

SB2761



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2761

Introduced 2/17/2016, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

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

Amends the Prevailing Wage Act. Provides that a prevailing wage determined at the time of bid submission shall continue for the duration of the contract.

LRB099 18275 JLS 42646 b

FISCAL NOTE ACT
MAY APPLY

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 4 and 9 as follows:

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

7 Sec. 4. Ascertaining prevailing wage.

8 (a) The public body awarding any contract for public work
9 or otherwise undertaking any public works, shall ascertain the
10 general prevailing rate of hourly wages in the locality in
11 which the work is to be performed, for each craft or type of
12 worker or mechanic needed to execute the contract, and where
13 the public body performs the work without letting a contract
14 therefor, shall ascertain the prevailing rate of wages on a per
15 hour basis in the locality, and such public body shall specify
16 in the resolution or ordinance and in the call for bids for the
17 contract, that the general prevailing rate of wages in the
18 locality for each craft or type of worker or mechanic needed to
19 execute the contract or perform such work, also the general
20 prevailing rate for legal holiday and overtime work, as
21 ascertained by the public body or by the Department of Labor
22 shall be paid for each craft or type of worker needed to
23 execute the contract or to perform such work, and it shall be

1 mandatory upon the contractor to whom the contract is awarded
2 and upon any subcontractor under him, and where the public body
3 performs the work, upon the public body, to pay not less than
4 the specified rates to all laborers, workers and mechanics
5 employed by them in the execution of the contract or such work;
6 provided, however, that if the public body desires that the
7 Department of Labor ascertain the prevailing rate of wages, it
8 shall notify the Department of Labor to ascertain the general
9 prevailing rate of hourly wages for work under contract, or for
10 work performed by a public body without letting a contract as
11 required in the locality in which the work is to be performed,
12 for each craft or type of worker or mechanic needed to execute
13 the contract or project or work to be performed. Upon such
14 notification the Department of Labor shall ascertain such
15 general prevailing rate of wages, and certify the prevailing
16 wage to such public body.

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

24 (a-2) When a public body or other entity covered by this
25 Act has awarded work to a contractor without a public bid,
26 contract or project specification, such public body or other

1 entity shall comply with subsection (a-1) by providing the
2 contractor with written notice on the purchase order related to
3 the work to be done or on a separate document indicating that
4 not less than the prevailing rate of wages as found by the
5 public body or Department of Labor or determined by the court
6 on review shall be paid to all laborers, workers, and mechanics
7 performing work on the project.

8 (a-3) Where a complaint is made and the Department of Labor
9 determines that a violation occurred, the Department of Labor
10 shall determine if proper written notice under this Section 4
11 was given. If proper written notice was not provided to the
12 contractor by the public body or other entity, the Department
13 of Labor shall order the public body or other entity to pay any
14 interest, penalties or fines that would have been owed by the
15 contractor if proper written notice were provided. The failure
16 by a public body or other entity to provide written notice does
17 not relieve the contractor of the duty to comply with the
18 prevailing wage rate, nor of the obligation to pay any back
19 wages, as determined under this Act. For the purposes of this
20 subsection, back wages shall be limited to the difference
21 between the actual amount paid and the prevailing rate of wages
22 required to be paid for the project. The failure of a public
23 body or other entity to provide written notice under this
24 Section 4 does not diminish the right of a laborer, worker, or
25 mechanic to the prevailing rate of wages as determined under
26 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.

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

23 (b-2) Where a complaint is made and the Department of Labor
24 determines that a violation has occurred, the Department of
25 Labor shall determine if proper written notice under this
26 Section 4 was given. If proper written notice was not provided

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

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

9 (d) Any prevailing rate determined by a public body or the
10 Department at the time of bid submission shall be the rate
11 applicable for the duration of the contract awarded by the
12 public body. ~~If the Department of Labor revises the prevailing~~
13 ~~rate of hourly wages to be paid by the public body or other~~
14 ~~entity, the revised rate shall apply to such contract, and the~~
15 ~~public body or other entity shall be responsible to notify the~~
16 ~~contractor and each subcontractor, of the revised rate.~~

17 ~~The public body or other entity shall discharge its duty to~~
18 ~~notify of the revised rates by inserting a written stipulation~~
19 ~~in all contracts or other written instruments that states the~~
20 ~~prevailing rate of wages are revised by the Department of Labor~~
21 ~~and are available on the Department's official website. This~~
22 ~~shall be deemed to be proper notification of any rate changes~~
23 ~~under this subsection.~~

24 (e) Two or more investigatory hearings under this Section
25 on the issue of establishing a new prevailing wage
26 classification for a particular craft or type of worker shall

1 be consolidated in a single hearing before the Department. Such
2 consolidation shall occur whether each separate investigatory
3 hearing is conducted by a public body or the Department. The
4 party requesting a consolidated investigatory hearing shall
5 have the burden of establishing that there is no existing
6 prevailing wage classification for the particular craft or type
7 of worker in any of the localities under consideration.

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

25 (Source: P.A. 96-437, eff. 1-1-10; 97-964, eff. 1-1-13.)

1 (820 ILCS 130/9) (from Ch. 48, par. 39s-9)

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

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

19 Where the Department of Labor ascertains the prevailing
20 rate of wages, it is the duty of the Department of Labor within
21 30 days after receiving a notice from the public body
22 authorizing the proposed work, to conduct an investigation to
23 ascertain the prevailing rate of wages as defined in this Act
24 and such investigation shall be conducted in the locality in
25 which the work is to be performed. The Department of Labor
26 shall send a certified copy of its findings to the public body

1 authorizing the work and keep a record of its findings
2 available for inspection by any interested party in the office
3 of the Department of Labor at Springfield.

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

16 At any time within 30 days after the Department of Labor
17 has published on its official web site a prevailing wage
18 schedule, any person affected thereby may object in writing to
19 the determination or such part thereof as they may deem
20 objectionable by filing a written notice with the public body
21 or Department of Labor, whichever has made such determination,
22 stating the specified grounds of the objection. It shall
23 thereafter be the duty of the public body or Department of
24 Labor to set a date for a hearing on the objection after giving
25 written notice to the objectors at least 10 days before the
26 date of the hearing and said notice shall state the time and

1 place of such hearing. Such hearing by a public body shall be
2 held within 45 days after the objection is filed, and shall not
3 be postponed or reset for a later date except upon the consent,
4 in writing, of all the objectors and the public body. If such
5 hearing is not held by the public body within the time herein
6 specified, the Department of Labor may, upon request of the
7 objectors, conduct the hearing on behalf of the public body.

8 The public body or Department of Labor, whichever has made
9 such determination, is authorized in its discretion to hear
10 each written objection filed separately or consolidate for
11 hearing any one or more written objections filed with them. At
12 such hearing the public body or Department of Labor shall
13 introduce in evidence the investigation it instituted which
14 formed the basis of its determination, and the public body or
15 Department of Labor, or any interested objectors may thereafter
16 introduce such evidence as is material to the issue.
17 Thereafter, the public body or Department of Labor, must rule
18 upon the written objection and make such final determination as
19 it believes the evidence warrants, and promptly file a
20 certified copy of its final determination with such public
21 body, and serve a copy by personal service or registered mail
22 on all parties to the proceedings. The final determination by
23 the Department of Labor or a public body shall be rendered
24 within 30 days after the conclusion of the hearing.

25 If proceedings to review judicially the final
26 determination of the public body or Department of Labor are not

1 instituted as hereafter provided, such determination shall be
2 final and binding.

3 The provisions of the Administrative Review Law, and all
4 amendments and modifications thereof, and the rules adopted
5 pursuant thereto, shall apply to and govern all proceedings for
6 the judicial review of final administrative decisions of any
7 public body or the Department of Labor hereunder. The term
8 "administrative decision" is defined as in Section 3-101 of the
9 Code of Civil Procedure.

10 Appeals from all final orders and judgments entered by the
11 court in review of the final administrative decision of the
12 public body or Department of Labor, may be taken by any party
13 to the action.

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

18 In all reviews or appeals under this Act, it shall be the
19 duty of the Attorney General to represent the Department of
20 Labor, and defend its determination. The Attorney General shall
21 not represent any public body, except the State, in any such
22 review or appeal.

23 Notwithstanding the provisions of this Section, any
24 prevailing rate determined by a public body or the Department
25 at the time of bid submission shall be the rate applicable for
26 the duration of the contract awarded by the public body.

1 (Source: P.A. 98-173, eff. 1-1-14.)