

# **Policy Manual**

## **Act 166**

### **Prevailing Wage on State Projects Act**

This document is meant for use as a training and reference manual for internal Wage & Hour Division use. It is NOT to be referred to or relied upon for legal or technical questions regarding the prevailing wage law (PA 166 of 1965; MCL 408.551, et seq.), and its impact on individual complaints or issues should be directed to the Wage & Hour Division by U.S. mail at P.O. Box 30476, Lansing, MI 48909-7976; by telephone at: (517) 322-1825; or via the website: [www.michigan.gov/wagehour](http://www.michigan.gov/wagehour).

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Prevailing Wage on State Projects

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**Administrative employee** - means an employee who receives at least \$250.00 a week and whose primary duty is non-manual work directly related to management policies or general business operations.

**Advertisement and invitation to bid** - means a notice requesting participation in making an offer or proposal of a price on a state project.

**Apprentice** - means a construction mechanic whose apprenticeship is registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor.

**Award date** - means the date that the Director of State Administrative Board approves the construction project through the Department of Management and Budget; the date that the Director of Transportation signs the transportation project contract; or the date the school district or other contracting agent signs the contract with the contractor.

**Commissioner** - means the Department of Labor and Economic Growth. [Sec. 1(d)] or designee.

**Complaint** - means a written statement alleging non-payment of the prevailing rate on a state project covered by Act 166.

**Complainant** – is a person or entity that files a written complaint with the department alleging a violation of Act 166.

**Construction mechanic** - means a skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice who is employed by a contractor and is working on a state project but shall not include executive, administration, professional, office, or custodial employees.

**Construction work** – see definition of Construction Mechanic and State Project.

**Contract** - means any contract which is subject to the Prevailing Wage Act and any subcontract let under the contract. (See Sec. 2)

**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. [Sec. 1(c)]

**Contractor** - means an individual, sole proprietorship, partnership, association, or corporation that is awarded a contract, or authorized by a contracting agent, or is allowed to perform construction work on a state project.

**Fringe benefits** - means contractor/subcontractor funded; vacation pay, holiday pay, health and welfare contributions, medical insurance, pension or retirement contributions, a bonus, profit sharing distribution, life insurance, contributions to an employee's annuity fund or tax deferred savings plan, education or training fund contributions, scholarship contributions, or other bona fide fringe benefits.

**Locality** - means a county, city, village, township, or school district in which the physical work on a state project is to be performed. [Sec. 1(e)]

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**DEFINITIONS**

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**On behalf of** - means acting with signed, written authorization from a construction mechanic or a notice of representation by an attorney as an agent or representative of the construction mechanic.

**Overtime** - means hours worked exceeding standard daily or weekly hours as provided in the prevailing wage rate schedule e.g., 8, 10, 12, or 40.

**Prevailing rate** - means the rate established by the department, which is composed of the hourly wage rate and fringe benefits for straight time, overtime, or premium pay as contained in a collective bargaining agreement or determined by public hearing.

**Project contractor** - means any contractor or subcontractor who agrees to perform construction work on a state project.

**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. 1(b)]

**Subcontractor** - means an individual, sole proprietorship, partnership, association, or corporation that is awarded a contract, **or authorized by a contracting agent to perform construction work, or is allowed to perform construction work on a state project.**

**Supplier** - a business that provides goods and **does not perform work on the site.**

**Third party** - is a person or entity, other than a construction mechanic, that files a written complaint with the department alleging a violation of Act 166.

**Written contract or written policy** - means a written employment contract, a collective bargaining agreement, an employment policy, an employment handbook, an employment letter or written document that applies to a construction mechanic and identifies a fringe benefit and defines the terms and conditions under which the fringe benefit is earned and paid.

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<b>Number</b>	<b>Title</b>
D1.00	Contracts for State Projects Subject to Act 166
D1.01	Contractors and Subcontractors Subject to Act 166
D1.02	Construction Mechanics Protected by Act

**CONTRACTS FOR STATE PROJECTS SUBJECT TO ACT 166****D1.00**

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**Purpose**

To establish uniform criteria for determining whether a contract for a "state project is subject to the provisions of the Michigan Prevailing Wage Law.

**Responsibility**

The investigator is responsible for reviewing all complaints to determine whether the contract is subject to the provisions of the Act.

**Policy**

1. Except as provided in policy 2, a contract for a state project shall be subject to state prevailing rate requirements if the contract;
  - a. is executed between a contracting agent and a successful bidder as contractor, and
  - b. is entered into pursuant to advertisement and invitation to bid, and
  - c. involves the employment of construction mechanics, and
  - d. is sponsored or financed in whole or in part by the State of Michigan. (Sec. 2) and,
  - e. includes an express term and/or other evidence exists in the bid specifications that the Michigan prevailing rates of wages and fringe benefits be paid each class of mechanics by the contractor and all subcontractors and (Sec. 2)
  - f. a prevailing rate schedule issued by the department is a part of the contract.
2. Contracts on state projects which require the payment of prevailing wages pursuant to the federal Davis-Bacon Act or related acts (see appendix B of 29 CFR Part I) or contracts that contain wage or fringe benefits rates that are equal or greater than the prevailing rate are not subject to the Act. (Sec. 2)
3. Cities, counties, townships or economic development corporations are not contracting agents, and are not subject to the Prevailing Wage Act, even if state prevailing rates are incorporated in contracts.

**CONTRACTS FOR STATE PROJECTS SUBJECT TO ACT 166****D1.00**

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**Application 1 - on Coverage**

Michigan's prevailing wage law covers state, public school (including community colleges) and state university projects, paid for by state funds or state backed bonds.

It does not cover construction projects:

- initiated by cities, townships, counties or
- initiated by economic development corporations or
- initiated by other entities not defined in the Act as "contracting agent."

Political subdivisions or governmental units that are not "contracting agent(s)" may have their own prevailing wage requirements, but those requirements are not subject to Act 166.

**Application 2 - State University and State Government Agencies**

All state universities and state government agencies are considered Contracting Agents. Western Michigan University Board of Control and Associated Builders & Contractors v. State of Michigan (refer to appendix C for Michigan Supreme Court decision).

**Application 3 - on Advertisement or Invitation to Bid, Competitive Bidding**

The revised school code, MCL 380.1267 MSA 15.41267, requires competitive bidding by all public school districts or a public school academy (except for emergency repairs, or repairs done by school district employees) for projects over the annual amount established by the Michigan Department of Education. This amount is adjusted yearly to reflect increases in the consumer price index (see appendix G).

**Application 4 - on Advertisement or Invitation to Bid**

A state university has entered into a \$75,000 contract with a contractor for alteration of a facility without an advertisement or invitation to bid. This contract would not be within the jurisdiction of the act because the university failed to advertise or invite contractors to bid on the project.

**Application 5 – on Advertisement or Invitation to Bid**

A state university has entered into a \$75,000 contract with a contractor for alteration of a facility. The university sent a letter inviting one or more contractors to bid on the project. This contract would be within the jurisdiction of the act because the university invited contractors to bid on the project.

**CONTRACTORS AND SUBCONTRACTORS SUBJECT TO ACT 166****D1.01**

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**Purpose**

To establish uniform criteria for determining whether a "contractor or subcontractor" is subject to the provisions of the Michigan Prevailing Wage Law, Act 166, of 1965.

**Responsibility**

Investigators are responsible for reviewing all complaints to determine if the contractor is subject to the Act.

**Policy**

1. A contractor awarded a contract to perform work on a covered state project is subject to the Act.
2. A subcontractor who contracts for work under a contract subject to Act 166 is also subject to the Act.
3. Each contractor or subcontractor is separately liable for the payment of the prevailing rate to its workers on a covered project.
4. The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work.

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**PREVAILING WAGE ON STATE PROJECTS**

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**CONSTRUCTION MECHANICS PROTECTED BY THE ACT****D1.02**

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**Purpose**

To establish uniform criteria for determining whether construction mechanics are protected by the provisions of the Michigan Prevailing Wage Law, Act 166, P.A. 1965.

**Responsibility**

The investigator is responsible for reviewing all complaints to determine if a construction mechanic is subject to the Act.

**Policy**

1. A "construction mechanic" employed by a contractor to perform work as described in the contract specification is covered by the Act.
2. An employer/employee relationship must exist for the Act to apply to a construction mechanic.
3. Civil service employees subject to the jurisdiction of the State Civil Service Commission are not covered by the Act.
4. Site of Work – (USDOC regulatory definition, 29 CFR 5.2)...“site of the work is the physical place or places where the...work called for in the contract [is occurring]; and any other site where a significant portion of the...work is constructed, provided that such site is established specifically for the performance of the contract or project.”

The site of work for most projects (including MDOT let projects) is defined as the entire construction site as specified in the plans and proposal. The site of work also includes batch plants, borrow pits, job headquarters, tool yards, etc., provided they are established for and dedicated exclusively, or nearly so, to the project, **and** are adjacent or virtually adjacent to the site of the work.

**Covered:**

A driver whose activities are confined to the project worksite and / or a site specifically created to serve the project is covered for all hours worked. Drivers who work for a contractor on the project delivering materials from a supply depot created for the project are covered.

**Not Covered:**

Time spent transporting materials to or from a project site is not covered whenever materials are transported to and from an offsite location not specifically created to serve the project. Drivers delivering materials to a project site, employed by a manufacturer or material supplier, from a plant or site that serves the public and who perform no work on the project, are not covered because their work is only incidental to the project. A truck driver whose only contact with a “state project” is the removal of materials from a project is not covered by the prevailing wage law for time spent loading or transporting the material to a refuse site.

**PREVAILING WAGE ON STATE PROJECTS****CONSTRUCTION MECHANICS PROTECTED BY THE ACT****D1.02****Application for construction mechanics****EXAMPLE 1:**

A driver whose activities are confined to the project worksite and / or a site specifically created to serve the project is covered for all hours worked. Drivers who work for a contractor on the project delivering materials from a supply depot created for the project are covered. A truck driver whose work on a project is 20 % or less of a work week is not covered.

A driver employed by a project contractor or subcontractor to haul materials, such as sand, dirt, gravel, asphalt, concrete, etc., to and from a location offsite is covered for all time worked if the supply source, such as a gravel pit or other facility, was created to serve the project, after the project was advertised for bid. In these cases, the driver's work is integrally related to the project and is covered.

S&L Road Building Co. leased or invoiced D&H Trucking Co. to haul dirt from point A and deliver it to point B on the project site. D&H became a project subcontractor at the time it was allowed to perform work on the project site. The truck driver(s) employed by D&H must be paid the prevailing wage rate for all time worked that is related to the project.

**EXAMPLE 2:**

A worker, employed by the contractor engaged on the project, assembles electrical panels offsite for installation at the project work site. The worker performs no work on the project work site. The time spent assembling the electrical panels is not covered by the Act.

**EXAMPLE 3:**

A supervisor/foreman who performs no construction mechanic work on the project is not covered by the Act.

A supervisor/foreman, who works on the project will be considered a construction mechanic if 40% or more of their duties, while working on the project, are as a construction mechanic. The mechanic will be compensated at least the journeyman rate for the classification involved for all project hours worked.

**EXAMPLE 4:**

- A. A complaint is received against George Johnson Wiring, Inc. for not paying prevailing wage rates to George Johnson. The contractor states Mr. Johnson is not covered because he is president of his corporation. Mr. Johnson performs skilled labor on the project site, is employed by a corporation, and therefore must be paid the prevailing wage rate.
- B. A complaint is received against Bill's Carpentry for not paying prevailing wage rates. Bill's Carpentry responds that all mechanics who worked on the site were independent contractors. The investigation will include examining the work circumstances to determine if there was an employer/employee relationship; if so, the prevailing wage rate must be paid.

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**PREVAILING WAGE ON STATE PROJECTS**

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<b>Number</b>	<b>Title</b>
D2.00	Acceptance of Complaints
D2.01	Notification of Complaint

**ACCEPTANCE OF COMPLAINTS****D2.00**

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**Purpose**

To establish uniform criteria for the acceptance of complaints filed alleging violation of Act 166.

**Responsibility**

The investigator is responsible for reviewing all incoming complaints to determine whether they contain the minimum amount of information necessary for acceptance.

**Policy**

1. A written complaint by a construction mechanic or a third party that provides all of the following shall be accepted for investigation by the department:
  - a. name and address of the complainant;
  - b. name and address of contractor alleged to have committed the violation;
  - c. name and address of contracting agent;
  - d. project name and description;
  - e. location where the work was performed;
  - f. construction dates;
  - g. description of the complaint;
  - h. identification of the classification for each construction mechanic alleged to be underpaid.
2. A complaint which fails to provide the information listed in Policy 1 shall be returned to the individual or third party complainant. The department shall inform the complainant of specific deficiencies in the information provided and provide the complainant with an additional complaint form.
3. A complaint filed by a construction mechanic in accordance with Policy 1 shall be accepted as an individual complaint.
4. A complaint filed by a third party in accordance with Policy 1 shall be accepted as a third party complaint.

**ACCEPTANCE OF COMPLAINTS****D2.00**

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5. A complaint filed by a third party or representative on behalf of a construction mechanic, in accordance with Policy 1, shall:

- a. be accepted as an individual complaint, if the complaint includes a notice of representation by an attorney or signed written authorization from the construction mechanic.

The third party shall be treated as a representative and be kept apprised of the investigation.

- b. be accepted as a third party complaint, if the complaint does not include a notice of representation by an attorney or signed, written authorization from the construction mechanic.

The third party shall be advised that the complaint will not be opened as an individual complaint because written authorization was not included.

6. The “complainant” shall be the construction mechanic, when a third party complaint filed on behalf of a construction mechanic, is accepted by the department.

7. The date of filing shall be the date received by the Wage & Hour Division.

8. A written complaint may be filed within 3 years of the alleged violation.

**NOTIFICATION OF COMPLAINT****D2.01**

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**Purpose**

To establish uniform guidelines for notifying the contracting agent/contractor/subcontractor of complaints filed.

**Responsibility**

The assigned investigator is responsible for requesting the support staff to send a letter notifying the contractor of a complaint if identification of a "state project" is determined in the field.

The administrative support staff is responsible for mailing the notification letter to the contractor/subcontractor and contracting agent on identified state projects.

**Policy**

1. A contractor/subcontractor and contracting agent shall be notified of any complaint filed against them unless:
  - a. the complaint is returned due to incomplete information, or
  - b. the complaint is determined to be outside the jurisdiction of the Act based on information submitted in response to a coverage letter, or
  - c. the complainant is exempt, or
  - d. the alleged violation precedes the three year record limitation.
2. Notification shall be provided in writing following a determination of coverage. The notification letter shall contain:
  - a. the nature of the complaint,
  - b. the project description,
  - c. the time period the violation is alleged to have occurred, and
  - d. the name of the complainant.
  - e. the potential of debarment under Executive Order 2003-1 (appendix H).
  - f. the contracting agent authority under Section 6 of the Act.
  - g. the posting requirement under Section 5 of the Act.
3. The contracting agent shall be notified of a complaint against a (sub) contractor.
4. The prime contractor, if known, shall be notified of a complaint against a (sub)contractor.

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<b>Number</b>	<b>Title</b>
D3.00	Obtaining Contractor/Subcontractor Address
D3.01	Verifying Contractor/Subcontractor Identity
D3.02	Contractor/Subcontractor Record Keeping Requirements
D3.03	Requests for Records

**OBTAINING A CONTRACTOR/SUBCONTRACTOR ADDRESS****D3.00****Purpose**

To assure that investigators take all reasonable steps to obtain an address for the contractor/subcontractor.

**Responsibility**

The investigator assigned to the case is responsible for attempting to obtain an address for the contractor/subcontractor and attempting to obtain a physical address if the contractor/subcontractor uses a post office box.

**Policy**

1. A closing summary shall not be issued unless an address has been obtained for a contractor/subcontractor. A contractor/subcontractor's failure to respond to written communication is not, in itself, sufficient justification to dismiss the complaint.
2. If a reasonable effort has been made and the contractor/subcontractor cannot be located, a letter indicating that the contractor/subcontractor's whereabouts is unknown should be issued, and the investigation closed.

**Application**

If communication to the contractor/subcontractor is returned to the department as undeliverable, or if the address given is a post office box, the investigator assigned to the case should make a reasonable effort to locate a physical address for the contractor/subcontractor. The amount of time spent trying to locate one contractor/subcontractor must be balanced against the needs of other cases and the probable likelihood of obtaining a physical address. Steps that may be taken to locate the contractor/subcontractor include:

1. Contact the Contracting Agent, project manager, and prime contractor to see if he/she knows the contractor/subcontractor's whereabouts.
2. Contact the complainant and to request a copy of the complainant's W2, 1099, etc.
3. Check with the County or City clerk's office to determine other names under which the Contractor/subcontractor may be doing business as; or to obtain the address listed on the assumed name filing.
4. Check with the local post office for forwarding address or location of physical address.
5. Check with the current owners of the establishment if it has been sold.
6. Check with the property owner or property manager if premises were leased.
7. Check with Corporations and Securities for current address and corporate name.
8. Check name and address in local telephone directory, Chamber of Commerce directories, etc.
9. Check name and address using Internet search engines.
10. Check to see if the contractor/subcontractor has filed for bankruptcy.

**OBTAINING A CONTRACTOR/SUBCONTRACTOR ADDRESS****D3.00**

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11. Check with the Unemployment Insurance Agency to determine if the contractor/subcontractor is registered.
12. Check township or municipal tax rolls to verify ownership of property at the given address.
13. Check Polk's or Bresser's Directory at the library for cross-reference of addresses and names.
13. Check with the Department of Labor and Economic Growth, Bureau of Occupational and Professional Regulation.
14. Check with the Secretary of State via the internet: <https://webstation.state.mi.us/sos/marc.htm> to obtain information from driver files.
15. Have administrative support staff check with Workers' Compensation Agency, with the Unemployment Insurance Agency, and on Westlaw.

**VERIFYING A CONTRACTOR/SUBCONTRACTOR'S IDENTITY****D3.01****Purpose**

To verify the identity of a contractor/subcontractor to assure that the correct legal identity is named.

**Responsibility**

The investigator assigned to the case is responsible for verifying the contractor/subcontractor's legal identity and obtaining documentation of the contractor/subcontractor's legal identity.

**Policy**

1. The contractor/subcontractor's legal identity shall be verified.
2. Identification involving assumed names (d/b/a) should include:
  - a. business name and address
  - b. name and address of persons who filed the assumed name
  - c. date of filing and file number if available
  - d. date of expiration or dissolution
  - e. municipality where assumed name filed
3. Identification involving corporations should include;
  - a. the corporate identity,
  - b. resident agent's name and address,
  - c. date of incorporation,
  - d. statement of good standing or dissolution, and
  - e. the date of dissolution if the corporation has dissolved.

NOTE: Make sure the earning period falls within the incorporation date and expiration date for the corporation.

**Application**

The following sources for legal identity are listed in order of preference:

Contact the Contracting Agent, project manager, and prime contractor to see if he/she knows the contractor/subcontractor's whereabouts.

Articles of Incorporation and Annual Report - Can be obtained from Corporations Division in the Department of Labor and Economic Growth, or from the Bureau of Commercial Services. The Articles of Incorporation contain the names of the officers of the corporation and the name of the corporation. The annual report provides a financial statement.

**VERIFYING A CONTRACTOR/SUBCONTRACTOR'S IDENTITY****D3.01**

County Clerk Registration - Can be obtained at the local county clerk's office and will show the Contractor/subcontractor's true name and address if operating under an assumed name and properly registered with the county clerk.

Sales Tax License - The sales tax license will show the name of the corporation, partners, or owner. A current license posted on the Contractor/subcontractor's premises may be used as a legal identity source. If the license shows a corporation, check with the Bureau of Corporations and Securities to make sure it was a viable corporation during the period claimed and that the earning period falls within the incorporation date and expiration date, if any, for this corporation.

License, Registration, or Certification - Can be obtained from appropriate board or commission, which has the authority to control the practice of a given profession. Examples of establishments, which are so controlled, include mortuaries, builders, beauty shops, pharmacies, doctor's offices, etc. Search the Department of Labor and Economic Growth website or see the listing in the state phone directory under Bureau of Commercial Services.

Have the administrative support staff check with the Unemployment Insurance Agency or Workers' Compensation Agency.

Look at W-2s and/or 1099s issued by the contractor/subcontractor and submitted by the claimant.

City licenses

Request the social security number from the contractor/subcontractor or the Unemployment Insurance Agency.

If a contractor/subcontractor's identity cannot be clearly established, the investigator should exercise judgment in identifying the person(s) who controlled the activities of the employees and the business.

Locating the contractor/subcontractor and establishing the contractor/subcontractor's legal identity can be accomplished at the same time. See section D3.00 on obtaining a Contractor/subcontractor address.

**CONTRACTOR/SUBCONTRACTOR RECORD KEEPING REQUIREMENTS****D3.02****Purpose**

To summarize employment record keeping requirements pertinent to Act 166.

**Responsibility**

The investigator examining employment records is responsible for informing contractor/subcontractors of the record keeping requirements of the Act.

**Requirements of the Act**

408.555 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 him in connection with said contract. This record shall be available for reasonable inspection by the contracting agent or the commissioner. “

**Policy**

1. Records shall contain:
  - a. the name of the construction mechanic,
  - b. the occupation of the construction mechanic (include each classification worked),
  - c. the actual wages and benefits paid to the construction mechanic **including certified payroll, as used in the industry, of each and every construction mechanic, and verification of such certified payroll in writing by either a representative or auditor/certified accountant at the end of such a certified payroll,** and
  - d. the hours worked on each project for each classification.
2. Prevailing wage and fringe benefits rates shall be posted in a conspicuous place on the construction site.
3. Records shall be available for inspection by the department.

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**REQUESTS FOR RECORDS****D3.03**

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**Purpose**

To establish a procedure for obtaining employment records and completing an investigation when a contractor/subcontractor fails to make records available for investigation.

**Responsibility**

It is the responsibility of the investigator assigned to the case to obtain pertinent records and to conduct follow-up contacts as requested by the Office of the Prosecuting Attorney.

**Requirements of the Act**

408.555 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 him in connection with said contract. This record shall be available for reasonable inspection by the contracting agent or the commissioner. “

**Policy**

1. Employment records shall be opened to inspection by an authorized agent of the Wage & Hour Division at any reasonable time within 14 working days of the date requested unless a showing of good cause of an extension is made.
2. At least 2 record requests shall be made to obtain the specific records needed to address the merits of the complaint.
3. The first request for records is the notification letter.
4. The second request shall be issued directing a response within 14 working days when a contractor/subcontractor does not respond to the notification letter or any other requests made by the investigator. These requests must be documented through a personal visit, telephone call, or a letter to the Contractor/subcontractor.
5. If the records are not provided in response to the second request, a letter shall be sent notifying the contractor of the section 5 violation and asking for compliance within 14 working days. The complainant, contracting agent, and if known, project manager and prime contractor shall be copied on the letter.
6. If a contractor fails to open employment records as requested, the investigator shall recommend the department contact the Prosecuting Attorney and/or the Attorney General to seek enforcement of section 5 and 7 of Act 166.

**Exception**, a complainant who is a contracting agent shall be referred to the Prosecuting Attorney to pursue action on their own behalf.

7. The contracting agent shall be notified when the department contacts the Prosecuting Attorney and/or the Attorney General for enforcement of section 5 and 7 of Act 166.
8. If the Prosecuting Attorney has not responded within 14 working days, the file shall be closed.

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D4.00	Investigation of Complaints
D4.01	Classification Disputes
D4.02	Determining if Prevailing Rates Has Been Paid
D4.03	Investigating Apprenticeship Claims
D4.04	Violation and Request for Compliance
D4.05	Withdrawal Complaint
D4.06	Resolution of Complaints
D4.07	Collection of Money

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**INVESTIGATION OF COMPLAINTS****D4.00**

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**Purpose**

To establish uniform criteria for conducting complaint investigations.

**Responsibility**

The investigator is responsible for determining if the claim is subject to the provisions of the Act and conduct an investigation to determine compliance with Act 166. Administrative support is responsible for sending the self audit and compliance/non-compliance letter. The manager is responsible to review recommendations.

**Policy**

1. The department shall conduct an investigation initiated by a written complaint.
2. Complaint investigations shall be conducted on a first in/first out basis.
3. The department shall establish jurisdiction prior to initiating contact with a contractor.
4. The contracting agent, prime contractor if known, and the project manager if known, shall be notified that a complaint has been filed with the department.
5. Time and payroll records of the contractor for the project construction dates, identified on the complaint, shall be inspected by the department to determine compliance or non-compliance. A sample audit of one pay period for each classification identified in the complaint shall be prepared to demonstrate compliance/non-compliance. If available, any time and payroll record(s) provided by complainant(s) will also be reviewed.
6. If non-compliance is determined, the investigator shall advise the contractor and complainant of the violation and forthcoming self audit letter. A letter shall be sent requesting the contractor conduct a self audit for the claim period and reimburse underpayments determined by the self audit. **The self-audit shall be certified by either a certified public accountant of the employer's choosing, or certified by the personal signature of the employer, attesting to the self-audit's authenticity and completeness with the following language prior to the signature: "I hereby certify that this self-audit is complete and correct as to its findings."**
7. When a complaint alleges a violation of the posting requirement on an ongoing project, the department shall request the (sub) contractor certify compliance. If the (sub) contractor fails to certify compliance with the posting requirements, an on-site inspection shall be made to determine compliance/non-compliance (See application 5).

