

New Business
June 19, 2018

**BUDGET,
FINANCE, AND
AUDIT STANDING
COMMITTEE**

16

**OFFICE OF CONTRACTING AND
PROCUREMENT**

June 15, 2018

HONORABLE CITY COUNCIL:

The Purchasing Division of the Finance Department recommends a Contract with the following firm(s) or person(s):

6001500 100% City Funding – To Provide Printing and Mailing Supplies for the Treasury Department. – Contractor: Diversified Data Processing and Consulting Inc., DBA DIVDAT – Location: 10811 Northend Ave., Ferndale MI, 48220 – Contract Period: Upon City Council Approval through June 18, 2019 – Total Contract Amount: \$88,000.00. **OCFO-TREASURY**

Respectfully submitted,

Boysie Jackson, Chief Procurement Officer
Office of Contracting and Procurement

BY COUNCIL MEMBER AYERS

RESOLVED, that Contract No. 6001500 referred to in the foregoing communication dated June 15, 2018, be hereby and is approved.

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MEMORANDUM

TO: Honorable City Council

FROM: Michael K. Jackson, II, Esq. *MKJ*
Senior Assistant Corporation Counsel

CC: Julianne Pastula, Esq.
City Council Liaison

RE: Michigan Prevailing Wage Act

DATE: June 13, 2018

This Honorable Body, through Council Member Scott Benson, requested an analysis regarding the legality of the City of Detroit implementing a strategy to provide equalization points for City contracts where the proposed vendor provides a “fair wage” to its workers who live in the City of Detroit. The memorandum analyzing the issue was filed on June 6, 2018¹. Later that afternoon, the Michigan Legislature repealed Michigan’s Prevailing Wage Act². This update addresses the impact of the repeal on previously filed memorandum³.

I. Impact of Repeal on Memorandum Analysis

As stated in the memorandum, the City of Detroit’s ability to regulate wages is limited by the Local Government Labor Regulatory Limitation Act, which states that “A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to pay to an employee a wage or fringe benefit based on wage and fringe benefit rates prevailing in the locality.”

The repeal of the Michigan Prevailing Wage Act does not change, amend, or modify the Local Government Labor Regulatory Limitation Act, which was an exception to the Local Government Labor Regulatory Limitation Act and allowed the state to regulate wage rate and benefits on state construction contracts. The repeal of Michigan’s Prevailing Wage Act further restricts the City’s ability to regulate wages. As such, the repeal does not change our analysis that the City may be able to implement a strategy to provide equalization points for contracts where the proposed vendor provides a “fair wage” to its workers who live in the City of Detroit if it is reasonably related to a legitimate state interest.

CITY CLERK 2018 JUN 15 4:11:15 PM

¹ Exhibit 1, Memorandum dated May 30, 2018
² Exhibit 2, Initiative to Repeal Prevailing Wage and Legislative Analysis
³ The Law Department is currently preparing a memorandum addressing how the repeal of the Michigan Prevailing Wage Act effect the City of Detroit Prevailing Wage Ordinance.

EXHIBIT 1



CITY OF DETROIT
LAW DEPARTMENT

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MEMORANDUM

TO: Honorable City Council

FROM: Michael K. Jackson, II, Esq. *MKT*
Senior Assistant Corporation Counsel

CC: Julianne Pastula
City Council Liaison

RE: Fair Wage Contract Review

DATE: May 30, 2018

This Honorable Body, through Council Member Scott Benson, requested an analysis regarding the legality of the City of Detroit implementing a strategy to provide equalization points for City contracts where the proposed vendor provides a “fair wage” to its workers who live in the City of Detroit. The City of Detroit Ordinance may apply modest credits to its vendors for the purpose of promoting local business interest, but such credit may not be implemented as an ordinance, local policy, or local resolution requiring an employer to pay to an employee a wage or fringe benefit based on such rates prevailing in the locality.

Generally, the City of Detroit, as previously opined by the law department¹, may not enact an ordinance regulating wages. As established by Michigan statutory and case law (summarized below), a local government’s ability to regulate wages and fringe benefits is limited. However, the City may be able to provide equalization points to local vendors that pay a “fair wage” to residents of the City of Detroit if the preference is rationally related to a legitimate government interest.

Background

In the City of Detroit’s procurement of goods and services, Chapter 18 of the 1984 Detroit City Code allows equalization credits for local businesses in accordance with the equalization allowance table set forth in Sec. 18-5-12. Accordingly, the bid of a Detroit-based business or Detroit-resident business receives equalization points in the form of percentage points from the equalization allowance table located in in Sec. 18-5-12. A similar undertaking occurs when a joint venture, mentor venture, Detroit-based small business, or Detroit-based micro business bids on a contract.

¹ Exhibit 1, Opinion Letter dated October 11, 2016.



Detroit's Ability to Regulate Wages is Limited

Generally, a municipality has broad discretion adopting laws over matters of "municipal concerns, property and government." *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 188; 880 NW2d 765, 770 (2016). The Michigan Constitution provides that powers granted to municipalities shall include those fairly implied and not prohibited by Michigan Constitution, MI CONST Art. 7, § 34. However, the City's ability to regulate wages is limited by statutory and case law.

