

F03 – Prevailing Wage: What's Old Is New Again

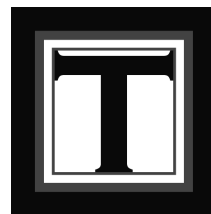
2026 MSBO
ANNUAL CONFERENCE
AND EXHIBIT SHOW



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Caution:

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Future legal developments may affect these topics.

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Agenda

Michigan Prevailing Wages on State Projects Act

- Background
- Applicability & Key Definitions
- Prevailing Wage and Fringe Benefit Determinations
- Contract Provisions
- Contractor Prohibitions and Requirements
- Enforcement and Penalties

Federal Davis-Bacon Act

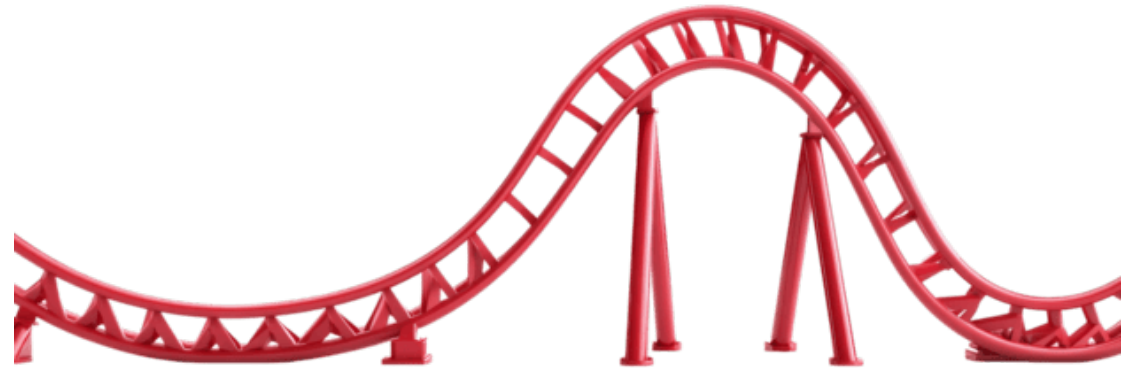
- Applicability
- Prevailing Wage and Fringe Benefit Determinations
- Contract Provisions
- Enforcement and Penalties

Michigan Prevailing Wages on State Projects Act



Background

- Public Act 166 of 1965 required payment of prevailing wages for State-funded construction projects
- Public Act 166 repealed in 2018
- Public Act 10 of 2023 reinstated prevailing wage, effective February 13, 2024
- Public Act 110 of 2024, effective April 2, 2025, further extended prevailing wage requirements



Applicability & Key Definitions



Statutory Scope

“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 requires or involves the employment of *construction mechanics*...must include 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 must not be less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed.”

MCL 408.1102(1)

“Contracting Agent”

- Includes both *public* and *private* contracting agents
- Public contracting agent includes an officer or school board, supported in whole or in part by funds from this state



MCL 380.1267(1), (8)

“Advertisement and Invitation to Bid”

- Revised School Code Section 1267:
 - Before commencing construction of a new school building, or addition to or repair or renovation of an existing school building, except repair in emergency situations, the board must obtain competitive bids on all the material and labor required for the construction or repair or renovation.
- Applies if project is above State bid threshold (\$31,321 for 2025-26)

MCL 380.1267(1), (8)

“Advertisement and Invitation to Bid”

- Also includes bidding pursuant to:
 - Revised School Code Section 1274a:
 - Energy conservation improvements or operational improvements to school facilities
 - Removal or treatment of asbestos or other material injurious to health for school facilities
 - Board policies
 - Grant requirements
 - Voluntary bidding?

