



Sen. Michael Noland

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LRB097 18678 JLS 65302 a

1 AMENDMENT TO SENATE BILL 2943

2 AMENDMENT NO. _____. Amend Senate Bill 2943 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Prevailing Wage Act is amended by changing
5 Sections 2, 4, 5, 6, and 11 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

1 out of public funds. "Public works" as defined herein includes
2 all projects financed in whole or in part with bonds, grants,
3 loans, or other funds made available by or through the State or
4 any of its political subdivisions, including but not limited
5 to: bonds issued under the Industrial Project Revenue Bond Act
6 (Article 11, Division 74 of the Illinois Municipal Code), the
7 Industrial Building Revenue Bond Act, the Illinois Finance
8 Authority Act, the Illinois Sports Facilities Authority Act, or
9 the Build Illinois Bond Act; loans or other funds made
10 available pursuant to the Build Illinois Act; or funds from the
11 Fund for Illinois' Future under Section 6z-47 of the State
12 Finance Act, funds for school construction under Section 5 of
13 the General Obligation Bond Act, funds authorized under Section
14 3 of the School Construction Bond Act, funds for school
15 infrastructure under Section 6z-45 of the State Finance Act,
16 and funds for transportation purposes under Section 4 of the
17 General Obligation Bond Act. "Public works" also includes (i)
18 all projects financed in whole or in part with funds from the
19 Department of Commerce and Economic Opportunity under the
20 Illinois Renewable Fuels Development Program Act for which
21 there is no project labor agreement; (ii) all work performed
22 pursuant to a public private agreement under the Public Private
23 Agreements for the Illiana Expressway Act; and (iii) all
24 projects undertaken under a public-private agreement under the
25 Public-Private Partnerships for Transportation Act. "Public
26 works" also includes all projects at leased facility property

1 used for airport purposes under Section 35 of the Local
2 Government Facility Lease Act. "Public works" also includes the
3 construction of a new wind power facility by a business
4 designated as a High Impact Business under Section 5.5(a)(3)(E)
5 of the Illinois Enterprise Zone Act. "Public works" does not
6 include work done directly by any public utility company,
7 whether or not done under public supervision or direction, or
8 paid for wholly or in part out of public funds. "Public works"
9 does not include projects undertaken by the owner at an
10 owner-occupied single-family residence or at an owner-occupied
11 unit of a multi-family residence.

12 "Construction" means all work on public works involving
13 laborers, workers or mechanics. This includes any maintenance,
14 repair, assembly, or disassembly work performed on equipment
15 whether owned, leased, or rented.

16 "Locality" means the county where the physical work upon
17 public works is performed, except (1) that if there is not
18 available in the county a sufficient number of competent
19 skilled laborers, workers and mechanics to construct the public
20 works efficiently and properly, "locality" includes any other
21 county nearest the one in which the work or construction is to
22 be performed and from which such persons may be obtained in
23 sufficient numbers to perform the work and (2) that, with
24 respect to contracts for highway work with the Department of
25 Transportation of this State, "locality" may at the discretion
26 of the Secretary of the Department of Transportation be

1 construed to include two or more adjacent counties from which
2 workers may be accessible for work on such construction.

3 "Public body" means the State or any officer, board or
4 commission of the State or any political subdivision or
5 department thereof, or any institution supported in whole or in
6 part by public funds, and includes every county, city, town,
7 village, township, school district, irrigation, utility,
8 reclamation improvement or other district and every other
9 political subdivision, district or municipality of the state
10 whether such political subdivision, municipality or district
11 operates under a special charter or not.

12 The terms "general prevailing rate of hourly wages",
13 "general prevailing rate of wages" or "prevailing rate of
14 wages" when used in this Act mean the hourly cash wages plus
15 fringe benefits for training and apprenticeship programs
16 approved by the U.S. Department of Labor, Bureau of
17 Apprenticeship and Training, health and welfare, insurance,
18 vacations and pensions paid generally, in the locality in which
19 the work is being performed, to employees engaged in work of a
20 similar character on public works.

21 "Responsible bidder" means those individuals or firms
22 meeting the requirements of Section 30-22 of the Illinois
23 Procurement Code.

24 (Source: P.A. 96-28, eff. 7-1-09; 96-58, eff. 1-1-10; 96-186,
25 eff. 1-1-10; 96-913, eff. 6-9-10; 96-1000, eff. 7-2-10; 97-502,
26 eff. 8-23-11.)

1 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

2 Sec. 4. Ascertaining prevailing wage.

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

1 ascertain the prevailing rate of wages, it shall notify the
2 Department of Labor to ascertain the general prevailing rate of
3 hourly wages for work under contract, or for work performed by
4 a public body without letting a contract as required in the
5 locality in which the work is to be performed, for each craft
6 or type of worker or mechanic needed to execute the contract or
7 project or work to be performed. Upon such notification the
8 Department of Labor shall ascertain such general prevailing
9 rate of wages, and certify the prevailing wage to such public
10 body.

