



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5538

Introduced 1/31/2022, by Rep. Michael Halpin

SYNOPSIS AS INTRODUCED:

820 ILCS 130/1	from Ch. 48, par. 39s-1
820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/3	from Ch. 48, par. 39s-3
820 ILCS 130/5	from Ch. 48, par. 39s-5
820 ILCS 130/11	from Ch. 48, par. 39s-11

Amends the Prevailing Wage Act. Provides that the provisions of the Act apply to the construction or demolition of public works performed by an employee of a public body engaged in the construction or demolition of public works on behalf of another public body. Makes conforming changes.

LRB102 25275 SPS 34548 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Prevailing Wage Act is amended by changing
5 Sections 1, 2, 3, 5, and 11 as follows:

6 (820 ILCS 130/1) (from Ch. 48, par. 39s-1)

7 Sec. 1. It is the policy of the State of Illinois that a
8 wage of no less than the general prevailing hourly rate as paid
9 for work of a similar character in the locality in which the
10 work is performed, shall be paid to all laborers, workers and
11 mechanics employed by or on behalf of any and all public bodies
12 engaged in public works. It is also the policy of the State of
13 Illinois that a wage of no less than the general prevailing
14 hourly rate as paid for work of a similar character in the
15 locality in which the work is performed, shall be paid to all
16 employees of public bodies when engaged in public works on
17 behalf of other public bodies.

18 (Source: P.A. 83-443.)

19 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

20 Sec. 2. This Act applies to the wages of laborers,
21 mechanics and other workers employed in any public works, as
22 hereinafter defined, by any public body and to anyone under

1 contracts for public works. This includes any maintenance,
2 repair, assembly, or disassembly work performed on equipment
3 whether owned, leased, or rented.

4 As used in this Act, unless the context indicates
5 otherwise:

6 "Public works" means all fixed works constructed or
7 demolished by any public body, or paid for wholly or in part
8 out of public funds, including fixed works constructed or
9 demolished by a public body on behalf of another public body.

10 "Public works" as defined herein includes all projects
11 financed in whole or in part with bonds, grants, loans, or
12 other funds made available by or through the State or any of
13 its political subdivisions, including but not limited to:
14 bonds issued under the Industrial Project Revenue Bond Act
15 (Article 11, Division 74 of the Illinois Municipal Code), the
16 Industrial Building Revenue Bond Act, the Illinois Finance
17 Authority Act, the Illinois Sports Facilities Authority Act,
18 or the Build Illinois Bond Act; loans or other funds made
19 available pursuant to the Build Illinois Act; loans or other
20 funds made available pursuant to the Riverfront Development
21 Fund under Section 10-15 of the River Edge Redevelopment Zone
22 Act; or funds from the Fund for Illinois' Future under Section
23 6z-47 of the State Finance Act, funds for school construction
24 under Section 5 of the General Obligation Bond Act, funds
25 authorized under Section 3 of the School Construction Bond
26 Act, funds for school infrastructure under Section 6z-45 of

1 the State Finance Act, and funds for transportation purposes
2 under Section 4 of the General Obligation Bond Act. "Public
3 works" also includes (i) all projects financed in whole or in
4 part with funds from the Environmental Protection Agency under
5 the Illinois Renewable Fuels Development Program Act for which
6 there is no project labor agreement; (ii) all work performed
7 pursuant to a public private agreement under the Public
8 Private Agreements for the Illiana Expressway Act or the
9 Public-Private Agreements for the South Suburban Airport Act;
10 and (iii) all projects undertaken under a public-private
11 agreement under the Public-Private Partnerships for
12 Transportation Act. "Public works" also includes all projects
13 at leased facility property used for airport purposes under
14 Section 35 of the Local Government Facility Lease Act. "Public
15 works" also includes the construction of a new wind power
16 facility by a business designated as a High Impact Business
17 under Section 5.5(a)(3)(E) and the construction of a new
18 utility-scale solar power facility by a business designated as
19 a High Impact Business under Section 5.5(a)(3)(E-5) of the
20 Illinois Enterprise Zone Act. "Public works" also includes
21 electric vehicle charging station projects financed pursuant
22 to the Electric Vehicle Act and renewable energy projects
23 required to pay the prevailing wage pursuant to the Illinois
24 Power Agency Act. "Public works" does not include work done
25 directly by any public utility company, whether or not done
26 under public supervision or direction, or paid for wholly or

