



## 103RD GENERAL ASSEMBLY

### State of Illinois

### 2023 and 2024

### HB2881

Introduced 2/16/2023, by Rep. Gregg Johnson

#### SYNOPSIS AS INTRODUCED:

820 ILCS 130/1	from Ch. 48, par. 39s-1
820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/3	from Ch. 48, par. 39s-3
820 ILCS 130/5	from Ch. 48, par. 39s-5
820 ILCS 130/11	from Ch. 48, par. 39s-11

Amends the Prevailing Wage Act. Provides that the provisions of the Act apply to the construction or demolition of public works performed by an employee of a public body engaged in the construction or demolition of public works on behalf of another public body. Makes conforming changes.

LRB103 27136 SPS 53505 b

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 1, 2, 3, 5, and 11 as follows:

6 (820 ILCS 130/1) (from Ch. 48, par. 39s-1)

7 Sec. 1. It is the policy of the State of Illinois that a  
8 wage of no less than the general prevailing hourly rate as paid  
9 for work of a similar character in the locality in which the  
10 work is performed, shall be paid to all laborers, workers and  
11 mechanics employed by or on behalf of any and all public bodies  
12 engaged in public works. It is also the policy of the State of  
13 Illinois that a wage of no less than the general prevailing  
14 hourly rate as paid for work of a similar character in the  
15 locality in which the work is performed shall be paid to all  
16 employees of public bodies when engaged in public works on  
17 behalf of other public bodies.

18 (Source: P.A. 83-443.)

19 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

20 Sec. 2. This Act applies to the wages of laborers,  
21 mechanics and other workers employed in any public works, as  
22 hereinafter defined, by any public body and to anyone under

1 contracts for public works. This includes any maintenance,  
2 repair, assembly, or disassembly work performed on equipment  
3 whether owned, leased, or rented.

4 As used in this Act, unless the context indicates  
5 otherwise:

6 "Public works" means all fixed works constructed or  
7 demolished by any public body, or paid for wholly or in part  
8 out of public funds, including fixed works constructed or  
9 demolished by a public body on behalf of another public body.

10 "Public works" as defined herein includes all projects  
11 financed in whole or in part with bonds, grants, loans, or  
12 other funds made available by or through the State or any of  
13 its political subdivisions, including but not limited to:  
14 bonds issued under the Industrial Project Revenue Bond Act  
15 (Article 11, Division 74 of the Illinois Municipal Code), the  
16 Industrial Building Revenue Bond Act, the Illinois Finance  
17 Authority Act, the Illinois Sports Facilities Authority Act,  
18 or the Build Illinois Bond Act; loans or other funds made  
19 available pursuant to the Build Illinois Act; loans or other  
20 funds made available pursuant to the Riverfront Development  
21 Fund under Section 10-15 of the River Edge Redevelopment Zone  
22 Act; or funds from the Fund for Illinois' Future under Section  
23 6z-47 of the State Finance Act, funds for school construction  
24 under Section 5 of the General Obligation Bond Act, funds  
25 authorized under Section 3 of the School Construction Bond  
26 Act, funds for school infrastructure under Section 6z-45 of

1 the State Finance Act, and funds for transportation purposes  
2 under Section 4 of the General Obligation Bond Act. "Public  
3 works" also includes (i) all projects financed in whole or in  
4 part with funds from the Environmental Protection Agency under  
5 the Illinois Renewable Fuels Development Program Act for which  
6 there is no project labor agreement; (ii) all work performed  
7 pursuant to a public private agreement under the Public  
8 Private Agreements for the Illiana Expressway Act or the  
9 Public-Private Agreements for the South Suburban Airport Act;  
10 (iii) all projects undertaken under a public-private agreement  
11 under the Public-Private Partnerships for Transportation Act;  
12 and (iv) all transportation facilities undertaken under a  
13 design-build contract or a Construction Manager/General  
14 Contractor contract under the Innovations for Transportation  
15 Infrastructure Act. "Public works" also includes all projects  
16 at leased facility property used for airport purposes under  
17 Section 35 of the Local Government Facility Lease Act. "Public  
18 works" also includes the construction of a new wind power  
19 facility by a business designated as a High Impact Business  
20 under Section 5.5(a)(3)(E) and the construction of a new  
21 utility-scale solar power facility by a business designated as  
22 a High Impact Business under Section 5.5(a)(3)(E-5) of the  
23 Illinois Enterprise Zone Act. "Public works" also includes  
24 electric vehicle charging station projects financed pursuant  
25 to the Electric Vehicle Act and renewable energy projects  
26 required to pay the prevailing wage pursuant to the Illinois