**INVESTIGATION OF COMPLAINTS****D4.00**

8. When the contracting agent keeps
  - a. advertise and offer invitation to bid for a state project,
  - b. have the commissioner determine rates for all classifications called for on the project,
  - c. provide rates, or
  - d. include a requirement and/or other evidence to pay rates as part of the specifications of a contract.

The **contracting agent** is in violation of the Act.

The **contractor** is not in violation of the Act because, the project was not advertised or let out for bid, or rates, or the requirement and/or other evidence to pay rates were not included in the contract.

9. A complainant shall not be referred to the prosecuting attorney.

**Exception**, a complainant who is a contracting agent shall be referred to the prosecuting attorney to pursue action on their own behalf (see section D3.03 policy 5).

10. The complainant, third party or other representative (filing on behalf of), contracting agent, contractor, project manager and prime contractor shall be notified of the results of the sample audit investigation (see violation and the request for compliance section D4.04).

**Application 1 – Documenting Compliance or non-compliance**

Document compliance or noncompliance by conducting a sample audit for one pay period for each classification indicated in the complaint.

In the case of an ongoing project the prevailing rates are required to be posted on the construction site (Policy 2 Section D3.02 and Policy 7 Section D4.00).

**Application 2– Individual Complaint**

A plumber working on a school project files a prevailing wage complaint indicating that the posted rate for plumbers on the job was not paid. After jurisdiction has been established, a review of the payroll records of the contractor finds compliance in one week and non-compliance in one week, during the period claimed by the complainant. A sample audit is completed for one week that shows non-compliance. The investigator advises the contractor, complainant, and the third party or representative (filing on behalf of), if applicable, of the violation and forthcoming self audit letter. The contractor is sent a letter requesting the contractor complete an audit for the entire period the plumber worked on the project and submit any underpayment found due. The payment may be paid by check or money order, made payable to the construction mechanic or department, sent to the department or paid directly to the employee. The contractor should be advised to notify this office of direct payment to the employee.

If the contractor completes an audit and submits payment to the plumber, the contractor will be considered in violation of the Act but resolution was successful.

If the contractor does not complete an audit, the contractor will be considered in violation.

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**INVESTIGATION OF COMPLAINTS****D4.00**

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**Application 3– Third Party Complaint**

A Carpenters Union filed a third party complaint against a contractor alleging that laborers were performing job duties consistent with the carpenter classification and were not paid the proper prevailing wage rate. A review of the records showed one mechanic was paid the prevailing wage rate as a laborer, the second mechanic was paid as carpenter, and the third was paid both the laborer rate and the carpenter rate based on the number of hours worked in each classification. The contractor/subcontractor provided a job description identifying the duties performed by each audited mechanic. The job descriptions were consistent with classifications paid. No violation was found. A sample audit was conducted for one mechanic for one pay period.

**Application 4– Posting Requirement Complaint**

1. If the (sub) contractor does not respond to the notification letter within 14 working days, the investigator requests the (sub) contractor complete the certification of posting form. This request must be documented through personal visit, telephone call, or letter.
2. If the (sub) contractor fails to complete and return the certification of posting form within 14 working days, an on-site inspection on the construction site will be made. If the prevailing wage and fringe benefit rates are posted in a conspicuous place at the construction site a determination of compliance will be made regardless of who posted the copy.
3. If the rates are not posted, the investigator shall recommend the department contact the prosecuting attorney to seek enforcement of sections 5 and 7 of Act 166 (section 3.03).

**CLASSIFICATION DISPUTES****D4.01****Purpose**

To establish uniform criteria for investigating complaints regarding classification disputes on covered state projects within the authority of the statute.

**Responsibility**

The investigator is responsible for determining whether a complaint involves a classification dispute and taking appropriate action.

**Policy**

1. The division shall determine that the rate of pay is consistent with the work actually performed.
2. The division will not pursue disputes alleging:
  - a. an incorrect classification for classifications with similar scopes of work.
  - b. jurisdictional disputes between *similar* trade classifications.
  - c. worker ratios: apprentice to journeyman, helper or assistant ratios on state projects.

**Application 1 - classification dispute**

- A. The following is an example of misclassification that the division will investigate:

A construction mechanic installs roofing materials on the project site and is paid the general laborer's rate. An investigation is appropriate since the construction mechanic was paid the General Laborer prevailing rate for the skilled work (roofer) performed.

- B. The following is an example of a classification dispute that the division will not pursue:

A contracting agent requests a determination on whether a contractor can install conduit in relation to a teledata system using the teledata classification, or does the electrical code require a permit and installation of the metallic and non-metallic conduit by an electrician under the inside wireman's classification.

Since the determination of which classification is appropriate would depend on what the electrical code requires, the question should be directed to the entity which regulates the electrical code and not Wage & Hour.

- C. The following is an example of similar scopes of work:

A construction mechanic works as a laborer and performs both cement finisher tender and mason tender duties on a project (i.e. setup scaffolding, cleaning tools, loading/unloading material), the cement finisher and mason tender duties are described as laborers duties as well. The construction mechanic is paid the laborers rate.

A determination will be made that the appropriate rate was paid.

**CLASSIFICATION DISPUTES****D4.01****Application 2 - classification verification**

The division shall verify whether a construction mechanic is paid within the appropriate rate classification by utilizing available information for the classification. The prevailing practice of the industry determines how work is classified - work performed by the employee, not the worker's title or qualifications determines the classification.

There are resources within and outside the division that can be used to establish whether a construction mechanic performed within a specific classification.

1. Collective bargaining agreement work descriptions.
2. Bureau of Construction Codes can be contacted.
3. Trade representatives can be contacted by phone at the union locals of the various trades.
4. Dictionary of Occupational Titles, Standard Industrial Classification Manual. The North American Industry Classification System (NAICS) has replaced the U.S. Standard Industrial Classification (SIC) system.
5. Contractors should be contacted.
6. U.S. Department of Labor area offices of the Bureau of Apprenticeship and Training:\*\*

Detroit                                      313/226-6206  
Lansing (state office)                      517/377-1746, e-mail: bivins.glenn@dol.gov

\*\*Phone numbers are subject to change.

**Application 3 – (policy 1) Third Party Complaint**

A sprinkler fitter union filed a third party complaint against a contractor alleging that landscape laborers were performing job duties consistent with the sprinkler fitter classification and therefore were not being paid the proper prevailing wage rate. A review of the records showed all mechanics were paid the landscape laborers rate. The contractor/subcontractor provided a job description identifying the duties performed by each audited mechanic. The job descriptions were NOT consistent with classifications paid. The job duties were consistent with the sprinkler fitter classification. The contractor/subcontractor is in violation of the Act. A sample audit was conducted for one mechanic for one pay period to demonstrate non-compliance.

**Application 4 – Third Party Complaint**

A carpenters union filed a third party complaint against a contractor alleging that three laborers were performing job duties consistent with the carpenter classification and were not paid the proper prevailing wage rate. A review of the records showed one mechanic was paid the prevailing wage rate as a laborer, the second mechanic was paid as carpenter, and the third was paid both the laborer rate and the carpenter rate based on the number of hours worked in each classification. The contractor/subcontractor provided a job description identifying the duties performed by each audited mechanic. The job descriptions were consistent with classifications paid. No violation was found. A sample audit was conducted for one mechanic for one pay period to demonstrate compliance.

**DETERMINING IF PREVAILING RATE HAS BEEN PAID****D4.02****Purpose**

To establish criteria for determining whether the prevailing rate has been paid.

**Responsibility**

The investigator is responsible for inspecting records to determine compliance with the prevailing rate requirement for work performed by a construction mechanic on a covered state project.

**Policy**

1. The division shall allow the contractor a credit for wages paid to a construction mechanic for work performed on a state project.
2. Fringe benefit means; vacation pay, holiday pay, health and welfare contributions, medical insurance, pension or retirement contributions, a bonus, profit sharing distribution, life insurance, contractor/subcontractors contributions to an employee's annuity fund, or tax deferred savings plan, education or training fund contributions, scholarship contributions, or other bona fide fringe benefits.
3. The division shall allow the contractor a credit for fringe benefits paid to, or earned by, construction mechanics for work performed on a state project.
4. Fringe benefits paid on an hourly basis shall be credited at the same hourly rate.
5. The division shall allow the contractor a fringe benefit credit for:
  - a. A fringe benefit paid directly to a construction mechanic
  - b. A fringe benefit contribution or payment made on behalf of a construction mechanic
  - c. A fringe benefit, which may be provided to a construction mechanic, pursuant to a written contract or policy.
6. The division shall calculate an hourly credit based on 2080 hours per year (52 weeks x 40 hours per week) for the actual contribution or cost attributed to an employee for a fringe benefit not paid on an hourly rate basis, (e.g. medical coverage, life insurance) to determine credit for work on a project. **Reference: Application 2 & 3.**
7. The department will exercise discretion in converting the formula or method of payment of a fringe benefit to an hourly rate, based on 2080 hours per year (52 weeks x 40 hours per week) in cases where an individual cost or contribution is not available and the fringe benefit contribution or cost is expressed in a formula or method of payment other than an hourly rate.

**DETERMINING IF PREVAILING RATE HAS BEEN PAID****D4.02**

8. Fringe benefit contributions paid to an individual instead of a fund may be credited to the prevailing rate.
9. Monies provided by contractors to construction mechanics for items such as clothing, uniforms, gas, travel time, meals or lodging, or per diem shall be considered reimbursable expenses and shall not be credited to the payment of the prevailing rate. Payments on behalf of a construction mechanic that are not wage or fringe benefits, e.g. industry advancement funds, shall not be credited. **Payments into a trust for wages, to be paid at the end of a project, will not be credited or allowed.**
10. Legally required payments and contributions such as unemployment taxes, Workers' Compensation Agency and Contractor/subcontractor's social security contributions shall not be credited to the payment of the prevailing rate.
11. A contractor/subcontractor shall pay overtime and premium pay to its workers as required in the prevailing rate schedule. **Reference: Application 1A.**
12. A contractor or subcontractor may utilize four 10 hour work days per week, Monday thru Friday, and be exempt from overtime even when the employee works less than 10 hours per day or less than 40 hours per week and: **Application 5**
  - a. The 9<sup>th</sup> character in the overtime provisions of the rate schedule for that project and specific classification has a "Y" and,
  - b. Notification has been issued by the employer to the employees prior to the start of work on the project.
  - c. Meets all other stipulations as stated in the rate schedule for each classification.
13. A weighted average may be used to compute the overtime due when a construction mechanic works at two or more classifications on a covered project, during an overtime period. **Application 1B.**
14. Only those hours worked on the covered project shall be considered for computing straight time, overtime or premium pay when a construction mechanic works on a covered project and a non-covered project in the same pay period. **Application 1C.**
15. There shall be no combining of project and non-project hours to calculate premium pay and overtime pay. **Application 1C.**
16. An apprentice shall be paid pursuant to the prevailing rate established for the classification and apprentice level.

**DETERMINING IF PREVAILING RATE HAS BEEN PAID**

**D4.02**

**Application 1 - Regarding premium pay**

**A. PREVAILING RATE SCHEDULE, POLICY 11**

The overtime pay schedule is included with the prevailing rate schedule and indicates the payment required for hours worked over 40 in a workweek, hours worked over a daily standard (e.g. 9, 10), at one and a half time (1 ½) or double time.

**B. WEIGHTED AVERAGE, POLICY 13**

In cases where an employee works at 2 or more different rates/classifications on the same project in a +40 hour workweek, the Contractor/subcontractor can voluntarily pay the 1 1/2 the highest rate or use a weighted average computed by adding all earnings at straight time, dividing by the hours worked to obtain a weighted average rate. Overtime hours must be paid at the applicable regular plus 1/2 the weighted average. For example - overtime on 35 hours @ \$15.15 and 10 hours @ 16.00 is computed as follows:

$$\begin{array}{r}
 35 @ 15.15 = \$530.25 \\
 10 @ 16.00 = \underline{\$160.00} \\
 \qquad \qquad \qquad \$690.25
 \end{array}$$

$$\$690.25 \text{ divided by } 45 = \$15.34 \text{ weighted average}$$

$$\$15.34 \times .5 = \$7.67 \times 5 \text{ hours} = \$38.35$$

$$\text{The employee is due } \$530.25 + \$160.00 + \$38.35 = \$728.60$$

**C. COVERED AND NON-COVERED OVERTIME/PREMIUM HOURS, POLICY 14 & 15**

A complaint is received concerning non-payment of premium pay from a master plumber for time worked on a state project. A review of the time records for the period claimed showed the mechanic had worked at two locations during the period claimed. One location was at Central Michigan University, a covered project as defined by the Act. The other was at Embers Restaurant, a non-covered project.

pp end 10-18-98	12th	13th	14th	15th	16th	17th	18th	
Central Mich.	6	10	0	2	8	0	0	26
Embers Rest.	6	1	8	8	0	0	0	23
	12	11	8	10	8	0	0	49

The investigator reviews the rate schedule supplied with the file and determines the overtime/premium pay schedule requires 1 ½ times the straight hourly rate for hours in excess of 8 in a day, as well as 1 ½ times the straight hourly rate for hours worked over 40 in a week. The prevailing wage audit for this pay period showed the mechanic was due 1 ½ times the straight hourly rate for only the 2 hours worked over 8 on 10-13-98 (Policy 11). Any remaining overtime would not be subject to Act 166 of 1965 as only those hours worked on the project are counted.

## Prevailing Wage on State Projects

**DETERMINING IF PREVAILING RATE HAS BEEN PAID****D4.02****Application 2, policies 5 & 6**

Example: A construction mechanic has been employed for six months at a regular rate of \$14.00/hour. The written policy expressly requires that 80 hours of vacation/personal time be paid after one year of seniority.

The investigator will compute the credit in the following manner:

$$80 \text{ hours} \times \$14.00/\text{hour} = \$1120.00$$

$$\$1120.00/2080 \text{ hours} = \$ .54/\text{hour to be credited}$$

**Application 3, calculating fringe benefit credits**

- A. The construction mechanic earns \$1.00 per hour for vacation paid = \$1.00 per hour fringe benefit credit.
- B. Employee fringe benefits are as follows:

Vacation	40 hours X \$14.00	\$560.00
Dental insurance	monthly premium	\$31.07
Vision insurance.	monthly premium	\$5.38
Blue Cross	monthly premium	\$230.00
Life insurance	monthly premium	\$27.04
Training/tuition	annual	\$500.00
Year End Bonus	\$250 per quarter	\$1,000.00
401k Employer contribution	annual	\$2,000.00

Calculated fringe benefit credit:

Vacation	40 hours X \$14.00 = 560/2080 =	\$ .27
Dental insurance	\$31.07 X 12 months = \$372.84/2080 =	\$.18
Vision insurance	\$5.38 X 12 months = \$64.56/2080 =	\$.03
Blue Cross	\$230.00 X 12 months = \$2,760.00/2080 =	\$1.33
Life insurance	\$27.04 X 12 months = \$324.48/2080 =	\$.16
Training/tuition	\$500.00/2080 =	\$.24
Year End Bonus	4 x \$250 = \$1000.00/2080 =	\$.48
401k Employer Contribution	\$2000.00/2080 =	\$.96
Total credit		<u>\$3.65</u>

**Application 4, policy 7**

A review of the billing invoices from a company that provided training to employees of XYZ Company shows that \$15,000 was paid for training during a 12 month period. There are 20 employees of XYZ Company eligible for the training. The fringe credit would be calculated as follows; \$15,000 paid/20 employees = 750/2080 hours = \$.36 hourly credit.

**DETERMINING IF PREVAILING RATE HAS BEEN PAID****D4.02****Application 5, policy 12**

Employer has notified their employees prior to beginning work on the project, that the project allows for 4 ten hour days without paying overtime for hours worked over 8 hours each day.

- A. Perfect Plumbing begins work at Miller Public High School in Lansing. An employee works 10 hours each day, Monday thru Thursday. The rate schedule for this project contains the following language for plumbers: *“4 ten hour days may be worked only Monday thru Friday.”* The employee is exempt from overtime because the rate schedule for that project allows for 4 ten hour days Monday thru Friday. The following week the employee works 10 hours each day Monday thru Wednesday and Friday. Again, the employee is not due overtime because the rate schedule for that project allows for 4 tens Monday thru Friday and does not indicate the days have to be consecutive.
- B. Perfect Plumbing begins work at Central High School, for the Flint Public Schools. The rate schedule for this project contains the following language for plumbers: *“4 tens may be worked Monday-Thursday or Tuesday-Friday at the straight time rate.”* The employees work 4 ten hour days Monday thru Wednesday, and again on Friday. The employees would be due overtime pay for the 9<sup>th</sup> and 10<sup>th</sup> hours Monday, Tuesday, Wednesday and Friday because the employer did not follow the stipulation in the rate schedule for 4 tens which allows for no overtime if 4 ten hour days are worked Monday thru Thursday or Tuesday thru Friday.
- C. Bob’s Electrical was awarded a contract to perform work at Central Michigan University. Their employees worked 4 ten hour days Monday thru Wednesday, but run into a supply issue on Thursday and worked only 6 hours. The rate schedule for the project contains the following language for electricians: *“4 consecutive 10 hour days may be worked at the straight time rate of pay Monday-Friday. Saturday may be used as a make up day when work was canceled due to weather conditions.”* The employees are not due overtime. Policy 12 allows an exemption from overtime even when the employee works less than 10 hours per day or less than 40 hours per week.
- D. The following week Bob’s Electrical has some weather problems, again on Thursday, when the employees have already worked 4 ten hour days Monday thru Wednesday. The employees do not work at all on Thursday, but are told to come in on Saturday for 10 hours to make up for Thursday. As stated in Application c, the rate schedule for that project states, *“Saturday may be used as a make up day when work was canceled due to weather conditions.”* The employees are not due overtime because the rate schedule allows for a make up day on Saturday and the employees only worked 4 days that week.
- E. Again, Bob’s has his employees work 4 ten hour days Monday thru Wednesday, but due to supply issues they only worked 4 hours on Thursday. The employees were told to come in on Friday and worked 6 more hours. As stated in Application c, the rate schedule for that project states, *“4 consecutive 10 hour days may be worked at the straight time rate of pay Monday-Friday.”* Because the employer did not follow the stipulations outlined in the rate schedule and the employees worked more than 4 consecutive days by working on a 5<sup>th</sup> day, they would be due overtime pay for the 9<sup>th</sup> and 10<sup>th</sup> hours, Monday, Tuesday and Wednesday.

**DETERMINING IF PREVAILING RATE HAS BEEN PAID****D4.02**

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- F. Sparty Asbestos Removal performing work at MSU, had their employees work 4 ten hour days Wednesday thru Saturday. The rate schedule for that project contains the following language for asbestos removal: *"4 ten hour days @ straight time allowed Monday-Saturday, must be consecutive calendar days."* Because the employer followed the requirements of the rate schedule for that project, the employees are not due overtime.

**INVESTIGATING APPRENTICESHIP CLAIMS****D4.03****Purpose**

To establish uniform criteria for determining whether a construction mechanic is to be paid the prevailing rate as an apprentice.

**Responsibility**

The investigator is responsible for determining whether a construction mechanic is an apprentice and whether the correct prevailing rate is paid.

**Policy**

1. A construction mechanic shall only be paid the apprentice rate:
  - a) if registered with the U.S.D.O.L. Bureau of Apprenticeship and Training (BAT) and
  - b) for the period covered by the BAT certificate and
  - c) if apprentice rates are included on the prevailing wage rate schedule contained in the contract.
2. Journeyman to apprentice ratios shall not be considered in determining compliance with the Act.
3. A contractor shall be required to pay the journeyman rate to a construction mechanic who is not a registered apprentice.
4. The rate paid must be from the rate schedule for the work performed.

**Application 1 - Registered apprentice – rates in contract**

A construction mechanic is working on a project as a registered apprentice with the Bureau of Apprenticeship and Training (BAT) during the entire period of the project. A review of the records show:

- a. The apprenticeship rates are included in the prevailing wage rate schedule contained in the contract.
- b. The apprentice is in the sixth period of his term.
- c. The apprentice is paid the apprentice rate for the sixth period as indicated in the prevailing rate schedule.

The contractor is in compliance with the Act.

**INVESTIGATING APPRENTICESHIP CLAIMS****D4.03****Application 2 –****A. Registered apprentice - no apprenticeship rates in contract**

A construction mechanic is working as a plumber on a project. The mechanic is a registered apprentice with BAT during the entire period of the project. The mechanic is paid a rate less than the journeyman rate. The contract does not include plumber apprenticeship rates.

The contractor is in violation for not paying the journeyman rate.

(See policy on investigation of complaints).

**B. Unregistered apprentice – no rates in contract**

A construction mechanic is working as a plumber on a project. The mechanic is not a registered apprentice with BAT. The mechanic is paid a rate less than the journeyman rate. The contract does not include plumber apprenticeship rates.

The contractor is in violation for not paying the correct prevailing rate.

**Application 3 – Period of registration**

A construction mechanic works as a carpenter on a state project from June 1 to December 31. The mechanic becomes a registered apprentice with BAT in September 1 of the same year. Apprenticeship rates can only be paid from September 1 forward (beginning with the date of registration). The mechanic must be paid the journeyman rate from June 1 to August 31.

**Application 4 - Unregistered apprentice - rates -in contract**

A construction mechanic works as a painter on a state project and is paid the apprenticeship painter rate as specified in the contract. The construction mechanic is not registered with BAT, and therefore, must be paid the journeyman painter rate.

The contractor is in violation of the Act.

**VIOLATION AND THE REQUEST FOR COMPLIANCE****D4.04****Purpose**

To establish uniform criteria for informing the contracting agent, contractor/subcontractor, prime contractor and project manager that a violation has been found and that compliance is requested.

**Responsibility**

The investigator assigned to the case is responsible for determining if the Act has been violated and, if so, advising the contractor and complainant of the violation and forthcoming self audit letter then recommending the notification and request for compliance letter be sent.

**Policy**

1. Contracting agents, contractors and subcontractors not in compliance with the provisions of the Act shall be sent a letter notifying them of a violation and requesting compliance.
2. The letter may contain:
  - the nature of the violation.
  - the nature of the corrective action to be taken:
    - provide required records, or
    - conduct self audit, and a request to submit payment due
    - a request for a listing of names, addresses and amounts being paid to each individual construction mechanic audited
    - a request to comply with the Act
  - the authority of the contracting agent as described under Section 6 of Public Act 166.
3. Contractors and subcontractors shall be given 14 working days to demonstrate compliance.
4. The violation notification and request for compliance letter shall be sent to the contracting agent, contractor and subcontractor and copied to the complainant, third party or representative (filing on behalf of), prime contractor and project manager when:
  - a. the contract specifications do not include :
    - a prevailing rate schedule for all classifications called for on the project,
    - a requirement and/or other evidence to pay rates, or
  - b. when the contracting agent fails to:
    - request the department determine rates for all classifications called for on the project, or
  - c. a review of payroll records reveals a payment less than the prevailing rate, or
  - d. the established prevailing rates are not posted, or
  - e. a contractor does not maintain the appropriate records, or provide records as required by Section 5 of Public Act 166.

**WITHDRAWAL OF COMPLAINTS****D4.05**

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**Purpose**

To establish procedures for withdrawal of a complaint.

**Responsibility**

The investigator is responsible for documenting the withdrawal of complaints. The administrative support staff is responsible for sending confirmation of withdrawal letters to all parties.

**Policy**

1. A signed statement may be submitted by the complainant to withdraw a complaint, or a verbal withdrawal will be considered valid if confirmed by a letter from the department which is not disputed by the complainant within 14 working days of the date mailed, and the file shall be closed as withdrawn. All parties shall be copied.
2. No further action shall be taken if the complaint is withdrawn.

**RESOLUTION OF COMPALINTS****D4.06**

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**Purpose**

To identify what resolves a complaint.

**Responsibility**

The division is responsible for encouraging contractor/subcontractors to comply with the prevailing wage law.

**Policy**

1. If a complainant withdraws a complaint at any time, prior to payment, the file shall be closed as withdrawn.
2. If a contractor/subcontractor pays an amount, which is accepted by the complainant prior to the preparation of a sample audit, the file shall be closed as paid. If the complainant does not accept payment see Section D4.00.
3. If the sample audit demonstrates a violation, the contractor and complainant shall be advised of the violation and the contractor sent a letter requesting a self-audit and payment.
  - If the contractor submits payment, a closing letter shall be sent to all parties notifying them that a violation was found, and a payment received.
  - If the contractor fails to submit payment, or if no response from the contractor is received; a closing letter shall be sent to the contracting agent advising them of the contractor's non-compliance.
4. The contracting agent shall be informed of the results of the investigation and advised of the right under Section 6 of Act 166 to terminate the contract if a violation is determined. All parties shall be copied with this letter.

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**COLLECTION OF MONEY**

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**D4.07****Purpose**

To establish uniform policy regarding the collection and distribution of money.

