

HB3043



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3043

by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

New Act

Creates the Living Wage Act. Provides that the State, its agencies, and political subdivisions shall ensure that new contracts and subcontracts include a provision specifying that, as a condition of payment of the contract, the minimum wage to be paid to workers in performance of the contract or subcontract shall be at least \$16.36 per hour for new contracts created after January 1, 2018. Provides that for every year thereafter, the Department of Labor shall adjust the amount of the hourly minimum wage by the annual percentage increase in the consumer price index. Sets forth provisions concerning enforcement and penalties. Creates a private right of action to enforce the provisions of the Act. Provides for debarment of certain contractors or subcontractors for violation of the Act. Contains severability provisions. Effective January 1, 2018.

LRB100 10777 MLM 21008 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Living
5 Wage Act.

6 Section 5. Policy. It is the policy of the State of
7 Illinois that in order to increase efficiency and cost savings
8 in the work performed by parties who contract with the State of
9 Illinois or any of its political subdivisions the hourly
10 minimum wage to be paid by those contractors shall be \$16.36,
11 and shall be increased annually thereafter by an amount
12 specified herein. It is further the policy of the State of
13 Illinois that raising the pay of low-wage workers increases the
14 productivity and quality of their work, lowers turnover, and
15 reduces supervisory costs. These savings and quality
16 improvements will lead to an improved economy in Illinois and
17 more efficient State procurement.

18 Section 10. Definitions. As used in this Act:

19 "Concessions contract" means a contract under which the
20 State of Illinois, or any political subdivision thereof, grants
21 a right to use State property, including land or facilities,
22 for furnishing services. "Concessions contract" includes, but

1 is not limited to, a contract the principal purpose of which is
2 to furnish food, lodging, automobile fuel, souvenirs,
3 newspaper stands, or recreational equipment, or any
4 combination thereof, regardless of whether the services are of
5 direct benefit to the State, its personnel, or the general
6 public.

7 "Contractor" means any individual or other legal entity
8 that is awarded a contract or subcontract by the State of
9 Illinois, its executive department, its agencies, its
10 political subdivisions, and the like. "Contractor" refers to
11 both a prime contractor and all of its subcontractors of any
12 tier on a contract with the State of Illinois, its executive
13 department, its agencies, its political subdivisions, and the
14 like.

15 "Contract" means all types of State agreements, regardless
16 of what they may be called, for the procurement, use, or
17 disposal of supplies, services, professional or artistic
18 services; construction or for leases of real property where the
19 State is the lessee; and capital improvements, including
20 renewals, and includes master contracts; contracts for
21 financing through use of installment or lease-purchase
22 arrangements; renegotiated contracts; amendments to contracts;
23 and change orders, as defined in Section 1-15.30 of the
24 Illinois Procurement Code. "Contract" includes all contracts
25 and any subcontracts of any tier thereunder, whether negotiated
26 or advertised, including any procurement actions, lease

1 agreements, cooperative agreements, provider agreements,
2 intergovernmental service agreements, service agreements,
3 licenses, permits, or any other type of agreement, regardless
4 of nomenclature, type, or particular form, and whether entered
5 into verbally or in writing. The term "contract" shall be
6 interpreted broadly as to include, but not be limited to, any
7 contract that may be consistent with the definition provided in
8 the Illinois Procurement Code or any other applicable Illinois
9 law. Contracts may be the result of competitive bidding or
10 awarded to a single source under applicable authority to do so.
11 In addition to bilateral instruments, "contract" includes, but
12 is not limited to, awards and notices of awards; job orders or
13 task letters issued under basic ordering agreements; letter
14 contracts; orders, such as purchase orders, under which the
15 contract becomes effective by written acceptance or
16 performance; bilateral contract modifications; and concessions
17 contracts.

18 "Minimum wage" means, for purposes of this Act, a wage that
19 is at least:

20 (1) \$16.36 per hour beginning January 1, 2018; and

21 (2) Beginning January 1, 2019, and annually
22 thereafter, an amount determined by the Department of Labor
23 pursuant to Section 15 of this Act.

24 "New contract" means a contract that results from a
25 solicitation issued on or after January 1, 2018, or a contract
26 that is awarded outside the solicitation process on or after

1 January 1, 2018. "New contract" includes both new contracts and
2 replacements for expiring contracts. For purposes of this Act,
3 a contract that is entered into prior to January 1, 2018 will
4 constitute a new contract if, through bilateral negotiation, on
5 or after January 1, 2018:

6 (1) the contract is renewed;

7 (2) the contract is extended, unless the extension is
8 made pursuant to a term in the contract as of December 31,
9 2016 providing for a short-term limited extension; or

10 (3) the contract is amended pursuant to a modification
11 that is outside the scope of the contract.