1 Power Agency Act. "Public works" does not include work done  
2 directly by any public utility company, whether or not done  
3 under public supervision or direction, or paid for wholly or  
4 in part out of public funds. "Public works" also includes  
5 construction projects performed by a third party contracted by  
6 any public utility, as described in subsection (a) of Section  
7 2.1, in public rights-of-way, as defined in Section 21-201 of  
8 the Public Utilities Act, whether or not done under public  
9 supervision or direction, or paid for wholly or in part out of  
10 public funds. "Public works" also includes construction  
11 projects that exceed 15 aggregate miles of new fiber optic  
12 cable, performed by a third party contracted by any public  
13 utility, as described in subsection (b) of Section 2.1, in  
14 public rights-of-way, as defined in Section 21-201 of the  
15 Public Utilities Act, whether or not done under public  
16 supervision or direction, or paid for wholly or in part out of  
17 public funds. "Public works" also includes any corrective  
18 action performed pursuant to Title XVI of the Environmental  
19 Protection Act for which payment from the Underground Storage  
20 Tank Fund is requested. "Public works" does not include  
21 projects undertaken by the owner at an owner-occupied  
22 single-family residence or at an owner-occupied unit of a  
23 multi-family residence. "Public works" does not include work  
24 performed for soil and water conservation purposes on  
25 agricultural lands, whether or not done under public  
26 supervision or paid for wholly or in part out of public funds,

1 done directly by an owner or person who has legal control of  
2 those lands.

3 "Construction" means all work on public works involving  
4 laborers, workers or mechanics. This includes any maintenance,  
5 repair, assembly, or disassembly work performed on equipment  
6 whether owned, leased, or rented.

7 "Locality" means the county where the physical work upon  
8 public works is performed, except (1) that if there is not  
9 available in the county a sufficient number of competent  
10 skilled laborers, workers and mechanics to construct the  
11 public works efficiently and properly, "locality" includes any  
12 other county nearest the one in which the work or construction  
13 is to be performed and from which such persons may be obtained  
14 in sufficient numbers to perform the work and (2) that, with  
15 respect to contracts for highway work with the Department of  
16 Transportation of this State, "locality" may at the discretion  
17 of the Secretary of the Department of Transportation be  
18 construed to include two or more adjacent counties from which  
19 workers may be accessible for work on such construction.

20 "Public body" means the State or any officer, board or  
21 commission of the State or any political subdivision or  
22 department thereof, or any institution supported in whole or  
23 in part by public funds, and includes every county, city,  
24 town, village, township, school district, irrigation, utility,  
25 reclamation improvement or other district and every other  
26 political subdivision, district or municipality of the state

1 whether such political subdivision, municipality or district  
2 operates under a special charter or not.

3 "Labor organization" means an organization that is the  
4 exclusive representative of an employer's employees recognized  
5 or certified pursuant to the National Labor Relations Act.

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

15 (Source: P.A. 102-9, eff. 1-1-22; 102-444, eff. 8-20-21;  
16 102-673, eff. 11-30-21; 102-813, eff. 5-13-22; 102-1094, eff.  
17 6-15-22.)

18 (820 ILCS 130/3) (from Ch. 48, par. 39s-3)

19 Sec. 3. Not less than the general prevailing rate of  
20 hourly wages for work of a similar character on public works in  
21 the locality in which the work is performed, and not less than  
22 the general prevailing rate of hourly wages for legal holiday  
23 and overtime work, shall be paid to all laborers, workers and  
24 mechanics employed by or on behalf of any public body engaged  
25 in the construction or demolition of public works. This

1 includes any maintenance, repair, assembly, or disassembly  
2 work performed on equipment whether owned, leased, or rented.  
3 This also includes the construction or demolition of public  
4 works performed by an employee of a public body engaged in the  
5 construction or demolition of public works on behalf of  
6 another public body. Only such laborers, workers and mechanics  
7 as are directly employed by contractors or subcontractors in  
8 actual construction work on the site of the building or  
9 construction job, and laborers, workers and mechanics engaged  
10 in the transportation of materials and equipment to or from  
11 the site, but not including the transportation by the sellers  
12 and suppliers or the manufacture or processing of materials or  
13 equipment, in the execution of any contract or contracts for  
14 public works with any public body shall be deemed to be  
15 employed upon public works. The wage for a tradesman  
16 performing maintenance is equivalent to that of a tradesman  
17 engaged in construction or demolition.

18 (Source: P.A. 95-341, eff. 8-21-07; 96-186, eff. 1-1-10.)