**Responsibility**

The investigator is responsible for the timely submission of any checks or money orders received in the field. Division staff is responsible for accounting and distribution of funds received in the office.

The department shall distribute and account for funds collected.

**Policy**

1. The division shall request the payment of money by check or money order made payable to the construction mechanic for the payment of prevailing wage complaints be made within 14 working days.
2. Direct payment to construction mechanics shall be permitted.
3. Payments, by check or money order, made payable to the State of Michigan received in the field by division representatives, must be mailed to the division on or before the next business day.
4. Payments, by check or money order, made payable to the construction mechanic, received in the field by division representatives, must be mailed to the division, or delivered to the construction mechanic, on or before the next business day.
5. Cash payments to the department or to a representative of the department are prohibited.
6. When payment is made in the presence of an investigator, the investigator shall document the payment in a report.
7. When a check is hand delivered to the construction mechanic, the investigator shall;
  - Identify the construction mechanic with a pictured ID, and
  - Have the construction mechanic acknowledge receipt of the check by signing the report that documents the delivery of the check to the construction mechanic.

**Application**

Checks made out to the department shall be immediately deposited in the Wage & Hour Division's account. A State of Michigan check shall be issued to the employee.

When payment is received within 14 days of a Self Audit Letter mailing date, the case file will be clearly marked as paid. When a Self Audit Letter is returned due to improper address or postage and then re-mailed, the later mailing date shall be used to calculate the 14-day voluntary compliance period. For example: If an audit letter was mailed on Monday, January 11, 14 days shall be allowed in addition to January 11, and payment would be due on Monday, January 28. However, if the audit letter was mailed on December 18, payment would be due on January 2, since 14 days are up on January 1 and January 1 is a legal holiday.

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**CONTENTS**

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<b>Number</b>	<b>Title</b>
D5.00	Establishing the Prevailing Rate
D5.01	Issuing Prevailing Rates - Official
D5.02	Issuing Prevailing Rates – General Information

**ESTABLISHING THE PREVAILING RATE****D5.00****Purpose**

To establish uniform criteria for determining and establishing prevailing rate schedules.

**Responsibility**

The Wage & Hour Division is responsible for surveying, determining, compiling, establishing and recording rate information for the prevailing rate schedules for regular, overtime, and premium pay hours.

**Policy**

1. The prevailing rate shall be based on the hourly wage rates and fringe benefit data contained in collective agreements, submitted to the division.
2. Wage and fringe benefit data shall be used only if submitted with a copy of a collective agreement or other similar documentation verifying rate authenticity.
3. The department shall solicit information from bona fide organizations of construction mechanics and their contractor/subcontractors to gather all applicable agreements and addendums.
4. Prevailing rate surveys will not solicit information on journeyman to apprentice ratios and prevailing rate schedules shall not include journeyman to apprentice ratios.
5. The prevailing rate shall include, but is not limited to, the sum of:
  - The hourly wage
  - Vacation pay
  - Holiday pay
  - Health and welfare
  - Pension contributions
  - Supplemental unemployment benefits
  - Apprenticeship contributions
  - Labor management training funds
6. The prevailing rate shall not include:
  - industry advancement or promotion contributions (Appendix I)
  - uniform allowances
  - subsistence allowance
  - reimbursable business expenses
  - per diems
  - parking allowance
  - transportation
7. The prevailing rate shall be computed at straight time, overtime and premium pay rates.

**ESTABLISHING THE PREVAILING RATE**

**D5.00**

8. Commercial journey level prevailing rates shall be determined and published. Road building journey level prevailing rates shall be determined and published. Marine and Rail journey level prevailing rates will be determined when needed for a state project.
9. The department shall respond to requests for re-issuance of rates when requested by a contracting agent **prior to** the advertisement and/or invitation to bid or re-bid a state project.
10. The department shall determine additional prevailing rates for specific classifications requested by a contracting agent **prior to** the advertisement and/or invitation to bid or re-bid a state project.
11. For purposes of establishing the prevailing rates, the area surveyed shall be defined as the smallest geographical unit, locale, or zone covered by a collective agreement.
12. In the absence of current or verifiable wage and fringe benefits data for recognized classifications, the rate shall be determined based on the rates of collective agreements in the nearest locality.

**Application 1 – Steps used to compile rates**

1. Request bona fide organizations of construction mechanics and their contractor/subcontractors to gather any and all wage setting agreements.
2. Review all collective agreements and addendums.
3. Survey information verified by documentation received will be used to establish the prevailing wage rates.

**Application 2**

The following example provides an application of Policy 5 to determine the prevailing rate: This example represents information received from the survey process.

<b>Inside Electrician</b>	<b>June 2, 1997 to May 31, 1998</b>
Base Rate	\$23.34
Vacation (14% of base)	3.27
Pension Defined Benefit	2.33
Pension Direct Contribution	1.17
Health and Welfare	3.35
National Electrical Benefit Fund (NEBF) (3% of base)	.70
Training (1% of base)	.23
School (1% of base)	.23
Labor Management Contribution Fund (LMCF)	.06
Industry Advancement (CIAP)	.10
	<hr/>
TOTAL	\$34.78

Prevailing Wage on State Projects

**ESTABLISHING THE PREVAILING RATE**

**D5.00**

For purposes of determining the prevailing rate for straight time hours, all contributions are added except Construction Industry Advancement Funds (CIAP). The prevailing rate would be \$34.68.

**Application 3**

Fringe benefits described in a CBA are reviewed to determine the calculated overtime and premium rates. For this example only, the following scenario is provided; vacation is 14% of the base rate, pension and health and welfare contributions are set dollar amounts, and the NEBF, training and school contributions are a percentage of the base rate. The time and one half rate would be calculated as follows:

	<b>Straight Time</b>	<b>When calculating time and one half</b>	<b>Time and one half</b>
Base Rate	\$23.34	multiplied by 1.5	\$35.01
Vacation (14% of base)	3.27	14% of 35.01	4.90
Pension Direct Benefit	2.33		2.33
Pension Direct Contribution	1.17		1.17
Health and Welfare	3.35		3.35
NEBF (3% of base)	.70	3% of 35.01	1.05
Training (1% of base)	.23	1% of 35.01	.35
School (1% of base)	.23	1% of 35.01	.35
LMCF	.06		.06
<b>TOTAL</b>	<b>\$34.68</b>		<b>\$48.57</b>

**Application 4**

Some agreements use hours worked and hours paid in provisions relating to certain fringe benefit contributions. Hours worked may mean the same fringe benefit contribution is required whether the hours worked are straight time or overtime. Fringe benefit contributions based on hours paid refers to the conversion of overtime hours to straight time hours and a fringe benefit contribution for each hour paid. For example, 4 hours of time and half overtime equates to 6 hours paid. A fringe benefit contribution for hours paid for 4 double time hours equates to 8 hourly contributions. When both terms are used in collective agreements, their intent should be verified.

**SHEET METAL LOCAL #33**

	<b><u>STRAIGHT TIME</u></b>	<b><u>DOUBLE TIME</u></b>
Base rate	\$26.40	\$52.80
Vacation (hours worked)	1.00	1.00
National pension(hours worked)	2.98	2.98
Pension direct benefit ( <b>hours paid</b> )	1.30	2.60
Pension direct contribution (hours worked)	2.75	2.75
Health and welfare(hours worked)	3.20	3.20
Training(hours worked)	.18	.18
Apprentice fund (hours worked)	.74	.74
Labor Management Contribution Fund (LMCF) (hours worked)	.26	.26
Supplemental Unemployment Benefit Fund (SUB) (hours worked)	<u>.25</u>	<u>.25</u>
<b>Total</b>	<b>\$38.06</b>	<b>\$65.76</b>

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**ISSUING OFFICIAL PREVAILING RATES****D5.01**

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**Purpose**

To establish uniform criteria for issuing official prevailing rate schedules requested by contracting agents.

**Responsibility**

Division staff is responsible for determining if the requestor is a contracting agent. Division staff is responsible for asking contracting agents if they want more than journey level rate schedules. Upon receipt of a request, designated staff is responsible for issuing the official prevailing rate schedules to contracting agents and keeping a log of all official rate schedules issued to contracting agents and a copy of rates on state projects.

**Policy**

1. The department shall issue **official** prevailing rates, which include an issue and expiration date, to **contracting agents only**.
2. The department **shall not** issue **official** prevailing rate schedules to contractors, subcontractors, bidders, and the general public (see Section D5.02).
3. Specific rates for classifications requested by a contracting agent, **before the contract is let out for bid**, shall be added to the official rate schedules (apprenticeship or other classifications).
4. Official rate schedules shall be issued within 7 workdays from the receipt date of the request, except those rates, which must be determined by means of public surveys or public hearings.
5. Official prevailing rate schedules for a project shall be provided to the contracting agent without charge.
6. Official prevailing rate schedules are fixed and apply for the duration of the project.
7. The 'Requirements of P.A. 166' document should be sent with each official rate schedule, (see Appendix E).
8. The rates on the website are for information purposes only.

**ISSUING OFFICIAL PREVAILING RATES****D5.01****Application 1**Rate request

A request received should include all of the following information:

- Request date
- Whether the requestor is a contracting agent (i.e. school, university or state agency). (if not a contracting agent see section 5.02)
- Name and phone number of the person making the request
- Email address where rate schedule is to be sent
- Contracting agent name
- Project description
- Identify state project (i.e. school building, project #, type of work)
- Location of the project (i.e. city/township, road etc.)
- County(s) requested
- Rate schedule(s) requested (commercial, road builder, marine, and rail rates)
- Any additional specific classifications needed (i.e. plumber apprentice, journey level classifications not ordinarily included).

**ISSUING PREVAILING RATES – GENERAL INFORMATION****D5.02****Purpose**

To establish uniform criteria for distributing general information prevailing rate schedules requested by non-contracting agents (i.e. contractors, subcontractors, workers and general public).

**Responsibility**

Division staff is responsible for determining if the requestor is a non-contracting agent.

**Policy**

1. Prevailing rates are available for information purposes from the Wage & Hour Division website.
2. The department shall distribute general information prevailing rates to non-contracting agents.
3. No additions shall be made to general information prevailing rate schedules (i.e. additional classifications, rates, issue dates, etc.).
4. The department shall respond to requests for general information prevailing rate schedules from the general public within 14 days.
5. The website rates are not official rates and are for general information only.

**Application****Rate request**

The Division receives a general information request. A general information request received should include all of the following information:

- request date
- Whether the requestor is a non-contracting agent (i.e. contractors, subcontractors, bidders, workers, and union representatives). If requestor is a contracting agent see policy 5.01.
- name, address and phone number where rates are to be sent
- county(s) requested
- rate schedule requested (commercial, road builder, marine, and rail rates)

**APPENDIX A - ACT 166 OF 1965**

## PREVAILING WAGES ON STATE PROJECTS Act 166 of 1965

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.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

*The People of the State of Michigan enact:*

### 408.551 Definitions.

Sec. 1. As used in this act:

(a) "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.

(b) "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.

(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) "Commissioner" means the department of labor.

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

**History:** 1965, Act 166, Eff. Mar. 31, 1966;—Am. 1978, Act 100, Eff. Mar. 30, 1979.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

### 408.552 Contracts for state projects; minimum wage provisions, exceptions.

Sec. 2. 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 his 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 the federal Davis-Bacon act (United States code, title 40, section 276a et seq) 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.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **408.553 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:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **408.554 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 in the office of the commissioner of labor and made available to the public.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **408.555 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 him in connection with said contract. This record shall be available for reasonable inspection by the contracting agent or the commissioner.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services,

transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **408.556 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 his sureties shall be liable to the contracting agent for any excess costs occasioned thereby.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **408.557 Violation of act; penalty.**

Sec. 7. Any person, firm or corporation or combination thereof, including the officers of any contracting agent, violating the provisions of this act is guilty of a misdemeanor.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **408.558 Inapplicability of act.**

Sec. 8. The provisions of this act shall not apply to contracts entered into or the bids made before the effective date of this act.

**History:** 1965, Act 166, Eff. Mar. 31, 1966.

**Compiler's note:** For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

APPENDIX B – 29 CFR PART I

Statutes related to the Davis-Bacon Act requiring payment of wages at rates predetermined by the Secretary of Labor.

1. The Davis-Bacon Act, as amended.
2. National Housing Act.
3. Housing Act of 1950.
4. Housing Act of 1959.
5. Commercial Fisheries Research and Development Act of 1964.
6. Library Services and Construction Act, as amended.
7. National Technical Institute for the Deaf Act.
8. National Foundation on the Arts and Humanities of 1965.
9. Elementary and Secondary Education Act of 1965 as amended.
10. The Federal-Aid Highway Acts, as amended.
11. Indians Self-Determination and Education Assistance Act.
12. Indian Health Care Improvement Act.
13. Rehabilitation Act of 1973.
14. Comprehensive Employment and Training Act of 1973.
15. State and Local Fiscal Assistance Act of 1972.
16. Federal Water Pollution Control Act.
17. Veterans Nursing Home Care Act of 1964.
18. Postal Reorganization Act, as amended.
19. National Visitors Center Facilities Act of 1968.
20. Appalachian Regional Development Act of 1965.
21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974.
22. Hospital Survey and Construction Act, as amended.
23. Health Professions Education Assistance Act.
24. Nurse Training Act of 1964.
25. Heart Disease, Cancer, and Stroke Amendments of 1965.
26. Safe Drinking Water Act.
27. National Health Planning and Resources Act.

28. U.S. Housing Act of 1937, as amended.
  29. Demonstration Cities and Metropolitan Development Act of 1966.
  30. Slum Clearance Program: Housing Act of 1949.
  31. Farm Housing: House Act of 1964.
  32. Housing Act of 1961.
  33. Defense Housing and Community Facilities and Services Act of 1951.
  34. Special Health Revenue Sharing Act of 1975.
  35. Economic Opportunity Act of 1964.
  36. Headstart, Economic Opportunity, and Community Partnership Act of 1974.
  37. Housing and Urban Development Act of 1965.
  38. Older Americans Act of 1965, as amended.
  39. Public Works and Economic Development Act of 1965.
  40. Juvenile Delinquency Prevention Act.
  41. New Communities Act of 1968.
  42. Urban Growth and New Community Development Act of 1970.
  43. Domestic Volunteer Service Act of 1973.
  44. Housing and Community Development Act of 1974.
  45. Developmentally Disabled Assistance and Bill of Rights Act.
  46. National Energy Conservation Policy Act.
  47. Public Works Employment Act of 1976.
  48. Energy Conservation and Production Act.
  49. Solid Waste Disposal Act.
  50. Rail Passenger Service Act of 1970.
  51. Urban Mass Transportation Act of 1964.
  52. Highway speed ground transportation study.
  53. Airport and Airway Development Act of 1970.
  54. Federal Civil Defense Act of 1950.
  55. National Capital Transportation Act of 1965.
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**APPENDIX C – WMU & ABC VS. SOM & MSBTCC**

**H**

Western Michigan University Bd. of Control v.  
State  
Mich.,1997.

Supreme Court of Michigan.

**WESTERNMICHIGANUNIVERSITY BOARD OF CONTROL**, a constitutional body politic and corporate, Plaintiff-Appellee,  
Associated Builders & Contractors, Inc., Western Michigan Chapter, a Michigan Corporation, Intervenor Plaintiff-Appellee,

v.

STATE of Michigan, Defendant-Appellant,  
andMichigan State Building Trades and Construction Council, AFL-CIO, a voluntary unincorporated association, Intervenor Defendant-Appellant.

**Docket Nos. 104340, 104341.**

Argued April 10, 1997.

Decided July 29, 1997.

State university brought declaratory judgment action against state, seeking determination as to whether Prevailing Wage Act applied to student recreational facility project. The Kalamazoo Circuit Court, Donald E. Goodwillie, J., granted summary disposition for university. State appealed. The Court of Appeals, [212 Mich.App. 22, 536 N.W.2d 609](#), affirmed. State sought leave to appeal. The Supreme Court, Mallet, C.J., held that the student recreational facility project was “sponsored or financed in whole or in part by the state” within meaning of Prevailing Wage Act.

Reversed.

Riley, J., dissented with opinion in which [Weaver, J.](#), concurred.

West Headnotes

**[1] Labor and Employment 231H ↻2304**

[231H](#) Labor and Employment

[231HXIII](#) Wages and Hours

[231HXIII\(B\)](#) Minimum Wages and Overtime

Pay

[231HXIII\(B\)4](#) Operation and Effect of Regulations

[231Hk2304](#) k. Prevailing Wages. [Most](#)

[Cited Cases](#)

(Formerly 232Ak1268 Labor Relations)

State university was state institution supported by state funds and, therefore, was “contracting agent” within meaning of Prevailing Wage Act. [M.C.L.A. Const. Art. 8, § 4](#); [M.C.L.A. §§ 390.551, 408.551\(c\)](#).

**[2] Labor and Employment 231H ↻2304**

[231H](#) Labor and Employment

[231HXIII](#) Wages and Hours

[231HXIII\(B\)](#) Minimum Wages and Overtime

Pay

[231HXIII\(B\)4](#) Operation and Effect of Regulations

[231Hk2304](#) k. Prevailing Wages. [Most](#)

[Cited Cases](#)

(Formerly 232Ak1268 Labor Relations)

State university's student recreational facility project, which involved renovations and addition to existing student recreation center, was “state project” within meaning of Prevailing Wage Act. [M.C.L.A. § 408.551\(b\)](#).

**[3] Statutes 361 ↻190**

[361](#) Statutes

[361VI](#) Construction and Operation

[361VI\(A\)](#) General Rules of Construction

[361k187](#) Meaning of Language

[361k190](#) k. Existence of Ambiguity.

[Most Cited Cases](#)

When statutory language is clear and unambiguous, Supreme Court must honor legislative intent as clearly indicated in that language; no further construction is required or permitted.

**[4] Statutes 361 ↻188**

[361](#) Statutes

[361VI](#) Construction and Operation

[361VI\(A\)](#) General Rules of Construction

(Cite as: 455 Mich. 531, 565 N.W.2d 828)

[361k187](#) Meaning of Language[361k188](#) k. In General. [Most Cited](#)[Cases](#)

Where statute does not define term, Supreme Court will ascribe its plain and ordinary meaning.

**[5] Labor and Employment 231H**  **2304**[231H](#) Labor and Employment[231HXIII](#) Wages and Hours[231HXIII\(B\)](#) Minimum Wages and Overtime

Pay

[231HXIII\(B\)4](#) Operation and Effect of Regulations

[231Hk2304](#) k. Prevailing Wages. [Most Cited Cases](#)

(Formerly 232Ak1268 Labor Relations)

State university's student recreational facility project was "sponsored or financed in whole or in part by the state" within meaning of Prevailing Wage Act, though university had not sought direct state appropriations for project and state did not act as surety for payment of bonds issued to finance project; university was part of state government and its funds were state funds. [M.C.L.A. § 408.552](#).

**[6] Statutes 361**  **219(4)**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(A\)](#) General Rules of Construction[361k213](#) Extrinsic Aids to Construction[361k219](#) Executive Construction

[361k219\(4\)](#) k. Erroneous Construction; Conflict with Statute. [Most Cited Cases](#)

While administrative agency's construction of statute generally deserves deference, it is not controlling and cannot be used to overcome statute's plain meaning.

**[7] Statutes 361**  **241(2)**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(B\)](#) Particular Classes of Statutes[361k241](#) Penal Statutes

[361k241\(2\)](#) k. Nature and Subject-Matter of Statute. [Most Cited Cases](#)

Mere inclusion of misdemeanor penalty provision in Prevailing Wage Act did not render the Act a criminal statute to be strictly construed when determining its application to project; overruling [Bowie v. Coloma School Bd.](#), 58 Mich.App. 233, 227 N.W.2d 298, [Muskegon Bldg. & Constr. Trades v. Muskegon Area Intermediate School Dist.](#), 130 Mich.App. 420, 343 N.W.2d 579. [M.C.L.A. § 408.551](#) et seq.


**[8] Statutes 361**  **236**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(B\)](#) Particular Classes of Statutes

[361k236](#) k. Remedial Statutes. [Most Cited Cases](#)

Remedial statute is designed to correct existing law, redress existing grievance or introduce regulations conducive to public good.

**[9] Statutes 361**  **236**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(B\)](#) Particular Classes of Statutes

[361k236](#) k. Remedial Statutes. [Most Cited Cases](#)

**Statutes 361**  **241(1)**[361](#) Statutes[361VI](#) Construction and Operation[361VI\(B\)](#) Particular Classes of Statutes[361k241](#) Penal Statutes

[361k241\(1\)](#) k. In General. [Most Cited Cases](#)

Remedial statutes, and remedial portions of penal statutes, are to be liberally construed.

**\*\*829 \*532** Miller, Canfield, Paddock & Stone, P.L.C. by [Don M. Schmidt](#) and [Charles E. Ritter](#), Kalamazoo, for Plaintiff-Appellee.

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Klimist, McKnight, Sale, McClow & Canzano, P.C.

(Cite as: 455 Mich. 531, 565 N.W.2d 828)

by [John R. Canzano](#), Southfield, for Defendant-Appellant Intervenor Michigan State Building and Construction Trades Council.

Miller, Johnson, Snell & Cumiskey, P.L.C. by [Peter J. Kok](#) and [Timothy J. Ryan](#), Grand Rapids, amicus curiae, for Associated Builders & Contractors, Inc.

### \*533 Opinion

[MALLETT](#), Chief Justice.

Michigan's prevailing wage act, [M.C.L. § 408.551](#) *et seq.*; M.S.A. § 17.256(1) *et seq.*, requires that certain contracts for state projects contain a provision obligating the contractor to pay workers on the project the wage rate and fringe benefits prevailing in the locality where the construction is to occur. We granted leave in this case to determine whether Western Michigan University's student recreational facility project is subject to the act. The trial court and Court of Appeals determined that because state appropriations did not directly finance or guaranty financing for the project, the project was not "sponsored or financed in whole or in part by the state" [FNI](#) within the meaning of the act and that, consequently, the project was not subject to it. We disagree. Because Western Michigan University is essentially an arm of state government, its project was sponsored and financed by the state within the plain meaning of the act.

[FNI. M.C.L. § 408.552](#); M.S.A. § 17.256(2).

## I

### Facts

Western Michigan University began planning renovation of its student recreational facilities in the mid-1980s. It entered into various contracts for the planning and work on the project during the 1980s and early 1990s. Before the Board of Control of the university finalized the financing of the project, bills relating to the various contracts were paid out of the university's general fund, which contained commingled state appropriations. In the spring of 1991, the board adopted an enrollment fee increase to fund the project. In December of 1992,

after realizing that \*534 funds generated from the enrollment fee would not completely cover the cost, the university issued approximately \$60 million in revenue bonds. The bonds were to be primarily repaid with revenues from student activity fees. The university additionally pledged certain general fund revenues. These revenues included tuition fees, deposits, charges and receipts, income from students, gross revenues from housing, dining and auxiliary facilities, and grants, gifts, donations, and pledges, as well as investment income.

The university sent an inquiry to the Department of Labor regarding whether it must pay construction workers on the project at the prevailing wage act rate. The parties dispute whether the department informed the university that the act did not apply. The university claims that the department indicated that the act did not apply to the project because it was not funded by direct state appropriations. The state claims that correspondence from the department related \*\*830 to other projects, and not to the recreational facility project at issue here.

In light of controversy surrounding the applicability of the prevailing wage act to the project, state representative Mary Brown requested a formal opinion from the Attorney General on the issue. The Attorney General determined that the act does apply generally to construction projects undertaken by state universities, and specifically applies to the student recreational facilities projects. OAG, 1991-1992, No. 6,723, pp. 156-160 (June 23, 1992).

Immediately following release of the Attorney General opinion, the university commenced this declaratory judgment action. The trial court granted summary\*535 disposition for the university and the intervenor plaintiff, Associated Builders & Contractors, Inc., holding that because the project had not been "sponsored or financed" by the state, it was not subject to the act. The state, and the intervenor defendant Michigan State Building Trades and Construction Council, AFL-CIO, appealed. The Court of Appeals affirmed. [212 Mich.App. 22, 536 N.W.2d 609 \(1995\)](#). The defendant and the intervenor defendant sought leave to appeal in this

Court and now we reverse.

## II

### Prevailing Wage Act

Michigan's prevailing wage act is generally patterned after the federal prevailing wage act, also known as the Davis-Bacon Act. [40 U.S.C. § 276a](#) *et seq.* Both the federal and Michigan acts serve to protect employees of government contractors from substandard wages. Federal courts have explained the public policy underlying the federal act as “protect[ing] local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area”... [and] “giv [ing] local labor and the local contractor a fair opportunity to participate in this building program.” [*Universities Research Ass'n, Inc. v. Coutu*, 450 U.S. 754, 773-774, 101 S.Ct. 1451, 1463, 67 L.Ed.2d 662 (1981).]

The purposes of the Davis-Bacon Act are to protect the employees of Government contractors from substandard wages and to promote the hiring of local labor rather than cheap labor from distant sources. [*North Georgia Building & Construction Trades Council v. Goldschmidt*, 621 F.2d 697, 702 (C.A.5, 1980).]

