

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 379 Session of 2011

INTRODUCED BY GALLOWAY, METCALFE, BARBIN, BARRAR, B. BOYLE, BRENNAN, BURNS, BUXTON, CARROLL, CUTLER, DAVIS, DEASY, FREEMAN, GEIST, GEORGE, GERBER, GERGELY, GIBBONS, HARHAI, HARKINS, HARRIS, HENNESSEY, HUTCHINSON, W. KELLER, KORTZ, LONGIETTI, MAHONEY, MANN, MUNDY, MURPHY, MUSTIO, PETRARCA, RAPP, READSHAW, REICHLEY, SABATINA, SANTARSIERO, STEVENSON, SWANGER, VULAKOVICH, WAGNER, WATSON, WHITE, GABLER AND HORNAMAN, FEBRUARY 1, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 1, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in contracts for public works, providing for  
3 verification of the Social Security numbers of all employees  
4 for purposes of wage reporting and employment eligibility;  
5 prescribing penalties; and establishing good faith immunity  
6 under certain circumstances.

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

9 Section 1. Chapter 39 of Title 62 of the Pennsylvania

10 Consolidated Statutes is amended by adding a subchapter to read:

11 SUBCHAPTER F

12 EMPLOYMENT VERIFICATION

13 Sec.

14 3951. Scope of subchapter.

15 3952. Definitions.

16 3953. Verification.

17 3954. Violations.

1 3955. Enforcement and sanctions.

2 3956. Protection from retaliation.

3 3957. Good faith immunity.

4 § 3951. Scope of subchapter.

5 This subchapter relates to verification of employment on  
6 certain public works projects.

7 § 3952. Definitions.

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

11 "Employee." An individual for whom a public works contractor  
12 or a subcontractor is required by law to file a Form W-2 with  
13 the Internal Revenue Service.

14 "EVP." The E-Verify Program operated by the Department of  
15 Homeland Security.

16 "INA." The Immigration and Nationality Act (66 Stat. 163, 8  
17 U.S.C. § 1101 et seq.).

18 "NVS." The Social Security Number Verification Service  
19 operated by the Social Security Administration.

20 "Public work." As defined in section 2 of the act of August  
21 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing  
22 Wage Act.

23 "Public works contractor." A contractor that provides goods  
24 or services under a contract with a Commonwealth agency  
25 involving a public works project.

26 "Public works project." A project involving a public work.

27 "Secretary." The Secretary of Labor and Industry of the  
28 Commonwealth.

29 "Subcontractor." A person, regardless of its tier,  
30 including, but not limited to, a staffing agency, that performs

1 work for a public works contractor under a contract for a public  
2 work.

3 "Willful." Action or conduct undertaken intentionally or  
4 with reckless disregard for or deliberate ignorance of the  
5 requirements and obligations established by this subchapter.  
6 § 3953. Verification.

7 (a) General rule.--As a precondition of being awarded a  
8 contract for a public work, and prior to the execution of the  
9 contract, a public works contractor shall provide the  
10 Commonwealth agency with which the contract will be made a  
11 verification statement in which it shall represent the  
12 following:

13 (1) The public works contractor has verified the Social  
14 Security numbers of all of its then-existing employees for  
15 wage reporting purposes through NVS in accordance with  
16 Federal law governing the use of NVS.

17 (2) The public works contractor will verify the Social  
18 Security number of a new employee for employment eligibility  
19 purposes within three days following the first day of  
20 employment of the new employee through EVP in accordance with  
21 Federal law governing the use of EVP.

22 (3) The public works contractor will provide the  
23 Commonwealth agency with the verification statement required  
24 under subsection (b) from each subcontractor it uses or  
25 intends to use on the public works project prior to the  
26 commencement of any work by the subcontractor on the public  
27 works project.

28 (b) Subcontractor verification statements.--Prior to the  
29 execution of a subcontract with a public works contractor, a  
30 subcontractor shall provide the public works contractor with a

1 verification statement containing substantially the same  
2 information about the subcontractor as required under subsection  
3 (a) about the public works contractor. The subcontractor shall  
4 submit the verification statement to the contractor prior to the  
5 commencement of any work by the subcontractor on the public  
6 works project.

7 (c) All verification statements.--The verification statement  
8 required by this section shall be on a form prescribed by the  
9 secretary and shall comply with the following additional  
10 requirements:

11 (1) The statement shall include a certification that the  
12 information in the statement is true and correct and that the  
13 person signing the statement understands that the submission  
14 of false or misleading information in connection with the  
15 verification shall subject the person and the public works  
16 contractor or subcontractor, as the case may be, to sanctions  
17 provided by law.

18 (2) The statement shall be signed by a representative of  
19 the public works contractor or subcontractor, as applicable,  
20 who has sufficient knowledge and authority to make the  
21 representations and certifications contained in the  
22 statement.

23 (d) Discrimination prohibited.--In conducting the Social  
24 Security number verification required by this section, a public  
25 works contractor or a subcontractor shall not discriminate  
26 against any employee on the basis of race, ethnicity, color or  
27 national origin.

28 (e) Application.--The requirements of this section regarding  
29 the verification of Social Security numbers shall not apply to  
30 employees who are authorized under Federal law to work in the

1 United States without Social Security numbers.

2 § 3954. Violations.

