



#### OFFICERS

Tim Drea, President

Pat Devaney, Secretary Treasurer

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Illinois AFL-CIO  
Response to Draft Program Guidebook Feedback Request  
Illinois Power Agency  
March 31, 2023

The following comments are submitted by the Illinois AFL-CIO in response to the Request for Stakeholder Feedback issued by the Illinois Power Agency (IPA) concerning the draft Program Guidebook (Guidebook) for the Illinois Shines Adjustable Block Program (Program).

The Illinois AFL-CIO is a state labor federation of over 1,500 affiliated unions representing nearly 900,000 workers in Illinois. The Illinois AFL-CIO is a full-service labor federation providing legislative and political support to unions and their members. Our members work in thousands of occupations and statewide in every Illinois community. Our membership is wide and diverse, with electricians, laborers, teachers, first responders, health care workers, transit workers and many more who share the common goal of working toward economic security and a fair economy. To that end, the Illinois AFL-CIO is uniquely positioned to respond with feedback on the Guidebook.

As you know, the Program Administrator maintains a public list of Approved Vendors and Designees that appears on the Program's website for public transparency. The Illinois AFL-CIO has discovered that the draft Guidebook for the Program allows Designees and Approved Vendors to opt out of being included on the public list.<sup>1</sup> This is problematic for several reasons as stated herein, namely, not being fully transparent regarding "Public Works" projects.

I. Prevailing Wage Act, (820 ILCS 130/2)

As you are aware, the Illinois Power Agency Act states "each facility shall be subject to the prevailing wage requirements included in the Prevailing Wage Act." (20 ILCS 3855/1-75(Q)(1)). Additionally, "[IPA] shall require verification that all construction performed on the facility by the renewable energy credit delivery contract holder, its contractors, or its subcontractors relating to construction of the facility is performed by construction employees receiving an amount for that work equal to or greater than the general prevailing rate, as that term is defined in Section 3 of the [IPWA]." *Id.* The purpose of the IPWA is to compel legal entities to ascertain and pay prevailing wages on public projects. *Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc.*, 358 Ill.App. 3d 638 (1st Dist. 2005).

Section 2 of the Illinois Prevailing Wage Act (IPWA) states:

"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

<sup>1</sup> Draft Program Guidebook for the Illinois Shines program pg. 50, 63.

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... "Public works" also includes electric vehicle charging station projects financed pursuant to the Electric Vehicle Act and renewable energy projects required to pay the prevailing wage pursuant to the Illinois Power Agency Act. (820 ILCS 130/2).

"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... Id.

Thus, the IPA is considered a public body whereby construction under the Program is subject to the IPWA. Similarly, the construction performed by private entities paid for in whole or in part with Program funding is subject to the IPWA.

To properly effectuate the IPWA, it is clear why various records required under the IPWA are considered public records to be made available for inspection and copying pursuant to the Illinois Freedom of Information Act (FOIA) (see 820 ILCS 130/5(a)(2)). The purpose behind FOIA is well established.

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 ... Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely ... and monitoring government to ensure that it is being conducted in the public interest. 5 ILCS 140/1.

FOIA not only requires records held by the public body to be subject to the Act, but similarly requires records held by private entities with whom a public body has contracted with and that which relate to a governmental function to be considered public. *Id.* at 7(2). In interpreting this section, the Illinois Supreme Court concluded (*Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 62 (internal citations omitted)):

The General Assembly's intent to respond to the growing concern related to the privatization of governmental responsibilities and its impact on the right of public information access and transparency ... when governmental functions are privatized, there is a risk of decreased accountability and transparency ... [T]he purpose of the FOIA ... is expressly based on a policy of full, complete disclosure regarding the affairs of government to promote accountability in government and an informed citizenry. ... [S]ection 7(2) ensures that governmental entities must not be permitted to avoid their disclosure obligations by contractually delegating their responsibility to a private entity.

Both the IPWA and FOIA, including applicable interpretations, make clear the intent of the State of Illinois to promote transparency and accountability of the government and enforce the obligation of governments to operate openly and provide public records.

To that end, the Guidebook for the Program states:



The purpose of Designee registration requirement is to increase Program *transparency* [emphasis added] by creating a searchable database of participating organizations on both the ABP and Illinois Shines websites. Potential customers will be able to verify that an entity representing the Program is indeed a registered participant (and likewise be able to review if the entity is listed on the complaint or disciplinary databases).

Furthermore, according to the IPA Long-Term Renewable Resources Procurement Plan<sup>2</sup>, section 2.8.1.3. states, “the program website also features a program dashboard updated daily to provide stakeholders with daily updates on block activity, project information spreadsheets to provide increased transparency about photovoltaic projects supported through the Adjustable Block Program, and a map of projects supported through the program to date”. Transparency being the clear intent of the website’s approved project information.

It is the opinion of the Illinois AFL-CIO that by allowing Designees and Approved Vendors to opt out of the public list and not publishing all Designees and Approved Vendors on its website, the IPA is not fulfilling its obligations under the Program or Illinois Shine. Stakeholders and interested parties would be unable to track projects by Designee or Approved Vendor to determine whether the IPWA, or the Program for that matter, are being complied with. This makes it impossible for interested parties to have any remedies, as is their right, under either the IPWA or the Program.

As records that are already subject to FOIA, and in the interest of transparency and accountability, Designees and Approved Vendors must be made public and readily available. To do so would not be unduly burdensome as this information is already acquired by the IPA and made available upon request. However, in the time such a request is able to be made to and fulfilled by the IPA, a project may already be completed whereby any potential affected parties have no way of knowing whether statutes were complied with, much less whether remedies are available.

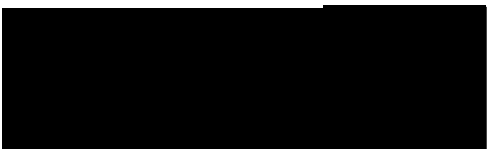
With public mistrust of government growing in Illinois, and with such a strong policy toward governmental transparency, now is the time to improve standards and expand oversight to protect workers, consumers, and taxpayers. Continuing to publish all Designees and Approved Vendors would allow for the monitoring of construction to ensure compliance with prevailing wage and safety regulations.

For these reasons, the Illinois AFL-CIO requests all Designees and Approved Vendors applying to the IPA Program continued to be published in accordance with all state and local regulations.

If you have any questions, please contact me at your earliest convenience.

Sincerely,

  
Tim Drea  
President

  
Pat Devaney  
Secretary Treasurer

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<sup>2</sup> [2022-long-term-plan-23-august.pdf \(illinoisabp.com\)](#)