

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1329 Session of 2011

INTRODUCED BY F. KELLER, AUMENT, BENNINGHOFF, BLOOM, BOYD, CAUSER, CLYMER, CUTLER, DENLINGER, EVERETT, FLECK, GILLEN, GROVE, HARRIS, HICKERNELL, KAUFFMAN, KRIEGER, LAWRENCE, MILLER, MILNE, MOUL, OBERLANDER, PERRY, PICKETT, REICHLEY, ROAE, ROCK, ROSS, SACCONI, SAYLOR, SCHRODER, CREIGHTON, SWANGER, METCALFE, MAHER, TALLMAN AND KNOWLES, APRIL 8, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 13, 2012

AN ACT

1 Amending the act of August 15, 1961 (P.L.987, No.442), entitled
2 "An act relating to public works contracts; providing for
3 prevailing wages; imposing duties upon the Secretary of Labor
4 and Industry; providing remedies, penalties and repealing
5 existing laws," raising the threshold for applicability; ←
6 FURTHER PROVIDING FOR SPECIFICATIONS AND FOR DUTY OF
7 SECRETARY; AND PROVIDING FOR PROTECTION OF WORKMEN.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Section 2 of the act of August 15, 1961 (P.L.987,~~ ←
11 ~~No.442), known as the Pennsylvania Prevailing Wage Act, amended~~
12 ~~August 9, 1963 (P.L.653, No.342), is amended to read:~~

13 SECTION 1. SECTIONS 2, 3 AND 7 OF THE ACT OF AUGUST 15, 1961 ←
14 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE
15 ACT, AMENDED AUGUST 9, 1963 (P.L.653, NO.342), ARE AMENDED TO
16 READ:

17 Section 2. Definitions.--As used in this act--

18 (1) "Department" means Department of Labor and Industry of

1 the Commonwealth of Pennsylvania.

2 (2) "Locality" means any political subdivision, or
3 combination of the same, within the county in which the public
4 work is to be performed. When no workmen for which a prevailing
5 minimum wage is to be determined hereunder are employed in the
6 locality, the locality may be extended to include adjoining
7 political subdivisions where such workmen are employed in those
8 crafts or trades for which there are no workmen employed in the
9 locality as otherwise herein defined.

10 (3) "Maintenance work" means the repair of existing
11 facilities when the size, type or extent of such facilities is
12 not thereby changed or increased.

13 (4) "Public body" means the Commonwealth of Pennsylvania,
14 any of its political subdivisions, any authority created by the
15 General Assembly of the Commonwealth of Pennsylvania and any
16 instrumentality or agency of the Commonwealth of Pennsylvania.

17 (5) "Public work" means construction, reconstruction,
18 demolition, alteration and/or repair work other than maintenance
19 work, done under contract and paid for in whole or in part out
20 of the funds of a public body where the estimated cost of the
21 total project is in excess of [twenty-five thousand dollars
22 (\$25,000)] one hundred eighty-five thousand dollars (\$185,000)
23 as adjusted on March 1 of each year to conform to increases or
24 decreases in the Consumer Price Index as published by the United
25 States Department of Labor, Bureau of Labor Statistics for the
26 previous calendar year for urban wage earners in the
27 Pennsylvania, New Jersey, Delaware and Maryland area combined,
28 but shall not include work performed under a rehabilitation or
29 manpower training program.

30 (6) "Secretary" means the Secretary of Labor and Industry or

1 his duly authorized deputy or representative.

2 (7) "Workman" includes laborer, mechanic, skilled and semi-
3 skilled laborer and apprentices employed by any contractor or
4 subcontractor and engaged in the performance of services
5 directly upon the public work project, regardless of whether
6 their work becomes a component part thereof, but does not
7 include material suppliers or their employees who do not perform
8 services at the job site.

9 (8) "Work performed under a rehabilitation program," means
10 work arranged by and at a State institution primarily for
11 teaching and upgrading the skills and employment opportunities
12 of the inmates of such institutions.

13 (9) "Advisory Board" means the board created by section 2.1
14 of this act.

15 (10) "Appeals Board" means the board created by section 2.2
16 of this act.

17 SECTION 3. SPECIFICATIONS.--(A) THE SPECIFICATIONS FOR
18 EVERY CONTRACT FOR ANY PUBLIC WORK TO WHICH ANY PUBLIC BODY IS A
19 PARTY, SHALL CONTAIN A PROVISION STATING THE MINIMUM WAGE RATE
20 THAT MUST BE PAID TO THE WORKMEN EMPLOYED IN THE PERFORMANCE OF
21 THE CONTRACT.

22 (B) NO PERSON SHALL INTENTIONALLY DIVIDE A CONSTRUCTION
23 PROJECT INTO MULTIPLE PARTS FOR THE PURPOSES OF CIRCUMVENTING
24 THIS ACT.

