



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1529

Introduced 2/9/2007, by Sen. Gary Forby

SYNOPSIS AS INTRODUCED:

820 ILCS 130/4	from Ch. 48, par. 39s-4
820 ILCS 130/5	from Ch. 48, par. 39s-5
820 ILCS 130/9	from Ch. 48, par. 39s-9

Amends the Prevailing Wage Act. Provides that a failure to provide prevailing wage information in certain project specifications, contracts, subcontracts, or notices does not excuse a contractor or subcontractor from paying the prevailing wage. Deletes language providing that 2 or more investigatory hearings on the issue of establishing a new prevailing wage classification for a particular craft or type of worker shall be consolidated in a single hearing before the Department of Labor. Provides that contractors and subcontractors shall make and keep, for not less than 5 (rather than 3) years, records of all laborers, mechanics, and other workers employed by them on a project. Provides that a public body or the Department of Labor, whichever has made a prevailing wage determination, is authorized to hear each timely filed written objection, that 2 or more hearings on the issue of establishing a new prevailing wage classification for a particular craft or type of worker shall be consolidated in a single hearing before the Department, that the consolidation shall occur whether each separate hearing is conducted by a public body or the Department, and that the party requesting a consolidated hearing has the burden of establishing that there is no existing prevailing wage classification for the particular craft or type of worker in any of the localities under consideration. Effective immediately.

LRB095 09396 WGH 29592 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 4, 5, and 9 as follows:

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

1 and upon any subcontractor under him, and where the public body
2 performs the work, upon the public body, to pay not less than
3 the specified rates to all laborers, workers and mechanics
4 employed by them in the execution of the contract or such work;
5 provided, however, that if the public body desires that the
6 Department of Labor ascertain the prevailing rate of wages, it
7 shall notify the Department of Labor to ascertain the general
8 prevailing rate of hourly wages for work under contract, or for
9 work performed by a public body without letting a contract as
10 required in the locality in which the work is to be performed,
11 for each craft or type of worker or mechanic needed to execute
12 the contract or project or work to be performed. Upon such
13 notification the Department of Labor shall ascertain such
14 general prevailing rate of wages, and certify the prevailing
15 wage to such public body. The public body awarding the contract
16 shall cause to be inserted in the project specifications and
17 the contract a stipulation to the effect that not less than the
18 prevailing rate of wages as found by the public body or
19 Department of Labor or determined by the court on review shall
20 be paid to all laborers, workers and mechanics performing work
21 under the contract. The failure of the public body awarding the
22 contract to insert the prevailing wage stipulation in the
23 project specifications or the contract does not excuse a
24 contractor or subcontractor from paying the prevailing wage to
25 all laborers, workers, and mechanics performing work under a
26 contract covered by this Act.

1 (b) It shall also be mandatory upon the contractor to whom
2 the contract is awarded to insert into each subcontract and
3 into the project specifications for each subcontract a written
4 stipulation to the effect that not less than the prevailing
5 rate of wages shall be paid to all laborers, workers, and
6 mechanics performing work under the contract. It shall also be
7 mandatory upon each subcontractor to cause to be inserted into
8 each lower tiered subcontract and into the project
9 specifications for each lower tiered subcontract a stipulation
10 to the effect that not less than the prevailing rate of wages
11 shall be paid to all laborers, workers, and mechanics
12 performing work under the contract. A contractor or
13 subcontractor who fails to comply with this subsection (b) is
14 in violation of this Act. The failure to provide the required
15 stipulations does not excuse the contractor, subcontractor, or
16 any lower tiered subcontractor from paying the prevailing wage
17 to all laborers, workers, and mechanics performing work under a
18 contract covered by this Act.