According to the Local Government Labor Regulatory Limitation Act, "A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to pay to an employee a wage or fringe benefit based on wage and fringe benefit rates prevailing in the locality." However, in the public context, wages paid to employees of contractors working on municipal contracts have a self-evident relationship to "municipal concerns, property, and government" if those words are even reasonably, if not liberally, construed. *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 187-88; 880 NW2d 765 (2016). The State of Michigan's and City of Detroit's laws requiring prevailing wages to be paid on public contracts are consistent with this ruling. Michigan's prevailing wage act, M.C.L. § 408.551 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. *W Michigan Univ Bd of Control v State*, 455 Mich 531, 533; 565 NW2d 828 (1997). Section 18-5-62 of the 1984 Detroit City Code states that "The executed [public works] contracts shall include [sic] a signed affidavit acknowledging that the prevailing wages shall be paid under terms of the contract by the contractor and subcontractors throughout the term of the contract."

Modest Preferences for Local Businesses Are Appropriate

It is settled law that applying modest credits or percentage points to local businesses does not offend the Equal Protection Clause. *Walsh Const Co of Illinois v City of Detroit*, 257 F Supp 2d 935, 940 (ED Mich, 2003). Reviewing courts have approved up to a five percent (5%) credit for local businesses. *Id.*

To withstand judicial scrutiny, the City's proposed preference for local businesses in its contracts must be rationally related to a legitimate state interest. The general rule is that the legislation is presumed to be valid and will be sustained if the classification drawn by law or ordinance is rationally related to a legitimate state interest. *Smith Setzer & Sons, Inc v S.C. Procurement Review Panel*, 20 F3d 1311, 1320 (CA 4, 1994). Unless the legislation constrains fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, courts presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. *City of New Orleans v Dukes*, 427 US 297, 303 (1976). Such legislation "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification [.]" *Johnson v Bredesen*, 624 F3d 742, 746 (CA 6, 2010). In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed



along suspect lines. *Dukes*, 427 US at 303.

In the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Equal Protection Clause of the Fourteenth Amendment. *Dukes*, 427 US at 303. The analysis presents the following two questions for review: 1) whether the purpose that animates these laws and regulations is legitimate, and 2) whether it was “reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose.” *Smith Setzer & Sons, Inc*, 20 F3d at 1320. Under rational basis scrutiny, government action amounts to a constitutional violation only if it is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government’s actions were irrational. *Michael v Ghee*, 498 F3d 372, 379 (CA 6, 2007). Finally, the government “has no obligation to produce evidence to sustain the rationality of its action; its choice is presumptively valid and may be based on rational speculation unsupported by evidence or empirical data.” *Liberty Coins, LLC v Goodman*, 748 F3d 682, 694 (CA 6, 2014).

In *Ohio Contractors Ass’n v City of Akron*, No. 5:14CV0923, 2014 WL 1761611, at *1 (ND Ohio, May 1, 2014), a state-wide trade association composed of contractors filed a verified complaint for injunctive and declaratory relief against the City of Akron, alleging that Akron’s Local Hiring and Workforce Participation Policy violated the equal protection provisions of both the United States Constitution and the Ohio Constitution. The City of Akron argued that its Local Hiring Policy is rationally related to two legitimate government interests: (1) “returning and reinvesting” to the taxpayers of Akron some of the tax money that will finance this public works project; and (2) “reducing local unemployment and combating declining incomes” of its residents. *Id.* at *5. The court upheld the Akron hiring rule, concluding that the policy was rationally related to legitimate governmental interests and the equal protection clause was not violated because all contractors are faced with the same situation, and the availability of Akron residents to satisfy the local hiring quota will be the same whether the contractor is located near or away from the City of Akron. *Id.* at *6.

Application

Here, the City may have the ability to incentivize certified Detroit-based businesses that employ Detroit residents and pay wages that are greater than the wages paid by other employers with employees in similar job classifications. It is the law department’s understanding that the government interest contemplated in this legislation is similar to that in *Ohio Contractors Ass’n*, which was “returning and reinvesting” to the taxpayers of Akron some of the tax money that will finance contracts; and (2) “reducing local unemployment and combating declining incomes” of its residents. Such an interest was ruled to be a legitimate government interest. It could be argued that such an interest would be a legitimate state interest for a local government because the equalization points would benefit local employers that employ Detroit residents and the resident taxpayers. As stated above, courts have approved the use of modest “equalization credits” to achieve a legitimate government interest.

Conclusion

The City of Detroit may be able to implement a strategy to provide equalization points for



contracts where the proposed vendor provides a “fair wage” to its workers who live in the City of Detroit if it is reasonably related to a legitimate state interest. Such an ordinance allowing the preference discussed herein would need to be carefully drafted and implemented so as not to expand beyond the City of Detroit’s ability to regulate wages. As previously stated, the City of Detroit cannot not adopt, enforce, or administer an **ordinance, local policy, or local resolution** requiring an employer to pay to an employee a wage or fringe benefit based on wage and fringe benefit rates prevailing in the locality, except in the context of public contracts. Specifically, the ordinance would need to define “fair wage” in a way that would not violate the legal prohibition of a “Living Wage.” Further, the ordinance should not have the effect of allowing employers to pay a higher wage to a Detroit resident over a non-resident for the same job, simply to get the preference credit. Finally, the practical implications and resources required for monitoring and enforcing this preference should also be considered.



