



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3970

by Rep. Joe Sosnowski

SYNOPSIS AS INTRODUCED:

820 ILCS 130/2
820 ILCS 130/4

from Ch. 48, par. 39s-2
from Ch. 48, par. 39s-4

Amends the Prevailing Wage Act. Provides that "public works" does not include gardening-related maintenance projects, including but not limited to watering and pruning. Deletes provisions regarding investigatory hearings by the Department of Labor regarding new wage classifications. Requires the creation of any new prevailing wage classification to be established by the General Assembly.

LRB099 10003 JLS 30223 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 WHEREAS, The Illinois Administrative Procedure Act
3 conditions the authority of a State agency's implementation,
4 application, interpretation, or prescription of law or policy
5 on rules being adopted in accordance with all provisions of
6 that Act; therefore,

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

9 Section 5. The Prevailing Wage Act is amended by changing
10 Sections 2 and 4 as follows:

11 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

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

18 As used in this Act, unless the context indicates
19 otherwise:

20 "Public works" means all fixed works constructed or
21 demolished by any public body, or paid for wholly or in part
22 out of public funds. "Public works" as defined herein includes

1 all projects financed in whole or in part with bonds, grants,
2 loans, or other funds made available by or through the State or
3 any of its political subdivisions, including but not limited
4 to: bonds issued under the Industrial Project Revenue Bond Act
5 (Article 11, Division 74 of the Illinois Municipal Code), the
6 Industrial Building Revenue Bond Act, the Illinois Finance
7 Authority Act, the Illinois Sports Facilities Authority Act, or
8 the Build Illinois Bond Act; loans or other funds made
9 available pursuant to the Build Illinois Act; loans or other
10 funds made available pursuant to the Riverfront Development
11 Fund under Section 10-15 of the River Edge Redevelopment Zone
12 Act; or funds from the Fund for Illinois' Future under Section
13 6z-47 of the State Finance Act, funds for school construction
14 under Section 5 of the General Obligation Bond Act, funds
15 authorized under Section 3 of the School Construction Bond Act,
16 funds for school infrastructure under Section 6z-45 of the
17 State Finance Act, and funds for transportation purposes under
18 Section 4 of the General Obligation Bond Act. "Public works"
19 also includes (i) all projects financed in whole or in part
20 with funds from the Department of Commerce and Economic
21 Opportunity under the Illinois Renewable Fuels Development
22 Program Act for which there is no project labor agreement; (ii)
23 all work performed pursuant to a public private agreement under
24 the Public Private Agreements for the Illiana Expressway Act or
25 the Public-Private Agreements for the South Suburban Airport
26 Act; and (iii) all projects undertaken under a public-private

1 agreement under the Public-Private Partnerships for
2 Transportation Act. "Public works" also includes all projects
3 at leased facility property used for airport purposes under
4 Section 35 of the Local Government Facility Lease Act. "Public
5 works" also includes the construction of a new wind power
6 facility by a business designated as a High Impact Business
7 under Section 5.5(a)(3)(E) of the Illinois Enterprise Zone Act.
8 "Public works" does not include work done directly by any
9 public utility company, whether or not done under public
10 supervision or direction, or paid for wholly or in part out of
11 public funds. "Public works" also includes any corrective
12 action performed pursuant to Title XVI of the Environmental
13 Protection Act for which payment from the Underground Storage
14 Tank Fund is requested. "Public works" does not include
15 projects undertaken by the owner at an owner-occupied
16 single-family residence or at an owner-occupied unit of a
17 multi-family residence. "Public works" does not include
18 gardening-related maintenance projects, including watering and
19 pruning. "Public works" does not include work performed for
20 soil and water conservation purposes on agricultural lands,
21 whether or not done under public supervision or paid for wholly
22 or in part out of public funds, done directly by an owner or
23 person who has legal control of those lands.

24 "Construction" means all work on public works involving
25 laborers, workers or mechanics. This includes any maintenance,
26 repair, assembly, or disassembly work performed on equipment

1 whether owned, leased, or rented.