\*536 The Michigan prevailing wage act reflects these same public policy concerns. Through its exercise of the sovereign police power to regulate the terms and conditions of employment for the welfare of Michigan workers, <sup>FN2</sup> THE MICHIGAN LEGISLATURE has Required that certain contracts for state projects must contain a provision requiring the contractor to pay the prevailing wages and fringe benefits to workers on qualifying projects.

<sup>FN2</sup>. See [Const. 1963, art. 4, § 49](#); [West Ottawa Public Schools v. Director, Dept of Labor](#), 107 Mich.App. 237, 244, 309 N.W.2d 220 (1981).

Whether a particular project comes within the ambit of the act is governed by the language of the act itself. In this regard, the act provides:

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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. [[M.C.L. § 408.552](#); M.S.A. § 17.256(2) (emphasis added).]

In summary, to come within the act, a project must: (1) be with a “contracting agent,” a term expressly defined in the act; (2) be entered into after advertisement or invitation to bid; (3) be a state project, a term also defined in the act; (4) require the employment of construction mechanics; and \*\*831 (5) be sponsored or financed in whole or in part by the state.

\*537 The parties do not dispute that the contracts at issue were entered into pursuant to an invitation to bid or that the project required the employment of construction mechanics. Consequently, we will not further discuss these two threshold requirements.

[1] The requirement that the project be with a “contracting agent” is explained in the act's definition of the term “contracting agent”:

“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. [[M.C.L. § 408.551\(c\)](#); M.S.A. § 17.256(1)(c).]

The university is clearly a contracting agent within the plain meaning of the act. The constitutional provisions relating to state universities deems the university an “institution” and establishes state support:

The legislature shall appropriate moneys to main-

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tain ... Western Michigan University ... by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. [[Const 1963, art 8, § 4.](#)]

Further, the regional universities act, [M.C.L. § 390.551](#); M.S.A. § 15.1120(1), refers to the university as a “state institution”:

The established state institutions known as Central Michigan university, Eastern Michigan university, Northern Michigan university and Western Michigan university are continued under these names. Each institution shall be governed by a separate 8-member board of control.

[2] \*538 Having determined that the university is a “contracting agent,” we next turn to whether the student recreational facilities project it undertook is a “state project.” The act also expressly defines this term:

“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. [[M.C.L. § 408.551\(b\)](#); M.S.A. § 17.256(1)(b).]

The parties do not dispute that the project undertaken by the contracting agent, Western Michigan University, involved renovations and an addition to the existing student recreation center. Consequently, it clearly is a “state project” within the plain meaning of the act.

The critical issue in this appeal is whether the project satisfies the final threshold requirement. To come within the act, the project must be “sponsored or financed in whole or in part by the state.” This phrase is not defined in the act. The Attorney General concluded that the project met this final criterion, while the trial court and the Court of Appeals determined that it did not.

### III

#### Sponsored or Financed by the State

[3][4] In construing the terms of a statute, this Court has often stated that we must give effect to the Legislature's intent. When statutory language is clear and unambiguous, we must honor the legislative intent as clearly indicated in that language. No further construction is required or permitted. \*539 [Tryc v. Michigan Veterans' Facility](#), 451 Mich. 129, 135, 545 N.W.2d 642 (1996). Further, where a statute does not define a term, we will ascribe its plain and ordinary meaning. *Id.* at 135-136, 545 N.W.2d 642; [Shelby Twp. v. Dep't of Social Services](#), 143 Mich.App. 294, 300, 372 N.W.2d 533 (1985).

[5] We find no ambiguity in the prevailing wage act's threshold requirement that a project must be “sponsored or financed in whole or in part by the state.” No construction of these terms is required. If the “state,” including any part of state government, helps to finance a project, or undertakes some responsibility for a project, this criterion is met. Because we agree with the analysis of the Attorney General regarding whether the state has sponsored or financed a project in whole or in part, specifically regarding the university's project at issue in this case, we will set forth that analysis here:

\*\*832 Direct legislative appropriation of funds is not ... the only means by which a project can be sponsored or financed by the state. In [West Ottawa Public Schools v. Director, Dep't of Labor](#), 107 Mich.App. 237, 309 N.W.2d 220 (1981), *lv den* 413 Mich. 917 (1982), for example, the state did not directly appropriate any funds for the project in question but did act as a surety for the payment of bonds issued to finance the project. The Court held that this was sufficient to constitute “sponsorship” within the meaning of the prevailing wage act. In reaching this conclusion, the Court defined “sponsor” as “one who assumes responsibility for some other person or thing.” [107 Mich.App. at 247-248, 309 N.W.2d 220.](#)

The board of control of a state university assumes responsibility for any construction project undertaken by the university and the university, thus, is the “sponsor” of the project. State universities are clearly a part of state government in [Michigan. Regents of the University of Michigan v. Employment](#)

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[Relations Comm.](#), 389 Mich. 96, 108, 204 N.W.2d 218 (1973); \*540 [Branum v. Bd. of Regents of University of Michigan](#), 5 Mich.App. 134, 138-139, 145 N.W.2d 860 (1966).<sup>2</sup>

FN2. It is noted that several cases have reached a contrary result with respect to local school districts. See, e.g., [Bowie v. Coloma School Bd.](#), 58 Mich.App. 233, 227 N.W.2d 298 (1975), and [Muskegon Bldg. & Constr. Trades v. Muskegon Area Intermediate School Dist.](#), 130 Mich.App. 420, 343 N.W.2d 579 (1983), *lv den* 419 Mich. 916 (1984). These cases are clearly distinguishable, however, since school districts have been characterized as municipal corporations and are not part of state government. See, e.g., [Bowie, supra](#), 58 Mich.App. at 239, 227 N.W.2d 298; State universities, in contrast, are institutions of state government. [Regents of the University of Michigan, supra](#); [Branum, supra](#).

[OAG, *supra* at 158.]

We fully agree with this analysis. Western Michigan University is “the state” within the meaning of the prevailing wage act. This Court has fully and consistently articulated the nature of state institutions of higher learning, such as the University of Michigan and Western Michigan University. In [Auditor General v. Regents of the Univ.](#), 83 Mich. 467, 47 N.W. 440 (1890), this Court found that the state universities are organically part of the state government and found that all university property is state property held in trust for the public purpose of the university.

While we recognize that state universities must exercise a fair amount of independence and control over their day-to-day operations and the use of state university funds in furtherance of their educational purposes, this does not diminish their essential character as a part of the state. As explained by the Court of Appeals, in a case involving the application of governmental immunity to the University of Michigan:

In spite of its independence, the board of regents remains a part of the government of the State of Michigan.

\* \* \* \* \*

\*541 It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island. Within the confines of the operation and allocation of funds of the University, it is supreme. Without these confines, however, there is no reason to allow the regents to use their independence to thwart the clearly established public policy of the people of [Michigan](#). [[Branum v. Bd of Regents of Univ. of Michigan, supra](#) at 138-139, 145 N.W.2d 860.]

In summary, we hold that because Western Michigan University is a part of state government and its funds are state funds, the student recreational facility project is sponsored and financed by the state within the plain meaning of the prevailing wage act. Further, because the project meets all the other threshold criteria for the act's application, the university must comply with the act's wage and benefit requirements.

We are mindful that our determination regarding whether the project was sponsored or financed by the state contravenes the trial \*\*833 court and the Court of Appeals conclusions and does not comport with the Department of Labor's longstanding policy in construing the act. Our position is somewhat reminiscent of the boy who pointed out that the emperor has no clothes. Consequently, we feel compelled to explore and explain why the arguments relied on by the lower courts are in error.

The primary, and most alluring, of these arguments has a certain technical appeal. This argument is set forth in the following excerpt from the Court of Appeals opinion:

\*542 [A]cceptance of the [state's] interpretation

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would render meaningless the statutory requirement that the state project be “sponsored or financed in whole or in part by the state.”...

...When construing a statute, the court should presume that every word has some meaning and should avoid any construction that would render the statute, or any part of it, surplusage or nugatory. *Altman v. Meridian Twp.*, 439 Mich. 623, 635, 487 N.W.2d 155 (1992). If possible, effect should be given to each provision. *Gebhardt v. O'Rourke*, 444 Mich. 535, 542, 510 N.W.2d 900 (1994). The Attorney General would deem all state projects to be sponsored by the state. This would render surplusage the requirement that a project be “sponsored or financed in whole or in part by the state.” Because we find this issue to be dispositive, we need not address whether WMU is a “contracting agent” or whether this is a “state project” as defined by the act. [212 Mich.App at 26-27, 536 N.W.2d 609.]

We first note that the rule of construction that statutes should be interpreted to give effect to every term is not needed here, where the statutory language is clear. Even so, the rule is misapplied. Holding that a project undertaken and financed by the university, an arm of state government, is necessarily “sponsored and financed in whole or in part by the state” does not equate with finding that every state project comes within the act. Neither does such a holding render the “sponsored and financed” criterion surplusage.

There are “contracting agents” that are not a part of state government, in contrast to the university here, whose projects may or may not be “sponsored or financed in whole or in part by the state.” If a “contracting agent” is a part of state government, for example a state agency or department, or a state institution like Western Michigan University, all its projects will necessarily be sponsored or financed by the state. If those projects meet the other threshold \*543 criteria discussed earlier in part II, they will come within the act. In contrast, for projects undertaken by contracting agents that are not part of state government, for example, a local school board, the “sponsored or financed ... by the state” criterion will require closer examination and

must be determined case by case. The existence of these nonstate contracting agents ensures that the “sponsored or financed” language is not mere surplusage.

Because the act does not limit how a contracting agent may satisfy the “sponsored or financed ... by the state” criterion, we also refuse to do so. Contracting agents that are an integral part of state government satisfy the requirement by their very nature. Contracting agents that are outside state government can satisfy the requirement in a number of ways, including, but not necessarily limited to, direct legislative appropriation of funds and having the state act as surety for payment of bonds issued to finance the project.

Other arguments that the trial court relied on also stem from an erroneous application of rules of statutory construction. The first is the rule that we must give deference to an agency's construction of the act that it is charged to administer. *Davis v. River Rouge Bd. of Ed.*, 406 Mich. 486, 490, 280 N.W.2d 453 (1979). The trial court, following this rule, cited the Department of Labor's Policy and Procedure Manual definitions of “financed” and “sponsored” and then accepted these definitions.<sup>FN3</sup> Apparently reluctant \*\*834 to \*544 contravene the Department's longstanding policy, the trial court found that because the university did not seek direct appropriations and because the state did not act as surety for repayment of the bonds, the project was outside the act's scope.

<sup>FN3</sup>. The Department of Labor's manual contains the following definitions:

Financed in whole or in part by the state--- means providing or making state monies available for capital outlay or debt service. Sponsored by the state---means that the state acts as a surety by assuming the financial responsibilities for an authorized contracting agent.

As we have already noted, no construction is needed where the language of the statute is clear and can be given its plain and ordinary meaning.

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Consequently, we would not reach this rule of construction.

[6] Further, while an agency's construction generally deserves deference, it is not controlling and cannot be used to overcome the statute's plain meaning. *Id.*; [Ludington Service Corp. v. Acting Comm'r of Ins.](#), 444 Mich. 481, 505, 511 N.W.2d 661 (1994). The extremely limited and artificial definition that the department places on the "sponsored or financed" language simply has no basis in the act. The act does not require direct legislative appropriations of state monies as a threshold criterion. Nor does it limit its definition of "sponsorship" to instances where the state acts as surety. We refuse to so artificially limit the clear terms of the act and instead ascribe the commonly understood definitions of these terms, as explained earlier in this opinion.

[7] The other rule of construction that the trial court erroneously applied is the rule of strict construction. Because the prevailing wage act is in derogation of the common law, and because it contains a misdemeanor criminal penalty provision, the trial court, following previous Court of Appeals opinions, found \*545 that its terms must be strictly construed against its application.<sup>FN4</sup> The rule of strict construction should not apply to application of the prevailing wage act in this context. As noted by the Court of Appeals in determining whether another act, the Pesticide Control Act, [M.C.L. § 286.551](#); M.S.A. § 12.340(1), should be strictly construed:

FN4. [Bowie, supra at 241, 227 N.W.2d 298](#); [Muskegon, supra at 437, 343 N.W.2d 579](#).

The general rule that criminal statutes are to be strictly construed is inapplicable when the general purpose of the Legislature is manifest and is subserved by giving the words used in the statute their ordinary meaning. [United States v. P. Koenig Coal Co.](#), 270 U.S. 512, 520, 46 S.Ct. 392, 394, 70 L.Ed. 709, 713 (1926). [[People v. Jackson](#), 176 Mich.App. 620, 628, 440 N.W.2d 39 (1989).]

[8] As previously noted, the Michigan act, like the

federal Davis-Bacon Act, implements public policy beneficial to businesses and their workers on government construction projects by providing for a certain minimum wage rate and benefit level. The primary purpose of the act is remedial, rather than criminal, in nature. "A remedial statute is designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good." [In re School Dist. No. 6, Paris & Wyoming Twps.](#), 284 Mich. 132, 144, 278 N.W. 792 (1938).

[9] The mere inclusion of a misdemeanor penalty provision does not render the act a criminal statute that must be strictly construed. Similar to the prevailing wage act, the Minimum Wage Law, [M.C.L. § 408.381 et seq.](#); M.S.A. § 17.255(1) *et seq.*, and the Worker's Disability Compensation Act, [M.C.L. § 418.101 et seq.](#); M.S.A. \*546 § 17.237(101) *et seq.*, also regulate the terms and conditions of employment. These acts also are in derogation of the common law and contain misdemeanor penalty provisions. [M.C.L. § 408.396](#); M.S.A. § 17.225(16), [M.C.L. § 418.125](#); M.S.A. § 17.237(125). However, neither of these acts has been construed as criminal statutes, nor have their terms generally been strictly construed. See [Gross v. Great Atlantic & Pacific Tea Co.](#), 87 Mich.App. 448, 274 N.W.2d 817 (1978); [Rice v. Michigan Sugar Co.](#), 83 Mich.App. 508, 269 N.W.2d 202 (1978). Further, even if we were to find that the prevailing wage act was generally a criminal statute, we would construe its remedial provisions, including the threshold criteria for its applicability, liberally.

Remedial statutes, and the remedial portions of penal statutes, are to be liberally \*\*835 construed. See, e.g., [Robinson v. Harmon](#), 157 Mich. 272, 278, 122 N.W. 106 (1909); [Rancour v. The Detroit Edison Co.](#), 150 Mich.App. 276, 285, 388 N.W.2d 336 (1986), lv den 428 Mich. 860 (1987); [Pi-Con, Inc. v. A J Anderson Construction Co.](#), 169 Mich.App. 389, 395, 425 N.W.2d 563 (1988). [[Jackson, supra at 628, n. 3, 440 N.W.2d 39](#).]

To the extent that previous decisions of the Court of Appeals have indicated that the rule of strict construction should apply when determining the ap-

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plicability of the prevailing wage act, those portions of those decisions are overruled. See [Bowie, supra at 241, 227 N.W.2d 298](#); [Muskegon, supra at 437, 343 N.W.2d 579](#).

#### IV

##### Conclusion

For the above reasons, we hold that Western Michigan University's student recreational facilities project comes within the ambit of the prevailing wage act. \*547 Because the university is a part of state government in its creation and operation, projects it undertakes are "sponsored or financed ... by the state" within the meaning of the act regardless of whether there are other direct state appropriations or other state sponsorship and are subject to it when the other threshold criteria are met. We therefore reverse the decision of the Court of Appeals.

[BRICKLEY, MICHAEL F. CAVANAGH, BOYLE](#) and [MARILYN J. KELLY, JJ.](#), concurred with [MALLETT, C.J.](#)

RILEY, Justice (dissenting).

Because I disagree with the majority's conclusion that Western Michigan University's project to build a recreational facility is subject to the prevailing wage act, I respectfully dissent. I believe that the majority has given a strained interpretation of the meaning of "sponsored or financed in whole or in part by the state" in the act that is not supported by the plain meaning of the statute, is contradicted by the statute itself, and renders nugatory part of the provisions where the building agent is a state institution. I would adopt the long-held interpretation of the agency responsible for administering this act, the Department of Labor, and hold that a project is sponsored or financed by the state when it was either (1) financed by the state, i.e., where the state made money available for a capital outlay or debt service, or (2) sponsored by the state, i.e., where the state became a surety for the project. In the instant case, the State of Michigan did not finance or sponsor the university's project to expand the student recreational facility because the university did

not use state funds for the project and the state did not act as a surety to indemnify the debt the university incurred \*548 on the project. Consequently, I would conclude that the prevailing wage act does not apply. The trial court properly entered judgment on behalf of the university by ruling that the act did not apply. I would affirm the Court of Appeals decision upholding the trial court's grant of summary disposition in favor of the university.

#### ANALYSIS

##### I. Prevailing Wage Act

The prevailing wage act, [M.C.L. § 408.551](#) *et seq.*; M.S.A. § 17.256(1) *et seq.*, requires that certain contracts for state projects must contain a provision that requires the contractor to pay wages and fringe benefits to construction employees at the prevailing wage in the locality where the construction is to occur. Section 2 of the prevailing wage act contains the primary mandate:

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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be \*\*836 performed. [[M.C.L. § 408.552](#); M.S.A. § 17.256(2) (emphasis added).]

I agree with the majority that this provision thereby requires a governmental employer to pay the prevailing wage if a project meets the following five conditions:\*549 the project must (1) be with a "contracting agent" as defined by the act, (2) be entered into pursuant to an advertisement and invitation to bid, (3) be a "state project" as defined by the act, (4) involve the employment of construction mechanics, and (5) be "sponsored or financed in

whole or part by the state.” See Op., pp. 830-831.

## II. Majority's Interpretation of the Act and the Proper Interpretation

The only issue on appeal is whether the project to build a recreational facility initiated by Western Michigan University was “sponsored or financed in whole or in part by the state.” The majority asserts that the statute unambiguously provides that this project was sponsored and financed by the state because “Western Michigan University is ‘the state’ ” for purposes of the act. See Op., p. 832. I do not believe that this conclusion is required by the plain meaning of the act.

In fact, the majority's interpretation of the word “state” in the phrase “sponsored or financed in whole or in part by the state” is contradicted by the statute's usage of the word “state” in the very same statute in its third element. The majority concludes that the term “state” in this phrase unambiguously includes state universities like Western Michigan, but also unambiguously excludes local school boards. See Op., p. 833.<sup>FN1</sup> In contrast, in requiring that a project subject to the prevailing wage act be a “state project,” \*550 the statute clearly provides that an improvement by a local school board is a “state project.”

<sup>FN1</sup> The majority reasons as follows:

[W]e hold that because Western Michigan University is a part of state government and its funds are state funds, the student recreational facility project is sponsored and financed by the state within the plain meaning of the prevailing wage act. [Op., p. 832.]

[F]or projects undertaken by contracting agents that are not part of state government, for example, a local school board, the “sponsored or financed ... by the state” criterion will require closer examination and must be determined case by case. [Op., p. 833 (emphasis added).]

A “state project” is defined by the act as a “new construction, alteration, repair, installation, paint-

ing, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a contracting agent.” M.C.L. § 408.551(b); M.S.A. § 17.256(1)(b) (emphasis added). The statute defines a “contracting agent” as “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.” M.C.L. § 408.551(c); M.S.A. § 17.256(1)(c) (emphasis added). Thus, there can be no dispute that, according to the statute, a local school board may begin a “state project.” The majority's interpretation, however, creates an inconsistency in the statute: a project by a local school board may be a “state project” under the statute's third element, but, at the same time, a local school board is not part of the “state” for the purposes of the fifth element. See Op., p. 833. This contradiction manifests the fallacy of the majority's claim that it is expounding on the unambiguous, plain meaning of the word “state.”

The analysis is flawed for a second reason. The majority's novel interpretation of the statute renders superfluous the first of the five elements, i.e., that the \*551 project be with a “contracting agent,” where the contracting agent is a state institution. The statute provides that a state institution that is supported by state funds like Western Michigan University is a “contracting agent” under the act.<sup>FN2</sup> The university concedes on appeal the point that Western Michigan University is a contracting agent. Where an employer like Western Michigan University meets the statute's first element of the test (involve a “contracting agent”) because it is a state institution, it will then, according to the majority's \*\*837 interpretation, always meet the fifth element that the project be “sponsored or financed ... by the state” because Western Michigan University is the state.

<sup>FN2</sup> The fact that Western Michigan University is a “state institution” is, in my opinion, a good example of a point that is unambiguous.

(Cite as: 455 Mich. 531, 565 N.W.2d 828)

The majority attempts to address this claim that its interpretation renders part of the statute to be mere “surplusage” as the Court of Appeals concluded, see [212 Mich.App. 22, 26, 536 N.W.2d 609 \(1995\)](#), by noting that there are other entities defined by the act as “contracting agent[s]” that are not part of the state for whom the fifth element would be relevant. See Op., pp. 832-833. Nevertheless, the statute's fifth requirement would still be redundant for “state” contracting agents (as interpreted by the majority). The rules of statutory construction require that this Court read separate provisions of a statute consistently as a whole to ensure that each provision is given effect. [Gebhardt v. O'Rourke, 444 Mich. 535, 542, 510 N.W.2d 900 \(1994\)](#). By analogy, this Court should interpret a statute to ensure that an interpretation of one provision does not render another superfluous in a substantial\*552 number of cases. The Legislature likely did not intend to create such a cumbersome, awkward statute.

The majority's error is rooted in its mistaken belief that the word “state” is unambiguous in the phrase “sponsored or financed in whole or in part by the state.” In my opinion, the word “state” may be construed narrowly to include only the three branches of state government (executive, legislative, and judiciary) and the agencies they operate. Or, the “state” may be construed broadly to include the three branches of state government and their agencies as well as all municipalities and institutions that are created by the state. Traditionally, cities, like state universities and colleges, are considered municipal corporations and creatures of the state. [Sinas v. City of Lansing, 382 Mich. 407, 411, 170 N.W.2d 23 \(1969\)](#). The word “state” in the fifth element may also plausibly be interpreted, as advanced by the majority, to include all state governmental agencies, and state institutions, like state universities and state mental health facilities, but not smaller units of government created by the state. This Court should examine the purpose of this fifth element and examine it in the context of the earlier provisions to discern its meaning here.

The focus of the fifth element is on whether the project is “sponsored or financed” by the state gov-

ernment, not on whether the agency or institution initiating the project is a governmental entity. The statute ensures the latter point in its first element, by guaranteeing that the project is with a “contracting agent.” Every entity listed in the definition of contracting agent could be loosely described as a state \*553 actor. In focusing on whether the project is financed or sponsored by the state, the statute's fifth element appears to ensure that either the Legislature has authorized funds for the project or there has been a state action by one of the three branches of government to sponsor the project. The act, however, provides no definition of the terms “sponsor” or “finance.”

The Department of Labor has defined these terms for its administrative use in its policy and procedural manual from 1992 as follows:

Financed in whole or in part by the state-means providing or making state monies available for capital outlay or debt service.

\* \* \* \* \*

Sponsored by the state-means that the state acts as a surety by assuming the financial responsibilities for an authorized contracting agent.

The Department of Labor apparently applied this interpretation to at least six state university or college projects from 1987 through 1991, where it concluded that the prevailing wage act did not apply to the school projects because the state universities and colleges used bond issues to fund the projects and did not use state funds.<sup>FN3</sup> This \*\*838 Court generally grants \*554 deference to a long-standing agency interpretation of a statute that the agency administers. See [Wayne Co. Prosecutor v. Dep't of Corrections, 451 Mich. 569, 580, 548 N.W.2d 900 \(1996\)](#). Because the agency's interpretation is a plausible one and fits the purposes of the statute and its fifth requirement examined in context, I would defer to this administrative agency and conclude that, in order for a project to come under the prevailing wage act, the state must either finance the project by providing state monies or sponsor the project by assuming financial responsibility for it.

(Cite as: 455 Mich. 531, 565 N.W.2d 828)

[FN3](#). For example, in July 1987, the Department of Labor sent the following letter with regard to a project by Ferris State College:

“This project for which you have claimed an underpayment of the prevailing wage act is not a state prevailing wage project. Ferris State College financed this building project with its own bond issue, which is not guaranteed by the State. This method of financing ... is outside the jurisdiction of the Department of Labor.”

### III. APPLICATION OF THE PROPER INTERPRETATION

Under this interpretation, the trial court properly concluded that the project was not financed or sponsored by the State of Michigan.

In April 1992, the university began construction on the project. In December 1992, the university issued \$59,495,000 in tax-exempt bonds to pay for the project. Between the start of the project and the sale of the bonds, the university internally borrowed with interest from its general fund to cover the cost of the project's progress. The university did not receive capital appropriations from the state for the project. During the time the university drew from its general fund, the cash reserves in the general fund ranged from approximately \$22,000,000 to \$38,000,000, and the amount the university drew from the general fund as a temporary cash flow on a monthly basis ranged from \$95,000 to \$7,100,000. After the bonds were sold, the general fund was reimbursed with interest from the bond proceeds. The university intends to repay the revenue bonds with money raised through student activity fees and from its nonstate general fund that [\\*555](#) includes tuition, other fees, grants, and gifts. The Legislature approved the project with the understanding that it would not involve state funds.[FN4](#) The state was not a party to any of the contracts for the project, is not obligated to pay on the revenue bonds, and is not acting as surety on the bonds.

