorney General argue that the common meaning of Article 2, § 9 contains no carve-out for the

adopt-and-amend tactic, and the Legislature's only options for responding to a voter-initiated proposed law are those specifically provided for in Article 2 § 9, i.e., to (1) adopt the law, (2) reject the law, or (3) propose an alternative law to be placed on the ballot at the next general election. They also argue that the history and spirit of the Michigan Constitution, as well as the caselaw analyzing Article 2, § 9, support the common understanding. Plaintiffs and the Attorney General do not dispute that, once the Legislature enacted the Earned Sick Time Act and the Improved Workforce Opportunity Wage Act, the Legislature was free to amend the laws in a subsequent legislative session.

For its part, the State argues that because Article 2, § 9 does not expressly *forbid* the Legislature from adopting and amending a voter-initiated law in the same legislative session, the Legislature was able to do so under its powers outlined in Article 4 of the Michigan Constitution, which governs and outlines the powers of the Legislature. Const 1963, art 4, § 1. In other words, the State's view is that the Legislature has a plenary power to enact and amend laws under Article 4, which is uninhibited unless the Michigan Constitution expressly enjoins it. Without an express mandate to the contrary, the Legislature was free to adopt the voter-initiated laws and then substantially amend them in the same legislative session.

The Court heard oral argument on the motions on June 27, 2022, and took the matter under advisement.

II. ANALYSIS

A. SUMMARY DISPOSITION STANDARD

The parties request summary disposition under MCR 2.116(C)(10). Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact. *El-Khalil*

v Oakwood Healthcare, Inc, 504 Mich 152, 160; 934 NW2d 665 (2019). " 'A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.' " *Id*. (citation omitted). As noted above, the parties do not dispute the facts of this case, and the case centers on whether 2018 PA 368 & 369 are constitutional. A party challenging the constitutionality of a statute has the burden to establish that there are no factual circumstances under which the act may be valid, meaning that the Court will analyze whether the statutes are unconstitutional in the abstract, rather than as applied to a specific case. *League of Women Voters of Mich v Sec'y of State*, 508 Mich 520; ___ NW2d ___ (2022) (Docket Nos. 163711, 163712, 163744, 163745, 163747, and 163748); slip op at 8 (*League of Women Voters III*).

B. ANALYSIS OF ARTICLE 2, § 9

By way of background, "the Michigan Constitution reserves to the People the ability to approve legislation that the Legislature has already adopted (the referendum), and to propose laws to the Legislature and enact them if the Legislature refuses (the initiative)." *League of Women Voters III*, ___ Mich ___; slip op at 10. Article 2, § 9 of the Michigan Constitution governs initiatives and referendums. The Article provides, in full:

> The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.
>
> No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

> Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.
>
> If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.
>
> Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.
>
> The legislature shall implement the provisions of this section. [Const 1963, art 2, § 9.]

1. LEGAL BACKGROUND

To interpret Article 2, § 9, the Court first looks to the rules of constitutional analysis and notes that the rules differ from those of statutory interpretation. *Birchwood Manor, Inc v Comm'r of Revenue*, 261 Mich App 248, 257; 680 NW2d 504 (2004). In the constitutional-interpretation context, the starting point is the common meaning (or understanding) of the constitutional language. See *O'Connell v Dir of Elections*, 317 Mich App 82, 88; 894 NW2d 113 (2016); *Birchwood Manor*, 261 Mich App at 254. In other words, "[t]he primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification." *Wayne Co v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004); see

also *League of Women Voters of Mich v Sec'y of State*, 333 Mich App 1, 14; 959 NW2d 1 (2020) (*League of Women Voters I*) (the Court will look at the common understanding, or the meaning that a "great mass of people themselves" would give the provision). Thus, the "primary goal in construing a constitutional provision—in marked contrast to a statute or other texts—is to give effect to the *intent of the people* of the state of Michigan who ratified the constitution, by applying the rule of common understanding." *Mich United Conservation Clubs v Sec'y of State*, 464 Mich 359, 373; 630 NW2d 297 (2001) (YOUNG, J., concurring) (quotation marks omitted). This differs from the method of statutory interpretation, which is to determine the intent of the Legislature that passed the law, and absent an ambiguity, the plain and ordinary meaning of the language will control *Birchwood Manor*, 261 Mich App at 257. As Justice Cooley once described in his seminal treatise on constitutional analysis:

> A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and *it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that was the sense designed to be conveyed.* [*Id*. at 254, quoting 1 Cooley, Constitutional Limitations (6th ed), p 81 (citation omitted; emphasis added).]

The Court's analysis, therefore, begins with the common meaning of the constitutional provisions as the ratifiers, i.e. the People, understood them. *Mich United Conservation Clubs*, 464 Mich at 373 (YOUNG, J., concurring). The Court's task is not to "impose on the constitutional text at issue . . . the meaning we as judges would prefer, or even the meaning the people of Michigan today would prefer, but to search for contextual clues about what meaning the people who ratified the text *in 1963* gave to it." *Id*. at 375. The "common meaning" or "common understanding" is determined " 'by applying each term's plain meaning at the time of ratification.' " *Oshtemo*

Charter Twp v Kalamazoo Co, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 355634); slip op at 2 (citation omitted). The Court may also consider the circumstances of the provision and the purpose of the provision. *Id*. Additionally, "[e]very constitutional provision must be interpreted in the light of the document as a whole, and *no provision should be construed to nullify or impair another*." *League of Women Voters I*, 333 Mich App at 14 (citation and quotation marks omitted) (emphasis added).

Next, the Court will consider " 'the circumstances surrounding the adoption of the constitutional provision and the purpose sought to be accomplished.' " *Id*. (citation omitted). For example, the Address to the People—which is distributed to citizens in advance of the ratification vote—as well as the constitutional convention debates, are also relevant to understanding the intent of the ratifiers. *Mich Coalition of State Employee Unions v Michigan*, 498 Mich 312, 323-324; 870 NW2d 275 (2015). In addition, the Court "liberally construes constitutional initiative and referendum provisions, through which the people reserve to themselves a direct legislative voice, to achieve their purposes." *League of Women Voters v Sec'y of State*, ___ Mich App ___; ___ NW 2d ___ (2021) (Docket Nos. 357984 and 357986); slip op at 9 (*League of Women Voters II*), aff'd 508 Mich 520 (2022).

2. COMMON MEANING OF ARTICLE 2, § 9

The Court turns first to the common meaning of the language of Article 2, § 9, as the People would have understood it. Article 2, § 9 explicitly and affirmatively outlines the three options that are available to the Legislature during the 40 days following its receipt of the initiative petition after certification by the State. First, it can do nothing thereby rejecting the proposed law, in which case it must await the voters' decision at the ballot box whether to approve the measure. Second, the Legislature may propose a different law on the same subject in which case both measures, the

initiative and the legislative alternative will appear on the ballot and if both pass, the one garnering the most votes will prevail and become law. The Legislature's third alternative defined in art 2, § 9 is to enact the law proposed in the initiative *without change*. See Const 1963, art 2, § 9. Article 2, § 9 does not provide the Legislature with any other options during (or after) the 40-day period, including the option to significantly amend the proposed law after adopting it.

