PREVAILING WAGES ON STATE PROJECTS

Act 10 of 2023

AN ACT to require prevailing wages and fringe benefits on certain projects; to establish the requirements and responsibilities of contracting agents and bidders; to make appropriations for the implementation of this act; to provide for the powers and duties of certain state and local governmental officers and entities; to create the prevailing wage fund; and to prescribe penalties.

History: 2023, Act 10, Eff. Feb. 13, 2024 ;-- Am. 2024, Act 110, Eff. Apr. 2, 2025

The People of the State of Michigan enact:

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408.1101 Definitions.

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 does not include executive, administrative, professional, office, or custodial employees.

(c) "Contracting agent" means either of the following:

(i) A private contracting agent.

(ii) A public contracting agent.

(d) "Energy facility" means an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than 1 parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

(e) "Energy facility project" means new construction, completion, demolition, major alteration, or repowering of an energy facility.

(f) "Energy storage facility" means a system that absorbs, stores, and discharges electricity with a nameplate capacity of 2 megawatts or more. Energy storage facility does not include either of the following:

(i) Fossil fuel storage.

(ii) Power-to-gas storage that directly uses fossil fuel inputs.

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

(h) "Nameplate capacity" means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

(i) "Private contracting agent" means an individual or a partnership, association, trust, corporation, or any other legal entity that enters into a contract for an energy facility project or to perform an energy facility project by the direct employment of labor.

(j) "Public contracting agent" means an officer, school board, board or commission of this state, or state institution supported in whole or in part by funds from this state, authorized to enter into a contract for a state project or to perform a state project by the direct employment of labor.

(k) "Solar energy facility" means a system that captures and converts solar energy into electricity, with a nameplate capacity of 2 megawatts or more, for the purpose of sale or for use in locations other than solely the solar energy facility property. Solar energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations generation tie lines; solar monitoring stations; and accessory equipment and structures.

(l) "State project" means either of the following:

(i) New construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads 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.

(ii) An energy facility project.

(m) "State project registration" means a registration granted under section 2a.

(n) "Wind energy facility" means a system that captures and converts wind energy into electricity, with a nameplate capacity of 2 megawatts or more, for the purpose of sale or for use in locations other than solely the wind energy facility property. Wind energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

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History: 2023, Act 10, Eff. Feb. 13, 2024 ;-- Am. 2024, Act 110, Eff. Apr. 2, 2025

408.1102 Contracts for state projects; minimum wage provisions; exceptions; prohibitions on contractor and subcontractors.

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 that requires or involves the employment of construction mechanics, other than those subject to the jurisdiction of the state civil service commission, 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. 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.

(3) A contractor shall not do any of the following:

(a) Submit a bid for a state project unless the contractor holds a state project registration.

(b) Perform work on a state project unless the contractor holds a state project registration.

(c) List a subcontractor on a bid proposal for a state project if the subcontractor does not hold a state project registration.

(d) Enter into an agreement with a subcontractor to perform work on a state project if the subcontractor does not hold a state project registration.

(4) A subcontractor shall not do either of the following unless the subcontractor holds a state project registration:

(a) Perform work on a state project.

(b) Enter into an agreement with a contractor to perform work on a state project.

(5) A contractor shall include in a bid for a state project a copy of the state project registration for the contractor and for each subcontractor of the contractor that has been selected at the time the contractor submits the bid.

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History: 2023, Act 10, Eff. Feb. 13, 2024 ;-- Am. 2024, Act 110, Eff. Apr. 2, 2025

408.1102a State project registration; application; fee; contents; suspension or revocation.

Sec. 2a.

(1) To obtain a state project registration or renew a state project registration, a contractor or subcontractor must do both of the following:

(a) Submit an application that meets the requirements of subsection (2) to the commissioner on a form and in a manner as prescribed by the commissioner.

(b) Pay the application fee described in subsection (3).

(2) An application for a state project registration must include all of the following:

(a) All of the following information for the contractor or subcontractor:

(i) Name.

(ii) Address of its principal place of business or, if this address is not in this state, the name and address of the custodian of records and agent for service of process in this state.

(iii) Telephone number.

(iv) Whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or, if a different type of legal entity, the type of legal entity.

(v) The name and address of each person with a financial interest in the contractor or subcontractor or, if the contractor or subcontractor is a publicly traded corporation, the name and address of each officer of the corporation.

(vi) Tax identification number.

(vii) Unemployment insurance identification number.

(b) A statement that the contractor or subcontractor is in compliance with all applicable laws.

(c) Documentation that shows, as determined by the commissioner, that the contractor or subcontractor is in compliance with all applicable laws, including, but not limited to, holding every license, registration, certificate, or other similar authorization required by law.

(d) Any other information or documentation as required by the commissioner.

(3) A state project registration is valid for 1 year. The commissioner shall establish an annual renewal date for all state project registrations. The commissioner shall establish a state project registration application fee in an amount that is sufficient to implement this act. The commissioner may allow an applicant for a state project registration to pay a prorated application fee based on the date that the applicant submits its application.

(4) Not later than 15 business days after the commissioner receives a complete application and application fee for a state project registration, the commissioner shall do 1 of the following:

(a) If the applicant meets the requirements for a state project registration, grant the state project registration to the applicant.

(b) If the applicant does not meet the requirements of a state project registration, deny the application and provide the applicant with a written statement that includes the reason for the denial.

(5) A contractor or subcontractor shall not submit an application for a state project registration if the contractor or subcontractor knows that the application contains a false statement.

(6) The commissioner may suspend or revoke a contractor's or subcontractor's state project registration if all of the following conditions are met:

(a) The commissioner determines that the contractor or subcontractor significantly or repeatedly violated this act or another law.

