



**Committee on Oversight Reform and Ethics
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Overview of Michigan's Prevailing Wage Law

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Chairman McMillin and members of the committee, thank you for inviting me to provide some insight on Public Act 166 of 1965, Michigan's Prevailing Wage Act.

My Name is Chris Fisher and I am with Associated Builders and Contractors of Michigan. ABC is a statewide trade association working in partnership with four chapters throughout the state representing contractors, subcontractors, material suppliers and related firms in the commercial and industrial construction industry.

On the outset and in the interest of fair disclosure, ABC is on record in opposition of our state's prevailing wage act. In being here today I would like to not only spend some time providing a brief overview of the consequences, intended and otherwise, of PA 166, but also make time to share some of the inner workings and regulatory aspects of the act which dig beyond the typical arguments many are used to hearing, pro or con, about prevailing wage in Michigan.

Firstly, it is important to know exactly what it is your predecessors in the Legislature passed into law in 1965 when this became enacted. This is important to know because it properly keeps us on track by limiting our discussion to that which is germane to the issue at hand.

Indeed, the preamble to the act states that it is, “An act to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; and to prescribe penalties”.¹ The remainder of the act does not deviate from this preamble. I bring this to the attention of the Committee because the discussion can occasionally and erroneously include claims that the act somehow addresses public interest issues such as training, safety or quality of work. You all have a copy of the act in front of you and can see for yourselves that this is most definitely not the case.

Indeed, issues like safety are not addressed by this act, but instead are covered by Construction Safety Standards Division of MIOSHA², which of course covers all construction work, prevailing wage and otherwise. And for matters regarding quality of work, that is of course covered by our state’s building code. In fact, at the DELEG website one will find the Bureau of Construction Codes. The mission statement there is to “assure that the built environment and the systems within are sound, safe and sanitary; building users' health, safety and welfare are protected; and that, through a coordinated program of code compliance, investigation and training, there is consistent application of standards.”³

Moreover, the act most certainly doesn’t guarantee a Michigan based workforce or prevent the hiring of illegal aliens as some have absurdly attempted to claim. After all, if that were actually the case there would not be the need for currently considered legislation such as the so-called “Hire Michigan First” package of bills recently introduced, nor legislation sponsored by representative Rep. David Agema involving the use of e-verify to ensure that public contracts are performed by employees who are entitled to work in the United States.

Now on to the Prevailing Wage Act itself. In Michigan, PA 166 of 1965, has resulted in artificially inflated wage mandates which come at the expense of two things that Michigan doesn’t have much of right now: jobs and taxpayer dollars.

¹ Act 166 of 1965; Prevailing Wages on State Projects:
http://www.michigan.gov/documents/dleg/wsh_vision_values_302902_7.pdf

² Michigan Occupational Safety and Health Administration (MIOSHA) Vision and Values:
http://www.mi.gov/documents/dleg/wsh_vision_values_302902_7.pdf

³ Michigan bureau of Construction Codes: <http://www.michigan.gov/dleg/0,1607,7-154-10575---,00.html>

One need not dig deeply to find that numerous peer-reviewed governmental, institutional and academic studies, both in Michigan and around the country,⁴ that have shown the negative effects of prevailing wage laws and ordinances. Moreover, prevailing wage does not mean a fair, living wage, but rather one that is artificially inflated by 40 to 60 percent.⁵ Simply put, Michigan cannot afford the economic burden imposed by so-called prevailing wage rates.

It is well worth keeping this important point in mind, because State of Michigan contracted labor costs for construction services ought to be taken into consideration in a fashion that is consistent with ongoing discussions about other labor and benefit burdens affecting the state by directly hired public employees. This point is often overlooked but it is important that it be well considered, now more than ever.

In Michigan, prevailing wage requirements add a quarter of a billion dollars annually to the cost of governmental construction projects⁶. This means that Michigan's prevailing wage law forces construction costs to increase dramatically and charges taxpayers more to complete a project.