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

26 (d) If the Department of Labor revises the prevailing rate

1 of hourly wages to be paid by the public body, the revised rate
2 shall apply to such contract, and the public body shall be
3 responsible to notify the contractor and each subcontractor, of
4 the revised rate. The failure of the public body to notify the
5 contractor and each subcontractor of the revised rate does not
6 excuse contractors and subcontractors from their obligations
7 under this Act, including the requirement to pay the revised
8 rate to all laborers, workers and mechanics performing work
9 under a contract covered by this Act.

10 (e) ~~Two or more investigatory hearings under this Section~~
11 ~~on the issue of establishing a new prevailing wage~~
12 ~~classification for a particular craft or type of worker shall~~
13 ~~be consolidated in a single hearing before the Department. Such~~
14 ~~consolidation shall occur whether each separate investigatory~~
15 ~~hearing is conducted by a public body or the Department. The~~
16 ~~party requesting a consolidated investigatory hearing shall~~
17 ~~have the burden of establishing that there is no existing~~
18 ~~prevailing wage classification for the particular craft or type~~
19 ~~of worker in any of the localities under consideration.~~

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

1 required by this Section is a violation of this Act.

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

4 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

5 Sec. 5. Certified payroll.

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

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

16 (2) submit monthly, in person, by mail, or
17 electronically a certified payroll to the public body in
18 charge of the project. The certified payroll shall consist
19 of a complete copy of the records identified in paragraph
20 (1) of this subsection (a), but may exclude the starting
21 and ending times of work each day. The certified payroll
22 shall be accompanied by a statement signed by the
23 contractor or subcontractor which avers that: (i) such
24 records are true and accurate; (ii) the hourly rate paid to
25 each worker is not less than the general prevailing rate of

1 hourly wages required by this Act; and (iii) the contractor
2 or subcontractor is aware that filing a certified payroll
3 that he or she knows to be false is a Class B misdemeanor.
4 A general contractor is not prohibited from relying on the
5 certification of a lower tier subcontractor, provided the
6 general contractor does not knowingly rely upon a
7 subcontractor's false certification. Any contractor or
8 subcontractor subject to this Act who fails to submit a
9 certified payroll or knowingly files a false certified
10 payroll is in violation of this Act and guilty of a Class B
11 misdemeanor. The public body in charge of the project shall
12 keep the records submitted in accordance with this
13 paragraph (2) of subsection (a) for a period of not less
14 than 3 years. The records submitted in accordance with this
15 paragraph (2) of subsection (a) shall be considered public
16 records, except an employee's address, telephone number,
17 and social security number, and made available in
18 accordance with the Freedom of Information Act. The public
19 body shall accept any reasonable submissions by the
20 contractor that meet the requirements of this Section.

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 130/9) (from Ch. 48, par. 39s-9)

6 Sec. 9. To effectuate the purpose and policy of this Act
7 each public body shall, during the month of June of each
8 calendar year, investigate and ascertain the prevailing rate of
9 wages as defined in this Act and publicly post or keep
10 available for inspection by any interested party in the main
11 office of such public body its determination of such prevailing
12 rate of wage and shall promptly file, no later than July 15 of
13 each year, a certified copy thereof in the office of the
14 Secretary of State at Springfield and the office of the
15 Illinois Department of Labor.

16 The Department of Labor shall during the month of June of
17 each calendar year, investigate and ascertain the prevailing
18 rate of wages for each county in the State. If a public body
19 does not investigate and ascertain the prevailing rate of wages
20 during the month of June as required by the previous paragraph,
21 then the prevailing rate of wages for that public body shall be
22 the rate as determined by the Department under this paragraph
23 for the county in which such public body is located.

24 Where the Department of Labor ascertains the prevailing
25 rate of wages, it is the duty of the Department of Labor within

1 30 days after receiving a notice from the public body
2 authorizing the proposed work, to conduct an investigation to
3 ascertain the prevailing rate of wages as defined in this Act
4 and such investigation shall be conducted in the locality in
5 which the work is to be performed. The Department of Labor
6 shall send a certified copy of its findings to the public body
7 authorizing the work and keep a record of its findings
8 available for inspection by any interested party in the office
9 of the Department of Labor at Springfield.

