

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2545 Session of 2012

INTRODUCED BY MILLER, AUMENT, BEAR, BOYD, CALTAGIRONE,  
CREIGHTON, CUTLER, DENLINGER, EVERETT, GILLESPIE, GINGRICH,  
GROVE, HARRIS, HICKERNELL, LAWRENCE, MARSICO, PERRY, PICKETT,  
ROAE, ROCK, SAYLOR, SCAVELLO AND SWANGER, JULY 2, 2012

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JULY 2, 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; providing  
6 for duties of contractors, trustees or third parties managing  
7 fringe benefit payments; further providing for duty of  
8 secretary; providing for right of workmen to challenge fringe  
9 benefit payments allocation; further providing for remedies  
10 and penalties; and providing for prohibited conduct.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Section 2 of the act of August 15, 1961 (P.L.987,  
14 No.442), known as the Pennsylvania Prevailing Wage Act, is  
15 amended by adding a paragraph to read:

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

17 \* \* \*

18 (11) "Fringe benefit" means medical or hospital care,  
19 pensions on retirement or death, compensation for injuries or  
20 illness resulting from occupational activity or insurance to  
21 provide any of the foregoing. The term also means unemployment

1 benefits, life insurance, disability insurance, sickness  
2 insurance or accident insurance, vacation or holiday pay and  
3 defraying the costs of apprenticeship program. The term does not  
4 include any other fees.

5 Section 2. The act is amended by adding a section to read:

6 Section 6.1. Duties of Contractors, Trustees or Third  
7 Parties Managing Fringe Benefit Payments.--The secretary shall  
8 require contractors, trustees or third parties managing the  
9 administration of fringe benefit payments under a collective  
10 bargaining agreement to maintain accurate records of fringe  
11 benefit payments made to each worker. The records must contain a  
12 clear description of each item for which funds were allocated in  
13 a fringe benefit payment. The secretary must be provided access  
14 to the records.

15 Section 3. Section 7 of the act, amended August 9, 1963  
16 (P.L.653, No.342), is amended to read:

17 Section 7. Duty of Secretary.--The secretary shall, after  
18 consultation with the advisory board, determine the general  
19 prevailing minimum wage rate in the locality in which the public  
20 work is to be performed for each craft or classification of all  
21 workmen needed to perform public work contracts during the  
22 anticipated term thereof: Provided, however, That employer and  
23 employe contributions for employe fringe benefits pursuant to a  
24 bona fide collective bargaining agreement shall be considered an  
25 integral part of the wage rate for the purpose of determining  
26 the minimum wage rate under this act. Nothing in this act,  
27 however, shall prohibit the payment of more than the general  
28 prevailing minimum wage rate to any workman employed on public  
29 work. The secretary shall forthwith give notice by mail of all  
30 determinations of general prevailing minimum wage rates made

1 pursuant to this section to any representative of any craft, any  
2 employer or any representative of any group of employers, who  
3 shall in writing request the secretary so to do.

4 Section 4. The act is amended by adding a section to read:

5 Section 10.1. Right of Workmen to Challenge Fringe Benefit  
6 Payments Allocation.--(a) Within three months from the date of  
7 the occurrence of the incident complained of, a workman may file  
8 a protest in writing with the secretary objecting to the misuse  
9 of a fringe benefit payment made by an employer to a contractor,  
10 trustee or third party administering fringe benefit payments  
11 under a collective bargaining agreement. A protest made under  
12 this subsection must be based on the alleged use of payments for  
13 purposes not covered by a fringe benefit.

14 (b) A contractor or labor organization may not retaliate  
15 against a worker who makes a complaint under subsection (a) with  
16 respect to hiring, job assignments, seniority or another job-  
17 related matter. A workman aggrieved under this section has a  
18 cause of action against the contractor or labor organization. In  
19 rendering a judgment in an action brought under this act, a  
20 court shall order, as it considers appropriate, the payment of  
21 back wages and fringe benefits, seniority rights, actual damages  
22 or a combination of the remedies. A court shall also award the  
23 complainant all or a portion of the costs of litigation,  
24 including reasonable attorney fees and witness fees if it  
25 determines the award is appropriate.

26 Section 5. Section 11 of the act is amended by adding a  
27 subsection to read:

28 Section 11. Remedies and Penalties.--\* \* \*

29 (i) If, after notice and hearing as required by this  
30 section, the secretary determines that a contractor, third

1 person or trustee administering fringe benefit payments under a  
2 collective bargaining agreement utilized payments made by  
3 employers for fringe benefits for a purpose not permitted under  
4 this act and the misuse was intentional, the secretary shall:

5 (1) order restitution of the amount misused back to fringe  
6 benefit purposes; and

7 (2) impose an administrative penalty of up to ten thousand  
8 dollars (\$10,000) on the trustee or third party.

9 In addition, the secretary may prohibit the trustee or third  
10 party from administering payments made by an employer under this  
11 act for up to three years. The secretary may request the  
12 Attorney General to investigate the third party or trustee to  
13 determine possible criminal violations.

14 Section 6. The act is amended by adding a section to read:

15 Section 13.1. Prohibited Conduct.--A contractor or labor  
16 organization may not discriminate against a workman on  
17 assignment to work to a public project based on his contribution  
18 to or his failure to contribute to a fund utilized for political  
19 activity. A workman aggrieved under this section has a cause of  
20 action against the labor organization. A court, in rendering a  
21 judgment in an action brought under this act, shall order, as it  
22 considers appropriate, the payment of back wages and fringe  
23 benefits, seniority rights, damages or a combination of the  
24 remedies. A court shall also award the complainant all or a  
25 portion of the costs of litigation, including reasonable  
26 attorney fees and witness fees if it determines that the award  
27 is appropriate.

28 Section 7. This act shall take effect in 60 days.