See MCL 380.1274a(6)

“State Project”

- New construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works...that meets both of the following conditions:
 - (A) Is authorized by a public contracting agent
 - (B) Is sponsored or financed in whole or in part by this state
- An energy facility project

“Sponsored or Financed in Whole or in Part by the State”

- Includes:
 - State aid revenue
 - Bonds qualified through the Michigan School Bond Qualification and Loan Program
 - State grants
- Excludes:
 - Projects financed exclusively through local taxes (e.g., only operating or sinking fund millage)
 - Non-qualified bonds (if debt service not paid with state aid)

“Energy Facility Project”

- Energy facility project: New construction, completion, demolition, major alteration, or repowering of an energy facility
- Energy facility: an energy storage facility, solar energy facility, or wind energy facility



MCL 408.1101(d), (e)

“Construction Mechanics”

- Skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice working on a state project
- Excludes: Executive, administrative, professional, office, or custodial employees



MCL 408.1101(b)

Statutory Exemptions

Contracts containing either of the following are exempt from Michigan prevailing wage requirements:

- Provisions requiring the payment of prevailing wages under the federal Davis-Bacon Act, or
- Minimum wage schedules which are the same as prevailing wages in the locality, as determined by CBAs or understandings between bona fide organizations

MCL 408.1102(1)

Statutory Exemptions

- Contracts entered into or bids made before February 13, 2024
- State project paid for, in whole or in part, from “revenue from a millage” if millage was authorized:
 - Under the Revised School Code, **and**
 - Before February 13, 2024
- Note: Bonds proceeds are revenue from sale of security, not “revenue from a millage”

Check Board Policies!

- Thrun Policy 3306 – Construction Bidding

5. If federal or state prevailing wage requirements apply, project specifications must include the schedule of minimum rates to be paid to each relevant class of construction mechanic or laborer. If state prevailing wage requirements apply, the schedule of minimum rates must also be printed on bid forms.

- Does your district's policy address?

Check Board Policies!

- Thrun Policy 3307 – Construction Administration

D. Prevailing Wage

1. Bid materials, project specifications, and contract documents must comply with applicable federal and state law prevailing wage requirements.
2. The responsibility for paying prevailing wage rates rests solely with the contractor. The District has no duty to ensure that a contractor has paid prevailing wage rates.

Prevailing Wage and Fringe Benefit Determinations



MICHIGAN DEPARTMENT OF
**LABOR & ECONOMIC
OPPORTUNITY**

Wage and Fringe Benefit Determinations

- Before soliciting bids, school must have LEO determine the prevailing rates of wages and fringe benefits for construction mechanics called for in the contract.
- Rate schedules must be part of work specs and must be printed on bidding forms.
- If contract not awarded or construction not started within 90 days of LEO's determination, LEO must make redetermination before contract is awarded.
- LEO may hold public hearings in the locality in which work is to be performed to determine rates.

Wage and Fringe Benefit Determinations

- Determinations Posted on LEO website
- Updated annually on November 1

Prevailing Wage Rates for State Of Michigan Funded Projects
Official Rate Schedule
Ingham

Classification Name	Last Updated		
3.1 Power Equip. Operator - Highway & Heavy	11/01/2025		
Wage Rates	Straight Time	Time and a Half	Double Time
Journeyman	\$71.46	\$94.57	\$117.67
Apprentice: Level 1 0 - 6 Months	\$57.61	\$73.79	\$89.97
Apprentice: Level 2 7 - 12 Months	\$59.93	\$77.28	\$94.61
Apprentice: Level 3 13 - 18 Months	\$62.23	\$80.73	\$99.21
Apprentice: Level 4 19 - 24 Months	\$64.54	\$84.19	\$103.83
Apprentice: Level 5 25 - 30 Months	\$66.85	\$87.66	\$108.45
Apprentice: Level 6 31 - 36 Months	\$69.15	\$91.10	\$113.05

Four 10-hour days allowed? - Yes

Make Up Day Allowed? - Yes

Contract Provisions



Required Contract Provisions

- Requirement that bidder and all its subcontractors will pay specified wages and fringe benefits to construction mechanics.
- Include wage and fringe benefit rate schedules.
- Construction mechanics are "intended beneficiaries of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements."
- Aggrieved construction mechanic may file a lawsuit against the contractor/subcontractor.

Suggested Provisions: Contractor / Subcontractor Contract

- Act: "A *contracting agent*, contractor, *or* subcontractor shall maintain certified payroll records and other records required under this act for a minimum of 3 years."
- Suggested Provisions:
 - Contractor must maintain all prevailing wage records for at least 3 years.
 - Contractor must provide copies of records to the District within 24 hours of request.

