



Labor Committee

Adopted in House Comm. on Mar 07, 2007

09500HB0773ham001

LRB095 09068 RLC 32685 a

1 AMENDMENT TO HOUSE BILL 773

2 AMENDMENT NO. _____. Amend House Bill 773 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Prevailing Wage Act is amended by changing
5 Sections 2, 3, 4, 6, 9, 11, and 11b 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.

11 As used in this Act, unless the context indicates
12 otherwise:

13 "Public works" means all fixed works constructed by any
14 public body, other than work done directly by any public
15 utility company, whether or not done under public supervision
16 or direction, or paid for wholly or in part out of public

1 funds. "Public works" as defined herein includes all projects
2 financed in whole or in part with bonds issued under the
3 Industrial Project Revenue Bond Act (Article 11, Division 74 of
4 the Illinois Municipal Code), the Economic Development Area Tax
5 Increment Allocation Act, the Industrial Building Revenue Bond
6 Act, the Illinois Finance Authority Act, the Illinois Sports
7 Facilities Authority Act, or the Build Illinois Bond Act, and
8 all projects financed in whole or in part with loans or other
9 funds made available pursuant to the Build Illinois Act.
10 "Public works" also includes all projects financed in whole or
11 in part with funds from the Fund for Illinois' Future under
12 Section 6z-47 of the State Finance Act, funds for school
13 construction under Section 5 of the General Obligation Bond
14 Act, funds authorized under Section 3 of the School
15 Construction Bond Act, funds for school infrastructure under
16 Section 6z-45 of the State Finance Act, and funds for
17 transportation purposes under Section 4 of the General
18 Obligation Bond Act. "Public works" also includes all projects
19 financed in whole or in part with funds from the Department of
20 Commerce and Economic Opportunity under the Illinois Renewable
21 Fuels Development Program Act for which there is no project
22 labor agreement. "Public works" also includes all projects at
23 leased facility property used for airport purposes under
24 Section 35 of the Local Government Facility Lease Act and all
25 projects financed in whole or in part with loans or other funds
26 made available pursuant to the Illinois Enterprise Zone Act.

1 "Construction" means all work on public works involving
2 laborers, workers or mechanics.

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

16 "Public body" means the State or any officer, board or
17 commission of the State or any political subdivision or
18 department thereof, or any institution supported in whole or in
19 part by public funds, and includes every county, city, town,
20 village, township, school district, irrigation, utility,
21 reclamation improvement or other district and every other
22 political subdivision, district or municipality of the state
23 whether such political subdivision, municipality or district
24 operates under a special charter or not.

25 The terms "general prevailing rate of hourly wages",
26 "general prevailing rate of wages" or "prevailing rate of

1 wages" when used in this Act mean the hourly cash wages plus
2 fringe benefits for training and apprenticeship programs
3 approved by the U.S. Department of Labor, Bureau of
4 Apprenticeship and Training, health and welfare, insurance,
5 vacations and pensions paid generally, in the locality in which
6 the work is being performed, to employees engaged in work of a
7 similar character on public works.

8 "Contractor" or "subcontractor" means any person or entity
9 who undertakes to, offers to undertake to, purports to have the
10 capacity to undertake to, submits a bid to, or does himself or
11 herself or by or through others, engage in a public works.

12 (Source: P.A. 93-15, eff. 6-11-03; 93-16, eff. 1-1-04; 93-205,
13 eff. 1-1-04; 94-750, eff. 5-9-06.)

14 (820 ILCS 130/3) (from Ch. 48, par. 39s-3)

15 Sec. 3. Not less than the general prevailing rate of hourly
16 wages for work of a similar character on public works in the
17 locality in which the work is performed, and not less than the
18 general prevailing rate of hourly wages for legal holiday and
19 overtime work, shall be paid to all laborers, workers and
20 mechanics employed by or on behalf of any public body engaged
21 in the construction of public works. Laborers ~~Only such~~
22 ~~laborers~~, workers and mechanics ~~as are~~ directly employed by
23 contractors or subcontractors in actual construction work on
24 the site of the building or construction job shall be deemed to
25 be employed upon public works. The site of the building or