19 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

20 Sec. 5. Certified payroll.

21 (a) Any contractor and each subcontractor who participates  
22 in public works and any public body that participates in  
23 public works on behalf of another public body shall:

24 (1) make and keep, for a period of not less than 3  
25 years from the date of the last payment made before



1 January 1, 2014 (the effective date of Public Act 98-328)  
2 and for a period of 5 years from the date of the last  
3 payment made on or after January 1, 2014 (the effective  
4 date of Public Act 98-328) on a contract or subcontract  
5 for public works, records of all laborers, mechanics, and  
6 other workers employed by them on the project; the records  
7 shall include (i) the worker's name, (ii) the worker's  
8 address, (iii) the worker's telephone number when  
9 available, (iv) the last 4 digits of the worker's social  
10 security number, (v) the worker's gender, (vi) the  
11 worker's race, (vii) the worker's ethnicity, (viii)  
12 veteran status, (ix) the worker's classification or  
13 classifications, (x) the worker's skill level, such as  
14 apprentice or journeyman, (xi) the worker's gross and net  
15 wages paid in each pay period, (xii) the worker's number  
16 of hours worked each day, (xiii) the worker's starting and  
17 ending times of work each day, (xiv) the worker's hourly  
18 wage rate, (xv) the worker's hourly overtime wage rate,  
19 (xvi) the worker's hourly fringe benefit rates, (xvii) the  
20 name and address of each fringe benefit fund, (xviii) the  
21 plan sponsor of each fringe benefit, if applicable, and  
22 (xix) the plan administrator of each fringe benefit, if  
23 applicable; and

24 (2) no later than the 15th day of each calendar month  
25 file a certified payroll for the immediately preceding  
26 month with the public body in charge of the project until

1 the Department of Labor activates the database created  
2 under Section 5.1 at which time certified payroll shall  
3 only be submitted to that database, except for projects  
4 done by State agencies that opt to have contractors submit  
5 certified payrolls directly to that State agency. A State  
6 agency that opts to directly receive certified payrolls  
7 must submit the required information in a specified  
8 electronic format to the Department of Labor no later than  
9 10 days after the certified payroll was filed with the  
10 State agency. A certified payroll must be filed for only  
11 those calendar months during which construction on a  
12 public works project has occurred. The certified payroll  
13 shall consist of a complete copy of the records identified  
14 in paragraph (1) of this subsection (a), but may exclude  
15 the starting and ending times of work each day. The  
16 certified payroll shall be accompanied by a statement  
17 signed by the contractor or subcontractor or an officer,  
18 employee, or agent of the contractor or subcontractor or  
19 an officer, employee, or agent of a public body engaged in  
20 the construction or demolition of public works on behalf  
21 of another public body, which avers that: (i) he or she has  
22 examined the certified payroll records required to be  
23 submitted by the Act and such records are true and  
24 accurate; (ii) the hourly rate paid to each worker is not  
25 less than the general prevailing rate of hourly wages  
26 required by this Act; and (iii) the public body engaged in

1       the construction or demolition of public works on behalf  
2       of another public body or the contractor or subcontractor  
3       is aware that filing a certified payroll that he or she  
4       knows to be false is a Class A misdemeanor. A general  
5       contractor is not prohibited from relying on the  
6       certification of a lower tier subcontractor, provided the  
7       general contractor does not knowingly rely upon a  
8       subcontractor's false certification. Any public body  
9       engaged in the construction or demolition of public works  
10       on behalf of another public body, any officer, employee,  
11       or agent of a public body engaged in the construction or  
12       demolition of public works on behalf of another public  
13       body, any contractor or subcontractor subject to this Act,  
14       and any officer, employee, or agent of such contractor or  
15       subcontractor whose duty as such officer, employee, or  
16       agent it is to file such certified payroll who willfully  
17       fails to file such a certified payroll on or before the  
18       date such certified payroll is required by this paragraph  
19       to be filed and any person who willfully files a false  
20       certified payroll that is false as to any material fact is  
21       in violation of this Act and guilty of a Class A  
22       misdemeanor. The public body in charge of the project  
23       shall keep the records submitted in accordance with this  
24       paragraph (2) of subsection (a) before January 1, 2014  
25       (the effective date of Public Act 98-328) for a period of  
26       not less than 3 years, and the records submitted in

1           accordance with this paragraph (2) of subsection (a) on or  
2           after January 1, 2014 (the effective date of Public Act  
3           98-328) for a period of 5 years, from the date of the last  
4           payment for work on a contract or subcontract for public  
5           works or until the Department of Labor activates the  
6           database created under Section 5.1, whichever is less.  
7           After the activation of the database created under Section  
8           5.1, the Department of Labor rather than the public body  
9           in charge of the project shall keep the records and  
10          maintain the database. The records submitted in accordance  
11          with this paragraph (2) of subsection (a) shall be  
12          considered public records, except an employee's address,  
13          telephone number, social security number, race, ethnicity,  
14          and gender, and made available in accordance with the  
15          Freedom of Information Act. The public body shall accept  
16          any reasonable submissions by the contractor that meet the  
17          requirements of this Section.

