



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0773

Introduced 2/7/2007, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/3	from Ch. 48, par. 39s-3
820 ILCS 130/4	from Ch. 48, par. 39s-4
820 ILCS 130/5	from Ch. 48, par. 39s-5
820 ILCS 130/6	from Ch. 48, par. 39s-6
820 ILCS 130/11	from Ch. 48, par. 39s-11
820 ILCS 130/11b	
820 ILCS 130/11a rep.	

Amends the Prevailing Wage Act. Provides that the Act applies to maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. Provides that all contractors and subcontractors required to pay the prevailing wage shall make payment of the wage in legal tender without a deduction for food, sleeping accommodations, transportation, use of tools, or any other thing of any kind or description.

LRB095 09068 RLC 29259 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

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, 3, 4, 5, 6, 11, and 11b 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. This includes any maintenance,
11 repair, assembly, or disassembly work performed on equipment
12 whether owned, leased or rented.

13 As used in this Act, unless the context indicates
14 otherwise:

15 "Public works" means all fixed works constructed by any
16 public body, other than work done directly by any public
17 utility company, whether or not done under public supervision
18 or direction, or paid for wholly or in part out of public
19 funds. "Public works" as defined herein includes all projects
20 financed in whole or in part with bonds issued under the
21 Industrial Project Revenue Bond Act (Article 11, Division 74 of
22 the Illinois Municipal Code, the Tax Increment Allocation
23 Redevelopment Act (Article 11, Division 74.4 of the Illinois

1 Municipal Code), the Industrial Building Revenue Bond Act, the
2 Illinois Finance Authority Act, the Illinois Sports Facilities
3 Authority Act, or the Build Illinois Bond Act, and all projects
4 financed in whole or in part with loans or other funds made
5 available pursuant to the Build Illinois Act. "Public works"
6 also includes all projects financed in whole or in part with
7 funds from the Fund for Illinois' Future under Section 6z-47 of
8 the State Finance Act, funds for school construction under
9 Section 5 of the General Obligation Bond Act, funds authorized
10 under Section 3 of the School Construction Bond Act, funds for
11 school infrastructure under Section 6z-45 of the State Finance
12 Act, and funds for transportation purposes under Section 4 of
13 the General Obligation Bond Act. "Public works" also includes
14 all projects financed in whole or in part with funds from the
15 Department of Commerce and Economic Opportunity under the
16 Illinois Renewable Fuels Development Program Act for which
17 there is no project labor agreement. "Public works" also
18 includes all projects at leased facility property used for
19 airport purposes under Section 35 of the Local Government
20 Facility Lease Act and all projects financed in whole or in
21 part with loans or other funds made available pursuant to the
22 Illinois Enterprise Zone Loan Act.

23 "Construction" means all work on public works involving
24 laborers, workers or mechanics. This includes any maintenance,
25 repair, assembly, or disassembly work performed on equipment
26 whether owned, leased, or rented.

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

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

23 The terms "general prevailing rate of hourly wages",
24 "general prevailing rate of wages" or "prevailing rate of
25 wages" when used in this Act mean the hourly cash wages plus
26 fringe benefits for training and apprenticeship programs

1 approved by the U.S. Department of Labor, Bureau of
2 Apprenticeship and Training, health and welfare, insurance,
3 vacations and pensions paid generally, in the locality in which
4 the work is being performed, to employees engaged in work of a
5 similar character on public works.

6 "Contractor" or "subcontractor" means any person or entity
7 who undertakes to, offers to undertake to, purports to have the
8 capacity to undertake to, submits a bid to, or does himself or
9 herself or by or through others, engage in a public works.

10 (Source: P.A. 93-15, eff. 6-11-03; 93-16, eff. 1-1-04; 93-205,
11 eff. 1-1-04; 94-750, eff. 5-9-06.)

