



**City of Woodstock**  
**Office of the City Manager**

Phone (815) 338-4301 • Fax (815) 334-2269  
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www.woodstockil.gov

121 W. Calhoun Street  
Woodstock, Illinois 60098

Roscoe C. Stelford III  
City Manager

**SPECIAL MEETING**  
**WOODSTOCK CITY COUNCIL**  
**STRATEGIC PLANNING WORKSHOP**  
**Stage Left Cafe**  
**October 2, 2014**  
**4:00PM**

*The City Council Strategic Planning Workshop is a working session of the City Council and City Administration. While this is a public meeting, no public comments will be entertained.*

**CALL TO ORDER:**

**ROLL CALL:**

**POTENTIAL DISCUSSION ITEMS:**

- 1. Marketing/Branding**
- 2. Old Courthouse Project**
- 3. Prevailing Wage Act**

**ADJOURN to October 7, 2014 City Council Industrial Forum, 4:00PM, Stage Left Café.**

*NOTICE: In compliance with the American's With Disabilities Act (ADA), this and all other City Council meetings are located in facilities that are physically accessible to those who have disabilities. If additional reasonable accommodations are needed, please call the City Manager's Office at 815/338-4301 at least 72 hours prior to any meeting so that accommodations can be made.*



City of  
**WOODSTOCK**  
Department of Community & Economic Development  
121 W. Calhoun Street  
Woodstock, Illinois 60098

phone 815.338.4305  
fax 815.334-2267  
commdevdept@woodstockil.gov  
[www.woodstockil.gov](http://www.woodstockil.gov)

## MEMORANDUM

DATE: September 22, 2014  
TO: Roscoe Stelford, City Manager  
FROM: Nancy Baker, City Planner  
RE: Demolition of Courthouse Addition

The addition at the northeast corner of the Old Courthouse was probably constructed in the mid-1950s to provide additional records storage. Unlike previous additions, this one is incongruous to the rest of the building and detracts from the overall historic character of the building. The Gary W. Anderson Architects Baseline Conditions Report recommends that it be demolished and the Historic Preservation Commission has informally supported this concept.





Based on photographic evidence, four windows were removed to accommodate the addition. The north wall had a double hung window on both the ground floor and the first floor and the sash contained 6 panes of glass over 6 panes of glass (i.e., a 6 over 6 configuration). The east wall of the 1904 addition had a full height double hung window (1 over 1) on the first floor and a shorter (1 over 1) double hung window on the ground level. First floor windows had limestone lintels and limestone sills. The ground floor window on the 1904 addition had a limestone sill and operable shutters.

At present, we have seen no indication of any water problems attributable to a leaky roof. This roof is not included in the roofing project that is currently in progress for the rest of the building. There is an unfinished plywood fascia on the north side, just below the roof, that may need to be repaired or replaced in the near future.

The first floor is utilized as a mechanical room supplying heat and electricity to the north gallery. It also provides storage space for the tenant, the Northwest Area Arts Council (NAAC). The ground floor has been used for dining tables.



Unfinished fascia

The removal of this addition is not a minor undertaking. The photo below shows the roof over the passageway between the two buildings. This roof extends back to the small passageway that connects the Courthouse and Sheriff's House. Electricity extends to the light fixture in the passageway and a gas pipe that supplies the La Petite Creperie outdoor fireplace is attached to the wall of the 1950s addition.



The previous photo also shows the large section of the north wall which has been painted white, which will become more visible if the most recent addition is removed.

The first floor of the addition contains the furnace for the front gallery on the north side of the building and the AC condenser is located on the roof. The room also contains the electrical panel that supplies electricity to the north gallery. When the addition is demolished, a new furnace, condenser, and duct work will need to be installed in a new location. Relocation of the electrical panel will require relocation of electrical conduit as well.



Demolition of the ground floor space will also require termination of electric and HVAC.

It will be difficult to fully determine the condition of the masonry until the addition walls are removed. It appears that the original window opening widths were retained but sills and brick were removed to create doorways. The remaining historic masonry has been covered with several layers of paint which will have to be removed. New (salvaged) bricks will be required to restore original opening sizes and replace missing bricks.

The addition has a concrete floor which appears to be similar in elevation to the grade of the patio. This could be removed as part of the restoration process. Alternatively, rather than restoring the window that faces east, potentially a door could be installed to provide direct access to the patio.

We “guesstimate” the demolition and restoration will cost \$90,000-\$110,000 if there are no structural deficiencies that need to be corrected. This is based on the following rough breakdown:

Masonry restoration: includes new limestone, paint removal, replace missing bricks, tuckpointing and downspout relocation \$35,000-\$40,000

Windows: new double hung insulated wood windows with historic pane configuration \$15,000

HVAC:	includes new furnace, AC condenser, and duct work \$10,000-15,000 (does not include cost to construct new furnace room if necessary)
Electric and gas:	relocation of electrical panel, new conduit, re-piping of gas \$5,000
Interior finishes:	plaster, trim details, painting, etc. \$5,000-\$10,000
Roof construction:	Construction of new roof or canopy over passageway \$5,000-\$10,000
Demolition:	equipment rental, labor, disposal costs \$10,000-\$15,000
Architectural fees:	\$7,500

The demolition of the addition should not occur until next spring at the earliest. Architectural plans and specifications will have to be prepared and bids advertised and awarded. Work should occur during warmer temperatures for the comfort of the tenants and to prevent ice crystals from forming in the mortar. At the same time, the work must be timed so as not to disrupt outside dining at either restaurant. Work also must be coordinated with other work on the front of the buildings, such as the front stair projects for both the Courthouse and Sheriff's House.

The demolition will cause considerable inconvenience to the tenant on the first floor because work will not be limited just to the area to be demolished. New ductwork and electrical conduit will be required throughout the north gallery.

It is recommended that demolition of the addition remain low on the priority list until both the Courthouse and the Sheriff's House are completely weather-tight. Many of the windows on both buildings are in dire condition and allow rain and snow into the buildings. The windows in the second-story restrooms in the Courthouse allowed so much cold air in last winter that the water in the toilets froze, and they remain non-functional. Both buildings have loose masonry, eroded and incompatible bricks and mortar, and gaps that need to be caulked. Decorative limestone details on the courthouse are cracked. The soffits on both buildings need to be restored, the downspouts need to be replaced, and the decorative metal cornice on the Sheriff's House needs to be restored so it does not rust away. (See the following photographs which illustrate the aforementioned issues.)

In addition to the factors above, it is premature to demolish the addition until a new heating and cooling system has been designed for the entire building. Replacing the heating and cooling system for the north gallery without addressing how best to heat and cool the entire building will result in a continuation of the inadequate and inefficient system in place today.

**OLD COURTHOUSE PHOTOS**

**September 2014**







LAW OFFICES  
ZUKOWSKI, ROGERS, FLOOD & McARDLE  
50 VIRGINIA STREET  
CRYSTAL LAKE, ILLINOIS 60014

RUTH A. SCHLOSSBERG  
rschlossberg@zrfmlaw.com

(815)459-2050  
FAX (815)459-9057

September 16, 2014

Via E-mail: [rstelford@woodstockil.gov](mailto:rstelford@woodstockil.gov)

Mr. Roscoe Stelford, Manager  
CITY OF WOODSTOCK  
121 West Calhoun Street  
Woodstock, IL 60098

Via E-mail: [pruscko@woodstockil.gov](mailto:pruscko@woodstockil.gov)

Mr. Paul Ruscko, Public Works Director  
CITY OF WOODSTOCK  
326 Washington Street  
Woodstock, IL 60098

**RE: Prevailing Wage Seminar**

Dear Roscoe and Paul:

On Thursday, September 11<sup>th</sup>, I attended the prevailing wage seminar put on by the Indiana Illinois Iowa Foundation for Fair Contracting or IIIFC. Not surprisingly, the program focused on the benefits of prevailing wage laws as well as enforcement related to those laws. Nonetheless, it was a very interesting seminar and confirmed much of what we already know and predicted about how both the Department of Labor and the unions believe the Prevailing Wage Act ought to be enforced.

The morning started with a presentation by two economists who seek to make an economic case in favor of prevailing wage law. Notably, because of McHenry County's and Woodstock's opposition to prevailing wage law this summer, one of the economists had generated a report examining the economic impacts and implications of prevailing wage in McHenry County. We understand the City received a copy of that pamphlet recently and that Roscoe circulated it this week. No counter-arguments or analysis was discussed at the meeting.

The economists were followed by representatives from the Department of Labor including the head of the department and the chief legal counsel. While acknowledging that many portions of the Act "can be unintelligible", they discussed how they currently enforce the Act which enforcement is consistent with the advice we have been offering. Representatives from the Public Access Counselor of the Attorney General's office also spoke about the application of Freedom of Information Act and the Open Meetings Act, generally, and to requests for information relating to prevailing wage. Finally, a panel of all the speakers and additional representatives from unions and area contractors answered questions for over an hour.

**ZUKOWSKI, ROGERS FLOOD & MCARDLE**

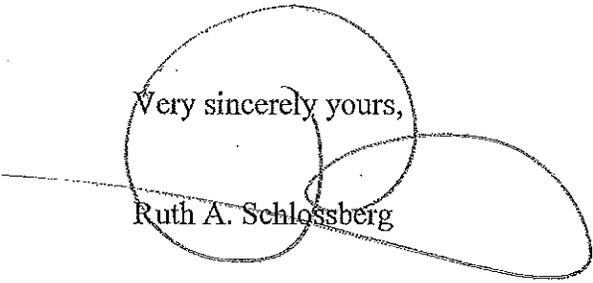
Mr. Roscoe Stelford  
Mr. Paul Ruscko  
September 16, 2014  
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For your use, I have included all of the information that we received at that seminar. In particular, please note that it may be worth your time to review the documents purporting to articulate the benefits of prevailing wage and the case for prevailing wage in McHenry County. While they did not discuss it in any detail, the material they handed out also includes proposed responsible bidder ordinances. I am simply passing these along to you for your reference. Most interesting about these is the description of public works that they include in the ordinance. I would think this is a useful reference the next time we have a question about whether something is subject to prevailing wage and we wonder what the union thinks.

I hope this information is useful and interesting to you. Please let me know if you would like us to pass it on to your City Council or if you prefer to include it directly in their packet. If you have any questions or would like to discuss any of the specific material presented, as always never fail to be in touch.

Very sincerely yours,

Ruth A. Schlossberg



RAS:dg

Attachments (*via e-mail*)

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**EXERCISE  
WH-347**

The following exercise relates to the review of certified payroll records. As you know, certified payroll records are required to be submitted by contractors on a weekly basis on all contracts subject to the Davis-Bacon labor standards provisions. Below is a portion of a wage determination applicable to this example.

Take a few moments and identify areas on the attached certified payroll record that you believe may indicate potential compliance problems. After you have finished, be prepared to discuss what actions you would take to further investigate the potential problems that you have identified.

	<b>Rates</b>	<b>Fringes</b>
<b>Bricklayers</b>	<b>\$12.00</b>	<b>\$5.46</b>
<b>Carpenters</b>	<b>\$13.35</b>	<b>\$4.63</b>
<b>Laborers (Unskilled)</b>	<b>\$10.65</b>	<b>\$3.65</b>
<b>Sheet Metal Workers</b>	<b>\$15.24</b>	<b>\$3.778</b>

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**Unlisted classification needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses in 29 CFR 5.5 (a)(1)(ii).**

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

**PAYROLL**

(For Contractor's Optional Use; See Instructions at [www.dol.gov/eisawhd/forms/wh3471nstr.htm](http://www.dol.gov/eisawhd/forms/wh3471nstr.htm))



U.S. Wage and Hour Division

Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR  OR SUBCONTRACTOR   
Hale N. Hardee Construction Co., Inc.

ADDRESS

1 Easy Street, New York, NY

OMB No.: 1215-0149  
Expires: 12/31/2011

PAYROLL NO

20

FOR WEEK ENDING

October 12, 2009

PROJECT AND LOCATION

Project #: ACE352 / 1250 5th Avenue

PROJECT OR CONTRACT NO

ACE-GC-4561

(1) NAME AND HOME/LOCAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) U.S. OF EMPLOYER IDENTIFICATION NUMBER	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
			S	M	T	W	T	F	S				FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
																	6	
Anderson, Joseph		Carpenter	1	1	1	1	1			5	35.96	179.80	67.43	179.80	17.98		265.21	633.79
			8	8	8	8	8			40	17.98	719.12						
Bedwell, Thomas		Carpenter	1	1	1	1	1			5	20.03	100.15	61.45	163.87	16.39		341.71	477.64
			8	8	8	8	8			40	17.98	719.12						
Larson, Todd		Carpenter	1	1	1	1	1			5	20.03	100.15	47.56	126.83	12.68		187.08	447.97
			8	8	8	8	8			40	13.35	534.00						
O'Brian, Tom		Apprentice Carpenter										37.92	101.12	10.11		149.15	356.45	
			8	8	8	8	8			40	12.64	505.60						
Roberts, Gordon		Apprentice Carpenter										37.92	101.12	10.11		149.15	356.45	
			8	8	8	8	8			40	12.64	505.60						
Snyder, Hammond		Trainee Carpenter										37.92	101.12	10.11		149.15	356.45	
			8	8	8	8	8			40	12.64	505.60						
Clements, Paul E.		Bricklayer										40.61	108.30	10.83	Repay Loan	259.24	282.29	
			6	6	6	6	7			31	17.46	541.38						
Cunningham, Christopher		Bricklayer										42.60	113.60	11.36		210.16	357.54	
			6	6 1/2	7	7	6			32 1/2	17.46	568.17						





## **E X E R C I S E**

### **Answer Sheet**

There are three Carpenters (Joseph Anderson, Thomas Bedwell, and Todd Larson). None of them have the exact rate of pay (basic hourly rate and overtime).

The Certified Payroll records should be checked for the following:

- 1) The rate of pay for each classification should be checked against the Basic Hourly Rate and Fringe Benefits for the corresponding classes on the WD.

Example: Mascola's rate is less than that on the WD.

- 2) The contractor should provide evidence of an approved apprenticeship and trainee program. Individual registration should be verified. The ratios and levels of progression should be confirmed.
  - a. If, for example, the ratio of journeymen to apprentices is 2:1, then the contractor must pay one apprentice the full journeyman rate. (The first apprentice on the job is the bona fide apprentice.)
  - b. Bootstrapping is not allowed. For example, if the trainee is not allowed and must be elevated to the full journeyman rate, it does not mean that the firm can have two apprentices.
  - c. The apprenticeship program should be reviewed for the fringe benefit requirements. In this case, the apprentices

have been paid 60% of the journeyman rate plus the full amount of the fringe benefits.

