



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB5270

Introduced 01/25/06, by Rep. Dave Winters

#### SYNOPSIS AS INTRODUCED:

820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/4	from Ch. 48, par. 39s-4
820 ILCS 130/5a new	
820 ILCS 130/5b new	
820 ILCS 130/6	from Ch. 48, par. 39s-6

Amends the Prevailing Wage Act. Provides that a public body or other entity covered by the Act that contracts for work with a contractor or subcontractor without a public bid or project specification shall provide the contractor or subcontractor with a prevailing wage notice on the project on the purchase order or on a separate document. Provides that, if the Department of Labor determines that a violation of the Act has occurred, the Department shall determine whether a proper notice was given to the contractor, and, if a notice was not given, the Department shall order the public body to pay back wages, interest, penalties, or fines owed by the contractor to its employees. Provides that a contractor is not in violation if a notice is not given to the contractor. Provides that the failure to provide a notice does not diminish the obligation of a contractor to pay the prevailing wage. Provides that a contractor who has awarded work to a subcontractor without a contract or without a contract specification may comply with notice requirements by providing a lower tiered subcontractor with a written prevailing wage notice. Provides that a contractor with a business location where workers regularly visit may, instead of posting a prevailing wage notice on a job site, post in a conspicuous location at that business the current prevailing wage rate or give a written notice to those workers. Provides that information made available under a Freedom of Information Act request in accordance with provisions of the Act regarding certified payrolls shall be used only to enforce the Act and that any misuse of the information is prohibited. Sets forth criminal and civil penalties for the misuse of information. Provides that a written complaint regarding an alleged violation of this Act shall be filed with the Director of Labor and sets forth requirements concerning the handling of the complaint. Makes other changes.

LRB094 18796 WGH 54203 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL 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 2, 4, and 6 and adding Sections 5a and 5b as follows:

6 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

7 Sec. 2. This Act applies to the wages of laborers,  
8 mechanics and other workers employed in any public works, as  
9 hereinafter defined, by any public body and to anyone under  
10 contracts for public works.

11 As used in this Act, unless the context indicates  
12 otherwise:

13 "Public works" means all fixed works constructed by any  
14 public body, other than work done directly by any public  
15 utility company, whether or not done under public supervision  
16 or direction, or paid for wholly or in part out of public  
17 funds. "Public works" as defined herein includes all projects  
18 financed in whole or in part with bonds issued under the  
19 Industrial Project Revenue Bond Act (Article 11, Division 74 of  
20 the Illinois Municipal Code), the Industrial Building Revenue  
21 Bond Act, the Illinois Finance Authority Act, the Illinois  
22 Sports Facilities Authority Act, or the Build Illinois Bond  
23 Act, and all projects financed in whole or in part with loans  
24 or other funds made available pursuant to the Build Illinois  
25 Act. "Public works" also includes all projects financed in  
26 whole or in part with funds from the Fund for Illinois' Future  
27 under Section 6z-47 of the State Finance Act, funds for school  
28 construction under Section 5 of the General Obligation Bond  
29 Act, funds authorized under Section 3 of the School  
30 Construction Bond Act, funds for school infrastructure under  
31 Section 6z-45 of the State Finance Act, and funds for  
32 transportation purposes under Section 4 of the General

1 Obligation Bond Act. "Public works" also includes all projects  
2 financed in whole or in part with funds from the Department of  
3 Commerce and Economic Opportunity ~~Community Affairs~~ under the  
4 Illinois Renewable Fuels Development Program Act for which  
5 there is no project labor agreement.

6 "Construction" means all work on public works involving  
7 laborers, workers or mechanics.

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

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

30 The terms "general prevailing rate of hourly wages",  
31 "general prevailing rate of wages" or "prevailing rate of  
32 wages" when used in this Act mean the hourly cash wages plus  
33 fringe benefits for training and apprenticeship programs  
34 approved by the U.S. Department of Labor, Bureau of  
35 Apprenticeship and Training, health and welfare, insurance,  
36 ~~vacations and~~ pensions paid generally, in the locality in which

1 the work is being performed, as well as the hourly cost of  
2 vacation benefits, to employees engaged in work of a similar  
3 character on public works.