12 "Worker" means any person engaged in performing work on or
13 in connection with a contract covered by this Act, other than
14 individuals employed in a bona fide executive, administrative,
15 or professional capacity, regardless of the contractual
16 relationship alleged to exist between the individual and the
17 employer.

18 Section 15. Establishing a minimum wage for State
19 contractors and subcontractors.

20 (a) The State, its executive departments, agencies, and
21 political subdivisions shall ensure that new contracts include
22 a provision, which the contractor and any subcontractors shall
23 incorporate directly into lower-tier subcontracts, specifying
24 that, as a condition of payment of the contract, the minimum
25 wage to be paid to workers in the performance of the contract

1 or subcontract shall be at least:

2 (1) \$16.36 per hour; and

3 (2) beginning January 1, 2019, and annually
4 thereafter, the amount of the hourly minimum wage required
5 by new contracts shall be published by the Department of
6 Labor.

7 The minimum wage after adjustment under this
8 subsection (a) shall be:

9 (A) no less than the amount published as the
10 minimum wage effective at the date of determination;

11 (B) increased from the existing amount by the
12 annual percentage increase in the Consumer Price Index
13 for Urban Wage Earners and Clerical Workers (Midwest
14 Region, all items);

15 (C) and rounded to the nearest multiple of 10
16 cents.

17 (3) The minimum wage rates shall be calculated on an
18 annual basis, as described herein, and take effect January
19 1 of each year. The Department of Labor shall publish the
20 minimum wage rates for the upcoming year at least 90 days
21 before the new rates take effect.

22 (b) When calculating the annual percentage increase in the
23 Consumer Price Index for purposes of item (B) of paragraph (2)
24 of subsection (a) of this Section, the Director of Labor shall
25 compare the Consumer Price Index for the most recent month
26 available with the Consumer Price Index for the same month in

1 the preceding year.

2 (c) Each worker engaged in the performance of a covered
3 contract by the prime contractor or any subcontractor,
4 regardless of any contractual relationship which may be alleged
5 to exist between the contractor and worker, shall be paid not
6 less than the applicable minimum wage under this Act.

7 (d) The contractor may not discharge any part of its
8 minimum wage obligation under this Act by furnishing fringe
9 benefits or the cash equivalent thereof.

10 (e) The contractor shall pay unconditionally to each worker
11 all wages due free and clear and without subsequent deduction
12 rebate, or kickback on any account, except that the provisions
13 of this Act shall not apply as to any deduction made by
14 employers under any title of the federal Social Security Act or
15 the federal Unemployment Insurance Tax Act, or as to any
16 deductions made for union dues pursuant to any bona fide
17 collective bargaining agreement. The payments shall be made no
18 later than one pay period following the end of the regular pay
19 period in which such wages were earned or accrued. A pay period
20 under this Act may not be of any duration longer than
21 semi-monthly.

22 (f) Nothing in this Act shall be construed as relieving a
23 contractor of any other obligation under federal, State or
24 local law, or under contract or collective bargaining
25 agreement, for the payment of a higher wage to any worker, nor
26 shall a lower prevailing wage under any federal, State, or

1 local law, or under contract, entitle a contractor to pay any
2 worker less than the minimum wage established annually under
3 this Act.

4 Section 20. Application of wage standards to collective
5 bargaining agreements. Nothing in this Act shall be construed
6 as to interfere with, impede, or in any way diminish the right
7 of employees to bargain collectively with their employers
8 through representatives of their own choosing in order to
9 establish wages or other conditions of employment in excess of
10 the applicable minimum wage standards in this Act.

11 Section 25. Enforcement, penalties, and private right of
12 action.

13 (a) Any officer, agent, or representative of any public
14 body who willfully violates, or willfully fails to comply with,
15 any of the provisions of this Act, and any contractor or
16 subcontractor, and any officer, employee, or agent thereof, who
17 as such officer, employee, who willfully violates, or willfully
18 fails to comply with, any of the provisions of this Act, is
19 guilty of a Class A misdemeanor.

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

1 interested person.

2 (c) Failure to comply with the minimum wage requirement as
3 stated in this Act shall be considered evidence bearing on a
4 contractor's qualification for award of future contracts.

5 (d) The prime contractor and any upper-tier subcontractor
6 shall be responsible for the compliance by any subcontractor or
7 lower-tier subcontractor with the minimum wage requirements
8 set forth in this Act. In the event of any violation of the
9 minimum wage obligation of this subsection (d), the contractor
10 and subcontractor, if any, responsible for the violation shall
11 be liable for the unpaid wages.

