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**SFA****BILL ANALYSIS**

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Senate Bill 805 (as reported without amendment)  
Sponsor: Senator Glenn D. Steil  
Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 12-3-97

## **RATIONALE**

Michigan's prevailing wage law, Public Act 166 of 1965, essentially provides that the wages and fringe benefits paid by contractors on State construction projects must not be less than the wages and fringe benefits prevailing in the locality where the work is to be performed. The law is administered by the Department of Consumer and Industry Services (DCIS), which determines the required prevailing rates by sending survey requests to local construction unions throughout the State. The Act has been the subject of recent Federal court decisions. On November 21, 1994, the U.S. District Court for the Eastern District of Michigan held that Public Act 166 of 1965 was preempted by Federal law. On June 27, 1997, however, the U.S. Court of Appeals for the Sixth Circuit reversed that decision and reinstated the Act. (These decisions are discussed in **BACKGROUND**, below.) On July 21, 1997, the DCIS issued a memorandum stating that, "effective June 27, 1997, the Prevailing Wage Act applies to construction projects financed or sponsored by the state" (emphasis in original). The memorandum also specifies that there will be no retroactive enforcement, and that the Department will not take enforcement action on projects bid before June 27, 1997.

Reportedly, the voters of several school districts (described in **BACKGROUND**) approved bond issues for construction projects before the reinstatement of the Act. Because these bond issues were based on budgets and cost estimates that did not reflect the prevailing wage, the school districts are facing increased costs to complete projects that were bid on after June 27. Some people believe that a fair solution for those schools whose projects were caught between the rulings, would be to create a prevailing wage exemption for projects that had received voter approval before June 27, 1997.

## **CONTENT**

The bill would amend Public Act 166 of 1965 to exempt a State project for a school building construction when bonding for that construction was approved by a majority of those voting on the issue at an election that had occurred after November 21, 1994, and before June 27, 1997.

Currently, only contracts entered into or bids made before the Act's effective date, March 31, 1966, are exempted.

MCL 408.558

## **BACKGROUND**

### Court Decisions

In 1993, Associated Builders and Contractors, Saginaw Valley Area Chapter, a nonunion trade association of construction contractors, brought suit against the Michigan Department of Labor (*Associated Builders and Contractors, Saginaw Valley Area Chapter v Lowell W. Perry*). The suit alleged that the Federal Employee Retirement Income Security Act (ERISA) preempted Public Act 166 of 1965. The U.S. District Court for the Eastern District of Michigan found that Public Act 166, "...directly regulates--and therefore 'relates to'--the terms of ERISA plans by enforcing reporting and disclosure requirements, establishing rules for the calculation of benefits to be paid, and imposing remedies for alleged misconduct arising from the administration of plans. These [administrative] provisions of the Act...are preempted by ERISA." The Court also found that ERISA preempted provisions concerning an excess benefits cap and apprenticeship requirements. The Court held that the preempted sections could not be severed from the nonpreempted portions, and invalidated the entire Act.

In June 1997, the U.S. Court of Appeals for the

Sixth Circuit addressed the issue of whether Public Act 166 was preempted by ERISA. The Court examined decisions of other circuits holding that other states' prevailing wage laws were not preempted by ERISA. The Court stated, "Applying the law as it presently stands and without anticipating possible future changes, we hold that Michigan's PWA [prevailing wage act] has not been preempted by ERISA...[F]ederal statutes will not be held to have preempted laws in areas of traditional state regulation unless that is the clear and manifest intent of Congress."

### School Districts

The reinstatement of Public Act 166 of 1965 affected several school districts from limited income communities. In December 1996, the Godfrey-Lee Public Schools in Wyoming, Michigan began the process of developing a bond issue for a project to improve the facilities and technology needs of the school district. On May 12, 1997, the bond proposal was approved by the district voters. The school received a construction management proposal on June 20 and selected a contractor on July 1. On September 2, the contractor presented budget updates. Based on 1995 published wage rates, the school estimated that its costs will be at least 6% higher due to the application of prevailing wages. Although the DCIS will not take enforcement action on projects bid before June 27, the school's budget, cost estimates, and bond proposal had been established on March 28 (when the State approved the bond proposal), before the reinstatement of the prevailing wage. The contracts, however, were entered into after June 27.

Similarly, Mesick Consolidated Schools in Mesick, Michigan, passed a bond issue on February 8, 1997, to build a new high school for its growing population. During the bidding process and while some construction already was taking place, the school was informed that the prevailing wage would apply to its project for all contracts let after June 27. The school then returned to the contractors who had submitted bids, and found that it had to pay an additional \$269,562 in order to provide prevailing wages and fringe benefits.

### ARGUMENTS

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

#### Supporting Argument

The bill would exempt the few districts whose school building construction projects were caught in the middle of the change in law. It would allow them to complete the projects that were voted on at an election within the specified dates without the prevailing wage requirement. Evidently, the budgets, cost estimates, and bond issue proposal funds were already determined when the bonds were approved or qualified. Under the recent court decision, the communities will be required to pay an additional amount of money to the same contract employees for the same work because the contractors are required to pay the employees prevailing wages and fringe benefits. The taxpayers of the community will not get the full scope of the project they voted for at an election.

#### Supporting Argument

Prevailing wage and fringe benefit laws keep unskilled, low wage workers out of the job market where they could be developing skills and technical expertise that would improve their employment position in the long run. The bill would make incremental progress toward eliminating the law.

#### Opposing Argument

Some people believe the school project situation described above is not a compelling enough reason to sacrifice the adequate payment and benefits the construction workers deserve. Furthermore, they believe the bill would exempt school districts that had previously voted on a bond issue with the prevailing wage requirement, thus denying the workers prevailing wages that were already taken into account.

**Response:** The bill would apply only to projects approved between November 21, 1994, and June 27, 1997, when the Act was considered invalid.

Legislative Analyst: N. Nagata

### FISCAL IMPACT

The bill would have no fiscal impact on State government. It would reduce the school building construction costs of a school district with a building project that met the criteria for the exemption provided in the bill.

Fiscal Analyst: E. Pratt

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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.