EXHIBIT 1



CITY OF DETROIT
LAW DEPARTMENT

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October 11, 2016

Detroit City Council
1340 Coleman A. Young Municipal Center
Detroit Michigan 48226
Attn: Internal Operations Standing Committee

RE: Request by Council President Jones to City Council Legislative Policy Division and to Law Department for (1) a report on the effect of Michigan Supreme Court ruling in *Associated Builders v City of Lansing* on the City's prevailing wage ordinance and (2) an ordinance to require payment of prevailing wages as a condition to approving development agreements

Honorable City Council:

BACKGROUND

Council President Jones addressed a memorandum dated May 18, 2016 to David Whitaker, Director, Legislative Policy Division, and to Melvin Butch Hollowell, Jr, Corporation Counsel, requesting the following:

On Tuesday, May 17, 2016, the Michigan Supreme Court ruled that local prevailing wage laws were constitutional. Please provide a report on the enforcement, benefits, and legal proceedings related to the current living [*sic*¹] wage ordinance in the City of Detroit. If necessary and legally applicable, please draft an ordinance that requires City of Detroit contractors to agree to pay a prevailing wage before the City of Detroit will approve development agreements.

The memorandum was referred to the Internal Operations Standing Committee as item 9 on the Agenda dated May 24, 2016; a copy of the memorandum is attached as Exhibit A. Following is the Law Department's response.

¹ The subject matter title of the memorandum is "Prevailing Wage Ordinance." The City has a prevailing wage ordinance, contained in Chapter 18, Article V, Division 4 of the 1984 Detroit City Code, entitled "Prevailing Wage and Fringe Benefit Rates Required for City Projects" and codified as section 18-5-60 through 18-5-69. A copy of the ordinance is attached as Exhibit B.

The City no longer has a "living wage ordinance"; it was formerly codified as Sections 18-5-81 through 18-5-86 of the City Code, but was repealed by Ordinance No. 27-10, effective November 24, 2010.



Based on the nature of the request, the Law Department has assumed that the request for “a report on the enforcement, benefits, and legal proceedings related to the current living wage ordinance” expressed in the second sentence is addressed to the Legislative Policy Division, as it does not request a legal opinion. Rather, it appears to request a review and analysis of the application and effectiveness of the existing ordinance, of which the Law Department has no information.

The Law Department’s response addresses the holding of the Michigan Supreme Court, its effect on the City’s Prevailing Wage Ordinance, and the request for an ordinance.

DISCUSSION

A. City of Detroit Prevailing Wage Ordinance

The City of Detroit has an existing prevailing wage ordinance, codified in Sections 18-5-60 through 18-5-69 of the 1984 Detroit City Code. A copy is included as Exhibit B. Subject to exceptions controlled by federal or state prevailing wage laws, the prevailing wage ordinance requires every city public works contract of \$100,000 or more to include an express term requiring the contractor and subcontractors to provide wages and fringe benefits not less than those prevailing in the city. Secs. 18-5-60 and 18-5-61. A copy of the prevailing wage ordinance must be included in the contract, Sec. 18-5-62, and a schedule of prevailing wages and fringe benefits must be part of the contract specifications, Sec. 18-5-63.

In addition to applying to municipal public works contracts of \$100,000 or more, Sec. 18-5-65 requires that, as a condition to receiving a tax abatement from the city, the recipient must agree to pay prevailing wages on all construction work performed on the property for which the tax abatement is granted.

B. Michigan Supreme Court opinion in *Associated Builders v City of Lansing*

On May 17, 2016, the Michigan Supreme Court issued an opinion in *Associated Builders v City of Lansing*, 499 Mich 177, 880 NW2d 765 (2016). In that opinion, the Supreme Court overruled the case of *Attorney Gen’l ex rel Lennane v Detroit*, 225 Mich 631, 196 NW 391 (1923) in which the earlier court had invalidated a Detroit charter provision and ordinance that required payment of prevailing wages as unauthorized by the 1908 Michigan Constitution, as the subject matter was of state rather than municipal concern and there had been no specific delegation of authority from the state to the city. The Supreme Court in *Associated Builders* specifically overruled *Lennane*², holding that

the wages paid to employees of contractors working on *municipal contracts* have a self-evident relationship to “municipal concerns, property, and government,” if those words are even reasonably, if not liberally, construed. Those wage rates concern how a municipality acts as a market participant,

² 499 Mich at 183, 880 NW2d at 768.



spending its own money on its own projects. If a municipality has broad powers over local concerns, it certainly has the power to set terms for the contracts it enters into with third parties for its own municipal projects—including provisions relating to the wages paid to third-party employees. This way the municipality controls its own money, and presumably expresses its citizens' preference as to what those who work on *public* projects should be paid. We see nothing in these municipal aims that falls outside the ambit of Article 7, § 22 of the 1963 Constitution.³

The decision is based on constitutional grounds, differentiating the broader grant of authority to municipalities under the 1963 Constitution from the narrower grant under the 1908 Constitution, at least as it had been interpreted by the *Lennane* court. From a constitutional perspective, an ordinance requiring payment of prevailing wages on a municipal contract is of a municipal concern, and thus within the powers delegated by the constitution.⁴

C. Local Government Labor Regulatory Limitation Act, 2015 PA 105 (MCL 123.1381 et seq.)

Although the Supreme Court stated in *Associated Builders and Contractors* that, constitutionally, an ordinance requiring payment of prevailing wages on municipal contracts is a matter of municipal concern, the legislature has enacted legislation stating the contrary:

The legislature finds and declares that regulation of the employment relationship between a nonpublic employer and its employees is a matter of state concern and is outside the express or implied authority of local governmental bodies to regulate, absent express delegation of that authority to the local governmental body.⁵

The Local Government Labor Regulatory Limitation Act, Public Act 105 of 2015, effective June 30, 2015 and codified in MCL 123.1381 through 123.1396, places substantial restrictions on the power of local governments to adopt, enforce, or administer an ordinance, local policy, or local resolution affecting wages, benefits, or terms of employment. A copy of the act is attached as Exhibit C. Section 6 of the Act states:

A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to pay to an employee a wage or fringe benefit based on wage and fringe benefit rates

³ 499 Mich at 187-88, 880 NW2d at 770 (emphasis in original; footnotes omitted).