12 (820 ILCS 130/3) (from Ch. 48, par. 39s-3)

13 Sec. 3. Not less than the general prevailing rate of hourly
14 wages for work of a similar character on public works in the
15 locality in which the work is performed, and not less than the
16 general prevailing rate of hourly wages for legal holiday and
17 overtime work, shall be paid to all laborers, workers and
18 mechanics employed by or on behalf of any public body engaged
19 in the construction of public works. This includes any
20 maintenance, repair, assembly, or disassembly work performed
21 on equipment whether owned, leased, or rented. Only such
22 laborers, workers and mechanics as are directly employed by
23 contractors or subcontractors in actual construction work on
24 the site of the building or construction job, or at a facility
25 dedicated exclusively, or nearly so, to performance of the

1 contract or project, and are located in proximity to the actual
2 construction location that it would be reasonable to include
3 them, and laborers, workers and mechanics engaged in the
4 transportation of materials and equipment to or from the site,
5 but not including the transportation by the sellers and
6 suppliers or the manufacture or processing of materials or
7 equipment, in the execution of any contract or contracts for
8 public works with any public body shall be deemed to be
9 employed upon public works. The wage for a tradesman performing
10 maintenance is equivalent to that of a tradesman engaged in
11 construction. All contractors and subcontractors required to
12 pay the prevailing wage under this Act shall make payment of
13 such wages in legal tender, without any deduction for food,
14 sleeping accommodations, transportation, use of tools, or any
15 other thing of any kind or description.

16 (Source: P.A. 93-15, eff. 6-11-03; 93-16, eff. 1-1-04.)

17 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

18 Sec. 4. (a) The public body awarding any contract for
19 public work or otherwise undertaking any public works, shall
20 ascertain the general prevailing rate of hourly wages in the
21 locality in which the work is to be performed, for each craft
22 or type of worker or mechanic needed to execute the contract,
23 and where the public body performs the work without letting a
24 contract therefor, shall ascertain the prevailing rate of wages
25 on a per hour basis in the locality, and such public body shall

1 specify in the resolution or ordinance and in the call for bids
2 for the contract, that the general prevailing rate of wages in
3 the locality for each craft or type of worker or mechanic
4 needed to execute the contract or perform such work, also the
5 general prevailing rate for legal holiday and overtime work, as
6 ascertained by the public body or by the Department of Labor
7 shall be paid for each craft or type of worker needed to
8 execute the contract or to perform such work, and it shall be
9 mandatory upon the contractor to whom the contract is awarded
10 and upon any subcontractor under him, and where the public body
11 performs the work, upon the public body, to pay not less than
12 the specified rates to all laborers, workers and mechanics
13 employed by them in the execution of the contract or such work;
14 provided, however, that if the public body desires that the
15 Department of Labor ascertain the prevailing rate of wages, it
16 shall notify the Department of Labor to ascertain the general
17 prevailing rate of hourly wages for work under contract, or for
18 work performed by a public body without letting a contract as
19 required in the locality in which the work is to be performed,
20 for each craft or type of worker or mechanic needed to execute
21 the contract or project or work to be performed. Upon such
22 notification the Department of Labor shall ascertain such
23 general prevailing rate of wages, and certify the prevailing
24 wage to such public body. The public body awarding the contract
25 shall cause to be inserted in the project specifications and
26 the contract a stipulation to the effect that not less than the

1 prevailing rate of wages as found by the public body or
2 Department of Labor or determined by the court on review shall
3 be paid to all laborers, workers and mechanics performing work
4 under the contract.

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

12 (c) Where a complaint has been made and the Department has
13 determined that a violation has occurred, the Department shall
14 determine if proper notice under this Section 4 was given. If
15 proper notice was not provided to the contractor by the public
16 body, the Department shall order the public body to pay any
17 back wages, interest, penalties or fines owed by the contractor
18 to all laborers, mechanics and other workers who performed work
19 on the project. For the purposes of this subsection back wages
20 shall be limited to the difference between the actual amount
21 paid and the prevailing wages required to be paid for the
22 project. A contractor shall not be deemed in violation of this
23 Act if proper notice pursuant to this Section 4 is not
24 provided. The failure to provide notice by a public body does
25 not diminish the obligation of a contractor to pay the
26 prevailing wage rate as determined under this Act.

