



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF LABOR STANDARDS

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**Opinion letter regarding the Applicability of Massachusetts' Prevailing Wage Laws  
to the Clarendon Hill Project in Somerville, MA**

**PW-2025-10-28  
October 28, 2025**

In this letter, the Massachusetts Department of Labor Standards (“DLS”) determines whether the Commonwealth’s prevailing wage laws, G.L. c. 149, §§ 26-27H, inclusive, apply to the construction of custom-made, prefabricated, modular housing units constructed offsite for installation at a specific public project, i.e. the Clarendon Hill Project in Somerville, MA.

**Background**

Massachusetts’ prevailing wage law applies to the construction of public works by the Commonwealth, or by a county, town, authority, or district. G.L. c. 149, §§ 26, 27. Thus, the prevailing wage statute applies to a particular project if: (1) the project is “construction”, as defined in G.L. c. 149, § 27D; (2) the project is a “public work”; and (3) the project is being undertaken by a public entity subject to the prevailing wage law. The Legislature has delegated decision-making authority to determine whether a particular project is subject to the prevailing wage laws to the Director of DLS. *See Teamsters Joint Council No. 10 v. Director of Dept. of Labor and Workforce Development*, 447 Mass. 100, 109-10 (2006) (citing G.L. c. 149, §§ 26-27F); *Niles v. Huntington Controls, Inc.*, 92 Mass. App. Ct. 15, 21-22 (2017) (noting that Courts give deference to DLS opinion letters).

On August 9, 2018, the Massachusetts Legislature enacted a home rule petition (“Somerville HRP”) that authorized the Somerville Housing Authority (“SHA”) to reconstruct and develop the state-funded Clarendon Hill public housing project at 34 North Street in Somerville. *See* Chapter 197 of the Acts of 2018. The Clarendon Hill Redevelopment Project (“Project”) replaces 216 low-income apartments with 591 units of affordable and market rate housing. Phase I involved replacing 130 of the 216 public housing units and constructing another 38 “net-new” affordable units; that construction is now complete. Phase I also included the installation of modular housing units that were made by Lab 9 in Littleton, MA.

On April 15, 2025, the Office of the Attorney General (“AGO”) asked DLS to confirm that the offsite fabrication of modular units in Littleton for the Project is subject to the Commonwealth’s

prevailing wage laws. *See* Letter from Moran to Flanagan, April 15, 2025 (“AGO Letter”) (Exhibit A). Pursuant to its [Public Review Process for Prevailing Wage Opinion Letters](#), DLS held an informal public hearing on June 26, 2025 for interested parties to submit oral and written testimony regarding “whether the construction of custom-made, prefabricated, modular housing units constructed offsite for installation at a specific public project, i.e. the Clarendon Hill Project, is subject to the Massachusetts Prevailing Wage pursuant to G.L. c. 149, §§ 26, 27.”<sup>1</sup> More than fifty individuals testified orally at the hearing, and approximately thirty submitted written testimony.

### **Analysis**

There is no dispute that the Commonwealth’s prevailing wage laws apply to the installation of the modular housing units at the Somerville site of the Project. This installation is construction on a public work and is being undertaken by a public entity subject to the prevailing wage law, namely SHA. The open question is whether the offsite fabrication of the modular housing units developed exclusively for this Project is also subject to prevailing wage.

DLS defers to the AGO’s legal interpretation that the Somerville HRP’s exclusion of the Project from “any general or special law related to the procurement and award of contracts” (as enacted by Chapter 197 of the Acts of 2018) “nullifie[s] the provision of G.L. c. 149 § 44E(4) that exempts the manufacture of modular buildings from the requirement to pay the prevailing wage for such work.”<sup>2</sup> The Somerville HRP’s exclusion, however, only means that it may be subject to the prevailing wage<sup>3</sup>; DLS must still determine whether this particular type of offsite fabrication actually is public works construction subject to G.L. c. 149, §§ 26-27H, inclusive.

The first question is whether the offsite fabrication in Littleton is “construction” within the meaning of the prevailing wage statute. *See* G.L. c. 149, § 27D (defining “construction” as including “additions to and alterations of public works”). After a comprehensive review of all testimony and careful analysis, DLS finds that, in these specific circumstances, the offsite fabrication is construction. It is undisputed that these modular housing units are “additions to and alterations of” the public work at Clarendon Hill. Furthermore, unlike traditional manufacturing, the offsite fabrication of these units is an integral part of those additions and alterations. Lab 9’s Littleton location was not a pre-existing factory with a history of manufacturing units and selling

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<sup>1</sup> DLS’ Notice of Hearing (dated June 12, 2025) (Exhibit B) specified that the public hearing would address only this specific question, and not other questions about the Project. This Opinion Letter likewise only addresses this particular question. It does not opine on any other questions raised in the AGO Letter.

