

## HEYL ROYSTER GOVERNMENTAL SEMINAR GOVERNMENT OFFICIALS ESSENTIALS

Seminars were hosted in Peoria on Tuesday, June 4;  
Urbana on Wednesday, June 5; and  
Rockford on Thursday, June 6

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## Presenters



**Tim Bertschy** is chair of Heyl Royster's Governmental Practice and Commercial Litigation Practice. Mr. Bertschy has represented units of local government for more than 35 years. He is a past President of the Illinois Township Attorneys Association and the Illinois State Bar Association, and a past member of the American Bar Association Board of Governors, representing Illinois and Ohio.



**John Redlingshafer** represents townships, villages, fire districts, road districts, and other governmental entities. He serves on the Tazewell County Board and is a past President of the Illinois Township Attorneys Association. He was an author and General Editor for a publication related to special district law for the Illinois Institute for Continuing Legal Education, and also wrote for the Institute's publications regarding the Illinois Open Meetings Act, Freedom of Information Act, and municipal contracts.



**Andy Keyt** represents and assists in the representation of public entities as their counsel. As counsel for local public entities, Mr. Keyt attends board meetings and provides counsel on all legal issues. He has authored publications and given presentations on the Freedom of Information Act, the Open Meetings Act and other government-related issues. He is a participating author for Illinois Institute for Continuing Legal Education publication chapters entitled "Introduction to the Open Meetings Act" and "Cemetery Maintenance Districts."



**Stacy Crabtree** focuses her practice on commercial and governmental transactions and litigation. She assists clients with the negotiation and drafting of a wide range of contracts and corporate governance and compliance issues. Her clients range from large to small businesses, non-profits and local units of government. Ms. Crabtree serves as general counsel to a local municipality and has represented governmental entities in various contract disputes.



**Keith Fruehling** concentrates his practice in civil litigation, including the defense of complex asbestos, employment and civil rights, professional malpractice, local governmental, and products liability litigation. He has represented Fortune 500 corporations, universities, state and local governmental units, professionals, and local businesses. He also sits on the Illinois State Bar Association Board of Governors.



**Mark McClenathan** has represented municipalities, and clients before various governmental bodies. He has experience in annexations, subdivisions and developments, zoning, and intergovernmental agreements. As a trial attorney, Mr. McClenathan has handled cases in state courts in more than 19 counties in Illinois, and in federal court.

Heyl Royster Governmental Seminar  
**Government Officials' Essentials**

June 2013



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**Governmental Finance**



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**Introduction**

- Governmental spending requires proper budgeting and tax levies
- Budgeting rules are established by statutes
- Levy rules are established by statutes
- Political pressures exist on governmental spending
- Budgeting problems for governmental bodies
  - Increased costs
  - Budget cuts
  - Decreased revenues



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## Budgeting and Appropriations

"Show me the money"



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## Governmental Budgeting

- For different bodies of government, different laws apply.
- For example:
  - The Illinois Municipal Budget Law (50 ILCS 330 *et seq.*) applies to townships and other small units of government.
  - The Illinois Municipal Code (65 ILCS 5/1 *et seq.*) applies to cities, villages, and incorporated towns.
- Look to particular statutes covering your governmental entity.

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## Governmental Budgeting

- Effect of failure to spend in accord with budget and appropriation ordinance
  - Invalid expenditures, void contracts, etc.

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### Illinois Municipal Budget Law

50 ILCS 330 *et seq.*

- Imposes requirements on budget appropriations made by townships and other small units of government.
- Requires the adoption of a combined annual budget and appropriation ordinance before the first quarter of each fiscal year.
  - Funds may be expended during the first quarter prior to adoption.



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### Illinois Municipal Budget Law (cont.)

- The combined annual budget and appropriation ordinance specifies the objects and purposes for which appropriations are made and the amount appropriated for each object or purpose.
- Provides the governing body with legal authority to allocate funds to specific spending activities.
- "Fund" concept



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### Illinois Municipal Budget Law (cont.)

- The budget included in the ordinance *must* contain for each fund:
  - Statement of the cash on hand at the beginning of each fiscal year
  - An estimate of the cash expected to be received during such fiscal year from all sources
  - An estimate of the expenditures contemplated for the fiscal year
  - Statement of the estimated cash expected to be on hand at the end of the fiscal year
- Forms Available online [www.toi.org/Resources/Download-Center.aspx](http://www.toi.org/Resources/Download-Center.aspx) (must filter for "budget & levy")



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### Illinois Municipal Budget Law (cont.)

- The ordinance should first be prepared in a tentative form, and provided to the public for inspection for at least 30 days prior to final action. There should be at least one public hearing, notice of which must be provided in a newspaper published in the municipality at least 30 days prior to the hearing.
- Note when and how "final hearing" takes place
- The failure by the governing body to adopt an annual budget and appropriation ordinance will have no effect on an otherwise valid tax levy of the municipality.



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### Amending Budget

- "...Except as otherwise provided by law, no further appropriations shall be made at any other time within such fiscal year, provided that the governing body of such municipality may from time to time make transfers between the various items in any fund in such appropriation ordinance not exceeding in the aggregate ten per cent of the total amount appropriated in such fund by such ordinance, may transfer funds received by the taxing district as the result of an erroneous distribution of property taxes by a county treasurer back to that county treasurer without amending the budget and appropriation ordinance, and may amend such budget and appropriation ordinance from time to time by the same procedure as is herein provided for the original adoption of a budget and appropriation ordinance; provided that nothing in this section shall be construed to permit transfers between funds required by law to be kept separate..." (50 ILCS 330/3)



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### Transfer of Monies Between Funds

- Various statutory provisions allow permanent transfers of monies between funds.
- For example, 60 ILCS 1/245-5 provides for a transfer of monies between certain township funds.
- See statutes applicable to your unit of government.