1 (d) ~~(b)~~ It shall also be mandatory upon the contractor to
2 whom the contract is awarded to insert into each subcontract
3 and into the project specifications for each subcontract a
4 written stipulation to the effect that not less than the
5 prevailing rate of wages shall be paid to all laborers,
6 workers, and mechanics performing work under the contract. It
7 shall also be mandatory upon each subcontractor to cause to be
8 inserted into each lower tiered subcontract and into the
9 project specifications for each lower tiered subcontract a
10 stipulation to the effect that not less than the prevailing
11 rate of wages shall be paid to all laborers, workers, and
12 mechanics performing work under the contract. A contractor or
13 subcontractor who fails to comply with this subsection (c) ~~(b)~~
14 is in violation of this Act.

15 (e) When a contractor has awarded work to a subcontractor
16 without a contract or without a contract specification, the
17 contractor may comply with this subsection (e) by providing a
18 subcontractor a written statement indicating that no less than
19 the prevailing wage rate shall be paid to all laborers,
20 mechanics and other workers performing work on the project.

21 (f) Where a complaint has been made and the Department has
22 determined that a violation has occurred, the Department shall
23 determine if proper notice under this Section 4 was given. If
24 proper notice was not provided to the subcontractor by the
25 contractor, the Department shall order the contractor to pay
26 any back wages, interest, penalties or fines owed by the

1 subcontractor to all laborers, mechanics and other workers who
2 performed work on the project. For the purposes of this
3 subsection back wages shall be limited to the difference
4 between the actual amount paid and the prevailing wages
5 required for the project. A subcontractor shall not be deemed
6 in violation of this Act if such notice is not provided.
7 However, if proper notice was not provided to the contractor by
8 the public body under subsections (a) or (b) of this Section 4,
9 the Department shall order the public body to pay any back
10 wages, interest, penalties or fines owed by the subcontractor
11 to all laborers, mechanics and other workers who performed work
12 on the project. The failure to provide notice by a contractor
13 does not diminish the obligation of a subcontractor to pay the
14 prevailing wage rate as determined under this Act.

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

22 (h) ~~(d)~~ If the Department of Labor revises the prevailing
23 rate of hourly wages to be paid by the public body, the revised
24 rate shall apply to such contract, and ~~the public body shall be~~
25 ~~responsible to notify~~ the contractor and each subcontractor
26 notifying its employees pursuant to this Act and paying the 7

1 ~~of the~~ revised rate.

2 (i) ~~(e)~~ Two or more investigatory hearings under this
3 Section on the issue of establishing a new prevailing wage
4 classification for a particular craft or type of worker shall
5 be consolidated in a single hearing before the Department. Such
6 consolidation shall occur whether each separate investigatory
7 hearing is conducted by a public body or the Department. The
8 party requesting a consolidated investigatory hearing shall
9 have the burden of establishing that there is no existing
10 prevailing wage classification for the particular craft or type
11 of worker in any of the localities under consideration. The
12 request for an investigatory hearing shall be filed within the
13 month of June. Upon receiving a request for an investigatory
14 hearing pursuant to this subsection, the Department shall set a
15 hearing. Such hearing shall take place no later than 45
16 calendar days after the receipt by the Department of Labor of
17 the request for an investigatory hearing, unless all parties
18 consent to a later date. The Department of Labor is empowered
19 to promulgate, adopt, amend and rescind rules and regulations
20 to govern the hearing procedure.

21 (j) It shall be mandatory upon the contractor or
22 construction manager to whom a contract for public works is
23 awarded to post, at a location on the project site of the
24 public works that is easily accessible to the workers engaged
25 on the project, the prevailing wage rates for each craft or
26 type of worker or mechanic needed to execute the contract or

1 project or work to be performed. In lieu of posting on a job
2 site, a contractor which has a business location where
3 laborers, workers and mechanics regularly visit may: (1) post
4 in a conspicuous location at that business the current
5 prevailing wage rates for each county the contractor is
6 performing work; or (2) provide such laborer, worker or
7 mechanic engaged on the public works project a written notice
8 indicating the prevailing wage rates for the public works
9 project. A failure to post or provide a prevailing wage rate as
10 required by this Section is a violation of this Act.

11 (k) The public body awarding any contract for a public
12 works or otherwise undertaking any public works shall notify
13 the Department of Labor in writing, on a form prescribed by the
14 Department of Labor, whenever a contract subject to the
15 provisions of this Act has been awarded. The notification
16 mentioned herein shall be filed with the Department of Labor
17 within 30 days after such contract is awarded or before
18 commencement of the public works, and shall include a list of
19 all first-tier subcontractors.

