

## AMENDMENTS TO HOUSE BILL NO. 2648

Sponsor: SENATOR ROBINSON

Printer's No. 3201

1 Amend Bill, page 1, lines 22 and 23, by striking out "and for  
2 criminal" in line 22 and all of line 23 and inserting  
3 ; providing for public works employment verification and  
4 establishing the Public Works Employment Verification  
5 Account; and making a related repeal.

6 Amend Bill, page 1, lines 26 and 27; page 2, line 1; by  
7 striking out all of said lines on said pages and inserting

8 Section 1. Section 503-A(c) of the act of April 9, 1929  
9 (P.L.177, No.175), known as The Administrative Code of 1929, is  
10 amended by adding paragraphs to read:

11 Amend Bill, page 2, lines 6 and 7, by striking out "Within 30  
12 days of the effective date of this paragraph, appoint agents"  
13 and inserting

14 No later than May 1, 2023, provide a report to the  
15 General Assembly regarding the ability of the office

16 Amend Bill, page 2, lines 15 and 16, by striking out "This"  
17 in line 15 and all of line 16 and inserting

18 The report shall be done in consultation with the  
19 Department of Labor and Industry and shall include:

20 (i) The estimated number of agents necessary to  
21 conduct investigations.

22 (ii) The estimated cost for personnel, equipment and  
23 other operational needs related to investigations.

24 (iii) The amount of time necessary to hire and train  
25 investigators.

26 (iv) How cases would be coordinated with the  
27 Internal Audits Division within the Department of Labor  
28 and Industry and with other Federal and State law  
29 enforcement agencies investigating fraud within the  
30 unemployment compensation program.

31 (v) Any Federal or State laws, regulations or

guidance that may inhibit the ability to conduct investigations.

(vi) An estimate of the amount of fraudulent payments made in unemployment compensation programs in this Commonwealth from March 1, 2020, through September 30, 2022, including the amount of fraudulent payments recovered up to the date of the report's submission.

(12.2) Provide the report under paragraph (1) to:

(i) The President Pro Tempore of the Senate.

(ii) The Speaker of the House of Representatives.

(iii) The Majority Leader of the Senate.

(iv) The Minority Leader of the Senate.

(v) The Majority Leader of the House of Representatives.

(vi) The Minority Leader of the House of Representatives.

(vii) The chairperson and minority chairperson of the Appropriations Committee of the Senate.

(viii) The chairperson and minority chairperson of the Appropriations Committee of the House of Representatives.

(ix) The chairperson and minority chairperson of the Labor and Industry Committee of the Senate.

(x) The chairperson and minority chairperson of the Labor and Industry Committee of the House of Representatives.

Amend Bill, page 2, lines 18 through 30; page 3, lines 1 through 14; by striking out all of said lines on said pages and inserting

Section 2. The act is amended by adding an article to read:

ARTICLE XXIV-C

PUBLIC WORKS EMPLOYMENT VERIFICATION

Section 2401-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly states otherwise:

"Department." The Department of General Services of the Commonwealth.

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

"EVP." The E-Verify Program operated by the Department of Homeland Security that electronically verifies employment eligibility for employees.

"Public body." The Commonwealth of Pennsylvania, any of its political subdivisions, any authority created by the General Assembly of the Commonwealth and any instrumentality or agency

1 of the Commonwealth.

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

5 "Public works contractor." A contractor that provides work  
6 under a contract involving a public work.

7 "Secretary." The Secretary of General Services of the  
8 Commonwealth.

9 "Subcontractor." A person, other than a natural person,  
10 regardless of its tier, including, but not limited to, a  
11 staffing agency that performs work for a public works contractor  
12 under a contract for a public work. The term shall not include  
13 persons that are material suppliers for a project.

14 "Willful." Action or conduct undertaken intentionally or  
15 with reckless disregard for or deliberate ignorance of the  
16 requirements and obligations established under this article.  
17 Section 2402-C. Duty of public works contractors and  
18 subcontractors.

19 (a) General rule.--A public works contractor or  
20 subcontractor shall participate in EVP and shall, subject to the  
21 requirements of Federal law governing the use of EVP, use EVP to  
22 verify employment eligibility of each new employee. The  
23 department shall post on its publicly accessible Internet  
24 website information regarding the requirements of Federal law  
25 governing the use of EVP.

26 (b) Discrimination prohibited.--In conducting the  
27 verification required by this section, a public works contractor  
28 or subcontractor shall not discriminate against an employee on  
29 the basis of race, ethnicity, color or national origin.  
30 Section 2403-C. Verification form.

31 (a) General rule for public works contractors.--As a  
32 precondition of being awarded a contract for a public work, or  
33 with respect to a contract that was awarded prior to the  
34 effective date of this subsection but has not yet been executed,  
35 prior to the execution of the contract, a public works  
36 contractor shall provide the public body with a verification  
37 form described in subsection (c), acknowledging its  
38 responsibilities under and its compliance with section 2402-C  
39 and stating that the contractor is enrolled in EVP. Contracts  
40 between a public works contractor and its subcontractors shall  
41 contain information about the requirements of this article.