⁴ Somewhat curiously, the Supreme Court took no notice of Act 105 of 2015, effective June 30, 2015 and codified as MCL 123.1382 in which the Michigan Legislature stated that regulation of private wages is a matter of state concern and not local concern. The effect of Act 105 of 2015, the “local government labor regulatory limitation act”, is discussed in further detail in Part C.

⁵ MCL 123.1382.



prevailing in the locality. This section does not apply to state projects subject to 1965 PA 166, MCL 408.551 to 408.558.⁶

Therefore, as a general rule, the City is specifically forbidden from enacting or enforcing a prevailing wage ordinance, policy, or resolution⁷. There are, however, two important exceptions⁸.

The first exception is that the Act does not apply to ordinances, policies or resolutions in place as of December 31, 2014. The enacting section 1 of 2015 PA 105 states, in part,

This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. . . . Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. . . .

Thus, the City's prevailing wage ordinance, which was last amended in 2004, is not affected by the Act. Furthermore, the second sentence quoted above anticipated the Supreme Court's decision in *Associated Builders*, which specifically found that a local governmental body had the authority to adopt a prevailing wage ordinance.

The second exception is contained within the definitions:

(e) "Ordinance, local policy, or local resolution" does not include the terms of an agreement voluntarily offered to a local governmental body by an owner, purchaser, or developer of property.⁹

⁶ MCL 123.1386.

⁷ Both the State Constitution, Article 7, § 22, and the Home Rule City Act, MCL 117.4j, state that cities have the power to enact ordinances relating to municipal concerns, *subject to state law*. *Associated Builders*, 499 Mich at 182, 880 NW2d at 767, footnotes 6 and 7. The Michigan courts have interpreted this language as allowing cities to enjoy powers not specifically denied; but prohibiting powers that have been specifically denied by the legislature. *Associated Builders*, 499 Mich at 182, 880 NW2d at 767, footnote 26.

⁸ A potential, but unlikely, third exception is found in MCL 123.1395, which exempts voluntary agreements between an employer and the local government (a) in connection with provision of services directly to the local government or (b) in connection with receipt of a tax abatement. However, the language of MCL 123.1395 is prefaced with "Subject to sections 5 to 8 and 11" (MCL 123.1385 through 123.1388 and 123.1381). As a rule of statutory construction, all language in a statute is presumed to have meaning and not be mere surplusage. Therefore, the purpose of this prefatory clause would most likely be interpreted by the courts as forbidding a local government from enforcing even voluntary agreements that covered the subject matter of those 5 sections, which includes payment of prevailing wages in section 6, MCL 123.1386.

⁹ MCL 125.1383(e).



Hon. City Council

Re: Effect of *Associated Builders v City of Lansing* on Prevailing Wage Ordinance

October 11, 2016

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Thus, a person desiring to purchase property from the city could voluntarily offer to include terms in the purchase or development agreement to pay prevailing wages. Under those circumstances, the terms of the agreement, and the enforcement by the city of the agreement, would not run afoul of the act since the act only regulate "ordinances, local policies, and local resolutions" and by definition the agreement is not included.

D. Ordinance to require contractors to agree to pay prevailing wage before the City approved development agreements:

The Law Department is not able to prepare an ordinance in the manner requested. Although a purchaser or developer can voluntarily agree—that is, offer—to include contract terms imposing an obligation on itself to pay prevailing wages, an ordinance "requiring the contractor to agree" does not appear to meet the test of voluntariness. On the other hand, it might be possible to draft an ordinance that limits the power of the City to sell real property without prior receipt of certain information, such as whether the prospective purchaser had offered to pay prevailing wages. An ordinance phrased in such a way imposes limitations on what the City can do, not mandates on what the offeror must do. However, the Law Department would need further information as to the nature and scope of such an ordinance; for example, whether it would apply to all purchases of land or only those above stated, yet-to-be-determined, thresholds.

Respectfully submitted,

Timothy A. Beckett
Supervising Assistant Corporation Counsel
Municipal Section

Concur:

Melvin Butch Hollowell, Jr.
Corporation Counsel

*Attachments: Exhibit A, Memorandum dated May 18, 2016
Exhibit B, City's prevailing wage ordinance
Exhibit C, 2015 PA 105, Local Government Labor Regulatory Limitation Act*

Exhibit A

City of Detroit
CITY COUNCIL
COUNCIL PRESIDENT BRENDA JONES

Internal
Referral

MEMORANDUM

TO: David Whitaker, Director
Legislative Policy Division

Melvin Butch Hollowell, Jr.
Corporation Counsel

FROM: Council President Brenda Jones *BJ*

DATE: May 18, 2016

RE: Prevailing Wage Ordinance

Greetings:

On Tuesday, May 17, 2016, the Michigan Supreme Court ruled that local prevailing wage laws were constitutional. Please provide a report on the enforcement, benefits, and legal proceedings related to the current living wage ordinance in the City of Detroit. If necessary and legally applicable, please draft an ordinance that requires City of Detroit contractors to agree to pay a prevailing wage before the City of Detroit will approve development agreements.

