



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6112

Introduced 2/11/2010, by Rep. Robert F. Flider - Harry Osterman - Angelo Saviano - John D'Amico

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

Amends the Prevailing Wage Act. Provides that for a laborer, worker, or mechanic engaged in the transportation of aggregate or excavated materials or the operation of equipment to haul aggregate or excavated materials to or from the site of the building or construction job, the Department of Labor shall take into consideration the applicable prevailing wage rate and the Illinois Department of Transportation's current method of establishing equipment rates for trucks on public works projects. Defines various terms.

LRB096 16066 RLC 35407 b

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, 3, and 4 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 or
16 demolished by any public body, or paid for wholly or in part
17 out of public funds. "Public works" as defined herein includes
18 all projects financed in whole or in part with bonds, grants,
19 loans, or other funds made available by or through the State or
20 any of its political subdivisions, including but not limited
21 to: bonds issued under the Industrial Project Revenue Bond Act
22 (Article 11, Division 74 of the Illinois Municipal Code), the
23 Industrial Building Revenue Bond Act, the Illinois Finance

1 Authority Act, the Illinois Sports Facilities Authority Act, or
2 the Build Illinois Bond Act; loans or other funds made
3 available pursuant to the Build Illinois Act; or funds from the
4 Fund for Illinois' Future under Section 6z-47 of the State
5 Finance Act, funds for school construction under Section 5 of
6 the General Obligation Bond Act, funds authorized under Section
7 3 of the School Construction Bond Act, funds for school
8 infrastructure under Section 6z-45 of the State Finance Act,
9 and funds for transportation purposes under Section 4 of the
10 General Obligation Bond Act. "Public works" also includes all
11 projects financed in whole or in part with funds from the
12 Department of Commerce and Economic Opportunity under the
13 Illinois Renewable Fuels Development Program Act for which
14 there is no project labor agreement. "Public works" also
15 includes all projects at leased facility property used for
16 airport purposes under Section 35 of the Local Government
17 Facility Lease Act. "Public works" also includes the
18 construction of a new wind power facility by a business
19 designated as a High Impact Business under Section 5.5(a)(3)(E)
20 of the Illinois Enterprise Zone Act. "Public works" does not
21 include work done directly by any public utility company,
22 whether or not done under public supervision or direction, or
23 paid for wholly or in part out of public funds. "Public works"
24 does not include projects undertaken by the owner at an
25 owner-occupied single-family residence or at an owner-occupied
26 unit of a multi-family residence.

1 "Construction" means all work on public works involving
2 laborers, workers or mechanics. This includes any maintenance,
3 repair, assembly, or disassembly work performed on equipment
4 whether owned, leased, or rented.

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

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

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

10 "Aggregate or excavated materials" includes, but is not
11 limited to, rock, gravel, sand, pebbles, dirt, soil, clay,
12 bitumen, cultured/polymer, cement, concrete, asphalt, slag,
13 grindings, and recycled materials.

14 A "stockpile" is aggregate or excavated materials that are
15 placed in a location for temporary storage when all or
16 substantially all of the aggregate or excavated material is
17 relocated by loading and hauling it to another location for
18 final placement.

19 "Trucking broker" means an individual or business entity,
20 the activities of which include, but are not limited to:

21 (1) contracting to provide trucking services in the
22 construction industry to users of such services;

23 (2) contracting to obtain such service from providers
24 of trucking services;

25 (3) dispatching the providers of the services to do
26 work as required by the users of the services;

1 (4) receiving payment from the users in consideration
2 of the trucking services provided; and

3 (5) making payment to the providers for the services.

4 "Trucking firm" means any legal business entity that owns
5 one or more vehicles and hires the vehicles out for services to
6 trucking brokers or contractors on public works projects.

7 "Independent truck owner-operator" means an individual,
8 partnership, or principal stockholder of a corporation who owns
9 or holds a vehicle under lease and who contracts that vehicle
10 and the owner's services to an entity which provides
11 construction services to a public works project.