Moreover, the fact that the People gave the Legislature the option to propose an alternative belies the State's argument that the Legislature may substantially amend the voter-initiated law once enacted. The common meaning of the provision lends itself to the opposite conclusion. For example, the same paragraph provides, "If any law proposed by such petition shall be enacted by the legislature *it* shall be subject to referendum, as hereinafter provided." *Id.* The use of the words "such" and "it" indicates that the People intended that the *exact law* will be subject to the referendum. Thus, the provision makes clear that the initiated law cannot be subject to amendment until *after* the referendum period has run.

Then, if the proposed law is approved through the general-election process, the law takes effect 10 days after the official-vote declaration. And once passed by the voters, the initiated law can only be repealed by another election vote or by a supermajority vote of ¾ of the Legislature. *Id*. This provision once again indicates that the Legislature cannot significantly amend a voter-initiated law in the same legislative session. Otherwise, the adopt-and-amend procedure would render the purpose of the supermajority requirement meaningless. As is demonstrated in this case, all a Legislature that opposes the initiative need do is adopt the initiative and then amend or repeal it by simple majority. The State argues that the fact that the amendment must be passed by a ¾ vote supports its position because the Constitution has no similar requirement for legislatively-enacted laws. But the fact that the People contemplated that a law enacted through popular vote

could only be amended or repealed by a supermajority in both Houses only confirms that the People desired strong safeguards against legislative interference with the People's constitutional right of initiative.

Finally, Article 2, § 9 goes on to state that "[l]aws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof." *Id*. The State contends that because this statement only applies to referendums, the paragraph supports the State's interpretation that the Legislature may amend a voter-initiated law within the same legislative session. But the State's interpretation fails to consider that the People never granted the Legislature the option to amend a voter-initiated law in the first instance. So there was no need for the People to specify, yet again, that the Legislature lacked that power.

The State relies on the fact that Article 2, § 9 does not expressly prohibit the Legislature from adopting and amending a voter-initiated law within the same legislative session. But this "fourth option" does not appear in the language of Article 2, § 9. The State's overarching position is that the Legislature has a plenary power that allows it to amend or appeal a law when the constitution does not expressly limit this power. The State invokes Article 4 to argue that the Legislature can do " 'anything which it is not prohibited from doing.' " But Article 2, § 9 *does* prohibit the Legislature from taking action beyond what is outlined in the constitutional provision. In essence, the State attempts to treat the Legislature's power regarding initiatives as if it stemmed from their powers defined in Article 4. It does not. Article 2, § 9 affirms that the initiative power arises from the People—not the Legislature. The People granted the Legislature three options that it may take within 40 days when faced with an initiative petition—adopt it, reject it, or propose an alternative. The Legislature chose none of these three options. And, as noted, reading a fourth option into the initiative process would essentially nullify the provision allowing the People to

vote on (and potentially adopt) a rejected initiative.[1] The Court will not look for meanings between the lines to determine the common meaning of a constitutional provision or grant the Legislature an implied power which so clearly and unambiguously nullifies a power explicitly granted to the People.

For these reasons, the language of Article 2, § 9, as it would have been understood by a great mass of people, supports that the Legislature only has three options in response to an initiative petition—adopt the initiative presented before it, reject the petition, or propose an alternative law. Article 2, § 9 does not permit the adopt-and-amend tactic.

3. SPIRIT AND HISTORY OF ARTICLE 2, § 9

The history and spirit of Michigan's Constitutions align with the common meaning. Article 1, § 1 of Michigan's Constitution sets the precedent for the rest of the Constitution: "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection." Const 1963, art 1, § 1. The inherent power of the people to govern themselves stems back to Michigan's origins and its 1835 Constitution. See Const 1835, art I, § 1 ("First. All political power is inherent in the people."). Similarly, the Preamble invokes the power of the people and provides, "We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution." Const 1963, Preamble. The starting point for any constitutional analysis, therefore, is the will of the People.

[1] Article 4, § 13 of the Michigan Constitution provides that the Legislature operates on an annual, regular-session basis, which further supports that the Legislature cannot amend the voter-initiated law within the same legislative session.

The earliest iterations of the Michigan Constitution (the 1835 Constitution and the 1850 Constitution) did not contain a statutory-initiative procedure. See generally Const 1835 and Const 1850. The idea of the initiative first appeared in Michigan's 1908 constitution. *League of Women Voters III*, ___ Mich ___; slip op at 11. Initially, the 1908 Constitution provided for an initiative arising from the Legislature—not from a citizen petition. Const 1908, art 5, § 38 (as ratified) ("Any bill passed by the legislature and approved by the governor, except appropriation bills, may be referred by the legislature to the qualified electors; and no bill so referred shall become a law unless approved by a majority of the electors voting thereon."); see also *League of Women Voters III*, slip op at 11 (explaining the evolution of the initiative petition).

The Michigan Constitution was amended in 1913 during a period of "mistrust" of the government. *League of Women Voters III*, slip op at 11-12. The 1913 amendment added significant additional details "clawing back" the right of the People to initiate and approve legislation. *Id*. at 11.

> The initiative found its birth in the fact that political parties repeatedly made promises to the electorate both in and out of their platforms to favor and pass certain legislation for which there was a popular demand. As soon as election was over their promises were forgotten, and no effort was made to redeem them. These promises were made so often and then forgotten that the electorate at last through sheer desperation took matters into its own hands and constructed a constitutional procedure by which it could effect changes in the Constitution and bring about desired legislation without the aid of the legislature. [*Id*., quoting *Hamilton v Deland*, 227 Mich 111, 130; 198 NW 843 (1924) (BIRD, J., dissenting)].

Then, during the 1963 Constitutional Convention, the initiative language was "substantially slimmed down" to remove technical language. *League of Women Voters III*, ___ Mich ___; slip op at 12. The corresponding Constitutional Convention Record does not indicate any intent to permit the Legislature to adopt, and then substantially amend, the initiative petition within the same legislative session. To the contrary, the constitutional history suggests that the

Delegates envisioned only three options for the Legislature—adopt in full, reject, or propose an alternative.

For example, in the context of discussing a proposed amendment lowering the percentage of registered electors, Delegate Downs stated, "I think by making it half as difficult to initiate legislation, we will then encourage that process, rather than the constitutional amendment process. And it does then give the legislature a chance to review what was done; *either adopt it, do nothing, or provide an alternative* in case the legislature, after hearings, can work out a better proposal." 2 Constitutional Convention Record, 1961-1962, p 2394 (emphasis added). Delegate Kuhn added, "[B]ut what are the rights of the legislature after the people start this petition and have the 10 per cent [sic] of the people who voted for governor? They must accept it within 40 days, and accept it in toto, or they must place it on the ballot." *Id*. This colloquy further supports that the common understanding of the initiative process was that the Legislature's options were either to adopt or reject the proposed law, or propose an alternative law for the voters to decide.