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## Illinois Municipal Code

### 65 ILCS 5/1 *et seq.*

- The Illinois Municipal Code (65 ILCS 5/1 et seq.) applies to cities, villages, and incorporated towns.
- Section 8-1-2 covers appropriations.
- The Illinois Municipal Code requires that "no contract shall be made by the corporate authorities . . . unless an appropriation has been previously made concerning that contract or expense."
- "Any contract made, or any expense otherwise incurred, in violations of the provisions . . . shall be null and void as to the municipality."

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## Illinois Municipal Code Section 8-1-7

### Continued

- Exceptions to Prior Appropriation
  - Anticipation of an appropriation ordinance
    - Municipalities may make necessary expenditures for the support thereof upon the basis of the appropriations of the preceding fiscal year.
  - Planning and financing of a public project
    - If determined by two-thirds vote of the corporate authorities at a regularly scheduled meeting, may employ expenses for planning and financing that is expedient and in the best public interest.

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## Tax Levies

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## Tax Levies

- There is no inherent power to tax in the State of Illinois. However, municipalities have been given power by the General Assembly to tax in specific ways. Generally, municipalities gain the majority of their revenue through property taxes.
- A municipality is required to impose a tax levy ordinance in order to levy taxes.
- Levy filing deadline- Last Tuesday in December
- What if no levy filed?

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## Tax Levy Ordinance

- A tax levy ordinance must follow all general requirements applicable to ordinances.
- A tax levy must meet statutory rule limitations or they will be imposed
- A tax levy ordinance must always follow Truth-in-Taxation requirements.
- When applicable, a tax levy ordinance must comply with PTELL.

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## Truth-in-Taxation Requirements

35 ILCS 200/18-55 *et seq.*

- The Truth in Taxation law establishes procedures taxing districts must follow in the adoption of their property tax levies.
- Taxing bodies must follow a six step process in order to comply with Truth-in-Taxation requirements

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## Truth-in-Taxation Requirements

- 1) Determine Proposed Aggregate Levy
  - An aggregate levy is essentially the totally annual corporate levy and all special purpose levies exclusive of debt service levies and levies made for the purpose of paying amount due under public building commission leases. The proposal of an aggregate levy must be made no less than 20 days before the adoption of the levy ordinance. The proposed tax levy should be recorded in the minutes of the governing board meeting.

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## Truth-in-Taxation Requirements

- 2) Calculate the percentage increase
  - Calculate the increase from the prior year's aggregate tax extension. If the proposed tax levy is more than a 5% increase over the amount of the previous year's extension, the district must publish a notice in a newspaper and conduct a hearing.

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## Truth-in-Taxation Requirements

- 3) Notice of Hearing in a Newspaper
  - If the percentage increase is greater than the allowable increase of 5%, then newspaper notice and a hearing is required.
  - Notice must be published in an English language newspaper following specific requirements. The requirements differ depending on whether the municipality is located in a single county or expands over several counties.
  - The notice must:
    - Appear no more than 14 days nor less than 7 days before the hearing date.
    - Be at least 1/8 page in size.
    - Be enclosed in a black border not less than 1/4 inch wide.
    - At least 12 point font.
    - NOT appear in classified or legal section of paper.
    - NOT contain any additional information not required by law.

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## Truth-in-Taxation Requirements

- 4) Conduct a Public Hearing
  - Again, if an increase is over 5%, then a public hearing is required by law. The hearing must be open to the public. The corporate authority of the municipality must explain the reason for the increase. The hearing CANNOT coincide with the hearing on the proposed budget.

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## Truth-in-Taxation Requirements

- 5) Second Notice
  - A second notice may be required for a few reasons. First, if the final aggregate tax levy ordinance is larger than the amount stated on the published notice, than a second notice and hearing must occur. Additionally, if a municipality did not have to issue notice because the percentage increase on the propose levy was less than 5%, but the adopted levy ended up being greater than a 5% increase, notice would be required.

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## Truth-in-Taxation Requirements

- 6) Certificate of Compliance
  - Last, accompanying any ordinance levy must be a certificate of compliance. A copy of the tax levy ordinance must be filed with the county clerk by the last Tuesday in December. The tax levy ordinance must be certified by attaching a certificate of the municipal clerk stating that the attached levy ordinance is a true and accurate copy of an ordinance duly pass on a roll call vote and now in force. Additionally, a certificate signed by the mayor or president showing compliance with the requirements of the Illinois Truth in Taxation Law must be attached before filing.

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**Property Tax Extension Limitation Law (PTELL)**  
35 ILCS 200/18-185 *et seq.*

- PTELL is designed to limit the increases in property tax extensions for non-home ruling taxing districts.
- PTELL is often mistaken as a tax cap.
- PTELL actually allows a taxing district to receive a limited inflationary increase in tax extensions on existing property plus an additional amount for new construction.



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**Property Tax Extension Limitation Law (cont.)**

- Increases in property tax extensions are limited to the lesser of 5% or the increase in the national Consumer Price Index (CPI) for the year preceding the levy year.
- The limitation can be increased for a taxing body with voter approval to:
  1. Increase the extension limitation;
  2. Increase the limiting rate;
  3. Levy a new tax rate; or
  4. Increase the debt service extension base.