1 in part out of public funds. "Public works" also includes
2 construction projects performed by a third party contracted by
3 any public utility, as described in subsection (a) of Section
4 2.1, in public rights-of-way, as defined in Section 21-201 of
5 the Public Utilities Act, whether or not done under public
6 supervision or direction, or paid for wholly or in part out of
7 public funds. "Public works" also includes construction
8 projects that exceed 15 aggregate miles of new fiber optic
9 cable, performed by a third party contracted by any public
10 utility, as described in subsection (b) of Section 2.1, in
11 public rights-of-way, as defined in Section 21-201 of the
12 Public Utilities Act, whether or not done under public
13 supervision or direction, or paid for wholly or in part out of
14 public funds. "Public works" also includes any corrective
15 action performed pursuant to Title XVI of the Environmental
16 Protection Act for which payment from the Underground Storage
17 Tank Fund is requested. "Public works" does not include
18 projects undertaken by the owner at an owner-occupied
19 single-family residence or at an owner-occupied unit of a
20 multi-family residence. "Public works" does not include work
21 performed for soil and water conservation purposes on
22 agricultural lands, whether or not done under public
23 supervision or paid for wholly or in part out of public funds,
24 done directly by an owner or person who has legal control of
25 those lands.

26 "Construction" means all work on public works involving

1 laborers, workers or mechanics. This includes any maintenance,
2 repair, assembly, or disassembly work performed on equipment
3 whether owned, leased, or rented.

4 "Locality" means the county where the physical work upon
5 public works is performed, except (1) that if there is not
6 available in the county a sufficient number of competent
7 skilled laborers, workers and mechanics to construct the
8 public works efficiently and properly, "locality" includes any
9 other county nearest the one in which the work or construction
10 is to be performed and from which such persons may be obtained
11 in sufficient numbers to perform the work and (2) that, with
12 respect to contracts for highway work with the Department of
13 Transportation of this State, "locality" may at the discretion
14 of the Secretary of the Department of Transportation be
15 construed to include two or more adjacent counties from which
16 workers may be accessible for work on such construction.

17 "Public body" means the State or any officer, board or
18 commission of the State or any political subdivision or
19 department thereof, or any institution supported in whole or
20 in part by public funds, and includes every county, city,
21 town, village, township, school district, irrigation, utility,
22 reclamation improvement or other district and every other
23 political subdivision, district or municipality of the state
24 whether such political subdivision, municipality or district
25 operates under a special charter or not.

26 "Labor organization" means an organization that is the

1 exclusive representative of an employer's employees recognized
2 or certified pursuant to the National Labor Relations Act.

3 The terms "general prevailing rate of hourly wages",
4 "general prevailing rate of wages" or "prevailing rate of
5 wages" when used in this Act mean the hourly cash wages plus
6 annualized fringe benefits for training and apprenticeship
7 programs approved by the U.S. Department of Labor, Bureau of
8 Apprenticeship and Training, health and welfare, insurance,
9 vacations and pensions paid generally, in the locality in
10 which the work is being performed, to employees engaged in
11 work of a similar character on public works.

12 (Source: P.A. 102-9, eff. 1-1-22; 102-444, eff. 8-20-21;
13 102-673, eff. 11-30-21; revised 12-9-21.)

14 (820 ILCS 130/3) (from Ch. 48, par. 39s-3)

15 Sec. 3. Not less than the general prevailing rate of
16 hourly wages for work of a similar character on public works in
17 the locality in which the work is performed, and not less than
18 the general prevailing rate of hourly wages for legal holiday
19 and overtime work, shall be paid to all laborers, workers and
20 mechanics employed by or on behalf of any public body engaged
21 in the construction or demolition of public works. This
22 includes any maintenance, repair, assembly, or disassembly
23 work performed on equipment whether owned, leased, or rented.
24 This also includes the construction or demolition of public
25 works performed by an employee of a public body engaged in the

1 construction or demolition of public works on behalf of
2 another public body. Only such laborers, workers and mechanics
3 as are directly employed by contractors or subcontractors in
4 actual construction work on the site of the building or
5 construction job, and laborers, workers and mechanics engaged
6 in the transportation of materials and equipment to or from
7 the site, but not including the transportation by the sellers
8 and suppliers or the manufacture or processing of materials or
9 equipment, in the execution of any contract or contracts for
10 public works with any public body shall be deemed to be
11 employed upon public works. The wage for a tradesman
12 performing maintenance is equivalent to that of a tradesman
13 engaged in construction or demolition.

14 (Source: P.A. 95-341, eff. 8-21-07; 96-186, eff. 1-1-10.)