Suggested Provisions: Construction Manager Contract

- Construction Manager to assist the District with requesting prevailing rates of wages and benefits from LEO.
- Construction Manager to assist with competitively bidding the work in compliance with applicable law.
- Construction Manager to ensure the District-awarded contracts contain provisions mandated by the Act.

See MCL 408.1102, MCL 408.1103

Contractor Prohibitions and Requirements



Contractor Shall Not ...

- Submit a bid for a state project unless the contractor holds a state project registration issued by LEO.
- Perform work on a state project unless the contractor holds a state project registration.
- List a subcontractor on a bid proposal for a state project if the subcontractor does not hold a state project registration.
- Enter into an agreement with a subcontractor to perform work on a state project if the subcontractor does not hold a state project registration.

Subcontractor Shall Not ...

If the subcontractor does not hold a state project registration, then the subcontractor shall not:

- Perform work on a state project.
- Enter into an agreement with a contractor to perform work on a state project.



MCL 408.1102(4)

Bid Requirement

Contractors must include in a bid for a state project a copy of the state project registration for the contractor and for each selected subcontractor.



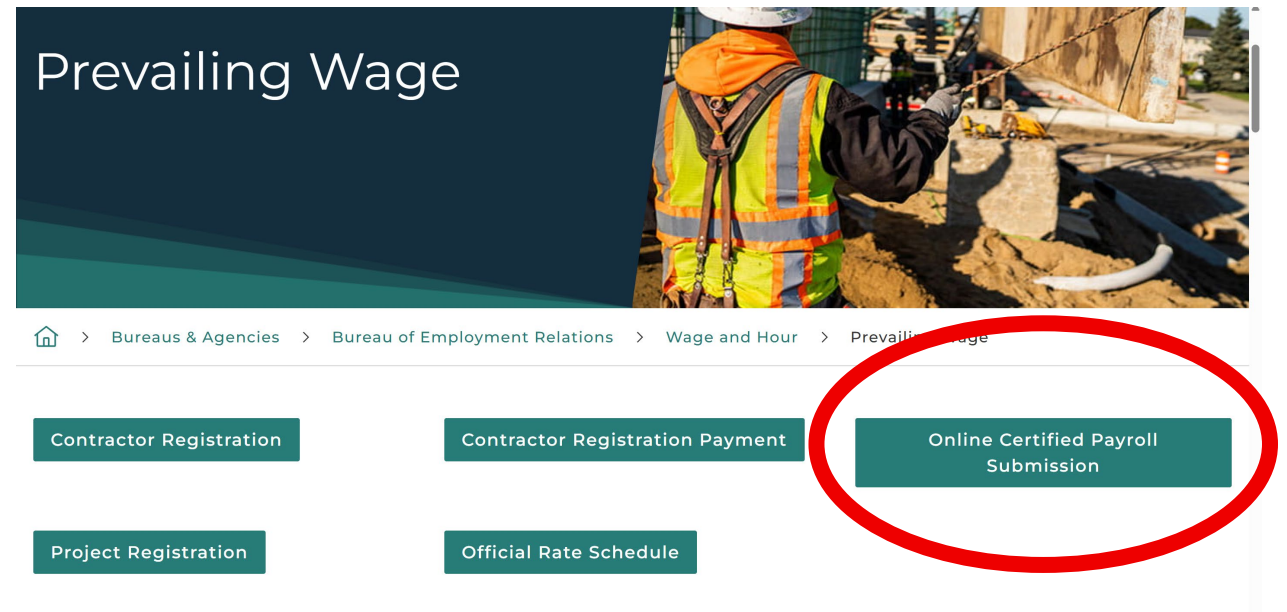
MCL 408.1102(5)

Payroll Records

- Within ten days after the end of a pay period, a contractor or subcontractor must transmit the certified payroll records for the pay period to the following:
 - (a) Before April 2, 2026, the applicable contracting agent
 - (b) On or after April 2, 2026, LEO's database
- Exceptions:
 - The contractor or subcontractor performs work on a state project and is otherwise required by law to transmit certified payroll records to the state transportation department
 - The contractor or subcontractor performs work on an energy facility project that is solely routine maintenance or repair

Payroll Records

A contracting agent that receives a certified payroll record from a contractor or subcontractor shall, not later than 10 days after receiving the certified payroll record, transmit the certified payroll record to LEO.