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

22 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

23 Sec. 5. Certified payroll.

24 (a) While participating on public works, the contractor and
25 each subcontractor shall:

1 (1) make and keep, for a period of not less than 3
2 years, records of all laborers, mechanics, and other
3 workers employed by them on the project; the records shall
4 include each worker's name, address, telephone number when
5 available, social security number, classification or
6 classifications, the hourly wages paid in each pay period,
7 the number of hours worked each day, ~~and the starting and~~
8 ~~ending times of work each day;~~ and

9 (2) submit monthly, in person, by mail, or
10 electronically a certified payroll to the public body in
11 charge of the project. The certified payroll shall consist
12 of a complete copy of the records identified in paragraph
13 (1) of this subsection (a), but may exclude the starting
14 and ending times of work each day. The certified payroll
15 shall be accompanied by a statement signed by the
16 contractor or subcontractor which avers that: (i) such
17 records are true and accurate; (ii) the hourly rate paid to
18 each worker is not less than the general prevailing rate of
19 hourly wages required by this Act; and (iii) the contractor
20 or subcontractor is aware that filing a certified payroll
21 that he or she knows to be false is a Class B misdemeanor.
22 A general contractor is not prohibited from relying on the
23 certification of a lower tier subcontractor, provided the
24 general contractor does not knowingly rely upon a
25 subcontractor's false certification. Any contractor or
26 subcontractor subject to this Act who fails to submit a

1 certified payroll or knowingly files a false certified
2 payroll is in violation of this Act and guilty of a Class B
3 misdemeanor. The public body in charge of the project shall
4 keep the records submitted in accordance with this
5 paragraph (2) of subsection (a) for a period of not less
6 than 3 years. The records submitted in accordance with this
7 paragraph (2) of subsection (a) shall be considered public
8 records, except an employee's address, telephone number,
9 and social security number, and made available in
10 accordance with the Freedom of Information Act. The public
11 body shall accept any reasonable submissions by the
12 contractor that meet the requirements of this Section. This
13 paragraph (a) (2) does not apply to a mechanic performing
14 maintenance, repair, assembly, or disassembly work on
15 leased or rented equipment when the mechanic performing the
16 work is an employee of the entity leasing or renting the
17 equipment, unless the entity leasing or renting the
18 equipment employs a mechanic on the public works project 3
19 or more consecutive days or 10 or more days in a calendar
20 month.

21 (b) Upon 7 business days' notice, the contractor and each
22 subcontractor shall make available for inspection the records
23 identified in paragraph (1) of subsection (a) of this Section
24 to the public body in charge of the project, its officers and
25 agents, and to the Director of Labor and his deputies and
26 agents. Upon 7 business days' notice, the contractor and each

1 subcontractor shall make such records available at all
2 reasonable hours at a location within this State.

3 (Source: P.A. 93-38, eff. 6-1-04; 94-515, eff. 8-10-05;
4 94-1023, eff. 7-12-06.)

5 (820 ILCS 130/6) (from Ch. 48, par. 39s-6)

6 Sec. 6. Any officer, agent or representative of any public
7 body who wilfully violates, or omits to comply with, any of the
8 provisions of this Act, and any contractor or subcontractor, or
9 agent or representative thereof, doing public work as
10 aforesaid, who wilfully violates, or omits to comply with, any
11 of the provisions of this Act, ~~neglects to keep, or cause to be~~
12 ~~kept, an accurate record of the names, occupation and actual~~
13 ~~wages paid to each laborer, worker and mechanic employed by~~
14 ~~him, in connection with the public work~~ or who refuses to allow
15 access to same at any reasonable hour to any person authorized
16 to inspect same under this Act, is guilty of a Class A
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. 94-488, eff. 1-1-06.)