- 3) There is a "helper" (James Nulty) listed on the certified payroll, but there are no helpers listed on the WD. Either the classification must be conformed or the employee must be paid the rate for the classification of work he is performing (journeyman sheet metal worker or laborer).
- 4) Arnold Peterson's exact classification should be confirmed by interviews. The firm's method of paying the employee  $\frac{1}{2}$  his hours as a laborer and  $\frac{1}{2}$  as a plumber may be a method used to pay Peterson less than the full plumber's rate.
- 5) The bricklayers should be carefully interviewed to determine whether the certified payroll records have been falsified to show compliance. The daily hours recorded for bricklayers are less than the hours worked by the other employees; it is possible that Clements and Cunningham were paid on a piece rate basis. Also note that the gross earnings for these employees are rounded off (hours times the hourly rate shows an amount different than that on the payroll).
- 6) Unskilled laborers (James Burke & John Burns) are listed as working only  $\frac{1}{2}$  the hours of the other employees. This could be an indication that the laborers are being paid only  $\frac{1}{2}$  the applicable WD rate.
- 7) Thomas Bedwell is due an additional \$100 as a result of a payroll error in adding the individual payroll deductions. Numerous errors of this nature could be an indication of payroll falsification.

- 8) The repayment of a bank loan for Clements should be verified to make certain it was authorized by Clements or ordered by a court.
- 9) The overtime rates should be carefully checked.
- a. In the case of Anderson, the firm is showing that it pays double time wages for the overtime hours (5 hours x \$35.96). It may mean that the contractor is merely reducing the overtime hours by  $\frac{1}{2}$  in order to simulate CWHSSA compliance. The employee should be interviewed to determine compliance.
  - b. For Bedwell and Larson, the contractor is showing an overtime rate of \$20.03 ( $1\frac{1}{2}$  x \$13.35). If the contractor is not making contributions to a fringe benefit plan for all hours worked, then the overtime is not correctly computed because fringe benefit rates are paid at straight time, not time and  $\frac{1}{2}$ .

For example: The contractor pays Bedwell the fringe benefit amount in cash. The correct total payment is \$24.66 ( $1\frac{1}{2}$  x \$13.35 + \$4.63 in fringe benefits).

However, for Larson, the firm makes contributions to a fringe benefit plan for ALL hours worked in the amount of \$4.63. The overtime rate shown on the CPR in this case is correct.

- 10) The contractor should be asked to provide evidence that fringe benefit contributions are being made on behalf of Larson at the rate for which credit is claimed. The plan should be checked to determine if it is a bona fide third party FB plan.

- 11) There is no identifying number for any of the workers. The last four digits of the social security number is one possible identifying number that could have been used.
- 12) On the certification page, the Title of the signatory party is not provided at the top of the form.
- 13) On the certification page, item number 4 (b)'s box, 'Where Fringe Benefits Are Paid In Cash' is not checked when it should have been.
- 14) On the certification page, the signature box is not signed by Mr. Hale Hardee.

ORDINANCE NO. \_\_\_\_

AN ORDINANCE ESTABLISHING RESPONSIBLE BIDDER  
REQUIREMENTS ON PUBLIC WORKS PROJECTS

WHEREAS, the City of \_\_\_\_\_ (“City”) is a municipal corporation organized and operating under the laws of the State of Illinois;

WHEREAS, the City expends substantial funds for the construction of public works, a portion of that money being derived from taxes paid by residents;

WHEREAS, the City seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the City, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, the City seeks to enhance its ability to identify the lowest “responsible bidder” on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law; and

WHEREAS, “An Ordinance Establishing Responsible Bidder Requirements on Public Works Projects” will assure efficient use of taxpayer dollars, will promote public safety, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City Council of \_\_\_\_\_, Illinois, that:

**Section 1. Public works**

For purposes of this chapter, the term “public works” shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

## Section 2.    **Responsible Bidder**

In determining whether a bidder is a "responsible bidder" for the award of a public works contract the bidder must submit the following information and supporting documentation verified under oath on a form designated by the City, in order for the bid to be accepted:

- A. Documents evidencing compliance with all applicable laws and ordinances pre-requisite to doing business in Illinois;
- B. A valid federal employer tax identification number or, if an individual, a valid social security number;
- C. Documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number);
- D. Documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number);
- E. Disclosure of any federal, state or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years.
- F. A statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy.

If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the contractor's workers' compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code;

- G. A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years.

Such statement shall also provide that the contractor has reviewed the Prevailing Wage Act (or federal Davis-Bacon and related Acts), has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act (or federal Davis-Bacon and related Acts) and related requirements.

A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding;

- H. A statement of compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions);

- I. A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.);
- J. A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances;
- K. Disclosure of any federal, state or local claim for unpaid compensation (wages and/or fringe benefits) for contractor's employees filed against the bidder in the last five years, where such claim totals \$100,000 or more;
- L. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company;
- M. Evidence of participation in apprenticeship and training programs applicable to the work to be performed on the project which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization. The required evidence includes a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project;
- N. Documents evidencing contractors safety and health activities and programs, including:
  - (i) a written safety policy statement signed by a company representative;
  - (ii) completed copies of OSHA Form 300A Summary of Work-Related Injuries and Illnesses for the past three (3) years (if applicable); and
  - (iii) the current year-to-date OSHA Form 300 Log of Work-Related Injuries and Illnesses (if applicable).
- O. Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City. Each contractor shall submit all subcontractor information and supporting documentation to the City prior to the subcontractor commencing work on the project.

Any material changes to the contractor's status, at any time, must be reported in writing to the City within fourteen (14) days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible bidder.

**Section 3. Additional Criteria Available**

If all of the above criteria are otherwise satisfied and credits considered, the City may also consider the following factors, in its discretion, in awarding the project if such information is requested:

- A. Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, and the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines; and/or
- B. Any determinations by a court or governmental agency for violations of federal, state, or local laws including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon and related Acts.

**Section 4. Credit Toward Bid Award**

The following criteria shall be used as credit toward a bid in determining the lowest responsible bidder. If the City applies any credit(s) towards a bid, the credit(s) will not reduce the amount of a contract.

EXAMPLE: \$1,000,000 bid, receives \$50,000 local bidder credit. For purposes of determining the lowest bidder, the contractor's bid is \$950,000. However, the contract price will remain \$1,000,000.

- A. The City shall apply a credit equal to 5% or \$50,000, whichever is less, based on the local bidder's bid. A local bidder is an individual or business entity that (1) establishes it has a place of business located in the county where the work is to be performed for at least 1 year prior to the deadline for submitting bids, and (2) can demonstrate for one year prior to the deadline for submitting bids that it has paid a minimum of \$5,000 of sales tax in the county where the work is to be performed.

In the event a local bidder does not bid on the project, a bidder that establishes it has a place of business located within an Illinois county contiguous to the county where the work is to be performed for at least one year prior to the deadline for submitting bids will receive a credit equal to 1% or \$10,000, whichever is less; and

- B. The City shall apply a credit equal to 2% or \$20,000, whichever is less, towards the bid of a bidder with a local workforce. "Local workforce" means at least 25% of the bidder's construction employees reside in the county where the work is to be performed or Illinois counties contiguous to the county where the work is to be performed. The bidder is not required to have a place of business in the county where the work is to be performed for this credit to apply.

The bidder is responsible for requesting credit based upon any of the above criteria.

**Section 5. Incomplete Submissions by Bidders and Subcontractors**

It is the sole responsibility of the contractor to comply with all submission requirements at the time it submits its bid to the City. Contractor submissions deemed inadequate or incomplete may result in a determination that the contractor is not a responsible bidder.

The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor submissions to the City prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, the City may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the City approves such information.

**Section 6. Lowest Bidder Not Chosen**

When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the purchasing agent.

**Section 7. Multiple Low Bids**

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the City Council, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

**Section 8. Public Records**

All information submitted by a contractor or subcontractor pursuant to this Ordinance are public records subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

**Section 9. Materiality**

The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

**Section 10. Severability**

If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

**Section 11. Other Ordinances**

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby revoked.

**Section 12. Effective Date**

This Ordinance shall take effect upon passage by the City Council of \_\_\_\_\_, Illinois.

This Ordinance was passed by the City Council of \_\_\_\_\_, Illinois on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

This Ordinance was approved by the Mayor of the City of \_\_\_\_\_, Illinois on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk

COMPLYING WITH THE  
ILLINOIS PREVAILING WAGE  
ACT  
PUBLIC BODY  
RESPONSIBILITY

February 2014

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What is the Prevailing Wage Act?

It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works. 820 ILCS 130

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What is the Department's Authority Under the Act?

1. To ascertain the Prevailing Wage.
2. To investigate violations of the Prevailing Wage Act and enforce the Act.
3. To prosecute debarments under the Prevailing Wage Act.
4. To hold Section 9 hearings instituted by Private Parties.
5. **The Department does not have the authority to issue regulations except as relating to debarments. Thus, its interpretations are a matter of position regarding enforcement. Its questions and answers reflect its position as a matter of enforcement policy.**

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**What Projects are Covered? Sec. 2**

1. Direct contract between a public body (State of Illinois or one of its political subdivisions) and a contractor.
2. Financing for the project comes from various specified funding mechanisms within the statute. For example: Build Illinois Bond Act or funds for school construction.
3. All projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions.
4. Non-governmental organization funded in whole or in-part by public funds/financing.

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**Sec. 3 Coverage Cont.**

- This also includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.
- Demolition projects are covered regardless of whether in conjunction with subsequent public works projects.
  - P.A. 96-0186, eff. Jan. 1, 2010

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**WHO IS COVERED**

- All laborers, workers and mechanics directly employed by contractors and subcontractors and engaged in construction on the site of construction, including workers engaged in the transportation of material and equipment to and from the site
- Excludes transportation by sellers and suppliers
- The transportation proviso is often misapplied by contractors (e.g. where contractor's own trucks deliver materials)
- In trucking may have one way exemption only

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**VIOLATIONS: Public Bodies, Sec. 4**

- IDOL determines violations
- If the public body/entity failed to provide written notice to contractor, it is responsible for interest, penalties, or fines.
  - P.A. 96-437, eff. Jan. 1, 2010
  - Response to *Brandt Construction Company v. Ludwig*
- Public Bodies are NOT responsible for back wages even if proper notice was not given.
  - P.A. 96-437, eff. Jan. 1, 2010

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**CONTRACT STIPULATIONS:  
Contractors, Sec. 4**

- Contractors must insert a written prevailing wage stipulation into each lower tier contract
- Contractors must have a prevailing wage stipulation in all bonds
- Contractors must provide subcontractors with a written statement indicating prevailing wage applies
  - P.A. 96-437, eff. Jan 1, 2010

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**VIOLATIONS: Contractors, Sec. 4**

- IDOL determines violations
- If no written notice to subcontractor, contractor responsible for interest, penalties, or fines
- Contractors are NOT responsible for back wages when proper notice was not given.
  - P.A. 96-0437, eff. Jan 1, 2010

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### NEW CLASSIFICATIONS, Sec.4

- Anyone affected by a classification may petition IDOL objecting to the failure to include a classification. However, the new classification must involve work that is substantially different from any existing classification.

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### RECORD KEEPING, Sec. 5

- Contractors must keep accurate records for 5 years
- What must be kept?
  - (i) the worker's name, (ii) the worker's address, (iii) the worker's telephone number when available, (iv) the worker's social security number, (v) the worker's classification or classification, (vi) the worker's gross and net wages paid in each pay period, (vii) the worker's number of hours worked each day, (viii) the worker's starting and ending times of work each day, (ix) the worker's hourly wage rate, (x) the worker's hourly overtime wage rate, (xi) the worker's hourly fringe benefit rates, (xii) the name and address of each fringe benefit fund, (xiii) the plan sponsor of each fringe benefit, if applicable, and (xiv) the plan administrator of each fringe benefit, if applicable.
  - In addition to the records retention, contractors must:
  - Submit monthly to the public body in charge of the project a certified payroll consisting of a complete copy of the records identified in the retention portion of Section 5 by the tenth of the month. The records identified in the above paragraph, but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor or an officer, employee, or agent of the contractor or subcontractor which avers that: (i) he or she has examined the certified payroll records required to be submitted by the Act and such records are true and accurate, (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by the Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. Note: a contractor or subcontractor who makes contributions to and one or more labor organizations need not provide items related to fringe benefit funds on certified payroll.

Failure to file a certified payroll is a violation of the Act

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### Establishing rates, Sec.9

- Every June the individual public bodies or the IDOL investigate and ascertain the general prevailing wage rates for each county and each classification. The rates are posted on the IDOL web site.
- Any person affected by a wage determination may file objections with the IDOL within 30 days after the rates are posted on the web site in June.
- Why do cheaters not object? One who has a proclivity to cheat does not object because the higher the prevailing rate, the more money the contractor puts in his pocket.
- The prevailing rate is not a "Union" rate.
- The rate is determined by ascertaining what was paid during course of year on projects. Look back and not forward

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**DEBARING CONTRACTORS, Sec.11, 11a**

- Section 11a is the only section where the IDOL has rule making authority.
- Specific hearing procedures at 56 Ill. Adm. Code 100
- Contractor may be debarred for up to 4 years from the date its name is placed in the Illinois Register.
- Contractors guilty of sec. 5 or 6 are automatically subject to debarment, no right to a hearing (P.A. 96-571, Jan 1, 2012)

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**ADMINISTRATIVE CODE 56 Ill. Adm. Code 100**

Factors IDOL considers on whether issue a notice of violation:

- **Severity** - whether there has been more than one violation and whether the violation involves a non-technical substantive error, i.e. willful conduct;
- **Frequency and duration** - whether a general inspection of the contractor's history reveals other violations;
- **Amount in controversy** - The difference between the amount actually paid and the prevailing wage rate, no set dollar amount triggers;
- **Accurate Records** - whether the contractor has cause to be kept accurate records;
- **Access** - Whether the contractor has cooperated with IDOL.

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**PENALTIES, Sec.11**

- In addition to the wages the contractor is also liable to the IDOL for a 20% PENALTY. Second violation = 50%.
- 2% Punitive damages accrue each month if the contractor fails to pay the wages after a determination has been made. Second violation = 5%
- IDOL also has a right of action on behalf of employees who choose not to exercise a private right of action.
- Public body or contractor may be liable if no written notification

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### Recent Developments in Scope of Coverage and What is "Public Works" and Activities Covered.