MCL 408.1122(3)

Payment and Rates Posting

- Contractors and subcontractors must:
 - Pay construction mechanics the wages and fringe benefits under an applicable contract for a state project
 - Post on the construction site, in an obvious place, a copy of all prevailing wage and fringe benefit rates prescribed in a contract
 - 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 said contract.
 - *The record must be available for reasonable inspection by the contracting agent or LEO*

MCL 408.1102(2), 408.1105

Discrimination or Retaliation

Contractor or subcontractor cannot discharge, discipline, retaliate against, or otherwise discriminate against a construction mechanic, or threaten to do any of these things, because the construction mechanic reported or was about to report a violation or suspected violation of this act.



MCL 408.1107

Enforcement and Penalties



School Enforcement

- School can terminate contractor's right to proceed with a contract if:
 - School provides written notice to contractor and its sureties (if known), and
 - Less than the prevailing rates of wages and fringe benefits have been or will be paid
- School may proceed to complete the contract by separate agreement with another contractor.
- Original contractor and its sureties are liable to the school for any excess costs

LEO Audit Authority

- LEO can enter any project during normal hours of operation to inspect payroll records, interview employees, conduct wage surveys of employees, or all other actions reasonably related to the act's enforcement
- The school, contractor, or subcontractor must provide to LEO any records requested for enforcement (e.g., certified payroll, fringe benefit information, and other information)

LEO Audit Authority

- LEO can:
 - Administer oaths or affirmations,
 - Subpoena witnesses and compel their attendance,
 - Take evidence,
 - Require the production of records or other documents relevant or material to the inquiry
 - Interview employees, supervisors, and others to ascertain the wages, benefits, classification, etc.

MCL 408.1115, 408.1118

Statute of Limitations

- Complaints must be received by LEO within 3 years of the alleged violation or the last date on which a violation could have occurred, whichever is later.



MCL 408.1117

School Liability

- If school does not include in the contract documents or bidding forms the requirement to pay prevailing wages and benefits or the schedule of prevailing wages and fringe benefits, the school is liable for any loss of wages and fringe benefits suffered by construction mechanic.
- Construction mechanic may bring lawsuit against school and recover actual damages, interest assessed up to 10% per annum, costs, and attorney fees at trial and on appeal.

School Liability

- LEO may assess a civil penalty of not more than \$5,000 for each violation and an additional 10% penalty.
- School may request a review of LEO's determination within 14 days of the penalty notification.
- Penalty payment to LEO is due within 15 working days after the date the penalty is issued and not subject to further appeals.

MCL 408.1113(1), (3); 408.1121(1)

