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MCL 408.552**Purpose**

To determine jurisdiction to investigate an Act 166 complaint and establish uniform criteria for determining whether a contract for a state project is subject to the provisions of Act 166.

Responsibility

The investigator is responsible for reviewing all complaints to determine whether the contract is subject to the provisions of the Act. The investigator is responsible for advising a claimant when a claim is outside the jurisdiction of the Act, providing referral to another agency when appropriate, and educating customers on the requirements 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 meets all of the following
 - a. is executed between a contracting agent and a successful bidder as contractor,
 - b. is entered into pursuant to advertisement and invitation to bid,
 - c. involves the employment of construction mechanics,
 - d. is sponsored or financed in whole or in part by the State of Michigan. (Sec. 2 of Act 166)
 - e. includes an express term and/or other evidence exists in the bid specifications that the Michigan prevailing rates for wages and fringe benefits be paid each class of mechanics by the contractor and all subcontractors and (Sec. 2 of Act 166)
 - f. includes a prevailing rate schedule issued by the department as a part of the contract. The contract must be awarded or construction must begin within 90 days of issuance of the rates for rates to be valid; new rates should be requested if 90 days has expired.
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 of Act 166)
3. Cities, counties, townships; non-public schools, colleges and universities or economic development corporations are not contracting agents, and are not subject to Act 166, even if state prevailing rates are incorporated in contracts.

Prevailing Wage on State Projects

Application 1 - on Coverage

Michigan's prevailing wage law covers state, public schools, charter schools, community colleges, state colleges and university projects, paid for by state funds or state backed bonds.

Examples of acceptable proof of state backed bonds are:

A letter or email from the contacting agent, stating that the bonds are state backed or qualified bonds. Note: a voter millage could be for state qualified bonds or a sinking fund, additional information regarding the millage should be obtained to determine if the funding is state backed.

School Bond Program Election Results website: <https://treas-secure.state.mi.us/apps/findschoolbondelectinfo.asp>

Examples of state funding:

Legislation funding a particular project i.e. community college building, state office building, 2014 PA 114.

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, 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. Projects of public Universities and colleges are generally considered state projects unless the documentation shows that the source of funding is federal funds.

Review: [Western Michigan University Board of Control and Associated Builders & Contractors v. State of Michigan](#) (refer to appendix C for Michigan Supreme Court decision).

Prevailing Wage on State Projects

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).

Verbal notice of competitive bidding would be allowed, contracting agent would have to be able to provide proof of verbal notice i.e. affidavit, written documentation on contracting agent letterhead.

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 project would not be within the jurisdiction of the act because the university failed to advertise or invite contractors to bid on the project. This would be a contracting agent violation.

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 project would be within the jurisdiction of the act because the university invited contractors to bid on the project.

Prevailing Wage on State Projects

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

Purpose

To establish uniform criteria for determining whether a contractor or subcontractor is subject to the provisions of Act 166.

Responsibility

Investigators are responsible for reviewing all complaints to determine if the contractor is subject to the Act. The investigator is responsible for advising a claimant when a claim is outside the jurisdiction of the act, providing referral to another agency when appropriate, and educating customers on the requirements.

Policy

1. A contractor awarded a contract to perform work on a state covered project is subject to the Act.
2. A subcontractor who contracts for work on a state covered project 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. Each contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work.

Prevailing Wage on State Projects

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

To establish uniform criteria for determining whether construction mechanics are protected by the provisions of Act 166.

Responsibility

The investigator is responsible for reviewing all complaints to determine if a construction mechanic is subject to the Act. The investigator is responsible for advising a claimant when a claim is outside the jurisdiction of the act, providing referral to another agency when appropriate, and educating customers on the requirements.

Policy

1. An employer/employee relationship must exist for the Act to apply to a construction mechanic.
2. A construction mechanic employed by a contractor to perform work as described in the contract specification is 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.
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. A driver whose activities are 20% or more of a work week and whose work is confined to the project worksite and / or a site specifically created to serve the project is covered for all hours worked. Drivers whose activities are 20% or more of a work week, who work for a contractor on the project delivering materials from a supply depot created for the project are covered.

Prevailing Wage on State Projects**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. A truck driver whose work on a project is 20% or less of a work week is not covered.

Application for construction mechanics**EXAMPLE 1:**

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.