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

1 Sec. 11. (a) No public works project shall be instituted
2 unless the provisions of this Act have been complied with. The
3 provisions of this Act shall not be applicable to Federal
4 construction projects which require a prevailing wage
5 determination by the United States Secretary of Labor. The
6 Illinois Department of Labor represented by the Attorney
7 General is empowered to sue for injunctive relief against the
8 awarding of any contract or the continuation of work under any
9 contract for public works at a time when the prevailing wage
10 prerequisites have not been met. Any contract for public works
11 awarded at a time when the prevailing wage prerequisites had
12 not been met shall be void as against public policy and the
13 contractor is prohibited from recovering any damages for the
14 voiding of the contract or pursuant to the terms of the
15 contract. The contractor is limited to a claim for amounts
16 actually paid for labor and materials supplied to the public
17 body. Where objections to a determination of the prevailing
18 rate of wages or a court action relative thereto is pending,
19 the public body shall not continue work on the project unless
20 sufficient funds are available to pay increased wages if such
21 are finally determined or unless the Department of Labor
22 certifies such determination of the prevailing rate of wages as
23 correct.

24 Any laborer, worker or mechanic employed by the contractor
25 or by any sub-contractor under him who is paid for his services
26 in a sum less than the stipulated rates for work done under

1 such contract, shall have a right of action for whatever
2 difference there may be between the amount so paid, and the
3 prevailing rate of wages required to be paid on the public
4 works project ~~rates provided by the contract~~ together with
5 costs and such reasonable attorney's fees as shall be allowed
6 by the court. Such contractor or subcontractor shall also be
7 liable to the Department of Labor for 20% of such underpayments
8 and shall be additionally liable to the laborer, worker or
9 mechanic for punitive damages in the amount of 2% of the amount
10 of any such penalty to the State for underpayments for each
11 month following the date of payment during which such
12 underpayments remain unpaid. Where a second or subsequent
13 action to recover underpayments is brought against a contractor
14 or subcontractor and the contractor or subcontractor is found
15 liable for underpayments to any laborer, worker, or mechanic,
16 the contractor or subcontractor shall also be liable to the
17 Department of Labor for 50% of the underpayments payable as a
18 result of the second or subsequent action, and shall be
19 additionally liable to the laborer, worker or mechanic for
20 punitive damages in the amount of ~~for~~ 5% of the amount of any
21 such penalty to the State for underpayments for each month
22 following the date of payment during which the underpayments
23 remain unpaid. The Department shall also have a right of action
24 on behalf of any individual who has a right of action under
25 this Section. An action brought to recover same shall be deemed
26 to be a suit for wages, and any and all judgments entered

1 therein shall have the same force and effect as other judgments
2 for wages. At the request of any laborer, workman or mechanic
3 employed by the contractor or by any subcontractor under him
4 who is paid less than the prevailing wage rate required by this
5 Act, the Department of Labor may take an assignment of such
6 wage claim in trust for the assigning laborer, workman or
7 mechanic and may bring any legal action necessary to collect
8 such claim, and the contractor or subcontractor shall be
9 required to pay the costs incurred in collecting such claim.

10 (b) For purposes of this subsection, the following
11 definitions are applicable:

12 "Accurate records" means the payroll records required to be
13 filed with the public body in charge of the project as required
14 by Section 5 of the Act. Accurate records shall also mean the
15 hourly rate paid for fringe benefits, including pension, health
16 and welfare, training and vacations, and a designation of
17 whether such fringe benefits were paid into a fund or paid
18 directly to the employee.

19 "Act" means the Prevailing Wage Act.

20 "Construction manager" includes, but is not limited to, the
21 contractor, subcontractor or anyone overseeing any project
22 covered by the Act for purposes of the posting requirement.

23 "Contract" means an agreement either written or oral or
24 otherwise as agreed to between the parties.

25 "Decision" means that the Department has determined that a
26 violation has occurred that warrants the Director or the

1 Director's designee to issue a notice of violation to a
2 contractor or subcontractor. Each specific finding listed in
3 the notice of violation is a separate "Decision" that the Act
4 has been violated.

5 "Director" means the Director of the Illinois Department of
6 Labor or, at the Director's discretion, the Director's
7 designee, deputy or agent.

8 "Employee" means laborers, mechanics and other workers
9 employed in any public works, as defined and covered under the
10 Act, by anyone under contracts for public works.

11 "Employer" means a contractor or subcontractor, or both,
12 who performs public works projects subject to the Act.

13 "Notice of second violation" is a notice issued by the
14 Department advising a contractor or subcontractor that a
15 violation as defined in this subsection has occurred within
16 five years from the date of the notice of first violation.