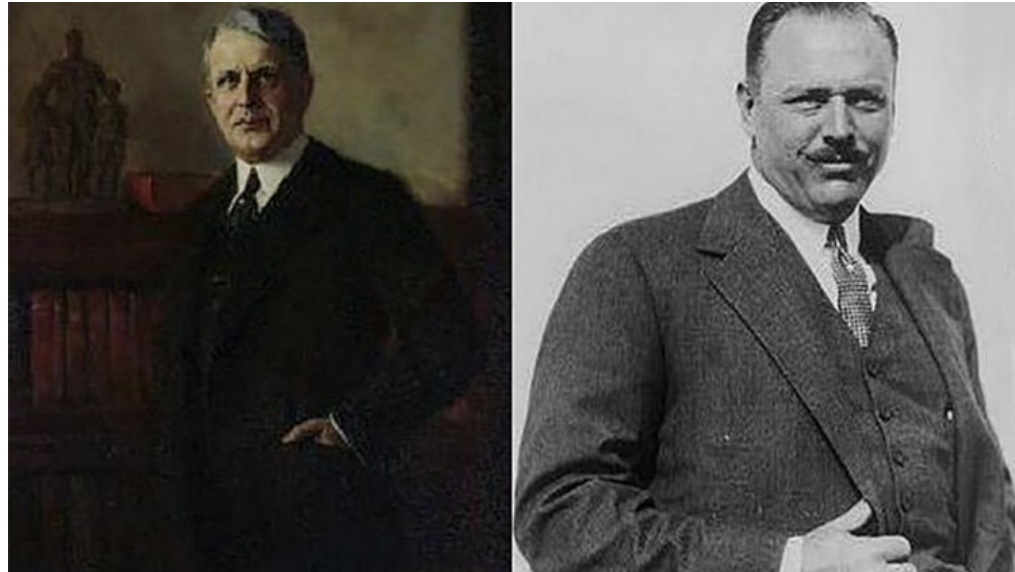
Future Developments

- LEO signaled that it is promulgating administrative rules for Act.
- Senate Bill 54 of 2025:
 - Act does not apply “if the state project was paid for, in whole or in part, from revenue from a millage, *bond, or bond proposal* ... authorized before February 13, 2024.”
 - Bill in committee since June 26, 2025



<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2025-SB-0054>

Federal Davis-Bacon Act



Applicability



Statutory Scope

“The advertised specifications for every contract in excess of \$2,000, *to which the Federal Government or the District of Columbia is a party*, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government . . . and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid [to] various classes of laborers and mechanics.”

40 USC 3142(a)

General Education Provisions Act

- All *laborers and mechanics* employed by contractors or subcontractors on all *construction and minor remodeling* projects assisted under *any applicable program* shall be paid wages at rates not less than those determined by the Secretary of Labor
- “Applicable program” includes each program for which U.S. Secretary of Education or U.S. Department of Education has administrative responsibility
- U.S. Department of Education guidance: only applies to projects over \$2,000

“Laborers and Mechanics”

- Includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial.
- Laborers and mechanics do not include:
 - Workers whose duties are primarily administrative, executive, or clerical, rather than manual.
 - FLSA executive, administrative, or professional employees.

“Minor Remodeling”

- Minor alterations in a previously completed building.
- Does not include building construction, structural alterations to buildings, building maintenance, or repairs.



34 CFR 77.1(c)

Davis-Bacon Act and Related Acts Provisions and Procedures

- Agencies must ensure that specified clauses and prevailing wage determinations are contained in contract.
- After construction starts, no payment, advance, grant, loan, or guarantee of funds shall be approved by the agency unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the specified clauses.

Prevailing Wage and Fringe Benefit Determinations



General and Project Determinations

- General determinations: in effect for most counties and general construction types (available at <https://sam.gov/content/wage-determinations>)
- Project determinations:
 - Project involves work in more than 1 county
 - No general determination available for project county
 - Most work will be performed by classification that is not listed on the general determination
 - Use DOL Standard Form 308

Contract Provisions



Required Contract Clauses

- All laborers and mechanics working on the project will be paid at least once a week the prevailing wage determined by the U.S. Secretary of Labor (which determination must be attached to contract).
- Right to withhold from contractor any payments as may be necessary to pay laborers and mechanics the full amount of wages required by the contract.
- Payroll records must be maintained by the contractor during the work and for at least 3 years thereafter for all laborers and mechanics.

Required Contract Clauses

- Breach of contract may be grounds for contract termination
- All rulings and interpretations of the Davis-Bacon and Related Acts are incorporated by reference into the contract
- Department of Labor dispute resolution procedures apply
- Contractor certification that neither it (nor any person who has an interest in the contractor's firm) is on Secretary of Labor's "debarment" list
- Anti-retaliation provision

Suggested Clause: Construction Manager Contract

- Construction Manager to ensure that each contractor and subcontractor contract complies any applicable federal requirements, including Davis-Bacon.



Enforcement and Penalties



Suspension of Funds

- If the contractor or any subcontractor fails to comply with required contract provisions:
 - The awarding agency may suspend payments, advances, or funding guarantees
 - Suspension remains in place until:
 - The violation is corrected, and/or
 - Sufficient funds are withheld to pay workers all owed wages and monetary relief and cover any applicable liquidated damages and interest

Debarment

Whenever any contractor or subcontractor is found by the Secretary of Labor to have disregarded its obligations, such contractor or subcontractor will be ineligible to be awarded any contract or subcontract of the United States for up to 3 years.



Reminder

If contract contains provisions requiring the payment of prevailing wages under the federal Davis-Bacon Act, Michigan Prevailing Wages on State Projects Act does not apply.



MCL 408.1102(1)

Questions?





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