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Senate Bill 6 (Substitute S-10 as passed by the Senate)  
Sponsor: Senator Veronica Klinefelt  
Committee: Labor

Date Completed: 4-18-23

## **CONTENT**

### **The bill would enact a new law to do the following:**

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

### State Project Bids

Under the bill, every contract executed between a contracting agent and a successful bidder as contractor and entered into pursuant to advertisement and invitation to bid for a State project that required or involved the employment of construction mechanics, other than those subject to the jurisdiction of the State Civil Service Commission, and that was sponsored or financed in whole or in part by the State, would have to contain an express term that the rates of wages and fringe benefits to be paid to each class of mechanics by the bidder and all of its subcontractors could not be less than the wage and fringe benefit rates prevailing in the locality in which the work was to be performed.

Contracts on State projects that contained provisions requiring the payment of prevailing wages as determined by the United States Secretary of Labor under the Davis-Bacon Act, or that contained minimum wage schedules that were the same as prevailing wages in the locality as determined by collective bargaining agreements or understandings between bona fide organizations of construction mechanics and their employers, would be exempt under the bill. (Generally, the Davis-Bacon Act governs public buildings, properties, and works. The Davis-Bacon prevailing wage is a combination of the basic hourly wage rate and any fringe benefit rate listed for a specific classification of worker.)

"Contracting agent" would mean any officer, school board, board or commission of the State, or a State institution supported in whole or in part by State funds, authorized to enter into a contract for a State project or to perform a State project by the direct employment of labor. "State project" would mean new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a contracting agent.

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

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

### Prevailing Wages and Fringe Benefits

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

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

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

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

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

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

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

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

### Appropriation

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

### **BRIEF RATIONALE**

Prior to 2018, Public Act (PA) 166 of 1965 required State construction projects to pay workers' wages and benefits that were not less than the wages and benefits prevailing in the locality where the work was performed. The Michigan Legislature adopted an initiative petition in 2018 that repealed PA 166 of 1965. Some people believe that prevailing wage laws improve construction standards by requiring contractors to employ skilled labor on projects and so it has been recommended that the prevailing wage laws be reenacted.

### **PREVIOUS LEGISLATION**

*(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)*

The bill would reenact a prevailing wage law that was repealed by an initiative petition adopted by the Michigan Legislature in 2018.

Legislative Analyst: Tyler P. VanHuyse

### **FISCAL IMPACT**

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

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

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

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

Fiscal Analyst: Joe Carrasco, Jr.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.