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

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

24 The terms "general prevailing rate of hourly wages",
25 "general prevailing rate of wages" or "prevailing rate of
26 wages" when used in this Act mean the hourly cash wages plus

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

7 (Source: P.A. 97-502, eff. 8-23-11; 98-109, eff. 7-25-13;
8 98-482, eff. 1-1-14; 98-740, eff. 7-16-14; 98-756, eff.
9 7-16-14.)

10 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

11 Sec. 4. Ascertaining prevailing wage.

12 (a) The public body awarding any contract for public work
13 or otherwise undertaking any public works, shall ascertain the
14 general prevailing rate of hourly wages in the locality in
15 which the work is to be performed, for each craft or type of
16 worker or mechanic needed to execute the contract, and where
17 the public body performs the work without letting a contract
18 therefor, shall ascertain the prevailing rate of wages on a per
19 hour basis in the locality, and such public body shall specify
20 in the resolution or ordinance and in the call for bids for the
21 contract, that the general prevailing rate of wages in the
22 locality for each craft or type of worker or mechanic needed to
23 execute the contract or perform such work, also the general
24 prevailing rate for legal holiday and overtime work, as
25 ascertained by the public body or by the Department of Labor

1 shall be paid for each craft or type of worker needed to
2 execute the contract or to perform such work, and it shall be
3 mandatory upon the contractor to whom the contract is awarded
4 and upon any subcontractor under him, and where the public body
5 performs the work, upon the public body, to pay not less than
6 the specified rates to all laborers, workers and mechanics
7 employed by them in the execution of the contract or such work;
8 provided, however, that if the public body desires that the
9 Department of Labor ascertain the prevailing rate of wages, it
10 shall notify the Department of Labor to ascertain the general
11 prevailing rate of hourly wages for work under contract, or for
12 work performed by a public body without letting a contract as
13 required in the locality in which the work is to be performed,
14 for each craft or type of worker or mechanic needed to execute
15 the contract or project or work to be performed. Upon such
16 notification the Department of Labor shall ascertain such
17 general prevailing rate of wages, and certify the prevailing
18 wage to such public body.

19 (a-1) The public body or other entity awarding the contract
20 shall cause to be inserted in the project specifications and
21 the contract a stipulation to the effect that not less than the
22 prevailing rate of wages as found by the public body or
23 Department of Labor or determined by the court on review shall
24 be paid to all laborers, workers and mechanics performing work
25 under the contract.

26 (a-2) When a public body or other entity covered by this

1 Act has awarded work to a contractor without a public bid,
2 contract or project specification, such public body or other
3 entity shall comply with subsection (a-1) by providing the
4 contractor with written notice on the purchase order related to
5 the work to be done or on a separate document indicating that
6 not less than the prevailing rate of wages as found by the
7 public body or Department of Labor or determined by the court
8 on review shall be paid to all laborers, workers, and mechanics
9 performing work on the project.

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

1 mechanic to the prevailing rate of wages as determined under
2 this Act.

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

17 (b-1) When a contractor has awarded work to a subcontractor
18 without a contract or contract specification, the contractor
19 shall comply with subsection (b) by providing a subcontractor
20 with a written statement indicating that not less than the
21 prevailing rate of wages shall be paid to all laborers,
22 workers, and mechanics performing work on the project. A
23 contractor or subcontractor who fails to comply with this
24 subsection (b-1) is in violation of this Act.

25 (b-2) Where a complaint is made and the Department of Labor
26 determines that a violation has occurred, the Department of

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

1 right of a laborer, worker, or mechanic to the prevailing rate
2 of wages as determined under this Act.

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

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

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

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

~~consolidation shall occur whether each separate investigatory hearing is conducted by a public body or the Department. The party requesting a consolidated investigatory hearing shall have the burden of establishing that there is no existing prevailing wage classification for the particular craft or type of worker in any of the localities under consideration.~~

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

(g) The creation of any new prevailing wage classification shall be established by the General Assembly.

(Source: P.A. 96-437, eff. 1-1-10; 97-964, eff. 1-1-13.)