3 The following shall constitute a violation of this  
4 subchapter:

5 (1) Employment by a public works contractor or  
6 subcontractor of an employee whose Social Security number has  
7 not been verified by the NVS or EVP as required by this  
8 subchapter, except during any period of time in which the  
9 employer is awaiting resolution from the Federal Government  
10 of a wage reporting or employment eligibility issue or  
11 dispute regarding the employee.

12 (2) Use by a public works contractor of a subcontractor  
13 on a public works project prior to the submission by the  
14 subcontractor of a verification statement required by this  
15 subchapter.

16 (3) Commencement of work by a subcontractor on a public  
17 works project prior to submitting to the public works  
18 contractor a verification statement required by this  
19 subchapter.

20 (4) Making a false statement or misrepresentation in a  
21 verification statement required by this subchapter.

22 § 3955. Enforcement and sanctions.

23 (a) General rule.--The secretary shall enforce the  
24 provisions of this subchapter.

25 (b) Investigation of complaints.--The secretary shall  
26 accept, review and investigate in a timely manner any credible  
27 complaint that a public works contractor or subcontractor has  
28 violated a provision of this subchapter.

29 (c) Audits.--To ensure compliance with the requirements of  
30 this subchapter, the secretary shall conduct complaint-based and

1 random audits of public works contractors and subcontractors in  
2 this Commonwealth. In conducting such audits, the secretary  
3 shall utilize NVS and EVP to verify the Social Security numbers  
4 of employees for wage reporting purposes and employment  
5 eligibility, as appropriate, in accordance with Federal law  
6 governing the use of NVS and EVP.

7 (d) Sanctions.--The following sanctions shall apply to  
8 violations of section 274A of the INA (8 U.S.C. § 1324a) or of  
9 this act:

10 (1) A public works contractor or subcontractor that  
11 violates section 274A of the INA or engages in violations  
12 described in section 3954(1), (2) or (3) (relating to  
13 violations):

14 (i) For a second violation, at the discretion of the  
15 secretary, may be subject to debarment under section 531  
16 (relating to debarment or suspension) for a period of up  
17 to 90 days. For a subsequent violation, at the discretion  
18 of the secretary, may be subject to debarment under  
19 section 531 for a period of up to three years.

20 (ii) At the discretion of the Commonwealth agency  
21 with whom the public works contractor has contracted, may  
22 be subject to termination of the contract by the  
23 Commonwealth agency without recourse against or penalty  
24 to the Commonwealth agency. The right of the Commonwealth  
25 agency to terminate the contract under this subparagraph  
26 may not be waived.

27 (iii) At the discretion of the public works  
28 contractor with whom the subcontractor has contracted,  
29 may be subject to termination of the subcontract by the  
30 public works contractor without recourse against or

1 penalty to the public works contractor. The right of the  
2 public works contractor to terminate the subcontract  
3 under this subparagraph may not be waived.

4 (2) A public works contractor or subcontractor that  
5 willfully violates section 274A of the INA or willfully  
6 engages in violations described in section 3954(1), (2) or  
7 (3):

8 (i) Shall be subject to debarment under section 531  
9 for three years.

10 (ii) At the discretion of the Commonwealth agency  
11 with which the public works contractor has contracted,  
12 may be subject to termination of the contract by the  
13 Commonwealth agency without recourse against or penalty  
14 to the Commonwealth agency. The right of the Commonwealth  
15 agency to terminate the contract under this subparagraph  
16 may not be waived.

17 (iii) At the discretion of the public works  
18 contractor with whom the subcontractor has contracted,  
19 may be subject to termination of the subcontract by the  
20 public works contractor without recourse against or  
21 penalty to the public works contractor. The right of the  
22 public works contractor to terminate the subcontract  
23 under this subparagraph may not be waived.

24 § 3956. Protection from retaliation.

25 (a) General rule.--It shall be unlawful for a public works  
26 contractor or subcontractor to discharge, threaten or otherwise  
27 retaliate or discriminate against an employee regarding  
28 compensation or other terms or conditions of employment because  
29 the employee:

30 (1) participates in an investigation, hearing or inquiry

1 held by the secretary or any other governmental authority  
2 under this subchapter; or

3 (2) reports or makes a complaint regarding the violation  
4 of this subchapter to a public works contractor,  
5 subcontractor or governmental authority.

6 (b) Actions.--

7 (1) Any employee who suffers retaliation or  
8 discrimination in violation of this section may bring an  
9 action in a court of common pleas in accordance with  
10 established civil procedures of this Commonwealth.

11 (2) The action must be brought within three years from  
12 the date the employee knew of the retaliation or  
13 discrimination.

14 (c) Relief.--If an employee prevails in an action commenced  
15 under this section, the employee shall be entitled to the  
16 following relief:

17 (1) Reinstatement of the employee, if applicable.

18 (2) Restitution equal to three times the amount of the  
19 employee's wages and fringe benefits calculated from the date  
20 of the violation or discrimination.

21 (3) Reasonable attorney fees and costs of the action.

22 (4) Any other legal and equitable relief as the court  
23 deems appropriate.

24 § 3957. Good faith immunity.

25 A public works contractor or subcontractor that relies in  
26 good faith on NVS and EVP procedures to verify the Social  
27 Security numbers of employees shall be immune from the sanctions  
28 authorized under section 3955 (relating to enforcement and  
29 sanctions) and shall have no liability to an individual who is  
30 not hired or is discharged from employment in the event that



1 incorrect information has been provided to the public works  
2 contractor or subcontractor.

3       Section 2.   This act shall take effect July 1, 2011.