Thank you.

CC: Honorable Colleagues
Janice Winfrey, Detroit City Clerk

Chapter 18 FINANCE AND TAXATION

ARTICLE V. PURCHASES AND SUPPLIES

DIVISION 4. PREVAILING WAGE AND FRINGE BENEFIT RATES REQUIRED FOR CITY PROJECTS

State Law reference— Local Government Labor Regulatory Limitation Act, 2015 PA 105, MCL 123.1381 et seq.

Sec. 18-5-60. Definitions.

For the purpose of sections 18-5-60 through 18-5-66 [18-5-69], the following words and phrases shall have the meaning ascribed to them by this section:

- (a) *Construction mechanic* shall mean a skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice working on a “city project”, but shall not include executive, administrative, professional, office or custodial employees.
- (b) *City project* shall mean a public works construction project that is one hundred thousand dollars (\$100,000.00) or more. Such a “city project” shall include new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, work, or roads authorized by a “contracting agent”. For purposes of this division, “city project” includes the contracts and subcontracts entered into by the “contracting agent” and the bidder.
- (c) *Contracting agent* shall mean any designee, officer, board or commission of the city, or a city institution supported in whole or in part by city funds, authorized to enter into a contract for a “city project” or to perform a “city project” by the direct employment of labor.
- (d) *Designee* means a public official acting on behalf of the Finance Director.
- (e) *Agencies* means any department, office, authority, commission, quasi-public entity, multi-member body, or other organization of city government.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-61. Requirement for an express term regarding a minimum rate of wages.

Every contract executed between a contracting agent and a successful bidder as contractor, and entered into pursuant to advertisement and invitation to bid for the city project which requires or involves the employment of construction mechanics, except those subject to the jurisdiction of the City of Detroit civil service commission, and which is financed in whole or in part by the city, but excluding those projects covered by the Federal Davis-Bacon Act or the State Prevailing Wage Act (Act 166, P.A. 1965, MCLA 408.551 et seq.; MSA 17.256(1) et seq.) shall contain an express

Exhibit B – City Prevailing Wage Ordinance

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 benefits rate prevailing in the city as established by the most recent survey of the Michigan Department of Labor for prevailing wage determination under Act 166, P.A. 1965 (Act 166, P.A. 1965), MCLA 408.551 et. seq., MSA 17.256(1) et seq.). Should a prevailing wage determination survey for the city be concluded during the life of a successful bidder's contract and/or his subcontracts covered by this ordinance, the rates of wages and fringe benefits that are the minimum to be paid each class of mechanic shall be appropriately adjusted according to this most recent survey. Any such adjustments that require an amendment to the contract shall be effective upon approval by the city council.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-62. Public works contracts, prevailing wage affidavit required.

All executed public works contracts by the City of Detroit and/or its agencies as prescribed in Section 18-5-60(a) and 18-5-60(b) shall include a copy of the Prevailing Wage Ordinance and a copy of the current prevailing wages and fringes as prescribed in section 18-5-61. The executed contracts shall included [*sic*] a signed affidavit acknowledging that the prevailing wages shall be paid under terms of the contract by the contractor and subcontractors throughout the term of the contract.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-63. Requirement that a schedule of rates is to be part of specifications for city projects.

A schedule of the prevailing wage and fringe benefits for all classes of construction mechanics called for in a contract shall be made a part of the specifications for the work to be performed and shall be printed in the bidding forms where work is to be done by contract.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-64. Requirement that a copy of prevailing wages be posted by contractors and subcontractors.

Every contractor and subcontractor shall keep posted in a conspicuous place on the construction site a copy of all prevailing wage and fringe rates prescribed by the contractor. Each new employee shall be provided a copy of the prevailing wage and fringe rates document when he or she begins work. In addition, the contractor must supply additional copies of the wage and fringe rates document as requested by employees. The contractor shall keep accurate records showing the name and occupation of and actual wages and benefits paid to each construction mechanic employed by the contractor in connection with said contract. This record shall be made available immediately on demand for inspection by the contracting agent of the city.

(Ord. No. 01-04, § 1, 1-7-04)

Exhibit B – City Prevailing Wage Ordinance

Sec. 18-5-65. Conditions for tax abatement.

All firms, companies, and businesses seeking tax abatement from the city shall as a condition of receiving that tax abatement agree to include prevailing wage schedules and payment of prevailing wages, as defined by this ordinance, on all construction work performed on the property for which the tax abatement is granted.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-66. Complaint process.

A person impacted by a violation of this ordinance [division] may file a complaint with the city Finance Director or his/her designee. If the complaint is not resolved to the complainant's satisfaction within the ninety day period, the complainant or his or her representative may bring an action in the appropriate to court enforce this ordinance. The court shall award reasonable attorneys fees and costs to a person who prevails in an enforcement action.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-67. Development of complaint procedures; requirement for investigation of complaint.