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**Property Tax Extension Limitation Law (cont.)**

- Home-rule
  - Home-rule municipalities are not subject to PTELL. Thus, a home-rule municipality does not have the requirement of a referendum in order to have a larger than 5% increase in aggregate tax levy.
- However, a home-rule municipality must still follow Truth-in-Taxation requirements all other general requirements applicable to ordinances.



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## Miscellaneous Financial Issues



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## The Spending Process

- Each unit of government has a spending process.
- It is the responsibility of each government official to be familiar with the process applying to their position.
  - This includes understanding the power that exists to make an expenditure and whether it was properly exercised.



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## Audits

- Each unit of government has audit requirements.
- It is the responsibility of each government official to be familiar with these and, as applicable, to review and understand audit conclusions.



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### Maintaining Funds During Fiscal Year

- Who is the treasurer
- How to determine depository
- Investment policy requirements
- How large a balance can be maintained in any fund



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### Bonding Authority

- Most governmental bodies having bonding authority
  - General obligation bonds
  - Revenue bonds
- Their power is typically limited to particular purposes- public buildings, parks, hospitals, etc.
- This is a very complex and specialized area.
- See statutes applicable to your unit of government.



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### Transparency in Government



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## Transparency in Illinois

- Open Meetings Act (5 ILCS 120/)
- Freedom of Information Act (5 ILCS 140/)
- Local Records Act (50 ILCS 205/)

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## Overview of Open Meetings Act (OMA)



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## Open Meetings Act – 5 ILCS 120

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**. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

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## OMA – General Considerations

- Mandatory Training (5 ILCS 120/1.05)
- Is everything open?
  - 5 ILCS 120/2(c)
    - A public body may hold closed meetings to consider certain subjects
  - But NO final action
- Notices/Emergencies (5 ILCS 120/2.02)
  - 48 hour continuous notice (accessible)
- Recording Meetings (5 ILCS 120/2.05)

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## What Bodies Must Follow OMA?

"Public body" means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof...

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## What is a public body? The *Rockford* Test

- Challenges on what is a public body
  - Subsidiary is not defined in Open Meetings Act or Freedom of Information Act
- "Extremely Significant" characteristics
  - Formal legal nature of entity
  - Independence of board of directors
  - Independence of employees from direct government control
- "Potentially Relevant" factors
  - Degree of governmental control over entity
  - Nature of the entity's functions

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## Concerns for Orderly Meetings

- Rules of Order
  - Who is this Robert guy?
  - By default, used in General Assembly
- 5 ILCS 120/2.06
  - Public Participation
- Where are you meeting?
  - PAC Opinion 12-008: Private residences



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## 5 ILCS 120/2.06 Rules

- Recognition to address body
- Time limitations
- Decorum
- Authority to suspend remarks
- Authority to suspend rules
- Sign in sheet for those wishing to speak
- Getting on the agenda
- Interference with deliberation of body
- Disturbing deliberations



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## Overview of Freedom of Information Act (FOIA)



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## Public Policy – 5 ILCS 140/1

Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be **the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government** and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

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## Presumption – 5 ILCS 140/1.2

**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.

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## Readily Available Lists

- 5 ILCS 140/5

As to public records prepared or received after the effective date of this Act, each public body shall maintain and make available for inspection and copying a **reasonably current list of all types or categories of records under its control**. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

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### Timing Issues

- Typically five business days (not including the day request received) – 5 ILCS 140/3
  - Extension for up to another five business days if proper grounds given
- But, information from arrest reports
  - 72 hours – 5 ILCS 140/2.15
- Solely Commercial Purpose?
  - 21 days – 5 ILCS 140/3.1



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### Costs Related to FOIA Requests

- 5 ILCS 140/6
  - Fees “reasonably calculated” to reimburse the actual cost (color copies, discs, etc.)
  - First 50 pages of black and white (letter or legal) are free
  - Further copies shall not exceed \$0.15/page.
  - Cannot charge requester for copies added to your file (5 ILCS 140/3.5 and PAC 10-002)



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### Popular Reasons for Denials

- 5 ILCS 140/3, 140/7(1) and 140/7.5
  - Overly Broad and/or Unduly Burdensome (140/3)
  - Personal Information (140/7(1)(c))
  - Preliminary Drafts (140/7(1)(f))
  - Trade Secrets (140/7(1)(g))
  - Communications with Attorney (140/7(1)(m))
- *Lieber v. Bd. of Trustees, So. Ill. Univ.*
  - Disclosure for one is a disclosure for all



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### What is a Record Under FOIA?

- 5 ILCS 140/2(c)

"Public records" means **all records**, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, **electronic communications**, recorded information and all other 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, or under the control of any public body.



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### Electronic Records

- Requested format, if feasible
  - "Locked" .xls file – 2013 IL App (1<sup>st</sup>) 121841
- PAC Opinion 11-006 and definition of "public records"

Electronic records relating to transaction of public business are "public records...notwithstanding that they are generated on public officials' private equipment and/or maintained on personal electronic accounts"



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### Construction – 5 ILCS 140/2.10

Certified 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.



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## Construction - Public Contracts

- Private parties' correspondence, records, etc., shared with public body are now public records (likely) subject to disclosure
  - Bid Packets, Contracts
- 5 ILCS 140/7(1)(g)
  - "Trade Secrets"

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## What is a "trade secret"?

- *BlueStar Energy Services*
  - Information that:
    - Would either inflict substantial competitive harm; or
    - Make it more difficult for the agency to induce people to submit similar information in the future
- But is the public body required to withhold the information?
  - *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979)

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## Settlements – 5 ILCS 140/2.20

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.

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## Closing Considerations

- COMMUNICATION
- Local Records Act Considerations
- Questions?