4 (Source: P.A. 92-16, eff. 6-28-01; 93-15, eff. 6-11-03; 93-16,  
5 eff. 1-1-04; 93-205, eff. 1-1-04; revised 1-12-04.)

6 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

7 Sec. 4. (a) The public body awarding any contract for  
8 public work or otherwise undertaking any public works, shall  
9 ascertain the general prevailing rate of hourly wages in the  
10 locality in which the work is to be performed, for each craft  
11 or type of worker or mechanic needed to execute the contract,  
12 and where the public body performs the work without letting a  
13 contract therefor, shall ascertain the prevailing rate of wages  
14 on a per hour basis in the locality, and such public body shall  
15 specify in the resolution or ordinance and in the call for bids  
16 for the contract, that the general prevailing rate of wages in  
17 the locality for each craft or type of worker or mechanic  
18 needed to execute the contract or perform such work, also the  
19 general prevailing rate for legal holiday and overtime work, as  
20 ascertained by the public body or by the Department of Labor  
21 shall be paid for each craft or type of worker needed to  
22 execute the contract or to perform such work, and it shall be  
23 mandatory upon the contractor to whom the contract is awarded  
24 and upon any subcontractor under him, and where the public body  
25 performs the work, upon the public body, to pay not less than  
26 the specified rates to all laborers, workers and mechanics  
27 employed by them in the execution of the contract or such work;  
28 provided, however, that if the public body desires that the  
29 Department of Labor ascertain the prevailing rate of wages, it  
30 shall notify the Department of Labor to ascertain the general  
31 prevailing rate of hourly wages for work under contract, or for  
32 work performed by a public body without letting a contract as  
33 required in the locality in which the work is to be performed,  
34 for each craft or type of worker or mechanic needed to execute  
35 the contract or project or work to be performed. Upon such

1 notification the Department of Labor shall ascertain such  
2 general prevailing rate of wages, and certify the prevailing  
3 wage to such public body. The public body awarding the contract  
4 shall cause to be inserted in the project specifications and  
5 the contract a stipulation to the effect that not less than the  
6 prevailing rate of wages as found by the public body or  
7 Department of Labor or determined by the court on review shall  
8 be paid to all laborers, workers and mechanics performing work  
9 under the contract.

10 (a-5) When a public body or other entity covered by this  
11 Act contracts for work with a contractor or subcontractor  
12 without a public bid or project specification, such public body  
13 or other entity shall provide the contractor or subcontractor  
14 with a written notice that the prevailing wage is required to  
15 be paid on the project as a statement on the purchase order  
16 related to the work to be done or on a separate document.

17 Where a complaint has been made and the Department has  
18 determined a violation has occurred, the Department shall  
19 determine if proper notice was given. If proper notice was not  
20 provided to the contractor by the public body, the Department  
21 shall order the public body to pay any back wages, interest,  
22 penalties or fines owed by the contractor to its employees who  
23 worked on the project. A contractor shall not be deemed in  
24 violation of this Act if such notice is not provided. The  
25 failure to provide notice by a public body does not diminish  
26 the obligation of a contractor to pay the prevailing wage rate  
27 as determined under this Act.

28 (b) It shall also be mandatory upon the contractor to whom  
29 the contract is awarded to insert into each subcontract and  
30 into the project specifications for each subcontract a written  
31 stipulation to the effect that not less than the prevailing  
32 rate of wages shall be paid to all laborers, workers, and  
33 mechanics performing work under the contract. It shall also be  
34 mandatory upon each subcontractor to cause to be inserted into  
35 each lower tiered subcontract and into the project  
36 specifications for each lower tiered subcontract a stipulation

1 to the effect that not less than the prevailing rate of wages  
2 shall be paid to all laborers, workers, and mechanics  
3 performing work under the contract. A contractor or  
4 subcontractor who fails to comply with this subsection (b) is  
5 in violation of this Act. When a contractor has awarded work to  
6 a subcontractor without a contract or without a contract  
7 specification, the contractor may comply with this subsection  
8 (b) by providing a lower tiered subcontractor with a written  
9 statement indicating that not less than the prevailing wage  
10 rate shall be paid to all laborers, workers and mechanics  
11 performing work on the project.