<sup>2</sup> Many parties submitted responses regarding the past treatment of modular housing projects and concerns regarding the future of this practice. The AGO Letter notes that “under normal circumstances,” the requirement to pay the prevailing wage would not apply to modular housing that meets the requirements of G.L. c. 149, § 44E(4). This Opinion Letter does not affect those “normal circumstances.” Instead, this Opinion Letter concerns the unique situation where the Legislature passes a Home Rule Petition that the AGO has determined nullifies the provisions of Section 44E for a specific project.

<sup>3</sup> DLS does not perceive any constitutional defects in the Somerville Home Rule Petition. *See Opinion of the Justices*, 356 Mass. 775, 787-88 (1969); *Opinion of the Justices*, 357 Mass. 831, 833-35 (1970).

them to other parties; its first production (and in fact its only production during Phase I of the Project) was exclusively developed for Clarendon Hill. Moreover, this production was coordinated, in both timing and specifications, to allow the units to be seamlessly installed on the public construction site in Somerville. Testimony showed that Lab 9's employees worked on both the Littleton and Somerville sites, yet despite this interconnectedness, these employees' wages varied between Prevailing Wage and non-Prevailing Wage based on which site they were at on a particular day. Finally, Lab 9's own website suggests that it is part of the construction process, stating that the company uses "circular construction methods" and that its "workforce can build 75 percent of projects within the confines of a made-to-order construction method." While none of these factors by themselves are dispositive, taken together, DLS determines that, the offsite fabrication of custom modular units in the specific circumstances detailed above is construction as defined by G.L. c. 149, § 27D. See [Letter to Eachus](#), August 30, 1994 (DLS determination holding that assembly of chemical storage tanks at offsite location is construction and subject to prevailing wage).

The second question is whether the application of prevailing wage to the Littleton offsite construction otherwise meets the requirements of G.L. c. 149, §§ 26-27H, inclusive. As the Supreme Judicial Court has stated, the Director of DLS "has fairly broad policy-making authority because the Legislature delegated the details of how the prevailing wage law should be applied, subject to certain limits." *Teamsters Joint Council No. 10*, 447 Mass. at 108-09. Those limits include the requirement that the work must have a significant connection to the public works construction site. *See, e.g., id.* (the Director has the "authority to set wages for teamsters whose work had a significant connection with the work site"); *Construction Industries of Mass. v. Commissioner of Labor and Industries*, 406 Mass. 162, 168 (1989) ("When the performance of a statutorily specified job has a significant connection with the construction project, then that job falls within the domain of the posted wage law statute."). DLS determines that the work on the Project in Littleton has sufficient connection to the public works construction site in Somerville. The factors outlined above as to why the Littleton work constitutes construction demonstrate that there is a significant connection between the two sites. Lab 9 was only producing modular units for the Project during the period in question. These units were produced in Littleton with specifications and on a schedule that was dictated by the awarding authority's development plan. The construction plan from the beginning of the Project was reliant on the two sites operating in tandem. As a result, there is sufficient nexus between the offsite construction in Littleton and the Somerville site for prevailing wage to apply.<sup>4</sup>

Therefore, considering all the factors and limiting this decision to the specific facts of this Project, it is the determination of the Department of Labor Standards that the offsite fabrication of custom-made, prefabricated, modular housing units for installation at a specific public

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<sup>4</sup> This Opinion Letter is limited to the unique facts and circumstances surrounding this phase of the Project, including the fact that Lab 9's production occurred exclusively for the Clarendon Hill project during Phase 1.

project, i.e. the Clarendon Hill Project, is subject to prevailing wage.<sup>5</sup> This determination is based on the evidence presented to DLS and on the unique characteristics of the Project; nothing in this determination changes the applicability of G.L. c. 149, § 44E to other modular housing projects nor does the decision subject either offsite manufacturing or offsite fabrication in general to the prevailing wage laws.

Thank you for your cooperation regarding this matter. If you have any additional questions or concerns, please do not hesitate to contact me.