[FN4](#). On March 5, 1992, the Director of the Department of Management and Budget, Patricia Woodworth, sent a letter to the Joint Capital Outlay Subcommittee indicating her support for the project because “it does not require state funding and with the understanding that there is no commitment of state funds for operation and maintenance.” The committee unanimously supported the project with the understanding that “there is no commitment of state funds for operation and maintenance.”

According to the undisputed facts, the State of Michigan did not specifically appropriate funds for the project. Where the university drew from its general fund for the project, it reimbursed the funds it obtained, and this fund, at all times, contained sufficient cash reserves from nonstate sources to cover the costs of the project. The trial court persuasively addressed the point regarding whether the university actually used state or nonstate funds for the project when it drew from its general fund:

[I]t would be unrealistic to require WMU to chase dollars through its general account to determine whether they were state or non-state funds, for this would be an impossible task. Thus, the court finds that so long as there were sufficient non-state funds in the general account to cover the dollars paid out for the Project, there was no state financing or sponsorship.

Moreover, the State of Michigan did not become a surety on the project and was not financially responsible for the debt the university incurred.

[\\*556](#) Because the Court of Appeals properly affirmed the trial court's decision to grant summary disposition in favor of Western Michigan University, I would affirm.

[WEAVER](#), J., concurred with RILEY, J. Mich., 1997.

Western Michigan University Bd. of Control v. State  
455 Mich. 531, 565 N.W.2d 828, 134 Lab.Cas. P

**(Cite as: 455 Mich. 531, 565 N.W.2d 828)**

58,298, 119 Ed. Law Rep. 1122, 4 Wage & Hour  
Cas.2d (BNA) 114

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554 N.W.2d 906 (Table)

453 Mich. 915, 554 N.W.2d 906 (Table)

(Cite as: **453 Mich. 915, 554 N.W.2d 906 (Table)**)

**H**

Western Michigan University Bd. of Control v.  
State  
Mich. 1996.

(The decision of the Court is referenced in the  
North Western Reporter in a table captioned  
“Supreme Court of Michigan Applications for  
Leave to Appeal.”)

Supreme Court of Michigan.

**WesternMichiganUniversity** Baord of Control,  
Associated Builders & Contractors, Inc.

v.

State, Michigan State Building Trades and Con-  
struction Cpouncil, AFL-CIO

**NOS. 104340, 104341. COA Nos. 164452, 166312.**

October 25, 1996

Prior Report: [212 Mich.App. 22, 536 N.W.2d 609.](#)

Disposition: Leave to appeal GRANTED.

Mich. 1996.

Western Michigan University Bd. of Control v.  
State

453 Mich. 915, 554 N.W.2d 906 (Table)

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Western Michigan University Bd. of Control v.  
State  
Mich.App.,1995.

Court of Appeals of Michigan.

**WESTERNMICHIGANUNIVERSITY BOARD  
OF CONTROL**, Plaintiff-Appellee,  
and **Associated Builders and Contractors Inc.**, Inter-  
vening Plaintiff-Appellee,

v.

**STATE** of Michigan, Defendant-Appellant,  
and **Michigan State Building Trades and Construc-  
tion Council, AFL-CIO**, Intervening Defendant-Appellant.

**Docket Nos. 164452, 166312.**

Submitted May 2, 1995, at Grand Rapids.

Decided July 7, 1995, at 9:15 a.m.

Released for Publication Sept. 15, 1995.

State university board of control brought suit against state, seeking determination whether Prevailing Wage Act applied to construction project. The Kalamazoo Circuit Court, Donald E. Goodwillie, J., granted summary disposition for university, and state appealed. The Court of Appeals, [Ductoroff](#), C.J., filed that Act did not apply to project.

Affirmed.

West Headnotes

[\[1\]](#) Statutes [361](#) [212.6](#)

[361](#) Statutes

[361VI](#) Construction and Operation

[361VI\(A\)](#) General Rules of Construction

[361k212](#) Presumptions to Aid Construction

[361k212.6](#) k. Words Used. [Most Cited](#)

[Cases](#)

When construing statute, court should presume that every word has some meaning and should avoid any construction that would render statute, or any part of it, surplusage or nugatory.

[\[2\]](#) Statutes [361](#) [206](#)

[361](#) Statutes

[361VI](#) Construction and Operation

[361VI\(A\)](#) General Rules of Construction

[361k204](#) Statute as a Whole, and Intrinsic Aids to Construction

[361k206](#) k. Giving Effect to Entire Statute. [Most Cited Cases](#)

If possible, affect should be given to each provision of statute.

[\[3\]](#) Labor and Employment [231H](#) [2304](#)

[231H](#) Labor and Employment

[231HXIII](#) Wages and Hours

[231HXIII\(B\)](#) Minimum Wages and Overtime Pay

[231HXIII\(B\)4](#) Operation and Effect of Regulations

[231Hk2304](#) k. Prevailing Wages. [Most Cited Cases](#)

(Formerly 232Ak1268 Labor Relations)

Project financed by state university through tax-exempt bond issue was not “sponsored in whole or in part by the state” within meaning of Prevailing Wage Act, where state did not provide any direct capital outlays for the project and bond issue, which was funded with assessed student use fees, expressly stated that state was not responsible for repayment on the debt and that no state appropriations would be used for its repayment; fact that university used funds from University’s general fund, which contained direct state appropriations, to pay for initial bills for project before bonds were issued did not imply that project was financed by the state, and state did not provide any capital outlay or debt service by granting tax exempt status. [M.C.L.A. § 408.552](#).

**\*\*609 \*23** Miller, Canfield, Paddock & Stone, P.L.C. by [Don M. Schmidt](#) and [Charles E. Ritter](#), and Keith A. Pretty, Kalamazoo, for Western Michigan University Bd. of Control.

Miller, Johnson, Snell & Cummiskey, P.L.C. by [Peter J. Kok](#) and [Timothy J. Ryan](#), Grand Rapids, for Associated Builders and Contractors, Inc.

[Frank J. Kelley](#), Atty. Gen., Thomas L. Casey, Sol. Gen., and Kelly Keenan, Asst. Atty. Gen., for State of Mich.

Klimist, McKnight, Sale, McClow & Canzano, P.C. by [John R. Canzano](#), and [Donald J. Prebenda](#), Southfield, for Michigan State Building Trades and Construction Council, AFL-CIO.

Before [DOCTOROFF](#), C.J., and [HOLBROOK](#) and [CORRIGAN](#), JJ.

[DOCTOROFF](#), Chief Judge.

The trial court granted plaintiffs' motion for summary disposition pursuant to [MCR 2.116\(C\)\(10\)](#), ruling that the prevailing wage act, [M.C.L. § 408.551](#) *et seq.*; M.S.A. § 17.256(1) *et seq.*, did not apply to a Western Michigan University (WMU) construction project because the project was neither financed nor sponsored by the state. We affirm.

In early 1986, WMU began to conduct feasibility studies on changes to its recreation facility. WMU paid for these studies with funds out of its general fund. As a result of the studies, the WMU Board of Control adopted an increase in the student enrollment fee to finance the project. Construction on the project began in 1992. When WMU realized that the increase in the student enrollment fee would not cover all the expenses, it borrowed money from the general fund. On March 13, 1992, WMU sold \$59,495,000 of tax-exempt bonds and adopted a declaration of official intent to reimburse itself for the project expenditures with the bond proceeds. The bond debt would be funded with use fees assessed on students.

WMU wrote to the Michigan Department of Labor to ask whether WMU would be required to pay the project's construction workers at the rates determined pursuant to the prevailing wage act. On four separate occasions between November 1991 and March 1992, the Department of Labor informed WMU that the act did not apply to their project because state funds were not going to be used. On June 23, 1992, pursuant to a question from a state legislator, the Attorney General released an opinion stating that the act applied to WMU's project regardless of its funding source. OAG, 1991-1992,

No. 6723, p. 156. The WMU Board of Control then filed a declaratory judgment action asking the trial court to determine whether the act applied to the construction project. Associated Builders & Contractors, Inc., intervened as a plaintiff and Michigan State Building and Construction Trades Council, AFL-CIO, intervened as a defendant. All parties filed motions for summary disposition. Ruling that the act did not apply to WMU's project, the trial court granted plaintiffs' motion for summary disposition pursuant to [MCR 2.116\(C\)\(10\)](#) and denied defendants' motion for summary disposition.

Summary disposition pursuant to [MCR 2.116\(C\)\(10\)](#) is proper when, except with regard to damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we review the trial court's grant of summary disposition de novo. [All-state Ins. Co. v. Elassal](#), 203 Mich.App. 548, 552, 512 N.W.2d 856 (1994). The prevailing wage act states, in relevant part:

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 ... 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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. [[M.C.L. § 408.552](#); M.S.A. § 17.256(2) ].

In his opinion, the Attorney General determined that the relevant question was whether the project was a "state project" and whether it was "sponsored in whole or in part by the state" within the meaning of the act. The Attorney General then merged these two questions and determined that, because WMU is a state university, the state sponsored the project.

On the other hand, the trial court reasoned that three questions had to be resolved in determining whether the act applied: (1) whether WMU is a

212 Mich.App. 22, 536 N.W.2d 609, 102 Ed. Law Rep. 1172, 2 Wage & Hour Cas.2d (BNA) 1694  
(Cite as: 212 Mich.App. 22, 536 N.W.2d 609)

“contracting agent”; (2) whether the project is a “state project”; and (3) whether the project is being “sponsored or financed in whole or in part by the state.” While the trial court agreed with the Attorney General that WMU was a contracting agent and the project was a state project, the court held that the project was not “sponsored or \*26 financed in whole or in part by the state.” We hold that the trial court properly interpreted the requirements of the statute.

Our Court has addressed this issue before. In *Muskegon Building & Construction Trades v. Muskegon Area Intermediate School Dist.*, 130 Mich.App. 420, 343 N.W.2d 579 (1983), the plaintiff requested a determination whether the Muskegon School Board would be required to comply with the prevailing wage act in a remodeling project for one of the schools. The plaintiff argued that, because the Legislature had recently amended the definition of “contracting agents” in the act to explicitly include school boards, the school board was required to comply with the \*\*611 act even though it raised the funds for the remodeling through its own tax levy. Our Court held that acceptance of the plaintiff’s interpretation would render meaningless the statutory requirement that the state project be “sponsored or financed in whole or in part by the state.” *Id.* at 432-433, 343 N.W.2d 579.

[1][2][3] Although *Muskegon* involved a school board and a tax levy rather than a state university and a bond issue, we find its reasoning applicable to this case. When construing a statute, the court should presume that every word has some meaning and should avoid any construction that would render the statute, or any part of it, surplusage or nugatory. *Altman v. Meridian Twp.*, 439 Mich. 623, 635, 487 N.W.2d 155 (1992). If possible, effect should be given to each provision. *Gebhardt v. O'Rourke*, 444 Mich. 535, 542, 510 N.W.2d 900 (1994). The Attorney General would deem all state projects to be sponsored by the state. This would render surplusage the requirement that a project be “sponsored or financed in whole or in part by the state.” Because we find this issue to be dispositive, we need not address whether WMU is a

“contracting agent” or \*27 whether this is a “state project” as defined by the act.

Next, defendants argue that, even if all state projects are not deemed to be financed or sponsored by the state, this project was financed or sponsored by the state. It is undisputed that the state did not provide any direct capital outlays for the project. Defendants maintain that the state financed and sponsored the project indirectly. We disagree.

The words “finance” and “sponsor” are not defined in the act. Therefore, it is appropriate to consult a dictionary for their ordinary meaning. *Popma v. Auto Club Ins. Ass'n*, 446 Mich. 460, 470, 521 N.W.2d 831 (1994). The verb “finance” is defined as “to supply the funds or capital for.” *The American Heritage Dictionary* (New College Edition, 1976), p. 492. “Sponsor” is defined as “one who binds himself to answer for another’s default: SURETY [and] one who assumes responsibility for some other person or thing.” *West Ottawa Public Schools v. Babcock, Director, Dep’t of Labor*, 107 Mich.App. 237, 247-248, 309 N.W.2d 220 (1981), quoting *Webster’s Third New International Dictionary* (Unabridged, 1970), p. 2204.

First, defendants maintain that WMU used monies from its general fund to pay for certain expenses. The general fund did contain direct state appropriations, as well as funds from other sources. WMU admits that it paid for the feasibility studies out of its general fund. Plaintiffs also do not dispute that WMU paid the initial bills for the project out of the general fund. As the trial court stated, however, this does not imply that the project was financed by the state. When WMU issued the bond, it adopted a resolution to reimburse its general fund out of the bond proceeds. Lowell Rinker, WMU’s assistant vice president for business,\*28 stated that revenue bonds were issued in the amount of \$59,495,000 to cover the estimated \$45,230,000 cost of the project. Rinker also stated that fifty-eight percent of the university’s general fund came from state appropriations. The other forty-two percent consisted of funding from nonstate sources. According to Rinker, the non-state cash in the general fund ranged

from \$22 million to \$38 million while the project's temporary cash flow needs for the same period ranged from \$95,000 to \$7,100,000. This means that, even if WMU received no state appropriation, it still could have temporarily financed the project without state assistance until it received the funds from the bond issue.

Second, defendants claim that, because WMU pledged state income and property to repay the revenue bonds, the state partially financed the project. The bond issue expressly stated that the state was not responsible for repayment of the debt and that no state appropriations would be used for its repayment. WMU stated its intent to finance the bond with increased student user fees. If we accepted defendants' claim that all the property pledged to finance the bond is state property, then all of WMU's projects would qualify as state projects financed or sponsored by the state. As we stated above, not all state projects are financed or sponsored by the state.

Third, defendants argue that the state sponsored the project by granting WMU tax-exempt status for its bond issue. This argument has no merit. Although the State of Michigan will not gain the tax revenue it might have received on a taxable bond issue, loss of tax revenue does not qualify as sponsorship or financing of the project. The State of Michigan did not lose any more money or take on any greater financial risk than it would have if the project had never been undertaken. The State of Michigan did not provide any capital outlay or debt service by granting tax-exempt status. The State of Michigan neither sponsored nor financed WMU's construction project.

Under the prevailing wage act, workers on state projects that are financed or sponsored, in whole or in part, by the state must be paid not less than the prevailing wage rate in the locality where the work is performed. [M.C.L. § 408.552](#); M.S.A. § 17.256(2). Because WMU's project was not financed or sponsored by the state, the prevailing wage act does not apply to this project.

Affirmed.

Mich.App.,1995.

Western Michigan University Bd. of Control v. State

212 Mich.App. 22, 536 N.W.2d 609, 102 Ed. Law Rep. 1172, 2 Wage & Hour Cas.2d (BNA) 1694

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455 Mich. 531 printed in FULL format.

WESTERN MICHIGAN UNIVERSITY BOARD OF CONTROL, a constitutional body politic and corporate, Plaintiff-Appellee, ASSOCIATED BUILDERS & CONTRACTORS, INC., WESTERN MICHIGAN CHAPTER, a Michigan Corporation, Intervenor Plaintiff-Appellee, v. STATE OF MICHIGAN, Defendant-Appellant, and MICHIGAN STATE BUILDING TRADES AND CONSTRUCTION COUNCIL, AFL-CIO, a voluntary unincorporated association, Intervenor Defendant-Appellant.

Nos. 104340, 104341

SUPREME COURT OF MICHIGAN

455 Mich. 531; 565 N.W.2d 828; 1997 Mich. LEXIS 1811; 134 Lab. Cas. (CCH) P58,298; 4 Wage & Hour Cas. 2d (BNA) 114

April 10, 1997, Argued

July 29, 1997, Decided

July 29, 1997, FILED

**PRIOR HISTORY:** [\*\*\*1] Kalamazoo Circuit Court, Donald M. Goodwillie, J. Court of Appeals, DOCTOROFF, C.J., and D. E. HOLBROOK, JR., and CORRIGAN, JJ. (Docket Nos. 164452, 166312). 212 Mich. App. 22; 536 N.W.2d 609 (1995).

**DISPOSITION:** Decision of the Court of Appeals reversed.

**CORE TERMS:** financed, sponsored, contracting, prevailing wage, state government, surety, wage, general fund, state institution, plain meaning, et seq, appropriation, contractor, recreational, mechanics, finance, criterion, sponsor, local school board, undertaken, threshold, strictly construed, invitation to bid, fringe benefits, prevailing, public policy, advertisement, unambiguous, sponsorship, surplusage

**COUNSEL:** Miller, Canfield, Paddock & Stone, P.L.C. (by Don M. Schmidt and Charles E. Ritter) [444 West Michigan Ave., Kalamazoo, MI 49007-3751], for the plaintiff-appellee.

Frank J. Kelley, Attorney General, Thomas L. Casey, Solicitor General, and Kelly Keenan, Assistant Deputy Attorney General [P.O. Box 30212, Lansing, MI 48909], for defendant-appellant State of Michigan.

Klimist, McKnight, Sale, McClow & Canzano, P.C. (by John R. Canzano) [400 Galleria Officecentre, Suite 117,

Southfield, MI 48034], for defendant-appellant intervenor Michigan State Building and Construction Trades Council.

**Amicus Curiae:**

Miller, Johnson, Snell & Cummiskey, P.L.C. (by Peter J. Kok and Timothy J. Ryan) [800 Calder Plaza Building, Grand Rapids, MI 49503], for the Associated Builders & Contractors, Inc.

**JUDGES: BEFORE THE ENTIRE BENCH.** Chief Justice Conrad L. Mallett, Jr., Justices James H. Brickley, Michael F. Cavanagh, Patricia J. Boyle, Dorothy [\*\*\*2] Comstock Riley, Elizabeth A. Weaver, Marilyn Kelly. BRICKLEY, CAVANAGH, BOYLE, and KELLY, JJ., concurred with MALLETT, C.J. RILEY, J. (dissenting). WEAVER, J., concurred with RILEY, J.

**OPINION BY:** CONRAD L. MALLETT, JR.

**OPINION:** [\*\*829] [\*533] Opinion

**MALLETT, C.J.**

Michigan's prevailing wage act, MCL 408.551 et seq.; MSA 17.256(1) et seq., requires that certain contracts for state projects contain a provision obligating the contractor to pay workers on the project the wage rate and fringe benefits prevailing in the locality where the con-

struction is to occur. We granted leave in this case to determine whether Western Michigan University's student recreational facility project is subject to the act. The trial court and Court of Appeals determined that because state appropriations did not directly finance or guaranty financing for the project, the project was not "sponsored or financed in whole or in part by the state" n1 within the meaning of the act and that, consequently, the project was not subject to it. We disagree. Because Western Michigan University is essentially an arm of state government, its project was sponsored and financed by the state within the plain meaning of the act.

n1 MCL 408.552; MSA 17.256(2).

\*\*\*3]

I

#### Facts

Western Michigan University began planning renovation of its student recreational facilities in the mid-1980s. It entered into various contracts for the planning and work on the project during the 1980s and early 1990s. Before the Board of Control of the university finalized the financing of the project, bills relating to the various contracts were paid out of the university's general fund, which contained commingled state appropriations. In the spring of 1991, the board adopted an enrollment fee increase to fund the project. In December of 1992, after realizing that [\*534] funds generated from the enrollment fee would not completely cover the cost, the university issued approximately \$ 60 million in revenue bonds. The bonds were to be primarily repaid with revenues from student activity fees. The university additionally pledged certain general fund revenues. These revenues included tuition fees, deposits, charges and receipts, income from students, gross revenues from housing, dining and auxiliary facilities, and grants, gifts, donations, and pledges, as well as investment income.

The university sent an inquiry to the Department of Labor regarding whether it must \*\*\*4] pay construction workers on the project at the prevailing wage act rate. The parties dispute whether the department informed the university that the act did not apply. The university claims that the department indicated that the act did not apply to the project because it was not funded by direct state appropriations. The state claims that correspondence from the department related [\*830] to other projects, and not to the recreational facility project at issue here.

In light of controversy surrounding the applicability of the prevailing wage act to the project, state representa-

tive Mary Brown requested a formal opinion from the Attorney General on the issue. The Attorney General determined that the act does apply generally to construction projects undertaken by state universities, and specifically applies to the student recreational facilities projects. OAG, 1991-1992, No 6,723, pp 156-160 (June 23, 1992).

Immediately following release of the Attorney General opinion, the university commenced this declaratory judgment action. The trial court granted summary [\*535] disposition for the university and the intervenor plaintiff, Associated Builders & Contractors, Inc., holding that because the project [\*\*\*5] had not been "sponsored or financed" by the state, it was not subject to the act. The state, and the intervenor defendant Michigan State Building Trades and Construction Council, AFL-CIO, appealed. The Court of Appeals affirmed. 212 Mich. App. 22; 536 N.W.2d 609 (1995). The defendant and the intervenor defendant sought leave to appeal in this Court and now we reverse.

#### II

#### Prevailing Wage Act

Michigan's prevailing wage act is generally patterned after the federal prevailing wage act, also known as the Davis-Bacon Act. 40 USC 276a et seq. Both the federal and Michigan acts serve to protect employees of government contractors from substandard wages. Federal courts have explained the public policy underlying the federal act as

"protecting local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area" . . . [and] "giving local labor and the local contractor a fair opportunity to participate in this building program." [ *Universities Research Ass'n, Inc v Coudu*, 450 U.S. 754, 773-774; 101 S. Ct. 1451; 67 L. Ed. 2d 662 (1981).]

The purposes of the Davis-Bacon Act are to protect the employees [\*\*\*6] of Government contractors from substandard wages and to promote the hiring of local labor rather than cheap labor from distant sources. [ *North Georgia Building & Construction Trades Council v Goldschmidt*, 621 F.2d 697, 702 (CA 5, 1980).]

[\*536] The Michigan prevailing wage act reflects these same public policy concerns. Through its exercise of the sovereign police power to regulate the terms and conditions of employment for the welfare of Michigan workers, n2 the Michigan Legislature has required that certain contracts for state projects must contain a provision requiring

the contractor to pay the prevailing wages and fringe benefits to workers on qualifying projects

n2 See Const 1963, art 4, § 49; *West Ottawa Public Schools v Director, Dept of Labor*, 107 Mich. App. 237, 244; 309 N.W.2d 220 (1981).

Whether a particular project comes within the ambit of the act is governed by the language of the act itself. In this regard, the act provides:

Every contract executed between a contracting agent [\*\*\*7] 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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. [MCL 408.552; MSA 17.256(2) (emphasis added).]

In summary, to come within the act, a project must: (1) be with a "contracting agent," a term expressly defined in the act; (2) be entered into after advertisement or invitation to bid; (3) be a state project, a term also defined in the act; (4) require the employment of construction mechanics; and [\*\*\*831] (5) be sponsored or financed in whole or in part by the state.

[\*537] The parties do not dispute that the contracts at issue were entered into pursuant to an invitation to bid or that the project required the employment [\*\*\*8] of construction mechanics. Consequently, we will not further discuss these two threshold requirements.

The requirement that the project be with a "contracting agent" is explained in the act's definition of the term "contracting agent":

"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. [MCL 408.551(c); MSA 17.256(1)(c).]

The university is clearly a contracting agent within the plain meaning of the act. The constitutional provisions relating to state universities deems the university an "in-

stitution" and establishes state support:

The legislature shall appropriate moneys to maintain . . . Western Michigan University . . . by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. [Const 1963, art 8, § 4.]

Further, the regional universities act, MCL 390.551; MSA 15.1120(1), refers to the university as a "state institution":

The established state institutions [\*\*\*9] known as Central Michigan university, Eastern Michigan university, Northern Michigan university and Western Michigan university are continued under these names. Each institution shall be governed by a separate 8-member board of control.

[\*538] Having determined that the university is a "contracting agent," we next turn to whether the student recreational facilities project it undertook is a "state project." The act also expressly defines this term:

"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. [MCL 408.551(b); MSA 17.256(1)(b).]

The parties do not dispute that the project undertaken by the contracting agent, Western Michigan University, involved renovations and an addition to the existing student recreation center. Consequently, it clearly is a "state project" within the plain meaning of the act.

The critical issue in this appeal is whether the project satisfies the final threshold requirement. To come within the act, the project must be "sponsored [\*\*\*10] or financed in whole or in part by the state." This phrase is not defined in the act. The Attorney General concluded that the project met this final criterion, while the trial court and the Court of Appeals determined that it did not.

### III

#### Sponsored or Financed by the State

In construing the terms of a statute, this Court has often stated that we must give effect to the Legislature's intent. When statutory language is clear and unambiguous, we must honor the legislative intent as clearly indicated in that language. No further construction is required or permitted. *Tryc v Michigan* [\*539] *Veterans' Facility*, 451 Mich. 129, 135; 545 N.W.2d 642 (1996). Further, where

a statute does not define a term, we will ascribe its plain and ordinary meaning. *Id.* at 135-136; *Shelby Twp v Dep't of Social Services*, 143 Mich. App. 294, 300; 372 N.W.2d 533 (1985).