**Legislative:** 55 ILCS 5/5-1/34 amends the Counties code and provides that "any sports, art or entertainment facilities that receive revenue from a tax imposed under subsection b of Section 5-1930 of the Counties Code shall be considered to be public works within the meaning of the Prevailing Wage Act. In addition, county authorities responsible for the construction, renovation, modification, or alteration of the sports, arts, or entertainment facilities shall enter into project labor agreements with labor organizations as defined by the National Labor Relations Act."

30 ILCS 71/10 of the Economic Development Act was amended to provide that any corrective performed pursuant to Title XVI of the Environmental Protection Act for which the payment from the Underground Tank Fund is requested shall be considered a public works project.

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### Recent Developments in Scope of Coverage and What is "Public Works" and Activities Covered.

**Judicial:** In 1983 the maintenance exclusion was eliminated from the Prevailing Wage Act and the Department has taken the position that maintenance work performed by laborers, workers or mechanics on public works projects is covered.

In November 2013 the Illinois Supreme Court in *Department of Labor v. ERH Enterprises*, 2013WL 6115714 addressed several issues and one of them involved the claim by the Employer that the repair and maintenance work it was performing were part of the operations and such work was not covered by the Prevailing Wage Act. Noting the Act defines "public works" broadly found the repair to the sewer pipe to be covered maintenance.

Second relevant issue court addressed was scope of public funding. Court held that public funds included "current operating funds, special funds, interest and sinking funds and funds of any kind or character" belonging to or in the custody of any public agency." Court found payment of funds by water customers that comes into custody of Village and even if maintained in special fund and which Village used to pay for operations by subcontractor of water plant are public funds. Hence to extent they went to contractor, then by definition the infrastructure repairs were paid for out of public funds.

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### PRIVATE DEVELOPMENT AND PUBLIC WORKS

Where a public body specifically gives a private entity, public money, the project becomes a public works project under the Act, notwithstanding its pure private use.

#### Current issues arising out of "non-traditional" funding of projects:

1. Where municipality donates land or provides land below market costs
2. Where municipality provides infrastructure improvements as part of private development, in essence subsidizing the development
3. Duty to suit towns - State decisions (West Virginia, Pa, MO (not accept carefully construed legal traps), Montana, and Oregon) versus Davis Bacon
4. TIF Projects
4. Sales tax rebates for development versus tax credits

Department's position on enforcement is that the Department "does not sanction 'schisms' for circumventing the intent and purposes of the law and it is axiomatic that a public body cannot circumvent a statute by doing indirectly that which it could not do directly." See Atty. General Opinion 87-014, *Billing v. City of East Moline*, 14 IL App.2d 263, 272-273 (1987).

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### Recent Developments in Scope of Coverage and What is "Public Works" and Activities Covered.

**Administrative:**

Real Estate In 2013 the Department for purposes of enforcement placed on its web site an update on its position in enforcing prevailing wage issues involving landscaping and its coverage by the Prevailing Wage Act.

Real Estate is a Real work with meaning of the Prevailing Wage Act. Opportunity Center of Southeastern Illinois v. Board of, 204 Ill App3d 945 (9th Dist. 1990) and thus the Department has concluded that modifications to the real estate are subject to Prevailing Wage Act. There is not a classification of landscape plantmen or landscape operator or landscape truck driver and these tasks fall within definition of laborer (Illinois Landscape Contractors, 372 Ill App 2d 952 (2nd Dist. 2007). For purpose of bidding this work or contracting this work neither bids nor contracts nor acceptances on landscape work covered by the Prevailing Wage Act should be based upon rates of pay other than that those associated with the classifications of laborers, operator, or truck driver the Department has published.

There is no change in Department's position regarding landscaping when performed as part of construction project or installing traditional "hardscapes" (paving of concrete etc.) and when not the character of the real estate, although no other covered work such as "hardscapes" is involved, the work is covered work under the Prevailing Wage Act. In questions we have attempted to give specific examples.

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### Current Hot Topics Before Department re Public Bodies

1. Intergovernmental agreements. When Public Body steps outside the realm and acts like a private party and engages in commercial activity does *Monmouth* still apply? There are federal court cases where public bodies can lose exemption under Acts based upon a regular course of commercial activity, which changes nature of entity.
2. Revisiting TIF financing based upon Supreme Court's decision and expansive definition in ERH.
3. The viability of the Preference Act.
4. Public Body enforcement of the Prevailing Wage Act where contracts are subject to the Act and Violations are Discovered.
5. The Investigative Process and the role of the Municipality.
6. Electronic Transfers of Records.

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### Recent Amendments to the Record Keeping Requirement

HB 922  
PA 98-3028

Amends the Prevailing Wage Act to provide that contractors and subcontractors shall make and keep for a period of not less than 5 years from the date of the last payment on a contract or subcontract for public works records of all workers employed on the project. Provides that a public body must keep for 5 years certain payroll records. Provides that a contractor, subcontractor, or public body may retain records in paper or electronic format. Provides that actions for the failure to pay wages or compensation shall be brought within 5 years from the date of the failure to pay.

Effective 1/1/14

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**Recent Amendments to filing Requirements**

HB 2540  
98-0173

Amends the Prevailing Wage Act. Deletes language requiring copies of determinations concerning the prevailing rate of wages to be filed with the Secretary of State.

Effective 1/1/14

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**CHANGES TO CERTIFIED PAYROLL FORM**

HB 3223  
PA 98-0482

Requires contractors to include where do not contribute to jointly administered fringe benefit funds, the name and address of each fringe benefit fund, the sponsor and administrator of fringe benefit plans and address..

Effective 1/1/14

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**If there is an increase in the Prevailing Wage during a project, am I required to pay the increase?**

Yes, all bid specifications shall list the specified rates to all laborers, workers and mechanics in the locality for each craft or type of worker or mechanic needed to execute the contract. If the Department of Labor revises the prevailing rate of hourly wages to be paid by the public body, the revised rate shall apply to such contract, and the public body shall be responsible to notify the contractor and each subcontractor, of the revised rate.

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**How am I to know when rate increases occur?**

If the Department of Labor revises the prevailing rate of hourly wages to be paid by the public body, the revised rate shall apply to such contract, and the public body shall be responsible to notify the contractor of the revised rate. The general contractor is responsible for notifying each lower subcontractor. The Department posts the wage rates monthly at: <http://labor.illinois.gov/>

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**Public Body Prerequisite**

Adopt a Prevailing Wage Ordinance/Resolution in the month of June of each calendar year.  
Publish in a newspaper in an area of general circulation that the Public Body has adopted a Prevailing Wage Ordinance/Resolution.

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**Public Body Prerequisite**

Publish in a newspaper in an area of general circulation that the Public Body has adopted a Prevailing Wage Ordinance/Resolution.

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**Public Body Prerequisite**

Include the Prevailing Wage Requirement in a Call for Bids (advertisement) for public works construction projects.

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**Public Body Prerequisite**

Include a list of the Specified Prevailing Wage Rates in the bid specifications of the contract.

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**Public Body Prerequisite**

Notify the contractor in writing of the requirement for the payment of prevailing wages in the contract and in the contractors bonds requiring the faithful payment of prevailing wages.

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### Public Body Prerequisite

Any contract instigated wherein the prevailing wage prerequisites have not been met will be declared void as against public policy.

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### Public Body Prerequisites Summary

(820 ILCS 130/11) In part, any contract for public works awarded at a time when the prevailing wage prerequisites had not been met shall be void as against public policy and the contractor is prohibited from recovering any damages for the voiding of the contract or pursuant to the terms of the contract. The contractor is limited to a claim for amounts actually paid for labor and materials supplied to the public body.

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### The Bidding Process

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

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### Public Body Prevailing Wage Ordinance

The Act requires public bodies, during June of each year, to investigate and ascertain the prevailing rate of wages for each craft and type of worker and to file their determination of wage rates with the Illinois Department of Labor no later than July 15.

If a Public Body fails to make prevailing wage determinations during the month of June, then the prevailing rate wages for that Public Body shall be the rate determined by the Department of Labor for the county in which such public body is located.

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### Contracts/Work Orders

The public body awarding the contract/work order shall cause to be inserted in the contract/work order a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract/work order.

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### Contracts/Work Orders Sample Language

This contract/work order calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed.

Many Public Bodies still do not include proper language in call for bids or contracts.

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### Contract Language - 1

**Prevailing Wage Rates:**

To the extent required by law Contractor will comply and cause all its subcontractors to comply and insert appropriate provisions in their contract regarding the payment of the general prevailing rate of hourly wages for all laborers, workers and mechanics employed by or on behalf of the Contractor and all subcontractors in connection with services as provided for in the Illinois Prevailing Wage Act, 820 ILCS 130/01 et. seq. Further to the extent applicable, the Contractor will ensure that it and its subcontractors comply with the provisions of the Davis Bacon Act (prevailing wages), 40 U.S.C. sec 276 as amended and the Copeland (anti-kickback) Act, 18 U.S.C. sec. 874 and related regulations. The Contractor must comply with all laws relating to payment of wages to laborers, mechanics and other workers employed on any public works.

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### Contract Language 2:

**Prevailing Wage Rates:**

- It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, must be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works.
- The term general prevailing hourly rate when used in this agreement will mean the hourly cash wage plus fringe benefits for health and welfare, pensions, vacations and pensions paid generally in the locality in which the work is being performed to employees engaged in work of a similar character on public works.
- If the Department of Labor issues the generally prevailing hourly rate to be paid, the revised rate must apply to any contract in which the Prevailing Rate of Pay must be paid. A copy of the current prevailing wage schedule is attached to this contract (Exhibit 2). If IDOL revises the prevailing Rate of hourly wages to be paid for work performed under this contract before completion of the work under this contract, the revised rate applies from the effective date of the revision, but any such revision will not entitle Contractor to any automatic increase in compensation under the terms of this contract.
- If the nature of the work or services under this contract (S&S) is subject to the Illinois Prevailing Wage Act, 820 ILCS 130/01 et. seq. then not less than the general prevailing rate of hourly wages as determined by the Illinois Department of Labor must be paid to all laborers, mechanics and other workers performing work under this Contract. The prevailing wage rates as established by the Department of Labor are expressly incorporated into this agreement and such other laws governing the payment of wages also are expressly incorporated into these specifications.
- As a condition of making payment to the contractor, the Public Body may require the contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics and other workers employed as the Contractor in accordance with Illinois law.

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### Contract Language -3

**Prevailing Wage Rates:**

The Contractor shall observe and comply with the laws, ordinances, regulations and codes of the Federal, State, County and other local governmental agencies which may in any manner affect the performance of the contract, including the payment of wages to its employees. In the manner and to the extent required by law, this contract is subject to the Illinois Prevailing Wage Act and to all laws governing the payment of wages to laborers, workers and mechanics of a contractor or any subcontractor of a contractor bound to this agreement who is performing services covered by this contract. Assurances of compliance with the above requirements by the Contractor, its employees, agents or subcontractors shall be the responsibility of the contractor. Failure to comply with the terms of any applicable laws shall cause the contractor to be in default of this contract and the Public Body may terminate this contract.

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### Contract Language - 4

#### Prevailing Wage Rates:

This contract, call for bid, does not require union work. However, all work performed by laborers, workers, mechanics performing services under this contract on the public work's site are subject to the provisions of the Illinois Prevailing Wage Act.

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### Contract Language - 5

#### Prevailing Wage Rates:

This call for bid does not require union work. However, all work performed by laborers, workers, mechanics performing services under this contract on the public work's site are subject to the provisions of the Illinois Prevailing Wage Act. By submitting this bid proposal the Bidder certifies that the hourly rate of wages to be paid to its employees shall be in accordance with the Prevailing Wage rate schedule and any adjustment thereto during the life of the contract as published by the Illinois Department of Labor.

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### Contract Language - 6

This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 1301.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

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**What if a Public Body Fails to Provide Proper Notice?**

If a Public Body fails to provide proper written notification to a contractor that is subject to the Prevailing Wage Act, Section 4. (a-3) holds a Public Body financially responsible for any interest, penalties or fines assessed by the Department.

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**Bonds/All Contracts**

It shall also require in all such contractor's bonds that the contractor include such provision as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

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**Certified Payroll Requirements**

Contractors and subcontractors on public works projects must submit certified payroll records to the public body in charge of the project by the 15th of the month following the work.

These records must be retained by the public body for not less than five (5) years (beginning 01-01-14).

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**What are Public Bodies required to provide to the general public?**

These certified payroll records are considered public records and public bodies must make these records available to the public under the Freedom of Information Act, with the exception of the employee's address, telephone number and social security number.

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**What do Public Bodies have to do with the CTP?**

Keep for a period of not less than five (5) years (beginning 01-01-14)

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**Are Trades Other than Construction subject to the Prevailing Wage**

1. The Illinois Procurement Code requires prevailing wage payments to service employees performing work under contracts with the State of Illinois.
2. The Department publishes rates for food service workers Janitorial-Cleaning, Window Cleaning Services, Security Services and Printing Rates.

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### What is the Remedy for a Contractor Violating the Prevailing Wage Required under the Procurement Code.

While the Department of Labor publishes the prevailing wage rate, it has no enforcement powers.

The Agency responsible for bidding the contract is responsible for taking action under its contract where an employee fails to receive the Prevailing Wage Rate.

The Department refers inquiries or complaints by employees to the relevant agency for investigation and action.

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### Landscaping

- Many questions have been posed to the Department regarding the application of the Prevailing Wage Act in the counties of Cook, Lake, McHenry, DuPage, Kane, Will, Kendall, Boone and Grundy to work involving landscape (e.g. plants, bushes, seeds, bushes, shrubs etc, dirt, organic materials, sod, and nonorganic materials used in connection with landscape) and the issues relating to modifications to real estate because of the uniqueness of the work and materials involved. In response to the above referenced inquiries regarding work in these counties and comments received from concerned persons, the Department believes it is appropriate to set forth certain questions and answers, which illustrate the Department's position as a matter of its enforcement policy to issues involving landscape work and the application of the Prevailing Wage Act.
- Nothing set forth below should be interpreted as a change in the Department's view regarding traditional "landscape work" (by way of example and not limitation "work associated with building, making, forming, demolishing brick or concrete paths or walk ways, fountains, concrete or masonry planters or retaining walls") that some might consider or refer to as falling under "landscape work." The Department has considered this work to have fallen under the Prevailing Wage Act and remains covered work under the Prevailing Wage Act.
- Where examples are given, they should be considered as examples only to help provide guidance and should not be considered all encompassing.
- Is work in connection with landscape work covered under the Prevailing Wage Act?
- Real estate is considered by the Department as a field work to which the Prevailing Wage Act applies. Work performed in connection with landscape is covered work depending upon the nature of the work.

