



Rep. Keith Farnham

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LRB096 05651 WGH 23733 a

1 AMENDMENT TO HOUSE BILL 2104

2 AMENDMENT NO. _____. Amend House Bill 2104 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Prevailing Wage Act is amended by changing
5 Sections 4, 5, 6, 11, and 11b as follows:

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

7 Sec. 4. (a) The public body awarding any contract for
8 public work or otherwise undertaking any public works, shall
9 ascertain the general prevailing rate of hourly wages in the
10 locality in which the work is to be performed, for each craft
11 or type of worker or mechanic needed to execute the contract,
12 and where the public body performs the work without letting a
13 contract therefor, shall ascertain the prevailing rate of wages
14 on a per hour basis in the locality, and such public body shall
15 specify in the resolution or ordinance and in the call for bids
16 for the contract, that the general prevailing rate of wages in

1 the locality for each craft or type of worker or mechanic
2 needed to execute the contract or perform such work, also the
3 general prevailing rate for legal holiday and overtime work, as
4 ascertained by the public body or by the Department of Labor
5 shall be paid for each craft or type of worker needed to
6 execute the contract or to perform such work, and it shall be
7 mandatory upon the contractor to whom the contract is awarded
8 and upon any subcontractor under him, and where the public body
9 performs the work, upon the public body, to pay not less than
10 the specified rates to all laborers, workers and mechanics
11 employed by them in the execution of the contract or such work;
12 provided, however, that if the public body desires that the
13 Department of Labor ascertain the prevailing rate of wages, it
14 shall notify the Department of Labor to ascertain the general
15 prevailing rate of hourly wages for work under contract, or for
16 work performed by a public body without letting a contract as
17 required in the locality in which the work is to be performed,
18 for each craft or type of worker or mechanic needed to execute
19 the contract or project or work to be performed. Upon such
20 notification the Department of Labor shall ascertain such
21 general prevailing rate of wages, and certify the prevailing
22 wage to such public body. The public body awarding the contract
23 shall cause to be inserted in the project specifications and
24 the contract a stipulation to the effect that not less than the
25 prevailing rate of wages as found by the public body or
26 Department of Labor or determined by the court on review shall

1 be paid to all laborers, workers and mechanics performing work
2 under the contract.

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 (c) The public body shall require all contractors and
18 subcontractors of any tier to provide a bond which shall ~~It~~
19 ~~shall also require in all such contractor's bonds that the~~
20 ~~contractor~~ include such provision as will guarantee the
21 faithful performance of such prevailing wage clause as provided
22 by contract. All bid specifications shall list the specified
23 rates to all laborers, workers and mechanics in the locality
24 for each craft or type of worker or mechanic needed to execute
25 the contract.

26 (d) If the Department of Labor revises the prevailing rate

1 of hourly wages to be paid by the public body, the revised rate
2 shall apply to such contract, and the public body shall be
3 responsible to notify the contractor and each subcontractor, of
4 the revised rate.

5 (e) Two or more investigatory hearings under this Section
6 on the issue of establishing a new prevailing wage
7 classification for a particular craft or type of worker shall
8 be consolidated in a single hearing before the Department. Such
9 consolidation shall occur whether each separate investigatory
10 hearing is conducted by a public body or the Department. The
11 party requesting a consolidated investigatory hearing shall
12 have the burden of establishing that there is no existing
13 prevailing wage classification for the particular craft or type
14 of worker in any of the localities under consideration.

15 (f) It shall be mandatory upon the contractor or
16 construction manager to whom a contract for public works is
17 awarded to post, at a location on the project site of the
18 public works that is easily accessible to the workers engaged
19 on the project, the prevailing wage rates for each craft or
20 type of worker or mechanic needed to execute the contract or
21 project or work to be performed. A failure to post a prevailing
22 wage rate as required by this Section is a violation of this
23 Act.

24 (Source: P.A. 95-331, eff. 8-21-07.)

25 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

1 Sec. 5. Certified payroll.

2 (a) While participating on public works, the contractor and
3 each subcontractor shall:

4 (1) make and keep, for a period of not less than 3
5 years, records of all laborers, mechanics, and other
6 workers employed by them on the project; the records shall
7 include each worker's name, address, telephone number when
8 available, social security number, classification or
9 classifications, the hourly wages paid in each pay period,
10 the number of hours worked each day, and the starting and
11 ending times of work each day; and