The State relies on Delegate Kuhn's later remark that "[i]f the Legislature sees fit to adopt the petition of the initiative as being sent out, if the legislature in their wisdom feel it looks like it is going to be good, and they adopt it in toto, then they have full control. They can amend it and do anything they see fit." *Id*. at 2395. But Delegate Kuhn did not explain the time frame for when the Legislature can begin the amendment process. [2] As outlined earlier, Delegate Kuhn signaled his understanding that the Legislature could *not* amend within the same legislative session. Even

[2] Delegate Kuhn also expressed his distaste for the initiative process: "It's tough. We want to make it tough. It should not be easy. The people should not be writing the laws. That's what we have a senate and a house of representatives for. But they should have the power, which they do not have in our federal government, but they do have it in this matter . . . ." *Id*. at 2394.

if Delegate Kuhn's understanding was in line with the State's position, Delegate Kuhn's sole opinion does not override the common understanding of the People.

In the Address to the People, the Convention explained Article 2, § 9 as follows:

> This is a revision of Sec 1, Article V, of the present constitution eliminating much language of a purely statutory character. The new *wording specifically reserves the initiative and referendum powers to the people*, limits them as noted, and requires signatures equal to at least eight per cent of the electors last voting for governor for initiative petitions and at least five per cent for referendum petitions.
>
> *In the section is language which provides that the legislature must act upon initiative proposals within 40 session days, but may propose counter measures to the people.*
>
> No laws initiated or adopted by the people can be vetoed; and *no law initiated and adopted by them can be amended or repealed except by a vote of the people . . . or by three fourths of the members in each house of the legislature. . . .*
>
> Matters of legislative detail contained in the present section of the constitution are left to the legislature. The language makes it clear, however, *that this section is self-executing and the legislature cannot thwart the popular will by refusing to act*. [*What the Proposed New State Constitution Means to You: A Report to the People of Michigan by Their Elected Delegates to the Constitutional Convention of 1961-1962 (Address to the People)*, August 1, 1962, p 21 (emphasis added).][3]

The Address of the People therefore reflects an ongoing attempt by the drafters to prevent the Legislature from "thwarting" the popular will, as expressed in the initiative. Furthermore, the adopt-and-amend strategy does not appear in the constitutional history, or in the Address to the People. Nor has it ever been asserted before in the 60 years since the 1963 constitution was ratified.

[3] In another section, the Convention explained that the remaining language in Article 5 of the previous Constitution was transferred to Article 2 (Elections) because "it relates to the initiative and referendum." 2 Official Record, p 3369.

The initiative process has only been invoked a handful of times throughout its history, including in 2018. See Michigan Legislature, *Voter Initiatives* <http://www.legislature.mi.gov/(S(idwphh5op24v3uahhgm3pqtu))/mileg.aspx?page=initiative.> (accessed July 12, 2022). And, as the parties appear to agree, the Legislature has never previously attempted to amend a voter-initiated law within the same legislative session after adopting the law. See *id*.

In 1963 (shortly after ratification), Attorney General Frank Kelley was asked to opine on certain questions relating to Article 2, § 9, in the context of an initiative petition regarding a mandatory tenure law. OAG 1963, No. 4303, pp 309-312 (March 6, 1964). Attorney General Kelley opined that the Legislature could *not* adopt and then amend an initiative petition within the same legislative session without violating both the body and spirit of the Michigan Constitution:

> The people have not imposed similar restrictions upon a law enacted by the legislature in response to initiative petitions filed with that body under Article II, Sec. 9. It must follow that the initiative petition enacted into law by the legislature in response to initiative petitions are subject to amendment by the legislature at a subsequent legislative session. *It is equally clear that the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963*. [*Id*. at 311 (emphasis added).]

Attorney General Kelley's viewpoint was therefore in line with plaintiffs' and the Attorney General's position in this matter. His opinion is entitled to more weight than subsequent opinions because Attorney General Kelley issued his opinion shortly after the Michigan Constitution was ratified. See *In re Requests of Governor and Senate on Constitutionality of 1972 PA 294*, 389 Mich 441, 470; 208 NW2d 469 (1973) ("[T]hose cases decided at a time proximate to the ratification of the constitution are important in that they better reflect the meaning of the language

of the constitution at the time it was written."). Therefore, both the history and the spirit of Article 2, § 9 support the common meaning.

4. CASELAW REGARDING ARTICLE 2, § 9

Shortly after the Michigan Constitution was ratified, Article 2, § 9 became the subject of several court decisions. In *Mich Farm Bureau v Hare*, 379 Mich 387; 151 NW2d 797 (1967) (per curiam), the Michigan Supreme Court addressed a timing issue regarding the People's referendum power outlined in Article 2, § 9. The specific referendum petition related to a state statute that exempted Michigan from a recently-enacted federal law imposing uniform daylight savings time on all states. *Id*. at 392. The specific issue was whether the referendum power could be exercised within the 90-day period after the session adjourned, or could only be exercised before the adjournment of the legislative session. *Id*. at 392-393. The plaintiffs' concern was that the Legislature could adopt and repeal the relevant law in the spring and fall of every year, preventing citizens from ever submitting referendum petitions on the law. See *id*. at 392-393, 395.

In the context of analyzing whether a referendum petition complied with the Michigan Constitution, the Supreme Court explained that the referendum power was reserved to the People and should "be saved if possible as against conceivable if not likely evasion or parry by the legislature." *Id*. at 393. The Court explained that "no court should so construe a clause or section of a constitution as to impede or defeat its generally understood ends when another construction thereof, equally concordant with the words and sense of that clause or section, will guard and enforce those ends." *Id*. The State's interpretation would permit "outright legislative defeat, not just hindrance, of the people's reserved right" to referendum. *Id*. at 394. Thus, the Court rejected the "adopt-and-repeal" approach. *Id.* The Court then cautioned against an interpretation like the one the State advocates here:

> With such construction announced judicially, the legislature would stand free to avoid effective referral of this and future legislative exemptions. . . simply by repealing [the statute] next November, then by enacting another immediate effect act of exemption next spring and then by another repealer in the late fall, and so on through the years." [*Id*. at 395.]

The Court declined to adopt an interpretation that would "thwart" the constitutional process. *Id*. at 395. See also *Woodland v Mich Citizens Lobby*, 423 Mich 188, 215; 378 NW2d 337 (1985) ("Art. 2, § 9, is a reservation of legislative authority which serves as a limitation on the powers of the Legislature."). This Court concludes that *Farm Bureau* is entitled to additional weight because it was decided within a few years after the 1963 Constitution was ratified. See *Constitutionality of 1972 PA 294*, 389 Mich at 470.