17 "Notice of violation" means the formal written notice to a
18 contractor or subcontractor that the Department has made a
19 decision that the contractor or subcontractor has violated the
20 Act.

21 "Prevailing hourly rate of wages" means the hourly cash
22 wages plus fringe benefits for health and welfare, insurance,
23 training, vacations and pensions paid most frequently
24 (numerically most occurring), in the county in which the public
25 works is performed, to employees engaged on public works, as
26 determined by the public body awarding the contract or the most

1 recent revision as determined by the Department of Labor
2 effective prior to the date when the contract was let for bids
3 or, if not let for bids, when executed; and all revisions by
4 the Illinois Department of Labor when effected.

5 "Violation" means a written decision by the Department that
6 a contractor or subcontractor has: failed or refused to pay the
7 prevailing wage to one or more laborers, workers, or mechanics
8 under a single contract or subcontract as required by Section 3
9 of the Act; failed to keep accurate records as required by the
10 Act; failed to produce to the Department accurate records or
11 records not in compliance with the provisions of Section 6 of
12 the Act; refused to submit records to the Department in
13 response to a subpoena issued in accordance with Section 10 of
14 the Act; refused to comply with the certified payroll provision
15 of Section 5 of the Act; refused the Department access, at any
16 reasonable hour or at any location designated by the
17 Department, to inspect the contractor's or subcontractor's
18 certified records and other records as required by the Act;
19 failed to insert into each subcontract or lower tiered
20 subcontract and into the project specifications for each
21 subcontract or lower tiered subcontract a written stipulation
22 that not less than the prevailing rate of wages be paid as
23 required by Section 4 of the Act; or the contractor failed to
24 obtain a bond that guarantees the faithful performance of the
25 prevailing wage clause in the contract. A violation also means
26 a written decision by the Department that a contractor or

1 construction manager failed to post or provide the prevailing
2 wage rates as required by Section 4 of the Act.

3 After receipt of a complaint or on the Department's
4 initiative, the Director shall review the investigative file to
5 determine whether there has been a violation or violations of
6 which the contractor or subcontractor must be given notice. All
7 information and observations made during an audit,
8 investigation or survey shall be considered and shall
9 constitute the basis for the Department's decision that the Act
10 has been violated and that a notice of violation shall be
11 issued. The notice of violation shall identify the specific
12 violations of the Act.

13 The notice of violation shall state the amount of monies
14 estimated due by the Department to be in controversy based on
15 reasons contained in the investigation file.

16 In making a decision that a contractor or subcontractor has
17 failed to allow the Director access to accurate payroll
18 records, the Director shall rely on the information contained
19 in the investigative file, the certified payroll records filed
20 with the public body in charge of the project or any other
21 information and shall assess a separate violation for each day
22 worked by each worker on the subject project. Each decision of
23 a separate violation under Section 5 of the Act shall be listed
24 in the notice of violation.

25 In deciding that the Act has been violated and that the
26 issuance of a notice of violation is required, the Director

1 shall base the decision on one or any combination of the
2 following reasons:

3 (1) The severity of the violations. The Director will
4 consider the following:

5 (i) The amount of wages that are determined to be
6 underpaid pursuant to the Act.

7 (ii) The activity or conduct complained of
8 violates the requirements of the statute and was not
9 merely a technical, non-substantive error. Examples of
10 a technical error include, but are not limited to, a
11 mathematical error, bookkeeping error, transposition
12 of numbers, or computer or programming error.

13 (2) The nature and duration of the present violations
14 as well as prior history of the contractor or the
15 subcontractor related to the Act. The prior history
16 considered cannot exceed 7 years before the date of the
17 second notice of violation.

18 (3) Whether the contractor or subcontractor filed
19 certified payroll records with the public body in charge of
20 the project; whether the contractor or subcontractor has
21 kept the payroll records and accurate records for 3 years;
22 whether the contractor or subcontractor produced certified
23 payroll records in accordance with Section 5 of the Act.

24 (4) Whether the contractor or subcontractor has
25 violated any other provision of the Act.