The finance department shall create appropriate polices *[sic]*, procedures, and documents necessary to implement the complaint procedure required by this ordinance [division]. The finance department shall submit these polices *[sic]*, procedures and documents to city council for review. The finance director or his/her designee shall be responsible for the enforcement of this complaint process. The city shall designate an individual or individual(s) who shall investigate any and all complaints or violations of this ordinance. A contractor under investigation shall shall *[sic]* provide the finance director with weekly payroll records setting forth the name, address, telephone number, classification, wage rate and fringe benefit package of all employees who work on the contract, including the employees of contractors subcontractors and agents. Such weekly payroll records must include the required information for all city contracts and all other contracts on which the employee worked during the week in which the employee worked on the contract. These records will reflect the individual time each employee worked on the project for each day of the project. Such records shall also set forth the total number of hours of overtime credited to each such employee for each day and week and the amount of overtime pay received for the week. The records shall set forth the full weekly wages earned by each employee and the actual hourly wage rate to the employee. The city shall begin the investigation within three (3) days of receipt of a complaint and shall provide a written determination within ten (10) days of beginning its investigation with a copy of the determination to the complainant and the city council, as to whether or not a violation has occurred.

(Ord. No. 01-04, § 1, 1-7-04)

Exhibit B – City Prevailing Wage Ordinance

Sec. 18-5-68. Termination of contract for failure to pay; liability of contractor and sureties.

The city or its agent, by written notice to the contractor and the sureties of the contractor known to the contracting agent, shall terminate the contractor's right to proceed with the contract for which less than the prevailing rates or wages and fringe benefits have been or will be paid and shall proceed to complete the contract by separate agreement with another contractor. The city or its contracting agent shall withhold payment for work done by a contractor found to be in violation of not paying prevailing wages until liabilities for unpaid wages are paid to the effected [*sic*] workers under the contract. If a contractor fails to pay the liabilities for unpaid wages to the effected workers the city shall use the contractors withheld payments to secure a contractor to complete the work.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-69. Penalties.

Any person, firm or corporation or combination thereof, including officers of any contracting agent, who violates the provisions of this ordinance is guilty of a misdemeanor. In addition, any contractor found to be in violation of this division by any contracting agent shall be barred for two (2) years from bidding on any city project. In addition, if the contractor who is found in violation of the provisions of this ordinance by the Finance Director in one contract and has additional contracts with the city, all contracts held by this contractor must be evaluated immediately to determine their compliance with this prevailing wage ordinance.

Any contractor or subcontractor who violates the prevailing wage requirement shall pay to each employee affected the amount of the deficiency, for each day of the violation. Violation of the ordinance, shall also result in a penalty paid to the city in the amount of two hundred dollars (\$200.00) per a violation for each day the violation has occurred. The city shall withhold payments to the employer in such amounts as are necessary to effect the payments provided in this paragraph.

(Ord. No. 01-04, § 1, 1-7-04)

Sec. 18-5-70. Reserve

LOCAL GOVERNMENT LABOR REGULATORY LIMITATION ACT
Act 105 of 2015

AN ACT to limit the powers of local governmental bodies regarding the regulation of terms and conditions of employment within local government boundaries for employees of nonpublic employers.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

The People of the State of Michigan enact:

123.1381 Short title.

Sec. 1. This act shall be known and may be cited as the "local government labor regulatory limitation act".

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1382 Legislative findings and declarations.

Sec. 2. The legislature finds and declares that regulation of the employment relationship between a nonpublic employer and its employees is a matter of state concern and is outside the express or implied authority of local governmental bodies to regulate, absent express delegation of that authority to the local governmental body.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1383 Definitions.

Sec. 3. As used in this act:

(a) "Educational institution" means any of the following:

(i) A school district, an intermediate school district, or a public school academy as those terms are defined in sections 4 to 6 of the revised school code, 1976 PA 451, MCL 380.4 to 380.6.

(ii) A community college established under the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195, or under part 25 of the revised school code, 1976 PA 451, MCL 380.1601 to 380.1607.

(b) "Employee" means a person employed in this state by an employer.

(c) "Employer" means a person or entity engaging in or intending to engage in a commercial activity, enterprise, or business in this state, but excludes a local governmental body or an educational institution.

(d) "Local governmental body" means any local government or its subdivision, including, but not limited to, a city, village, township, county, or educational institution; a local public authority, agency, board, commission, or other local governmental, quasi-governmental, or quasi-public body; or a public body that acts or purports to act in a commercial, business, economic development, or similar capacity for a local government or its subdivision. Local governmental body does not include an authority established by interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to

Rendered Thursday, October 6, 2016

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124.512, to which this state is a party.

(e) "Ordinance, local policy, or local resolution" does not include the terms of an agreement voluntarily offered to a local governmental body by an owner, purchaser, or developer of property.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1384 Information employer must request, require, or exclude on employment application; regulation by local governmental body prohibited.

Sec. 4. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution regulating information an employer or potential employer must request, require, or exclude on an application for employment from an employee or a potential employee. This section does not prohibit an ordinance, local policy, or local resolution requiring a criminal background check for an employee or potential employee in connection with the receipt of a license or permit from a local governmental body.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1385 Payment of wage higher than state minimum wage; requirement by local governmental body prohibited.

Sec. 5. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to pay to an employee a wage higher than the state minimum hourly wage rate determined under section 4 of the workforce opportunity wage act, 2014 PA 138, MCL 408.414, or, if applicable to the employer, the minimum wage provisions of the fair labor standards act of 1938, 29 USC 201 to 219, unless those federal minimum wage provisions would result in a lower minimum hourly wage than provided under state law.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1386 Payment of wage or fringe benefit based on local prevailing rates; requirement by local governmental body prohibited.