We find no ambiguity in the prevailing wage act's threshold requirement that a project must be "sponsored or financed in whole or in part by the state." No construction of these terms is required. If the "state," including any part of state government, helps to finance a project, or undertakes some responsibility for a project, this [\*\*\*11] criterion is met. Because we agree with the analysis of the Attorney General regarding whether the state has sponsored or financed a project in whole or in part, specifically regarding the university's project at issue in this case, we will set forth that analysis here:

[\*\*832] Direct legislative appropriation of funds is not . . . the only means by which a project can be sponsored or financed by the state. In *West Ottawa Public Schools v Director, Dep't of Labor*, 107 Mich. App. 237; 309 N.W.2d 220 (1981), *lv den* 413 Mich. 917 (1982), for example, the state did not directly appropriate any funds for the project in question but did act as a surety for the payment of bonds issued to finance the project. The Court held that this was sufficient to constitute "sponsorship" within the meaning of the prevailing wage act. In reaching this conclusion, the Court defined "sponsor" as "one who assumes responsibility for some other person or thing." 107 Mich. App. at 247-248.

The board of control of a state university assumes responsibility for any construction project undertaken by the university and the university, thus, is the "sponsor" of the project. State universities are clearly a [\*\*\*12] part of state government in Michigan. *Regents of the University of Michigan v Employment Relations Comm*, 389 Mich. 96, 108; 204 N.W.2d 218 (1973); *Branum v Bd of Regents of University* [\*540] of Michigan, 5 Mich. App. 134, 138-139; 145 N.W.2d 860 (1966).<sup>2</sup>

<sup>2</sup> It is noted that several cases have reached a contrary result with respect to local school districts. See, e.g., *Bowie v Coloma School Bd*, 58 Mich. App. 233; 227 N.W.2d 298 (1975), and *Muskegon Bldg & Constr Trades v Muskegon Area Intermediate School Dist*, 130 Mich. App. 420; 343 N.W.2d 579 (1983), *lv den* 419 Mich. 916 (1984). These cases are clearly distinguishable, however, since school districts have been characterized as municipal corporations and are not part of state government. See, e.g., *Bowie*, *supra*, 58 Mich. App. 239; State universities, in contrast, are institutions of state government. *Regents of the University of Michigan*, *supra*; *Branum*,

*supra*.

[OAG, *supra* at 158.]

We fully agree with this analysis. Western Michigan University is "the state" within the meaning of the prevailing wage act. This Court has fully and consistently articulated the nature of state institutions of higher learning. [\*\*\*13] such as the University of Michigan and Western Michigan University. In *Auditor General v Regent Univ of Michigan*, 83 Mich. 467; 47 N.W. 440 (1890), this Court found that the state universities are organically part of the state government and found that all university property is state property held in trust for the public purpose of the university.

While we recognize that state universities must exercise a fair amount of independence and control over their day-to-day operations and the use of state university funds in furtherance of their educational purposes, this does not diminish their essential character as a part of the state. As explained by the Court of Appeals, in a case involving the application of governmental immunity to the University of Michigan:

In spite of its independence, the board of regents remains a part of the government of the State of Michigan.

\*\*\*

{\*541}  
It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan [\*\*\*14] is an independent branch of the government of the State of Michigan, but it is not an island. Within the confines of the operation and allocation of funds of the University, it is supreme. Without these confines, however, there is no reason to allow the regents to use their independence to thwart the clearly established public policy of the people of Michigan. { *Branum v Bd of Regents of Univ of Michigan*, *supra* at 138-139. }

In summary, we hold that because Western Michigan University is a part of state government and its funds are state funds, the student recreational facility project is sponsored and financed by the state within the plain meaning of the prevailing wage act. Further, because the project meets all the other threshold criteria for the act's application, the university must comply with the act's wage and benefit requirements.

We are mindful that our determination regarding

whether the project was sponsored or financed by the state contravenes the trial [\*\*833] court and the Court of Appeals conclusions and does not comport with the Department of Labor's longstanding policy in construing the act. Our position is somewhat reminiscent of the boy who pointed out [\*\*\*15] that the emperor has no clothes. Consequently, we feel compelled to explore and explain why the arguments relied on by the lower courts are in error.

The primary, and most alluring, of these arguments has a certain technical appeal. This argument is set forth in the following excerpt from the Court of Appeals opinion:

[\*542] Acceptance of the [state's] interpretation would render meaningless the statutory requirement that the state project be "sponsored or financed in whole or in part by the state."

... When construing a statute, the court should presume that every word has some meaning and should avoid any construction that would render the statute, or any part of it, surplusage or nugatory. *Alman v Meridian Twp*, 439 Mich. 623, 635; 487 N.W.2d 155 (1992). If possible, effect should be given to each provision. *Gebhardt v O'Rourke*, 444 Mich. 535, 542; 510 N.W.2d 900 (1994). The Attorney General would deem all state projects to be sponsored by the state. This would render surplusage the requirement that a project be "sponsored or financed in whole or in part by the state." Because we find this issue to be dispositive, we need not address whether WMU is a "contracting [\*\*\*16] agent" or whether this is a "state project" as defined by the act. [212 Mich. App. at 26-27.]

We first note that the rule of construction that statutes should be interpreted to give effect to every term is not needed here, where the statutory language is clear. Even so, the rule is misapplied. Holding that a project undertaken and financed by the university, an arm of state government, is necessarily "sponsored and financed in whole or in part by the state" does not equate with finding that every state project comes within the act. Neither does such a holding render the "sponsored and financed" criterion surplusage.

There are "contracting agents" that are not a part of state government, in contrast to the university here, whose projects may or may not be "sponsored or financed in whole or in part by the state." If a "contracting agent" is a part of state government, for example a state agency or department, or a state institution like Western Michigan University, all its projects will necessarily be sponsored or financed by the state. If those projects meet the other threshold [\*543] criteria discussed earlier in part II, they will come within the act. In contrast, for projects un-

dertaken [\*\*\*17] by contracting agents that are not part of state government, for example, a local school board, the "sponsored or financed . . . by the state" criterion will require closer examination and must be determined case by case. The existence of these nonstate contracting agents ensures that the "sponsored or financed" language is not mere surplusage.

Because the act does not limit how a contracting agent may satisfy the "sponsored or financed . . . by the state" criterion, we also refuse to do so. Contracting agents that are an integral part of state government satisfy the requirement by their very nature. Contracting agents that are outside state government can satisfy the requirement in a number of ways, including, but not necessarily limited to, direct legislative appropriation of funds and having the state act as surety for payment of bonds issued to finance the project.

Other arguments that the trial court relied on also stem from an erroneous application of rules of statutory construction. The first is the rule that we must give deference to an agency's construction of the act that it is charged to administer. *Davis v River Rouge Bd of Ed*, 406 Mich. 486, 490; 280 N.W.2d 453 (1979). [\*\*\*18] The trial court, following this rule, cited the Department of Labor's Policy and Procedure Manual definitions of "financed" and "sponsored" and then accepted these definitions. n3 Apparently reluctant [\*\*834] to [\*544] contravene the Department's longstanding policy, the trial court found that because the university did not seek direct appropriations and because the state did not act as surety for repayment of the bonds, the project was outside the act's scope.

n3 The Department of Labor's manual contains the following definitions:

Financed in whole or in part by the state— means providing or making state monies available for capital outlay or debt service.

Sponsored by the state—means that the state acts as a surety by assuming the financial responsibilities for an authorized contracting agent.

As we have already noted, no construction is needed where the language of the statute is clear and can be given its plain and ordinary meaning. Consequently, we would not reach this rule of construction. [\*\*\*19]

Further, while an agency's construction generally deserves deference, it is not controlling and cannot be used to overcome the statute's plain meaning. *Id.*; *Ludington Service Corp v Acting Comm'r of Ins*, 444 Mich. 481,

505; 511 N.W.2d 661 (1994). The extremely limited and artificial definition that the department places on the "sponsored or financed" language simply has no basis in the act. The act does not require direct legislative appropriations of state monies as a threshold criterion. Nor does it limit its definition of "sponsorship" to instances where the state acts as surety. We refuse to so artificially limit the clear terms of the act and instead ascribe the commonly understood definitions of these terms, as explained earlier in this opinion.

The other rule of construction that the trial court erroneously applied is the rule of strict construction. Because the prevailing wage act is in derogation of the common law, and because it contains a misdemeanor criminal penalty provision, the trial court, following previous Court of Appeals opinions, found [\*545] that its terms must be strictly construed against its application. n4 The rule of strict construction should not apply to [\*\*\*20] application of the prevailing wage act in this context. As noted by the Court of Appeals in determining whether another act, the Pesticide Control Act, MCL 286.551; MSA 12.340(1), should be strictly construed:

n4 *Bowie, supra at 241; Muskegon, supra at 437.*

The general rule that criminal statutes are to be strictly construed is inapplicable when the general purpose of the Legislature is manifest and is subserved by giving the words used in the statute their ordinary meaning. *United States v P Koenig Coal Co*, 270 U.S. 512, 520; 46 S. Ct. 392, 394; 70 L. Ed. 709, 713 (1926). [*People v Jackson*, 176 Mich. App. 620, 628; 440 N.W.2d 39 (1989).]

As previously noted, the Michigan act, like the federal Davis-Bacon Act, implements public policy beneficial to businesses and their workers on government construction projects by providing for a certain minimum wage rate and benefit level. The primary purpose of the act is remedial, rather than criminal, in nature. "A remedial statute is designed to correct [\*\*\*21] an existing law, redress an existing grievance, or introduce regulations conducive to the public good." *In re School Dist No 6, Paris & Wyoming Twps*, 284 Mich. 132, 144; 278 N.W. 792 (1938).

The mere inclusion of a misdemeanor penalty provision does not render the act a criminal statute that must be strictly construed. Similar to the prevailing wage act, the Minimum Wage Law, MCL 408.381 et seq.; MSA 17.255(1) et seq.; and the Worker's Disability Compensation Act, MCL 418.101 et seq.; MSA [\*546] 17.237(101) et seq., also regulate the terms and conditions of employment. These acts also are in derogation of the common law and contain misdemeanor penalty pro-

visions. MCL 408.396; MSA 17.225(16), MCL 418.125; MSA 17.237(125). However, neither of these acts has been construed as criminal statutes, nor have their terms generally been strictly construed. See *Gross v Great Atlantic & Pacific Tea Co*, 87 Mich. App. 448; 274 N.W.2d 817 (1978); *Rice v Michigan Sugar Co*, 83 Mich. App. 508; 269 N.W.2d 202 (1978). Further, even if we were to find that the prevailing wage act was generally a criminal statute, we would construe its remedial provisions, including the threshold criteria for [\*\*\*22] its applicability, liberally.

Remedial statutes, and the remedial portions of penal statutes, are to be liberally [\*\*\*835] construed. See, e.g., *Robinson v Harmon*, 157 Mich. 272, 278; 122 N.W. 106 (1909); *Rancour v The Detroit Edison Co*, 150 Mich. App. 276, 285; 388 N.W.2d 336 (1986), lv den 428 Mich. 860 (1987); *Pi-Con, Inc v A J Anderson Construction Co*, 169 Mich. App. 389, 395; 425 N.W.2d 563 (1988). [*Jackson, supra at 628, n 3.*]

To the extent that previous decisions of the Court of Appeals have indicated that the rule of strict construction should apply when determining the applicability of the prevailing wage act, those portions of those decisions are overruled. See *Bowie, supra at 241; Muskegon, supra at 437.*

#### IV

#### Conclusion

For the above reasons, we hold that Western Michigan University's student recreational facilities project comes within the ambit of the prevailing wage act. [\*547] Because the university is a part of state government in its creation and operation, projects it undertakes are "sponsored or financed . . . by the state" within the meaning of the act regardless of whether there are other direct state appropriations or other state sponsorship [\*\*\*23] and are subject to it when the other threshold criteria are met. We therefore reverse the decision of the Court of Appeals.

BRICKLEY, CAVANAGH, BOYLE, and KELLY, JJ.,  
concurring with MALLETT, C.J.

DISSENTBY: DOROTHY COMSTOCK RILEY

DISSENT:

RILEY, J. (dissenting).

Because I disagree with the majority's conclusion that Western Michigan University's project to build a recreational facility is subject to the prevailing wage act, I respectfully dissent. I believe that the majority has given a strained interpretation of the meaning of "sponsored or

financed in whole or in part by the state" in the act that is not supported by the plain meaning of the statute, is contradicted by the statute itself, and renders nugatory part of the provisions where the building agent is a state institution. I would adopt the long-held interpretation of the agency responsible for administering this act, the Department of Labor, and hold that a project is sponsored or financed by the state when it was either (1) financed by the state, i.e., where the state made money available for a capital outlay or debt service, or (2) sponsored by the state, i.e., where the state became a surety for the project. In [\*\*\*24] the instant case, the State of Michigan did not finance or sponsor the university's project to expand the student recreational facility because the university did not use state funds for the project and the state did not act as a surety to indemnify the debt the university incurred [\*548] on the project. Consequently, I would conclude that the prevailing wage act does not apply. The trial court properly entered judgment on behalf of the university by ruling that the act did not apply. I would affirm the Court of Appeals decision upholding the trial court's grant of summary disposition in favor of the university.

#### ANALYSIS

##### I. Prevailing Wage Act

The prevailing wage act, *MCL 408.551 et seq.*; *MSA 17.256(1) et seq.*, requires that certain contracts for state projects must contain a provision that requires the contractor to pay wages and fringe benefits to construction employees at the prevailing wage in the locality where the construction is to occur. Section 2 of the prevailing wage act contains the primary mandate:

Every contract executed between a contracting agent and a successful bidder as contractor and entered into pursuant to advertisement and invitation [\*\*\*25] 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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be [\*\*836] performed. [*MCL 408.552*; *MSA 17.256(2)* (emphasis added).]

I agree with the majority that this provision thereby requires a governmental employer to pay the prevailing wage if a project meets the following five conditions: [\*549] the project must (1) be with a "contracting agent" as defined by the act, (2) be entered into pursuant to an advertisement and invitation to bid, (3) be a "state project"

as defined by the act, (4) involve the employment of construction mechanics, and (5) be "sponsored or financed in whole or part by the state." See slip op, pp 5-6.

##### II. Majority's Interpretation of the Act and the Proper Interpretation

The only issue on appeal is [\*\*\*26] whether the project to build a recreational facility initiated by Western Michigan University was "sponsored or financed in whole or in part by the state." The majority asserts that the statute unambiguously provides that this project was sponsored and financed by the state because "Western Michigan University is 'the state'" for purposes of the act. See slip op, p 9. I do not believe that this conclusion is required by the plain meaning of the act.

In fact, the majority's interpretation of the word "state" in the phrase "sponsored or financed in whole or in part by the state" is contradicted by the statute's usage of the word "state" in the very same statute in its third element. The majority concludes that the term "state" in this phrase unambiguously includes state universities like Western Michigan, but also unambiguously excludes local school boards. See slip op, pp 12-13. n1 In contrast, in requiring that a project subject to the prevailing wage act be a "state project," [\*550] the statute clearly provides that an improvement by a local school board is a "state project."

n1 The majority reasons as follows:

We hold that because Western Michigan University is a part of state government and its funds are state funds, the student recreational facility project is sponsored and financed by the state within the plain meaning of the prevailing wage act. [Slip op, p 11.]

[F]or projects undertaken by contracting agents that are not part of state government, for example, a local school board, the "sponsored or financed . . . by the state" criterion will require closer examination and must be determined case by case. [Slip op, pp 12-13 (emphasis added).]

[\*\*\*27]

A "state project" is defined by the act as a "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." *MCL 408.551(b)*; *MSA 17.256(1)(b)* (emphasis added). The statute defines a "contracting agent" as "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." *MCL 408.551(c)*; *MSA 17.256(1)(c)* (emphasis added). Thus, there can be no dispute that, according to the statute, a local school board may begin a "state project." The majority's interpretation, however, creates an inconsistency in the statute: a project by a local school board may be a "state project" under the statute's third element, but, at the same time, a local school board is not part of the "state" for the purposes of the fifth element. See slip op, pp 12-13. This contradiction manifests the fallacy of the majority's claim that it is expounding [\*\*\*28] on the unambiguous, plain meaning of the word "state."

The analysis is flawed for a second reason. The majority's novel interpretation of the statute renders superfluous the first of the five elements, i.e., that the [\*551] project be with a "contracting agent," where the contracting agent is a state institution. The statute provides that a state institution that is supported by state funds like Western Michigan University is a "contracting agent" under the act. n2 The university concedes on appeal the point that Western Michigan University is a contracting agent. Where an employer like Western Michigan University meets the statute's first element of the test (involve a "contracting agent") because it is a state institution, it will then, according to the majority's [\*\*837] interpretation, always meet the fifth element that the project be "sponsored or financed . . . by the state" because Western Michigan University is the state.

n2 The fact that Western Michigan University is a "state institution" is, in my opinion, a good example of a point that is unambiguous.

[\*\*\*29]

The majority attempts to address this claim that its interpretation renders part of the statute to be mere "surplusage" as the Court of Appeals concluded, see 212 Mich. App. 22, 26; 536 N.W.2d 609 (1995), by noting that there are other entities defined by the act as "contracting agents" that are not part of the state for whom the fifth element would be relevant. See slip op, pp 11-13. Nevertheless, the statute's fifth requirement would still be redundant for "state" contracting agents (as interpreted by the majority). The rules of statutory construction require that this Court read separate provisions of a statute consistently as a whole to ensure that each provision is given effect. *Gebhardt v O'Rourke*, 444 Mich. 535, 542; 510 N.W.2d 900 (1994). By analogy, this Court should interpret a statute to ensure that an interpretation of one provision does not render another superfluous in a substantial [\*552] number of cases. The Legislature likely

did not intend to create such a cumbersome, awkward statute.

The majority's error is rooted in its mistaken belief that the word "state" is unambiguous in the phrase "sponsored or financed in whole or in part by the state." In my opinion, the word "state" [\*\*\*30] may be construed narrowly to include only the three branches of state government (executive, legislative, and judiciary) and the agencies they operate. Or, the "state" may be construed broadly to include the three branches of state government and their agencies as well as all municipalities and institutions that are created by the state. Traditionally, cities, like state universities and colleges, are considered municipal corporations and creatures of the state. *Sinas v City of Lansing*, 382 Mich. 407, 411; 170 N.W.2d 23 (1969). The word "state" in the fifth element may also plausibly be interpreted, as advanced by the majority, to include all state governmental agencies, and state institutions, like state universities and state mental health facilities, but not smaller units of government created by the state. This Court should examine the purpose of this fifth element and examine it in the context of the earlier provisions to discern its meaning here.

The focus of the fifth element is on whether the project is "sponsored or financed" by the state government, not on whether the agency or institution initiating the project is a governmental entity. The statute ensures the [\*\*\*31] latter point in its first element, by guaranteeing that the project is with a "contracting agent." Every entity listed in the definition of contracting agent could be loosely described as a state [\*553] actor. In focusing on whether the project is financed or sponsored by the state, the statute's fifth element appears to ensure that either the Legislature has authorized funds for the project or there has been a state action by one of the three branches of government to sponsor the project. The act, however, provides no definition of the terms "sponsor" or "finance."

The Department of Labor has defined these terms for its administrative use in its policy and procedural manual from 1992 as follows:

Financed in whole or in part by the state \_\_\_ means providing or making state monies available for capital outlay or debt service.

\* \* \*

Sponsored by the state \_\_\_ means that the state acts as a surety by assuming the financial responsibilities for an authorized contracting agent.

The Department of Labor apparently applied this inter-

pretation to at least six state university or college projects from 1987 through 1991, where it concluded that the prevailing wage act [\*\*\*32] did not apply to the school projects because the state universities and colleges used bond issues to fund the projects and did not use state funds. n3 This [\*\*838] Court generally grants [\*554] deference to a longstanding agency interpretation of a statute that the agency administers. See *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich. 569, 580; 548 N.W.2d 900 (1996). Because the agency's interpretation is a plausible one and fits the purposes of the statute and its fifth requirement examined in context, I would defer to this administrative agency and conclude that, in order for a project to come under the prevailing wage act, the state must either finance the project by providing state monies or sponsor the project by assuming financial responsibility for it.

n3 For example, in July 1987, the Department of Labor sent the following letter with regard to a project by Ferris State College:

"This project for which you have claimed an underpayment of the prevailing wage act is not a state prevailing wage project. Ferris State College financed this building project with its own bond issue, which is not guaranteed by the State. This method of financing . . . is outside the jurisdiction of the Department of Labor."

[\*\*\*33]

### III. Application of the Proper Interpretation

Under this interpretation, the trial court properly concluded that the project was not financed or sponsored by the State of Michigan.

In April 1992, the university began construction on the project. In December 1992, the university issued \$ 59,495,000 in tax-exempt bonds to pay for the project. Between the start of the project and the sale of the bonds, the university internally borrowed with interest from its general fund to cover the cost of the project's progress. The university did not receive capital appropriations from the state for the project. During the time the university drew from its general fund, the cash reserves in the general fund ranged from approximately \$ 22,000,000 to \$ 38,000,000, and the amount the university drew from the general fund as a temporary cash flow on a monthly basis ranged from \$ 95,000 to \$ 7,100,000. After the

bonds were sold, the general fund was reimbursed with interest from the bond proceeds. The university intends to repay the revenue bonds with money raised through student activity fees and from its nonstate general fund that [\*555] includes tuition, other fees, grants, and gifts. The Legislature [\*\*\*34] approved the project with the understanding that it would not involve state funds. n4 The state was not a party to any of the contracts for the project, is not obligated to pay on the revenue bonds, and is not acting as surety on the bonds.

n4 On March 5, 1992, the Director of the Department of Management and Budget, Patricia Woodworth, sent a letter to the Joint Capital Outlay Subcommittee indicating her support for the project because "it does not require state funding and with the understanding that there is no commitment of state funds for operation and maintenance." The committee unanimously supported the project with the understanding that "there is no commitment of state funds for operation and maintenance."

According to the undisputed facts, the State of Michigan did not specifically appropriate funds for the project. Where the university drew from its general fund for the project, it reimbursed the funds it obtained, and this fund, at all times, contained sufficient cash reserves from non-state sources [\*\*\*35] to cover the costs of the project. The trial court persuasively addressed the point regarding whether the university actually used state or nonstate funds for the project when it drew from its general fund:

It would be unrealistic to require WMU to chase dollars through its general account to determine whether they were state or non-state funds, for this would be an impossible task. Thus, the court finds that so long as there were sufficient non-state funds in the general account to cover the dollars paid out for the Project, there was no state financing or sponsorship.

Moreover, the State of Michigan did not become a surety on the project and was not financially responsible for the debt the university incurred.

[\*556] Because the Court of Appeals properly affirmed the trial court's decision to grant summary disposition in favor of Western Michigan University, I would affirm.

WEAVER, J., concurred with RILEY, J.

**APPENDIX D – SAMPLE AUDIT**

Claim Number:

**Department of Labor & Economic Growth  
Wage & Hour Division  
Prevailing Wage Sample Audit**

Date:

Revised 10/04/04

Investigator:

Contracting Agent Information		Employer/Contractor Information	
Name:		Name:	
Address:		Address:	
City:		City:	
State:	ZIP:	State:	ZIP:

Complainant Information		Construction Mechanic Information	
Name:		Name:	
Address:		Address:	
City:		City:	
State:	ZIP:	State:	ZIP:
Contact:		Classification:	

Project Information			Prime Contractor Information	
Project Name:			Name:	
Project Description:			Address:	
Project Location:	Address:		City:	
	City:		State:	ZIP:
	State:	ZIP:	<b>Project Manager</b>	
Period Worked on the Project (Dates):			Name:	
			Address:	
Total period of employment (Dates):			City:	
			State:	ZIP:

Sample Audit Calculations								
Hourly Rate:				<b>Total Hourly Fringe Benefit Credit*      \$0.00</b> * See calculations on second page				
		Paid	Required					
Regular								
Overtime rate (1.5x):								
Premium rate (2x):								
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Period Ending	Regular Hours Worked	Overtime Hours Worked	Premium Hours Worked	Total Wages Paid	Total Fringes Paid	Total Wages & Fringes Paid	Total Wages & Fringes Earned	Gross Wages & Fringes Due
					\$0.00	\$0.00	\$0.00	\$0.00
						\$0.00	\$0.00	\$0.00

Comments:

Claim Number:

**Department of Labor & Economic Growth  
Wage & Hour Division  
Prevailing Wage Sample Audit**

Fringe benefits paid (list):						
	Benefit Year		Amount paid directly	Written contract or policy	Monthly made on behalf	Known per hour amount
	Calendar	Other				
Vacation						0
Sick						0
Personal						0
Holiday						0
Bonus						0
Life Insurance						0
Health Insurance						0
Retirement						0
Training						0
Other						0

Hourly Fringe Benefit Credit Calculations						
Vacation	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Sick	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Personal	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Holiday	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Bonus	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Life Insurance	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Health Insurance	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Retirement	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Training	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
Other	\$0.00	/	0 Annual Hours	=	\$0.00	\$0.00
					<b>\$0.00</b>	<b>Total Fringe Benefit Credit</b>

**APPENDIX E – REQUIREMENTS (RATE SCHEDULE COVER LETTER)**



STATE OF MICHIGAN

JENNIFER M. GRANHOLM  
GOVERNOR

DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

KEITH W. COOLEY  
DIRECTOR

## REQUIREMENTS OF THE PREVAILING WAGES ON STATE PROJECTS ACT, PUBLIC ACT 166 OF 1965

The Michigan Department of Labor & Economic Growth determines prevailing rates pursuant to the Prevailing Wages on State Projects Act, Public Act 166 of 1965, as amended. The purpose of establishing prevailing rates is to provide minimum rates of pay that must be paid to workers on construction projects for which the state or a school district is the contracting agent and which is financed or financially supported by the state. By law, prevailing rates are compiled from the rates contained in collectively bargained agreements which cover the locations of the state projects. The attached prevailing rates provide an hourly rate which includes wage and fringe benefit totals for designated construction mechanic classifications. The overtime rates also include wage and fringe benefit totals. Please pay special attention to the overtime and premium pay requirements. Prevailing wage is satisfied when wages plus fringe benefits paid to a worker are equal to or greater than the required rate.

