



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5690

Introduced 2/16/2012, by Rep. Elizabeth Hernandez

SYNOPSIS AS INTRODUCED:

820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/5	from Ch. 48, par. 39s-5
820 ILCS 130/5.1 new	
820 ILCS 130/11	from Ch. 48, par. 39s-11

Amends the Prevailing Wage Act. Requires contractors to include in recording keeping the gross and net wage, hourly overtime rate, fringe benefit rates, and the sponsor and administrator of fringe benefit plans. Provides for filing of the records with the Department of Labor. Authorizes that Department to require electronic filing. Requires that Department to create and provide a form for the filing of certified payrolls. Allows any interested party to bring an action under the Act. Defines terms.

LRB097 19165 JLS 64407 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning wages.

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

4 Section 5. The Prevailing Wage Act is amended by changing
5 Sections 2, 5, and 11 and by adding Section 5.1 as follows:

6 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

7 Sec. 2. This Act applies to the wages of laborers,
8 mechanics and other workers employed in any public works, as
9 hereinafter defined, by any public body and to anyone under
10 contracts for public works. This includes any maintenance,
11 repair, assembly, or disassembly work performed on equipment
12 whether owned, leased, or rented.

13 As used in this Act, unless the context indicates
14 otherwise:

15 "Public works" means all fixed works constructed or
16 demolished by any public body, or paid for wholly or in part
17 out of public funds. "Public works" as defined herein includes
18 all projects financed in whole or in part with bonds, grants,
19 loans, or other funds made available by or through the State or
20 any of its political subdivisions, including but not limited
21 to: bonds issued under the Industrial Project Revenue Bond Act
22 (Article 11, Division 74 of the Illinois Municipal Code), the
23 Industrial Building Revenue Bond Act, the Illinois Finance

1 Authority Act, the Illinois Sports Facilities Authority Act, or
2 the Build Illinois Bond Act; loans or other funds made
3 available pursuant to the Build Illinois Act; or funds from the
4 Fund for Illinois' Future under Section 6z-47 of the State
5 Finance Act, funds for school construction under Section 5 of
6 the General Obligation Bond Act, funds authorized under Section
7 3 of the School Construction Bond Act, funds for school
8 infrastructure under Section 6z-45 of the State Finance Act,
9 and funds for transportation purposes under Section 4 of the
10 General Obligation Bond Act. "Public works" also includes (i)
11 all projects financed in whole or in part with funds from the
12 Department of Commerce and Economic Opportunity under the
13 Illinois Renewable Fuels Development Program Act for which
14 there is no project labor agreement; (ii) all work performed
15 pursuant to a public private agreement under the Public Private
16 Agreements for the Illiana Expressway Act; and (iii) all
17 projects undertaken under a public-private agreement under the
18 Public-Private Partnerships for Transportation Act. "Public
19 works" also includes all projects at leased facility property
20 used for airport purposes under Section 35 of the Local
21 Government Facility Lease Act. "Public works" also includes the
22 construction of a new wind power facility by a business
23 designated as a High Impact Business under Section 5.5(a)(3)(E)
24 of the Illinois Enterprise Zone Act. "Public works" does not
25 include work done directly by any public utility company,
26 whether or not done under public supervision or direction, or

1 paid for wholly or in part out of public funds. "Public works"
2 does not include projects undertaken by the owner at an
3 owner-occupied single-family residence or at an owner-occupied
4 unit of a multi-family residence.

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

9 "Contractor" and "subcontractor" include an individual,
10 partnership, association, corporation, limited liability
11 company, business trust, and a person or group of persons
12 acting directly or indirectly in the interest of a contractor
13 or subcontractor in relation to any laborer, worker, or
14 mechanic employed.

15 "Entity" means a sole proprietor, partnership, firm,
16 corporation, limited liability company, association, or other
17 business enterprise, but does not include (i) the State of
18 Illinois or its officers, agencies, or political subdivisions
19 or (ii) the federal government.

20 "Interested party" means a person or entity with an
21 interest in compliance with this Act.

22 "Locality" means the county where the physical work upon
23 public works is performed, except (1) that if there is not
24 available in the county a sufficient number of competent
25 skilled laborers, workers and mechanics to construct the public
26 works efficiently and properly, "locality" includes any other

1 county nearest the one in which the work or construction is to
2 be performed and from which such persons may be obtained in
3 sufficient numbers to perform the work and (2) that, with
4 respect to contracts for highway work with the Department of
5 Transportation of this State, "locality" may at the discretion
6 of the Secretary of the Department of Transportation be
7 construed to include two or more adjacent counties from which
8 workers may be accessible for work on such construction.

9 "Public body" means the State or any officer, board or
10 commission of the State or any political subdivision or
11 department thereof, or any institution supported in whole or in
12 part by public funds, and includes every county, city, town,
13 village, township, school district, irrigation, utility,
14 reclamation improvement or other district and every other
15 political subdivision, district or municipality of the state
16 whether such political subdivision, municipality or district
17 operates under a special charter or not.

18 The terms "general prevailing rate of hourly wages",
19 "general prevailing rate of wages" or "prevailing rate of
20 wages" when used in this Act mean the hourly cash wages plus
21 annualized fringe benefits for training and apprenticeship
22 programs approved by the U.S. Department of Labor, Bureau of
23 Apprenticeship and Training, health and welfare, insurance,
24 vacations and pensions paid generally, in the locality in which
25 the work is being performed, to employees engaged in work of a
26 similar character on public works.

1 (Source: P.A. 96-28, eff. 7-1-09; 96-58, eff. 1-1-10; 96-186,
2 eff. 1-1-10; 96-913, eff. 6-9-10; 96-1000, eff. 7-2-10; 97-502,
3 eff. 8-23-11.)