11 (a-0.5) When a public body or other entity covered by this
12 Act calls for bids for a contract covered by this Act, the
13 public body or other entity shall specify in the call for bids
14 for the contract that it shall be mandatory upon each
15 contractor and upon each subcontractor under him and upon any
16 subcontractor of any tier to include in each bid a total number
17 of straight-time work hours, identified as either
18 "Journeyman" or "Apprentice", for each craft or type of
19 worker or mechanic needed to execute the contract or perform
20 the work. Bids received that do not include the total number of
21 straight-time work hours as required in this subsection shall
22 be dismissed from consideration without recourse by the
23 contractor and any subcontractor under him and any
24 subcontractor of any tier.

25 (a-0.7) To effectuate the purpose and policy of this Act,
26 contractors and subcontractors under him and subcontractors of

1 any tier submitting bids for public works contracts must be a
2 responsible bidder.

3 (a-1) The public body or other entity 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-2) When a public body or other entity covered by this
11 Act has awarded work to a contractor without a public bid,
12 contract or project specification, such public body or other
13 entity shall comply with subsection (a-1) by providing the
14 contractor with written notice on the purchase order related to
15 the work to be done or on a separate document indicating that
16 not less than the prevailing rate of wages as found by the
17 public body or Department of Labor or determined by the court
18 on review shall be paid to all laborers, workers, and mechanics
19 performing work on the project.

20 (a-2.5) When a complaint is made and the Department of
21 Labor determines that a violation occurred, the Department of
22 Labor shall order the public body or other entity that awarded
23 the work to pay the sum of any back wages, as determined under
24 this Act, and any interest, penalties, or fines owed by the
25 contractor and any subcontractor under him and any
26 subcontractor of any tier to the Department.

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

21 (b) It shall also be mandatory upon the contractor to whom
22 the contract is awarded to insert into each subcontract and
23 into the project specifications for each subcontract a written
24 stipulation to the effect that not less than the prevailing
25 rate of wages shall be paid to all laborers, workers, and
26 mechanics performing work under the contract. It shall also be

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

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

17 (b-1.5) When a complaint is made and the Department of
18 Labor determines that a violation occurred, the Department of
19 Labor shall order the contractor that awarded the work to a
20 subcontractor to pay the sum of any back wages, as determined
21 under this Act, and any interest, penalties, or fines owed by
22 the subcontractor and any subcontractor of any tier to the
23 Department.

24 (b-2) Where a complaint is made and the Department of Labor
25 determines that a violation has occurred and, ~~the Department of~~
26 ~~Labor shall determine if proper written notice under this~~

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

1 the right of a laborer, worker, or mechanic to the prevailing
2 rate of wages as determined under this Act.

3 (c) A public body or other entity shall also require in all
4 contractor's and subcontractor's bonds that the contractor or
5 subcontractor include such provision as will guarantee the
6 faithful performance of such prevailing wage clause as provided
7 by contract or other written instrument. All bid specifications
8 shall list the specified rates to all laborers, workers and
9 mechanics in the locality for each craft or type of worker or
10 mechanic needed to execute the contract.

11 (d) If the Department of Labor revises the prevailing rate
12 of hourly wages to be paid by the public body, the revised rate
13 shall apply to such contract, and the public body shall be
14 responsible to notify the contractor and each subcontractor, of
15 the revised rate.

16 (e) Two or more investigatory hearings under this Section
17 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 investigatory
21 hearing is conducted by a public body or the Department. The
22 party requesting a consolidated investigatory hearing shall
23 have the burden of establishing that there is no existing
24 prevailing wage classification for the particular craft or type
25 of worker in any of the localities under consideration.

26 (f) It shall be mandatory upon the contractor or

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

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

18 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

19 Sec. 5. Certified payroll.

20 (a) Any contractor and each subcontractor who participates
21 in public works shall:

22 (1) make and keep, for a period of not less than 3
23 years from the date of the last payment on a contract or
24 subcontract for public works, records of all laborers,
25 mechanics, and other workers employed by them on the

1 project; the records shall include each worker's name,
2 address, telephone number when available, social security
3 number, trade, laborer, or mechanic classification or
4 classifications, the hourly wages paid in each pay period,
5 the number of hours worked each day, and the starting and
6 ending times of work each day; and

7 (2) no later than the tenth day of each calendar month
8 file a certified payroll for the immediately preceding
9 month with the public body in charge of the project. A
10 certified payroll must be filed for only those calendar
11 months during which construction on a public works project
12 has occurred. The certified payroll shall consist of a
13 complete copy of the records identified in paragraph (1) of
14 this subsection (a) including, ~~but may exclude~~ the starting
15 and ending times of work each day. The certified payroll
16 shall be accompanied by a statement signed by the
17 contractor or subcontractor or an officer, employee, or
18 agent of the contractor or subcontractor which avers that:
19 (i) he or she has examined the certified payroll records
20 required to be submitted by the Act and such records are
21 true and accurate; (ii) the hourly rate paid to each worker
22 is not less than the general prevailing rate of hourly
23 wages required by this Act; and (iii) the contractor or
24 subcontractor is aware that filing a certified payroll that
25 he or she knows to be false is a Class A misdemeanor. A
26 general contractor is not prohibited from relying on the

