



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB1370

Introduced 02/09/05, by Rep. Larry McKeon - Charles E. Jefferson - Brandon W. Phelps - Cynthia Soto

#### SYNOPSIS AS INTRODUCED:

820 ILCS 130/6	from Ch. 48, par. 39s-6
820 ILCS 130/11	from Ch. 48, par. 39s-11
820 ILCS 130/11a	from Ch. 48, par. 39s-11a
820 ILCS 130/11b	

Amends the Prevailing Wage Act. Provides that specified violations of the Act are Class A (rather than Class B) misdemeanors. Provides that a contractor or subcontractor who pays a worker less than the stipulated rates for work performed under a contract is liable to the Department of Labor for 50% (rather than 20%) of the underpayment and is liable to the worker for punitive damages in the amount of 5% (rather than 2%) of the amount of the penalty to the State for each month following the date of payment during which the underpayment remains unpaid. Provides that the list of contractors or subcontractors found to have disregarded their obligations to employees under the Act shall include contractors or subcontractors who, on 2 separate occasions within 5 years (rather than on 2 separate occasions, without regard to a time period), have been determined to have violated the Act. Provides that no contract may be awarded to a contractor or subcontractor appearing on the list, or to an entity in which the contractor or subcontractor has an interest, until 5 (rather than 2) years have elapsed from the date of publication of the list. Provides that a party violating provisions protecting whistle blowers is liable to the Department of Labor for a penalty of \$5,000 for each violation.

LRB094 09246 WGH 39480 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

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 6, 11, 11a, and 11b as follows:

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

7 Sec. 6. Any officer, agent or representative of any public  
8 body who wilfully violates, or omits to comply with, any of the  
9 provisions of this Act, and any contractor or subcontractor, or  
10 agent or representative thereof, doing public work as  
11 aforesaid, who neglects to keep, or cause to be kept, an  
12 accurate record of the names, occupation and actual wages paid  
13 to each laborer, worker and mechanic employed by him, in  
14 connection with the public work or who refuses to allow access  
15 to same at any reasonable hour to any person authorized to  
16 inspect same under this Act, is guilty of a Class A ~~B~~  
17 misdemeanor.

18 The Department of Labor shall inquire diligently as to any  
19 violation of this Act, shall institute actions for penalties  
20 herein prescribed, and shall enforce generally the provisions  
21 of this Act. The Attorney General shall prosecute such cases  
22 upon complaint by the Department or any interested person.

23 (Source: P.A. 81-992.)

24 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

25 Sec. 11. No public works project shall be instituted unless  
26 the provisions of this Act have been complied with. The  
27 provisions of this Act shall not be applicable to Federal  
28 construction projects which require a prevailing wage  
29 determination by the United States Secretary of Labor. The  
30 Illinois Department of Labor represented by the Attorney  
31 General is empowered to sue for injunctive relief against the

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

17       Any laborer, worker or mechanic employed by the contractor  
18 or by any sub-contractor under him who is paid for his services  
19 in a sum less than the stipulated rates for work done under  
20 such contract, shall have a right of action for whatever  
21 difference there may be between the amount so paid, and the  
22 rates provided by the contract together with costs and such  
23 reasonable attorney's fees as shall be allowed by the court.  
24 Such contractor or subcontractor shall also be liable to the  
25 Department of Labor for 50% ~~20%~~ of such underpayments and shall  
26 be additionally liable to the laborer, worker or mechanic for  
27 punitive damages in the amount of 5% ~~2%~~ of the amount of any  
28 such penalty to the State for underpayments for each month  
29 following the date of payment during which such underpayments  
30 remain unpaid. The Department shall also have a right of action  
31 on behalf of any individual who has a right of action under  
32 this Section. An action brought to recover same shall be deemed  
33 to be a suit for wages, and any and all judgments entered  
34 therein shall have the same force and effect as other judgments  
35 for wages. At the request of any laborer, workman or mechanic  
36 employed by the contractor or by any subcontractor under him

1 who is paid less than the prevailing wage rate required by this  
2 Act, the Department of Labor may take an assignment of such  
3 wage claim in trust for the assigning laborer, workman or  
4 mechanic and may bring any legal action necessary to collect  
5 such claim, and the contractor or subcontractor shall be  
6 required to pay the costs incurred in collecting such claim.