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## The Bid Process and Contracting Considerations



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## Selection of Architect or Engineer

- Architect or engineer must be licensed
- Professional Engineering Practice Act
  - 225 ILCS 325/41
  - "It is unlawful for the State or any of its political subdivisions, or any county, city or town to engage in the construction of any public work involving professional engineering, unless the engineering plan, specifications and estimates have been prepared by, and the construction is executed under the guidance of a professional engineer licensed under this Act."

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**Local Government Professional Services Selection Act**

- 50 ILCS 510/
- Applies to any school district and any unit of local government of fewer than 3 million inhabitants, except home rule units.
- Governs use of architectural, engineering, and land surveying services ("AES").

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**Local Government Professional Services Selection Act (cont.)**

- Section 4. Public notice.
- If utilizing AES, political subdivision must allow the professional firms to "annually file a statement of qualifications and performance data."

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**Local Government Professional Services Selection Act (cont.)**

- Section 4 (cont.)
- When project requires AES, the political subdivision must:
  - Mail notice requesting statement of interest from firms with current info on file; or
  - Place advertisement in daily newspaper requesting statement of interest and statement of qualification and performance data from firms interested.

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**Local Government Professional Services Selection Act (cont.)**

- Section 5. Evaluation Procedure.
- During evaluation, must take into account “qualifications, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the firm, and such other qualifications-based factors as the political subdivision may determine in writing are applicable.”



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**Local Government Professional Services Selection Act (cont.)**

- Section 5 (cont.)
- May conduct discussions with, and require public presentations by, firms deemed to be the most qualified.
- Prior to selection, cannot seek verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.



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**Local Government Professional Services Selection Act (cont.)**

- Section 6. Selection procedure.
  - Shall select at least 3 firms that are most qualified to provide services and rank them in order of qualifications.
  - Then must contact firm ranked most preferred and attempt to negotiate a contract at a fair and reasonable compensation.



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### Local Government Professional Services Selection Act (cont.)

- Section 7. Contract negotiation.
  - Must prepare a written description of the scope of the proposed services to be used as a basis for negotiations and negotiate a contract with highest qualified firm.
  - If unable to negotiate satisfactory contract, terminate negotiations and move on to next ranked firm.



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### Local Government Professional Services Selection Act (cont.)

- Exceptions to Sections, 4, 5, and 6 if political subdivision:
  - Already has satisfactory relationship with firm(s);
  - Determines by resolution that an emergency exists and expeditious selection needed; or
  - Determines by resolution that expected cost of the services will be less than \$25,000.



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### Application of PSSA (non home rule units)

- Design/build contracts – likely unable to have single contract
- Construction manager – likely outside scope of PSSA
- Architectural competitions – likely able to have if rules consistent with PSSA
- Performance contracting – Local Government Energy Conservation Act



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### Bidding – Governing Rules

- Counties – 55 ILCS 5/5-1022
  - Villages and Cities – Illinois Municipal Code Sections 8-9-1, et. seq. and 9-2-100
  - Townships – Illinois Township Code Sections 85-30 and 205-105
  - Home rule units – own rules
- \*\*Always check your local ordinances to ensure compliance.



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### Bidding – When Required

Political Subdivision	Threshold
• Counties < 2,000,000	\$30,000
• Cities and villages < 500,000	\$20,000
• Townships	\$20,000



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### Bidding – Exceptions

- When bidding may not be required:
  - Counties:
    - Emergency situations authorized by Board
    - Contracts with the federal government
    - Purchases of used equipment
    - Purchases at auction
    - Transactions not suitable to competitive bidding
    - Certain contracts for data processing equipment



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## Bidding – Exceptions

- When bidding may not be required:
  - Villages and cities:
    - Contracts approved by 2/3 of all aldermen or trustees
    - Contracts with federal government

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## Bidding – Exceptions

- When bidding may not be required:
  - Townships:
    - Board resolution by ¾ vote that in best interests of township to forgo advertising for bids
    - In case of emergency authorized by Board

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## Caution

- Cannot split a project into smaller projects to avoid bidding requirements.
- Class 4 felony:
  - Stringing;
  - Attempting to avoid or evade the duty to bid; or
  - Assisting another in doing so.

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### Bid Advertisements

- Nature and character of work;
- Deadline for receipt of bids;
- When and where bids will be opened;
- How to obtain set of specifications;
- Bid deposits or bonds required; and
- Statement of right to reject all bids and waive any nonmaterial variances.



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### Qualifications to Bid

- May require each potential bidder to submit written documentation addressing:
  - Financial ability to perform;
  - Ability to obtain necessary bonds and insurance;
  - Experience in building like projects with specific examples; and
  - List of references.



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### Pre-bid Conference

- Meeting with political subdivision, architect or engineer, and interested bidders
- Not required but often held for larger or more complicated projects
- Held after bidding documents released but before due date
- Should make mandatory and create transcript or minutes of conference



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### Methods of Submitting Bids

- Bidding instructions should require sealed bids.
  - Required by statute for park district and school district projects
- Bidding instructions should state bidding by phone, fax, or email is not acceptable.
- Include precise procedures for modifying or withdrawing any bids prior to opening.



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### Opening the Bids

- Opened publicly and read aloud
- Does not need to occur at Board Meeting
- Summary of bids transmitted to all bidders by architect or engineer
- NOTE: If changing due date or date which bids are opened, send notice to all who requested bidding documents and publicly post notice.



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### Bid Rejection

- Can reject all bids (be cautious of financial penalties though)
- Must reject any bid containing a "material variance" from requirements.