The State relies on *In re Proposals D & H*, 417 Mich 409; 339 NW2d 848 (1983), in which the Supreme Court addressed a situation involving a legislatively-initiated law under Article 4, § 34 of the Michigan Constitution (providing that a bill may specify that it will not become law unless the majority of electors vote it into law). *Id*. at 418. *Proposals D & H* has a lengthy procedural history but, in short, the Court concluded that the People's power to file an initiative petition did not suspend the Legislature's authority under Article 4, § 34. *Id*. at 421. The Court acknowledged, however, that it was not addressing "whether the Legislature may act under art. 4, § 34 after it *receives* a certified initiative petition." *Id*. at 421 n 3. *Proposals D & H* is therefore distinguishable from this matter. Furthermore, to the extent that *D & H* is on point, *D & H* supports the Attorney General's and plaintiffs' position because the Court confirmed that the Legislature has yet another mechanism to propose a countermeasure to an initiative proposal—a proposed law under Article 4, § 34.

The State also relies, in large part, on *Frey v Dir of Dep't of Social Servs*, 162 Mich App 586; 413 NW2d 54 (1987), aff'd sub nom *Frey v Dep't of Mgt and Budget*, 429 Mich 315 (1987).

In *Frey*, the Court of Appeals addressed a proposal to initiate legislation preventing state-funded abortions for welfare recipients (unless necessary to save the mother's life). *Id*. at 588. The Legislature adopted the proposal. *Id*. at 589. The specific issue in *Frey* was whether the law should have immediate effect. *Id*. at 589-590. The plaintiffs relied on Const 1963, art 4, § 27 to argue that the amendment should *not* have immediate effect unless a supermajority of the Legislature voted for it. *Id*. at 590. The Court of Appeals, therefore, was *not* faced with the issue in this case whether the Legislature could amend an adopted voter-initiated law within the same legislative session.

The Court explored the language and history of Article 2, § 9, and ultimately concluded that Article 4, § 27 applied to the law. *Id*. at 595-596. The Court also suggested that certain provisions of Article 4 provided procedural safeguards in the context of Article 2, § 9, but the Court never held that the Legislature's authority was all-encompassing. *Id*. at 598-599 (explaining, among other things, that "[u]nless article 4, § 27 is incorporated into the initiative process, there is no guide as to when an initiative without immediate effect language, enacted by the Legislature, becomes effective"). Rather, the Court's ruling was limited to the process outlined in Article 4, § 27.

The Supreme Court affirmed, explaining that Article 4 of the Michigan Constitution outlined the procedure when the Legislature enacts a voter-initiated law. *Frey v Dep't of Mgt and Budget*, 429 Mich 315, 337-338; 414 NW2d 873 (1987). The Court reasoned that certain other rules outlined in Article 4 would apply to voter-initiated laws, such as the time of convening, quorums, and open meetings. *Id*. at 337. But the Court limited its holding: "We *only hold* that when an initiated law is enacted by the Legislature, it is subject to art. 4, § 27." *Id*. at 338 (emphasis added). The *Frey* decision was therefore limited to its facts and to the question whether art 4, § 27

applied to enacted laws arising from a legislatively-proposed initiative. The Court interprets *Frey* to stand for the position that the Legislature may employ certain procedures from Article 4 of the Michigan Constitution to implement laws adopted through the initiative process outlined in Article 2, § 9 (specifically art 4, § 27). But *Frey* does *not* signal that the Legislature has carte-blanche authority to adopt and then amend a voter-initiated law within the same legislative session.

Next, the Supreme Court decided *In re Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich 49; 340 NW2d 817 (1983). *Advisory Opinion 1982 PA 47* did not address any issues relating to Article 2, § 9. See *id*. Rather, the Court addressed a question relating to Article 9, § 15 of the Michigan Constitution, which pertained to long-term borrowing. *Id*. at 55. The State points to the language in the opinion that "[v]oter-approved acts are 'on an equal footing' with legislation that has not been submitted to the people." *Id*. at 66 (citation omitted). But the Court never addressed whether the Legislature can amend a voter-initiated law under Article 2, § 9.[4] And the Court was cautious to note, when concluding that certain provisions of a statute could not be amended without a vote of the People, that "[a]ny other construction of § 15 would permit the Legislature to do indirectly what it could not do directly without a vote of the people." *Id*. at 70. Plaintiffs do not challenge whether the law would have been on "equal footing" with a legislatively-enacted law, had the electors approved the law. So, like *Frey*, *Advisory Opinion 1982 PA 47* is distinguishable from this matter.

[4] The State quotes the opinion for the position that the Legislature can "make needed changes" to the voter-initiated law before the next election. *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich at 66-67. But the State does not argue that it was confronted with an emergency situation in this case, or even that the significant changes it made to the laws were "needed." Furthermore, the Court's discussion on this issue was mere dicta regarding how other states have addressed similar issues. See *id*.

The State points to *Reynolds v Bureau of State Lottery*, 240 Mich App 84; 610 NW2d 597 (2000). In *Reynolds*, the question was whether the Legislature had the power enact a law while a referendum regarding the same law was pending, but before the election deciding the referendum. *Id*. at 86. In short, the Court held that the Legislature had that power. *Id*. The statute at issue prohibited political candidate committees from hosting bingo games (and was known as the "Bingo Act"). *Id*. at 87. Referendum petitions were filed and while the certification and appeals process took place, the Legislature enacted a law that amended the Bingo Act. *Id*. at 89. The People then rejected the referendum during the general election. *Id*. at 90. The Court concluded that the Legislature retained its ordinary constitutional powers during the referendum process. *Id*. at 97. *Reynolds* is limited to the issue presented—whether the Legislature could amend a law while a voter referendum was pending.[5]

The State latches onto language in *Reynolds* suggesting that the Legislature could have responded to the popular will expressed in the referendum vote after the election by repealing the Bingo Act, either late in the same session or in the following session. *Id*. at 100. But the Court's statement was mere dictum because the Court's statement was not necessary to a resolution of the case. See *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 557-558; 741 NW2d 549 (2007) ("It is a well-settled rule that statements concerning a principle of law not essential to

[5] While the viability of the *Reynolds* decision is questionable given our Supreme Court's more recent jurisprudence, the Court notes that even in *Reynolds*, the Court was careful to note that: there was certainly no bad-faith attempt to subvert the referendum at issue. As noted, below, the legislators apparently did not understand the potential effect their passage of the later legislation might have on the referendum process . . ." By contrast, in this case, the State has offered little, if anything, in the way of a denial that the Legislature took its actions with the specific and intended purpose of circumventing the People's right to initiative.

determination of the case are obiter dictum and lack the force of an adjudication."). Furthermore, the instant matter involves voter-initiated laws—not the referendum process. *Reynolds* therefore holds no weight in this context.[6]

Most recently, our Supreme Court reaffirmed the role of the voter initiative in carrying out the will of the People. This year, the Supreme Court reiterated that Const 1963, art 2, § 9 is self-executing. *League of Women Voters III*, ___ Mich ___; slip op at 9. The Court explained:

> In sum, we have always understood the section on citizen-initiated constitutional amendments to be self-executing—meaning the Legislature is constrained from encroaching upon it just as the Legislature is constrained from encroaching upon the statutory initiative and referendum. "Of the right of qualified voters of the State to propose amendments to the Constitution by petition it may be said, generally, that it can be interfered with neither by the legislature, the courts, nor the officers charged with any duty in the premises." . . . We have confirmed that the alterations made in the 1963 Constitution did not change the self-executing character of this section. . . . While the 1963 Constitution did add a role for the Legislature to play, the constitutional text and convention debates point to a limited role for the Legislature, and we have said that "the principle that the Legislature may not unduly burden the self-executing constitutional procedure applies equally to both" initiated legislation and initiated constitutional amendments. [*League of Women Voters III*, ___ Mich ___; slip op at 21-22 (citations omitted).]

