

SB1646



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1646

Introduced 2/15/2019, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

820 ILCS 130/4

from Ch. 48, par. 39s-4

Amends the Prevailing Wage Act. 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 promulgated by administrative rule by the Department of Labor in accordance with the Illinois Administrative Procedure Act.

LRB101 09149 JLS 54243 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

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

4 Section 5. The Prevailing Wage Act is amended by changing
5 Section 4 as follows:

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

7 (Text of Section before amendment by P.A. 100-1177)

8 Sec. 4. Ascertaining prevailing wage.

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

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

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

25 (a-2) When a public body or other entity covered by this
26 Act has awarded work to a contractor without a public bid,

1 contract or project specification, such public body or other
2 entity shall comply with subsection (a-1) by providing the
3 contractor with written notice on the purchase order related to
4 the work to be done or on a separate document indicating that
5 not less than the prevailing rate of wages as found by the
6 public body or Department of Labor or determined by the court
7 on review shall be paid to all laborers, workers, and mechanics
8 performing work on the project.

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

1 this Act.

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

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

24 (b-2) Where a complaint is made and the Department of Labor
25 determines that a violation has occurred, the Department of
26 Labor shall determine if proper written notice under this

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

1 of wages as determined under this Act.

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

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

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

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

1 hearing is conducted by a public body or the Department. The
2 party requesting a consolidated investigatory hearing shall
3 have the burden of establishing that there is no existing
4 prevailing wage classification for the particular craft or type
5 of worker in any of the localities under consideration.

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

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

24 (Text of Section after amendment by P.A. 100-1177)

25 Sec. 4. Ascertaining prevailing wage.

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

14 (b) If the prevailing rates of wages and fringe benefits
15 cannot reasonably and fairly be applied in any locality because
16 no such agreements or understandings exist, the Department of
17 Labor shall determine the rates and fringe benefits for the
18 same or most similar work in the nearest and most similar
19 neighboring locality in which such agreements or
20 understandings exist. The Department of Labor shall keep a
21 record of its findings available for inspection by any
22 interested party in the office of the Department of Labor.

23 (c) In the event it is determined, after a written
24 objection is filed and hearing is held in accordance with
25 Section 9 of this Act, that less than 30% of the laborers,
26 workers, or mechanics in a particular trade or occupation in

1 the locality where the work is performed receive a collectively
2 bargained rate of wage, then the average wage paid to such
3 laborers, workers, or mechanics in the same trade or occupation
4 in the locality for the 12-month period preceding the
5 Department of Labor's annual determination shall be the
6 prevailing rate of wage.

7 (d) The public body awarding any contract for public work
8 or otherwise undertaking any public works shall specify in the
9 call for bids for the contract, or where the public body
10 performs the work without letting the contract in a written
11 instrument provided to the contractor, that the general
12 prevailing rate of wages in the locality for each craft or type
13 of worker or mechanic needed to execute the contract or perform
14 such work, also the general prevailing rate for legal holiday
15 and overtime work, as ascertained by the Department of Labor
16 shall be paid for each craft or type of worker needed to
17 execute the contract or to perform such work, and it shall be
18 mandatory upon the contractor to whom the contract is awarded
19 and upon any subcontractor under him, and where the public body
20 performs the work, upon the public body, to pay not less than
21 the specified rates to all laborers, workers and mechanics
22 employed by them in the execution of the contract or such work.
23 Compliance with this Act is a matter of statewide concern, and
24 a public body may not opt out of any provisions herein.

25 (e) The public body or other entity awarding the contract
26 shall cause to be inserted in the project specifications and

1 the contract a stipulation to the effect that not less than the
2 prevailing rate of wages as found by the Department of Labor or
3 determined by the court on review shall be paid to all
4 laborers, workers and mechanics performing work under the
5 contract.

6 (f) When a public body or other entity covered by this Act
7 has awarded work to a contractor without a public bid, contract
8 or project specification, such public body or other entity
9 shall comply with subsection (e) by providing the contractor
10 with written notice on the purchase order related to the work
11 to be done or on a separate document indicating that not less
12 than the prevailing rate of wages ascertained by the Department
13 of Labor or determined by the court on review shall be paid to
14 all laborers, workers, and mechanics performing work on the
15 project.

16 (g) Where a complaint is made and the Department of Labor
17 determines that a violation occurred, the Department of Labor
18 shall determine if proper written notice under this Section 4
19 was given. If proper written notice was not provided to the
20 contractor by the public body or other entity, the Department
21 of Labor shall order the public body or other entity to pay any
22 interest, penalties or fines that would have been owed by the
23 contractor if proper written notice were provided. The failure
24 by a public body or other entity to provide written notice does
25 not relieve the contractor of the duty to comply with the
26 prevailing wage rate, nor of the obligation to pay any back

1 wages, as determined under this Act. For the purposes of this
2 subsection, back wages shall be limited to the difference
3 between the actual amount paid and the prevailing rate of wages
4 required to be paid for the project. The failure of a public
5 body or other entity to provide written notice under this
6 Section 4 does not diminish the right of a laborer, worker, or
7 mechanic to the prevailing rate of wages as determined under
8 this Act.

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

23 (i) When a contractor has awarded work to a subcontractor
24 without a contract or contract specification, the contractor
25 shall comply with subsection (h) by providing a subcontractor
26 with a written statement indicating that not less than the

1 prevailing rate of wages shall be paid to all laborers,
2 workers, and mechanics performing work on the project. A
3 contractor or subcontractor who fails to comply with this
4 subsection is in violation of this Act.

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

1 rate, nor of the obligation to pay any back wages, as
2 determined under this Act. For the purposes of this subsection,
3 back wages shall be limited to the difference between the
4 actual amount paid and the prevailing rate of wages required
5 for the project. The failure to provide written notice by a
6 public body, other entity, or contractor does not diminish the
7 right of a laborer, worker, or mechanic to the prevailing rate
8 of wages as determined under this Act.

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

17 (l) If the Department of Labor revises the prevailing rate
18 of hourly wages to be paid by the public body or other entity,
19 the revised rate shall apply to such contract, and the public
20 body or other entity shall be responsible to notify the
21 contractor and each subcontractor, of the revised rate.

22 The public body or other entity shall discharge its duty to
23 notify of the revised rates by inserting a written stipulation
24 in all contracts or other written instruments that states the
25 prevailing rate of wages are revised by the Department of Labor
26 and are available on the Department's official website. This

1 shall be deemed to be proper notification of any rate changes
2 under this subsection.

3 (m) (Blank). ~~Two or more investigatory hearings under this~~
4 ~~Section on the issue of establishing a new prevailing wage~~
5 ~~classification for a particular craft or type of worker shall~~
6 ~~be consolidated in a single hearing before the Department. The~~
7 ~~party requesting a consolidated investigatory hearing shall~~
8 ~~have the burden of establishing that there is no existing~~
9 ~~prevailing wage classification for the particular craft or type~~
10 ~~of worker in any of the localities under consideration.~~

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

1 of this Act.

2 (o) The creation of any new prevailing wage classification
3 shall be promulgated by administrative rule by the Department
4 of Labor in accordance with the Illinois Administrative
5 Procedure Act.

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

7 Section 95. No acceleration or delay. Where this Act makes
8 changes in a statute that is represented in this Act by text
9 that is not yet or no longer in effect (for example, a Section
10 represented by multiple versions), the use of that text does
11 not accelerate or delay the taking effect of (i) the changes
12 made by this Act or (ii) provisions derived from any other
13 Public Act.