Regards,

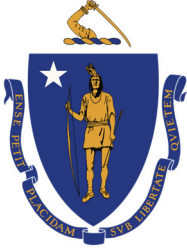
A handwritten signature in cursive script that reads "Michael Flanagan". The signature is written in black ink and is positioned above the typed name.

Michael Flanagan, Director  
Department of Labor Standards

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<sup>5</sup> This Opinion Letter takes no position concerning whether its determination should be retroactively applied. DLS notes that it received conflicting testimony regarding the parties' respective understandings at the commencement of the Project as to whether prevailing wage would apply to the offsite custom fabrication of the modular units.

# Exhibit A



## THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

April 15, 2025

Michael Flanagan, Director  
Massachusetts Department of Labor Standards  
100 Cambridge Street, Suite 500  
Boston, MA 02114

Dear Director Flanagan:

We write to seek affirmation from the Department of Labor Standards (DLS) that the requirements of the prevailing wage law, G.L. c. 149 s. 27, apply to off-site construction of modular building components on a specific project with unique characteristics as outlined below.

As you know, on November 1, 2013, DLS issued Opinion Letter PW-2013-03.11.01.13, “regarding whether custom pre-fabrication work, specifically, the off-site assemblage of architecturally custom-designed components of building systems that traditionally were constructed on-site is subject to the [Prevailing Wage] Law.”

The Opinion Letter stated, “Accordingly, the assemblage and prefabrication of custom designed components (such as plumbing, electrical conduits, air ducts, and other blueprint-specific pre-fabrication that customarily took place on the jobsite) which are only useful for the particular project are subject to the Law as there is a 'significant nexus' between the work performed and the construction project.”

Opinion Letter PW-2013-03.11.01.13 is currently listed as “Under Reconsideration” in the DLS Topical Index and listed as “Rescinded” in the catalogue of opinion letters. It is our understanding that the DLS held a “listening session” for stakeholders and members of the public to offer input into that reconsideration in January 2025. FLD is unaware of any determination that has been issued as a result of that meeting.

There is currently a public project for the construction of affordable housing by the Somerville Housing Authority called Clarendon Hill (“the project”). The developer of that project is Preservation of Affordable Housing (POAH) and the general contractor on the project is Dellbrook | JKS. There have been several subcontractors on the project representing a variety of trades and performing an array of different work. Among those are Lab 9 Modular, LLC and Lab 12 Corp.

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Boston, MA 02108  
(617) 727-2200

700 Pleasant St., Suite 310  
New Bedford, MA 02740  
(508) 990-9700

10 Mechanic St., Suite 301  
Worcester, MA 01608  
(508) 792-7600

1441 Main St., 12th Fl.  
Springfield, MA 01103  
(413) 784-1240

The project involves the installation of prefabricated modular housing units which are constructed specifically for this project offsite. Both the offsite construction and the onsite installation have been performed by employees of Lab 9 Modular, LLC (“Lab 9”) at their facility in Littleton, MA. Some offsite construction in Littleton has also been performed by employees of Lab 12 Corp. (“Lab 12”). There is no dispute that the prevailing wage laws apply to the onsite installation work at the Somerville project site.

The instant project is subject to the terms of a Home Rule Petition passed by the Massachusetts Legislature (Chapter 197 of the Acts of 2018), attached, which included the following conditions:

Construction and development activity related to redevelopment by the Somerville Housing Authority of the state-funded Clarendon Hill public housing project at 34 North street in the city of Somerville or any part thereof shall not be subject to any general or special law related to the procurement and award of contracts for the planning, design, construction management, construction, reconstruction, installation, demolition, maintenance or repair of buildings by a public agency; provided, however, that sections 26 to 27H, inclusive, of chapter 149 of the General Laws shall apply to all construction, reconstruction, installation, demolition, maintenance and repair.

As noted above, we believe the above bolded text, when read in conjunction with the remainder of the above paragraph and the relevant sections of G.L. Chapter 149, means that the requirement to pay the prevailing wage (contained in G.L. c. 149 s. 27, which is in the range specified above as applying) applies to the offsite construction of modular buildings for this project. General Laws Chapter 149, section 44E(4) states that:

The provisions of sections twenty-six to twenty-seven G, inclusive, shall not apply to the manufacture of modular buildings procured pursuant to this section...[emphasis added]

Accordingly, under normal circumstances, the requirement to pay the prevailing wage, under section twenty-seven, which falls in the above-referenced range, may not apply to the manufacture of modular buildings such as that done by Lab 9 and Lab 12 in Littleton for the Clarendon Hill project.