See also *Citizens Protecting Michigan's Constitution v Sec'y of State*, 503 Mich 42, 62-63; 921 NW2d 247 (2018) ("We have explained that the adoption of the initiative power, along with other

[6] The State also relies on an unpublished decision, *Keep Mich Wolves Protected v State Dep't of Natural Resources*, unpublished opinion per curiam of the Court of Appeals, issued November 22, 2016 (Docket No. 328604). But the *Wolves* decision involved the question whether a statute amending the National Resources Environmental Protection Act (NREPA), MCL 324.101 *et seq.*, violated the Title-Object Clause of the Michigan Constitution. Const 1963, art 2, § 24. The Court also addressed an argument that the law violated article 4, § 25 of the Michigan Constitution because the petition did not properly identify certain changes it made to NREPA. *Id*. at 10. The Court did not analyze the language of Article 2, § 9 in any detail. Furthermore, unpublished Court of Appeals' opinions are not binding. MCR 7.215(C)(1).

tools of direct democracy, 'reflected the popular distrust of the Legislative branch of our state government.' ") (Citation omitted.) Thus, the *League of Women Voters III* Court concluded that the Legislature's role in the initiative process should be limited.

Lastly, the State buttresses its reliance on *Frey* with Attorney General Bill Schuette's opinion on this subject. Attorney General Kelley's 1964 opinion stood for approximately 55 years until then-Attorney General Schuette was asked to opine on the constitutionality of the Legislature's actions in this matter. OAG 2018, No. 7306, 1-4 (December 3, 2018).[7] Attorney General Schuette opined that the absence of any limiting language in Article 2, § 9 led to the conclusion that the Legislature could amend a voter-initiated law within the same legislative session. *Id*. at 2. He explained that "since nothing in the Michigan Constitution prohibits the Legislature from amending legislation it drafts during the same legislative session in which it was enacted, it follows that the Legislature may do so as well with respect to an enacted initiated law." *Id*. at 3. Attorney General Schuette relied, primarily, on the *Frey* decision. *Id*. at 3-4. But, as noted above, the *Frey* decision is limited to its facts, and interpreted a different constitutional provision. Finally, Attorney General Schuette issued his opinion in the context of this matter. The Legislature, in turn, has used Attorney General Schuette's opinion as justification for their conduct.

[7] In 1976, Attorney General Kelley concluded that the enaction of a voter-initiated proposed law did not require extraordinary majorities in either legislative chamber. OAG 1975-1097, Opinion No. 4932 (January 15, 1976), pp 240-241. The State points out that Kelley goes on to state that "[i]f a measure proposed by initiative petition is enacted by the legislature within 40 session days without change or amendment, the legislature can amend or repeal such a measure by majority votes in each house as specified elsewhere in Mich Const 1963." But Attorney General Kelley had already explained, in OAG 4303, that the Legislature's powers were limited to the next legislative session. Thus, when read in harmony, OAG 4303 and OAG 4932 stand for the position that the Legislature may amend an adopted voter-initiated law at the next legislative session—a point which the parties do not contest in this case.

In contrast, Attorney General Kelley's opinion was issued within a year after the People ratified the Michigan Constitution and stood for 55 years. Therefore, the Court concludes that Attorney General Kelley's original opinion is entitled to more weight than Attorney General Schuette's opinion.

Farm Bureau remains the most persuasive and relevant authority. The *Farm Bureau* Court cautioned against "outright legislative defeat, not just hindrance, of the people's reserved right[s]" under Article 2, § 9. *Farm Bureau*, 379 Mich at 394. The State's strained interpretation of Article 2, § 9 would lead to just that. For these reasons, both the spirit of the Constitution and the relevant caselaw support that Article 2, § 9 prohibits the Legislature from adopting, and then substantially amending, a voter-initiated law within the same legislative session.

C. APPLICATION TO 2018 PA 368 AND 2018 PA 369

The Court now turns to the specific laws at issue in this matter. The State has not attempted to explain why the Legislature enacted the Earned Sick Time Act and the Improved Workforce Opportunity Wage Act, and then immediately amended them once the opportunity of the People to vote had been circumvented. And the amendments were substantial. For example, 2018 PA 368, which amended the Improved Workforce Opportunity Wage Act, (1) reduced the increase on the minimum wage from $12 per hour to $10.10 per hour, (2) removed the annual adjustment after 2022 based on inflation, and (3) eliminated language specific to tipped employees. See House Fiscal Agency, *Legislative Analysis: Minimum Wage* Amendments (March 11, 2019), p 1, available at <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-1171-58F01032.pdf>; Senate Fiscal Agency, *Bill Analysis: Senate Bill 1171 (as enacted)*, p 1, available at <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-1171-N.pdf>.

As for 2018 PA 369, the new law, which amended the Earned Sick Time Act (and renamed it the Paid Medical Leave Act), (1) exempted employers with fewer than 50 employees, (2) lowered the minimum number of hours that could be used in a year to 40, and (3) repealed a section prohibiting employers from taking retaliatory personnel actions against employees. House Fiscal Agency, *Legislative Analysis: Paid Medical Leave Act* (February 25, 2019), p 1, available at http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-1175-7A3AF60B.pdf; Senate Fiscal Agency, *Bill Analysis: Senate Bill 1175 (as enacted)*, p 1, available at http://www.legislature.mi.gov/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-1175-N.pdf. The new laws, therefore, substantially amended the original laws proposed by the voters. The process effectively thwarted the intent of the People and denied them the opportunity to vote on whether they preferred the voter-initiated proposal or the Legislature's suggested modifications.