12 "Transportation of aggregate or excavated materials" means
13 any required hauling activities on the site of or to or from a
14 public works project or stockpile regardless of whether the
15 activity is performed by the prime contractor, subcontractor,
16 trucking broker, trucking firm, independent contractor, or
17 employee or agent of any of the foregoing entities, and
18 regardless of which entity or person hires or contracts with
19 another. The transportation of aggregate or excavated
20 materials by employees of a contractor or subcontractor that
21 operates an asphalt or concrete plant, that was moved into a
22 gravel pit, borrow pit, or other location not on the project,
23 primarily to serve public works projects is considered work
24 under the contract.

25 The transportation of aggregate or excavated materials
26 includes, but is not limited to:

1 (1) the hauling of any or all stockpiled materials on
2 the project work site to other locations on the same
3 project even if the trucks leave the work site at some
4 point;

5 (2) the delivery of materials from any facility or any
6 stockpile to the project and the return haul to the
7 starting location either empty or loaded;

8 (3) the delivery of materials from another
9 construction project site to the public works project and
10 the return haul empty or loaded;

11 (4) the hauling required to remove any materials from
12 the public works project to a location off the project site
13 and the return haul either empty or loaded; and

14 (5) the delivery of materials by an employee of a
15 seller or supplier and the return haul to the off-site
16 facility or any stockpile empty or loaded by an employee of
17 the seller or supplier.

18 (Source: P.A. 95-341, eff. 8-21-07; 96-28, eff. 7-1-09; 96-58,
19 eff. 1-1-10; 96-186, eff. 1-1-10; revised 8-20-09.)

20 (820 ILCS 130/3) (from Ch. 48, par. 39s-3)

21 Sec. 3. Not less than the general prevailing rate of hourly
22 wages for work of a similar character on public works in the
23 locality in which the work is performed, and not less than the
24 general prevailing rate of hourly wages for legal holiday and
25 overtime work, shall be paid to all laborers, workers and

1 mechanics employed by or on behalf of any public body engaged
2 in the construction or demolition of public works. This
3 includes any maintenance, repair, assembly, or disassembly
4 work performed on equipment whether owned, leased, or rented.
5 All ~~Only such~~ laborers, workers and mechanics ~~as are~~ directly
6 employed by contractors or subcontractors in actual
7 construction work on the site of the building or construction
8 job shall be deemed to be employed upon public works. Laborers
9 ~~, and laborers,~~ workers and mechanics engaged in the
10 transportation of materials and equipment to or from the site
11 shall also be deemed to be employed upon public works, except
12 that the transportation of non-aggregate materials or
13 equipment, but not including the transportation by the sellers
14 and suppliers or the manufacture or processing of materials or
15 equipment, ~~in the execution of any contract or contracts for~~
16 ~~public works with any public body~~ shall not be deemed to be
17 employed upon public works. The transportation of aggregate or
18 excavated materials to the job site or stockpile shall be
19 deemed to be employment upon public works. The wage for a
20 tradesman performing maintenance is equivalent to that of a
21 tradesman engaged in construction or demolition.

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

23 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

24 Sec. 4. Ascertaining prevailing wage.

25 (a) The public body awarding any contract for public work

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

1 for each craft or type of worker or mechanic needed to execute
2 the contract or project or work to be performed. Upon such
3 notification the Department of Labor shall ascertain such
4 general prevailing rate of wages, and certify the prevailing
5 wage to such public body. For a laborer, worker, or mechanic
6 engaged in the transportation of aggregate or excavated
7 materials or the operation of equipment to haul aggregate or
8 excavated materials to or from the site of the building or
9 construction job, the Department of Labor shall take into
10 consideration the applicable prevailing wage rate and the
11 Illinois Department of Transportation's current method of
12 establishing equipment rates for trucks on public works
13 projects.

14 (a-1) The public body or other entity awarding the contract
15 shall cause to be inserted in the project specifications and
16 the contract a stipulation to the effect that not less than the
17 prevailing rate of wages as found by the public body or
18 Department of Labor or determined by the court on review shall
19 be paid to all laborers, workers and mechanics performing work
20 under the contract.