1 certification of a lower tier subcontractor, provided the
2 general contractor does not knowingly rely upon a
3 subcontractor's false certification. Any contractor or
4 subcontractor subject to this Act and any officer,
5 employee, or agent of such contractor or subcontractor
6 whose duty as such officer, employee, or agent it is to
7 file such certified payroll who willfully fails to file
8 such a certified payroll on or before the date such
9 certified payroll is required by this paragraph to be filed
10 and any person who willfully files a false certified
11 payroll that is false as to any material fact is in
12 violation of this Act and guilty of a Class A misdemeanor.
13 The public body in charge of the project shall keep the
14 records submitted in accordance with this paragraph (2) of
15 subsection (a) for a period of not less than 3 years from
16 the date of the last payment for work on a contract or
17 subcontract for public works. The records submitted in
18 accordance with this paragraph (2) of subsection (a) shall
19 be considered public records, except an employee's
20 address, telephone number, and social security number, and
21 made available in accordance with the Freedom of
22 Information Act. ~~The public body shall accept any~~
23 ~~reasonable submissions by the contractor that meet the~~
24 ~~requirements of this Section.~~

25 (b) Upon 7 business days' notice, the contractor and each
26 subcontractor shall make available for inspection and copying

1 at a location within this State during reasonable hours, the
2 records identified in paragraph (1) of subsection (a) of this
3 Section to the public body in charge of the project, its
4 officers and agents, the Director of Labor and his deputies and
5 agents, and to federal, State, or local law enforcement
6 agencies and prosecutors.

7 (Source: P.A. 97-571, eff. 1-1-12.)

8 (820 ILCS 130/6) (from Ch. 48, par. 39s-6)

9 Sec. 6. Any officer, agent or representative of any public
10 body who willfully ~~willfully~~ violates, or willfully fails to
11 comply with, any of the provisions of this Act, and any
12 contractor or subcontractor, and any officer, employee, or
13 agent thereof, who as such officer, employee, or agent, has a
14 duty to create, keep, maintain, or produce any record or
15 document required by this Act to be created, kept, maintained,
16 or produced who willfully fails to create, keep, maintain, or
17 produce such record or document as or when required by this
18 Act, is guilty of a Class 4 felony ~~A misdemeanor~~.

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

24 (Source: P.A. 97-571, eff. 1-1-12.)

1 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

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

25 Any laborer, worker or mechanic employed by the contractor
26 or by any sub-contractor under him who is paid for his services

1 in a sum less than the stipulated rates for work done under
2 such contract, shall have a right of action for whatever
3 difference there may be between the amount so paid, and the
4 rates provided by the contract together with costs and such
5 reasonable attorney's fees as shall be allowed by the court.
6 Such contractor or subcontractor shall also be liable to the
7 Department of Labor for 50% ~~20%~~ of such underpayments and shall
8 be additionally liable to each ~~the~~ laborer, worker or mechanic
9 for punitive damages in the amount of \$40 per day for each day
10 or portion of a day ~~2% of the amount of any such penalty to the~~
11 ~~State for underpayments for each month following the date of~~
12 ~~payment~~ during which such underpayments remain unpaid. Where a
13 second or subsequent action to recover underpayments is brought
14 against a contractor or subcontractor and the contractor or
15 subcontractor is found liable for underpayments to each ~~any~~
16 laborer, worker, or mechanic, the contractor or subcontractor
17 shall also be liable to the Department of Labor for 75% ~~50%~~ of
18 the underpayments payable as a result of the second or
19 subsequent action, and shall be additionally liable for
20 punitive damages in the amount of \$50 per day for each day or
21 portion of a day ~~5% of the amount of any such penalty to the~~
22 ~~State for underpayments for each month following the date of~~
23 ~~payment~~ during which the underpayments remain unpaid. A joint
24 labor-management committee established pursuant to the federal
25 Labor Management Cooperation Act of 1978 (Section 175a of Title
26 29 of the United States Code) may bring an action in any court

1 of competent jurisdiction against a public body or other entity
2 covered by this Act and any contractor and any subcontractor
3 under him and any subcontractor of any tier, with which the
4 public body or other entity enters into a contract for public
5 works, that fails to enforce or comply with any provision of
6 this Act. This action shall be commenced not later than 180
7 days after the completion and acceptance of the public works by
8 the public body or other entity covered by this Act. The court
9 may award the joint labor-management committee reasonable
10 attorney's fees and costs incurred in maintaining the action.

11 The Department shall also have a right of action on behalf of
12 any individual who has a right of action under this Section. An
13 action brought to recover same shall be deemed to be a suit for
14 wages, and any and all judgments entered therein shall have the
15 same force and effect as other judgments for wages. At the
16 request of any laborer, workman or mechanic employed by the
17 contractor or by any subcontractor under him who is paid less
18 than the prevailing wage rate required by this Act, the
19 Department of Labor may take an assignment of such wage claim
20 in trust for the assigning laborer, workman or mechanic and may
21 bring any legal action necessary to collect such claim, and the
22 contractor or subcontractor shall be required to pay the costs
23 incurred in collecting such claim.

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