
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2644 Session of
1992

INTRODUCED BY PISTELLA, PETRARCA, DALEY, BILLOW, PETRONE, MELIO,
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MAY 4, 1992

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 4, 1992

AN ACT

1 Regulating janitorial and maintenance service contracts entered
2 into by the Commonwealth; and providing for additional duties
3 of the Department of Labor and Industry.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Service
8 Contract Law.

9 Section 2. Definitions.

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

13 "Commonwealth." Includes all departments, agencies, boards
14 and commissions and all independent agencies, boards and
15 commissions.

16 "Department." The Department of Labor and Industry of the
17 Commonwealth.

1 "Service employee." Any person engaged in the performance of
2 a contract entered into by the Commonwealth, whether negotiated
3 or advertised, the principal purpose of which is to furnish
4 janitorial and maintenance services to the Commonwealth and
5 shall include all such persons regardless of any contractual
6 relationship that may be alleged to exist between a contractor
7 or subcontractor and such persons.

8 Section 3. Contract provisions.

9 Every contract and any bid specification therefor entered
10 into by the Commonwealth in excess of \$2,500, whether negotiated
11 or advertised, the principal purpose of which is to furnish
12 janitorial and maintenance services to the Commonwealth through
13 the use of service employees, shall contain the following:

14 (1) A provision specifying the minimum monetary wages to
15 be paid the various classes of service employees in the
16 performance of the contract or any subcontract thereunder as
17 determined by the department in accordance with prevailing
18 rates for such employees in the locality or, where a
19 collective bargaining agreement covers any such service
20 employees in accordance with the rates for such employees
21 provided for in such agreement, including prospective wage
22 increases provided for in such agreement as a result of
23 arm's-length negotiations. In no case shall such wages be
24 lower than the minimum specified in section 4.

25 (2) A provision specifying the fringe benefits to be
26 furnished the various classes of service employees engaged in
27 the performance of the contract or any subcontract
28 thereunder, as determined by the department to be prevailing
29 for such employees in the locality or, where a collective
30 bargaining agreement covers any such service employees to be

provided for in such agreement, including prospective fringe benefit increases provided for in such agreement as a result of arm's-length negotiations. These fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by law to be provided by the contractor or subcontractor. The obligation under this paragraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the department.

(3) A provision that no part of the services covered by this act will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.

(4) A provision that on the date a service employee commences work on a contract to which this act applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2), or will post a notice of the required compensation in a prominent place at the worksite.

Section 4. Minimum wage.

No contractor who enters into any contract with the

1 Commonwealth, the principal purpose of which is to furnish
2 janitorial or maintenance services through the use of service
3 employees and no subcontractor thereunder, shall pay any of his
4 employees engaged in performing work on such contracts less than
5 the minimum wage specified under the applicable Federal or State
6 minimum wage law.

7 Section 5. Violations.

8 (a) Liability.--Any violation of any of the contract
9 stipulations required by section 3(1) or (2) or by section 4
10 shall render the party responsible therefor liable for a sum
11 equal to the amount of any deductions, rebates, refunds or
12 underpayment of compensation due to any employee engaged in the
13 performance of such contract. As much of the accrued payment due
14 on the contract or any other contract between the same
15 contractor and the Commonwealth may be withheld as is necessary
16 to pay such employees. Such withheld sums shall be held in a
17 deposit fund. On order of the department, any compensation which
18 the head of the agency or the department has found to be due
19 pursuant to this act shall be paid directly to the underpaid
20 employees from any accrued payments withheld under this act.

21 (b) Enforcement.--In accordance with regulations prescribed
22 pursuant to section 6, the agency head or the department is
23 hereby authorized to carry out the provisions of this section.

24 (c) Cancellation of contract.--When a violation is found of
25 any contract stipulation, the contract is subject upon written
26 notice to cancellation by the contracting agency, whereupon the
27 Commonwealth may enter into other contracts or arrangements for
28 the completion of the original contract, charging any additional
29 cost to the original contractor.

30 Section 6. Rules and regulations.

1 (a) General rule.--The department shall, in the manner
2 provided by law, promulgate the rules and regulations necessary
3 to carry out this act.