1 construction job shall also include a facility dedicated to the
2 performance of the contract or project and located in such
3 proximity to the actual construction location that would be
4 reasonable to include them. Laborers, ~~and laborers,~~ workers and
5 mechanics engaged in the transportation of materials and
6 equipment to or from the site, but not including the
7 transportation by the sellers and suppliers or the manufacture
8 or processing of materials or equipment, in the execution of
9 any contract or contracts for public works with any public body
10 shall also be deemed to be employed upon public works. The wage
11 for a tradesman performing maintenance is equivalent to that of
12 a tradesman engaged in construction. All contractors and
13 subcontractors required to pay the prevailing wage under this
14 Act shall make payment of such wages in legal tender, without
15 any deduction for food, sleeping accommodations,
16 transportation, use of tools, or any other thing of any kind or
17 description.

18 (Source: P.A. 93-15, eff. 6-11-03; 93-16, eff. 1-1-04.)

19 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

20 Sec. 4. (a) The public body awarding any contract for
21 public works ~~work~~ or otherwise undertaking any public works,
22 shall ascertain the general prevailing rate of hourly wages in
23 the locality in which the work is to be performed, for each
24 craft or type of worker or mechanic needed to execute the
25 contract, and where the public body performs the work without

1 letting a contract therefor, shall ascertain the prevailing
2 rate of wages on a per hour basis in the locality. Such ~~, and~~
3 ~~such~~ public body shall specify in the resolution or ordinance
4 and in the call for bids for the contract, that the general
5 prevailing rate of wages in the locality for each craft or type
6 of worker or mechanic needed to execute the contract or perform
7 such work, also the general prevailing rate for legal holiday
8 and overtime work, as ascertained by the public body or by the
9 Department of Labor shall be paid for each craft or type of
10 worker needed to execute the contract or to perform such work.
11 ~~, and it~~

12 (b) It shall be mandatory upon the contractor to whom the
13 contract is awarded and upon any subcontractor under him, and
14 where the public body performs the work, upon the public body,
15 to pay not less than the specified rates to all laborers,
16 workers and mechanics employed by them in the execution of the
17 contract or such work; provided, however, that if the public
18 body desires that the Department of Labor ascertain the
19 prevailing rate of wages, it shall notify the Department of
20 Labor to ascertain the general prevailing rate of hourly wages
21 for work under contract, or for work performed by a public body
22 without letting a contract as required in the locality in which
23 the work is to be performed, for each craft or type of worker
24 or mechanic needed to execute the contract or project or work
25 to be performed. Upon such notification the Department of Labor
26 shall ascertain such general prevailing rate of wages, and

1 certify the prevailing wage to such public body.

2 (c) The public body awarding the contract shall cause to be
3 inserted in the project specifications and the contract a
4 stipulation to the effect that not less than the prevailing
5 rate of wages as found by the public body or Department of
6 Labor or determined by the court on review shall be paid to all
7 laborers, workers and mechanics performing work under the
8 contract.

9 (d) When a public body or other entity covered by this Act
10 contracts for work with a contractor without a public bid or
11 project specification, such public body or other entity shall
12 provide the contractor with a written notice that the
13 prevailing wage is required to be paid on the project as a
14 statement on the purchase order related to the work to be done
15 or on a separate document.

16 (e) Where a complaint has been made and the Department has
17 determined that a violation has occurred, the Department shall
18 determine if proper notice under this Section 4 was given. If
19 proper notice was not provided to the contractor by the public
20 body, the Department shall order the public body to pay any
21 back wages, interest, penalties or fines owed by the contractor
22 to all laborers, mechanics and other workers who performed work
23 on the project. For the purposes of this subsection back wages
24 shall be limited to the difference between the actual amount
25 paid and the prevailing wages required to be paid for the
26 project. A contractor shall not be deemed in violation of this

1 Act if proper notice pursuant to this Section 4 is not
2 provided. The failure to provide notice by a public body does
3 not diminish the right of a laborer, worker, or mechanic to the
4 prevailing wage rate as determined under this Act.