These added costs have a direct affect on overall construction employment. And since we probably all agree that Michigan's number one job is jobs, consider this; At a period where Michigan faces among the worst economic climates in the nation, punctuated with among the worst unemployment rates of all 50 states and with a 23 percent unemployment rate in the

⁴ *An Analysis of Market and Prevailing Wage Rates for the Construction Trades in California*: Matthew Newman, The California Institute for County Government. August 21, 2003.

Prevailing Wage Rates in Minnesota: An Examination of Alternative Calculation Methods and Their Effects on Public Construction Wages. Minnesota Taxpayers Association, February 2005.

The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law: Staff Research Report No. 149, Ohio Legislative Service Commission. May 20, 2002.

An analysis of Kentucky's Prevailing Wage Laws and Procedures, Legislative Research Division, State of Kentucky, Research Report Number 304. December 13, 2001.

Prevailing Wage Laws Mandate Excessive Costs. Washington Research Council November 29, 1999

⁵ *The Effects of Michigan's Prevailing Wage Law*. Paul Kersey. Mackinac Center for Public Policy, 2007.

⁶ *Ibid*

construction industry⁷, employment data has clearly shown a correlation between prevailing wage requirements and higher unemployment. When Michigan's prevailing wage law was suspended for 30 months, from December 1994 to June 1997 as a result of a federal district court ruling, 11,000 more construction jobs were created⁸. Therefore, in addition to common sense, indisputable Department of Labor employment data also points to a clear correlation between prevailing wage and employment.

Also, the overall competitiveness of Michigan is an important factor here, particularly when it comes to ranking Michigan to the other states. Unlike 42 other states that either have no prevailing wage mandates or that at least attempt to calculate prevailing wages based on an accurate sampling of all construction wages, Michigan's prevailing wage law dictates that wages and fringe benefits on all taxpayer-supported construction projects be determined exclusively by union collective bargaining agreements. This is especially disconcerting because 78 percent of Michigan's construction workers choose not to belong to a labor union, which is only slightly higher than the national average of roughly 14 percent of construction workers who are unionized.⁹ The point of sharing this data is that in Michigan, "prevailing wage" does not mean a fair-market living wage. It isn't even a wage that can be considered "prevailing." Rather, it's one artificially determined by an ever-shrinking minority of the construction work force. This results in a special interest driven wage monopoly that runs contrary to the best interests of Michigan citizens, communities and overall construction employment.

Moreover, it is essential that elected officials consider the labor costs of contracted workers as carefully as those costs associated with directly hired state employees are being. The fact that this state's prevailing wage rates are exclusively determined by private-sector union collective bargaining agreements places the public-sector State of Michigan in a much more difficult dilemma when dealing with labor costs for state contracts because the

⁷ United States Department of Labor: January 2011

⁸ Calculations based on data from the *Michigan Bureau of Consumer and Industry Services* from December, 1994 thru June, 1997.

⁹ Data Available at <http://unionstats.gsu.edu/> and US Department of Labor, Bureau of Labor Statistics: <ftp://ftp.bls.gov/pub/special.requests/lf/aat42.txt>

state has no say in negotiating or even setting wage rates (unlike most states) resulting in a serious and self-inflicted lack of oversight by the legislative and executive branches of government.

As I previously indicated, studies have shown \$250 million can be saved on local, state and school construction by repealing Michigan's Prevailing Wage Act. Of that total sum, half of which is applicable to school construction. This means that right now, as school districts are concerned about funding levels and facing another round of budget cuts, they are also essentially being dealt an unfunded mandate and are left paying this price at a time they can least afford it. This unfunded prevailing wage mandate is further applied to state universities and community colleges where students are facing increases in housing and tuition costs.

School prevailing wage studies in other states have found similar results. In Ohio, for example, an impressive \$487.9 million in aggregate school construction savings was realized over a five year period when that state repealed prevailing wage requirements for school construction, according to a report by the Ohio nonpartisan Legislative Service Commission.¹⁰ All this points very clearly to the point that at the very least, school districts, community colleges and universities should be allowed to choose for themselves whether or not to require a prevailing wage for their construction projects.