Therefore, in line with the language of the constitutional provision, the history/spirit of the Michigan Constitution, and the Supreme Court's decision in *Farm Bureau* and its progeny, the Court concludes that the adopt-and-amend process the Legislature used to enact 2018 PA 368 and 2018 PA 369 violated Article 2, § 9 of the Michigan Constitution.[8]

III. CONCLUSION

Both the letter and spirit of Article 2, § 9 support the conclusion that the Legislature has only three options to address voter-initiated legislation within the same legislative session—adopt

[8] The State argues that the Legislature may need to revise an enacted law within the same legislative session based on changed circumstances or an emergency. The Court declines to address this scenario, as it is not before this Court. And, as noted above, the State has not provided a reason for why the Legislature substantially amended 2018 PA 337 and 338 other than as a means to deprive the voters of their access to the initiative process.

it, reject it, or propose an alternative. Once the Legislature adopted the Earned Sick Time Act and the Improved Workforce Opportunity Act, it could not amend the laws within the same legislative session. To hold otherwise would effectively thwart the power of the People to initiate laws and then vote on those same laws—a power expressly reserved to the people in the Michigan Constitution.[9]

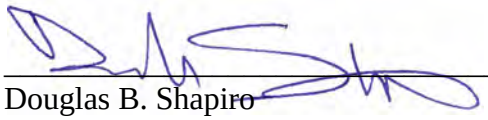
For these reasons, IT IS HEREBY ORDERED that plaintiff's and the Attorney General's motions for summary disposition are GRANTED.

IT IS FURTHER ORDERED that the State's motion for summary disposition is DENIED.

IT IS FURTHER ORDERED that 2018 PA 368 and 2018 PA 369 are VOIDED, and the initiatives adopted by the Legislature as 2018 PAs 337 and 338 remain in effect.

IT IS SO ORDERED. This is a final order that disposes of the last claim and closes the case.

Date: July 19, 2022



Douglas B. Shapiro
Judge, Court of Claims

[9] The Court notes that plaintiffs have not requested monetary damages in their amended complaint. At oral argument, plaintiffs' counsel confirmed that plaintiffs are not requesting monetary damages. Therefore, the Court does not award monetary damages.

EXHIBIT R

EXHIBIT R

EXHIBIT R

STATE OF MICHIGAN

COURT OF CLAIMS

ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN (aka ABC OF MICHIGAN), a nonprofit Michigan Corporation,

Plaintiff,

v

Case No. 2022-000111-MZ

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET, a state governmental agency,

Hon. Douglas B. Shapiro

Defendants.
_____/

NOTICE OF HEARING

At a session of said Court held in the City of Lansing, County of Ingham, State of Michigan.

IT IS HEREBY ORDERED that a Zoom hearing on defendant's motion for summary disposition and plaintiff's motion for preliminary injunction shall be held on Tuesday, September 20, 2022, at 1:00 p.m.

If either party intends to call witnesses for purposes of the motion for preliminary injunction they shall file a hearing witness list at least one week before the hearing containing the identity of the witnesses, the scope of their expected testimony and the expected time required for their testimony.

Date: August 31, 2022

_____
Judge, Court of Claims

EXHIBIT S

EXHIBIT S

EXHIBIT S

Has a prevailing wage law	Repealed prevailing wage	Never had prevailing wage
Alaska California Colorado (scheduled to be repealed in 2025 without further legislative action) Connecticut Delaware Hawai'i Illinois Maine Maryland Massachusetts Minnesota Missouri Montana Nebraska Nevada New Jersey New Mexico New York Ohio Oregon Pennsylvania Rhode Island Tennessee (partially repealed, only highway projects remain) Texas Washington Wyoming Vermont	Alabama Arizona Arkansas Florida Idaho Indiana Kansas Kentucky Louisiana New Hampshire Oklahoma Tennessee (partially repealed, only highway projects remain subject to prevailing wage) Utah West Virginia Wisconsin	Georgia Iowa Mississippi North Carolina North Dakota South Carolina South Dakota Virginia

ALABAMA

Repealed. Was enacted in 1941. Repealed by 1980 Act No. 79-122. No language in the repeal prohibits a department from enacting a similar law or policy.

ALASKA

Has a prevailing wage law. Originally enacted in 1931 as The Little Davis-Bacon Act, Title 36. Currently in force. Prevailing wage mandated by Alaska Stat. Ann. §36.05.010. Department of Labor and Workforce Development granted authority to determine the prevailing wage, "The

Department of Labor and Workforce Development has the authority to determine the prevailing wage," Alaska Stat. Ann. §36.05.030.

ARIZONA

Invalidated by the court, then repealed in full by referendum. Enacted in 1912. In 1979 The Court of Appeals in Arizona ruled that the method of determining rates by allowing union collective bargaining agreements to set the rates was unconstitutional as an impermissible delegation of powers to private groups, namely the labor organizations and employers. *Industrial Commission v C & D Pipeline, Inc.*, 125 Ariz 64 (1979). The entire law was repealed by popular referendum in 1984 Proposition 300. In addition to repealing the state prevailing wage law, Prop. 300 prohibited local governments from implementing such prevailing wage laws. "A concurrent resolution enacting and ordering the submission to the people of a measure relating to wages and hours for employees under public works contracts. An acting relating to public buildings and improvements; providing for removal and prohibition of limits on wages and hours for employees under public works contracts."[1]

ARKANSAS

Repealed. Enacted by Act 115 of 1955, but ruled unconstitutional by the Supreme Court of Arkansas in *J. C. Crowley v C. R. Thornbrough*, 226 Ark 768 (1956). Enacted by statute - Arkansas Prevailing Wage Law, Act 74 of 1969, as amended, Ark. Code Ann. §14-630 *et seq*. (Repl.1979). Replaced with Ark. Code Ann. § 22-9-301. Repealed by 2017 Act 1068, § 1, eff. April 6, 2017.

CALIFORNIA

Has a prevailing wage law. Enacted in 1931. Authorization for mandatory prevailing wage – Cal. Labor Code § 1771. Requirement for Director of the Department of Industrial Relations to set prevailing wage rate, "The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages," Cal. Labor Code § 1770.

COLORADO

Has prevailing wage law. Previously enacted as Colorado Title 8., Labor and Industry §§ 8-1-101 et seq. Repealed in 1985. Re-enacted in 2021 as House Bill 21-1319. Provides mandate for prevailing wage – Colo. Rev. Stat. § 24-92-203(1.5)(a). Requirement for the director to use U.S. Department of Labor wage determinations, "the director shall use appropriate wage determinations issued by the United States department of labor in accordance with the 'Davis-Bacon Act'', 40 U.S.C. sec. 3141, et seq., to establish the prevailing wage rates" – Colo. Rev.

[1] Text taken from Ballotpedia, accessed November 29, 2022: https://ballotpedia.org/Arizona_Wages_and_Hours_for_Public_Contracts_Employees_Statute,_Proposition_300_(1984)

Stat. § 24-92-205. This re-enactment is temporary, and is set for repeal effective June 30, 2025 – Colo. Rev. Stat. § 24-92-203(1.5)(b).

CONNECTICUT

Has a prevailing wage law. Enacted in 1935. Current codification in 1949. Prevailing wage mandated by Conn. Gen. Stat. § 31-53(a). The Labor Commissioner is required to determine wage, "the Labor Commissioner shall adopt the rate of wages," Conn. Gen. Stat. § 31-53(d).

DELAWARE

Has a prevailing wage law. Enacted in 1962. Prevailing wage mandated by Del. Code Ann. 29 § 6960(a). The Department of Labor is required to establish the wages, "the Delaware Department of Labor, Division of Industrial Affairs shall establish the prevailing wage," Del. Code Ann. 29 § 6960(a).