12 (2) submit monthly, in person, by mail, or
13 electronically a certified payroll to the public body in
14 charge of the project. The certified payroll shall consist
15 of a complete copy of the records identified in paragraph
16 (1) of this subsection (a), but may exclude the starting
17 and ending times of work each day. When the contractor and
18 subcontractor are not parties to collective bargaining
19 agreements that establish wages and fringe benefit
20 contributions for employees of the applicable craft
21 classification equal to the general prevailing rate of
22 hourly wages required by this Act, the ~~The~~ certified
23 payroll shall be accompanied by a statement signed by the
24 contractor or subcontractor which avers that: (i) such
25 records are true and accurate; (ii) the hourly rate paid to
26 each worker is not less than the general prevailing rate of

1 hourly wages required by this Act; and (iii) the contractor
2 or subcontractor is aware that filing a certified payroll
3 that he or she knows to be false is a Class A ~~B~~
4 misdemeanor. A general contractor or subcontractor is not
5 prohibited from relying on the certification of a lower
6 tier subcontractor, provided the subcontractor of any tier
7 is party to a collective bargaining agreement that
8 establishes wages and fringe benefit contributions for
9 employees of the applicable craft classification equal to
10 the general prevailing rate of hourly wages required by
11 this Act, and further provided that the general contractor
12 or subcontractor does not knowingly rely upon a
13 subcontractor's false certification. If a general
14 contractor or subcontractor of any tier is not party to a
15 collective bargaining agreement that establishes wages and
16 fringe benefit contributions for employees of the
17 applicable craft classification, the general contractor or
18 subcontractor of any tier is prohibited from relying on the
19 certification of a lower tier subcontractor, and the
20 general contractor or subcontractor of any tier is liable
21 for any underpayment of the general prevailing rate of
22 hourly wages required by this Act to any employee of a
23 lower tier subcontractor. A general contractor is not
24 ~~prohibited from relying on the certification of a lower~~
25 ~~tier subcontractor, provided the general contractor does~~
26 ~~not knowingly rely upon a subcontractor's false~~

1 ~~certification.~~ Any contractor or subcontractor subject to
2 this Act who fails to submit a certified payroll or
3 knowingly files a false certified payroll is in violation
4 of this Act and guilty of a Class A ~~B~~ misdemeanor. The
5 public body in charge of the project shall keep the records
6 submitted in accordance with this paragraph (2) of
7 subsection (a) for a period of not less than 3 years. The
8 records 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 the records
17 identified in paragraph (1) of subsection (a) of this Section
18 to the public body in charge of the project, its officers and
19 agents, and to the Director of Labor and his deputies and
20 agents. Upon 7 business days' notice, the contractor and each
21 subcontractor shall make such records available at all
22 reasonable hours at a location within this State.

23 (Source: P.A. 93-38, eff. 6-1-04; 94-515, eff. 8-10-05;
24 94-1023, eff. 7-12-06.)

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

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

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

18 (820 ILCS 130/11) (from Ch. 48, par. 39s-11)

19 Sec. 11. No public works project shall be instituted unless
20 the provisions of this Act have been complied with. The
21 provisions of this Act shall not be applicable to Federal
22 construction projects which require a prevailing wage
23 determination by the United States Secretary of Labor. The
24 Illinois Department of Labor represented by the Attorney
25 General is empowered to sue for injunctive relief against the

1 awarding of any contract or the continuation of work under any
2 contract for public works at a time when the prevailing wage
3 prerequisites have not been met. Any contract for public works
4 awarded at a time when the prevailing wage prerequisites had
5 not been met shall be void as against public policy and the
6 contractor is prohibited from recovering any damages for the
7 voiding of the contract or pursuant to the terms of the
8 contract. The contractor is limited to a claim for amounts
9 actually paid for labor and materials supplied to the public
10 body. Where objections to a determination of the prevailing
11 rate of wages or a court action relative thereto is pending,
12 the public body shall not continue work on the project unless
13 sufficient funds are available to pay increased wages if such
14 are finally determined or unless the Department of Labor
15 certifies such determination of the prevailing rate of wages as
16 correct.

17 Any laborer, worker or mechanic employed by the contractor
18 or by any sub-contractor under him who is paid for his services
19 in a sum less than the stipulated rates for work done under
20 such contract, shall have a right of action for whatever
21 difference there may be between the amount so paid, and the
22 rates provided by the contract together with costs and such
23 reasonable attorney's fees as shall be allowed by the court.
24 Such contractor or subcontractor shall also be liable to the
25 Department of Labor for 50% ~~20%~~ of such underpayments and shall
26 be additionally liable to each ~~the~~ laborer, worker or mechanic