4 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

5 Sec. 5. Certified payroll.

6 (a) Any contractor and each subcontractor who participates
7 in public works shall:

8 (1) make and keep, for a period of not less than 3
9 years from the date of the last payment on a contract or
10 subcontract for public works, records of all laborers,
11 mechanics, and other workers employed by them on the
12 project; the records shall include each worker's name,
13 address, telephone number when available, social security
14 number, classification or classifications, gross and net
15 ~~the hourly~~ wages paid in each pay period, the number of
16 hours worked each day, the hourly wage rate, the hourly
17 overtime wage rate, hourly fringe benefit rates, the plan
18 sponsor of each fringe benefit, if applicable, the plan
19 administrator of each fringe benefit, if applicable, and
20 the starting and ending times of work each day; and

21 (2) no later than the tenth day of each calendar month
22 file a certified payroll for the immediately preceding
23 month with the public body in charge of the project. A
24 certified payroll must be filed on a form created and
25 provided by the Department of Labor. A certified payroll

1 must be filed for only those calendar months during which
2 construction on a public works project has occurred. The
3 certified payroll shall consist of a complete copy of the
4 records identified in paragraph (1) of this subsection (a),
5 but may exclude the starting and ending times of work each
6 day. The certified payroll shall be accompanied by a
7 statement signed by the contractor or subcontractor or an
8 officer, employee, or agent of the contractor or
9 subcontractor which avers that: (i) he or she has examined
10 the certified payroll records required to be submitted by
11 the Act and such records are true and accurate; (ii) the
12 hourly rate paid to each worker is not less than the
13 general prevailing rate of hourly wages required by this
14 Act; and (iii) the contractor or subcontractor is aware
15 that filing a certified payroll that he or she knows to be
16 false is a Class A misdemeanor. A general contractor is not
17 prohibited from relying on the certification of a lower
18 tier subcontractor, provided the general contractor does
19 not knowingly rely upon a subcontractor's false
20 certification. Any contractor or subcontractor subject to
21 this Act and any officer, employee, or agent of such
22 contractor or subcontractor whose duty as such officer,
23 employee, or agent it is to file such certified payroll who
24 willfully fails to file such a certified payroll on or
25 before the date such certified payroll is required by this
26 paragraph to be filed and any person who willfully files a

1 false certified payroll that is false as to any material
2 fact is in violation of this Act and guilty of a Class A
3 misdemeanor. The public body in charge of the project shall
4 keep the records submitted in accordance with this
5 paragraph (2) of subsection (a) for a period of not less
6 than 3 years from the date of the last payment for work on
7 a contract or subcontract for public works. The records
8 submitted in accordance with this paragraph (2) of
9 subsection (a) shall be considered public records, except
10 an employee's address, telephone number, and social
11 security number, and made available in accordance with the
12 Freedom of Information Act. The public body shall accept
13 any reasonable submissions by the contractor that meet the
14 requirements of this Section.

15 (b) Upon 7 business days' notice, the contractor and each
16 subcontractor shall make available for inspection and copying
17 at a location within this State during reasonable hours, the
18 records identified in paragraph (1) of subsection (a) of this
19 Section to the public body in charge of the project, its
20 officers and agents, the Director of Labor and his deputies and
21 agents, and to federal, State, or local law enforcement
22 agencies and prosecutors.

23 (Source: P.A. 97-571, eff. 1-1-12.)

24 (820 ILCS 130/5.1 new)

25 Sec. 5.1. Electronic database. Subject to appropriation,

1 the Department shall develop and maintain an electronic
2 database capable of accepting and retaining certified payrolls
3 submitted under this Act. The database shall accept certified
4 payroll forms provided by the Department that are fillable and
5 designed to accept electronic signatures.

6 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

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

1 sufficient funds are available to pay increased wages if such
2 are finally determined or unless the Department of Labor
3 certifies such determination of the prevailing rate of wages as
4 correct.

5 Any interested party ~~laborer, worker or mechanic employed~~
6 ~~by the contractor or by any sub contractor under him who is~~
7 ~~paid for his services in a sum less than the stipulated rates~~
8 ~~for work done under such contract,~~ shall have a right of action
9 for whatever difference there may be between the amount so
10 paid, and the rates provided by the contract together with
11 costs and such reasonable attorney's fees as shall be allowed
12 by the court. Such contractor or subcontractor shall also be
13 liable to the Department of Labor for 20% of such underpayments
14 and shall be additionally liable to the laborer, worker or
15 mechanic for punitive damages in the amount of 2% of the amount
16 of any such penalty to the State for underpayments for each
17 month following the date of payment during which such
18 underpayments remain unpaid. Where a second or subsequent
19 action to recover underpayments is brought against a contractor
20 or subcontractor and the contractor or subcontractor is found
21 liable for underpayments to any laborer, worker, or mechanic,
22 the contractor or subcontractor shall also be liable to the
23 Department of Labor for 50% of the underpayments payable as a
24 result of the second or subsequent action, and shall be
25 additionally liable for 5% of the amount of any such penalty to
26 the State for underpayments for each month following the date

1 of payment during which the underpayments remain unpaid. The
2 Department shall also have a right of action on behalf of any
3 individual who has a right of action under this Section. An
4 action brought to recover same shall be deemed to be a suit for
5 wages, and any and all judgments entered therein shall have the
6 same force and effect as other judgments for wages. At the
7 request of any laborer, workman or mechanic employed by the
8 contractor or by any subcontractor under him who is paid less
9 than the prevailing wage rate required by this Act, the
10 Department of Labor may take an assignment of such wage claim
11 in trust for the assigning laborer, workman or mechanic and may
12 bring any legal action necessary to collect such claim, and the
13 contractor or subcontractor shall be required to pay the costs
14 incurred in collecting such claim.

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