In a discussion of prevailing wages, we, of course, must also address what construction wages are absent of our state's prevailing wage act. Again, these mandates are not found in the private sector, which accounts for most construction work, and are imposed only on work that is publically funded. According to DELEG, *the average free market, competitive construction wage* in Michigan is over \$22.00 per hour.¹¹ Interestingly, the January, 2011

¹⁰ SB 102 Report" The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law, 2002: <http://www.lsc.state.oh.us/research/srr149.pdf>

¹¹ Michigan Department of Energy Labor and Economic Growth; Labor Market Information: *Average Wages for Construction & Extraction Occupations; 2009*: http://www.milmi.org/admin/uploadedPublications/801_wage_g47.htm

US average hourly construction wage rate is higher at \$23.52¹² per hour. In many trades it is much higher. These are appealing wages that are already higher than most in the state and at least three times higher than minimum wage requirements. Yet, despite this fact and in addition to existing minimum wage laws, special interests have fought to also mandate a prevailing wage for the construction industry, even though there is no prevailing wage for other industries.

We just hit upon two very important points: Firstly, without prevailing wage, men and women employed in the construction industry are already higher paid than most workers in our state. And secondly, the state of Michigan is singling out one industry with a prevailing wage mandate that it does not apply to virtually any other industry in our state. Again, PA 166 only applies to what the act refers to as “construction mechanics.”¹³ I only bring this additional fact to your attention not so other industries must also endure prevailing wage mandates, but instead to suggest that the construction industry deserves the same level of respect extended to other industries and should not be singled out for this costly regulatory burden.

Speaking of regulatory burdens, it is finally important to hit upon some of the regulatory implications of the prevailing wage act, which many rightfully consider a nightmare. For many in the legislature there is an assumption that prevailing wage is a flat rate, not unlike the minimum wage, and that it is easily applied. Unfortunately this couldn't be farther from truth.

Unlike what one may experience with the minimum wage law, Michigan's costly prevailing wage mandate is plagued by archaic work rules that are found nowhere in the private sector, or generally in the public sector either.

¹² United States Department of Labor; Bureau of Labor Statistics: *Average hourly and weekly earnings of production and nonsupervisory employees(1) on private nonfarm payrolls by major industry sector and selected industry detail, seasonally adjusted*; Construction Sector, January, 2011: <ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb11.txt>

¹³ Act 166 of 1965; Prevailing Wages on State Projects:
http://www.michigan.gov/documents/dleg/wsh_vision_values_302902_7.pdf

For example, if a tradesperson puts down a hammer, picks up a paint brush and then a shovel he or she may have passed into three different wage classifications all on the same construction project. If that tradesperson uses that same hammer at a different location on that building site, for example on the roof, he or she has also crossed over at least one other prevailing wage classification with an entirely different wage and benefit rate. These ridiculous burdens must constantly be monitored and increase the cost of doing business in Michigan, while diminishing the state's overall competitiveness.

All told, there are over 120 different wage classifications/rate calculations for prevailing wage work.¹⁴ This total number can be found in just a single county. Statewide there are several thousand different wages from locality to locality and from trade to trade that must constantly be monitored by contractors. Many of these are nearly impossible to distinguish from one classification to another. *(For example, a Carpet and Resilient Floor Layer does not include installation of prefabricated formica & parquet flooring, which is to be paid carpenter rate, even though all the above are types of flooring. In addition, tile flooring is also an entirely different rate and it isn't always clear whether the prevailing wage rate comes from the carpentry, tile or masonry trades.)*

And on top of all this, prevailing wage differs from location to location. For example, an electrician in Ann Arbor is paid differently than one in Brighton, and Brighton even has a different rate than Howell, which is only a few miles down the road in the same county.¹⁵ In all, there are different wages all over the state resulting in inconsistent rates around Michigan. Moreover, all these wages are not fixed because the rates in each jurisdiction and trade can change several times throughout the course of the year making it especially confusing, burdensome and difficult to monitor.