Sec. 6. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to pay to an employee a wage or fringe benefit based on wage and fringe benefit rates prevailing in the locality. This section does not apply to state projects subject to 1965 PA 166, MCL 408.551 to 408.558.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as

an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1387 Work stoppage or strike activity of employers and employees; organization by employees; regulation by local governmental body prohibited.

Sec. 7. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution regulating work stoppage or strike activity of employers and their employees or the means by which employees may organize.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1388 Providing employee paid or unpaid leave time; requirement by local governmental body prohibited.

Sec. 8. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to provide to an employee paid or unpaid leave time.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1389 Regulation of hours and scheduling provided by employer to employees; regulation by local governmental body prohibited.

Sec. 9. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution regulating hours and scheduling that an employer is required to provide to employees. This section does not prohibit an ordinance, local policy, or local resolution that limits the hours a business may operate.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1390 Participation in educational apprenticeship or apprenticeship training program; requirement by local governmental body prohibited.

Sec. 10. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer or its employees to participate in any educational apprenticeship or apprenticeship training program that is not required by state or federal law.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as

Exhibit C, 2015 PA 105, Local Government Labor Regulatory Limitation Act

an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1391 Providing employee with specific fringe benefit; requirement by local governmental body prohibited.

Sec. 11. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution requiring an employer to provide to an employee any specific fringe benefit or any other benefit for which the employer would incur an expense, including, but not limited to, those enumerated in sections 6 to 10.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1392 Wage, hour, or benefit dispute; administrative or judicial remedies; regulation by local governmental body prohibited.

Sec. 12. A local governmental body shall not adopt, enforce, or administer an ordinance, local policy, or local resolution regulating or creating administrative or judicial remedies for wage, hour, or benefit disputes, including, but not limited to, any benefits described in sections 6 to 11.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1393 Severability of invalid or inoperative provision.

Sec. 13. If any parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, or federal law permit. Any provision held invalid or inoperative is severable from the remaining portions of this act.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1394 Employment discrimination; prohibition by local governmental body.

Sec. 14. This act does not prohibit a local governmental body from adopting or enforcing an ordinance, policy, or resolution prohibiting employment discrimination.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

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Exhibit C, 2015 PA 105, Local Government Labor Regulatory Limitation Act

relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1395 Voluntary agreement between employer and local governmental body.

Sec. 15. Subject to sections 5 to 8 and 11, this act does not prohibit a local governmental body from adopting, enforcing, or administering an ordinance, local policy, or local resolution that provides for the terms and conditions of a voluntary agreement between an employer and the local governmental body in connection with the provision of services directly to the local governmental body or in connection with the receipt of a grant, tax abatement, or tax credit from the local governmental body.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

123.1396 Voluntary written agreement in effect prior to October 1, 2015.

Sec. 16. This act does not prohibit a local governmental body from enforcing a written agreement voluntarily entered into and in effect prior to October 1, 2015.

History: 2015, Act 105, Imd. Eff. June 30, 2015.

Compiler's note: Enacting section 1 of Act 105 of 2015 provides:

"Enacting section 1. This act applies to ordinances, local policies, and local resolutions adopted after December 31, 2014. Nothing in this act shall be considered as an explicit or implicit authorization or recognition of the validity of any ordinance, local policy, or local resolution adopted before January 1, 2015. Nothing in this act authorizes a local governmental body to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act, and nothing in this act shall be construed as an express or implied recognition of any such authority that may or may not exist elsewhere in state law. Whether a local governmental body had the authority, before January 1, 2015, to adopt an ordinance, local policy, or local resolution regulating the employment relationship as to matters described in this act is a separate question that this act does not address. This act is not intended to be construed to impact the reasoning or outcome of pending litigation in any way, for or against any particular legal position."

EXHIBIT 2

INITIATION OF LEGISLATION

An initiation of legislation to repeal 1965 PA 166, entitled "An act to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; to prescribe penalties," (MCL 408.551 to 408.558); and to provide for an appropriation for related purposes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Enacting section 1. 1965 PA 166, MCL 408.551 to 408.558, is repealed.

Enacting section 2. For the fiscal year ending September 30, 2018, \$75,000.00 is appropriated from the general fund to the department of licensing and regulatory affairs. The appropriation under this section is designated as a work project under section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a, for the purpose of implementing and communicating information about the repeal of 1965 PA 166, MCL 408.551 to 408.558, to be accomplished by state employees or by contract with an estimated cost not exceeding \$75,000.00 and an estimated completion date by December 31, 2019.

Enacting section 3. If any part or parts of this act are found to be in conflict with the State Constitution of 1963, the United States Constitution, or federal law, this act shall be implemented to the maximum extent that the State Constitution of 1963, the United States Constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act.

Legislative Analysis



INITIATIVE TO REPEAL PREVAILING WAGE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

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

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

Complete to 6-6-18

ISSUE BEFORE THE LEGISLATURE:

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

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

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

THE CONTENT OF THE PROPOSED INITIATED LAW:

The initiation of legislation has three enacting sections.