7 (Source: P.A. 86-799.)

8 (820 ILCS 130/11a) (from Ch. 48, par. 39s-11a)

9 Sec. 11a. The Director of the Department of Labor shall  
10 publish in the Illinois Register no less often than once each  
11 calendar quarter a list of contractors or subcontractors found  
12 to have disregarded their obligations to employees under this  
13 Act. The Department of Labor shall determine the contractors or  
14 subcontractors who, on 2 separate occasions within 5 years,  
15 have been determined to have violated the provisions of this  
16 Act. Upon such determination the Department shall notify the  
17 violating contractor or subcontractor. Such contractor or  
18 subcontractor shall then have 10 working days to request a  
19 hearing by the Department on the alleged violations. Failure to  
20 respond within the 10 working day period shall result in  
21 automatic and immediate placement and publication on the list.  
22 If the contractor or subcontractor requests a hearing within  
23 the 10 working day period, the Director shall set a hearing on  
24 the alleged violations. Such hearing shall take place no later  
25 than 45 calendar days after the receipt by the Department of  
26 Labor of the request for a hearing. The Department of Labor is  
27 empowered to promulgate, adopt, amend and rescind rules and  
28 regulations to govern the hearing procedure. No contract shall  
29 be awarded to a contractor or subcontractor appearing on the  
30 list, or to any firm, corporation, partnership or association  
31 in which such contractor or subcontractor has an interest until  
32 5 ~~2~~ years have elapsed from the date of publication of the list  
33 containing the name of such contractor or subcontractor.

34 (Source: P.A. 93-38, eff. 6-1-04.)

1 (820 ILCS 130/11b)

2 Sec. 11b. Discharge or discipline of "whistle blowers"  
3 prohibited.

4 (a) No person shall discharge, discipline, or in any other  
5 way discriminate against, or cause to be discharged,  
6 disciplined, or discriminated against, any employee or any  
7 authorized representative of employees by reason of the fact  
8 that the employee or representative has filed, instituted, or  
9 caused to be filed or instituted any proceeding under this Act,  
10 or has testified or is about to testify in any proceeding  
11 resulting from the administration or enforcement of this Act,  
12 or offers any evidence of any violation of this Act.

13 (b) Any employee or a representative of employees who  
14 believes that he has been discharged, disciplined, or otherwise  
15 discriminated against by any person in violation of subsection  
16 (a) of this Section may, within 30 days after the alleged  
17 violation occurs, apply to the Director of Labor for a review  
18 of the discharge, discipline, or alleged discrimination. A copy  
19 of the application shall be sent to the person who allegedly  
20 committed the violation, who shall be the respondent. Upon  
21 receipt of an application, the Director shall cause such  
22 investigation to be made as he or she deems appropriate. The  
23 investigation shall provide an opportunity for a public hearing  
24 at the request of any party to the review to enable the parties  
25 to present information relating to the alleged violation. The  
26 parties shall be given written notice of the time and place of  
27 the hearing at least 5 days before the hearing. Upon receiving  
28 the report of the investigation, the Director shall make  
29 findings of fact. If the Director finds that a violation did  
30 occur, he or she shall issue a decision incorporating his or  
31 her findings and requiring the party committing the violation  
32 to take such affirmative action to abate the violation as the  
33 Director deems appropriate, including, but not limited to, the  
34 rehiring or reinstatement of the employee or representative of  
35 employees to his or her former position and compensating him or  
36 her for the time he or she was unemployed. The party committing

1 the violation shall also be liable to the Department of Labor  
2 for a penalty of \$5,000 for each violation of this Section. If  
3 the Director finds that there was no violation, he or she shall  
4 issue an order denying the application. An order issued by the  
5 Director under this Section shall be subject to judicial review  
6 under the Administrative Review Law.

7 (c) The Director shall adopt rules implementing this  
8 Section in accordance with the Illinois Administrative  
9 Procedure Act.

10 (Source: P.A. 88-359.)