

Act No. 10
Public Acts of 2023
Approved by the Governor
March 24, 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Reps. Brenda Carter, Mentzer, Breen, Snyder, Morgan, Rheingans, Miller, Haadsma, Farhat, Tyrone Carter, Rogers, MacDonell, Andrews, Paiz, Koleszar, Wegela, Tsernoglou, Brabec, Liberati, O'Neal, Byrnes, Glanville, Wilson, Hoskins, McKinney, Shannon, Scott, Martus, Conlin, Skaggs, Price, Morse, Grant, Dievendorf, Weiss, Hood, Churches, Tate, Pohutsky, Hope, Young, McFall, Whitsett, Hill, Edwards, Fitzgerald, Steckloff, Puri, Stone, Aiyash, Neeley and Coffia

ENROLLED HOUSE BILL No. 4007

AN ACT to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; to make appropriations for the implementation of this act; and to prescribe penalties.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

- (a) "Commissioner" means the department of labor and economic opportunity.
- (b) "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.
- (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) "Locality" means the county, city, village, township, or school district in which the physical work on a state project is to be performed.
- (e) "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.

Sec. 2. (1) 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 its 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 40 USC 3141 to 3148 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.

(2) A contractor or subcontractor shall pay to its construction mechanics wages and fringe benefits at the rates required under an applicable contract for a state project.

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.

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 with the commissioner and made available to the public.

Sec. 5. Every contractor and subcontractor shall 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 shall 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. This record shall be available for reasonable inspection by the contracting agent or the commissioner.

Sec. 6. The contracting agent, by written notice to the contractor and the sureties of the contractor known to the contracting agent, may 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 have been or will be paid, and may proceed to complete the contract by separate agreement with another contractor or otherwise, and the original contractor and the original contractor's sureties shall be liable to the contracting agent for any excess costs occasioned thereby.

Sec. 7. A contractor or subcontractor shall not 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.

Sec. 8. (1) A person that violates this act is subject to a civil fine of not more than \$5,000.00. The prosecutor of the county in which the violation occurred or the attorney general may bring an action to collect the fine.

(2) A contractor and its subcontractor are jointly and severally liable for a violation of this act.

Sec. 9. (1) Except as otherwise provided in subsection (2), the provisions of this act shall not apply to contracts entered into or the bids made before the effective date of this act.

(2) This act does not apply to a state project if the state project was paid for, in whole or in part, from revenue from a millage that meets both of the following conditions:

(a) The millage was authorized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(b) The millage was authorized before the effective date of this act.

Sec. 10. The commissioner has the authority to administer and enforce this act, including the authority to establish and enforce the payment of the 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.

Sec. 11. If a contracting agent does not include in the contract documents or bidding forms the requirement to pay prevailing wages and fringe benefits as required under section 2 or the schedule of prevailing wages and fringe benefits as required under section 3, the contracting agent, in addition to injunctive relief, is liable for any loss of wages and fringe benefits suffered by construction mechanics on the project as a result of the contracting agents' violation. An aggrieved construction mechanic, in addition to any other remedies provided in this act or in law, may bring a civil action in a court of competent jurisdiction against a contracting agent for the violation and may recover actual damages, interest assessed up to 10% per annum, costs, and attorney fees at trial and on appeal.

Sec. 12. Every contract for a state project must contain an express term providing that construction mechanics are intended beneficiaries of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements and further providing that any construction mechanic aggrieved by the failure of a contractor or subcontractor to pay prevailing wages or benefits as specified in the contract, or by a violation of section 7, in addition to any other remedies provided in this act or by law, may bring an action in a court of competent jurisdiction against the contractor or subcontractor for damages or injunctive relief and may be awarded reinstatement or other appropriate relief, and all damages sustained, together with actual costs and attorney fees at trial and on appeal.

Sec. 13. (1) In addition to any other penalty provided by law, the commissioner may assess a civil penalty of not more than \$5,000.00 for each violation of this act and an additional 10% penalty as determined by the commissioner.

(2) A civil penalty issued must be paid to the commissioner, made payable to the state of Michigan and credited to the State General Fund.

(3) A civil penalty owed under this act is due to the commissioner not later than 15 working days after the date the penalty is issued and not subject to further appeals.

(4) If the penalty remains unpaid beyond the period specified in subsection (3), the commissioner shall issue a letter to the employer demanding payment not later than 20 days after the date of the letter.

(5) If the penalty remains unpaid following the period specified in subsection (4), the department of treasury shall institute proceedings to collect the amount assessed as a civil penalty. The department of treasury shall offset the amount of the penalty against money owed by the state to the employer for any reason. The department of treasury shall request the attorney general recover the amount of the penalty remaining unpaid, after offsets, by instituting a civil action in a court of competent jurisdiction or in Ingham County.

