

SB2408



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2408

Introduced 2/10/2023, by Sen. Willie Preston

SYNOPSIS AS INTRODUCED:

820 ILCS 130/4
820 ILCS 130/11

from Ch. 48, par. 39s-4
from Ch. 48, par. 39s-11

Amends the Prevailing Wage Act. Provides that any laborer, worker, or mechanic who is employed by the contractor or by any lower tier sub-contractor and is paid for services in a sum less than the prevailing wage rates for work performed on a project shall have a right of action for whatever difference there may be between the amount so paid and the prevailing rates required to be paid for work performed on the project. Makes other changes.

LRB103 26347 SPS 52708 b

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 11 as follows:

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

7 Sec. 4. Ascertaining prevailing wage.

8 (a) The prevailing rate of wages paid to individuals
9 covered under this Act shall not be less than the rate that
10 prevails for work of a similar character on public works in the
11 locality in which the work is performed under collective
12 bargaining agreements or understandings between employers or
13 employer associations and bona fide labor organizations
14 relating to each craft or type of worker or mechanic needed to
15 execute the contract or perform such work, and collective
16 bargaining agreements or understandings successor thereto,
17 provided that said employers or members of said employer
18 associations employ at least 30% of the laborers, workers, or
19 mechanics in the same trade or occupation in the locality
20 where the work is being performed.

21 (b) If the prevailing rates of wages and fringe benefits
22 cannot reasonably and fairly be applied in any locality
23 because no such agreements or understandings exist, the

1 Department of Labor shall determine the rates and fringe
2 benefits for the same or most similar work in the nearest and
3 most similar neighboring locality in which such agreements or
4 understandings exist. The Department of Labor shall keep a
5 record of its findings available for inspection by any
6 interested party in the office of the Department of Labor.

7 (c) In the event it is determined, after a written
8 objection is filed and hearing is held in accordance with
9 Section 9 of this Act, that less than 30% of the laborers,
10 workers, or mechanics in a particular trade or occupation in
11 the locality where the work is performed receive a
12 collectively bargained rate of wage, then the average wage
13 paid to such laborers, workers, or mechanics in the same trade
14 or occupation in the locality for the 12-month period
15 preceding the Department of Labor's annual determination shall
16 be the prevailing rate of wage.

17 (d) The public body awarding any contract for public work
18 or otherwise undertaking any public works shall specify in the
19 call for bids for the contract, or where the public body
20 performs the work without letting the contract in a written
21 instrument provided to the contractor, that the general
22 prevailing rate of wages in the locality for each craft or type
23 of worker or mechanic needed to execute the contract or
24 perform such work, also the general prevailing rate for legal
25 holiday and overtime work, as ascertained by the Department of
26 Labor shall be paid for each craft or type of worker needed to

1 execute the contract or to perform such work, and it shall be
2 mandatory upon the contractor to whom the contract is awarded
3 and upon any subcontractor under him, and where the public
4 body performs the work, upon the public body, to pay not less
5 than the specified rates to all laborers, workers and
6 mechanics employed by them in the execution of the contract or
7 such work. Compliance with this Act is a matter of statewide
8 concern, and a public body may not opt out of any provisions
9 herein.

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

17 (f) When a public body or other entity covered by this Act
18 has awarded work to a contractor without a public bid,
19 contract or project specification, such public body or other
20 entity shall comply with subsection (e) by providing the
21 contractor with written notice on the purchase order related
22 to the work to be done or on a separate document indicating
23 that not less than the prevailing rate of wages ascertained by
24 the Department of Labor or determined by the court on review
25 shall be paid to all laborers, workers, and mechanics
26 performing work on the project.

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

20 Any laborer, worker, or mechanic who is employed by the
21 contractor or by any sub-contractor and is paid for services
22 in a sum less than the prevailing wage rates for work performed
23 on a project shall have a right of action for whatever
24 difference there may be between (i) the amount so paid and (ii)
25 the prevailing rates required to be paid for work performed on
26 the project.

