



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3155

Introduced 2/1/2012, by Sen. Dale A. Righter

#### SYNOPSIS AS INTRODUCED:

820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/4	from Ch. 48, par. 39s-4
820 ILCS 130/11a	from Ch. 48, par. 39s-11a

Amends the Prevailing Wage Act. Defines "compensatory damages" as the sum of economic and non-economic damages. Provides that any individual, contractor, or subcontractor who has been aggrieved by a falsely filed complaint may institute a civil action for damages, including, but not limited to, compensatory damages, legal fees, administrative fees, penalties assessed by the Department of Labor under the complaint, injunctive relief, and other appropriate equitable relief. Provides that no public body, including a home rule unit, is authorized to use, as a basis for denying a contract to a contractor or subcontractor, any complaint filed with the Department or any determination by the Department that the contractor or subcontractor has committed a violation under the Act, unless the contractor or subcontractor is debarred at the time of the bid.

LRB097 17879 WGH 63101 b

HOME RULE 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 Sections 2, 4, and 11a 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 "Compensatory damages" means the sum of economic and  
6 non-economic damages.

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

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

24 "Public body" means the State or any officer, board or  
25 commission of the State or any political subdivision or  
26 department thereof, or any institution supported in whole or in

1 part by public funds, and includes every county, city, town,  
2 village, township, school district, irrigation, utility,  
3 reclamation improvement or other district and every other  
4 political subdivision, district or municipality of the state  
5 whether such political subdivision, municipality or district  
6 operates under a special charter or not.

7 The terms "general prevailing rate of hourly wages",  
8 "general prevailing rate of wages" or "prevailing rate of  
9 wages" when used in this Act mean the hourly cash wages plus  
10 fringe benefits for training and apprenticeship programs  
11 approved by the U.S. Department of Labor, Bureau of  
12 Apprenticeship and Training, health and welfare, insurance,  
13 vacations and pensions paid generally, in the locality in which  
14 the work is being performed, to employees engaged in work of a  
15 similar character on public works.

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

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

20 Sec. 4. Ascertaining prevailing wage.

21 (a) The public body awarding any contract for public work  
22 or otherwise undertaking any public works, shall ascertain the  
23 general prevailing rate of hourly wages in the locality in  
24 which the work is to be performed, for each craft or type of  
25 worker or mechanic needed to execute the contract, and where

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

1 wage to such public body.

2 (a-1) The public body or other entity awarding the contract  
3 shall cause to be inserted in the project specifications and  
4 the contract a stipulation to the effect that not less than the  
5 prevailing rate of wages as found by the public body or  
6 Department of Labor or determined by the court on review shall  
7 be paid to all laborers, workers and mechanics performing work  
8 under the contract.

9 (a-2) When a public body or other entity covered by this  
10 Act has awarded work to a contractor without a public bid,  
11 contract or project specification, such public body or other  
12 entity shall comply with subsection (a-1) by providing the  
13 contractor with written notice on the purchase order related to  
14 the work to be done or on a separate document indicating that  
15 not less than the prevailing rate of wages as found by the  
16 public body or Department of Labor or determined by the court  
17 on review shall be paid to all laborers, workers, and mechanics  
18 performing work on the project.

19 (a-3) Where a complaint is made and the Department of Labor  
20 determines that a violation occurred, the Department of Labor  
21 shall determine if proper written notice under this Section 4  
22 was given. If proper written notice was not provided to the  
23 contractor by the public body or other entity, the Department  
24 of Labor shall order the public body or other entity to pay any  
25 interest, penalties or fines that would have been owed by the  
26 contractor if proper written notice were provided. The failure

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

12 (a-4) Any individual, contractor, or subcontractor who has  
13 been aggrieved by a falsely filed complaint may institute a  
14 civil action for damages, including, but not limited to,  
15 compensatory damages, legal fees, administrative fees,  
16 penalties assessed by the Department of Labor pursuant to the  
17 complaint, injunctive relief, and other appropriate equitable  
18 relief. Any person found to knowingly file a false complaint  
19 shall be liable to the individual, contractor, or subcontractor  
20 who was falsely accused for damages as provided in this  
21 subsection.