4 (b) Variances and exemptions.--The department may provide
5 such reasonable limitations and may make such rules and
6 regulations allowing reasonable variations, tolerances and
7 exemptions to and from any or all provisions of this act, other
8 than section 9, but only in special circumstances where it
9 determines that such limitation, variation, tolerance or
10 exemption is necessary and proper in the public interest or to
11 avoid the serious impairment of government business and is in
12 accord with the remedial purpose of this act to protect
13 prevailing labor standards.

14 (c) Successor provision.--

15 (1) No contractor or subcontractor under a contract,
16 which succeeds a contract subject to this act and under which
17 substantially the same services are furnished, shall pay any
18 service employee under such contract less than the wages and
19 fringe benefits including accrued wages and fringe benefits
20 and any prospective increases in wages and fringe benefits
21 provided for in a collective bargaining agreement as a result
22 of arm's-length negotiations to which such service employees
23 would have been entitled if they were employed under the
24 predecessor contract. In any of the foregoing circumstances
25 such obligations shall not apply if the department finds
26 after a hearing in accordance with regulations adopted by the
27 department that such wages and fringe benefits are
28 substantially at variance with those which prevail for
29 services of a character similar in the locality.

30 (2) The employees of a predecessor contractor or

1 subcontractor shall have the right of first refusal for any
2 similar employment position made available by the successor
3 contractor or subcontractor.

4 (d) Term of contracts.--Contracts to which this act applies
5 may, if authorized by the department, be for any term of years
6 not exceeding five, if each such contract provides for the
7 periodic adjustment of wages and fringe benefits pursuant to
8 future determinations issued in the manner prescribed in section
9 3 no less often than once every two years during the term of the
10 contract covering the various classes of service employees.

11 Section 7. Additional enforcement provisions.

12 (a) Lists.--The department is directed to distribute a list
13 to all agencies of the Commonwealth giving the names of persons
14 or firms that the agencies or the department have found to have
15 violated this act. Unless the department otherwise recommends
16 because of unusual circumstances, no contract of the
17 Commonwealth shall be awarded to the persons or firms appearing
18 on this list or to any firm, corporation, partnership or
19 association in which such persons or firms have a substantial
20 interest until three years have elapsed from the date of
21 publication of the list containing the names of such persons or
22 firms.

23 (b) Action by Commonwealth.--If the accrued payments
24 withheld under the terms of the contract are insufficient to
25 reimburse all service employees with respect to whom there has
26 been a failure to pay the compensation required pursuant to this
27 act, the Commonwealth may bring action against the contractor,
28 subcontractor or any sureties in any court of competent
29 jurisdiction to recover the remaining amount of underpayments.
30 Any sums thus recovered by the Commonwealth shall be held in the

1 deposit fund and shall be paid, on order of the department,
2 directly to the underpaid employee or employees. Any sum not
3 paid to an employee because of inability to do so within three
4 years shall be deposited in the General Fund.

5 (c) Actions by employees and their representatives.--

6 (1) Individual employees and employee bargaining
7 representatives shall have a civil right of action to enforce
8 this act.

9 (2) Attorney fees may, in the discretion of the court,
10 be awarded to a prevailing plaintiff.

11 (3) An action brought under this subsection shall be
12 commenced not later than three years following the time when
13 the wages or other benefits in dispute were due and payable.

14 (4) An action under this subsection may be brought
15 against any of the following:

16 (i) The Commonwealth.

17 (ii) A contractor, subcontractor or surety.

18 (iii) A past or prospective contractor,
19 subcontractor or surety.

20 (iv) Any other person who may be in violation of
21 this act.

22 Section 8. Overtime.

23 In determining any overtime pay to which such service
24 employees are entitled under any Federal law, the regular or
25 basic hourly rate of pay of such an employee shall not include
26 any fringe benefit payments computed hereunder which are
27 excluded from the regular rate under section 7(d) of the Fair
28 Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et
29 seq.).

30 Section 9. Application of act.

1 (a) Contracts.--This act shall apply to all contracts
2 entered into pursuant to negotiations concluded or invitations
3 for bids issued on or after 90 days from the effective date of
4 this act.

5 (b) Schedule for determination of wages, etc.--The
6 determinations of minimum monetary wages and fringe benefits for
7 the various classes of service employees under the provisions of
8 section 3(1) and (2) should be made with respect to all
9 contracts subject to this act, as soon as it is administratively
10 feasible to do so.

11 Section 10. Effective date.

12 This act shall take effect immediately.