### State of Michigan responsibilities under the law:

- The department establishes the prevailing rate for each classification of construction mechanic requested by a contracting agent prior to contracts being let out for bid on a state project.

### Contracting agent responsibilities under the law:

- If a contract is not awarded or construction does not start within 90 days of the date of the issuance of rates, a re-determination of rates must be requested by the contracting agent.
- Rates for classifications needed but not provided on the Prevailing Rate Schedule, including rates for registered apprentices, must be obtained prior to contracts being let out for bid on a state project.
- 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 his sureties shall be liable to the contracting agent for any excess costs occasioned thereby.

### Contractor responsibilities under the law:

- 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.
- Every contractor and subcontractor shall keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic employed by him in connection with said contract. This record shall be available for reasonable inspection by the contracting agent or the department.
- Each contractor or subcontractor is separately liable for the payment of the prevailing rate to its employees.
- The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work.
- The prime contractor is secondarily liable for payment of prevailing rates that are not paid by a subcontractor.
- A construction mechanic shall only be paid the apprentice rate if registered with the United States Department of Labor, Bureau of Apprenticeship and Training and the rate is included in the contract.

### Enforcement:

A person who has information of an alleged prevailing wage violation on a state project may file a complaint with the Wage & Hour Division. The department will investigate and attempt to resolve the complaint informally. During the course of an investigation, if the requested records and posting certification are not made available in compliance with Section 5 of Act 166, the investigation will be concluded and a referral to the Office of Prosecuting Attorney for criminal action under Section 7 and/or the Office of Attorney General for civil action will be made. The Office of Attorney General will pursue costs and fees associated with a lawsuit if filing is necessary to obtain records.

A violation of Act 166 may result in the contractor's name being added to the Prevailing Wage Act Violators List published on the division's website, updated monthly. This list includes the names and addresses of contractors and subcontractors the division has found in violation of Act 166 based on complaints from individuals and third parties. The Prevailing Wage Act Violators List is intended to inform contracting agents of contractors that have violated Act 166 for use in determining who should receive state-funded projects.

WAGE & HOUR DIVISION

P.O. BOX 30476 • LANSING, MICHIGAN 48909-7976

www.michigan.gov/wagehour • (517) 335-0400 • FAX (517) 335-0077

**APPENDIX F – PUBLIC SCHOOL COMPETITIVE BID BASE**



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING



JENNIFER M. GRANHOLM  
GOVERNOR

MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

October 14, 2009

**MEMORANDUM**

To: Local and Intermediate School District Superintendents  
Public School Academy Administrators

From: Carol L. Wolenberg, Deputy Superintendent *CW*

Subject: Competitive Bid Threshold, FY 2010

The purpose of this letter is to communicate changes to the base amount above which competitive bids must be obtained for remodeling, procurement of supplies, materials, and equipment. Sections 623a, 1267, and 1274 of the Revised School Code establish a base above which competitive bids must be obtained and provide for an increase in the base that corresponds with increases in the Consumer Price Index. The fiscal year 2009-2010 base for Section 1267, pertaining to construction, renovation, repair, or remodeling and the new base for Sections 623a and 1274, pertaining to procurement of supplies, materials, and equipment, is \$20,998.

Our analysis shows that the average Consumer Price Index (CPI) for the 12 month period ending August 31, 2008 was 213.61. The similar average for the 12 months ending August 31, 2009 was 214.00, a percentage increase of 0.19%. The fiscal year 2008-2009 base of \$20,959 for Section 1267 items has increased by \$39 to \$20,998. The base of \$20,488 for Sections 623a and 1274 items increases by \$510 to \$20,998. While the increase to the Sections 623a and 1274 threshold is due in part to the CPI increase, it is also results from the Michigan Legislature acting to synchronize the pertinent sections of the Revised School Code for the sake of simplicity.

Section 620(1) of the Revised School Code [MCL 380.620(1)] establishes a base above which travel expenses paid with intermediate funds must be posted to the ISD website. Section 620(1) provides for an increase in the base that corresponds with increases in the Consumer Price Index. For fiscal year 2009-10, the new base amount for travel is \$3,434 (3,428 x 1.0019).

**STATE BOARD OF EDUCATION**

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Superintendents  
Page 2  
October 14, 2009

There are changes to the limits on the value of awards given by an ISD to an employee, volunteer, or pupil, as well as the value above which an ISD administrator may not accept a gift from a vendor or potential vendor. Section 634 places an upper limit on the value of awards given by an ISD to an employee, volunteer, or pupil, as well as the value above which an ISD administrator may not accept a gift from a vendor or potential vendor. The fiscal year 2008-09 cap of \$116 for awards and the cap of \$51 for gifts did not increase, due to the relatively low percentage increase in the average CPI.

Please note that all of the thresholds and caps mentioned in this communication are effective as of this date, and are in effect until the next communication revises them.

If you have any questions, please contact Phil Boone, Office of State Aid and School Finance, at (517) 335-4059 or [boonep2@michigan.gov](mailto:boonep2@michigan.gov).

	Section	Requirement	Base Amount	2005-06 Base	2008-09 Threshold	2009-2010 Threshold
ISD Travel expenditures	620	Posting	\$3,000	\$3,093	\$3,428	\$3,434
ISD Procurement of supplies, materials, and equipment	623a	Comp. Bid	\$17,932	\$18,489	\$20,488	\$20,998
ISD Award value limit	634, 1814		\$100	\$105	\$116	\$116
ISD Gift value limit (monthly)	634		\$44	\$46	\$51	\$51
School building construction, addition, renovation, or repair	1267	Comp. Bid	\$17,932	\$18,915	\$20,959	\$20,998
School District or PSA Procurement of supplies, materials, and equipment	1274	Comp. Bid	\$17,932	\$18,489	\$20,488	\$20,998

cc: William Mayes, MASA  
David Martell, MSBO  
Dan Quisenberry, MAPSA  
Billie Wimmer, MCCA

**APPENDIX G – EXECUTIVE ORDER 2003-1**

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## EXECUTIVE ORDER NO. 2003-1

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### **PROCUREMENT OF GOODS AND SERVICES FROM VENDORS IN COMPLIANCE WITH STATE AND FEDERAL LAW**

WHEREAS, under Article V, Section 8 of the Michigan Constitution of 1963, each principal department of state government is under the supervision of the Governor, unless otherwise provided by the Constitution, and the Governor must take care that the laws of the State of Michigan are faithfully executed;

WHEREAS, the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1101 to 18.1594, creates and sets forth the duties and powers of the Department of Management and Budget, a principal department;

WHEREAS, under section 261(1) of the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1261(1), the Department of Management of Budget shall provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and all other items as needed by state agencies for which the legislature has not otherwise expressly provided;

WHEREAS, section 261(2) of the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1261(2), provides that the Department of Management of Budget shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts;

WHEREAS, section 264 of the Management and Budget Act of 1984, 1984 PA 431, MCL 18.1264, provides that the Department of Management may debar a vendor from participation in the bid process and from contract award upon notice and a finding that the vendor is not able to perform responsibly, or that the vendor, or an officer or an owner of a 25% or greater share of the vendor, has demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor; and

WHEREAS, because the State of Michigan conducts business with a wide-range of private sector vendors, it is important to ensure that state contracting is conducted in an open and honest fashion, that citizens receive the best goods and services at the best price, and to ensure the integrity of the contracting process;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, pursuant to the powers vested in me by the Michigan Constitution of 1963 and the laws of the State of Michigan, do hereby order the following:

## I. DEFINITIONS

As used in this Order:

- (a) "Debar" means to suspend, revoke, or prohibit the privilege of contracting with the State of Michigan for the provision of goods or services;
- (b) "Department" means the principal department created by section 121 of the Management and Budget Act, 1984 PA 431, MCL 18.1121; and
- (c) "Vendor" means a person or entity that has contracted with or seeks to contract with the State of Michigan for the provision of goods or services.

## II. VENDOR COMPLIANCE WITH STATE AND FEDERAL LAW

(a) The Department may debar a vendor from the consideration for the award of a contract for the provision of goods or services to the State of Michigan or suspend the procurement of goods and services from a vendor if, within the past three (3) years, the vendor, an officer of the vendor, or an owner of a 25% or greater interest in the vendor has:

- (1) Been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- (2) Been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;
- (3) Been convicted of any other offense, or violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this subdivision may include, but is not limited to, an offense under or violation of: the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922; 1965 PA 166 (law relating to prevailing wages on state projects), MCL 408.551 to 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits), MCL 408.471 to MCL 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL 408.1001 to 408.1094;
- (4) Failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- (5) Violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;
- (6) Refused to provide information or documents required by a contract, including but not limited to information or documents necessary for monitoring contract performance;
- (7) Failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/ purchase order; or
- (8) Failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule or regulation.

(b) If the Department finds that grounds to debar a vendor exist, it shall send the vendor a notice of proposed debarment indicating the grounds and the procedure for requesting a hearing. If the vendor does not respond with a written request for a hearing within twenty (20) calendar days, the Department shall issue the decision to debar without a hearing. The debarment period may be of any length, up to eight (8) years. After the debarment period

expires, the vendor may reapply for inclusion on bidder lists through the regular application process.

### III. IMPLEMENTATION

(a) The Director of the Department and agency heads shall revise written departmental rules, policies, and procedures, including but not limited to the Administrative Guide to State Government, to conform with this Executive Order, the Management and Budget Act, and the terms of existing contracts with vendors.

(b) Department directors, agency heads and supervisors shall be responsible for familiarizing employees with this Executive Order and with Departmental or agency rules, policies and procedures and implementing this Executive Order and for enforcing compliance within the scope of their authority.

### IV. MISCELLANEOUS

(a) Nothing in this Order should be construed to in any way impair the obligation of any existing contract between a vendor and the State of Michigan.

(b) The invalidity of any portion of this Order shall not affect the validity of the remainder the Order.

This Executive Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this \_\_\_\_\_ day of January, 2003

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Jennifer M. Granholm  
GOVERNOR

BY THE GOVERNOR:

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SECRETARY OF STATE

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**APPENDIX H - ATTORNEY GENERAL OPINIONS**

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 5507

June 29, 1979

**SCHOOLS AND SCHOOL DISTRICTS:**

Construction of addition to school buildings by vocational education students

**LABOR:**

Construction of addition to school buildings by vocational education students

**PUBLIC CONTRACTS:**

Construction of addition to school buildings by vocational education students

A board of education of a school district, other than a first and second class district, must obtain competitive bids on all material and labor required for the addition to an existing school building and, therefore, such a school district may not use vocational education students to build an addition to a school building.

Honorable Mary Brown

State Representative

The Capitol

Lansing, Michigan 48909

Mr. Stan Arnold

Construction Safety Commission

7150 Harris Drive

Lansing, Michigan 48926

You have requested my opinion on a question which may be stated as follows:

Is the Bedford Board of Education required to pay the prevailing wage to its vocational education students who are building an 8,000 square feet addition to the senior high school?

The Superintendent of the Bedford School District has provided our office with the following background information:

- '1. The building project is financed from General Fund revenues. It is a State Department of Education approved Vocational Building Trades as such. A portion of the instructional costs are reimbursed under the so-called Added Cost formula. We have several other State Department of Education approved vocational programs subject to the same type of financial arrangement.
  - '2. They are building a small addition of 8,000 square feet to our Senior High School. The addition will house areas for Distributive Education and first-year Vocational Building Trades.
  - '3. Thirty students are working on the project.
  - '4. Three class credits are awarded for successful completion of the subject.
  - '5. Only students electing the subject take it.
  - '6. As stated in the previous answer, it is an elective course. Further, as another part of our Vocational Building Trades subject offering, we have and are now building at least one residence. Students may be involved in this project rather than the addition to the high school.
- . . . No monetary remuneration is awarded and no student is required to take the course in order to graduate from our high school.'

The law is settled that boards of education have only such powers as are conferred upon them either expressly or by reasonably necessary implication by the Legislature. Senghas v L'Anse Creuse Public Schools, 368 Mich 557; 118 NW2d 975 (1963). In section 1287(1) of the School Code of 1976, 1976 PA 451, MCLA 380.1287(1); MSA 15.41287(1), the Legislature has provided that boards of education 'may establish, equip, and maintain vocational education programs and facilities.'

In responding to your inquiry, however, it is also necessary to examine the School Code of 1976, 1976

PA 451, Sec. 1267, MCLA 380.1267; MSA 15.41267. This provision, in pertinent part, states:

'(1) The board of a school district other than a first or second class school district, prior to commencing construction of a new school building or addition to an existing school building, shall obtain competitive bids on all the material and labor required for the complete construction of a proposed new building or addition to an existing school building.

'(2) The board shall advertise for the bids once each week for 2 successive weeks in a newspaper of general circulation in the area where the building or addition is to be constructed.

'(5) This section does not apply to buildings and repairs costing less than \$2,000.00.'

In OAG, 1961-1962, No 3440, p 55 (February 23, 1961), the Attorney General held that boards of education of school districts other than first and second class districts must take competitive bids for all alteration and repair contracts exceeding the sum of \$2,000.00. That conclusion was based upon an analysis of the School Code of 1955, 1955 PA 269, and in particular, sections 370 and 371 thereof, which stated:

'Sec. 370. The board of any school district, except a school district of the first or second class, which desires to commence the construction of any new school building or addition to any existing school building, shall obtain competitive bids before such construction be commenced on all the material and labor required for the complete construction of the proposed new building or addition to any existing school building.

'Sec. 371. Such board shall advertise for the bids required in section 370 hereof once each week for 2 successive weeks in a newspaper of general circulation in the county where the building is to be constructed or the addition is to be made, and, if no newspaper is published in such county, then such advertisement shall be printed in a newspaper of general circulation published in an adjacent county: Provided, however, That the provisions of this section and of section 370 of this act shall not apply to buildings and repairs of less than \$2,000.00.'

Sections 370 and 371 of the School Code of 1955 have been superseded by section 1267 of the School Code of 1976, supra. This new provision does not differ substantially from the prior sections 370 and 371, supra. Consequently, the School Code of 1976, Sec. 1267, supra, continues the rule that a board of education of a school district other than first and second class districts, prior to commencing construction on an addition to an existing school building, must obtain competitive bids on all the material and labor required for the addition to the existing school building.

Our office has been informed by the Superintendent of the Bedford School District that competitive bids, to date, have not been obtained on all the material and labor required for the addition to the senior high school. Therefore, the Board of Education of the Bedford School District must obtain competitive bids on the material and labor required for said addition pursuant to the terms of the School Code of 1976, Sec. 1267, supra. This statutory requirement for obtaining competitive bids precludes the construction of an addition to a school building by vocational education students since the competitive bidding requirement clearly contemplates the use of private contractors and their paid employees to build such projects.

Accordingly, the foregoing discussion obviates the need to address the prevailing wage question.

Frank J. Kelley

Attorney General

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<http://opinion/datafiles/1970s/op05507.htm>

State of Michigan, Department of Attorney General

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 5508

June 29, 1979

SCHOOLS AND SCHOOL DISTRICTS:

Payment of prevailing rates of wages and fringe benefits to employees

OFFICERS AND EMPLOYEES:

Payment of prevailing rates of wages and fringe benefits to school district employees

LABOR AND EMPLOYMENT:

Payment of prevailing rates wages and fringe benefits to school district employees

1965 PA 166, as amended by 1978 PA 100, does not require that employees of school boards be paid rates of wages and fringe benefits equal to that paid to construction workers of independent contractors.

Honorable Jack Faxon

State Senator

The Capitol

Lansing, Michigan 48909

Honorable Thomas Guastello

State Senator

## The Capitol

Lansing, Michigan 48909

You have each requested my opinion on a question which may be rephrased as follows:

Does 1965 PA 166, as amended by 1978 PA 100, require that employees of school boards be paid rates of wages and fringe benefits prevailing in the locality in which the work is performed?

Following enactment of 1965 PA 166, MCLA 408.551 et seq; MSA 17.256(1) et seq, hereinafter the act <sup>(1)</sup>, question arose as to its application to construction projects relating to school districts.

That issue came before Michigan's appellate courts in Bowie v Coloma School Board, 58 Mich App 233, 236; 227 NW2d 298 (1975). In that case the court said:

'At the outset, in construing this statute we are of the opinion that since it is in derogation of common law and since it provides for certain penalties in the event of violation, that it must be strictly construed. Having these precepts in mind, we must first seek to determine whether it was within the legislative intent that school districts should be included in and bound by the provisions of the statute. Under the principle of strict construction, the intent of the Legislature to include school districts within the statute must affirmatively appear.'

With respect to legislative intent, the court, at p 241, said:

' . . . The statute does not disclose affirmatively that it was the legislative intent that 'school districts' were included within the provisions. The use of the term 'school districts' could easily have been made a part of the statute had such been the intent. . . . '

1978 PA 100 amended section 1 of the act to include school districts within its purview. Specifically, Act 100 amended section 1 to read as follows:

'(a) '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.

'(b) '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.

'(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) 'Commissioner' means the department of labor.

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

It will also be noted that 1965 PA 166, supra, Sec. 2, provides in pertinent part:

'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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. . . .'

The entire act is cast in terms of the enacting language which spells out as its purpose 'to require prevailing wage and fringe benefits on state projects.' Thus, the act is concerned with the relationship between public agencies and independent contractors who bid on projects. Its purpose is to assure that successful bidders on state projects pay the prevailing rates of wages and fringe benefits. Since the inclusion of schools within the definition of state projects and school boards within the definition of contracting agent, it is clear that schools are currently included within the requirement that independent contractors working on state projects must pay the rates of wages and fringe benefits prevailing in the locality in which the work is to be performed.

It should also be observed that the construction, reconstruction or remodeling of any school building or addition thereto is subject to the requirements of 1937 PA 306, MCLA 388.851 et seq; MSA 15.1961 et seq. Under this act, building plans must be submitted to the Superintendent of Public Instruction for his approval prior to construction. 1937 PA 306, supra, Sec. 1(a). All such plans must be prepared by and the construction supervised by a registered architect or engineer. 1937 PA 306, Sec. 1(a), supra. Further, 1937 PA 306, supra, requires approvals as to fire safety and health.

Your question, however, is directed to whether the prevailing rates and fringe benefits which are required to be paid to employees of contractors by virtue of 1965 PA 166, Sec. 2, supra, must also be paid to employees of a school board.

As amended, the act places the responsibility upon the contracting agent, i.e., the school board, to assure that the contracts between it and the bidders contain provisions requiring payment by the latter of rates of wages and fringe benefits prevailing in the locality in which the work is to be performed. The thrust of the act as to wage and fringe benefit payments is clear--it requires that contractors pay prevailing wages and fringe benefits. It is silent with respect to wages and fringe benefits paid by the public contracting agent, i.e., the school board, nor does the applicant of the act turn upon the type of work being performed.

With respect to the establishment of wages and fringe benefits of school employees, 1947 PA 336, Sec. 9 added by 1965 PA 397, MCLA 423.209; MSA 17.455(a), guarantees the right of all public employees to

form and join labor organizations and bargain collectively through representatives of their choice. See City of Escanada v Michigan Labor Mediation Board, 19 Mich App 273; 172 NW2d 836 (1969). Such bargaining may, of course, establish a scale of wage and fringe benefits which are less or greater than that prevailing in the locality where the work is performed.

Therefore, it is my opinion that 1965 PA 166, supra, as amended by 1978 PA 100, Sec. 1, supra, does not require that employees of school boards be paid rates of wages and fringe benefits equal to that of construction workers of independent contractors.

Frank J. Kelley

Attorney General

(1) Entitled '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.'

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<http://opinion/datafiles/1970s/op05508.htm>

State of Michigan, Department of Attorney General

Last Updated 04/12/2001 11:25:40

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 5549

August 27, 1979

SCHOOLS AND SCHOOL DISTRICTS:

Construction contracts requiring payment of prevailing wages

LABOR:

Contracts on state projects requiring payment of prevailing wages

STATE:

Contract requiring payment of prevailing wages

The statute requiring payment of prevailing wages to employees of contractors working on state projects applies only to contracts entered into as a result of competitive bidding.

The Honorable John A. Welborn

State Senator

Capitol Building

Lansing, Michigan 48909

Dear Sir:

You have requested my opinion concerning the impact of 1965 PA 166, MCLA 408.551 et seq; MSA

17.256(1) et seq, on the following fact situation:

'I have recently been contacted by a small businessman in my district who does repair work. In the past, he has done small repair jobs at various schools, and various state facilities.

He was then informed by one of his previous state customers, that he could continue to do repair work because he was not operating under a contract as required under Public Act 166 of 1965.

'He has no contracts with any of these facilities. They simply call him when something breaks down.

'My question is, does this type of activity fall under Act 166 of 1965 as amended by Act 100 of 1978? In other words, is this small businessman required to pay the prevailing wage if he does this type of work, or does the Act apply only to contracts which are let for bids?'

1965 PA 166, supra, Sec. 2 provides:

'Every contract executed between a contracting agency 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 his subcontractors, shall not be less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. . . .' (Emphasis added)

Section 1267 of the School Code of 1976, MCLA 380.1267; MSA 15.41267, states that a board of a school district, other than a school district of the first or second class, shall obtain competitive bids on all material and labor required for the construction of a new school building or an addition to an existing school building. There is no statutory requirement that a school district obtain competitive bids where a person performs small repair jobs at various schools.

Where the language of the statute is plain and unambiguous, no interpretation is necessary. Acme Messenger Service Co v Unemployment Compensation Commission, 306 Mich 704, 11 NW2d 296 (1943); Ypsilanti Police Officers Association v Eastern Michigan University, 62 Mich App 87, 233 NW2d 497 (1975). The above quoted statutory language makes it abundantly clear that 1965 PA 166, supra, only applies to contracts entered into pursuant to the competitive bidding process.

It is, therefore, my opinion that where a person enters into a contract pursuant to competitive bidding, he must pay the prevailing wage required by the statute. However, 1965 PA 166, as amended by 1978 PA 100, supra, only applies to contracts entered into as a result of competitive bidding.

Frank J. Kelley

Attorney General

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<http://opinion/datafiles/1970s/op05549.htm>

State of Michigan, Department of Attorney General

Last Updated 04/12/2001 11:25:49

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 5600

November 21, 1979

**PUBLIC CONTRACTS:**

Statute requiring payment of a prevailing wage and fringe benefit rates of the locality

When an owner of a private building remodels the building for occupancy for a public body, the owner is not subject to the provisions of 1965 PA 166 which requires payment of the prevailing wage and fringe benefit rates of the locality.

Honorable Debbie Stabenow

State Representative

The Capitol

Lansing, Michigan 48909

You have stated that the Ingham County Department of Social Services is currently leasing certain office facilities in Lansing, Michigan, which were remodeled by the lessor in keeping with the specifications required by the lease. You also state that it is your understanding that the lessor, a private corporation, did not pay the prevailing wage and fringe benefit rates of the locality. Based upon these facts, you have requested my opinion on the following questions:

1. Has the lessor violated 1965 PA 166, as amended?
2. If a violation has occurred, what is the legal remedy?

1965 PA 166, Sec. 1, as last amended by 1978 PA 100, MCLA 408.551; MSA 17.256(1), provides in relevant part:

'(a) '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.

'(b) '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.

'(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.'

Also pertinent to the questions you have raised in 1965 PA 166, Sec. 2, as amended by 1978 PA 100, MCLA 408.552; MSA 17.256(2), which provides:

'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 his sub-contractors, 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 the federal Davis-Bacon act (United States code, title 40, section 276a et seq.) 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.'

Even while in the course of construction on leased land, the improvements become part of the land and belong to the landlord. Schneider v Bank of Lansing, 337 Mich 646; 60 NW2d 187 (1953). Also, a tenant is not liable for improvements made on leased premises by the landlord in the absence of a stipulation to that effect. 51 CJS, Landlord and Tenant, Sec. 407, p 1049.

The owner of property in the exercise of dominion over its property, may make the alterations to the premises in order to facilitate its use by a tenant. In such case, the lessor contracts for alternations and the public body is not a contracting party to the remodeling contract.

It is my opinion, therefore, that the owner of a private building is not subject to the provisions of 1965 PA 166, supra, as amended by 1978 PA 100, when it remodels a private building for occupancy by a public body.

My answer to your first questions obviates the necessity to answer your second question.