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### Landscaping

- What established classification of employees under the Prevailing Wage Act covers those employees who perform landscape work, which falls under the coverage of the Prevailing Wage Act?
- For the purpose of the Prevailing Wage Act, the Department of Labor does not recognize the classification of "landscape plantsman," "landscape laborer" "landscape helper," "landscape installer," "landscape operator" or "landscape truck driver." Work performed by persons who sometimes may be called "landscape plantsman" or "landscape laborer" is covered by the classification of laborer. Work performed by persons sometimes referred to as "landscape operator" is covered by the classification of operator and work performed by persons sometimes call "landscape truckdriver" is covered by the classification of truckdriver. Neither bids nor contracts nor acceptances on landscape work covered by the Prevailing Wage Act should be based upon rates of pay other than that those associated with the classifications of laborers, operator, or truckdriver the Department has published.

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### Landscaping

What are examples of landscape work that is covered under the Prevailing Wage Act when performed in connection with other work covered under the Prevailing Wage Act?

- All work involving the installation or removal of landscape materials in conjunction with or as part of work which is otherwise covered under the Prevailing Wage Act is also work covered by the Prevailing Wage Act. For example only, and not by way of limitation;
- original installation of landscape materials in connection with covered work involving buildings or structures;
- landscape work in conjunction with covered work involving any road, boulevard, street, highway, bridge project, sewer or underground project;
- lawn and landscape restoration performed in conjunction with covered work involving trenches and manholes, pipes, cables and conduits; 4)
- preparation of and landscaping of approaches associated with covered work performed in connection with shafts, tunnels, subways, and sewers;
- landscaping of an old or new site in conjunction with covered work involving underpinning, lagging, bracing, propping or shoring;
- landscaping in connection with covered work involving earthmoving and grading;
- landscaping in connection with covered work performed at a park or preserve.
- Even if the landscaping is to be performed after completion of the covered project, if it is an integral part of the overall project, it is deemed being performed in conjunction with or part of the project. The passage of time is not determinative. For example a municipality builds a new city hall, and the landscaping is to occur a year later or in stages over years, the landscape is an integral part of the overall project and is covered.

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### Landscaping

- When is landscape work no longer considered to be performed in conjunction with or as part of a project otherwise covered under the Prevailing Wage Act?
- Landscape work is no longer considered to be performed in conjunction with or as part of a project when the architect, project manager, or other appropriate authorized representative issues a certificate of substantial completion to the landscape contractor or other document reflecting substantial completion, such as final payment, which under the contract is to be made upon completion of work. If the manager refuses to issue such a certificate, then when the installation and or removal of all materials as required in the contract has been completed, subsequent work is no longer considered in conjunction with or part of the project.
- For example, after planting a tree or shrub, the initial edging, mulch application and watering and continued mulching, watering, edging, trimming of already installed materials while the contractor is at the job site performing work under the contract, is work performed in conjunction with and/or part of a project since it is work integral to the covered activities. However, if the contractor has fulfilled the installation/removal work required under the contract and left the project, and the contractor has to return months later to replace an installed plant that has died or is required to water the plants, the replacement would not be deemed work in conjunction with or part of a project since it is not integral to the covered activities. Thus, continued watering or pruning or mulching after the substantial completion is no longer work performed in conjunction with or as part of a covered project.

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### Landscaping

- Can work associated with landscape work by itself be considered work covered under the Prevailing Wage Act?
- When landscape work changes the nature, function, or character of the real estate, although no other covered work such as "hardscape" is involved, the work is covered work under the Prevailing Wage Act. For example, and not by way of limitation, covered work under the Prevailing Wage Act would include projects involving:
- earthmoving and grading;
- converting a vacant lot by the planting of trees, flowers, shrubs, or sod-grass;
- removing all trees on a lot and the replacing of trees by the planting of shrubs, grass or the making of a nature park; or
- the removal of trees and vegetation to leave the lot as a vacant lot so as to make the lot ready for construction.

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## Landscaping

- What are examples of work associated with landscaping that is not covered work when it is not done in conjunction with or part of covered work or does not fall within the scope of the work described in Question 6?
- Lawn mowing or grass cutting;
- tree watering;
- edging;
- weeding;
- cultivating beds;
- mulch application;
- bed preparation using soil amendments;
- tree staking;
- sweeping and blowing of landscape materials;
- pruning, planting, removal or replacement of shrubs, plants, and flowers;
- pruning of trees and replacement of trees that are planted as a replacement due to the removal of diseased or irreparably damaged trees, or trees that constitute a hazard;
- non-replacement replacement of sod, the removal of diseased or irreparably damaged trees or trees that are a hazard;
- seeding, including the preparation and application of erosion control blankets, application of fertilizer, herbicide, pesticides, fungicide;
- aquatic applications, taking, watering of trees, shrubs, plants, flowers, bulbs, seeds and sod;
- greening;
- dividing plants;
- dead-heading;
- sweeping;
- trash pick-up and removal of landscape litter;
- holiday light and seasonal decoration installation including the electrical connections if any.

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## Regulations/requirements local bodies should consider in their bid specifications

- Applicable laws that contractor must follow:
  - Illinois Prevailing Wage Act (820 ILCS 130/1 *et seq.*)
  - Employee Classification Act (820 ILCS 185 *et seq.*)
  - OSHA regulations
  - Disadvantaged Business Enterprise laws (i.e. 30 ILCS 571/1 *et seq.*)
  - Civil Rights Act/Illinois Human Rights Act (42 USC §2000e; 775 ILCS 5/1 *et seq.*)
  - Americans with Disabilities Act (42 USC §12101 *et seq.*)
  - Legal entity authorized to do business in Illinois pursuant to business laws (805 ILCS 405/1 *et seq.*; 805 ILCS 5/1 *et seq.*; 805 ILCS 180/1 *et seq.*)
  - Bribery laws (criminal and civil laws)
  - Environmental Protection Agency violations within the past 5 years (i.e. Clean Air Act, Safe Drinking Water Act, Hazardous and Solid Wastes Amendments Act)
  - Steel products used/supplied must be manufactured in the US (30 ILCS 565)
  - Drug Free Workplace Act (30 ILCS 580/1 *et seq.*)
  - Bid rigging or rotating laws (i.e. 720 ILCS 5/33E-3, 4)
  - Forced labor laws (i.e. 30 ILCS 583)
  - Child labor laws (i.e. 30 ILCS 584)
  - Lead Poisoning Prevention Act (410 ILCS 45/1 *et seq.*)
  - Elections Code (10 ILCS 5/1 *et seq.*)
  - Disclosure of Business Operations with Iran (30 ILCS 500/50-36)
  
- Standard certifications:
  - USDOL approved apprenticeship program participation
  - Access routes/staging areas for equipment, materials
  - Limiting vehicular access to only those roads paved or trails
  - Any international standards contractor should follow pertaining to work being performed (i.e. International Plumbing code)
  - Weekly invoicing/documentation showing work performed
  - Subcontracting clauses
    - Whether sub-contractors can/will be utilized
    - Written notification to owner of sub-contractors and contact information
  - Termination terms
    - Owner can terminate contract if jeopardy to health/safety/property
  - Obligation of contractor to maintain books/records
  - What information from the Owner must remain confidential
  - What information from the contractor or sub-contractor that should be considered public (i.e. subject to FOIA)
  - Certificates of insurance
  - Compliance with all federal, state, local rules/ordinances/regulations

- Background check (where required)
- EEOC compliance
- Performance record (similar projects)
  - False information = void contract
  - Not delinquent in payment of debt to the state
  - Debarment with state agencies within the previous 10 years
  - Bankruptcies within the last 10 years
  - Professional licensure discipline within the previous 10 years
  - Adverse civil judgments and administrative findings within the past 10 years
  - Criminal felony convictions within the last 10 years
- How to handle questions/communication from public or news media (i.e. is it best for the contractor performing work or the project owner to handle such communication)
- Owner right of access and right to restrict access to the job site
- Financial Disclosures and Conflicts of Interest
  - Type of corporation (sole proprietorship, corporate stock, LLC, Not-for-profit)
  - Related entities
  - Board of Directors and their ownership shares and distributive incomes
  - Self or relatives employed with the State or state agencies
  - Officer/Directors status as an elected official and relations to elected officials
  - Appointed office and relatives appointed to office
  - Relationships to registered lobbyists

### **How local public bodies can self-enforce**

- Collect and maintain certified payrolls for 5 years as required by the Prevailing Wage Act
- Review certified payrolls
  - Make sure workers are being paid wages and fringes as required by the prevailing wage on type of work and hours worked
  - Make sure the number of workers of one type of classification makes sense based on the work performed- possible employee classification issues
    - i.e. A certified payroll lists 10 laborers and 0 operating engineers with heavy equipment but the project is at a stage where a trench is being dug, there is an issue
  - Make sure the certified payrolls reflect what is actually happening on-the-job (number of workers, contractors and sub-contractors on site, work being performed)
  - Look for too few hours (i.e. no 40 hour workweeks), or irregular hours (hours reported in 10<sup>th</sup> or 100<sup>th</sup> fractions)
- Access job site and talk to workers
- Send potential violations to IDOL or contact III FFC with inquires

**Responsible Bidder Affidavit of Compliance**  
*To be completed by Contractor/Subcontractor*

**Project:**

**Contract Number:**

**Business Name:**

**Business Address:**

**Contact Person:**

**Phone:**

**Fax:**

**E-mail:**

**For Office Use Only**

Evidence of compliance with laws pre-requisite to doing business in the State Yes  No

Valid Federal FEIN or SS# Yes  No

Evidence of registration with Illinois Department of Revenue N/A  Yes  No

Evidence of registration with Illinois Department of Employment Security N/A  Yes  No

Disclosure of tax liens or delinquencies against contractor in last 5 years Yes  No

List of employees covered under workers' compensation policy, verification that employees are properly classified and evidence of coverage N/A  Yes  No

Statement of past compliance with the Illinois Prevailing Wage Act and agreement to pay prevailing wages on this project Yes  No

Compliance with Equal Opportunity Employer provisions Yes  No

Written substance abuse prevention program or certification that employees are covered under a collective bargaining agreement Yes  No

Verification that individuals are properly classified as employees or independent contractors N/A  Yes  No

Disclosure for any federal, state, or local claim for unpaid compensation to contractor's employees filed against the contractor in the last 5 years N/A  Yes  No

Required professional or trade licenses: N/A  Yes  No

Evidence of participation in applicable apprenticeship program(s) Yes  No

**Safety and Health Information:**

Written Safety Policy Statement Yes  No

Copies of OSHA 300A Summary N/A  Yes  No

Copy of OSHA 300 Log N/A  Yes  No

List of subcontractors (if applicable)

N/A  Yes  No

Additional Criteria (if applicable):

Statements as to past performance

N/A  Yes  No

No violations of federal/state/local laws N/A  Yes  No

Credit toward bid award

N/A  Yes  No

Address of business in the County or contiguous County: \_\_\_\_\_

Credit awarded (percent and dollar amount): \_\_\_\_\_

At least 25% of contractor's workforce resides in the County: \_\_\_\_\_

Credit awarded (dollar amount): \_\_\_\_\_



Registered with Illinois Department of Revenue: Yes  No

Describe supporting documentation attached (if "No," explain):

\_\_\_\_\_

Registered with Illinois Department of Employment Security: Yes  No

Describe supporting documentation attached (if "No," explain):

\_\_\_\_\_

**Tax liens or tax delinquencies**

Disclosure of any federal, state or local tax liens or tax delinquencies against the contractor of any officers of the contractor in the last five (5) years Yes  No

"No" means "not applicable." If "yes," describe lien/delinquencies and resolution: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Workers' Compensation**

Contractor's employees who will perform work on the project are:

Covered under a current workers' compensation policy: Yes  No

Properly classified under such policy: Yes  No

Describe supporting documentation attached:

**Prevailing Wage Compliance**

Contractor has complied with all provisions of the Illinois Prevailing Wage Act and federal Davis-Bacon and related Acts, and all rules and regulations therein, for the past five (5) years. Yes  No

Contractor has reviewed the applicable prevailing wage law, including the Illinois Prevailing Wage Act, and federal Davis-Bacon Act. Yes  No

Contractor will pay the applicable prevailing wage rates. Yes  No

Contractor will strictly comply with applicable prevailing wage laws. Yes  No

Contractor has not been found by the Illinois Department of Labor to be in violation of the Illinois Prevailing Wage Act twice within the past three year period.

("Yes" indicates compliance with the Act):

Yes  No

If the above answer is "No," list the date(s) of the Department's finding of a violation:

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**EOE Compliance**

Contractor is in compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).

Yes  No

**Substance Abuse**

Contractor complies with the Substance Abuse Prevention on Public Works Projects Act by:

Attaching a written substance abuse program in effect for its employees that meets or exceeds the requirements of the Act; or:

Yes  No

Attaching applicable provision from a collective bargaining agreement in effect for its employees that deals with the subject matter of the Act.

Yes  No

**Employee Classification**

Contractor's employees who will perform work on the project are properly classified as an employee or independent contractor under all applicable state and federal laws and local ordinances (Form B).

N/A  Yes  No

**Unpaid Compensation**

Contractor provides disclosure of any federal, state or local claim for unpaid compensation (wages and/or fringe benefits) to contractor's employees filed against the contractor in the last five years, where such claim totals \$100,000 or more.

N/A  Yes

No

If "yes," describe claim and resolution:

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**Professional or Trade Licenses**

Contractor will possess all applicable professional and trade licenses required for performing the Contract work: Yes  No

License	Number	Date Issued	Current Expiration	Holder of License

If any of the above license(s) have been revoked or suspended, state the date and reason for suspension/revocation:

**Participation in Approved Apprenticeship Program(s)**

Contractor participates in apprenticeship and training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organizations. Yes  No

Describe supporting documentation attached (e.g. Standards of Apprenticeship, Apprenticeship Agreement):

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**Safety & Health Activities**

Contractor provides information regarding its safety and health activities and programs, including:

Contractor's written safety policy statement signed by company representative  
Yes  No

Completed copies of OSHA 300A Summary of Work-related Injury & Illness Logs for the past three years  
N/A  Yes  No

If "N/A," provide explanation:

Current year to date OSHA 300 Log of Work-Related Injuries

If "N/A," provide explanation: N/A  Yes  No

**Subcontractors**

Contractor disclosed the name and address of each subcontractor for whom the contractor has accepted a bid and/or intends to hire on any part of the project (Form A). Yes [ ] No [ ]

Contractor provided this *Affidavit of Compliance* to all of the above-referenced subcontractors. Yes [ ] No [ ]

**Local Bidder or Contiguous Boundary Credit**

Contractor is claiming local bidder credit with proof of being a local bidder. Yes [ ] No [ ]

Contractor is claiming contiguous boundary credit with proof of being a contiguous boundary bidder. Yes [ ] No [ ]

Describe supporting documentation attached:

**Local Workforce Credit**

Contractor is claiming a local workforce credit with proof that 25% of workforce is drawn from county or counties contiguous to the county where the work is to be performed. Yes [ ] No [ ]

Describe supporting documentation attached:

**Documentation Attached** (Contractor must initial next to each item):

\_\_\_\_\_ **Form A:** Name and address of subcontractors from whom Contractor has accepted a bid or intends to hire to perform work on any part of the project.  
**NOTE:** All subcontractors shall complete and submit an Affidavit of Compliance no later than the date the subcontractor commences work on the project.