18          A contractor, subcontractor, or public body may retain  
19          records required under this Section in paper or electronic  
20          format.

21          (b) Upon 7 business days' notice, the public body engaged  
22          in the construction or demolition of public works on behalf of  
23          another public body or the contractor and each subcontractor  
24          shall make available for inspection and copying at a location  
25          within this State during reasonable hours, the records  
26          identified in paragraph (1) of subsection (a) of this Section

1 to the public body in charge of the project, its officers and  
2 agents, the Director of Labor and his deputies and agents, and  
3 to federal, State, or local law enforcement agencies and  
4 prosecutors.

5 (c) A contractor or subcontractor who remits contributions  
6 to fringe benefit funds that are jointly maintained and  
7 jointly governed by one or more employers and one or more labor  
8 organizations in accordance with the federal Labor Management  
9 Relations Act shall make and keep certified payroll records  
10 that include the information required under items (i) through  
11 (viii) of paragraph (1) of subsection (a) only. However, the  
12 information required under items (ix) through (xv) of  
13 paragraph (1) of subsection (a) shall be required for any  
14 contractor or subcontractor who remits contributions to a  
15 fringe benefit fund that is not jointly maintained and jointly  
16 governed by one or more employers and one or more labor  
17 organizations in accordance with the federal Labor Management  
18 Relations Act.

19 (Source: P.A. 100-1177, eff. 6-1-19; 101-31, eff. 6-28-19.)

20 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

21 Sec. 11. No public works project shall be instituted  
22 unless the provisions of this Act have been complied with. The  
23 provisions of this Act shall not be applicable to Federal  
24 construction projects which require a prevailing wage  
25 determination by the United States Secretary of Labor. The

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

22 Any employee of a public body that engaged in the  
23 construction or demolition of public works on behalf of  
24 another public body and any laborer, worker or mechanic  
25 employed by the contractor or by any sub-contractor under him  
26 who is paid for his services in a sum less than the stipulated

1 rates for work done under such contract, shall have a right of  
2 action for whatever difference there may be between the amount  
3 so paid, and the rates provided by the contract together with  
4 costs and such reasonable attorney's fees as shall be allowed  
5 by the court. Such contractor or subcontractor shall also be  
6 liable to the Department of Labor for 20% of such  
7 underpayments and shall be additionally liable to the laborer,  
8 worker or mechanic for punitive damages in the amount of 2% of  
9 the amount of any such penalty to the State for underpayments  
10 for each month following the date of payment during which such  
11 underpayments remain unpaid. Where a second or subsequent  
12 action to recover underpayments is brought against a public  
13 body that engaged in the construction or demolition of public  
14 works on behalf of another public body or a contractor or  
15 subcontractor and the public body or contractor or  
16 subcontractor is found liable for underpayments to any  
17 employee, laborer, worker, or mechanic, the public body or  
18 contractor or subcontractor shall also be liable to the  
19 Department of Labor for 50% of the underpayments payable as a  
20 result of the second or subsequent action, and shall be  
21 additionally liable for 5% of the amount of any such penalty to  
22 the State for underpayments for each month following the date  
23 of payment during which the underpayments remain unpaid. The  
24 Department shall also have a right of action on behalf of any  
25 individual who has a right of action under this Section. An  
26 action brought to recover same shall be deemed to be a suit for

1 wages, and any and all judgments entered therein shall have  
2 the same force and effect as other judgments for wages. The  
3 action shall be brought within 5 years from the date of the  
4 failure to pay the wages or compensation. At the request of any  
5 employee employed by a public body that engaged in the  
6 construction or demolition of public works on behalf of  
7 another public body or any laborer, workman or mechanic  
8 employed by the contractor or by any subcontractor under him  
9 who is paid less than the prevailing wage rate required by this  
10 Act, the Department of Labor may take an assignment of such  
11 wage claim in trust for the assigning laborer, workman or  
12 mechanic and may bring any legal action necessary to collect  
13 such claim, and the public body that engaged in the  
14 construction or demolition of public works on behalf of  
15 another public body or the contractor or subcontractor shall  
16 be required to pay the costs incurred in collecting such  
17 claim.

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