5 (f) ~~(b)~~ It shall also be mandatory upon the contractor to
6 whom the contract is awarded to insert into each subcontract
7 and into the project specifications for each subcontract a
8 written stipulation to the effect that not less than the
9 prevailing rate of wages shall be paid to all laborers,
10 workers, and mechanics performing work under the contract. It
11 shall also be mandatory upon each subcontractor to cause to be
12 inserted into each lower tiered subcontract and into the
13 project specifications for each lower tiered subcontract a
14 stipulation to the effect that not less than the prevailing
15 rate of wages shall be paid to all laborers, workers, and
16 mechanics performing work under the contract. A contractor or
17 subcontractor who fails to comply with this subsection (f) ~~(b)~~
18 is in violation of this Act.

19 (g) When a contractor has awarded work to a subcontractor
20 without a contract or without a contract specification, the
21 contractor may comply with subsection (d) by providing a
22 subcontractor a written statement indicating that no less than
23 the prevailing wage rate shall be paid to all laborers,
24 mechanics and other workers performing work on the project. A
25 contractor or subcontractor who fails to comply with this
26 subsection (g) is in violation of this Act.

1 (h) Where a complaint has been made and the Department has
2 determined that a violation has occurred, the Department shall
3 determine if proper notice under this Section 4 was given. If
4 proper notice was not provided to the subcontractor by the
5 contractor, the Department shall order the contractor to pay
6 any back wages, interest, penalties or fines owed by the
7 subcontractor to all laborers, mechanics and other workers who
8 performed work on the project. For the purposes of this
9 subsection back wages shall be limited to the difference
10 between the actual amount paid and the prevailing wages
11 required for the project. A subcontractor shall not be deemed
12 in violation of this Act if such notice is not provided.
13 However, if proper notice was not provided to the contractor by
14 the public body under subsections (a) or (b) of this Section 4,
15 the Department shall order the public body to pay any back
16 wages, interest, penalties or fines owed by the subcontractor
17 to all laborers, mechanics and other workers who performed work
18 on the project. The failure to provide notice by a public body
19 or contractor does not diminish the right of a laborer, worker,
20 or mechanic to prevailing wage rate as determined under this
21 Act.

22 (i) ~~(e)~~ It shall also require in all such contractor's
23 bonds that the contractor include such provision as will
24 guarantee the faithful performance of such prevailing wage
25 clause as provided by contract. All bid specifications shall
26 list the specified rates to all laborers, workers and mechanics

1 in the locality for each craft or type of worker or mechanic
2 needed to execute the contract.

3 (j) ~~(d)~~ If the Department of Labor revises the prevailing
4 rate of hourly wages to be paid by the public body, the revised
5 rate shall apply to such contract. The public body or the
6 Department of Labor shall make the revised rate of hourly wages
7 available to the contractor and each subcontractor. The, ~~and~~
8 ~~the public body shall be responsible to notify the~~ contractor
9 and each subcontractor shall notify its employees pursuant to
10 this Act and pay the , ~~of the~~ revised rate.

11 ~~(c) 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 (k) 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 the
6 contractor is performing work; or (2) provide such laborer,
7 worker or mechanic engaged on the public works project a
8 written notice indicating the prevailing wage rates for the
9 public works project. A failure to post or provide a prevailing
10 wage rate as required by this Section is a violation of this
11 Act.

12 (1) The public body awarding any contract for a public
13 works or otherwise undertaking any public works shall notify
14 the Department of Labor in writing, on a form prescribed by the
15 Department of Labor, whenever a contract subject to the
16 provisions of this Act has been awarded. The notification
17 mentioned herein shall be filed with the Department of Labor
18 within 30 days after such contract is awarded or before
19 commencement of the public works, and shall include a list of
20 all first-tier subcontractors.

21 (Source: P.A. 92-783, eff. 8-6-02; 93-15, eff. 6-11-03; 93-16,
22 eff. 1-1-04; 93-38, eff. 6-1-04; revised 10-29-04.)