15 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

16 Sec. 5. Certified payroll.

17 (a) Any contractor and each subcontractor who participates
18 in public works and any public body that participates in
19 public works on behalf of another public body shall:

20 (1) make and keep, for a period of not less than 3
21 years from the date of the last payment made before
22 January 1, 2014 (the effective date of Public Act 98-328)
23 and for a period of 5 years from the date of the last
24 payment made on or after January 1, 2014 (the effective
25 date of Public Act 98-328) on a contract or subcontract

1 for public works, records of all laborers, mechanics, and
2 other workers employed by them on the project; the records
3 shall include (i) the worker's name, (ii) the worker's
4 address, (iii) the worker's telephone number when
5 available, (iv) the last 4 digits of the worker's social
6 security number, (v) the worker's gender, (vi) the
7 worker's race, (vii) the worker's ethnicity, (viii)
8 veteran status, (ix) the worker's classification or
9 classifications, (x) the worker's skill level, such as
10 apprentice or journeyman, (xi) the worker's gross and net
11 wages paid in each pay period, (xii) the worker's number
12 of hours worked each day, (xiii) the worker's starting and
13 ending times of work each day, (xiv) the worker's hourly
14 wage rate, (xv) the worker's hourly overtime wage rate,
15 (xvi) the worker's hourly fringe benefit rates, (xvii) the
16 name and address of each fringe benefit fund, (xviii) the
17 plan sponsor of each fringe benefit, if applicable, and
18 (xix) the plan administrator of each fringe benefit, if
19 applicable; and

20 (2) no later than the 15th day of each calendar month
21 file a certified payroll for the immediately preceding
22 month with the public body in charge of the project until
23 the Department of Labor activates the database created
24 under Section 5.1 at which time certified payroll shall
25 only be submitted to that database, except for projects
26 done by State agencies that opt to have contractors submit

1 certified payrolls directly to that State agency. A State
2 agency that opts to directly receive certified payrolls
3 must submit the required information in a specified
4 electronic format to the Department of Labor no later than
5 10 days after the certified payroll was filed with the
6 State agency. A certified payroll must be filed for only
7 those calendar months during which construction on a
8 public works project has occurred. The certified payroll
9 shall consist of a complete copy of the records identified
10 in paragraph (1) of this subsection (a), but may exclude
11 the starting and ending times of work each day. The
12 certified payroll shall be accompanied by a statement
13 signed by the contractor or subcontractor or an officer,
14 employee, or agent of the contractor or subcontractor or
15 an officer, employee, or agent of a public body engaged in
16 the construction or demolition of public works on behalf
17 of another public body, which avers that: (i) he or she has
18 examined the certified payroll records required to be
19 submitted by the Act and such records are true and
20 accurate; (ii) the hourly rate paid to each worker is not
21 less than the general prevailing rate of hourly wages
22 required by this Act; and (iii) the public body engaged in
23 the construction or demolition of public works on behalf
24 of another public body or the contractor or subcontractor
25 is aware that filing a certified payroll that he or she
26 knows to be false is a Class A misdemeanor. A general

1 contractor is not prohibited from relying on the
2 certification of a lower tier subcontractor, provided the
3 general contractor does not knowingly rely upon a
4 subcontractor's false certification. Any public body
5 engaged in the construction or demolition of public works
6 on behalf of another public body, any officer, employee,
7 or agent of a public body engaged in the construction or
8 demolition of public works on behalf of another public
9 body, any contractor or subcontractor subject to this Act,
10 and any officer, employee, or agent of such contractor or
11 subcontractor whose duty as such officer, employee, or
12 agent it is to file such certified payroll who willfully
13 fails to file such a certified payroll on or before the
14 date such certified payroll is required by this paragraph
15 to be filed and any person who willfully files a false
16 certified payroll that is false as to any material fact is
17 in violation of this Act and guilty of a Class A
18 misdemeanor. The public body in charge of the project
19 shall keep the records submitted in accordance with this
20 paragraph (2) of subsection (a) before January 1, 2014
21 (the effective date of Public Act 98-328) for a period of
22 not less than 3 years, and the records submitted in
23 accordance with this paragraph (2) of subsection (a) on or
24 after January 1, 2014 (the effective date of Public Act
25 98-328) for a period of 5 years, from the date of the last
26 payment for work on a contract or subcontract for public

1 works or until the Department of Labor activates the
2 database created under Section 5.1, whichever is less.
3 After the activation of the database created under Section
4 5.1, the Department of Labor rather than the public body
5 in charge of the project shall keep the records and
6 maintain the database. The records submitted in accordance
7 with this paragraph (2) of subsection (a) shall be
8 considered public records, except an employee's address,
9 telephone number, social security number, race, ethnicity,
10 and gender, and made available in accordance with the
11 Freedom of Information Act. The public body shall accept
12 any reasonable submissions by the contractor that meet the
13 requirements of this Section.

14 A contractor, subcontractor, or public body may retain
15 records required under this Section in paper or electronic
16 format.

