

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2860 Session of
1998

INTRODUCED BY BARD, KENNEY, DeLUCA, ARGALL, SEYFERT, THOMAS,
BELARDI, YOUNGBLOOD, GIGLIOTTI, BELFANTI, BENNINGHOFF,
SEMMELE, MARSICO, ORIE, BOSCOLA, DALLY, CAWLEY, CORRIGAN,
WALKO, SERAFINI, ROBERTS, HARHAI, HENNESSEY, READSHAW,
PETRONE, HORSEY AND MILLER, OCTOBER 6, 1998

REFERRED TO COMMITTEE ON INTERGOVERNMENTAL AFFAIRS,
OCTOBER 6, 1998

AN ACT

1 Requiring all public bodies, including the Commonwealth, its
2 agencies, authorities and political subdivisions, to include
3 in certain contracts a provision that if certain products are
4 to be used in the performance of the contract, only those
5 products produced in this Commonwealth or the United States
6 shall be used; and providing for a cause of action and for
7 civil penalties.

8 The General Assembly finds and declares as follows:

9 (1) The Commonwealth is one of the leading manufacturing
10 states in the United States.

11 (2) Manufacturing constitutes a major industry in this
12 Commonwealth and, as such, provides the jobs and family
13 incomes for tens of thousands of people of this Commonwealth.

14 (3) Substantial revenues are generated for the
15 Commonwealth and its political subdivisions as a result of
16 manufactured products.

17 (4) The Commonwealth's public policy for many years has
18 been to aid and support the development and expansion of the

1 manufactured products in this Commonwealth in order to foster
2 the economic well-being of this Commonwealth and its people.

3 (5) The economy and general welfare of this Commonwealth
4 and its people, as well as the economy, general welfare and
5 national security of the United States, are inseparably
6 related to the preservation of the manufacturing industry in
7 this Commonwealth and in many other states.

8 (6) The General Assembly therefore declares it to be the
9 public policy of the Commonwealth that all public bodies and
10 officers should at all times aid and promote the development
11 of manufactured products in this Commonwealth in order to
12 stimulate and improve the economic well-being of this
13 Commonwealth and its people.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Short title.

17 This act shall be known and may be cited as the Jobs
18 Preservation Act.

19 Section 2. Purpose.

20 This act shall be deemed to be an exercise of the police
21 powers of the Commonwealth for the protection of the health,
22 safety and general welfare of the people of this Commonwealth.

23 Section 3. Definitions.

24 The following words and phrases when used in this act shall
25 have the meanings given to them in this section unless the
26 context clearly indicates otherwise:

27 "Contract." An agreement between a public body and a
28 contractor for the purchase or lease of any manufactured product
29 for a public use, the value of which exceeds \$2,000 in the
30 aggregate.

1 "Contractor." A person who enters into a contract with a
2 public body involving manufactured products.

3 "Manufactured product" or "product." Any tangible good or
4 supply that is assembled, produced, mined, grown or performed in
5 accordance with the laws of this Commonwealth.

6 "Person." An individual, corporation, partnership, business
7 unit or association.

8 "Public body."

9 (1) The Commonwealth and any of its departments, boards,
10 commissions, agencies and authorities now in existence or
11 hereafter created or organized by the Commonwealth.

12 (2) Counties, cities, boroughs, townships, school
13 districts and any other governmental unit or district.

14 (3) Any municipal, school or other authority now in
15 existence or hereafter created or organized by the
16 Commonwealth.

17 (4) A public body, authority, officer, agency or
18 instrumentality, whether exercising a governmental or
19 proprietary function.

20 "Public use." The application of manufactured products to
21 the furtherance of a legitimate governmental purpose.

22 "Responsible manufacturer." A manufacturer that is able to
23 demonstrate current compliance with all applicable Federal and
24 State wage, health and safety laws.

25 "United States." The fifty states of the United States of
26 America.

27 Section 4. Contract provision.

28 (a) General rule.--Every public body shall require that
29 every contract as defined in this act contain a provision that
30 only products manufactured in this Commonwealth by a responsible

1 manufacturer shall be used or supplied in the performance of the
2 contract or subcontracts thereunder.