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### Bid Rejection – Material Variance

- A variance is material if it gives a bidder a substantial advantage or benefit not enjoyed by other bidders.
  - Leo Michuda & Son Co. v. Metropolitan Sanitary District of Greater Chicago, 97 Ill.App.3d 340 (1<sup>st</sup> Dist. 1981).



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### Bid Selection

- If awarded, must be awarded to lowest "responsible bidder."
- List factors used in determining responsibility in bidding documents.
- If you are not going with the lowest bidder, carefully document basis for decision and if possible get opinion letters from architect and/or legal counsel supporting the decision.



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### Bid Selection – Responsible Bidder

- Some factors related to responsibility:
  - credentials,
  - financial information,
  - bonding capacity and insurance protection,
  - qualifications and past experience,
  - ability to complete the contract, and
  - in some cases, social policy.



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### Bid Selection – Formal Acceptance

- Should formally accept by ordinance or resolution.
- Written notice of acceptance should be served on the lowest responsible bidder.



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### Post Bid Considerations

- Contract
- Public entity obligations
  - Access, insurance, avoid delay, make payments.
    - Local Government Prompt Payment Act
      - 50 ILCS 505/
- Work changes
  - Public Construction Contract Act
    - 30 ILCS 557/



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### Conflicts of Interest

- Found in a variety of locations in the Illinois Statutes
- For each unit of government, an examination should be made of that public body's unique law



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## Conflict Statutes of Broad Application

- Prohibited interest in contracts (50 ILCS 105/3)
- Disclosure of identity in real estate contracts (50 ILCS 105/3.1)
- Pecuniary interest allowed in deposit and financial services contracts (50 ILCS105/3.2)



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## Contracting Considerations



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## Intergovernmental Agreements\*

- Need to cooperate
- Potential Contract Participants
- Power to Cooperate
- Areas of Cooperation

\*Slides courtesy of John Redlingshafer.



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## The Need to Cooperate: a “Cost-Benefit” Analysis

- Fewer Tax Dollars
  - PTELL Counties (Current CPI Level)
  - Difficulty in rate increase/referenda passing
- Resource Sharing
  - Staff
  - Equipment
- Foster Relationships
  - Other agreements
  - “Never bite the hand that feeds you...”
    - County power over townships: 60 ILCS 1/10

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## Potential Contract Participants

- Counties
- Municipalities
- Libraries
- Schools
- Special Districts  
and...
- Other Townships
- Road Districts

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## Power to Cooperate: Illinois Constitution, Article VII

SECTION 10. INTERGOVERNMENTAL COOPERATION  
(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

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## More Power: Intergovernmental Cooperation Act (5 ILCS 220)

Sec. 3. Intergovernmental cooperation. Any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment and except where specifically and expressly prohibited by law...



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## Options Under the Act

- Municipal Joint Action Agency (Sect. 3.2) for waste, but more than likely...
- Intergovernmental Contracts (Sect. 5)
- Sec. 3.6. (a) Any special district the boundaries of which are exactly coterminous with, or entirely within, the boundaries of a township may merge into and transfer all of its rights, powers, duties, liabilities and functions to the township as provided in this Section notwithstanding any other provision of the law. (referenda required)



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## Practical Considerations

- Relevant Authority (60 ILCS 1/85-10, for example)
- Contract Terms/Enforcement
  - Invalid subject matter
  - Circumvent voters
  - Prevailing Wage
  - Duration of Contract
- Other Options
  - Joint Ordinances/Resolutions (fund transfers)
  - Unilateral Actions (vacations, etc.)
  - Cooperation (dilapidated properties)



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### Areas of Cooperation – Counties

- Dilapidated Properties
  - 60 ILCS 1/85-50 & 55 ILCS 5/5-1121
- Lease of County Home or Hospital
  - 60 ILCS 1/180-5
- Assessor Contract?
  - 60 ILCS 1/77-5 and 30 ILCS 2/200-60(b)



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### Cooperation – Counties

- Roads and Bridges Code: Vacations, etc.
  - 605 ILCS 5/6-312
    - County Superintendent as Reviewing "Court"
  - 605 ILCS 5/6-325
    - Accepting roadways
- Roads and Bridges Code: Motor Fuel Tax
  - 35 ILCS 505/8
  - 605 ILCS 5/6-701



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### Cooperation – Municipalities

- Roads and Bridges Code
  - 605 ILCS 5/6-201.10-1
- Township Code
  - 60 ILCS 1/30-150, etc. (Police Protection)
  - 60 ILCS 1/110-75 (Zoning)



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### Cooperation – Others

- Fire Protection (60 ILCS 1/30-165)
- Cemeteries (60 ILCS 1/130)
- Community Building Sale (60 ILCS 1/150-80)
  - School or municipality
- Community Mental Health (60 ILCS 1/190-5)
- Service Centers, etc. (60 ILCS 1/205-50)



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### Cooperation – Townships and Road Districts? Absolutely.

- Between Road Districts
  - Lease/exchange of idle machinery or services
    - 605 ILCS 5/6-201.10, 201.10-1
  - District Line Agreements
    - 605 ILCS 5/6-402, 5/6-408
- Between Townships and Road Districts
  - Property Ownership
    - 60 ILCS 1/240-5
    - 605 ILCS 5/6-107.1



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### Cooperation – Townships

- Sometimes it isn't up to you...
  - Multi-township Assessment Districts
  - Joint Township Cemeteries



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## Cooperation – Road Districts

- State of Illinois
  - IDOT requests vacation, etc. (605 ILCS 5/6-303)
  - Interstate Commerce Commission/Railroads
- “Catchall”
  - 605 ILCS 5/9-101



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## Drafting an Agreement

- CALL YOUR LAWYER
- Establish terms (non-exclusive list)
  - Party(ies)
  - Service(s)
  - Time frame (may be limited by law)
  - Administration
  - Breaches/Default
- Elector Involvement?
  - Ordinance and Timing Issues



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## The Agreement Itself

- WHEREAS Clauses
  - Powers authorizing the agreement
    - Both sides and elector approval, if necessary
  - Can attach authorizing ordinances
  - Findings
    - Why it is good for the residents and/or
    - The specific need for the agreement



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## The Agreement Itself

- Terms
  - Exact services provided
  - In consideration of such services...
  - Shall commence on [DATE] and continue in full force and effect until...and by...
- Contingent Agreements?
  - Grants ("if awarded...")