26 The notices of the first and second violations shall be

1 sent by the Department by certified mail, deposited in the
2 United States mail, postage prepaid, addressed to the last
3 known address of the persons, partnerships, associations, or
4 corporations involved. Said notices shall contain a reference
5 to the specific Sections of the Act alleged to have been
6 violated; identify the particular public works project
7 involved; the conduct complained of; an identification as to
8 first or second notice and a statement of remedies available to
9 the contractor or subcontractor and Department.

10 (c) The Director of the Department of Labor shall publish
11 in the Illinois Register no less often than once each calendar
12 quarter a list of contractors or subcontractors found to have
13 disregarded their obligations to employees under this Act. The
14 Department of Labor shall determine the contractors or
15 subcontractors who, on 2 separate occasions within 5 years,
16 have been determined to have violated the provisions of this
17 Act. If a violation of this Act involves a worker who is not a
18 legal resident alien or a United States citizen, then a finding
19 of a single violation within a 5-year period shall require the
20 Department of Labor to proceed directly to a notice of second
21 violation. Upon such determinations the Department shall
22 notify the violating contractor or subcontractor. Such
23 contractor or subcontractor shall then have 10 working days to
24 request a hearing by the Department on the alleged violations.
25 Failure to respond within the 10 working day period shall
26 result in automatic and immediate placement and publication on

1 the list. If the contractor or subcontractor requests a hearing
2 within the 10 working day period, the Director shall set a
3 hearing on the alleged violations. Such hearing shall take
4 place no later than 45 calendar days after the receipt by the
5 Department of Labor of the request for a hearing. The
6 Department of Labor is empowered to promulgate, adopt, amend
7 and rescind rules and regulations to govern the hearing
8 procedure. No contract shall be awarded to a contractor or
9 subcontractor appearing on the list, or to any firm,
10 corporation, partnership or association in which such
11 contractor or subcontractor has an interest until 4 years have
12 elapsed from the date of publication of the list containing the
13 name of such contractor or subcontractor.

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

15 (820 ILCS 130/11b)

16 Sec. 11b. Discharge or discipline of "whistle blowers"
17 prohibited.

18 (a) No person shall discharge, discipline, or in any other
19 way discriminate against, or cause to be discharged,
20 disciplined, or discriminated against, any employee or any
21 authorized representative of employees by reason of the fact
22 that the employee or representative has filed, instituted, or
23 caused to be filed or instituted any proceeding under this Act,
24 or has testified or is about to testify in any proceeding
25 resulting from the administration or enforcement of this Act,

1 or offers any evidence of any violation of this Act.

2 (b) Any employee or a representative of employees who
3 believes that he has been discharged, disciplined, or otherwise
4 discriminated against by any person in violation of subsection
5 (a) of this Section may, within 180 ~~30~~ days after the alleged
6 violation occurs, apply to the Director of Labor for a review
7 of the discharge, discipline, or alleged discrimination. A copy
8 of the application shall be sent to the person who allegedly
9 committed the violation, who shall be the respondent. Upon
10 receipt of an application, the Director shall cause such
11 investigation to be made as he or she deems appropriate. The
12 investigation shall provide an opportunity for a public hearing
13 at the request of any party to the review to enable the parties
14 to present information relating to the alleged violation. The
15 parties shall be given written notice of the time and place of
16 the hearing at least 30 ~~5~~ days before the hearing. Upon
17 receiving the report of the investigation, the Director shall
18 make findings of fact. If the Director finds that a violation
19 did occur, he or she shall issue a decision incorporating his
20 or her findings and requiring the party committing the
21 violation to take such affirmative action to abate the
22 violation as the Director deems appropriate, including, but not
23 limited to, the rehiring or reinstatement of the employee or
24 representative of employees to his or her former position and
25 compensating him or her for the time he or she was unemployed.
26 The party committing the violation shall also be liable to the

1 Department of Labor for a penalty of \$5,000 for each violation
2 of this Section. If the Director finds that there was no
3 violation, he or she shall issue an order denying the
4 application. An order issued by the Director under this Section
5 shall be subject to judicial review under the Administrative
6 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. 94-488, eff. 1-1-06.)

11 (820 ILCS 130/11a rep.)

12 Section 10. The Prevailing Wage Act is amended by repealing
13 Section 11a.