21 (a-2) When a public body or other entity covered by this
22 Act has awarded work to a contractor without a public bid,
23 contract or project specification, such public body or other
24 entity shall comply with subsection (a-1) by providing the
25 contractor with written notice on the purchase order related to
26 the work to be done or on a separate document indicating that

1 not less than the prevailing rate of wages as found by the
2 public body or Department of Labor or determined by the court
3 on review shall be paid to all laborers, workers, and mechanics
4 performing work on the project.

5 (a-3) Where a complaint is made and the Department of Labor
6 determines that a violation occurred, the Department of Labor
7 shall determine if proper written notice under this Section 4
8 was given. If proper written notice was not provided to the
9 contractor by the public body or other entity, the Department
10 of Labor shall order the public body or other entity to pay any
11 interest, penalties or fines that would have been owed by the
12 contractor if proper written notice were provided. The failure
13 by a public body or other entity to provide written notice does
14 not relieve the contractor of the duty to comply with the
15 prevailing wage rate, nor of the obligation to pay any back
16 wages, as determined under this Act. For the purposes of this
17 subsection, back wages shall be limited to the difference
18 between the actual amount paid and the prevailing rate of wages
19 required to be paid for the project. The failure of a public
20 body or other entity to provide written notice under this
21 Section 4 does not diminish the right of a laborer, worker, or
22 mechanic to the prevailing rate of wages as determined under
23 this Act.

24 (b) It shall also be mandatory upon the contractor to whom
25 the contract is awarded to insert into each subcontract and
26 into the project specifications for each subcontract a written

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

12 (b-1) When a contractor has awarded work to a subcontractor
13 without a contract or contract specification, the contractor
14 shall comply with subsection (b) by providing a subcontractor
15 with a written statement indicating that not less than the
16 prevailing rate of wages shall be paid to all laborers,
17 workers, and mechanics performing work on the project. A
18 contractor or subcontractor who fails to comply with this
19 subsection (b-1) is in violation of this Act.

20 (b-2) Where a complaint is made and the Department of Labor
21 determines that a violation has occurred, the Department of
22 Labor shall determine if proper written notice under this
23 Section 4 was given. If proper written notice was not provided
24 to the subcontractor by the contractor, the Department of Labor
25 shall order the contractor to pay any interest, penalties, or
26 fines that would have been owed by the subcontractor if proper

1 written notice were provided. The failure by a contractor to
2 provide written notice to a subcontractor does not relieve the
3 subcontractor of the duty to comply with the prevailing wage
4 rate, nor of the obligation to pay any back wages, as
5 determined under this Act. For the purposes of this subsection,
6 back wages shall be limited to the difference between the
7 actual amount paid and the prevailing rate of wages required
8 for the project. However, if proper written notice was not
9 provided to the contractor by the public body or other entity
10 under this Section 4, the Department of Labor shall order the
11 public body or other entity to pay any interest, penalties, or
12 fines that would have been owed by the subcontractor if proper
13 written notice were provided. The failure by a public body or
14 other entity to provide written notice does not relieve the
15 subcontractor of the duty to comply with the prevailing wage
16 rate, nor of the obligation to pay any back wages, as
17 determined under this Act. For the purposes of this subsection,
18 back wages shall be limited to the difference between the
19 actual amount paid and the prevailing rate of wages required
20 for the project. The failure to provide written notice by a
21 public body, other entity, or contractor does not diminish the
22 right of a laborer, worker, or mechanic to the prevailing rate
23 of wages as determined under this Act.

24 (c) A public body or other entity shall also require in all
25 contractor's and subcontractor's bonds that the contractor or
26 subcontractor include such provision as will guarantee the

1 faithful performance of such prevailing wage clause as provided
2 by contract or other written instrument. All bid specifications
3 shall list the specified rates to all laborers, workers and
4 mechanics in the locality for each craft or type of worker or
5 mechanic needed to execute the contract.

6 (d) If the Department of Labor revises the prevailing rate
7 of hourly wages to be paid by the public body, the revised rate
8 shall apply to such contract, and the public body shall be
9 responsible to notify the contractor and each subcontractor, of
10 the revised rate.

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

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

12 (Source: P.A. 95-331, eff. 8-21-07; 96-437, eff. 1-1-10.)