10 The public body except for the Department of Transportation
11 with respect to highway contracts shall within 30 days after
12 filing with the Secretary of State, or the Department of Labor
13 shall within 30 days after filing with such public body,
14 publish in a newspaper of general circulation within the area
15 that the determination is effective, a notice of its
16 determination and shall promptly mail a copy of its
17 determination to any employer, and to any association of
18 employers and to any person or association of employees who
19 have filed their names and addresses, requesting copies of any
20 determination stating the particular rates and the particular
21 class of workers whose wages will be affected by such rates.

22 At any time within 30 days after the Department of Labor
23 has published on its official web site a prevailing wage
24 schedule, any person affected thereby may object in writing to
25 the determination or such part thereof as they may deem
26 objectionable by filing a written notice with the public body

1 or Department of Labor, whichever has made such determination,
2 stating the specified grounds of the objection. It shall
3 thereafter be the duty of the public body or Department of
4 Labor to set a date for a hearing on the objection after giving
5 written notice to the objectors at least 10 days before the
6 date of the hearing and said notice shall state the time and
7 place of such hearing. Such hearing by a public body shall be
8 held within 45 days after the objection is filed, and shall not
9 be postponed or reset for a later date except upon the consent,
10 in writing, of all the objectors and the public body. If such
11 hearing is not held by the public body within the time herein
12 specified, the Department of Labor may, upon request of the
13 objectors, conduct the hearing on behalf of the public body.

14 The public body or Department of Labor, whichever has made
15 such determination, is authorized ~~in its discretion~~ to hear
16 each timely filed written objection. Two or more hearings under
17 this Section on the issue of establishing a new prevailing wage
18 classification for a particular craft or type of worker shall
19 be consolidated in a single hearing before the Department. Such
20 consolidation shall occur whether each separate hearing is
21 conducted by a public body or the Department. The party
22 requesting a consolidated hearing shall have the burden of
23 establishing that there is no existing prevailing wage
24 classification for the particular craft or type of worker in
25 any of the localities under consideration ~~filed separately or~~
26 ~~consolidate for hearing any one or more written objections~~

1 ~~filed with them.~~ At such hearing the public body or Department
2 of Labor shall introduce in evidence the investigation it
3 instituted which formed the basis of its determination, and the
4 public body or Department of Labor, or any interested objectors
5 may thereafter introduce such evidence as is material to the
6 issue. Thereafter, the public body or Department of Labor, must
7 rule upon the written objection and make such final
8 determination as it believes the evidence warrants, and
9 promptly file a certified copy of its final determination with
10 such public body and the Secretary of State, and serve a copy
11 by personal service or registered mail on all parties to the
12 proceedings. The final determination by the Department of Labor
13 or a public body shall be rendered within 30 days after the
14 conclusion of the hearing.

15 If proceedings to review judicially the final
16 determination of the public body or Department of Labor are not
17 instituted as hereafter provided, such determination shall be
18 final and binding.

19 The provisions of the Administrative Review Law, and all
20 amendments and modifications thereof, and the rules adopted
21 pursuant thereto, shall apply to and govern all proceedings for
22 the judicial review of final administrative decisions of any
23 public body or the Department of Labor hereunder. The term
24 "administrative decision" is defined as in Section 3-101 of the
25 Code of Civil Procedure.

26 Appeals from all final orders and judgments entered by the

1 court in review of the final administrative decision of the
2 public body or Department of Labor, may be taken by any party
3 to the action.

4 Any proceeding in any court affecting a determination of
5 the Department of Labor or public body shall have priority in
6 hearing and determination over all other civil proceedings
7 pending in said court, except election contests.

8 In all reviews or appeals under this Act, it shall be the
9 duty of the Attorney General to represent the Department of
10 Labor, and defend its determination. The Attorney General shall
11 not represent any public body, except the State, in any such
12 review or appeal.

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.