1 for punitive damages of not less than \$35 per day for each day,
2 or portion thereof, in the amount of 2% of the amount of any
3 such penalty to the State for underpayments for each month
4 following the date of payment during which such underpayments
5 remain unpaid. Where a second or subsequent action to recover
6 underpayments is brought against a contractor or subcontractor
7 and the contractor or subcontractor is found liable for
8 underpayments to any laborer, worker, or mechanic, the
9 contractor or subcontractor shall also be liable to the
10 Department of Labor for 75% 50% of the underpayments payable as
11 a result of the second or subsequent action, and shall be
12 additionally liable to each laborer, worker, or mechanic for
13 punitive damages of not less than \$50 per day for each day, or
14 portion thereof, during which the underpayments remain unpaid.
15 A joint labor-management committee established pursuant to the
16 federal Labor-Management Cooperation Act of 1978 (Section 175a
17 of Title 29 of the United States Code) may bring an action in a
18 court of competent jurisdiction against any employer that fails
19 to pay the prevailing wage to its employees, and against any
20 public body that fails to comply with, or enforce upon any
21 general contractor or subcontractor of any tier with which the
22 public body enters into contracts for any public works, any
23 wage payment, bid and contract specifications, bonding, record
24 keeping, or release of records provisions as allowed for, or
25 required by, this Act. This action shall be commenced not later
26 than 180 days after the completion and acceptance of the public

1 works by the public body. The court may award the joint
2 labor-management committee reasonable attorney's fees and
3 costs incurred in maintaining the action ~~for 5% of the amount~~
4 ~~of any such penalty to the State for underpayments for each~~
5 ~~month following the date of payment during which the~~
6 ~~underpayments remain unpaid.~~ The Department shall also have a
7 right of action on behalf of any individual who has a right of
8 action under this Section. An action brought to recover same
9 shall be deemed to be a suit for wages, and any and all
10 judgments entered therein shall have the same force and effect
11 as other judgments for wages. At the request of any laborer,
12 workman or mechanic employed by the contractor or by any
13 subcontractor under him who is paid less than the prevailing
14 wage rate required by this Act, the Department of Labor may
15 take an assignment of such wage claim in trust for the
16 assigning laborer, workman or mechanic and may bring any legal
17 action necessary to collect such claim, and the contractor or
18 subcontractor shall be required to pay the costs incurred in
19 collecting such claim.

20 The public body may recover, from the contractor or
21 subcontractor of any tier, any attorney's fees or costs
22 associated with defense of an action brought against the public
23 body for noncompliance with this Act if the public body has
24 complied with all provisions of this Act and noncompliance is
25 exclusively the result of the failure by the general contractor
26 or subcontractor of any tier to comply with this Act.

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

2 (820 ILCS 130/11b)

3 Sec. 11b. Discharge or discipline of "whistle blowers"
4 prohibited.

5 (a) No person shall discharge, discipline, or in any other
6 way discriminate against, or cause to be discharged,
7 disciplined, or discriminated against, any employee or any
8 authorized representative of employees by reason of the fact
9 that the employee or representative has filed, instituted, or
10 caused to be filed or instituted any proceeding under this Act,
11 or has testified or is about to testify in any proceeding
12 resulting from the administration or enforcement of this Act,
13 or offers any evidence of any violation of this Act.

14 (b) Any employee or a representative of employees who
15 believes that he has been discharged, disciplined, or otherwise
16 discriminated against by any person in violation of subsection
17 (a) of this Section may, within 30 days after the alleged
18 violation occurs, apply to the Director of Labor for a review
19 of the discharge, discipline, or alleged discrimination. A copy
20 of the application shall be sent to the person who allegedly
21 committed the violation, who shall be the respondent. Upon
22 receipt of an application, the Director shall cause such
23 investigation to be made as he or she deems appropriate. The
24 investigation shall provide an opportunity for a public hearing
25 at the request of any party to the review to enable the parties

1 to present information relating to the alleged violation. The
2 parties shall be given written notice of the time and place of
3 the hearing at least 5 days before the hearing. Upon receiving
4 the report of the investigation, the Director shall make
5 findings of fact. If the Director finds that a violation did
6 occur, he or she shall issue a decision incorporating his or
7 her findings and requiring the party committing the violation
8 to take such affirmative action to abate the violation as the
9 Director deems appropriate, including, but not limited to, the
10 rehiring or reinstatement of the employee or representative of
11 employees to his or her former position and compensating him or
12 her for the time he or she was unemployed. The party committing
13 the violation shall also be liable to the Department of Labor
14 for a penalty of \$10,000 ~~\$5,000~~ for each violation of this
15 Section. If the Director finds that there was no violation, he
16 or she shall issue an order denying the application. An order
17 issued by the Director under this Section shall be subject to
18 judicial review under the Administrative Review Law.

19 (c) The Director shall adopt rules implementing this
20 Section in accordance with the Illinois Administrative
21 Procedure Act.

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