23 (820 ILCS 130/6) (from Ch. 48, par. 39s-6)

24 Sec. 6. Any officer, agent or representative of any public
25 body who wilfully violates, or omits to comply with, any of the

1 provisions of this Act, and any contractor or subcontractor, or
2 agent or representative thereof, doing public work as
3 aforesaid, who wilfully violates, or omits to comply with, any
4 of the provisions of this Act ~~neglects to keep, or cause to be~~
5 ~~kept, an accurate record of the names, occupation and actual~~
6 ~~wages paid to each laborer, worker and mechanic employed by~~
7 ~~him, in connection with the public work or who refuses to allow~~
8 ~~access to same at any reasonable hour to any person authorized~~
9 ~~to inspect same under this Act,~~ is guilty of a Class A
10 misdemeanor.

11 The Department of Labor shall inquire diligently as to any
12 violation of this Act, shall institute actions for penalties
13 herein prescribed, and shall enforce generally the provisions
14 of this Act. The Attorney General shall prosecute such cases
15 upon complaint by the Department or any interested person.

16 (Source: P.A. 94-488, eff. 1-1-06.)

17 (820 ILCS 130/9) (from Ch. 48, par. 39s-9)

18 Sec. 9. To effectuate the purpose and policy of this Act
19 each public body shall, during the month of June of each
20 calendar year, investigate and ascertain the prevailing rate of
21 wages as defined in this Act and publicly post or keep
22 available for inspection by any interested party in the main
23 office of such public body its determination of such prevailing
24 rate of wage and shall promptly file, no later than July 15 of
25 each year, a certified copy thereof in the office of the

1 Secretary of State at Springfield and the office of the
2 Illinois Department of Labor.

3 The Department of Labor shall during the month of June of
4 each calendar year, investigate and ascertain the prevailing
5 rate of wages for each county in the State. If a public body
6 does not investigate and ascertain the prevailing rate of wages
7 during the month of June as required by the previous paragraph,
8 then the prevailing rate of wages for that public body shall be
9 the rate as determined by the Department under this paragraph
10 for the county in which such public body is located.

11 Where the Department of Labor ascertains the prevailing
12 rate of wages, it is the duty of the Department of Labor within
13 30 days after receiving a notice from the public body
14 authorizing the proposed work, to conduct an investigation to
15 ascertain the prevailing rate of wages as defined in this Act
16 and such investigation shall be conducted in the locality in
17 which the work is to be performed. The Department of Labor
18 shall send a certified copy of its findings to the public body
19 authorizing the work and keep a record of its findings
20 available for inspection by any interested party in the office
21 of the Department of Labor at Springfield.

22 The public body except for the Department of Transportation
23 with respect to highway contracts shall within 30 days after
24 filing with the Secretary of State, or the Department of Labor
25 shall within 30 days after filing with such public body,
26 publish in a newspaper of general circulation within the area

1 that the determination is effective, a notice of its
2 determination and shall promptly mail a copy of its
3 determination to any employer, and to any association of
4 employers and to any person or association of employees who
5 have filed their names and addresses, requesting copies of any
6 determination stating the particular rates and the particular
7 class of workers whose wages will be affected by such rates.

8 At any time within 30 days after the Department of Labor
9 has published on its official web site a prevailing wage
10 schedule, any person affected thereby may object in writing to
11 the determination or such part thereof as they may deem
12 objectionable by filing a written notice with the public body
13 or Department of Labor, whichever has made such determination,
14 stating the specified grounds of the objection. It shall
15 thereafter be the duty of the public body or Department of
16 Labor to set a date for a hearing on the objection after giving
17 written notice to the objectors at least 10 days before the
18 date of the hearing and said notice shall state the time and
19 place of such hearing. Such hearing by a public body shall be
20 held within 45 days after the objection is filed, and shall not
21 be postponed or reset for a later date except upon the consent,
22 in writing, of all the objectors and the public body. If such
23 hearing is not held by the public body within the time herein
24 specified, the Department of Labor may, upon request of the
25 objectors, conduct the hearing on behalf of the public body.

