



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



August 5, 1991

FILE NO. 91-033

LABOR:  
Applicability of Prevailing  
Wage Act to Linked  
Deposit-Funded Projects

Honorable Patrick Quinn  
Treasurer, State of Illinois  
State House, Room 219  
Springfield, Illinois 62706

Dear Treasurer Quinn,

I have your letter wherein you inquire whether the Prevailing Wage Act (Ill. Rev. Stat. 1989, ch. 48, par. 39s-1 et seq.) is applicable to construction projects which are funded through the Treasurer's linked deposit program. For the reasons hereinafter stated, it is my opinion that the Prevailing Wage Act is not applicable to a construction project solely because its funding is facilitated through the linked

deposit program. Compliance with the provisions of the Prevailing Wage Act on such a project, however, may be made a condition of the agreement between the Treasurer and the financial institution which receives the deposit.

In general, the Treasurer is required by the Deposit of State Moneys Act (Ill. Rev. Stat. 1989, ch. 130, par. 20 et seq.) to receive proposals for deposits from financial institutions which meet the statutory criteria for the deposit of State moneys. The Treasurer may approve or reject any proposal, and is required to maintain a list of approved State depositories. With respect to any deposits made, the Treasurer may accept from such depositories as security for the deposits various obligations of the United States, local public entities, certificates of deposit or share certificates. The Treasurer's linked deposit program is authorized by section 7 of the Deposit of State Moneys Act (Ill. Rev. Stat. 1989, ch. 130, par. 26), which provides, in pertinent part:

"\* \* \* The State Treasurer may, in his discretion, accept a proposal from an eligible institution which provides for a reduced rate of interest provided that such institution documents the use of deposited funds for community development projects."

Based upon the information provided by your office, it appears that all of the general provisions of the Act concerning the eligibility of institutions for deposits, the making of proposals and the posting of security for deposits also apply

to linked deposits. With respect to a linked deposit, however, the Treasurer enters into an agreement with the institution making the proposal which provides for a reduced rate of interest to be paid upon the deposited State money, in return for the institution lending a like amount of money to a specific local entity for the purpose of financing an approved development project. The loan recipient may be either a public or a private entity, and the project may ultimately be intended for either public or private use.

Section 3 of the Prevailing Wage Act (Ill. Rev. Stat. 1989, ch. 48, par. 39s-3) provides that a contractor engaged in the construction of public works on behalf of a public body must pay workers not less than the prevailing rate of hourly wages for work on public works in the locality in which the work is performed. Section 2 of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 39s-2) contains definitions of terms used in the Act, including:

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'Public works' means all fixed works constructed for public use by any public body, other than work done directly by any public utility company, whether or not done under public supervision or direction, 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 issued under the Industrial Project Revenue Bond Act (Article 11, Division 74 of the Illinois Municipal Code), as now or hereafter amended, the Industrial Building Revenue Bond Act, as now or hereafter amended, the Illinois Development Finance Authority Act,

as now or hereafter amended, or the Build Illinois Bond Act, as now or hereafter amended, and all projects financed in whole or in part with loans or other funds made available pursuant to The Build Illinois Act, as now or hereafter amended.

\* \* \*

'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, authorized by law to construct public works or to enter into any contract for the construction of public works, 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.

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The issue, with respect to your inquiry, is whether the financing of a project through the linked deposit program brings the project within the definition of "public works" and makes the loan recipient a "public body", for purposes of the Act. In my opinion, the fact that a financial institution is enabled by a deposit of State funds to make a private loan to an entity which is not otherwise a "public body" does not transform that entity into a "public body", or the project into a "public work".

A non-governmental institution may be considered a public body, for purposes of the Prevailing Wage Act, if it is supported in whole or in part by public funds. Thus, it is

clear that the Prevailing Wage Act will be applicable when the entity receiving financing comes within the definition of "public body", because it is otherwise supported by public funds. (See, People ex rel. Bernardi v. Illini Community Hospital (1987), 163 Ill. App. 3d 987; Opportunity Center of Southeastern Illinois, Inc. v. Bernardi (1990), 204 Ill. App. 3d 945.) Any fixed work constructed by such an entity and upon which public money is expended will be subject to the requirements of the Act. Opportunity Center of Southeastern Illinois, Inc. v. Bernardi (1990), 204 Ill. App. 3d 945, 951.

The mere fact that public funds are used in the financing of a project, however, does not necessarily mean that the Prevailing Wage Act will be applicable to the project. Thus, in Zickuhr v. Bowling (1981), 97 Ill. App. 3d 534, a case decided prior to the effective date of Public Act 86-799, which expressly made projects funded under the Industrial Project Revenue Bond Act "public works", it was held that a warehouse built by a private corporation but financed under the Industrial Project Revenue Bond Act was not for public use and that the Prevailing Wage Act was therefore inapplicable to the project.

A project constructed by a private entity but financed through linked deposit funds is analogous to that which was considered by the court in Zickuhr v. Bowling. When linked deposit financing is used, the funds loaned are not public

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funds. The public moneys deposited are insured or fully secured, and are not at risk. In the event of default by the borrower, it is the lending institution, not the State, which must bear any loss. The State receives interest on the deposited funds and may withdraw them in accordance with the terms of the deposit. Since there is no expenditure of public funds, it is my opinion that the project does not become a "public work", for purposes of the Prevailing Wage Act, solely because the financing is facilitated by a linked deposit, unless the entity constructing the project is otherwise a "public body" as defined therein.

I believe, however, that it would be permissible to secure compliance with the terms of the Prevailing Wage Act by linked deposit loan recipients through the agreement between the Treasurer and the financial institution which receives the deposit. Under section 7 of the Deposit of State Moneys Act, it is within the discretion of the Treasurer whether to accept a proposal for a linked deposit. There is no statutory limitation upon the terms that the Treasurer may require in the agreement governing the deposit. Consequently, the acceptance of a proposal could be made contingent upon the financial institution requiring the loan recipient to comply with the terms of the Prevailing Wage Act in its construction, even though the project would not ordinarily be subject to the Act.

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Failure to comply with the terms of the Act would constitute a breach of the agreement between the financial institution and the loan recipient, and would be enforceable as such.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS  
ATTORNEY GENERAL