25 SECTION 7. DUTY OF SECRETARY.--(A) THE SECRETARY SHALL,
26 AFTER CONSULTATION WITH THE ADVISORY BOARD, DETERMINE THE
27 GENERAL PREVAILING MINIMUM WAGE RATE IN THE LOCALITY IN WHICH
28 THE PUBLIC WORK IS TO BE PERFORMED FOR EACH CRAFT OR
29 CLASSIFICATION OF ALL WORKMEN NEEDED TO PERFORM PUBLIC WORK
30 CONTRACTS DURING THE ANTICIPATED TERM THEREOF: PROVIDED,

1 HOWEVER, THAT EMPLOYER AND EMPLOYEE CONTRIBUTIONS FOR EMPLOYEE
2 BENEFITS PURSUANT TO A BONA FIDE COLLECTIVE BARGAINING AGREEMENT
3 SHALL BE CONSIDERED AN INTEGRAL PART OF THE WAGE RATE FOR THE
4 PURPOSE OF DETERMINING THE MINIMUM WAGE RATE UNDER THIS ACT.
5 NOTHING IN THIS ACT, HOWEVER, SHALL PROHIBIT THE PAYMENT OF MORE
6 THAN THE GENERAL PREVAILING MINIMUM WAGE RATE TO ANY WORKMAN
7 EMPLOYED ON PUBLIC WORK. THE SECRETARY SHALL FORTHWITH GIVE
8 NOTICE BY MAIL OF ALL DETERMINATIONS OF GENERAL PREVAILING
9 MINIMUM WAGE RATES MADE PURSUANT TO THIS SECTION TO ANY
10 REPRESENTATIVE OF ANY CRAFT, ANY EMPLOYER OR ANY REPRESENTATIVE
11 OF ANY GROUP OF EMPLOYERS, WHO SHALL IN WRITING REQUEST THE
12 SECRETARY SO TO DO.

13 (B) THE SECRETARY SHALL PROVIDE WRITTEN NOTICE ACKNOWLEDGING
14 RECEIPT OF MATERIALS SUBMITTED BY ANY EMPLOYER, LABOR
15 ORGANIZATION OR OTHER ASSOCIATION OR ORGANIZATION REPRESENTING A
16 GROUP OF EMPLOYERS OR EMPLOYEES FOR THE PURPOSES OF INCLUSION IN
17 THE CALCULATION OF THE PREVAILING WAGE RATE UNDER SUBSECTION
18 (A). IF AFTER REVIEW THE SECRETARY DETERMINES THAT THE SUBMITTED
19 MATERIAL IS INCOMPLETE OR UNACCEPTABLE FOR INCLUSION IN THE
20 CALCULATION OF THE PREVAILING WAGE RATE, THE SECRETARY SHALL
21 SEND A WRITTEN STATEMENT BY MAIL TO THE EMPLOYER, LABOR
22 ORGANIZATION OR OTHER ASSOCIATION OR ORGANIZATION REPRESENTING A
23 GROUP OF EMPLOYERS OR EMPLOYEES PROVIDING THE REASONS THE
24 INFORMATION CANNOT BE USED.

25 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

26 SECTION 13.1. PROTECTION OF WORKMEN.--(A) NO CONTRACTOR OR
27 SUBCONTRACTOR MAY DISCHARGE, THREATEN OR OTHERWISE DISCRIMINATE
28 OR RETALIATE AGAINST A WORKMAN REGARDING THE EMPLOYEE'S
29 COMPENSATION, TERMS, CONDITIONS, LOCATION OR PRIVILEGES OF
30 EMPLOYMENT BECAUSE THE WORKMAN EXERCISED HIS RIGHTS UNDER


1 SECTION 11(B) OR 13.

2 (B) NO CONTRACTOR OR SUBCONTRACTOR MAY DISCHARGE, THREATEN
3 OR OTHERWISE DISCRIMINATE OR RETALIATE AGAINST AN EMPLOYE
4 REGARDING THE EMPLOYE'S COMPENSATION, TERMS, CONDITIONS,
5 LOCATION OR PRIVILEGE OF EMPLOYMENT BECAUSE THE EMPLOYE IS
6 REQUESTED BY THE SECRETARY TO PARTICIPATE IN AN INVESTIGATION,
7 HEARING OR INQUIRY HELD BY THE SECRETARY OR IN A COURT ACTION.

8 (C) (1) A WORKMAN WHO ALLEGES A VIOLATION OF THIS ACT MAY
9 BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR
10 APPROPRIATE INJUNCTIVE RELIEF OR DAMAGES, OR BOTH, WITHIN ONE
11 HUNDRED EIGHTY DAYS AFTER THE OCCURRENCE OF THE ALLEGED
12 VIOLATION.

13 (2) IT SHALL BE A DEFENSE TO AN ACTION UNDER THIS SECTION IF
14 THE DEFENDANT PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
15 ACTION BY THE EMPLOYER OCCURRED FOR SEPARATE AND LEGITIMATE
16 REASONS, WHICH ARE NOT MERELY PRETEXTUAL.

17 (D) A COURT, IN RENDERING A JUDGMENT IN AN ACTION BROUGHT
18 UNDER THIS ACT, SHALL ORDER, AS THE COURT CONSIDERS APPROPRIATE,
19 REINSTATEMENT OF THE EMPLOYE, THE PAYMENT OF BACK WAGES, FULL
20 REINSTATEMENT OF FRINGE BENEFITS AND SENIORITY RIGHTS, DAMAGES
21 OR A COMBINATION OF THE REMEDIES. A COURT MAY ALSO AWARD THE
22 COMPLAINANT ALL OR A PORTION OF THE COSTS OF LITIGATION,
23 INCLUDING REASONABLE ATTORNEY FEES AND WITNESS FEES, IF THE
24 COURT DETERMINES THAT THE AWARD IS APPROPRIATE.

25 Section ~~2~~ 3. The amendment of section 2 of the act shall 
26 apply to contracts entered into on or after the effective date
27 of this section.

28 Section ~~3~~ 4. This act shall take effect in 60 days. 