FLORIDA

Repealed. Enacted in 1933 and codified as Fla. Stat. Ann. § 215.19. Repealed by 1979 Laws c. 79-14 § 1. No language in the repeal prohibits a department from enacting a similar law or policy.

GEORGIA

Never had a state-wide prevailing wage law.

HAWAI'I

Has a prevailing wage law. Enacted in 1955. Prevailing wage mandated by Haw. Rev. Stat. § 104-2(b). The Director of Labor and Industrial Relations is required to establish the wage rates, "The prevailing wage shall be established by the director," Haw. Rev. Stat. § 104-2(b)(1).

IDAHO

Repealed. Enacted in 1933, repealed in 1985 by HB No. 7 which overrode the governor's veto. No language in the repeal prohibits a department from enacting a similar law or policy.

ILLINOIS

Has a prevailing wage law. Enacted in 1931. Prevailing wage mandated by Ill. Comp. Stat. 820 § 130/3. The Department of Labor is required to establish the wage rates, "the Department of Labor shall determine the rates and fringe benefits for the same or similar work," Ill. Comp. Stat. 820 § 130/4(b).

INDIANA

Repealed. Enacted in 1935. Repealed in 1985 by Public Law 252-2015 codified as Ind. Code 5-16-7.2-5. Prior to repeal, prevailing wage had been mandated by Ind. Code 5-16-7-1 (repealed). Prior to repeal, a designated committee was required to establish the wage rates, "The committee shall establish wages for all classifications of work," Ind. Code 5-16-7-1(d) (repealed).

Ind. Code 5-16-7.2-5, which repealed the prevailing wage law, contains a prohibition on reinstituting a prevailing wage, not just for state-government agencies, but also for all public agencies, as defined by Ind. Code 5-30-1-11, which includes bodies corporate created by the state (local governments), school corporations, fire districts, airport authorities, and others.

IOWA

Never had a state-wide prevailing wage law. Des Moines tried to establish a local prevailing wage ordinance, but this was struck down by the Iowa Supreme Court in *City of Des Moines v Master Builders of Iowa*, 498 NW2d 702 (1993). The Court in *City of Des Moines* found that the local ordinance conflicted with the state's competitive bidding requirement and, under home rule, municipalities are granted broad powers as long as these do not conflict with state law, *id*. at page 704.

KANSAS

Repealed. Kansas is credited with implementing the nation's first prevailing wage law in 1891.[2] Repealed in 1987 by Laws 1987, chapter 186, § 1.

KENTUCKY

Repealed. Enacted in 1940. Repealed in 2017 by Kentucky Laws Chapter 3 (HB 3). Prior to repeal, prevailing wages was mandated by Ky. Rev. Stat. § 337.505 (repealed). Prior to repeal, the commissioner of the Department of Workplace Standards was required to set the prevailing wage rates, "The commissioner shall make initial determinations and current revisions of schedule rates or prevailing wages," Ky. Rev. Stat. § 337.520 (repealed).

LOUISIANA

Repealed. Enacted in 1968 by Act No. 65 of 1968. Repealed in 1988 by Acts 1988, No. 18, § 1; Acts 1988, No. 90, § 1. Prior to repeal, prevailing wage was mandated by La. Stat. Ann. 38:2301 (repealed). Prior to repeal, the Commissioner of Labor was required to determine the prevailing wage rate, La. Stat. Ann. 38:2301 § I (repealed). "[T]he state mandates, among other things, that the Commissioner of Labor determine the prevailing wage…" *Gibbs Construction, Inc. v State Department of Labor*, 525 So2d 1039, 1041 (1988).

MAINE

[2] See, "Losing Ground: Lessons from the Repeal of Nine 'Little Davis-Bacon' Acts, page 7, https://content.csbs.utah.edu/~philips/soccer2/Publications/Prevailing%20Wages/History/Losing%20Ground.pdf , accessed November 30, 2022.

Has a prevailing wage law. Enacted in 1933. Prevailing wage mandated by Me. Stat. Ann. 26, § 1308. The Bureau of Labor Standards is required to determine the prevailing wage rates, "The Bureau of Labor Standards shall investigate and determine the prevailing hourly wage and benefits rate," Me. Stat. Ann. 26, § 1308.

MARYLAND

Has a prevailing wage law. Enacted in 1945. Prevailing wage is required by Md. Code. Ann. State Finance and Procurement § 17-214. The Commissioner of Labor and Industry is required to determine the prevailing wage rates, "the Commissioner shall determine the prevailing wage rate," Md. Code. Ann. State Finance and Procurement § 17-208(a)(1).

MASSACHUSETTS

Has a prevailing wage law. Enacted in 1914. Prevailing wage is mandated by Mass. Gen. Laws Ch. 149 § 26. The Director of the Department of Labor standards is required to set the prevailing wage rates, "The commissioner…shall proceed forthwith to determine [the wage rates], and shall furnish said official or public body with a schedule of such rate or rates of wages," Mass. Gen. Laws Ch. 149 § 27.

MINNESOTA

Has a prevailing wage law. Enacted in 1973. Prevailing wage is mandated by Minn. Stat. § 177.41. The Commissioner of Labor and Industry is required to set the prevailing wage rates, "The commissioner of labor and industry shall investigate as necessary to ascertain [the prevailing wage rates]," Minn. Stat. § 177.43, Sub. 4.

MISSISSIPPI

Never had a prevailing wage law.

MISSOURI

Has a prevailing wage law. Enacted in 1957. Prevailing wage is mandated by Mo. Rev. Stat. § 290.220. The Department of Labor and Industrial Relations is required to set the prevailing wage rates, "The department shall…make an initial determination of the prevailing wage rate," Mo. Rev. Stat. § 290.257(3).

MONTANA

Has a prevailing wage law. Enacted in 1931. Prevailing wage is mandated by Mont. Code Ann. § 18-2-403. The Commissioner of Labor and Industry is required to set the prevailing wage, "the commissioner shall determine the standard prevailing rate of wages to be paid," Mont. Code Ann. § 18-2-411(5)(a).

NEBRASKA

Has a prevailing wage law. Enacted in 1923. Prevailing wage is mandated by Neb. Rev. Stat. §§ 73-103, 73-104. The Commission of Industry and Labor is required to set the prevailing wage rates, "the commission shall establish rates of pay and conditions of employment that are comparable to the prevalent wage rates paid," Neb. Rev. Stat. § 48-818.

NEVADA

Has a prevailing wage law. Enacted in 1937. Prevailing wage is mandated by Nev. Rev. Stat. § 338.020. The Labor Commissioner is required to set the prevailing wage rates, "The prevailing wage in each region must be determined by the Labor Commissioner." Nev. Rev. Stat. § 338.030.