However, the language in 44E(4) that states that section 27, “...shall not apply to the manufacture of modular buildings procured pursuant to this section” [emphasis added] refers to the entirety of Section 44E. Section 44E exclusively addresses projects which are awarded based on the public bidding process. Thus, Section 44E appears to exempt the manufacture of modular buildings from the requirement to pay prevailing wage only when that manufacturing is part of a project subject to the public bidding process, and not to projects that are not publicly bid.

The Home Rule petition explicitly exempted the Clarendon Hill project from the public bidding process:

“Construction and development activity related to redevelopment by the Somerville Housing Authority of the state funded Clarendon Hill public housing project at 34 North

street in the city of Somerville or any part thereof shall not be subject to any general or special law related to the procurement and award of contracts for the planning, design, construction management, construction, reconstruction, installation, demolition, maintenance or repair of buildings by a public agency...”

We believe that by removing the Clarendon Hill project from the requirements of the public bidding process, the Home Rule Petition nullified the provision of G.L. c. 149 s. 44E(4) that exempts the manufacture of modular buildings from the requirement to pay the prevailing wage for such work. If that is the case, then the work performed by Lab 9’s and Lab 12’s employees performing offsite construction of modular buildings is subject to the applicable prevailing wage rates for the project set by the Department of Labor Standards. Please confirm your interpretation of the applicability of the prevailing wage law to this project.

Please let me know if you have any questions. We look forward to your decision.

Best regards,



Lauren Moran  
Chief, Fair Labor Division  
Office of the MA Attorney General



# Exhibit B



THE COMMONWEALTH OF MASSACHUSETTS  
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DEPARTMENT OF LABOR STANDARDS

MAURA HEALEY  
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DIRECTOR

## Notice of Hearing

Consistent with its Public Review Process for Prevailing Wage Opinion Letters,<sup>1</sup> the Massachusetts Department of Labor Standards (“DLS”) will conduct a public hearing concerning whether the offsite construction of prefabricated modular housing units for the Somerville Housing Authority’s Clarendon Hill project (the “Project”) is subject to the prevailing wage. The hearing will be conducted online via WebEx on **June 26, 2025**, from **10:00 a.m. to 12:00 p.m.** and **2:00 p.m. to 4:00 p.m.** The hearing can be accessed via the following link - <https://eolwdma.webex.com/eolwdma/j.php?MTID=m78c441bdd3e9e25bf5908af355787a08>.

On April 15, 2025, the Fair Labor Division of the Massachusetts Office of the Attorney General (“AGO”) submitted a request to the Massachusetts Department of Labor Standards (“DLS”) regarding the applicability of Massachusetts’ prevailing wage laws to the construction of prefabricated modular housing units specifically for use at the Project. In response to this request from the Fair Labor Division, DLS will conduct a public hearing that will address the following question:

Whether the construction of custom-made, prefabricated, modular housing units constructed offsite for installation at a specific public project, i.e. the Clarendon Hill Project, is subject to the Massachusetts Prevailing Wage pursuant to G.L. c. 149 §§ 26, 27.

The June 26, 2025 hearing will address only this specific question, and will not address other questions about the Project (including about language contained in the Home Rule Petition, Chapter 197 of the Acts of 2018, that does not pertain to prevailing wage) or about off-site fabrication in general.

Interested parties and/or duly authorized agents thereof may attend the hearing and submit relevant testimony. Parties wishing to testify orally at the hearing are encouraged to register in advance; those who do so will be given a scheduled spot to speak. Parties who do not register in advance but wish to submit oral testimony may speak at the end of the meeting, time permitting. All oral testimony will be limited to three minutes per party to ensure that all interested parties have an opportunity to be heard. Additional written testimony may also be submitted by email by **Friday, July 11, 2025, at 5:00 p.m.**

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<sup>1</sup> <https://www.mass.gov/info-details/public-review-process-for-prevailing-wage-opinion-letters>



DLS encourages interested parties to submit written testimony prior to the June hearing. Persons who want to register to speak, submit testimony, or otherwise have questions or need further information should contact General Counsel Nick Rose at [nicholas.w.rose@mass.gov](mailto:nicholas.w.rose@mass.gov) or 617-626-6837.

Date of Notice: June 12, 2025