(b) The commissioner has promulgated a rule that establishes procedures for suspending or revoking a contractor's or subcontractor's state project registration.

(c) The rule described in subdivision (b) is in effect.

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History: Add. 2024, Act 110, Eff. Apr. 2, 2025

408.1103 Prevailing wage and fringe benefit rates; schedule as part of specifications and bid form.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1104 Prevailing wages and fringe benefit rates; establishment; public hearings.

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.

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History: 2023, Act 10, Eff. Feb. 13, 2024

408.1105 Prevailing wage and fringe benefit rates; posting by contractors.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1106 Prevailing wages and fringe benefits; failure to pay, termination of contract; contractor's liability and sureties.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1107 Prohibited conduct.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1108 Violation of act; penalty; liability.

Sec. 8.

(1) In addition to any other sanction provided for in this act, 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.

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History: 2023, Act 10, Eff. Feb. 13, 2024 ;-- Am. 2024, Act 110, Eff. Apr. 2, 2025

408.1109 Inapplicability of 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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1110 Administration and enforcement.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1111 Failure to comply; liability; civil action; damages.

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.

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History: 2023, Act 10, Eff. Feb. 13, 2024

408.1112 Failure to comply with wage, benefits, and nondiscrimination nonretaliation requirements; court action; damages; injunctive relief.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1113 Violation of act; civil penalties.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1114 Administration, enforcement, and investigations; commissioner rights; records.

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.

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History: 2023, Act 10, Eff. Feb. 13, 2024

408.1115 Investigations or proceedings; powers.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1116 Violation of act; filing of complaint.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1117 Statute of limitations; complaint.

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.

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History: 2023, Act 10, Eff. Feb. 13, 2024

408.1118 Investigations; right to interview.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1119 Retaliatory acts; complaint; rebuttable presumption.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1120 Final order.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1121 Request for review of determination; hearing.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1122 Maintenance of records; transmission of payroll records; payroll database.

Sec. 22.

CAUTION! This document is from an archive and may contain outdated information.

(1) A contracting agent, contractor, or subcontractor shall maintain certified payroll records and other records required under this act for a minimum of 3 years. Subject to subsection (6), not later than 10 days after the end of a pay period, a contractor or subcontractor shall transmit the certified payroll records for the pay period to the following:

(a) Before the date that is 1 year after the effective date of the amendatory act that added section 2a, the applicable contracting agent.

(b) On or after the date that is 1 year after the effective date of the amendatory act that added section 2a, the database described in subsection (2).

(2) By not later than the date that is 1 year after the effective date of the amendatory act that added section 2a, the commissioner shall create and maintain an internal certified payroll database that meets all of the following conditions:

(a) Allows a contractor, subcontractor, or contracting agent to submit certified payroll records to the database via the internet.

(b) Includes all of the following information for each construction mechanic:

(i) Classification.

(ii) Whether the construction mechanic is an apprentice, journeyman, or other skill level.

(iii) Gross wages paid in the pay period.

(iv) Number of hours worked each day.

(v) Starting and ending times of each day.

(vi) Hourly wage rate.

(vii) Hourly overtime wage rate.

(viii) Hourly fringe benefit rate.

(c) Does not display or otherwise include a construction mechanic's home address, telephone number, or Social Security number.

(d) Requires a contractor or subcontractor to attest at the time the contractor or subcontractor submits the certified payroll record, via electronic signature, that all of the following are true:

(i) The certified payroll record is complete and accurate.

(ii) The wage and fringe benefit rates paid to the construction mechanic are not less than the rates required under this act.

(iii) The person submitting the certified payroll record has reviewed the certified payroll record.

(iv) The person submitting the certified payroll record understands that a violation of this section may result in either of the following:

(A) The revocation or suspension of a state project registration.

(B) The denial of an application for a state project registration.

(3) A contracting agent that receives a certified payroll record under subsection (1)(a) shall, not later than 10 days after receiving the certified payroll record, transmit the certified payroll record to the commissioner on a form and in a manner as prescribed by the commissioner.

(4) By not later than the sixteenth day of each month, the commissioner shall update the database with the certified payroll records from the immediately preceding month.

(5) A contractor or subcontractor shall not submit a certified payroll record as required under this section if the contractor or subcontractor knows that the certified payroll record contains a false statement.

(6) A contractor or subcontractor is not required to transmit certified payroll records under subsection (1) if either of the following conditions applies:

(a) 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.

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(b) The contractor or subcontractor performs work on an energy facility project that is solely routine maintenance or repair.

History: 2023, Act 10, Eff. Feb. 13, 2024 ;-- Am. 2024, Act 110, Eff. Apr. 2, 2025

408.1123 Promulgation of rules.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1124 Exhaustion of administrative remedies; unavailable as defense.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024
Compiler's Notes: In this section, the phrase "It is not be" evidently should read "It is not to be."

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408.1125 Appropriation.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

408.1125a Prevailing wage fund.

Sec. 25a.

(1) The prevailing wage fund is created in the state treasury.

(2) The state treasurer shall deposit money and other assets received from fees or fines imposed under this act or from any other source in the fund. The state treasurer shall direct the

investment of money in the fund and credit interest and earnings from the investments to the fund.

(3) Money in the fund at the close of the fiscal year does not lapse to the general fund.

(4) The commissioner is the administrator of the fund for audits of the fund.

(5) The commissioner shall expend money from the fund on appropriation only to implement this act.

History: Add. 2024, Act 110, Eff. Apr. 2, 2025

408.1126 Severability.

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.

History: 2023, Act 10, Eff. Feb. 13, 2024

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