NEW HAMPSHIRE

Repealed. Enacted in 1941, the entire chapter was repealed in 1985. The repeal does not contain a prohibition on state agencies enacting a prevailing wage by other methods. The repealed statute had contained a requirement that the Labor Commissioner set the prevailing wage rates, "shall be based upon wages that will be determined by labor commissioner," N.H. Rev. Stat. Ann. § 280, as quoted in *Associated General Contractors of New Hampshire v State*, 113 NH 292, 294 (1973).

MEW JERSEY

Has a prevailing wage law. Enacted in 1913. Prevailing wage in currently mandated by N.J. Stat. Ann. § 34:11-56.27. The Commissioner of Labor and Workforce Development is required to set the prevailing wage rates, "The commissioner shall determine the prevailing wage rate," N.J. Stat. Ann. § 34:11-56.30.

NEW MEXICO

Has a prevailing wage law. Enacted in 1937. Prevailing wage is currently mandated by N.M. Stat. Ann. § 14-4-11(A). The Director of the Labor Relations Division of the Workplace Solutions Department is required to set the prevailing wage rates, "the director shall determine prevailing wage rates," N.M. Stat. Ann. § 14-4-11(B).

NEW YORK

Has a prevailing wage law. Enacted in 1897. Prevailing wage is currently mandated by N.Y. Labor Law § 231(1). The Commissioner of Labor is required to set the prevailing wage rates, "The fiscal officer…shall make a determination of the wages required to be paid," N.Y. Labor Law § 231(4).

NORTH CAROLINA

Never has a prevailing wage law.

NORTH DAKOTA

Never had a prevailing wage law.

OHIO

Has a prevailing wage law. Enacted in 1931. Prevailing wage is currently mandated by Ohio Rev. Code Ann. § 4115.05. The Director of Commerce is required to set the prevailing wage rates, "shall have the director of commerce determine the prevailing rates of wages," Ohio Rev. Code Ann. § 4115.04.

OKLAHOMA

Repealed. Initially enacted by statute in 1909. Repealed by statute in 2015, Laws 2015, c. 71, § 1. Prevailing wage rates had been required by Okla. Stat. 40 § 196.1 (repealed). The Commissioner of Labor had been required to set prevailing wage rates pursuant to Okla. Stat. 40 § 196.6(A) (repealed): "The Commissioner's duty is to investigate and determine the currently prevailing hourly rate of wages in localities." *ABC of Oklahoma v State of Oklahoma*, 628 P2d 1156, 1160 (1981).

OREGON

Has a prevailing wage law. Enacted in 1959. Prevailing wage is currently mandated by Or. Rev. Stat. § 279C.840. The Commissioner of the Bureau of Labor is required to set the prevailing wage rates, "The Commissioner of the Bureau of Labor and Industries…shall determine…the prevailing rate of wage for workers in each trade," Or. Rev. Stat. § 279C.815(2)(a).

PENNSYLVANIA

Has a prevailing wage law. Enacted in 1961. Prevailing wage is currently mandated by Pa. Cons. Stat. 34 § 9.106. The Secretary of Labor and Industry is required to set the prevailing wage rates, "The Secretary will conduct a continuing program for obtaining and compiling of wage rate information," Pa. Cons. Stat. 34 § 9.105(d).

RHODE ISLAND

Has a prevailing wage law. Enacted in 1935. Prevailing wage is currently mandated by R.I. Gen. Laws §37-13-7. The Director of Labor and Training is required to set the prevailing wage rates, "The director of labor and training shall investigate and determine the prevailing wages and payments," R.I. Gen. Laws § 37-13-8.

SOUTH CAROLINA

Never had a prevailing wage law.

SOUTH DAKOTA

Never had a prevailing wage law.

TENNESSEE

Partially repealed. Originally enacted in 1953. The policy had been imbedded in the Tennessee Prevailing Wage Act of 1975. The statutes were amended in 2014 to only require prevailing wage rates on state highway projects, "It is hereby declared to be the policy of this state that the prevailing wage rate be determined by defined standards and that such rate be paid workers on all state highway projects," Tenn. Code Ann. § 12-4-403. The Prevailing Wage Commission is required to set the prevailing wage rates for highway projects, "The commission shall determine the prevailing wage annually for highway construction," Tenn. Code Ann. § 12-4-405(4).

TEXAS

Has a prevailing wage law. Enacted in 1933. Prevailing wage is currently mandated by Texas Gov't Code Ann 10 § 2258.021. The Texas Workforce Commission is required, by statute, to choose between surveying wage rates itself, or by adopting the prevailing wage rates determined by the U.S. Department of Labor for use with the Davis-Bacon Act. Texas Gov't Code Ann 10 § 2258.022(a). The Commission has elected to use the federally-derived rates. See Tex. Admin. Code § 123.43, "The Commission has adopted the prevailing wage rates for the locality as determined by the United States Department of Labor in accordance with the Davis-Bacon Act…"

UTAH

Repealed. Originally enacted in 1933. Prevailing wage requirements were repealed in 1981 by H.B. 1. The Act repealed all code provisions related to the previous prevailing wage law, and did not include a prohibition on government agencies enacting such a policy through other means.

VERMONT

Has a prevailing wage law. Enacted in 2005. Prevailing wage is mandated by Vt. Stat. Ann. 29 § 161(b). The Vermont Department of Labor publishes the prevailing wage, "…shall be paid no less than the prevailing wage published periodically by the Vermont Department of Labor in its occupational employment and wage survey," Vt. Stat. Ann. 29 § 161(b).

VIRGINIA

Never had a prevailing wage law.

WASHINGTON

Has a prevailing wage law. Enacted in 1945. Prevailing wage is mandated by the Wash. Rev. Code 39.12.020. The industrial statistician is required to set the prevailing wages, "the industrial statistician shall establish the prevailing rate of wage," Wash. Rev. Code 39.12.015.

WEST VIRGINIA

Repealed. Originally enacted in 1933. Repealed in 2016 by W. Va. Acts 2016, c. 39. Prior to repeal, prevailing wage was mandated by W. Va. Code § 21-5A-2 (repealed). The prior law mandated that the Commissioner of Labor set the prevailing wage rates, "The commissioner of labor…shall assemble the data as to fair minimum wage," W. Va. Code § 21-5A-3 (repealed). The 2016 repeal did not contain a prohibition on government agencies enacting such a policy through other means.

WISCONSIN

Repealed. Originally enacted in 1931. Repealed in 2015, effective 2017, by the biennial budget, Act 59. Prior to repeal, prevailing wage was mandated by Wis. Stat. Ann. § 66.293(3)(am)(repealed). The prior law mandated that, "the department shall…compile the prevailing wage rates," Wis. Stat. Ann. § 66.293(3)(ar)(repealed). The 2015 repeal did not contain a prohibition on government agencies enacting such a policy through other means.

WYOMING

Has a prevailing wage law. Originally enacted in 1977. Prevailing wage is mandated by Wyo. Stat. Ann. § 27-4-403. The law mandates that the Department of Workforce Services sets the prevailing wage rates, "the department shall ascertain and consider the applicable hourly wage rates established by collective bargaining agreements," Wyo. Stat. Ann. § 27-4-405(b).