

# Legislative Analysis

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## INITIATIVE TO REPEAL PREVAILING WAGE

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<http://www.house.mi.gov/hfa>

**Proposed Initiated Law  
Placed before the Legislature by Petition  
By Protecting Michigan Taxpayers**

Analysis available at  
<http://www.legislature.mi.gov>

**Complete to 6-6-18**

*(Enacted as Public Act 171 of 2018)*

### ***ISSUE BEFORE THE LEGISLATURE:***

On June 1, 2018, the Board of State Canvassers certified the initiative petition filed by the ballot question committee *Protecting Michigan Taxpayers* (PMT) with a 4-0 vote (see *Background Information*, below). The initiative was received by the legislature on the same day.

Under Section 9 of Article II of the State Constitution of 1963, “Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature.”

If the legislature enacts the initiative, it becomes law. If the legislature rejects (or does not act on) the initiative, it would go before the voters on the November 2018 ballot. The legislature also has the option of rejecting the initiative and proposing a different measure on the same subject, which, if approved by a roll call vote, would appear on the November ballot alongside the PMT initiative. Finally, no law initiated by the people is subject to the veto power of the governor.

### ***THE CONTENT OF THE PROPOSED INITIATED LAW:***

The initiation of legislation has three enacting sections.

First, the initiative would repeal Public Act 166 of 1965, commonly referred to as the prevailing wage law. Among other things, the act requires that a state project undertaken by specific contracting agents, that involves the employment of construction mechanics, and that is sponsored or financed in whole or in part by the state must contain a contract term that the rates of wages and fringe benefits to be paid to each class of construction mechanic cannot be less than the wage and fringe benefits prevailing in the locality in which the work is to be performed. The Department of Licensing and Regulatory Affairs (LARA) establishes these prevailing wages and fringe benefits at the same rate that prevails on projects of similar character in the locality under collective bargaining agreements or understandings between bona fide organizations of construction mechanics and their employers.

Second, for the fiscal year ending September 30, 2018, the initiative would appropriate \$75,000 from the general fund to LARA. The appropriation would be designated as a work

project, for purposes of implementing and communicating information about the repeal of 1965 PA 166, to be accomplished by state employees or by contract with an estimated cost of less than \$75,000 and an estimated completion date of December 31, 2019.

Finally, the initiative would state that if any part or parts of the act are found to be in conflict with the state constitution, the U.S. constitution, or federal law, the act must be implemented to the maximum extent that the state constitution, U.S. constitution, and federal law permit. Any provision held invalid or inoperative would be severable from the remaining portions of the act.

MCL 408.551 et seq. (repealed)

### **BACKGROUND INFORMATION:**

On April 23, 2018, Department of State staff issued its final report on the PMT petition and recommended that the Board of State Canvassers certify the petition.<sup>1</sup> The final report was prepared after the validity of the petition signatures was challenged twice by the ballot question committee *Protect Michigan Jobs* (PMJ). Additionally, in its challenges, PMJ raised an issue with regard to the addresses provided on sheets by petition circulators. Addresses included vacant land, hotels and motels, and P.O. boxes.

The Secretary of State (SOS) staff recommended certifying the petition based on a two-stage sampling and verification process, and after a Department of Attorney General letter regarding the circulator address issue. The Department of Attorney General letter stated that, while a circulator, petition sponsor, or individual could face penalties for such an offense, the affected petition sheets and signatures could not be disqualified.

On April 26, the Board of State Canvassers voted 2-2 on a motion to certify the petition, and it was not certified. After the 2-2 vote, PMT filed a complaint for mandamus with the Michigan Court of Appeals, and PMJ intervened on behalf of the defendants.

For the Court of Appeals, the issue was whether the Board of State Canvassers was legally required to certify the petition even though some of the addresses provided by circulators may be fraudulent.

On May 11, 2018, the Michigan Court of Appeals ruled that the Board of State Canvassers must certify that the initiative petition filed by *Protecting Michigan Taxpayers* (PMT) had the requisite number of signatures for the initiative to move forward.<sup>2</sup> In its unanimous decision, the Court of Appeals ruled that disqualifying the signatures is not a permissible penalty for the violation in question and ordered the Board of State Canvassers to certify the petition. In its decision, the Court wrote: “Michigan’s election law makes no allowance for striking elector signatures in the event that a circulator records an incorrect address, and

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<sup>1</sup> Final Staff Report: “Protecting Michigan Taxpayers” Petition.  
[https://www.michigan.gov/documents/sos/Staff\\_Report\\_PMT\\_621255\\_7.pdf](https://www.michigan.gov/documents/sos/Staff_Report_PMT_621255_7.pdf)

<sup>2</sup> *Protecting Michigan Taxpayers v Board of State Canvassers*, COA Docket No. 343566  
[http://publicdocs.courts.mi.gov/opinions/final/coa/20180511\\_c343566\\_17\\_343566.opn.pdf](http://publicdocs.courts.mi.gov/opinions/final/coa/20180511_c343566_17_343566.opn.pdf)

nothing in the relevant statutes conveys any intent to disenfranchise electors who were unaware of a circulator's error or infraction.”