Other burdens imposed by the act include ridiculous requirements put in place by the previous administration like a *so-called Prevailing Wage Violator's List*: The result is that the State's Wage and Hour Division has been required to adopt the "scarlet letter" approach

¹⁴ Michigan Department of Energy, Labor and Economic Growth, Wage and hour Division:
<http://www.dleg.state.mi.us/bwuc/bsr/wh/asp/search.asp>

¹⁵ Ibid

for enforcement of the Act. It publishes the names of violators on its website under its Prevailing Wage Violators List. Some of the violations on the current list go back as far as 1998 and were long resolved after the misclassification--often unintentional--was rightly corrected. In branding these contractors as so-called violators, there is not even indication on the list differentiating minor reasons for violation from major violations involving substantial back pay amounts.

The decision on the part of the prior administration to continue to publish the names of reputable contractors who correct an error (often isolated errors that account for less than 1 percent of payroll) alongside of unscrupulous contractors who willfully mispay their employees has resulted in a great deal of confusion and has resulted in reputable contractors being linked with unscrupulous contractors who refuse to remedy their wrongful violation. The violators list has even resulted in third parties abusing the list by petitioning project owners to prohibit reputable contractors (those who play by the rules by correcting an error) from performing work on a project. Furthermore contractors have been placed on the list for having forgotten to post a copy of the rates in a conspicuous place at the jobsite – a mere technical violation not even affecting payroll– and are placed under the misleading title of “Failure to Provide Records.” The list should be cancelled because it goes beyond the penalties identified in the statute and it paints all violators with a broad brush even when only minor violations may have occurred and that are immediately corrected by an employer.

Furthermore, currently, the DELEG allows third parties (e.g., union business agents) to file complaints alleging prevailing wage violations regardless of there being a basis for the complaint.¹⁶ This has resulted in abuse of the prevailing wage act by clearing way for union business agents to target prevailing wage job sites, identify any contractors working on the projects, and then flood the Wage and Hour Division at DELEG with allegations of prevailing wage violations by those contractors. All that is required to file a complaint is to allege, *without proof* that workers on the projects have been misclassified according to

¹⁶ Wage & Hour Division Enforcement Manual - Act 166 Prevailing Wage:
http://www.mi.gov/dleg/0,1607,7-154-27673_27706-179984--,00.html

union practices or have not paid in accordance with the technical requirements of agency's artificial and often confusing fringe benefit calculation rules. The practice of utilizing third party complaints has resulted in "legalized harassment" of many construction contractors who then have to prove their innocence on prevailing wage projects as a part of an investigation by DELEG. Moreover, the third party complaint rule subjects project owners (usually school districts) to expenditure of taxpayer dollars to participate in the complaint procedures. Also troubling is that after a third party complaint is determined to be unfounded there is no "loser pays" protection for a contractor to recoup the time and money exhausted in proving their compliance.

Indeed, Mr. Chairman, I could go on and on with concerns surrounding the prevailing wage act. But for the sake of brevity I will not. In summary, please know that ABC supports competitive wages that are neither artificially high nor low. Unfortunately, the Prevailing Wage Act is inconsistent with this fundamental principle. That said, reform is clearly needed in Michigan that repeals Michigan's job killing prevailing wage law. Unlike 42 other states that either have no prevailing wage or that at least attempt to calculate prevailing wages based on an accurate sampling of all construction wages, Michigan's so-called prevailing wage law is among the worse. The fact that the wage is not even "prevailing" results in a special interest driven wage monopoly that runs contrary to the best interests of Michigan citizens, communities and overall construction employment. And this state doesn't even have an actual role in determining these wages, which, again are required for just the construction industry.

Michigan citizens deserve reform that will improve the business climate and foster fiscal accountability. Repealing Michigan's prevailing wage law is a common-sense way to save jobs and taxpayer dollars.

Thank you, Mr. Chairman for the invitation to provide this overview of the Michigan Prevailing Wage Act. I am happy to answer any questions you or members of the committee may have.