12 (e) Under this Act, any worker engaged in the performance
13 of a covered contract by the prime contractor or any
14 subcontractor under it who is paid for his services in a sum
15 less than the stipulated rates for work done under the contract
16 shall have a right of action for whatever difference there may
17 be between the amount so paid and the rates provided by the
18 contract, together with costs and any reasonable attorney's
19 fees as shall be allowed by the court. The contractor or
20 subcontractor shall also be liable to the Department of Labor
21 for 20% of the underpayments and shall be additionally liable
22 to the individual employed by the contractor or subcontractor
23 for punitive damages in the amount of 2% of the amount of any
24 penalty to the State for underpayments for each month following
25 the date of payment during which the underpayments remain
26 unpaid.

1 Where a second or subsequent action to recover
2 underpayments is brought against a contractor or subcontractor
3 and the contractor or subcontractor is found liable for
4 underpayments to any individual working for the contractor or
5 subcontractor, the contractor or subcontractor shall also be
6 liable to the Department of Labor for 50% of the underpayments
7 payable as a result of the second or subsequent action and
8 shall be additionally liable for 5% of the amount of any
9 penalty to the State for underpayments for each month following
10 the date of payment during which the underpayments remain
11 unpaid.

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

25 (f) In the event of a failure to pay any worker all or part
26 of the wages due under this Act, the contracting agency may on

1 its own action or after authorization or by direction of the
2 Department of Labor or the Attorney General acting on behalf
3 the Department of Labor and written notification to the
4 contractor, take action to cause suspension of any further
5 payment, advance, or guarantee of funds until the violations
6 have ceased. Additionally, any failure to comply with the
7 requirements of this Act may be grounds for termination of the
8 right to proceed with the contract work. In that event, the
9 State of Illinois, agency, or any political subdivision
10 thereof, may enter into other contracts or arrangements for
11 completion of the work, charging the contractor in default with
12 any additional cost. A breach of the contract clause may be
13 grounds for debarment as a contractor and subcontractor as
14 provided in Section 30 of this Act.

15 Section 30. Debarment. The Director of the Department of
16 Labor shall publish in the Illinois Register no less often than
17 once each calendar quarter a list of contractors or
18 subcontractors found to have disregarded their obligations to
19 workers under this Act. The Department of Labor shall determine
20 the contractors or subcontractors who, on 2 separate occasions
21 within 5 years, have been determined to have violated the
22 provisions of this Act. Upon that determination, the Department
23 shall notify the violating contractor or subcontractor. The
24 contractor or subcontractor shall then have 10 working days to
25 request a hearing by the Department on the alleged violations.

1 Failure to respond within the 10 working day period shall
2 result in automatic and immediate placement and publication on
3 the list. If the contractor or subcontractor requests a hearing
4 within the 10 working day period, the Director shall set a
5 hearing on the alleged violations. The hearing shall take place
6 no later than 45 calendar days after the receipt by the
7 Department of Labor of the request for a hearing. The
8 Department of Labor is empowered to adopt rules to govern the
9 hearing procedure. No contract shall be awarded to a contractor
10 or subcontractor appearing on the list, or to any firm,
11 corporation, partnership or association in which such
12 contractor or subcontractor has an interest until 4 years have
13 elapsed from the date of publication of the list containing the
14 name of such contractor or subcontractor.

15 A contractor or subcontractor convicted or found guilty
16 under Section 25 of this Act shall be subject to an automatic
17 and immediate debarment, thereafter prohibited from
18 participating in any public works project for 4 years, with no
19 right to a hearing.

20 Section 35. Notice requirement. The contractor or
21 subcontractor must notify all workers performing work on or in
22 connection with a covered contract of the applicable minimum
23 wage rate under this Act. With respect workers performing work
24 under contracts subject to prevailing wage requirements where
25 the prevailing wage rate is in excess of the minimum wage rate

1 established under this Act, the contractor may meet this
2 requirement by posting, in a prominent and accessible place at
3 the worksite, the applicable wage determination under those
4 laws. With respect to workers performing work under contracts
5 whose wages are not subject to prevailing wage requirements, or
6 workers performing work under contracts whose wages are subject
7 to prevailing wage requirements where the prevailing rate is
8 less than the minimum wage established under this Act, the
9 contractor must post a notice provided by the Department of
10 Labor in a prominent and accessible place at the worksite so it
11 may be readily seen by workers.

12 Section 97. Severability. The provisions of this Act are
13 severable under Section 1.31 of the Statute on Statutes.

14 Section 99. Effective date. This Act takes effect January
15 1, 2018.