On May 30, 2018, the Michigan Supreme Court denied the application for leave to appeal, writing “we are not persuaded that the questions presented should be reviewed by this Court.”<sup>3</sup>

### ***FISCAL IMPACT:***

#### Impact on Department of Licensing and Regulatory Affairs

The initiative would both decrease costs for and appropriate funds to the Department of Licensing and Regulatory Affairs (LARA). The Wage and Hour Division within LARA is currently responsible for determining wage and fringe benefit rates to be paid to workers on state projects subject to prevailing wage. Repealing prevailing wage would eliminate the department's administrative responsibilities for prevailing wage, though the department estimates that repealing prevailing wage would have only a minimal impact on departmental costs. The initiative would appropriate \$75,000 in GF/GP for LARA for Fiscal Year 2018. The language provides work-project status for the appropriation, and would require that the funding be used for the implementation of and communication regarding the repeal of 1965 PA 166.

#### Impact on State and Local Expenditures

The initiative could have a fiscal impact on state and local expenditures for construction projects that are subject to 1965 PA 166 (i.e., those by state departments, public and charter schools, community colleges, and universities financially sponsored by the state); however, the vast academic and policy literature pertaining to the economic effects and fiscal impacts of prevailing wage laws, or lack thereof, is decidedly contested, lacking consensus on proper research methods and appropriate sources of data, let alone findings and conclusions drawn from such data via such methods. The House Fiscal Agency has compiled a partial bibliography of studies of the impacts of prevailing wages laws, which can be accessed online at [http://www.house.mi.gov/hfa/PDF/Alpha/Prevailing\\_Wage\\_Memo.pdf](http://www.house.mi.gov/hfa/PDF/Alpha/Prevailing_Wage_Memo.pdf).

#### Impact on State Road Construction

Repealing 1965 PA 166 would likely have a minimal fiscal impact on Michigan Department of Transportation (MDOT) construction contracts. Much of MDOT's transportation program is carried out by private construction contractors working under contract with MDOT. All of MDOT's state trunkline road and bridge capital construction, rehabilitation, and reconstruction program is performed by private contractors. Most of MDOT's Capital Preventive Maintenance (CPM) program is also performed by private contractors. MDOT also administers many capital construction and reconstruction projects on behalf of local road agencies, Airport Improvement Projects on behalf of local airports, and rail and transit capital projects.

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<sup>3</sup> *Protecting Michigan Taxpayers v Board of State Canvassers*, MSC Docket No. 157761  
[http://publicdocs.courts.mi.gov/sct/public/orders/157761\\_39\\_01.pdf](http://publicdocs.courts.mi.gov/sct/public/orders/157761_39_01.pdf)

Over the ten fiscal years ending September 30, 2017, total MDOT construction contracts, based on awarded bid totals, have averaged \$1.23 billion per year—with a peak in FY 2008-09 at \$1.39 billion and a low in FY 2011-12 of \$987.7 million. Almost all of these construction contracts are awarded through open competitive bidding, and most of them are supported, at least in part, with federal funds. Projects that are funded in any part with federal aid are subject to the prevailing wage requirements of the federal Davis-Bacon Act (40 USC 3141 et seq.), which requires that all (sub)contractors performing on federal contracts or federally assisted contracts in excess of \$2,000 pay not less than the prevailing wage rates and fringe benefits listed in the contract’s Davis-Bacon wage determination. MDOT awards relatively few construction contracts that are not funded, at least in part, with federal aid, and thus almost all of the MDOT’s construction contracts would be subject to the federal Davis-Bacon prevailing wage requirements.<sup>4</sup> Consequently, repealing 1965 PA 166 would appear to have a minimal fiscal impact on MDOT construction contracts.

***POSITIONS:***

The sponsor of the initiative is Protecting Michigan Taxpayers.

An opponent of the initiative is Protect Michigan Jobs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>4</sup> The only MDOT construction-type contracts that are generally not federal-participating are contracts for capital construction or renovation of MDOT-owned facilities, such as salt sheds or maintenance garages. Appropriations for capital improvements to MDOT facilities have been \$3.0 million per year over the last five years. In addition, some of the local road agency projects funded under the Priority Roads Investment Program in FYs 2012-13 and 2013-14 used 100% state General Fund or Roads and Risks Reserve Fund support. These would not have been subject to federal-aid program requirements.