Sec. 14. The commissioner or the commissioner's designee shall administer and enforce this act and may investigate and ascertain wages of employees of an employer subject to this act. The commissioner or the commissioner's designee shall have the right to enter any project covered by this act during normal hours of operation of the project for the purposes of inspecting payroll records, interviewing employees, conducting wage surveys of employees, or all other actions reasonably related to the enforcement of this act. The contracting agency, contractor, or subcontractor shall provide to the commissioner or the commissioner's designee any records requested necessary to enforce this act, including certified payroll, fringe benefit information, or other information necessary to ensure compliance with this act.

Sec. 15. For the purpose of an investigation or proceeding under this act, the commissioner or the commissioner's designee may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records or other documents that the commissioner considers relevant or material to the inquiry.

Sec. 16. An employee believing that a violation of this act has occurred, or a third party having credible information that a violation has occurred, may file a complaint with the commissioner that a violation may have occurred. Employees filing a complaint may keep their identity confidential from release to the employer upon request to the commissioner. Upon filing, the commissioner may initiate an investigation to ascertain whether a violation of the act has occurred, and may order the contracting agent, contractor, or subcontractor, or any of the foregoing parties jointly and severally to make employees' amounts determined to be owing whole.

Sec. 17. The commissioner must not accept or investigate complaints received more than 3 years after the date of the alleged violation or the last date on which a violation could have occurred, whichever is later.

Sec. 18. During the course of an investigation, the commissioner shall have the right to interview employees, supervisors, and others, in private without third parties to ascertain the wages, benefits, classification, or other information relevant to enforcement of this act.

Sec. 19. An employee who believes they have been discharged, disciplined, or otherwise experienced a detrimental change in their employment status due to filing a complaint, participating in an investigation, or having raised concerns with their payment of wages and fringe benefits covered by this act with their employer, may file a complaint with the commissioner not later than 90 days after the believed retaliatory act. There is a rebuttable presumption of retaliation if an employee was removed from the project or not provided similar overtime, work hours, or other opportunities available prior to the retaliatory action. If the commissioner determines that retaliation has occurred, the commissioner may order rehiring, reinstatement, or other equitable remedy, including full back pay or lost earnings as a result of the retaliatory act.

Sec. 20. Unless an appeal is in process, the commissioner may enforce a final order under this act in a court of competent jurisdiction or in Ingham County.

Sec. 21. (1) The employer or employee may request a review of the department's determination not later than 14 days after notification is issued. If a request for a review by the employer or employee is not received by the department within 14 days, in the absence of a showing of good cause for a late request, the department's determination is final.

(2) For the purpose of an investigation or proceeding under this act, the commissioner or an authorized representative of the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records or other documents that the department considers relevant or material to the inquiry.

(3) The employee, employer, and the department shall be parties to a proceeding before a hearings officer brought pursuant to this section.

(4) The commissioner shall appoint hearings officers to make determinations in proceedings brought pursuant to this section. All proceedings in a hearing shall be conducted pursuant to the procedures applicable to contested cases under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearings officer shall affirm, modify, or rescind the order of the department and may assess costs as provided for in this act.

(5) The hearings officer shall issue a determination, which constitutes a final disposition of the proceedings, to each party not later than 30 days after the conclusion of the hearing. The determination of the hearings officer shall become the final agency order upon receipt by the parties.

(6) A party to the proceeding may obtain judicial review of the determination of the hearings officer pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Venue for an appeal under this act shall only be in the circuit where the employee is a resident, where the employment occurred, or where the employer has a principal place of business.

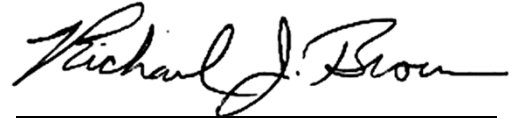
Sec. 22. Contracting agents, contractors, and subcontractors shall maintain certified payroll records and other records required under this act for a minimum of 3 years. Failure to maintain records may result in application of the applicable civil penalties provided for under this act.

Sec. 23. The commissioner may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 24. It is not be a defense to any civil action by a construction mechanic under this act that the construction mechanic has failed to exhaust any administrative remedies before the commissioner.

Sec. 25. For the fiscal year ending September 30, 2023, \$75,000.00 is appropriated from the general fund to the department of labor and economic opportunity. 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, to implement and communicate information about the enactment of this act, to be accomplished by state employees or by contract with an estimated cost not exceeding \$75,000.00 and an estimated completion date of December 31, 2024.

Sec. 26. If any portion of this act is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor