



**96TH GENERAL ASSEMBLY**

**State of Illinois**

**2009 and 2010**

INTRODUCED \_\_\_\_\_, BY

**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

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, 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.)