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## Introduction to the Illinois Tort Immunity Act History and General Overview



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## Note

- No slides were handed out for this portion of the seminar. If you have any questions on this topic or any topic, please feel free to contact one of our attorneys. Thank you.



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## Personnel Policies





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### Considerations Before Adoption

- What is a “policy”?
- Required by law?
  - Even if not required, should we?
- Is it possible under the law?
- Do we already have one?
  - Does it need replaced?
- How often should we plan on reviewing it?
- How do we pass it?




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### Employment Policies

- Required by Federal and/or State Law?
 

(b) The board shall set and adopt rules concerning all benefits available to employees of the board if the board employs 5 or more employees. The rules shall include, without limitation, the following benefits to the extent they are applicable: insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave. The rules shall be adopted and filed with the township clerk within 6 months after July 1, 1992. Amendments to the rules shall be filed with the township clerk on or before their effective date. - 60 ILCS 1/100-5




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## Employment-Related Policies

- Federal Law
  - EEOC? Typically, 15 or more employees.
- Other major consideration: unionized?

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## Illinois Public Labor Relations Act (5 ILCS 315/)

- Definition of Employer
  - 5 ILCS 315/3(o)
- Right to Organize and Bargain Collectively
  - 5 ILCS 315/6
  - Voluntarily?
  - What counts as five employees?

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## Employment-Related Policies

- If not required, why have them?
  - Protect your employees
  - Hopefully, avoid visits from the following entities:
    - US Equal Employment Opportunity Commission
    - US Department of Labor
    - Illinois Department of Labor

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### So what?

- When you face a claim...
  - Government agency WILL investigate
  - WILL ask you for the governing policy
    - How you handle a sexual harassment claim, etc.
    - What you did in this particular situation
    - How you handled them in the past?
  - Consistently, actions taken pursuant to policy is a better answer than "because," etc.



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### What should I cover?

- Two options
  - Individual policies on harassment, violence, etc.; or
  - Comprehensive, employee policy/manual
- Is one better?
  - Prefer comprehensive manual
  - Have employee acknowledge content



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### Employee Policy/Manual

- Human Rights and Related Considerations
  - Equal Employment Opportunity Employer
  - Harassment
  - Workplace Safety
  - Drug Testing
  - Drugs and Alcohol
  - Smoking (Smoke Free Illinois Act)



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### Other Employee Manual Considerations

- Employment Contract Created?
  - No terms in this Personnel Policy Manual shall be construed to establish an employment contract between...and any of its employees.
  - Either side can reserve right to terminate.
- Define employment before and in policy

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### Other Employee Manual Considerations

- Definitions of types of employees?
  - US Fair Labor Standards Act
  - Job Descriptions
- Wage and Salary Administration
  - Overtime
  - Performance Reviews, Bonuses

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### Other Employee Manual Considerations

- Other Compensation
  - Insurance
  - Vacations/Holidays
  - Personal and Sick Leave
  - Other Leaves of Absence
  - Mileage/Expenses

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### Other Employee Manual Considerations

- Hiring, Discipline, and Termination
  - Guidelines for Appropriate Conduct
- Personal Appearance, Demeanor
- Personnel Records
- Solicitation
- Use of Equipment
- Social Media



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### Other Employee Manual Considerations

- Review and Update
  - Laws and circumstances change
- Employee Input
- Acknowledgment in Personnel Files
- Enforcement
  - Do NOT be selective
  - “Slippery slope” on enforcement



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### Other Employee Manual Considerations

- Do these apply to public officials?  
No, but...
  - Recall the following statutes
    - Public Officer Prohibited Activities Act
    - Pecuniary Interest in Contracts statutes
  - Any policies regarding public officials?
    - Use of personal equipment on public jobs



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## Closing Considerations

- COMMUNICATION
- Questions?



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## PREVAILING WAGE ACT What Do You Need to Know?



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## I. Introduction

- Illinois Prevailing Wage Act
- 820 ILCS 130/0.01 – 12



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## II. Why Be Concerned?

### A. Potential Liability for Government Official

- Sec. 6. "Any officer, agent or representative of any public body who willfully violates, or omits to comply with, any of the provisions of this Act...is guilty of a Class A misdemeanor."
- Emphasis on enforcement by the Illinois Attorney General's office

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### B. Criminal Liability for The Contractor or Sub-Contractor

- Sec. 6 "...any contractor or subcontractor, or agent or representative thereof, doing public work as aforesaid, who neglects to keep, or cause to be kept, an accurate record of the names, occupation and actual wages paid to each laborer, worker and mechanic employed by him, in connection with the public work or who refuses to allow access to same at any reasonable hour to any person authorized to inspect same under this Act...is guilty of a Class B misdemeanor."

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### C. Enforcing Party

- Sec. 6. "The Department of Labor shall inquire diligently as to any violation of this Act, shall institute actions for penalties herein prescribed, and shall enforce generally the provisions of this Act. The Attorney General shall prosecute such cases upon complaint by the Department or any interested person."