26 The public body or Department of Labor, whichever has made

1 such determination, is authorized ~~in its discretion~~ to hear
2 each timely filed written objection. Two or more hearings under
3 this Section on the issue of establishing a new prevailing wage
4 classification for a particular craft or type of worker shall
5 be consolidated in a single hearing before the Department. Such
6 consolidation shall occur whether each separate hearing is
7 conducted by a public body or the Department. The party
8 requesting a consolidated hearing shall have the burden of
9 establishing that there is no existing prevailing wage
10 classification for the particular craft or type of worker in
11 any of the localities under consideration ~~filed separately or~~
12 ~~consolidate for hearing any one or more written objections~~
13 ~~filed with them.~~ At any such hearing under this Section, the
14 public body or Department of Labor shall introduce in evidence
15 the investigation it instituted which formed the basis of its
16 determination, and the public body or Department of Labor, or
17 any interested objectors may thereafter introduce such
18 evidence as is material to the issue. Thereafter, the public
19 body or Department of Labor, must rule upon the written
20 objection and make such final determination as it believes the
21 evidence warrants, and promptly file a certified copy of its
22 final determination with such public body and the Secretary of
23 State, and serve a copy by personal service or registered mail
24 on all parties to the proceedings. The final determination by
25 the Department of Labor or a public body shall be rendered
26 within 30 days after the conclusion of the hearing.

1 If proceedings to review judicially the final
2 determination of the public body or Department of Labor are not
3 instituted as hereafter provided, such determination shall be
4 final and binding.

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

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

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

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

25 (Source: P.A. 93-38, eff. 6-1-04.)

1 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

2 Sec. 11. (a) No public works project shall be instituted
3 unless the provisions of this Act have been complied with. The
4 provisions of this Act shall not be applicable to Federal
5 construction projects which require a prevailing wage
6 determination by the United States Secretary of Labor. The
7 Illinois Department of Labor represented by the Attorney
8 General is empowered to sue for injunctive relief against the
9 awarding of any contract or the continuation of work under any
10 contract for public works at a time when the prevailing wage
11 prerequisites have not been met. Any contract for public works
12 awarded at a time when the prevailing wage prerequisites had
13 not been met shall be void as against public policy and the
14 contractor is prohibited from recovering any damages for the
15 voiding of the contract or pursuant to the terms of the
16 contract. The contractor is limited to a claim for amounts
17 actually paid for labor and materials supplied to the public
18 body. Where objections to a determination of the prevailing
19 rate of wages or a court action relative thereto is pending,
20 the public body shall not continue work on the project unless
21 sufficient funds are available to pay increased wages if such
22 are finally determined or unless the Department of Labor
23 certifies such determination of the prevailing rate of wages as
24 correct.

25 Any laborer, worker or mechanic employed by the contractor
26 or by any sub-contractor under him who is paid for his services

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

1 to be a suit for wages, and any and all judgments entered
2 therein shall have the same force and effect as other judgments
3 for wages. At the request of any laborer, workman or mechanic
4 employed by the contractor or by any subcontractor under him
5 who is paid less than the prevailing wage rate required by this
6 Act, the Department of Labor may take an assignment of such
7 wage claim in trust for the assigning laborer, workman or
8 mechanic and may bring any legal action necessary to collect
9 such claim, and the contractor or subcontractor shall be
10 required to pay the costs incurred in collecting such claim.

11 (b) For purposes of this subsection, the following
12 definitions are applicable:

13 "Accurate records" means the payroll records required to be
14 filed with the public body in charge of the project as required
15 by Section 5 of the Act. Accurate records shall also mean the
16 hourly rate paid for fringe benefits, including pension, health
17 and welfare, training and vacations, and a designation of
18 whether such fringe benefits were paid into a fund or paid
19 directly to the employee.

20 "Act" means the Prevailing Wage Act.

21 "Construction manager" includes, but is not limited to, the
22 contractor, subcontractor or anyone overseeing any project
23 covered by the Act for purposes of the posting requirement.

24 "Contract" means an agreement either written or oral or
25 otherwise as agreed to between the parties.

26 "Decision" means that the Department has determined that a

1 violation has occurred that warrants the Director or the
2 Director's designee to issue a notice of violation to a
3 contractor or subcontractor. Each specific finding listed in
4 the notice of violation is a separate "Decision" that the Act
5 has been violated.

6 "Director" means the Director of the Illinois Department of
7 Labor or, at the Director's discretion, the Director's
8 designee, deputy or agent.