\_\_\_\_\_ **Form B:** List of individuals who will perform work on the project on behalf of the Contractor, verifying that each individual is properly classified as an employee or independent contractor. Contractor also verifies that all Contractor's employees are covered under a current workers' compensation policy, properly classified under the workers' compensation policy, and covered by a health and welfare and retirement plan.

\_\_\_\_\_ **Form C** Additional Information (if required)

\_\_\_\_\_ **Certificate of Good Standing**  
(or other evidence of compliance with laws pre-requisite to doing business in the state)

\_\_\_\_\_ **Illinois Department of Revenue registration**

\_\_\_\_\_ **Illinois Department of Employment Security registration**

\_\_\_\_\_ **Standards of Apprenticeship/Apprentice Agreements**

\_\_\_\_\_ **Substance Abuse Prevention program (or applicable provision from CBA in effect)**

\_\_\_\_\_ **Written Safety Policy Statement signed by company representative**

\_\_\_\_\_ **OSHA Form 300A Summary of Work-Related Injuries & Illnesses for the past 3 years**

\_\_\_\_\_ **Current year-to-date OSHA Form 300 Log of Work-Related Injuries and Illnesses**

\_\_\_\_\_ **Workers' Compensation Coverage**

\_\_\_\_\_ **Professional or Trade Licenses**

\_\_\_\_\_ **Local Bidder Credit documentation, if applicable**

\_\_\_\_\_ **Local Workforce Credit documentation, if applicable**





**Form C**

**Additional Information Required**

If required in the bid specifications, Contractor shall complete items I and/or II below:

I. Statement of past three (3) years experience on public construction projects.

Public Body/ Project Name/Year	Reference Name/ Phone #	Original Price/ Final price	Subcontractors

II. List any determinations by a court or governmental agency for violations of federal, state or local laws, including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon and related Acts.

Date	Law	Determination	Penalty

**BIDDER VERIFICATION**

I certify that I am authorized to execute this Affidavit of Compliance on behalf of the Contractor set forth on page one (1), that I have personal knowledge of all the information set forth herein and that all statements, representations, information and documents provide in or with this Affidavit and attachments hereto are true and accurate.

The Contractor may report any change in any of the facts stated in this Affidavit within fourteen (14) days of the effective date of such change by completing and submitting a new Affidavit. Failure to comply with this requirement is grounds for the Contractor to be deemed a non-responsible bidder.

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name of Authorized Officer (Print or Type)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

State of Illinois  
County of \_\_\_\_\_

Subscribed and sworn to  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 201\_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature & Seal

**SUBCONTRACTOR VERIFICATION**

I certify that I am authorized to execute this Affidavit of Compliance on behalf of the Contractor set forth on page one (1), that I have personal knowledge of all the information set forth herein and that all statements, representations, information and documents provide in or with this Affidavit and attachments hereto are true and accurate.

The Contractor may report any change in any of the facts stated in this Affidavit within fourteen (14) days of the effective date of such change by completing and submitting a new Affidavit. Failure to comply with this requirement is grounds for the project owner to withhold payment due for work performed.

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name of Authorized Officer (Print or Type)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

State of Iowa

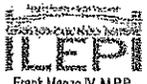
County of \_\_\_\_\_

Subscribed and sworn to  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 201\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature & Seal



**THE BENEFITS OF PREVAILING WAGE:  
AN ECONOMIC POLICY PERSPECTIVE**



Frank Manzo IV, M.P.P.  
ILEPI Policy Director



Robert Bruno, Ph.D.  
LEP Director

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**WHY DO WE RESEARCH PREVAILING WAGES?**



- Determine whether a policy is having the intended effects
- Debunk myths and challenge preconceived notions
- Evaluate *BENEFITS*, not just costs
- To build stronger states and communities

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**ECONOMIC FINDINGS ON PREVAILING WAGE**

Number of jobs projected to be lost

Build for a middle class jobs

Incidence of poverty

High school completion

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**BUILDS LOCAL MIDDLE-CLASS JOBS**

**Self-Sufficient Workers**

- Prevailing wage keeps the government from using its massive bargaining power to undermine the wages determined privately in the local labor market.
- Health and pension benefits: +53 percent in states with a prevailing wage law (Peterson, 2003).

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**BUILDS LOCAL MIDDLE-CLASS JOBS**

**Prevents a "Race to the Bottom"**

$$\text{Project Bid} = \text{Labor Costs} + \text{Quality} + \text{Productivity} + \text{Materials} + \text{Technology} + \text{Management Practices} + \text{Profit}$$

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**THE BEST DEAL FOR TAXPAYERS**

**Project Completed the 1<sup>st</sup> Time**

- Better skilled, healthier, and more productive workers ensure that projects are completed correctly and on-time, the first time (Mahala, 2008).

**Discourages Irresponsible Contractors**

- Federal legislation "was supported by a broad coalition of which included contractors and building trades unions" to punish unscrupulous contractors (Yesent, 1990).
- Misclassification of workers is higher in states without prevailing wage laws (Fritts, 2009).

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ILEPI Economic Commentary #10

August 11, 2014

# BUILDING A STRONG MCHENRY

## How Prevailing Wage Works



Frank Manzo IV, MPP  
*Policy Director*

Illinois Economic Policy Institute  
[www.illinoisepi.org](http://www.illinoisepi.org)  
(708) 375-1002

## BUILDING A STRONG MCHENRY: HOW PREVAILING WAGE WORKS

ILEPI Economic Commentary #10

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### INTRODUCTION

On June 17, 2014, the McHenry County Board voted against adopting a statutorily mandated prevailing wage. The vote follows a similar decision by the Woodstock City Council, although the city later approved its ordinance at the next council meeting. While the McHenry County Board expressed interest in partnering with other county governments to challenge the prevailing wage determinations of the state Department of Labor, this undertaking would be a waste of government resources. Results from this Economic Commentary find that:

- Labor costs account for just 20.9 percent of total costs on heavy and civil engineering projects in Illinois;
- Payroll costs on workers in heavy and civil engineering construction in McHenry County reflect the wages paid in the regional labor market and the higher cost of living in the Chicago area;
- Median housing costs are 40.0 percent of the typical income for a laborer earning the prevailing wage in McHenry County;
- Public works construction projects require skilled workers who complete more classroom and on-the-job training than the minimum requirements to receive a typical bachelor's degree;
- In Illinois, heavy and civil engineering construction workers are more productive than the average construction worker, producing \$164,294 in value added to the economy per worker;
- Prevailing wage is *not* a union wage, but unionized contractors submitted 92.3 percent of bids on public projects in McHenry County in 2013; and
- In McHenry County, prevailing wages generate \$57.6 million in economic output and support \$2.4 million in state and local tax revenues that otherwise would not occur.

Prevailing wage is necessary to prevent government bodies from undercutting the established labor market, and drives economic development in the county. Prevailing wage is the best deal for McHenry County taxpayers.

### LABOR COSTS AS A SHARE OF TOTAL COSTS IN MCHENRY COUNTY

The most recent data from the U.S. Economic Census reveals that labor costs account for just 20.9 percent of total construction costs in heavy and civil engineering in Illinois (Figure 1). Heavy and civil engineering construction is used throughout this study because it includes work on highways, road, bridges, dams, water and sewer lines, and land subdivision— projects which are predominately financed by the public. Payroll costs plus fringe benefits comprised \$3.51 billion (20.9 percent) of the \$16.75 billion in total construction costs on heavy and civil engineering across the state in 2007. Meanwhile, administrative costs were 5.7 percent of total construction costs in the sector. Spending on materials, components, supplies, subcontracts, and energy costs accounted for the bulk of expenses (62.3 percent).

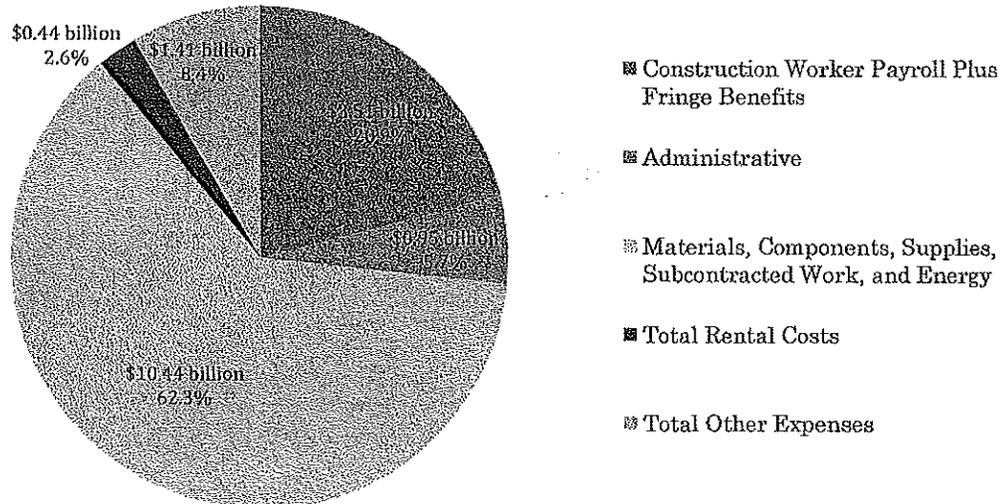
As the argument goes, prevailing wage raises the cost of public works construction. However, as will be evident, wages do not equal higher costs, but exploring the myth is worthwhile at the onset. If there were a 10 percent reduction in wages in McHenry County, there would be a 2.1 percent savings in total costs. Put another way, the county would save \$20,900 on a \$1 million project or \$209,000 on a \$10 million project. However, savings would occur *only if there is no relationship between wages paid and work performed*. Of course, this is an implausible assumption: higher wages attract more-experienced and better-skilled career employees who are more productive, which offsets most if not all of the cost savings.

In addition, according to the *County of McHenry, Illinois Comprehensive Annual Financial Report (CAFR)*, actual expenditures on road infrastructure totaled \$24.84 million in 2013 by the county alone (Figure 2). This includes spending from the County Highway Fund, Bridge Fund, Motor Fuel Tax Fund, and County Option Motor Fuel Tax Fund. About one-fifth of this government spending was on overhead Division of Transportation personnel (19.55 percent); 38.9 percent was disbursed for contractor, laborer, and other

contractual services; and the remainder was used to pay for commodities and capital outlay to improve McHenry County’s road network. Note that contractors use a significant portion of contractual costs to buy materials and machinery, invest in technologies, compensate management, and improve their profit margins, so labor costs are a component of this 38.9 percent of total expenditures. Therefore, at least at the county level, labor costs for workers who actually earn a prevailing wage are still roughly 20.9 percent.

Figure 1: Labor Costs as a Share of Total Public Works Construction Costs, Illinois, 2007 Economic Census

### Total Heavy and Civil Engineering Construction Costs in Illinois, 2007 Economic Census



Source: 2012 Economic Census, United States Census Bureau available at <http://www.census.gov/econ/census/>.

Figure 2: Horizontal Infrastructure Fund Spending, 2013 McHenry County CAFR

2013	Actual Expenditure	Personnel	Contractual	Commodities	Capital Outlay
Spending by County	\$24,838,076	\$4,855,529	\$9,670,090	\$1,458,140	\$8,854,317
Percentage of Spending	100.00%	19.55%	38.93%	5.87%	35.65%

Source: County of McHenry, Illinois Comprehensive Annual Financial Report for the Fiscal Year Ended November 30, 2013, available at <https://www.co.mchenry.il.us/home/showdocument?id=30431>.

#### COUNTY AND INDUSTRY COMPARISONS OF PAYROLL COSTS

The Illinois Prevailing Wage Act establishes local standards in McHenry County’s labor market. The law is intended to prevent a government body, such as the McHenry County Board, from using its expansive purchasing power to undercut privately-established wages and benefits in a community. In effect, the law takes labor costs out of the equation for contractors in winning a bid on a public construction project. Instead of lowering costs by using low-skill, low-wage workers, the law forces firms to compete on the basis of productivity, quality, materials costs, technology, management practices and logistics, and profit margins—while paying market wages.

McHenry County Board members have claimed that the Illinois Department of Labor prevailing wage determinations for McHenry are “off because these figures are too high” (MCB Minutes, 2014). Even though the Illinois Department of Labor is already required to determine prevailing wages based on actual certified transcripts of payroll forms from contractors and workers in the county, the Board questioned the process and called for its own wage study (MCB Minutes, 2014).

Take the prevailing wages for laborers as an example. In July 2014, the prevailing wage for a laborer was \$38.00 per hour in base wage and \$23.90 per year in hourly health and pension benefits in McHenry County. At first glance, these rates may seem high, but most construction is seasonal work. Road construction workers, for instance, only have jobs for eight or nine months out of the year and can only log around 1,600 hours of work each year. With 1,600 hours of prevailing wage work, a laborer in McHenry County would earn \$99,840 in total compensation, including \$60,800 in wages, \$38,240 in fringe benefits, and \$800 in training benefits (Figure 3).

Figure 3: July 2014 Prevailing Wage Rates of Laborer, McHenry County

McHenry County Prevailing Wage	Hourly Rate	1,600 Annual Hours	Percent of Income
Base Wage	\$38.00	\$60,800	60.90%
Fringe Benefits	\$23.90	\$38,240	38.30%
Training	\$0.50	\$800	0.80%
<b>Total Compensation</b>	<b>\$62.40</b>	<b>\$99,840</b>	<b>100.00%</b>

Source: "McHenry County Prevailing Wage for July 2014" from the Illinois Department of Labor, available at <http://www.illinois.gov/idol/Laws-Rules/CONMED/Rates/14-07Jul/MCHENRY9.htm>.