Frank J. Kelley

Attorney General

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State of Michigan, Department of Attorney General

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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 6723

June 23, 1992

COLLEGES AND UNIVERSITIES:

Application of prevailing wage act

PREVAILING WAGE ACT:

Application to state colleges and universities

The prevailing wage act does apply generally to construction projects undertaken by state universities, regardless of the source of funding for the projects.

The prevailing wage act does apply specifically to the renovation and addition to the student recreational facility to be built by Western Michigan University.

Honorable Mary Brown

State Representative

The Capitol

Lansing, Michigan

You have requested my opinion on two questions, both of which concern the prevailing wage act, 1965 PA 166, MCL 408.551 et seq.; MSA 17.256(1) et seq. Your questions may be stated as follows:

1. Does the prevailing wage act apply generally to construction projects undertaken by state universities?

2. Does the prevailing wage act apply specifically to the renovation and addition to the student recreational facility to be built by Western Michigan University?

Western Michigan University is a constitutional body corporate established by Const1963, art 8, Sec. 6. The Board of Trustees of the University has announced plans to renovate and to construct an addition to the University's existing Gary Student Recreation Center and Read Field House. I am advised that the existing facility was constructed on property donated to the University by the City of Kalamazoo and was financed entirely by bonds issued by the University and secured by student fees; no portion of the existing facility was financed with funds appropriated to the University by the Michigan Legislature. The University intends to finance the renovations and additions to this facility entirely out of the proceeds from a special student activity fee which it has begun imposing upon all students. The funds raised by this fee will be segregated in a separate account and will not be commingled with any other funds received by the University.

### STATUTORY ANALYSIS

The prevailing wage act requires that certain contracts for state projects must contain a provision obligating the contractor to pay wages and fringe benefits to construction employees at a rate which is not less than the rate prevailing in the locality where the construction is to occur. MCL 408.552; MSA 17.256(2). The applicable prevailing wage and fringe benefit rates are determined by the Michigan Department of Labor based upon an examination of local collective bargaining agreements and other "understandings" or contracts between local contractors and their construction employees. MCL 408.554; MSA 17.256(4).

The fundamental mandate of the prevailing wage act is set forth in section 2 of the act, MCL 408.552; MSA 17.256(2), which provides, insofar as it is pertinent here, that:

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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. [ Emphasis added.]

A contractor's failure to comply with this requirement is punishable as a misdemeanor. MCL 408.557; MSA 17.256(7).

The application of the prevailing wage act to the University, and to this particular project, therefore, turns upon whether the project is a "state project" and whether it is "sponsored or financed in whole or in part by the state," within the meaning of section 2, *supra*.

Section 1(b) of the act, MCL 408.551(b); MSA 17.256(1)(b), provides the following definition of the

term "state project" as it is used in the act:

(b) "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.

The term "contracting agent," in turn, is defined by section 1(c), MCL 408.551(c); MSA 17.256(1)(c), as follows:

(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. [ Emphasis added.]

As the Legislature has not defined the term "state institution" in the prevailing wage act, the term is to be given its plain and ordinary meaning. *Shelby Twp v Dep't of Social Services*, 143 MichApp 294, 300; 372 NW2d 533 (1985); lv den 424 Mich 859 (1985).

Each of the constitutional provisions relating to the state universities (Const1963, art 8, Secs. 4, 5 and 6) expressly refers to these entities as "institutions" or "institutions of higher education." Further, the Legislature has implemented these constitutional provisions with regard to Central, Eastern, Northern and Western Michigan Universities in 1963 (2nd ExSess) PA 48, MCL 390.551 et seq; MSA 15.1120(1) et seq. In section 1 of that act, the four universities are described as "the established state institutions" known by those names. Finally, the Legislature is required to appropriate funds to maintain the state universities by Const1963, art 8, Sec. 4, and does so on an annual basis. See, e.g., 1991 PA 123. Clearly, a state university is a "state institution supported in whole or in part by state funds" within the plain and ordinary meaning of MCL 408.551(c); MSA 17.256(1)(c), supra, and therefore may constitute a "contracting agent" for purposes of the prevailing wage act.

This office has been advised that the University of Michigan and Michigan State University pay the prevailing wage on their state construction projects. This office has also been advised that the Department of Labor has long taken the position that the prevailing wage act applies to the state universities.

" The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not be overruled without cogent reasons.' "

*Bd of Education of Oakland Schools v Superintendent of Public Instruction*, 401 Mich 37, 41; 257 NW2d 73 (1977). [ Citing *United States v Moore*, 95 US 760, 763; 24 LEd2d 588 (1877).]

Thus, a construction project undertaken by a state university is a "state project" and is subject to the prevailing wage act if the project is "sponsored or financed in whole or in part by the state." MCL 408.552; MSA 17.256(2).

If the Legislature directly appropriates funds for a university construction project, the project would clearly qualify as a "state project" which is "sponsored or financed ... by the state." <sup>(1)</sup> Direct legislative

appropriation of funds is not, however, the only means by which a project can be sponsored or financed by the state. In *West Ottawa Public Schools v Director Dep't of Labor*, 107 MichApp 237; 309 NW2d 220 (1981), lv den, 413 Mich 917 (1982), for example, the state did not directly appropriate any funds for the project in question but did act as a surety for the payment of bonds issued to finance the project. The Court held that this was sufficient to constitute "sponsorship" within the meaning of the prevailing wage act. In reaching this conclusion, the Court defined "sponsor" as "one who assumes responsibility for some other person or thing." 107 MichApp at 247-248.

The board of control of a state university assumes responsibility for any construction project undertaken by the university and the university, thus, is the "sponsor" of the project. State universities are clearly a part of state government in Michigan. *Regents of the University of Michigan v Employment Relations Comm*, 389 Mich 96, 108; 204 NW2d 218 (1973); *Branum v Bd of Regents of University of Michigan*, 5 MichApp 134, 138-139; 145 NW2d 860 (1966).<sup>(2)</sup> Thus, a construction project undertaken by a state university and financed with the university's funds is a "state project" and is "sponsored or financed in whole or in part by the state" within the plain meaning of the prevailing wage act.

### CONSTITUTIONAL ANALYSIS

This does not end our inquiry, however. It remains necessary to address the impact, if any, of Const1963, art 8, Secs. 5 and 6 upon your questions. These two provisions of the Michigan constitution expressly grant to the governing board of each state university the "general supervision of the institution and the control and direction of all expenditures from the institution's funds." In light of this grant of authority, "[t]he powers and prerogatives of Michigan universities have been jealously guarded not only by the boards of those universities but by [the Michigan Supreme] Court in a series of opinions running as far back as 1856." *Bd of Control of Eastern Michigan University v Labor Mediation Bd*, 384 Mich 561, 565; 184 NW2d 921 (1971). Thus, in *Weinberg v Regents of the University of Michigan*, 97 Mich 246, 255; 56 NW 605 (1893), the Court reviewed a state statute which purported to require all Michigan public bodies, when contracting for the construction of a public building, to require their contractors and subcontractors to post bonds sufficient to assure payment of all labor and material costs. Citing the constitutional autonomy of the University Regents, the Court concluded that the statute could not constitutionally be applied to the University. Accord, *William C Reichenbach Co v Michigan*, 94 MichApp 323; 288 NW2d 622 (1979). See also, OAG, 1989-1990, No 6602, p 226 (October 4, 1989).

More recently, however, the Michigan Supreme Court has recognized that the constitutional independence of the state universities is not absolute. In *Regents of the University of Michigan v Employment Relations Comm*, supra, for example, the Court was confronted with the question of whether the Michigan Public Employees Relations Act (PERA), MCL 423.201 et seq; MSA 17.455(1) et seq, applied to the University of Michigan. Addressing the constitutional provisions assuring the independence of the University's Board of Regents, the Court stated, 389 Mich at 107:

This concern for the educational process to be controlled by the Regents does not and cannot mean that they are exempt from all the laws of the state. When the University of Michigan was founded in the 19th Century it was comparatively easy to isolate the University and keep it free from outside interference. The complexities of modern times makes this impossible.

The Court went on to state, *Id* at 108:

We agree with the reasoning of the Court of Appeals in *Branum v Board of Regents of University of Michigan*, 5 MichApp 134 (1966). The issue in that case was whether the Legislature could waive governmental immunity for the University of Michigan because it was a constitutional corporation. The Court of Appeals stated (pp 138-139):

"In spite of its independence, the board of regents remains a part of the government of the State of Michigan.

"It is the opinion of this Court that the legislature can validly exercise its police power for the welfare of the people of this State, and a constitutional corporation such as the board of regents of the University of Michigan can lawfully be affected thereby. The University of Michigan is an independent branch of the government of the State of Michigan, but it is not an island. Within the confines of the operation and the allocation of funds of the University, it is supreme. Without these confines, however, there is no reason to allow the regents to use their independence to thwart the clearly established public policy of the people of Michigan."

PERA, the Court noted, was adopted pursuant to the Legislature's authority over public employee labor relations, an authority expressly recognized by article 4, Sec. 48 of the 1963 Constitution. In light of this newly adopted constitutional provision, PERA represented the clearly established public policy of the state and was, therefore, applicable to the University. *Id*, at 107. This conclusion, the Court indicated, did not interfere with the constitutional autonomy of the Regents since that autonomy lies primarily within the educational sphere. *Id*, at 109-110. See also, *Bd of Control of Eastern Michigan University*, *supra*, 384 Mich at p 566.

This analysis applies with equal force to the provisions of the prevailing wage act. Const1963, art 4, Sec. 49, provides:

The legislature may enact laws relative to the hours and conditions of employment.

The term "conditions of employment" has been found to include matters relating to wages and fringe benefits. *Fort Stewart Schools v Federal Labor Relations Authority*, 495 US 641, 650; 110 SCt 2043; 109 LEd2d 659 (1990). Thus, pursuant to Const1963, art 4, Sec. 49, the determination of public policy in the area of hours and conditions of employment, including wages, is expressly vested in the Legislature. The prevailing wage act is plainly an exercise of that legislative authority. That this act represents the clear public policy of the state was explicitly recognized by the Court of Appeals in *West Ottawa*, *supra*, 107 MichApp, at 245, where the Court stated that:

The Legislature has declared as the policy of this state that construction workers on public projects are to be paid the equivalent of the union wage in the locality.

The prevailing wage act applies generally to all construction projects in which the state is involved through sponsorship or funding. Because that act is a legislative exercise of the police power expressing

the clearly established public policy of the state, it may be applied to state universities without violating their constitutional autonomy.

## CONCLUSION

It is my opinion, therefore, in answer to your first question, that the prevailing wage act does apply generally to construction projects undertaken by state universities, regardless of the source of funding for the projects. It is also my opinion, in answer to your second question, that the prevailing wage act does apply specifically to the renovation and addition to the student recreational facility to be built by Western Michigan University.

Frank J. Kelley

Attorney General

(1 I am advised that, consistent with this conclusion, Western Michigan University has in the past complied with the requirements of the prevailing wage act on all projects which have utilized legislatively appropriated funds)

(2 It is noted that several cases have reached a contrary result with respect to local school districts) See, e.g., *Bowie v Coloma School Bd*, 58 MichApp 233; 227 NW2d 298 (1975) and *Muskegon Bldg & Constr Trades v Muskegon Area Intermediate School Dist*, 130 MichApp 420; 343 NW2d 579 (1983); *Iv den* 419 Mich 916 (1984). These cases are clearly distinguishable, however, since school districts have been characterized as municipal corporations and are not part of state government. See, e.g., *Bowie*, supra, 58 MichApp at 239. State universities, in contrast, are institutions of state government. *Regents of the University of Michigan*, supra; *Branum*, supra.

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State of Michigan, Department of Attorney General

Last Updated 04/12/2001 11:34:19

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## STATE OF MICHIGAN

**JENNIFER M. GRANHOLM, ATTORNEY GENERAL**

## PUBLIC CONTRACTS:

## PUBLIC SCHOOL ACADEMIES:

## SCHOOLS AND SCHOOL DISTRICTS:

## WAGES AND FRINGE BENEFITS:

Payment of prevailing wages on construction and remodeling of public school academy school buildings

Under the Wages and Fringe Benefits on State Projects Act, a contract for construction or remodeling of a school building authorized by a public school academy pursuant to bid, sponsored or financed in whole or in part by state funds, and using construction mechanics, must provide for the payment of prevailing wages.

Opinion No. 7057

July 19, 2000

Honorable Michael J. Hanley  
State Representative  
The Capitol  
Lansing, MI 48913

You have asked if, under the Wages and Fringe Benefits on State Projects Act, a contract for construction or remodeling of a school building, authorized by a public school academy pursuant to bid, supported or financed in whole or in part by state funds, and using construction mechanics, must provide for the payment of prevailing wages. The answer to this question requires an analysis of both the statute you cite and the Revised School Code.

The Wages and Fringe Benefits on State Projects Act (Prevailing Wage Act), 1965 PA 166, MCL 408.551 *et seq*; MSA 17.256(1) *et seq*, requires prevailing wages and fringe benefits on state projects, and establishes requirements and responsibilities of contracting agents and bidders. Section 503(6)(d) of the Revised School Code (Code), 1976 PA 451, MCL 380.1 *et seq*; MSA 15.4001 *et seq*, states that a public school academy shall "comply with" the provisions of the Prevailing Wage Act. In *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 536; 565 NW2d 828 (1997), the Michigan Supreme Court articulated the elements that bring a project within the Prevailing Wage Act:

[A] project must: (1) be with a "contracting agent," a term expressly defined in the act; (2) be entered into after advertisement or invitation to bid; (3) be a state project, a term also defined in the act; (4) require the employment of construction mechanics; and (5) be sponsored or financed in whole or in part by the state.

The Prevailing Wage Act expressly includes a "school board" within its definition of "[c]ontracting agent." Section 1(c). A public school academy is a public school under Const 1963, art 8, § 2, and a school district for purposes of Const 1963, art 9, § 11. Code, section 501(1). The Michigan Supreme Court has confirmed that public school academies are public schools, subject to general supervision of the State Board of Education "to the same extent as are all other public schools." *Council of Organizations and Others for Education About Parochialism, Inc v Governor*, 455 Mich 557, 583-584; 566 NW2d 208 (1997); OAG, 1997-1998, No 6956, p 72 (September 23, 1997). The board of directors of a public school academy is a school board and a contracting agent within the purview of the Prevailing Wage Act, thus satisfying the requirements of the first element.

Turning to the second element requiring advertisement or invitation to bid, the Code requires the board of directors of a public school academy, seeking to construct<sup>1</sup> a new school building or to repair or renovate an existing school, to seek and obtain "competitive bids" on all material and labor costs. Section 1267(1). If the costs are less than \$12,500, or the repair work is normally performed by school employees, no bids are required. Section 1267(6). Thus, the board of directors of a public school academy must seek bids for the

construction or remodeling of its school buildings, provided that the cost is \$12,500 or more. This statutory requirement satisfies the second element of a project entered into after "invitation to bid."

The third element of the Prevailing Wage Act expressly includes public "schools" within its definition of state project. Section 1(b). A public school academy is a public school. Code, section 501(1). *Council of Organizations, supra*, 455 Mich at 583. Thus, the Act's third element is satisfied.

The fourth element of the Prevailing Wage Act requires the employment of construction mechanics, other than employees in the state classified civil service, to construct or renovate the proposed project. This is a factual question to be resolved for each individual project, and is not appropriate for resolution by the Attorney General's opinion process.

The fifth and final element of the Prevailing Wage Act requires that the project be "sponsored or financed in whole or in part by the state." Section 2. In *Western Michigan Univ, supra*, at 539, the Michigan Supreme Court, citing OAG, 1991-1992, No 6723, p 156 (June 23, 1992), analyzed what constitutes state sponsorship of a project and concluded:

We find no ambiguity in the prevailing wage act's threshold requirement that a project must be "sponsored or financed in whole or in part by the state." No construction of these terms is required. If the "state," including any part of state government, helps to finance a project, or undertakes some responsibility for a project, this criterion is met. Because we agree with the analysis of the Attorney General regarding whether the state has sponsored or financed a project in whole or in part, specifically regarding the university's project at issue in this case, we will set forth that analysis here:

Direct legislative appropriation of funds is not . . . the only means by which a project can be sponsored or financed by the state. In *West Ottawa Public Schools v Director, Dep't of Labor*, 107 Mich App 237; 309 NW2d 220 (1981), lv den 413 Mich 917 (1982), for example, the state did not directly appropriate any funds for the project in question but did act as a surety for the payment of bonds issued to finance the project. The Court held that this was sufficient to constitute "sponsorship" within the meaning of the prevailing wage act. In reaching this conclusion, the Court defined "sponsor" as "one who assumes responsibility for some other person or thing."

With regard to funding, the Legislature has authorized a public school academy to receive state school aid payments. Pupils in attendance at a public school academy entitle the academy to receive the foundation allowance<sup>2</sup> for each pupil, payable by the state to the authorizing body as fiscal agent for the public school academy. See for example, sections 20(2), 20(6), 20(7), 51a(2)(a), and 51a(12) of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1601 *et seq*; MSA 15.1919(901) *et seq*. These state school aid payments are paid to the public school academy in accordance with section 507(1) of the Code. Not more than 20% of the total foundation allowance received by the academy may be transferred to a capital projects fund. Section 18(1) of the State School Aid Act of 1979. Monies in such fund would presumably be used by a public school academy to pay for the construction of new school buildings or the remodeling of existing school buildings. Since the governing body of a public school academy has no taxing authority, it is reasonable to assume that funds needed to pay for construction or remodeling of its school buildings would come from state school aid payments received by the academy. In that event, the academy's construction or remodeling of its school buildings would be sponsored or financed, in whole or in part, with state funds.<sup>3</sup>

It is my opinion, therefore, that under the Wages and Fringe Benefits On State Projects Act, a contract for construction or remodeling of a school building authorized by a public school academy pursuant to bid, supported or financed in whole or in part by state funds, and using construction mechanics, must provide for the payment of prevailing wages.

JENNIFER M. GRANHOLM  
Attorney General

<sup>1</sup> It is noted that the board of directors of a public school academy is empowered to "acquire" school buildings. Code, section 503(9). There is authority that holds the grant of power to acquire buildings includes the power to construct them. *Ronnow v City of Las Vegas*, 57 Nev 332; 65 P2d 133, 139 (1937); *Clark v City of Los Angeles*, 160 Cal 30; 116 P 722, 729 (1911); *King v Independent School Dist*, 46 Idaho 800; 272 P 507 (1928); *Verner v Muller*, 89 SC 117; 71 SE 654, 655-656 (1911). The commonly understood meaning of "remodel" is to reconstruct. *Webster's Third New International Dictionary Unabridged Edition* (1964). *Guadalupe County Bd of Comm'rs v State*, 43 NM 409; 94 P 2d 515, 518 (1939). Thus, remodeling of a school building would be within the grant of authority to the public school academy board of directors.

<sup>2</sup> The foundation allowance is set each year by the Legislature as part of the state aid payments each school district receives.

<sup>3</sup> The board of directors of a public school academy is empowered to receive grants or gifts. Revised School Code, section 504a(b). If the board were to construct or remodel a school building entirely with a gift or grant monies not sponsored or financed by state funds, a different conclusion may be required. See *Muskegon Building and Construction Trades v Muskegon Area Intermediate School Dist*,

130 Mich App 420, 435-436; 343 NW2d 579 (1983), overruled in part by *Western Michigan Univ, supra*.

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STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL

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MICHIGAN DEPT. OF LABOR

OCT 20 1988

October 13, 1988

DEPUTY DIRECTOR'S OFFICE

Elizabeth Howe, Director  
Michigan Department of Labor  
309 North Washington  
Lansing, MI 48909

Dear Director Howe:

You have asked two questions concerning the wages and fringe benefits on state projects act (Act) MCL 408.551 et seq; MSA 17.256(1) et seq, which, by its title, requires prevailing wages and fringe benefits on state projects and established the requirements and responsibilities of contracting agents and bidders. Your first question may be stated as follows:

Are Construction Industry Advance Program (CIAP) payments a fringe benefit under the provisions of MCL 408.551 et seq; MSA 17.256(1) et seq?

You have informed me that many construction industry contracts include a provision for CIAP payments and require employers to pay a sum into the program for every hour worked by employees covered by the contracts. The purposes of the program are to help prevent accidents in the industry, to provide education to benefit the industry, to undertake research into new methods and materials, and to generally benefit the construction industry.

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MCL 408.552; MSA 17.256(2), provides in pertinent part:

"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 his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed...."

In order to answer your question, it is necessary to determine the meaning of the term "fringe benefit." While there is no Michigan case on point, the term "fringe benefit" was discussed by the court in City & County of San Francisco v Callanan, 169 Cal App 3d 643, 648; 215 Cal Rptr 435, 437-438 (1985). The court cited Webster's Third New International Dictionary for the definition of the term to mean "an employment benefit (as a pension, a paid holiday, or health insurance) granted by an employer that involves a money cost without affecting basic wage rates." It also quoted from Trinity Services, Inc v Marshall, 593 F2d 1250; 193 US App DC 96 (1978), as follows:

"[That is,] to provide the benefit, the employer must make a payment to the employee (or to a fund maintained in the employee's behalf) for the present or future use of the employee (or his beneficiary), allow the employee to accrue some form of deferred compensation (such as vacation time), or incur the risk of granting the benefit to the employee (or his beneficiary) at some future time (such as compensation for injuries or illness from occupational activity)."

Elizabeth P. Howe, Director  
Michigan Department of Labor  
Page 3

Furthermore, MCL 408.471(e); MSA 17.277(1)(e), defines, for the purposes of the Act, "fringe benefits" as

"compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee."

In Construction Advancement Programs of North Central & East Central Ohio v A. Bentley & Sons Co., 45 Ohio App 2d 11; 340 NE2d 849 (1975), the court was required to determine whether payments to the Construction Advancement Program (CAP) pursuant to collective bargaining agreements constituted a fringe benefit. The purposes of this program were similar to those of the CIAP, and included promotion of safety, public education as pertaining to the construction industry, market development, and other activities to promote the common good of the construction industry. In holding that CAP payments were not a fringe benefit, the court quoted from the trial court's findings of fact as follows:

"(T)he [trial] Court finds that CAP conferred no benefits on the members of the union and that CAP is not a working condition or a fringe benefit for the union members but rather, ... that it is a typical industry promotion fund. While it may confer some incidental benefit on union members or on the general public, it is primarily for the benefit of the contractor." 340 NE2d at 852.

It is clear that CIAP payments do not fall within the commonly acknowledged fringe benefits such as vacation or sick time; nor are they paid directly to the employees. While it may be contended that they constitute "contributions made on behalf of an employee," the court in Bentley, supra, made it clear that this incidental type of benefit would not transform these payments into a fringe benefit when the primary beneficiary is the construction industry.

Elizabeth P. Howe, Director  
Michigan Department of Labor  
Page 4

Since there is no judicial precedent on point in this state, it is not possible to predict how the issue would be dealt with if it arose in this jurisdiction. However, if a Michigan court was presented with a factual situation similar to the Bentley case, I believe it would conclude, in answer to your first question, that CIAP payments are not a fringe benefit under the provisions of MCL 408.551 et seq; MSA 17.256(1) et seq.

Your second question may be stated as follows:

Is the Department of Labor authorized, pursuant to MCL 408.551 et seq; MSA 17.256(1) et seq, to establish a permissible ratio of apprentices to journey persons on construction projects which are subject to this Act? ND

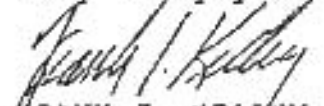
The term "fringe benefit" has been defined in the discussion of your first question. MCL 408.471(f); MSA 17.277(1)(f), defines the term "wages" as "all earnings of an employee whether determined on the basis of time, task, piece, commission, or other method of calculation for labor or services except those defined as fringe benefits under subdivision (c) above [MCL 408.471(e); MSA 17.277(1)(e)]." In Cookes v Lymperis, 178 Mich 299, 304; 144 NW 514 (1913), the term "wages" was defined as "compensation given or to be given by a master or employer to a hired person or employee, by the hour, day, week, or month, the amount to be ascertained by agreement or the proven going rate or market value of the same at the time and place rendered."

Where the Legislature uses certain and unambiguous language, the plain meaning of the statute must be followed. Browder v Int'l Fidelity Ins Co, 413 Mich 603, 611; 321 NW2d 668 (1982). Additionally, in Bowie v Coloma School Bd, 58 Mich App 233, 236; 227 NW2d 298 (1975), the court held that MCL 408.551 et seq; MSA 17.256(1) et seq, must be strictly construed. The Department of Labor is specifically authorized to establish prevailing wages and fringe benefits on state projects. However, there is no indication in MCL 408.551 et seq; MSA 17.256(1) et seq, that the Department of Labor is authorized to establish a permissible ratio of apprentices to journey persons, nor that such a ratio comes within the meaning of "wages" or "fringe benefits".

Elizabeth P. Howe, Director  
Michigan Department of Labor  
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It is my opinion, in answer to your second question, that the Department of Labor is not authorized, pursuant to MCL 408.551 et seq; MSA 17.256(1) et seq, to establish a permissible ratio of apprentices to journey persons on construction projects which are subject to this Act.

Very truly yours

  
FRANK J. KELLEY  
Attorney General

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