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### III. Public Policy Served by the PWA

- 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.

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### IV. What Is Covered by the PWA?

- This Act applies to the wages of laborers, mechanics and other workers employed in any public works, as hereinafter defined, by any public body and to anyone under contracts for public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.
- No monetary threshold

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### A. Public Works

- Sec. 2. "Public works" means all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds. "Public Works" as defined herein includes 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...

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## B. Fixed Works

- What is included
  - Buildings?
  - Gardens?
  - Plumbing?
  - Wiring?
  - Computers?
  - Ceiling tiles?
  - Equipment?

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## C. Construction

- Sec. 2.
  - "Construction" means all work on public works involving laborers, workers or mechanics.
  - This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

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## D. Public Body

- "...Public body" means the State or any officer, board or commission of the State or any political subdivision or department thereof, or any institution supported in whole or in part by public funds, and includes every **county, city, town, village, township**, school district, irrigation, utility, reclamation improvement or other district **and every other political subdivision**, district or municipality of the state whether such political subdivision, municipality or district operates under a special charter or not." (Emphasis added.)

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## V. Wage Payment Requirement

- Sec. 3 "Not less than the general prevailing rate of hourly wages for work of a similar character on public works in the locality in which the work is performed, and not less than the general prevailing rate of hourly wages for legal holiday and overtime work, shall be paid to all laborers, workers and mechanics employed by or on behalf of any public body engaged in the construction or demolition of public works..."
- "...This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented..."

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## A. "General Prevailing Rate of Hourly Wages"

- Sec. 2.
  - The terms "general prevailing rate of hourly wages," "general prevailing rate of wages" or "prevailing rate of wages" when used in this Act mean the hourly cash wages plus fringe benefits for training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, health and welfare, insurance, 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. (Emphasis added.)

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## VI. What Workers Are Covered? Section 3

- Sec. 3 "...Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job, and laborers, workers and mechanics engaged in the transportation of materials and equipment to or from the site, but not including the transportation by the sellers and suppliers or the manufacture or processing of materials or equipment..."

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### Section 3

- Sec. 3 "...Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job..." (Emphasis Added)



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### Section 3

- Sec. 3 "...Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job, and laborers, workers and mechanics engaged in the transportation of materials and equipment to or from the site, but not including the transportation by the sellers and suppliers or the manufacture or processing of materials or equipment..." (Emphasis Added)



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### Recap

- "Public Works" or directly associated activity.
- "Construction" (includes maintenance & repair).
- Public Body or projects funded with public money.
- Payment of general prevailing rate of hourly wages.
- Prevailing wage includes wages & benefits.
- Non-governmental employees (includes sub-contractors).
- No dollar minimum.



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## VII. Obligations of the Public Body

- Yearly – Sections 4, 7, 8, 9
- Each Job – Sections 4, 5

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### A. Yearly Obligations

- Sections 4, 7, 8, 9
- These establish the requirement for a public body to ascertain the prevailing wage rate for various work classifications

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#### 1. Ascertain Prevailing Wages Section 9, Paragraph 1

- “To effectuate the purpose and policy of this Act each public body shall, during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages as defined in this Act and publicly post or keep available for inspection by any interested party in the main office of such public body its determination of such prevailing rate of wage and shall promptly file, no later than July 15 of each year, a certified copy thereof in the office of the Secretary of State at Springfield and the office of the Illinois Department of Labor.”
- Also see Sec. 4.

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### Section 9, Paragraph 2

- "The Department of Labor shall during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages for each county in the State. If a public body does not investigate and ascertain the prevailing rate of wages during the month of June as required by the previous paragraph, then the prevailing rate of wages for that public body shall be the rate as determined by the Department under this paragraph for the county in which such public body is located."

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### 2. Publication and Notice Section 9, Paragraph 4

- "The public body except for the Department of Transportation with respect to highway contracts shall within 30 days after filing with the Secretary of State, or the Department of Labor shall within 30 days after filing with such public body, publish in a newspaper of general circulation within the area that the determination is effective, a notice of its determination and shall promptly mail a copy of its determination to any employer, and to any association of employers and to any person or association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates."

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### 3. What If Prevailing Wage Is Revised Mid-Project?

- **Sec 4(d).** "...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."

– See P.A. 97-0964 – Notification requirements is met by including in contract that prevailing wage is established by IDOL and is available on IDOL website (mandatory).

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## Yearly Obligation Overview

- Pass Ordinance in June
- Publish
- Post or keep for inspection
- File certified copy by July 15<sup>th</sup> with Illinois Secretary of State and Illinois Department of Labor
- Mail to Requesting Employers
- Revise with Notice as Required\* (PA 97-0964, eff. 1/1/13)



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## B. Obligations for Each Job

### 1. Bid Specifications and Contract Notice

- **Sec. 4(a-1).** "The public body or other entity awarding the contract shall cause to be inserted in the project specifications and the contract 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."



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## Forms

### ILLINOIS DEPARTMENT OF LABOR ADVERTISEMENT FOR BIDS MODEL LANGUAGE

Section 4 of the Illinois Prevailing Wage Act requires that a Public Body, in its call for bids (advertisement) shall notify potential contractors that they will be required to compensate their employees at the general prevailing wage rate in the locality wherein the work is performed.

Sample language: Acceptable notification language.

1. All Contracts for the Construction of Public Works are subject to the Illinois Prevailing Wage Act (820 ILCS 130/1-12).

Or

2. Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act (820 ILCS 130/1-12).