Figure 4 displays data on the regional labor market from the U.S. Census Bureau on *payroll costs*— which include all forms of compensation, such as salaries, wages, bonuses, vacation allowances, sick-leave pay, and contributions to qualified pension plans. In 2012, the average payroll cost per employee was \$66,262 for construction workers in McHenry County. Labor costs in heavy and civil engineering construction, on the other hand, were \$102,671 per employee in the county (which aligns with the total compensation in Figure 3). The difference between heavy and civil engineering construction costs and total construction labor costs is *not* the result of the Illinois Prevailing Wage Act. First, the average firm size was much smaller for the overall construction industry (5.3 employees per firm) in McHenry compared to those working in heavy and civil engineering (25.5 employees per firm). Many construction businesses are independent contractors who only perform work on-the-side. Conversely, heavy and civil engineering contractors have more employees because they work on the county's largest projects. Larger businesses are also more likely to provide health and retirement benefits to their employees (BLS, 2014).

Second, heavy and civil engineering payroll costs per employee in McHenry County reflect wages paid in the local labor market. McHenry payroll costs are less than the comparable figures in Kane County (\$109,814 per employee), Cook County (\$105,900 per employee), and Walworth County north of the border in Wisconsin (\$114,179 per employee). This is what construction workers on public projects earn in the regional economy— mostly because they are highly skilled and face significant workplace safety risks compared to other industries. Public works construction employees earn more because it is what the market dictates, not because prevailing wages inflate the wage rate (Figure 4).

Figure 4: Comparison of Payroll Costs to Neighboring Counties and States, 2012 County Business Patterns

2012 County	Entire Construction Industry			Heavy and Civil Engineering Construction		
	Employees	Payroll Per Employee	Firm Size	Employees	Payroll Per Employee	Firm Size
McHenry, IL	5,235	\$66,262	5.31	1,175	\$102,671	25.54
Lake, IL	8653	\$64,457	4.75	516	\$96,078	7.27
Cook, IL	62,593	\$74,810	6.50	7,187	\$105,900	21.14
Kane, IL	8,155	\$62,563	5.83	995	\$109,814	13.45
<i>All Illinois</i>	<i>180,468</i>	<i>\$64,535</i>	<i>6.43</i>	<i>24,252</i>	<i>\$88,180</i>	<i>17.49</i>
Walworth, WI	1,241	\$64,817	4.11	379	\$114,179	18.05
<i>All Wisconsin</i>	<i>89,001</i>	<i>\$60,555</i>	<i>6.59</i>	<i>12,241</i>	<i>\$105,099</i>	<i>17.87</i>
<i>All Indiana</i>	<i>112,805</i>	<i>\$54,364</i>	<i>8.63</i>	<i>15,073</i>	<i>\$76,655</i>	<i>18.94</i>

Source: 2012 County Business Patterns, United States Census Bureau, available at <http://censtats.census.gov/cgi-bin/cbpnaic/cbpsect.pl>.

Labor costs are similar in nearby regions outside of Chicagoland (Figure 5). The Illinois average for per-employee payroll costs was \$88,180 in heavy and civil engineering. The reason labor costs are greater in McHenry County (\$102,671 per employee) is that the cost of living is higher up north. While living expenses are 3.1 percent cheaper than the national average in the Champaign area and 14.2 percent cheaper than the national average in Springfield, the cost of living is 16.9 percent more expensive than the national average in the Chicago area, which included McHenry County (Figure 5). Furthermore, comparable payroll costs per employee were actually higher in border-state Wisconsin (\$105,099) but lower in nearby Indiana (\$76,655). However, a lower cost of living is once again the primary reason why labor costs are lower in Indiana. This is evidence that prevailing wages are not artificial or inflated.

Figure 5: Comparison of Cost of Living, 2010 Cost of Living Index for Selected Urban Areas (Composite)

Metropolitan Economy	Cost of Living Compared to National Average
Chicago area, IL	+16.9%
Champaign area, IL	-3.1%
Springfield area, IL	-14.2%
Milwaukee-Waukesha area, WI	+1.9%
South Bend area, IN	-8.1%

Source: 2010 Cost of Living Index—Selected Urban Areas, Annual Average: 2010 (100% composite index used), United States Census Bureau, available at <https://www.census.gov/compendia/statab/2012/tables/12s0728.pdf>

Housing costs are an example of high living expenses in McHenry County (Figure 6). In the past year, the median price of homes that were sold in McHenry County was \$184,010 (Zillow). Data from the U.S. Census Bureau show that median monthly homeowner costs in McHenry County were \$2,028 per month in 2012. The median monthly costs (“selected monthly owner costs”) include payments for mortgages, real estate taxes, insurance, and utilities and fuels. Compared with the income from wages that a typical laborer earns, the median cost to own a home would exhaust 40.0 percent of a worker’s take-home income. It is worth noting that most government agencies consider housing affordable only if costs are less than 30 percent of household income. Therefore, prevailing wage does not even support purchasing a home in McHenry County without a second job or without having a spouse or roommate who also works.

Figure 6: Comparison of Payroll Costs to Industries in McHenry County, 2012 County Business Patterns

2012 McHenry County Industry	Monthly	Annual
Laborer Income from Wages (Figure 3)	\$5,067	\$60,800
Median Monthly Homeowner Costs	\$2,028	\$24,336
Homeowner Costs as Share of Income from Wages	40.03%	40.03%

Source: Selected Monthly Owner Costs from “Selected Housing Characteristics” from the 2012 American Community Survey, 5-year estimates, available at <http://factfinder2.census.gov>; “McHenry County Prevailing Wage for July 2014” from the Illinois Department of Labor, available at <http://www.illinois.gov/idol/Laws-Rules/CONMED/Rates/14-07Jul/MCHENRY9.htm>.

Finally, the cost of labor for public works construction employees is comparable to other industries which require high-skilled workers performing risky or unpleasant work in McHenry County (Figure 7). In 2012, payroll costs were \$130,814 per employee in the mining, quarrying, and oil and gas extraction industry, \$85,015 per employee in engineering services, and \$71,295 per employee in waste management and remediation services. Again, payroll costs for heavy and civil engineering construction are not unusual in the McHenry County labor market.

Figure 7: Comparison of Payroll Costs to Industries in McHenry County, 2012 County Business Patterns

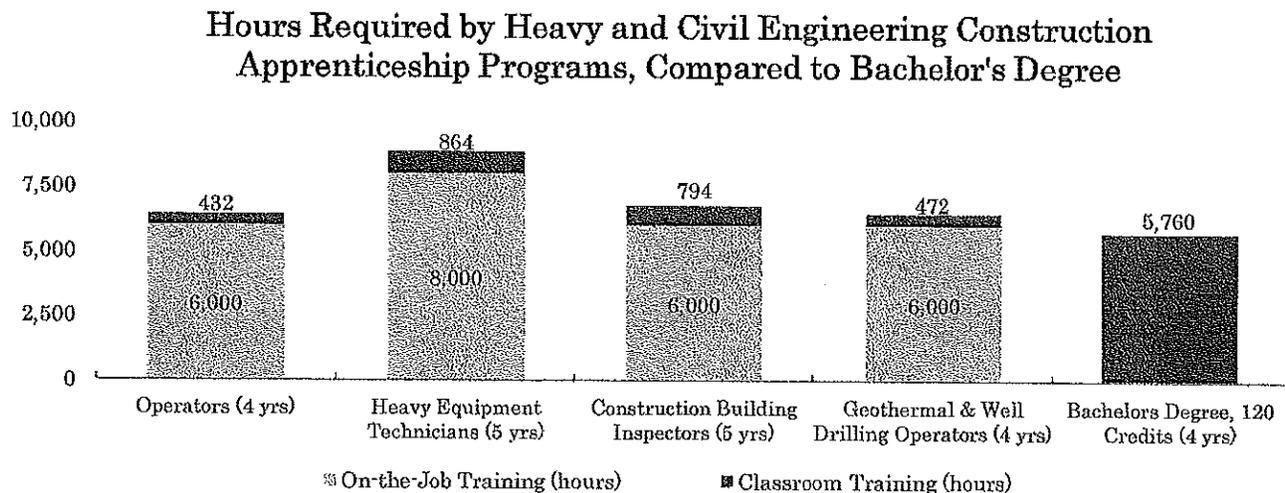
2012 McHenry County Industry	Employees	Payroll Per Employee
Mining, Quarrying, and Oil and Gas Extraction	43	\$130,814
Heavy and Civil Engineering Construction	1,175	\$102,671
Engineering Services	456	\$85,015
Medical Equipment and Supplies Manufacturing	988	\$83,479
Waste Management and Remediation Services	285	\$71,295

Source: 2012 County Business Patterns, United States Census Bureau, available at <http://censtats.census.gov/cgi-bin/cbpnaic/cbpsect.pl>

WORKER PRODUCTIVITY AND VALUE ADDED TO THE ECONOMY

Public works construction is not low-skilled work. Building high-quality infrastructure that is safe and durable for the public requires an experienced, educated workforce. Accordingly, many workers in heavy and civil engineering construction go through rigorous registered apprenticeship programs. These programs provide thousands of hours of classroom and on-the-job training to boost workers' skills. The apprenticeship programs sponsored jointly by the International Union of Operating Engineers Local 150 and signatory contractors, for example, require at least 6,432 total hours of training over at least four years, including a minimum of 6,000 hours of on-the-job training (Figure 8). Heavy equipment technicians complete an even longer program: apprentices must log 8,000 hours of on-the-job training and 864 hours in the classroom over five years. By contrast, it is worth noting that the typical 120-credit hour bachelor's degree requires just 5,760 hours of classroom training over four years and generally does not require any development of hard skills through on-the-job training.

Figure 8: Public Works Construction Skills Requirement Compared to Typical Bachelor's Degree

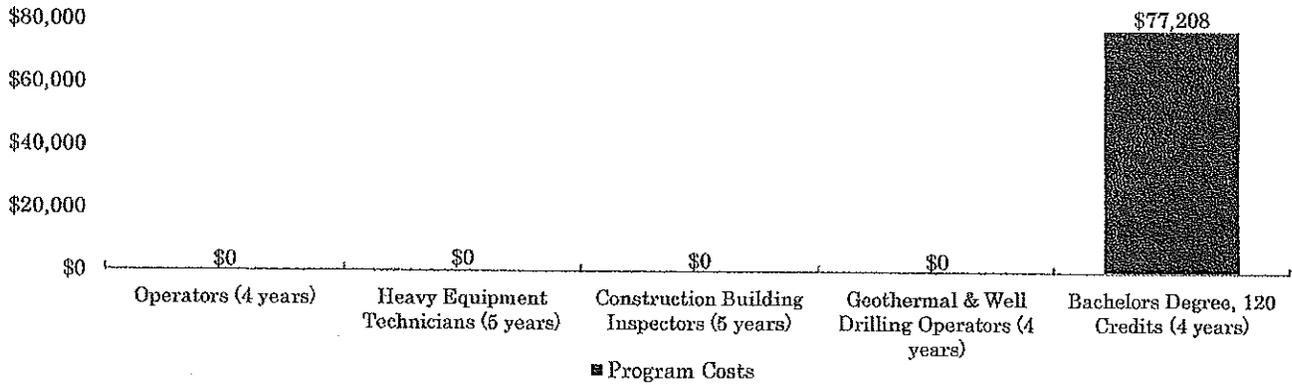


Source: International Union of Operating Engineers (IUOE) Local 150, which has membership in McHenry County. Requirements generously provided by Martin Tuvek, M.S., Assistant Coordinator-Safety Administrator. Typical bachelor's degree assumes 120 credit-hours required to graduate, such as in the University of Illinois College of Liberal Arts and Sciences (LAS): <http://www.las.illinois.edu/students/requirements/minimum>. The hours estimate assumes classroom time of three hours per class per week, five classes per semester, 16 weeks per semester, and two semesters each year over four years.

Additionally, apprenticeship programs are operationally funded by contractors and supported by prevailing wages (Figure 9). The total out-of-pocket program cost for apprentices is \$0. Expenses are covered by employers through a cents-per-hour contribution to apprenticeship programs. By contrast, the cost of attendance at the University of Illinois at Urbana-Champaign (excluding room and board) will total \$77,208 over the next four years for new enrollees this school year (Figure 9). Prevailing wages, therefore, support "the largest privately financed system of higher education in the country" (Philips, 2014).

Figure 9: Public Works Construction Training Program Costs Compared to Typical Bachelor's Degree

### Heavy and Civil Engineering Construction Apprenticeship Program Cost to Individual, Compared to Bachelors Degree

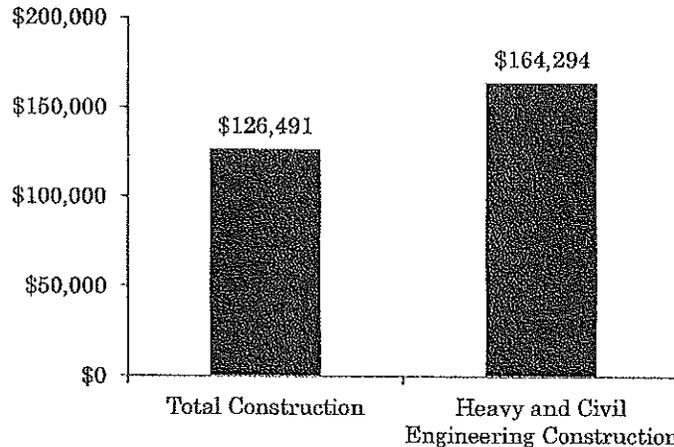


Source: Typical bachelor's degree program costs from the University of Illinois College of Liberal Arts and Sciences (LAS) for enrollees in Summer 2014, Fall 2014, and Spring 2015: [http://www.osfa.illinois.edu/cost/undergrad/res\\_1415.html](http://www.osfa.illinois.edu/cost/undergrad/res_1415.html). Costs include tuition, fees, books and supplies, and other expenses but not room and board

Finally, public works construction workers are extremely productive in Illinois. Figure 10 provides state-level data on the value added to the economy by workers in the entire construction industry and in the heavy and civil engineering sectors. "Value added"—which measures worker productivity over one year—is the total amount of business revenues generated minus the costs for materials, components, supplies, fuels, and subcontracted work. While value added in the entire Illinois construction industry was \$126,491 per worker in 2007, workers in heavy and civil engineering construction each contributed \$164,294 to Illinois' GDP on average (29.9 percent more). Together, the high-skill requirement and elevated productivity levels are the main reasons why wages are higher for public works construction employees compared to other blue-collar construction workers (Figure 10). It is worth noting, however, that the \$164,294 contribution to the economy per worker exceeds the \$102,671 payroll cost per worker from Figure 4.