12 (c) It shall also require in all such contractor's bonds  
13 that the contractor include such provision as will guarantee  
14 the faithful performance of such prevailing wage clause as  
15 provided by contract. All bid specifications shall list the  
16 specified rates to all laborers, workers and mechanics in the  
17 locality for each craft or type of worker or mechanic needed to  
18 execute the contract.

19 (d) If the Department of Labor revises the prevailing rate  
20 of hourly wages to be paid by the public body, the revised rate  
21 shall apply to such contract, and the public body shall be  
22 responsible to notify the contractor and each subcontractor, of  
23 the revised rate.

24 (e) Two or more investigatory hearings under this Section  
25 on the issue of establishing a new prevailing wage  
26 classification for a particular craft or type of worker shall  
27 be consolidated in a single hearing before the Department. Such  
28 consolidation shall occur whether each separate investigatory  
29 hearing is conducted by a public body or the Department. The  
30 party requesting a consolidated investigatory hearing shall  
31 have the burden of establishing that there is no existing  
32 prevailing wage classification for the particular craft or type  
33 of worker in any of the localities under consideration.

34 (f) It shall be mandatory upon the contractor or  
35 construction manager to whom a contract for public works is  
36 awarded to post, at a location on the project site of the

1 public works that is easily accessible to the workers engaged  
2 on the project, the prevailing wage rates for each craft or  
3 type of worker or mechanic needed to execute the contract or  
4 project or work to be performed.

5 In lieu of posting on a job site, a contractor which has a  
6 business location where laborers, workers, or mechanics  
7 regularly visit may:

8 (1) post in a conspicuous location at that business the  
9 current prevailing wage rate for all public bodies in which  
10 such laborers, workers, or mechanics could be on prevailing  
11 wage projects; or

12 (2) provide to such laborers, workers, or mechanics  
13 engaged on the project a written notice indicating the  
14 prevailing wage rate for the public works project.

15 A failure to post or provide a prevailing wage rate as  
16 required by this Section is a violation of this Act.

17 (Source: P.A. 92-783, eff. 8-6-02; 93-15, eff. 6-11-03; 93-16,  
18 eff. 1-1-04; 93-38, eff. 6-1-04; revised 10-29-04.)

19 (820 ILCS 130/5a new)

20 Sec. 5a. Misuse of information; harassment. Information  
21 made available pursuant to a request under the Freedom of  
22 Information Act in accordance with subparagraph (a) of Section  
23 5 shall be used only to enforce this Act. Any other use of the  
24 information, including but not limited to using the information  
25 to file complaints that are frivolous, vexatious, or brought  
26 primarily for purposes of harassment, constitutes misuse of  
27 information and is prohibited.

28 (820 ILCS 130/5b new)

29 Sec. 5b. Penalties for misuse of information. Any person  
30 who misuses information obtained under this Act is in violation  
31 of this Act and shall be:

32 (1) guilty of a Class B misdemeanor;

33 (2) liable for reasonable attorney's fees and other  
34 litigation costs reasonably incurred by any other party who

1 prevails in any action under this Section; and

2 (3) liable to the Department of Labor for a penalty of  
3 \$5,000 for each violation.

4 (820 ILCS 130/6) (from Ch. 48, par. 39s-6)

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

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

21 After an alleged violation occurs, a written complaint  
22 regarding an alleged violation of this Act shall be filed with  
23 the Director of Labor. Within 14 days of a complaint being  
24 field with the Director, a copy of the complaint shall be sent  
25 to the contractor who allegedly committed the violation, who  
26 shall be the respondent.

27 If the complaint has been filed by an employee of the  
28 respondent, the Department shall not send a copy of the  
29 complaint to the respondent until the complaint is investigated  
30 and closed.

31 Any information regarding an employee shall be redacted by  
32 the Department prior to being sent to the respondent.

33 Upon receipt of a complaint, the Director shall cause such  
34 investigation to be made as he or she deems appropriate.

35 (Source: P.A. 94-488, eff. 1-1-06.)