### MODEL CONTRACT LANGUAGE

Not less than the prevailing rate of wages as determined by the (public body) or the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing work under this contract. All contractor's bonds shall include a provision as will guarantee the faithful performance of such prevailing wage clause as provided by this bid specification or contract.

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• This contract 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. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, *including but not limited to*, all wage, notice and record keeping duties.

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**2. Notice Absent Bid or Contract Section 4 (a-2)**

• "When a public body or other entity covered by this Act has awarded work to a contractor without a public bid, contract or project specification, such public body or other entity shall comply with subsection (a-1) by providing the contractor with written notice on the purchase order related to the work to be done or on a separate document indicating 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 on the project."

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**3. Liability Absent Notice Section 4 (a-3)**

• "Where a complaint is made and the Department of Labor determines that a violation occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided to the contractor by the public body or other entity, the Department of Labor shall order the public body or other entity to pay any interest, penalties or fines that would have been owed by the contractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the contractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act..."

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#### 4. Bond Requirements Section 4(c).

- "A public body or other entity shall also require in all contractor's and subcontractor's bonds that the contractor or subcontractor include such provision as will guarantee the faithful performance of such prevailing wage clause as provided by contract or other written instrument.



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#### 4. Bond Requirements Section 4(c).

- 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."



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#### 5. Prevailing Rule Changes During Project Section 4(d).

- "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."

– But see PA 97-0964

– Mandatory contract inclusion?



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## 6. Subcontract Notice and Related Liabilities Section 4(b).

- "It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. It shall also be mandatory upon each subcontractor to cause to be inserted into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. A contractor or subcontractor who fails to comply with this subsection (b) is in violation of this Act."

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## Section 4(b-1).

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

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## Section 4(b-2).

- "Where a complaint is made and the Department of Labor determines that a violation has occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided to the subcontractor by the contractor, the Department of Labor shall order the contractor to pay any interest, penalties, or fines that would have been owed by the subcontractor if proper written notice were provided. The failure by a contractor to provide written notice to a subcontractor does not relieve the subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act...However, if proper written notice was not provided to the contractor by the public body or other entity under this Section 4, the Department of Labor shall order the public body or other entity to pay any interest, penalties, or fines that would have been owed by the subcontractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act."

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7. Project Postings for Contractors  
Section 4(f).

- "It shall be mandatory upon the contractor or construction manager to whom a contract for public works is awarded to post, at a location on the project site of the public works that is easily accessible to the workers engaged on the project, the prevailing wage rates for each craft or type of worker or mechanic needed to execute the contract or project or work to be performed...."



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Section 4(f) cont.

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



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8. Certified Payroll Requirements –  
Sec. 5(a)(1) Any contractor and each subcontractor who participates in public works shall:

- "Make and keep, for a period of not less than 3 years from the date of the last payment on a contract or subcontract for public works, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day;"



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Sec. 5(a)(2).

- "No later than the tenth day of each calendar month file a certified payroll for the immediately preceding month with the public body in charge of the project. A certified payroll must be filed for only those calendar months during which construction on a public works project has occurred. The certified payroll shall consist of a complete copy of the records identified in paragraph (1) of this subsection (a), 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 this 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.(Emphasis added.)"

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Sec. 5(a)(2).

- "...Any contractor or subcontractor subject to this Act and any officer, employee, or agent of such contractor or subcontractor whose duty as such officer, employee, or agent it is to file such certified payroll who willfully fails to file such a certified payroll on or before the date such certified payroll is required by this paragraph to be filed and any person who willfully files a false certified payroll that is false as to any material fact is in violation of this Act and guilty of a Class A misdemeanor."

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8. Public Body Retention Obligations  
Section 5(a)(2)

- "...The public body in charge of the project shall keep the records submitted in accordance with this paragraph (2) of subsection (a) for a period of not less than 3 years from the date of the last payment for work on a contract or subcontract for public works."
- "...The records submitted in accordance with this paragraph (2) of subsection (a) shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act..."
- "...The public body shall accept any reasonable submissions by the contractor that meet the requirements of this Section..."

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## 9. Criminal Liabilities Under Section 6

- Any officer, agent or representative of any public body who wilfully violates, or wilfully fails to comply with, any of the provisions of this Act, and any contractor or subcontractor, and any officer, employee, or agent thereof, who as such officer, employee, or agent, has a duty to create, keep, maintain, or produce any record or document required by this Act to be created, kept, maintained, or produced who wilfully fails to create, keep, maintain, or produce such record or document as or when required by this Act, is guilty of a Class A misdemeanor.

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



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## 10. Violations – Sec. 11

- Any contract not meeting requirements is void
- Contractor cannot recover damages – recovery limited to cost of materials and labor supplied
- Applies to sub-contractors, too
- Worker has claim for shortage in wages
- Also can recover costs and attorney fees
- Penalty paid to IDOL – 20-50%
- Punitive damages to worker of 2% - 5% monthly



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## 11. Contract Bar

- Violations can lead to a bar from receiving public contracts



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## Required for Each Job

- Notice of Prevailing Wage Act in bid and contract or on purchase order or separate document
- Provision in contractor's bond
- Contractor is to include notice in subcontracts; ditto for subs to sub-subs.
- Notice by public body of wage revisions
- Posting by contractor
- Contractor to submit certified payroll
- Retention requirements for public body
- FOIA requirements for public body
- Retention requirements for contractor
- Potential liability to public body
  - Notice
  - Payroll certification
  - Retention/FOIA



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Contact the Illinois Department of  
Labor on the Web



<http://www.state.il.us/agency/idol/>



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