Figure 10: Worker Productivity, Entire Industry vs. Public Works Construction, 2007 Economic Census

### Value Added Per Worker in Illinois, 2007 Economic Census



Source: 2012 Economic Census, United States Census Bureau available at <http://www.census.gov/econ/census/>.

ADDRESSING THE UNION WAGE MYTH

The prevailing wage is a living wage determined by private actors in the local labor market. Arriving at a prevailing wage is the result of the majority of contractors and employees entering into private contracts. The rate is determined based on certified payrolls submitted by employers and workers. While employees are sometimes represented by a labor union, the prevailing wage is *not* necessarily a union wage.

A union wage only prevails if the majority of workers in a particular job classification are paid that rate. Still, data from the Current Population Survey show that it is understandable if a union wage prevails in McHenry County (Figure 11). In 2013, the unionization rate for the private construction *industry* was 37.8 percent in the entire state. The construction industry, however, includes occupations such as contractor CEOs, lawyers, architects, accountants, and office assistants— jobs which are not covered under the Illinois Prevailing Wage Act. To observe blue-collar construction worker union membership, it is better to analyze data on construction *occupations*, as defined by the U.S. Bureau of Labor Statistics. Construction occupations include (but are not limited to): carpenters, plumbers, pipefitters, painters, boilermakers, operating engineers, and laborers. In 2013, the unionization rate of workers in these jobs was 48.6 percent in the entire state of Illinois. In McHenry County, the construction unionization rate exceeds 50 percent.

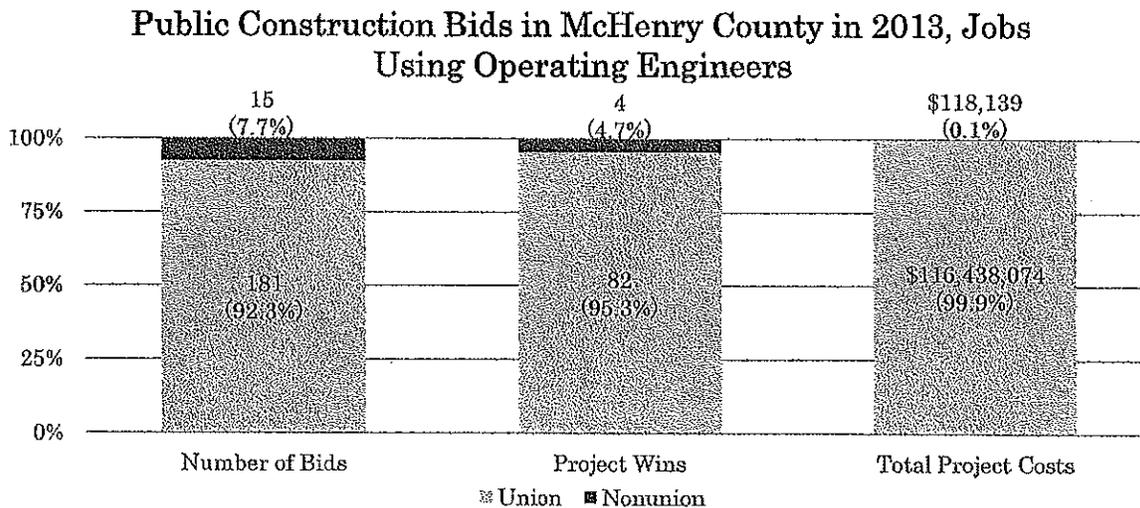
Figure 11: Unionization of Workers in Construction Industry and in “Construction Occupations,” Current Population Survey, 2013

Illinois in 2013	Unionization Rate	CPS Observations
Construction Industry	37.81%	222
Construction Occupations	48.63%	171

Source: Author’s analysis of the Current Population Survey – Outgoing Rotation Group (CPS-ORG) for 2013, United States Census Bureau and Bureau of Labor Statistics of the United States Department of Labor. Data obtained from the Center for Economic and Policy Research, available at <http://ceprdata.org>. Estimates are weighted to match the actual Illinois population. Note that the estimates rely on small sample sizes and should be interpreted only as general parameters.

Additionally, nonunion contractors are not bidding on public projects in McHenry County (Figure 12). In 2013, there were 86 lettings on public projects that involved work performed by operating engineers. These projects were awarded by the county (26.7 percent), by townships and cities in the county (48.8 percent), by the state (16.3 percent), and by school boards (8.1 percent). The total value of the projects was \$116.56 million over the year.

Figure 12: Market Share of Public Projects Using Operating Engineers in McHenry County, Union vs. Nonunion Contractors 2013



Source: Author’s analysis of internal data generously provided by the Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC), which operates in McHenry County. The III FFC dataset is limited to only projects that employ operating engineers.

On these 86 projects, nonunion contractors only submitted 15 total bids (7.7 percent) compared to 181 bids made by unionized firms (92.3 percent). As a result, nonunion contractors only won 4.7 percent of all project lettings across McHenry County in 2013. Nonunion contractors, however, are only bidding on small-scale public projects: the total project cost of awarded bids was \$118,139 for nonunion contractors (0.1 percent) compared to \$116.44 million for unionized contractors (99.9 percent). Simply put, with a market share of 99.9 percent, it makes sense if a union wage prevails in McHenry County. In addition, if nonunion contractors could outperform a union contractor's workforce, a nonunion firm would appear as the apparent low bidder far more often than 4.7 percent of the time (Figure 12).

#### THE BENEFITS OF PREVAILING WAGE TO MCHENRY COUNTY

An overwhelming majority of research on prevailing wages has concluded that a state prevailing wage law has no statistical impact on the overall cost of public construction projects (Philips et al., 1995; Prus, 1996; Wial, 1999; Bilginsoy & Philips, 2000; Philips, 2001; Azari-Rad et al., 2002; Duncan, 2011). By paying a living wage, prevailing wage encourages skilled workers to enter the construction industry, increases worker training and productivity, and reduces workplace injury and illnesses. These effects lead to workers who complete jobs on-budget and on-time, offsetting any increases in labor costs (Philips, 2014).

Prevailing wage builds local middle-class jobs. Studies show prevailing wage laws encourage the use of local, in-state contractors. Out-of-state contractors are 5 percent less likely to win bids on public construction projects due to prevailing wage laws, and repeal of prevailing wage leads to 6 percent of a project's total value leaking out of the county economy (Prus, 1999; Working Partnerships USA, 2011). The preponderance of research also finds that state prevailing wage laws—requiring market rates be paid—increase worker incomes by between 2 and 8 percent but increase productivity by 14 to 33 percent (Kessler & Katz, 2001; Kelsay et al., 2004; Philips, 2014). Any higher costs associated with requiring that market rates be paid is offset by increased productivity and better infrastructure quality.

Prevailing wage drives economic development. The economy benefits substantially from well-paid, highly-skilled, and healthy construction workers who complete jobs right the first time. Higher worker wages lifts consumer demand and increases spending at local businesses such as grocery stores, restaurants and bars, and professional and management services offices. As a result, prevailing wage stimulates job creation and generates \$1.1 billion in economic output in Illinois (Dickson Quesada et al., 2013).

Prevailing wage is the best deal for taxpayers. Prevailing wage laws promote worker training, which reduces errors and minimizes the chances of footing taxpayers with another bill to reconstruct low-quality infrastructure that does not last. Additionally, by fostering a strong middle class and enhancing economic development, prevailing wage generates millions of dollars in state and local tax revenues through increased consumer spending and reduced reliance on government assistance (Manzo & Carroll, 2014). In fact, prevailing wage supports \$44.4 million in state and local tax revenues each year in Illinois (Dickson Quesada et al., 2013).

Figure 13 presents an economic impact analysis of prevailing wage on McHenry County using IMPLAN, an input-output modeling software. The model incorporates assumptions and inputs used in the recent Illinois study on the economic and social impact of the state's prevailing wage law (Dickson Quesada et al., 2013). The economic impact analysis finds that prevailing wages stimulate the local economy through increased consumer spending. In fact, prevailing wages generate \$57.6 million in economic output in the region annually and also support \$2.4 million in state and local tax revenues each year in the county. In summary, the prevailing wage for public construction projects delivers positive economic outcomes for McHenry County (Figure 13).

Figure 13: Economic Impact of Prevailing Wage on Employment, Earnings, Economic Output, and Tax Revenues in McHenry County, 2013

Economic Impact Analysis of Prevailing Wage on McHenry County, IL, 2013		
Region	Economic Output (GDP)	State and Local Tax Revenues
McHenry County	\$57.6 million	\$2.4 million
Chicagoland Area	\$658.4 million	\$27.3 million
Illinois	\$1,072.9 million	\$44.4 million

Source: Author's analysis of prevailing wage using inputs and assumptions from A Weakened State: The Economic and Social Impacts of Repeal of the Prevailing Wage Law in Illinois by Dickson Quesada et al. (2013). The analyses used IMPLAN Version 3.0.17.2, Minnesota IMPLAN Group, Inc. © 2011.

CONCLUSION

The McHenry County Board should adopt its prevailing wage ordinance. Prevailing wage determinations are based on certified payroll records from contractors and employees. They reflect the levels of compensation privately agreed upon by contractors and employees in the local labor market, which in turn are the result of the high skill level and high productivity of McHenry County's construction workforce. Prevailing wage is necessary to prevent government bodies from undercutting the market. Prevailing wage is the best deal for McHenry County taxpayers.

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Illinois Prevailing Wage Seminar

**The FREEDOM of  
INFORMATION ACT:**  
*Better Understanding  
and Compliance*

September 11, 2014

Sarah Pratt

Public Access Counselor

Illinois Attorney General's Office

# The Freedom of Information Act (5 ILCS 140/1 *et seq.*)

The Freedom of Information Act (FOIA) originally became effective on July 1, 1984. On January 1, 2010, significant revisions to FOIA were enacted. Major changes include:

- Presumption of Openness
- Response time shortened from 7 to 5 days
- Copying charge limits
- FOIA Officers and training required

# PUBLIC ACCESS COUNSELOR

Also among the statutory revisions was the creation of the position of Public Access Counselor within the Attorney General's Office a position dedicated to resolving complaints concerning compliance with the Freedom of Information and Open Meetings Acts without litigation.

# Public Access Counselor

## Statutory Powers

Attorney General Act, 15 ILCS 205/7(c)

Duties include:

**FREE TRAINING and  
EDUCATIONAL MATERIALS;  
REQUESTS FOR REVIEW;  
ADVISORY OPINIONS;  
INFORMAL INQUIRIES;  
RESEARCH and RECOMMENDATIONS  
ON COMPLIANCE ISSUES,  
ESTABLISH ELECTRONIC  
FOIA and OMA TRAINING**

# The PURPOSE of FOIA

“The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes and accountability of public bodies at all levels of government. It is a **fundamental obligation of government** to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.” (Emphasis added.)

5 ILCS 140/1

# Presumption of Openness

Under FOIA, there is a presumption that public records are open to inspection or copying:

“Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by *clear and convincing evidence* that it is exempt.”

5 ILCS 140/1.2

# What is Clear and Convincing?

Generally, under FOIA, "clear and convincing" requires the public body "provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Emphasis in original.)

*Illinois Educ. Ass'n v. Illinois State Bd. of Educ.*, 204 Ill. 2d 456, 464 (2003).

# PUBLIC RECORDS

The definition of “public records” includes:

“[A]ll \* \* \* documentary materials *pertaining to the transaction of public business*, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, possessed or under the control of any public body.”

5 ILCS 140/2(c).

# Hypothetical

During a long and contentious city council meeting debating the closing of the city health department, two council members begin texting each other on their personal cell phones. Several texts detailed the members' ideas concerning the closing. One council member then sent this text to another member:

*"I'm starving! Where shall we eat after the meeting?"*

Several more text messages involving post-meeting dining plans ensued.

The local newspaper sends a FOIA request for the text messages.

How should the council respond?

# Choose your answer:

- a) Release all the texts because all communications made during a public meeting are public records regardless of the content and the public should know which business the council members frequent.
- b) Withhold all the texts because the communications were sent on the private devices of the council members.
- c) Release only the texts that relate to the department closing.

# What is a Public Record?

If a public official sent or received communications on a personal electronic device during a public meeting, and those communications pertain to the transaction of public business, then those communications are “public records” subject to the requirements of FOIA.

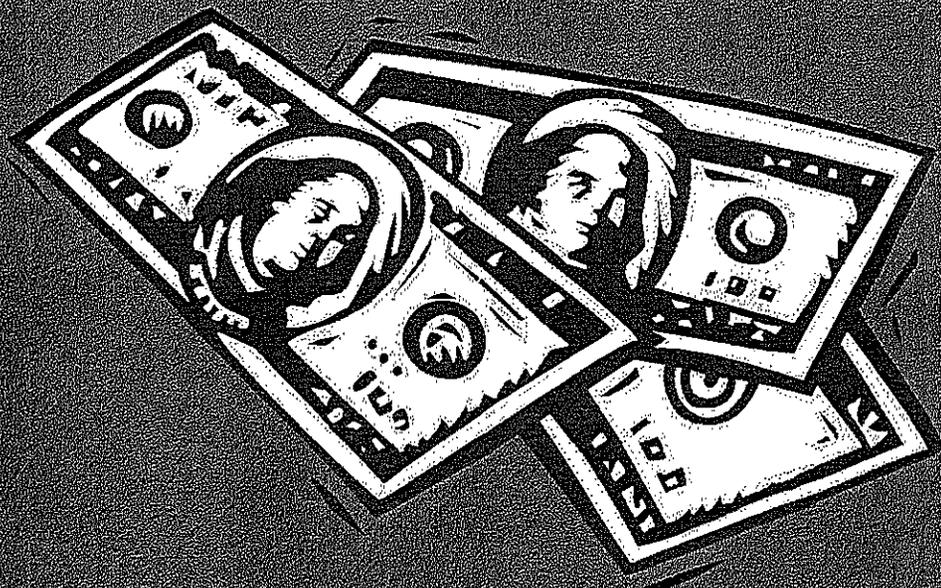
Ill. Att’y Gen. Pub. Acc. Op. No. 11-006, issued November 15, 2011.

*City of Champaign v. Madigan*, 2013 IL App (4<sup>th</sup>)120662, 992N.E.2d 629 (2013)

# Records of Funds

“All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.”

5 ILCS 140/2.5



# Prevailing Wage Act

Section 2.10 mandates that "[c]ertified payroll records submitted to a public body under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying in accordance with the provisions of this Act; except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the public body prior to disclosure."

5 ILCS 140/2.10

# Settlement Agreements

“All settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted.”