17 (b) Upon 7 business days' notice, the public body engaged
18 in the construction or demolition of public works on behalf of
19 another public body or the contractor and each subcontractor
20 shall make available for inspection and copying at a location
21 within this State during reasonable hours, the records
22 identified in paragraph (1) of subsection (a) of this Section
23 to the public body in charge of the project, its officers and
24 agents, the Director of Labor and his deputies and agents, and
25 to federal, State, or local law enforcement agencies and
26 prosecutors.

1 (c) A contractor or subcontractor who remits contributions
2 to fringe benefit funds that are jointly maintained and
3 jointly governed by one or more employers and one or more labor
4 organizations in accordance with the federal Labor Management
5 Relations Act shall make and keep certified payroll records
6 that include the information required under items (i) through
7 (viii) of paragraph (1) of subsection (a) only. However, the
8 information required under items (ix) through (xv) of
9 paragraph (1) of subsection (a) shall be required for any
10 contractor or subcontractor who remits contributions to a
11 fringe benefit fund that is not jointly maintained and jointly
12 governed by one or more employers and one or more labor
13 organizations in accordance with the federal Labor Management
14 Relations Act.

15 (Source: P.A. 100-1177, eff. 6-1-19; 101-31, eff. 6-28-19.)

16 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

17 Sec. 11. No public works project shall be instituted
18 unless the provisions of this Act have been complied with. The
19 provisions of this Act shall not be applicable to Federal
20 construction projects which require a prevailing wage
21 determination by the United States Secretary of Labor. The
22 Illinois Department of Labor represented by the Attorney
23 General is empowered to sue for injunctive relief against the
24 awarding of any contract or the continuation of work under any
25 contract for public works at a time when the prevailing wage

1 prerequisites have not been met. Any contract for public works
2 awarded at a time when the prevailing wage prerequisites had
3 not been met shall be void as against public policy and the
4 public body engaged in the construction or demolition of
5 public works on behalf of another public body or the
6 contractor is prohibited from recovering any damages for the
7 voiding of the contract or pursuant to the terms of the
8 contract. The public body engaged in the construction or
9 demolition of public works on behalf of another public body or
10 the contractor is limited to a claim for amounts actually paid
11 for labor and materials supplied to the public body. Where
12 objections to a determination of the prevailing rate of wages
13 or a court action relative thereto is pending, the public body
14 shall not continue work on the project unless sufficient funds
15 are available to pay increased wages if such are finally
16 determined or unless the Department of Labor certifies such
17 determination of the prevailing rate of wages as correct.

18 Any employee of a public body that engaged in the
19 construction or demolition of public works on behalf of
20 another public body and any laborer, worker or mechanic
21 employed by the contractor or by any sub-contractor under him
22 who is paid for his services in a sum less than the stipulated
23 rates for work done under such contract, shall have a right of
24 action for whatever difference there may be between the amount
25 so paid, and the rates provided by the contract together with
26 costs and such reasonable attorney's fees as shall be allowed

1 by the court. Such contractor or subcontractor shall also be
2 liable to the Department of Labor for 20% of such
3 underpayments and shall be additionally liable to the laborer,
4 worker or mechanic for punitive damages in the amount of 2% of
5 the amount of any such penalty to the State for underpayments
6 for each month following the date of payment during which such
7 underpayments remain unpaid. Where a second or subsequent
8 action to recover underpayments is brought against a public
9 body that engaged in the construction or demolition of public
10 works on behalf of another public body or a contractor or
11 subcontractor and the public body or contractor or
12 subcontractor is found liable for underpayments to any
13 employee, laborer, worker, or mechanic, the public body or
14 contractor or subcontractor shall also be liable to the
15 Department of Labor for 50% of the underpayments payable as a
16 result of the second or subsequent action, and shall be
17 additionally liable for 5% of the amount of any such penalty to
18 the State for underpayments for each month following the date
19 of payment during which the underpayments remain unpaid. The
20 Department shall also have a right of action on behalf of any
21 individual who has a right of action under this Section. An
22 action brought to recover same shall be deemed to be a suit for
23 wages, and any and all judgments entered therein shall have
24 the same force and effect as other judgments for wages. The
25 action shall be brought within 5 years from the date of the
26 failure to pay the wages or compensation. At the request of any

1 employee employed by a public body that engaged in the
2 construction or demolition of public works on behalf of
3 another public body or any laborer, workman or mechanic
4 employed by the contractor or by any subcontractor under him
5 who is paid less than the prevailing wage rate required by this
6 Act, the Department of Labor may take an assignment of such
7 wage claim in trust for the assigning laborer, workman or
8 mechanic and may bring any legal action necessary to collect
9 such claim, and the public body that engaged in the
10 construction or demolition of public works on behalf of
11 another public body or the contractor or subcontractor shall
12 be required to pay the costs incurred in collecting such
13 claim.

14 (Source: P.A. 98-328, eff. 1-1-14.)