



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3416

Introduced 2/14/2014, 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. Provides that the requirements apply to any prevailing wage classification not yet established as of January 1, 2013.

LRB098 14360 OMW 48996 b

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 Section 4 as follows:

11 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

12 Sec. 4. Ascertaining prevailing wage.

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

1 locality for each craft or type of worker or mechanic needed to
2 execute the contract or perform such work, also the general
3 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.

23 (a-1) The public body or other entity awarding the contract
24 shall cause to be inserted in the project specifications and
25 the contract a stipulation to the effect that not less than the
26 prevailing rate of wages as found by the public body or

1 Department of Labor or determined by the court on review shall
2 be paid to all laborers, workers and mechanics performing work
3 under the contract.

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

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

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

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

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

1 contractor or subcontractor who fails to comply with this
2 subsection (b-1) is in violation of this Act.

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

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

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

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

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

1 (e) (Blank) ~~Two or more investigatory hearings under this~~
2 ~~Section on the issue of establishing a new prevailing wage~~
3 ~~classification for a particular craft or type of worker shall~~
4 ~~be consolidated in a single hearing before the Department. Such~~
5 ~~consolidation shall occur whether each separate investigatory~~
6 ~~hearing is conducted by a public body or 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 (f) 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 (g) 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. The requirements set forth in this subsection
6 (g) by this amendatory Act of the 98th General Assembly apply
7 to any prevailing wage classification not yet established as of
8 January 1, 2013.

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