

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1543 Session of  
2011

INTRODUCED BY MILNE, AUMENT, BLOOM, BOYD, CLYMER, COX, EVERETT,  
FLECK, GABLER, GILLESPIE, GINGRICH, GROVE, KAUFFMAN,  
F. KELLER, MARSICO, MILLER, MOUL, MURT, PERRY, PICKETT, RAPP,  
ROAE, ROSS, SAYLOR, SCHRODER, SWANGER AND DENLINGER,  
MAY 12, 2011

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, FEBRUARY 8, 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," further providing for definitions, FOR  
6 SPECIFICATIONS AND FOR DUTY OF SECRETARY; AND PROVIDING FOR  
7 PROTECTION OF A WORKMAN. ←

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

10 ~~Section 1. Section 2(5) of the act of August 15, 1961~~ ←  
11 ~~(P.L.987, No.442), known as the Pennsylvania Prevailing Wage~~  
12 ~~Act, amended August 9, 1963 (P.L.653, No.342), is amended to~~  
13 ~~read:~~

14 SECTION 1. SECTIONS 2(5), 3 AND 7 OF THE ACT OF AUGUST 15, ←  
15 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING  
16 WAGE ACT, AMENDED AUGUST 9, 1963 (P.L.653, NO.342), ARE AMENDED  
17 TO READ:

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

1 \* \* \*

2 (5) "Public work" means construction, reconstruction,  
3 demolition, alteration and/or repair work other than maintenance  
4 work, done under contract and paid for in whole or in part out  
5 of the funds of a public body where the estimated cost of the  
6 total project is in excess of twenty-five thousand dollars  
7 (\$25,000), but shall not include work performed under a  
8 rehabilitation or manpower training program. ~~The term shall not~~ ←  
9 ~~include work on projects on property owned or held by nonprofit~~  
10 ~~historical organizations or land conservancies.~~ ← THE TERM SHALL  
11 NOT INCLUDE WORK ON ANY HISTORIC PROPERTY AS DEFINED UNDER 37  
12 PA.C.S. § 103 (RELATING TO DEFINITIONS), ANY PROPERTY MAINTAINED  
13 BY A QUALIFIED HISTORICAL AND ARCHEOLOGICAL SOCIETY THAT  
14 SATISFIES THE CRITERIA UNDER 37 PA.C.S. § 307 (RELATING TO  
15 QUALIFIED HISTORICAL AND ARCHEOLOGICAL SOCIETIES), ANY PROPERTY  
16 MAINTAINED BY A HISTORIC PRESERVATION ORGANIZATION OR ANY  
17 PROPERTY MAINTAINED BY A LAND TRUST THAT OPERATES UNDER THE ACT  
18 OF JULY 2, 1993 (P.L.359, NO.50), KNOWN AS THE "KEYSTONE  
19 RECREATION, PARK AND CONSERVATION FUND ACT."

20 \* \* \*

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

26 (B) NO PERSON SHALL INTENTIONALLY DIVIDE A CONSTRUCTION  
27 PROJECT INTO MULTIPLE PARTS FOR THE PURPOSES OF CIRCUMVENTING  
28 THIS ACT.

29 SECTION 7. DUTY OF SECRETARY.--(A) THE SECRETARY SHALL,  
30 AFTER CONSULTATION WITH THE ADVISORY BOARD, DETERMINE THE

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

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

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

30 SECTION 13.1. PROTECTION OF A WORKMAN.-- (A) NO CONTRACTOR

1 OR SUBCONTRACTOR MAY DISCHARGE, THREATEN OR OTHERWISE  
2 DISCRIMINATE OR RETALIATE AGAINST A WORKMAN REGARDING THE  
3 EMPLOYEE'S COMPENSATION, TERMS, CONDITIONS, LOCATION OR  
4 PRIVILEGES OF EMPLOYMENT BECAUSE THE WORKMAN EXERCISED HIS  
5 RIGHTS UNDER SECTION 11(B) OR 13.

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

12 (C) (1) A WORKMAN WHO ALLEGES A VIOLATION OF THIS ACT MAY  
13 BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR  
14 APPROPRIATE INJUNCTIVE RELIEF OR DAMAGES, OR BOTH, WITHIN 180  
15 DAYS AFTER THE OCCURRENCE OF THE ALLEGED VIOLATION.

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

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

28 Section 2 3. This act shall take effect in 60 days.