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

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

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

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

MCL 408.551 et seq. (repealed)

BACKGROUND INFORMATION:

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

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

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

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

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

¹ Final Staff Report: "Protecting Michigan Taxpayers" Petition.
https://www.michigan.gov/documents/sos/Staff_Report_PMT_621255_7.pdf

² *Protecting Michigan Taxpayers v Board of State Canvassers*, COA Docket No. 343566
http://publicdocs.courts.mi.gov/opinions/final/coa/20180511_c343566_17_343566.opn.pdf

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

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

FISCAL IMPACT:

Impact on Department of Licensing and Regulatory Affairs

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

Impact on State and Local Expenditures

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

Impact on State Road Construction

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

³ *Protecting Michigan Taxpayers v Board of State Canvassers*, MSC Docket No. 157761
http://publicdocs.courts.mi.gov/sct/public/orders/157761_39_01.pdf

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

POSITIONS:

The sponsor of the initiative is Protecting Michigan Taxpayers.

An opponent of the initiative is Protect Michigan Jobs.

Legislative Analyst: Patrick Morris
Fiscal Analysts: Marcus Coffin
Ben Gielczyk
William E. Hamilton
Jim Stansell

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

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



CITY OF DETROIT
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF BUDGET



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PHONE: (313) 224-6260
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WWW.DETROITMI.GOV

June 18, 2018

TO: *The Honorable Detroit City Council*

SUBJECT: *Request to Amend the FY 2018 Budget to Cover Various Anticipated Appropriation Deficits*

The Office of the CFO – Office of Budget requests authorization to amend the City of Detroit FY 2018 Budget to eliminate anticipated year-end appropriation deficits.

This budget amendment recommends corrections of anticipated appropriation deficits under the provisions of the Uniform Budgeting and Accounting Act, 1968 PA 2, MCL 141.421 to 141.440.

Inc./Decr.	Appro. #	Appropriation Name	Amount (\$)
Increase	00118	Police—Criminal Investigations Bureau	2,000,000.00
Increase	13713	Police—Budget Fiscal Operations Bureau	1,300,000.00
Increase	11376	Police—Office of Field Operations	1,300,000.00
Decrease	00718	Fire Fighting Operations	(4,600,000.00)
Increase	00223	Airport Operations Administration	500,000.00
Decrease	00063	OCFO—Office of Treasury	(500,000.00)
Increase	13968	Note C Debt Service—Expenses	14,999,610.19
Increase	13968	Note C Debt Service—Revenues	14,999,610.19
Increase	05976	MPD Auto Parking Operations—Expenses	14,999,610.19
Increase	05976	MPD Auto Parking Operations—Revenues	14,999,610.19
Increase	13366	Non-Departmental—PEG Fees	667,555.00
Decrease	13967	Non-Departmental—Contingency Funds	(667,555.00)
Increase	04739	Non-Departmental—Expenses	18,675,000.00
Increase	04739	Non-Departmental—Revenues	18,675,000.00
Increase	20528	Public Act 82 of 2018 (Street Funds)—Expenses	5,845,321.76
Increase	20528	Public Act 82 of 2018 (Street Funds)—Revenues	5,845,321.76
Increase	00362	Non-Departmental—Tax Districts	2,400,000.00
Decrease	11657	Recreation—Business Operations	(2,400,000.00)
Increase	13854	Non-Departmental Retirement Systems—Expenses	270,277.50
Increase	13854	Non-Departmental Retirement Systems—Revenues	270,277.50

Sincerely,

Tanya Stoudemire, J.D.
Deputy CFO/Budget Director

cc: Mike Duggan, Mayor
John W. Hill, CFO
David Massaron, Mayor's Office
Stephanie Grimes Washington, Mayor's Office

CITY CLERK 2018 JUN 18 PM 12:09



RESOLVED, that the FY 2018 City of Detroit Budget be and is hereby amended as follows:

Inc./Decr.	Appro. #	Appropriation Name	Amount (\$)
Increase	00118	Police—Criminal Investigations Bureau	2,000,000.00
Increase	13713	Police—Budget Fiscal Operations Bureau	1,300,000
Increase	11376	Police—Office of Field Operations	1,300,000
Decrease	00718	Fire Fighting Operations	(4,600,000.00)
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Increase	13854	Non-Departmental Retirement Systems—Expenses	270,277.50
Increase	13854	Non-Departmental Retirement Systems—Revenues	270,277.50

AND BE IT FURTHER RESOLVED; the Budget Director be and is hereby authorized to increase and decrease the aforementioned appropriations to eliminate anticipated deficits.



City of Detroit

CITY COUNCIL

19


CITY CLERK 2018 JUN 18 AM 10:17

GABE LELAND
COUNCIL MEMBER

MEMORANDUM

TO: Mr. David Whitaker, Legislative Policy Division Director

THRU: The Honorable Council President, Brenda Jones

FROM: Council Member Gabe Leland 

DATE: June 15, 2018

RE: Resolution calling for all City of Detroit employees to be paid at least \$15 per hour.

I am requesting that the Legislative Policy Division develop a resolution that calls for all City of Detroit employees to be paid \$15 per hour.

Separately, please provide a breakdown of the fiscal impact of implementing the proposed \$15 per hour wage for each of the following: full-time employees, part-time employees, and seasonal employees.

Please quantify the budgetary impact that this proposal would have and also identify places within the budget to obtain any additional funds that may be needed if such a policy is adopted.

When you have obtained the fiscal data, please coordinate the writing of the resolution with my staff.

Thank you!

CC: Honorable Detroit City Council Members
Mayor's Office, Stephanie Washington
Detroit City Clerk, Janice Winfrey