3 (b) Insufficient quantities in Commonwealth.--Subsection (a)
4 shall not apply where the public body receives insufficient
5 responses to requests for proposals or bids to provide products
6 manufactured in this Commonwealth. The head of the public body
7 shall certify, where applicable, that the lack of bidding
8 activity demonstrates insufficient quantity of production in
9 this Commonwealth to meet the requirements of the contract.

10 (c) United States manufacturing.--If a sufficient showing is
11 made under subsection (b), the public body shall require that
12 the contract contain a provision that manufactured products
13 unavailable from within this Commonwealth must be manufactured
14 in the United States by a responsible manufacturer.

15 (d) Insufficient quantities in United States.--The
16 restrictions of subsections (a) and (c) shall not apply where
17 the head of the public body demonstrates in writing that
18 manufactured products for a contract are not produced in the
19 United States in sufficient quantities to meet the requirements
20 of the contract.

21 Section 5. Documentation for payment.

22 (a) Unidentified products.--No public body shall authorize,
23 provide for or make any payments to any person under any
24 contract containing the provision required by section 4 when
25 unidentified manufactured products are supplied under a contract
26 unless:

27 (1) The public body is in receipt of documentation,
28 including, but not limited to, invoices or bills of lading
29 which certify that the product was manufactured in this
30 Commonwealth or, where applicable, the United States.

1 (2) The public body establishes that the contractor has
2 fully complied with section 4.

3 Manufactured products are unidentified when their place of
4 manufacture is not visibly evident on the products.

5 (b) Identifiable products.--If manufactured products are
6 identifiable on their face, the contractor must submit
7 certification which satisfies the public body that the products
8 satisfy the provisions required by section 4.

9 (c) Recovery of improper payments.--Any payments made to a
10 contractor by a public body in violation of this section shall
11 be recoverable directly from the contractor who did not comply
12 with section 4 by either the public body or the Attorney
13 General.

14 (d) Future bids prohibited.--In addition to the withholding
15 of payments under subsection (c), any person who willfully
16 violates any provision of this act shall be prohibited from
17 submitting any bids to any public agency for any contract for a
18 period of five years from the date of the determination that a
19 violation has occurred.

20 (e) Future work or supplies prohibited.--If a person who
21 violates the provisions of section 4 is a manufacturer or
22 supplier, that person shall be prohibited from performing any
23 work or supplying any manufactured products or goods to a public
24 body for a period of five years from the date of the
25 determination that a violation has occurred.

26 (f) Administrative law and procedure.--The provisions of 2
27 Pa.C.S. (relating to administrative law and procedure) apply to
28 decisions by public bodies that a person has violated section 4.
29 Section 6. Cause of action.

30 (a) General rule.--Persons aggrieved by the application of

1 section 4(b) or (d) may file a petition for relief before the
2 Board of Claims. The petition must allege that the head of the
3 public body has insufficient evidence upon which to base the
4 determination that the manufactured product is produced in
5 insufficient quantities in this Commonwealth or the United
6 States, as applicable.

7 (b) Civil penalty.--The Board of Claims shall have the
8 authority to impose the civil penalty set forth in section 7.
9 Section 7. Civil penalty.

10 Public officials or public employees who engage in material
11 misrepresentation of facts related to a determination made
12 pursuant to section 4 shall be personally liable for a fine of
13 not less than \$5,000. Prior to imposition of a civil penalty
14 under this act, the public official or public employee shall be
15 afforded an opportunity for a hearing under 2 Pa.C.S. (relating
16 to administrative law and procedure).

17 Section 8. Construction of act.

18 (a) Remedial legislation.--This act is intended as remedial
19 legislation designed to promote the general welfare and
20 stimulate the economy of this Commonwealth and its people. Each
21 and every provision in this act is intended to be construed in a
22 manner which will best effectuate that purpose. No provision of
23 this act is intended to receive a strict or limited
24 construction.

25 (b) Federal funds.--The provisions of this act shall not be
26 applicable when application of the act may jeopardize the
27 receipt of Federal funds.

28 Section 9. Repeals.

29 All acts and parts of acts are repealed insofar as they are
30 inconsistent with this act.

1 Section 10. Applicability.

2 This act shall not apply to any contract awarded pursuant to
3 an invitation for bids issued on or before the effective date of
4 this act.

5 Section 11. Effective date.

6 This act shall take effect immediately.