1 (h) 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 is in
14 violation of this Act.

15 (i) When a contractor has awarded work to a subcontractor
16 without a contract or contract specification, the contractor
17 shall comply with subsection (h) 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 is in violation of this Act.

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

1 as determined under this Act.

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

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

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

22 (m) Two or more investigatory hearings under this Section
23 on the issue of establishing a new prevailing wage
24 classification for a particular craft or type of worker shall
25 be consolidated in a single hearing before the Department. The
26 party requesting a consolidated investigatory hearing shall

1 have the burden of establishing that there is no existing
2 prevailing wage classification for the particular craft or
3 type of worker in any of the localities under consideration.

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

21 (Source: P.A. 100-1177, eff. 6-1-19.)

22 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

23 Sec. 11. No public works project shall be instituted
24 unless the provisions of this Act have been complied with. The
25 provisions of this Act shall not be applicable to Federal

1 construction projects which require a prevailing wage
2 determination by the United States Secretary of Labor. The
3 Illinois Department of Labor represented by the Attorney
4 General is empowered to sue for injunctive relief against the
5 awarding of any contract or the continuation of work under any
6 contract for public works at a time when the prevailing wage
7 prerequisites have not been met. Any contract for public works
8 awarded at a time when the prevailing wage prerequisites had
9 not been met shall be void as against public policy and the
10 contractor is prohibited from recovering any damages for the
11 voiding of the contract or pursuant to the terms of the
12 contract. The contractor is limited to a claim for amounts
13 actually paid for labor and materials supplied to the public
14 body. Where objections to a determination of the prevailing
15 rate of wages or a court action relative thereto is pending,
16 the public body shall not continue work on the project unless
17 sufficient funds are available to pay increased wages if such
18 are finally determined or unless the Department of Labor
19 certifies such determination of the prevailing rate of wages
20 as correct.

21 Any laborer, worker or mechanic employed by the contractor
22 or by any sub-contractor under him who is paid for his services
23 in a sum less than the prevailing ~~stipulated~~ rates for work
24 done under such contract, shall have a right of action for
25 whatever difference there may be between the amount so paid,
26 and the rates provided by the contract together with costs and

1 such reasonable attorney's fees as shall be allowed by the
2 court. Such contractor or subcontractor shall also be liable
3 to the Department of Labor for 20% of such underpayments and
4 shall be additionally liable to the laborer, worker or
5 mechanic for punitive damages in the amount of 2% of the amount
6 of any such penalty to the State for underpayments for each
7 month following the date of payment during which such
8 underpayments remain unpaid. Where a second or subsequent
9 action to recover underpayments is brought against a
10 contractor or subcontractor and the contractor or
11 subcontractor is found liable for underpayments to any
12 laborer, worker, or mechanic, the contractor or subcontractor
13 shall also be liable to the Department of Labor for 50% of the
14 underpayments payable as a result of the second or subsequent
15 action, and shall be additionally liable for 5% of the amount
16 of any such penalty to the State for underpayments for each
17 month following the date of payment during which the
18 underpayments remain unpaid. The Department shall also have a
19 right of action on behalf of any individual who has a right of
20 action under this Section. An action brought to recover same
21 shall be deemed to be a suit for wages, and any and all
22 judgments entered therein shall have the same force and effect
23 as other judgments for wages. The action shall be brought
24 within 5 years from the date of the failure to pay the wages or
25 compensation. At the request of any laborer, workman or
26 mechanic employed by the contractor or by any subcontractor

1 under him who is paid less than the prevailing wage rate
2 required by this Act, the Department of Labor may take an
3 assignment of such wage claim in trust for the assigning
4 laborer, workman or mechanic and may bring any legal action
5 necessary to collect such claim, and the contractor or
6 subcontractor shall be required to pay the costs incurred in
7 collecting such claim.

8 (Source: P.A. 98-328, eff. 1-1-14.)