22 (b) It shall also be mandatory upon the contractor to whom  
23 the contract is awarded to insert into each subcontract and  
24 into the project specifications for each subcontract a written  
25 stipulation to the effect that not less than the prevailing  
26 rate of wages shall be paid to all laborers, workers, and



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

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

18 (b-2) Where a complaint is made and the Department of Labor  
19 determines that a violation has occurred, the Department of  
20 Labor shall determine if proper written notice under this  
21 Section 4 was given. If proper written notice was not provided  
22 to the subcontractor by the contractor, the Department of Labor  
23 shall order the contractor to pay any interest, penalties, or  
24 fines that would have been owed by the subcontractor if proper  
25 written notice were provided. The failure by a contractor to  
26 provide written notice to a subcontractor does not relieve the

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

22 (c) A public body or other entity shall also require in all  
23 contractor's and subcontractor's bonds that the contractor or  
24 subcontractor include such provision as will guarantee the  
25 faithful performance of such prevailing wage clause as provided  
26 by contract or other written instrument. All bid specifications

1 shall list the specified rates to all laborers, workers and  
2 mechanics in the locality for each craft or type of worker or  
3 mechanic needed to execute the contract.

4 (d) If the Department of Labor revises the prevailing rate  
5 of hourly wages to be paid by the public body, the revised rate  
6 shall apply to such contract, and the public body shall be  
7 responsible to notify the contractor and each subcontractor, of  
8 the revised rate.

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

19 (f) It shall be mandatory upon the contractor or  
20 construction manager to whom a contract for public works is  
21 awarded to post, at a location on the project site of the  
22 public works that is easily accessible to the workers engaged  
23 on the project, the prevailing wage rates for each craft or  
24 type of worker or mechanic needed to execute the contract or  
25 project or work to be performed. In lieu of posting on the  
26 project site of the public works, a contractor which has a

1 business location where laborers, workers, and mechanics  
2 regularly visit may: (1) post in a conspicuous location at that  
3 business the current prevailing wage rates for each county in  
4 which the contractor is performing work; or (2) provide such  
5 laborer, worker, or mechanic engaged on the public works  
6 project a written notice indicating the prevailing wage rates  
7 for the public works project. A failure to post or provide a  
8 prevailing wage rate as required by this Section is a violation  
9 of this Act.

10 (Source: P.A. 95-331, eff. 8-21-07; 96-437, eff. 1-1-10.)

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

12 Sec. 11a. (a) The Director of the Department of Labor shall  
13 publish in the Illinois Register no less often than once each  
14 calendar quarter a list of contractors or subcontractors found  
15 to have disregarded their obligations to employees under this  
16 Act. The Department of Labor shall determine the contractors or  
17 subcontractors who, on 2 separate occasions within 5 years,  
18 have been determined to have violated the provisions of this  
19 Act. Upon such determination the Department shall notify the  
20 violating contractor or subcontractor. Such contractor or  
21 subcontractor shall then have 10 working days to request a  
22 hearing by the Department on the alleged violations. Failure to  
23 respond within the 10 working day period shall result in  
24 automatic and immediate placement and publication on the list.  
25 If the contractor or subcontractor requests a hearing within

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

12 (b) A contractor or subcontractor convicted or found guilty  
13 under Section 5 or 6 of this Act shall be subject to an  
14 automatic and immediate debarment, thereafter prohibited from  
15 participating in any public works project for 4 years, with no  
16 right to a hearing.

17 (c) No public body, including a home rule unit, is  
18 authorized to use, as a basis for denying a contract to a  
19 contractor or subcontractor, any complaint filed with the  
20 Department or any determination by the Department that the  
21 contractor or subcontractor has committed a violation under  
22 this Act, unless the contractor or subcontractor is debarred at  
23 the time of the bid as provided under this Section. This  
24 subsection is a limitation under subsection (i) of Section 6 of  
25 Article VII of the Illinois Constitution on the concurrent  
26 exercise by home rule units of powers and functions exercised

1 by the State.

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