5 ILCS 140/2.20

# Record Held by Agent

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency *has contracted to perform a governmental function* on behalf of the public body, and that *directly relates to the governmental function* and is *not otherwise exempt* under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2) (West 2010).

# FOIA OFFICERS

- Each public body must designate 1 or more;
- Must develop list of documents or categories of records for immediate disclosure;
- Upon receipt of a FOIA request, note date, compute and record response time;
- Maintain electronic or paper copy of request until response or denial complete;
- Create file for retention of original request, copy of response, all communications.

5 ILCS 140/3.5(a)

# Public Body Posting Requirements

Each public must display, make available for inspection and copying, and mail if requested:

- Description of itself, including purpose, organization, budget, offices, employees, and identification of advisory or governing body members;
- FOIA Request Information.

*If a public body maintains a website, this information must also be posted there!*

5 ILCS 140/4(a), (b)

# FOIA REQUESTS

- In writing, directed to the Public Body.
- Oral requests *may* be honored.
- Standard form *may not* be required.
- Public Body *may not require* requester to specify a purpose, *except* to determine whether the request is for a commercial purpose.
- **Forward immediately to FOIA officer.**  
See 5 ILCS 140/3(c).

# Responding to a Request -Time

A public body must generally respond to a FOIA request within 5 business days after receipt of a written request. The time for response may be extended for an additional 5 business days for one of seven reasons specified in the Act.

See 5 ILCS140/3 (d),(e)

# Reasons for 5 Business Day Extension

- (i) Records stored at other locations;
- (ii) Collection of substantial number of records;
- (iii) Extensive search required;
- (iv) Can't locate records after routine search so additional efforts are being made;
- (v) Records require review to determine whether section 7 exemptions apply;
- (vi) Unduly burdensome/interfering in shorter time;
- (vii) Need to consult with another public body/area.

# Commercial Purpose Requests

“Commercial purpose’ means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.”

5 ILCS 140/2(c-10)

Must respond within **21** working days after receipt.

# FOIA RESPONSE

A FOIA request may be granted, denied, or granted in part and denied in part. **If denying** a request for public records the public body shall notify the requester in writing of:

1. The decision to deny the request,
2. The reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and
3. The names and titles or positions of each person responsible for the denial.

# FOIA Response, cont.

In addition, each notice of denial by a public body shall:

1. Inform the requester of his or her right to seek review by the Public Access Counselor,
2. Provide the address and phone number of the Public Access Counselor,
3. Inform the requester of his right to judicial review under section 11 of FOIA.

5 ILCS 140/9(a)

# Responsive Records

FOIA does not require a public body to create records in order to respond to a FOIA request; rather a public body is required to make records within its possession or control available for inspection and copying. *Workmann v. Illinois State Bd. of Educ.*, 229 Ill. App. 3d 459, 464 (2<sup>nd</sup> Dist. 1992).

# No Duty to Create Records

March 6, 2014: FOIA request for the number of initial claims received against certain licensed physicians. IDPR would have to review files and tally the number of initial claims, requiring it to create records it did not maintain nor was required by law to maintain. Court ruled in favor of public body.

Chicago Tribune Company v. The Department of Financial and Professional Regulation, 2014 IL App. (4th) 13027.

# Duty to Extract Data

On the other hand, compiling data or information that a public body maintains in the course of business is NOT creating a new record. Further, school districts can be required to provide information, such as test scores, in a masked and scrambled format.

III. Att'y Gen. Pub. Acc. Op. No.12-014, issued December 11, 2012.

# Meaning of Public Records

FOIA is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records.

5 ILCS 140/3.3

# EXEMPTIONS

To enable public bodies to maintain certain types of sensitive public records confidentially, FOIA provides a number of exceptions to the requirement that public records be made available for public inspection. The exemptions do not, however, prohibit the dissemination of information; rather, they merely authorize the withholding of information. *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995), *appeal denied*, 166 Ill. 2d 554.

# Failure to Respond

- Failure to respond to a request within the time permitted is considered a denial of the request.
- A public body that fails to timely respond to a request, but then provides copies of the requested public records ***may not impose a fee*** for those copies.
- A public body that fails to respond to a request received ***may not treat the request as unduly burdensome*** under section 3(g).

5 ILCS140/3(d)

# Unduly Burdensome Requests

- Before invoking this section, public bodies must extend to requester an opportunity to reduce the request to manageable proportions.
- The burden of compliance on public body must outweigh public interest in the information.
- Repeated requests by same person for same records identical to records *previously provided or properly denied* are unduly burdensome.

5 ILCS 140/3(g)

# Unduly Burdensome - Examples

- ... manually locating and compiling large amounts of records from 93 separate facilities or systems over a 23-year time span.
- ... compiling all records, including financial records, school policies, and correspondence for a 12-year period.
- ... only two employees to gather, review, and redact thousands of records from several sources over a six-year span.
- ... creation of new reports to assemble vendor information and payments for rent-related expenses for public housing.

# Exemptions are Narrowly Construed

The exemptions to disclosure under FOIA  
are to be narrowly construed.

*Lieber v. Board of Trustees of Southern Illinois University,*  
176 Ill. 2d 401, 408 (1997).

# Copying Fees

- A public body is required to furnish copies of public records to a requestor.
- The fee for black and white, letter or legal sized copies may not exceed **15 cents per page**.
- No fees may be charged for the first 50 pages of black and white, letter or legal sized copies.
- If a public body provides copies in color or in a size other than letter or legal, the public body may charge its actual cost for reproducing the records.

5 ILCS 140/6(a)

# Fees for Electronic Copies

A public body may only charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.

Statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format, unless the General Assembly otherwise provides.

5 ILCS 140/6(a)

# Exemptions, cont.

When public records contain information that is exempt from disclosure under section 7, but also contains information that is not exempt from disclosure, the public body **may elect to redact exempt information**; remaining information shall be made available for inspection and copying.

5 ILCS 140/7(1)

# Exceptions to Discretionary Redactions within FOIA

Section 2.10: Certified payroll records, **must redact** certain information;

Section 7(1.5): “Any information exempt from disclosure under the Judicial Privacy Act **shall be redacted** from public records prior to disclosure under this Act.”

# Information Exempt Under Other Laws

**Section 7(1)(a)** of FOIA exempts from disclosure:

“Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.”

5 ILCS 140/7(1)(a)

# Examples of 7(1)(a)

Example 1: The Juvenile Court Act mandates that reports in which a minor was arrested and charged *must* be withheld in full. Records are exempt under Section 7(1)(a) and the Juvenile Court Act (705 ILCS 405/1) (West 2012).

Example 2: Section 7 of the Illinois Criminal Identification Act (ICIA) (20 ILCS 2630/7 (West 2012)) specifically prohibits disclosure of information in the Law Enforcement Agencies Data System (LEADS), including vehicle registration information.

## Information Exempt Under Other Laws

Section 7(1)(a) applies only when a law or rule implementing a law *specifically* prohibits the public body from releasing the information in question. *Better Government Ass'n v. Blagojevich*, 899 N.E.2d 382, 389 (4<sup>th</sup> Dist. 2008).

# 7(1)(a) Not Properly Asserted

Example 1: Illinois Supreme Court Rule 415 regulates discovery in criminal cases, but does not preclude defendant from obtaining materials through FOIA that are ordinarily subject to discovery.

See Ill. Att'y. Gen. PAC Req. Rev. Ltr. 11715, issued January 21, 2011, at 2.

# Information Exempt Under Other Laws

Section 7.5 of FOIA also exempts information that is exempt under other laws. Section 7.5, however, specifically references statutory exemptions.

Sections 7.5(a) through 7.5(z) list specific statutes.

Examples:

7.5(q) The Personnel Record Review Act.  
(Exempts evaluations of employees)

7.5(r) -The Illinois School Student Records Act  
(Exempts individually identifiable student records, parent/teacher communications)

# Private Information

“Private information” is exempt from disclosure unless disclosure is required by another provision of the Freedom of Information Act, a State or federal law or a court order.

5 ILCS 140/7(1)(b)

# Private Information

**Unique identifiers, including:**

Social Security Numbers

Driver's License Number s

Employee Identification Number s

Biometric Identifiers,

Personal Financial Information

Passwords or Other Access Codes

Medical Records

Home or Personal Telephone Numbers

Personal Email Addresses

5 ILCS 140/2(c-5)

# Personal Information

Section 7(1)(c) of FOIA exempts  
“Personal information contained within  
public records, the disclosure of which  
would constitute a clearly unwarranted  
invasion of personal privacy, unless the  
disclosure is consented to in writing by the  
individual subjects of the information[.]”  
5 ILCS 140/7(1)(c)

# Personal Information, cont.

“Unwarranted invasion of personal privacy” means the disclosure of information that is

- Highly personal or objectionable to a reasonable person, and in which the
- Subject's right to privacy outweighs any legitimate public interest in obtaining the information.

# Personal Information

“The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.”

5 ILCS 140/7(1)(c)

# Exempt Personal Information

- Dates of birth
- Victims' names
- Race
- Academic transcripts
- Names of suspects who were not arrested

# Non-Exempt Information Under Section 7(1)(c)

- Death Certificates
- Names of people issued a ticket, citation or notice to appear
- Resumes, CVs, certificates and other employment information
- Places of employment, outside employment
- Dollar amount deducted from all employee paychecks for union dues
- Time sheets, vacation time, accrual sheets, and amount of sick days used

# Deliberative Process/Preliminary Documents

Also exempted from disclosure under FOIA are:

“Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body.”

5 ILCS 140/7(1)(f)

# Deliberative Process/Preliminary Documents

The purpose of the deliberative process privilege is to allow agencies to “explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny.”

*Assembly of the State of California v. United States Department of Commerce*, 797 F.Supp.1554, 1556 E.D. Cal. 1992), *aff'd*, 968 F.2d 916 (9<sup>th</sup> Cir. 1992).

# Deliberative Process/Preliminary Documents

- Portions of police reports setting forth factual data are not within the deliberative process exemption. See *Matter of Gould v. New York City Police Dep't*, 89 N.Y.2d 267, 277; 675 N.E.2d 808, 813 (1996)
- Statistical Data is not exempt from disclosure under section 7(1)(f). See Ill. Att'y Gen. Pub. Acc. Op. No. 13-015, issued September 24, 2013

# Trade Secrets

Section 7(1)(g) of FOIA exempts from inspection and copying "[t]rade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested." 5 ILCS 140/7(1)(g)

# Bid Information

Section 7(1)(h) of FOIA exempts from disclosure "proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made."

5 ILCS 140/7(1)(h)

# Privileged Information

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, or are prepared in anticipation of litigation, are exempt from disclosure under section 7(1)(m) of FOIA.

# Attorney/Client Communication

Section 7(1)(m) does not exempt from disclosure generic descriptions of tasks an attorney performed contained in invoices, such as “read e-mail,” “telephone conference,” and “court appearance.” A public body may redact only information that could reveal legal advice provided or a substantive communication between an attorney and a representative of the public body.

III. Att’y Gen. Pub. Acc. Op. No. 12-005, issued March 12, 2012.

# Disciplinary Cases

Exemption 7(1)(n) of FOIA allows a public body to withhold records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.”

5 ILCS 140/7(1)(n)

Investigative records that do not relate to an actual adjudication are not exempt.

See Ill. Att'y Gen. Pub. Acc. Op. 13-011, issued June 11, 2013; *Kalven v. City of Chicago Police Department*, 2014 IL App. (1st) 121846 (issued March 10, 2014)

# REQUEST FOR REVIEW

A Request for Review must be filed the Public Access Counselor “not later than 60 days after the date of the final denial.”

The request must be in writing, signed by the requester and include:

- 1) a copy of the request for records, and
- 2) any responses from the public body

5 ILCS 140/9.5(a)

# Requests for Review

“A person whose request to inspect or copy a public record is denied by a public body, *except the General Assembly and committees, commissions, and agencies thereof*, may file a request for review with the Public Access Counselor [.]”

5 ILCS 140/9.5

# Request for Review, cont.

The Public Access Counselor may:

- Issue a binding opinion, which is subject to administrative review under section 11.5 of FOIA, or
- Resolve a request for review by mediation or by a means other than the issuance of a binding opinion. 5 ILCS 140/9.5(f)

# Resolution of Requests for Review FOIA and OMA

- Informal Resolution – Non-Binding Opinion

  - Not subject to Administrative Review

- Binding Opinion

  - Must be filed within 60 days of receipt of RFR, unless PAC extends time for 30 business days under FOIA, or 21 business days under OMA.

  - Administrative Review permitted within 35 days, Sangamon or Cook Counties

# Practical Guidelines

- Cooperate
  - Be Specific in Response
    - Clarify Questions

# Judicial Review

Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.

5 ILCS 140/11(a)

If the requester files suit under section 11 \* \*  
\* the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

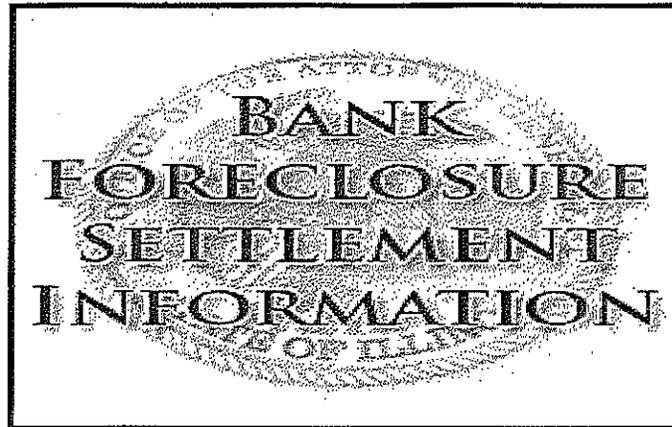
5 ILCS 140/9.5(g)



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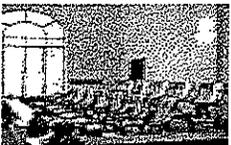
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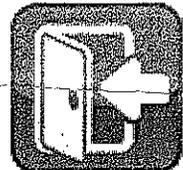
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### OMA and FOIA Public Site

FOIA Officers, OMA Designee, and OMA Public Body Members must register before taking the training on the FOIA/OMA Portal. If you are a member of the public interested in accessing the training program, click on the public training link.



Register as a FOIA Officer, OMA Designee, or a OMA Public Body Member



Continue to the OMA/FOIA Portal

If you are a member of the general public and are interested in accessing the same training program that the FOIA/OMA officers are taking, click this link: [General Public Training](#). This training is not recorded and can be accessed as often as you like.

### Public Access to Records



*It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business.*

*- Illinois Open Meetings Act, 5 ILCS 120/1.*

*Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the*

# Contact Information

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877-299-3642

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