9 "Employee" means laborers, mechanics and other workers
10 employed in any public works, as defined and covered under the
11 Act, by anyone under contracts for public works.

12 "Employer" means a contractor or subcontractor, or both,
13 who performs public works projects subject to the Act.

14 "Notice of second violation" is a notice issued by the
15 Department advising a contractor or subcontractor that a
16 violation as defined in this subsection has occurred within
17 five years from the date of the notice of first violation.

18 "Notice of violation" means the formal written notice to a
19 contractor or subcontractor that the Department has made a
20 decision that the contractor or subcontractor has violated the
21 Act.

22 "Prevailing hourly rate of wages" means the hourly cash
23 wages plus fringe benefits for health and welfare, insurance,
24 training, vacations and pensions paid most frequently
25 (numerically most occurring), in the county in which the public
26 works is performed, to employees engaged on public works, as

1 determined by the public body awarding the contract or the most
2 recent revision as determined by the Department of Labor
3 effective prior to the date when the contract was let for bids
4 or, if not let for bids, when executed; and all revisions by
5 the Illinois Department of Labor when effected.

6 "Violation" means a written decision by the Department that
7 a contractor or subcontractor has: failed or refused to pay the
8 prevailing wage to one or more laborers, workers, or mechanics
9 under a single contract or subcontract as required by Section 3
10 of this Act; failed to keep accurate records as required by
11 this Act; failed to produce to the Department accurate records
12 or records not in compliance with the provisions of this Act;
13 refused to submit records to the Department in response to a
14 subpoena issued in accordance with this Act; refused to comply
15 with the certified payroll provision of Section 5 of this Act;
16 refused the Department access, at any reasonable hour or at any
17 location designated by the Department, to inspect the
18 contractor's or subcontractor's certified records and other
19 records as required by the Act; failed to insert into each
20 subcontract or lower tiered subcontract and into the project
21 specifications for each subcontract or lower tiered
22 subcontract a written stipulation that not less than the
23 prevailing rate of wages be paid as required by Section 4 of
24 this Act; where a written contract or contract specification
25 was not present, the contractor failed to provide written
26 notice that the prevailing wage was required to be paid on the

1 project as required under this Act or the contractor failed to
2 obtain a bond that guarantees the faithful performance of the
3 prevailing wage clause in the contract. "Violation" also means
4 a written decision by the Department that a contractor or
5 construction manager failed to post or provide the prevailing
6 wage rates as required by Section 4 of this Act.

7 After receipt of a complaint or on the Department's
8 initiative, the Director shall review the investigative file to
9 determine whether there has been a violation or violations of
10 which the contractor or subcontractor must be given notice. All
11 information and observations made during an audit,
12 investigation or survey shall be considered and shall
13 constitute the basis for the Department's decision that the Act
14 has been violated and that a notice of violation shall be
15 issued. The notice of violation shall identify the specific
16 violations of the Act.

17 The notice of violation shall state the amount of monies
18 estimated due by the Department to be in controversy based on
19 reasons contained in the investigation file.

20 In making a decision that a contractor or subcontractor has
21 failed to allow the Director access to accurate payroll
22 records, the Director shall rely on the information contained
23 in the investigative file, the certified payroll records filed
24 with the public body in charge of the project or any other
25 information and shall assess a separate violation for each day
26 worked by each worker on the subject project. Each decision of

1 a separate violation under Section 5 of the Act shall be listed
2 in the notice of violation.

3 In deciding that the Act has been violated and that the
4 issuance of a notice of violation is required, the Director
5 shall base the decision on one or any combination of the
6 following reasons:

7 (1) The severity of the violations. The Director will
8 consider the following:

9 (i) The amount of wages that are determined to be
10 underpaid pursuant to the Act; and

11 (ii) Whether the activity or conduct complained of
12 violates the requirements of the statute and was not
13 merely a technical, non-substantive error. Examples of
14 a technical error include, but are not limited to, a
15 mathematical error, bookkeeping error, transposition
16 of numbers, or computer or programming error.

17 (2) The nature and duration of the present violations
18 as well as prior history of the contractor or the
19 subcontractor related to the Act. The prior history
20 considered cannot exceed 7 years before the date of the
21 second notice of violation.

22 (3) Whether the contractor or subcontractor filed
23 certified payroll records with the public body in charge of
24 the project; whether the contractor or subcontractor has
25 kept the payroll records and accurate records for 3 years;
26 whether the contractor or subcontractor produced certified

1 payroll records in accordance with Section 5 of the Act.

2 (4) Whether the contractor or subcontractor has
3 violated any other provision of the Act.

4 The notices of the first and second violations shall be
5 sent by the Department by certified mail, deposited in the
6 United States mail, postage prepaid, addressed to the last
7 known address of the persons, partnerships, associations, or
8 corporations involved. Said notices shall contain a reference
9 to the specific Sections of the Act alleged to have been
10 violated; identify the particular public works project
11 involved; the conduct complained of; an identification as to
12 first or second notice and a statement of remedies available to
13 the contractor or subcontractor and Department.

14 (c) The Director of the Department of Labor shall publish
15 in the Illinois Register no less often than once each calendar
16 quarter a list of contractors or subcontractors found to have
17 disregarded their obligations to employees under this Act. The
18 Department of Labor shall determine the contractors or
19 subcontractors who, on 2 separate occasions within 5 years,
20 have been determined to have violated the provisions of this
21 Act. Upon such determinations the Department shall notify the
22 violating contractor or subcontractor. Such contractor or
23 subcontractor shall then have 10 working days to request a
24 hearing by the Department on the alleged violations. Failure to
25 respond within the 10 working day period shall result in
26 automatic and immediate placement and publication on the list.

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

13 (Source: P.A. 94-488, eff. 1-1-06.)

14 (820 ILCS 130/11b)

15 Sec. 11b. Discharge or discipline of "whistle blowers"
16 prohibited.

17 (a) No person shall discharge, discipline, or in any other
18 way discriminate against, or cause to be discharged,
19 disciplined, or discriminated against, any employee or any
20 authorized representative of employees by reason of the fact
21 that the employee or representative has filed, instituted, or
22 caused to be filed or instituted any proceeding under this Act,
23 or has testified or is about to testify in any proceeding
24 resulting from the administration or enforcement of this Act,
25 or offers any evidence of any violation of this Act.

1 (b) Any employee or a representative of employees who
2 believes that he has been discharged, disciplined, or otherwise
3 discriminated against by any person in violation of subsection
4 (a) of this Section may, within 180 ~~30~~ days after the alleged
5 violation occurs, apply to the Director of Labor for a review
6 of the discharge, discipline, or alleged discrimination. A copy
7 of the application shall be sent to the person who allegedly
8 committed the violation, who shall be the respondent. Upon
9 receipt of an application, the Director shall cause such
10 investigation to be made as he or she deems appropriate. The
11 investigation shall provide an opportunity for a public hearing
12 at the request of any party to the review to enable the parties
13 to present information relating to the alleged violation. The
14 parties shall be given written notice of the time and place of
15 the hearing at least 30 ~~5~~ days before the hearing. Upon
16 receiving the report of the investigation, the Director shall
17 make findings of fact. If the Director finds that a violation
18 did occur, he or she shall issue a decision incorporating his
19 or her findings and requiring the party committing the
20 violation to take such affirmative action to abate the
21 violation as the Director deems appropriate, including, but not
22 limited to, the rehiring or reinstatement of the employee or
23 representative of employees to his or her former position and
24 compensating him or her for the time he or she was unemployed.
25 The party committing the violation shall also be liable to the
26 Department of Labor for a penalty of \$5,000 for each violation

1 of this Section. If the Director finds that there was no
2 violation, he or she shall issue an order denying the
3 application. An order issued by the Director under this Section
4 shall be subject to judicial review under the Administrative
5 Review Law.

6 (c) The Director shall adopt rules implementing this
7 Section in accordance with the Illinois Administrative
8 Procedure Act.

9 (Source: P.A. 94-488, eff. 1-1-06.)

10 (820 ILCS 130/11a rep.)

11 Section 10. The Prevailing Wage Act is amended by repealing
12 Section 11a."