42 (b) General rule for subcontractors.--Prior to commencing  
43 work on a public works project, a subcontractor shall provide  
44 the public body with a verification form described in subsection  
45 (c) acknowledging its responsibilities and its compliance with  
46 section 2402-C and stating that the subcontractor is enrolled in  
47 EVP. Contracts between a subcontractor and its subcontractors  
48 shall contain information about the requirements of this  
49 article.

50 (c) Form.--The verification form required by this section  
51 shall be on a form prescribed by the secretary and posted on the

1 department's publicly accessible Internet website and shall  
2 comply with the following additional requirements:

3 (1) The statement shall include a certification that the  
4 information in the statement is true and correct and that the  
5 individual signing the statement understands that the  
6 submission of false or misleading information in connection  
7 with the verification shall subject the individual and the  
8 public works contractor or subcontractor, as the case may be,  
9 to sanctions provided by law.

10 (2) The statement shall be signed by a representative of  
11 the public works contractor or subcontractor, as applicable,  
12 who has sufficient knowledge and authority to make the  
13 representations and certifications contained in the  
14 statement.

15 Section 2404-C. Violations.

16 It is a violation of this article for a public works  
17 contractor or subcontractor on a public work to:

18 (1) Fail to verify the employment eligibility of a new  
19 employee through EVP in accordance with Federal law.

20 (2) Not provide the verification form as required under  
21 section 2403-C or make a false statement or misrepresentation  
22 with respect to completing the form.

23 Section 2405-C. Enforcement and sanctions.

24 (a) General rule.--The department shall enforce this  
25 article.

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

30 (c) Audits.--To ensure compliance with the requirements of  
31 this article, the department shall conduct complaint-based and  
32 random audits of public works contractors and subcontractors in  
33 this Commonwealth.

34 (d) Reimbursement of department.--

35 (1) The department may require a public works contractor  
36 or subcontractor to reimburse the department for the cost of  
37 an audit if the public works contractor or subcontractor:

38 (i) is debarred from public work under subsection

39 (e); or

40 (ii) is subject to a civil penalty under subsection

41 (f).

42 (2) The cost of an audit shall be reasonably based on  
43 the amount of staff time spent on conducting an individual  
44 audit.

45 (e) Sanctions.--The following sanctions shall apply only to  
46 a violation under section 2404-C(1):

47 (1) For a first violation, a public works contractor or  
48 subcontractor shall receive a warning letter from the  
49 department detailing the violation. The letter shall be  
50 posted on the department's publicly accessible Internet  
51 website.

1       (2) For a second violation, a public works contractor or  
2       subcontractor shall be debarred from public work for 60 days.

3       (3) For a third violation and subsequent violations, a  
4       public works contractor or subcontractor shall be debarred  
5       from public work for not less than one year and not more than  
6       two years.

7       (4) In the case of an alleged willful violation, the  
8       secretary shall file a petition in Commonwealth Court seeking  
9       to have the court issue a rule to show cause why a public  
10       works contractor or subcontractor did not engage in the  
11       willful violation. If the court finds that the public works  
12       contractor or subcontractor engaged in a willful violation,  
13       the court shall order that the public works contractor or  
14       subcontractor be debarred from public work for a period of  
15       three years.

16       (5) Notwithstanding the provisions of paragraph (1), (2)  
17       or (3), a violation by a public works contractor or  
18       subcontractor that occurs 10 or more years after a prior  
19       violation shall be deemed to be a first violation.

20       (6) For the purposes of assessing sanctions, violations  
21       committed by a contractor or subcontractor subject to this  
22       article involving a single public works contract shall be  
23       considered a single violation despite the number of employees  
24       that are the subject of the violations.

25       (f) Civil penalty and sanctions.--The following shall apply:

26       (1) A public works contractor or subcontractor that  
27       violates section 2404-C(2) shall be subject to a civil  
28       penalty of not less than \$2,500 and not more than \$25,000 for  
29       each violation, to be imposed by the department based on the  
30       duration and severity of the violation.

31       (2) In addition to the penalty under paragraph (1), in  
32       the event of a willful violation of section 2404-C(2), a  
33       public works contractor or subcontractor shall be subject to  
34       debarment for not less than 60 days nor more than three  
35       years, depending on the duration and severity of the  
36       violation.

37       (g) Notice and appeal.--Actions taken by the department  
38       under subsections (e)(1), (2) and (3) and (f) shall be subject  
39       to the notice, appeal and other provisions of 2 Pa.C.S.  
40       (relating to administrative law and procedure).

41       Section 2406-C. Public Works Employment Verification Account.

42       (a) Establishment.--The Public Works Employment Verification  
43       Account is established as a restricted revenue, interest-bearing  
44       account in the General Fund.

45       (b) Deposits.--The department shall deposit penalties  
46       collected under section 2405-C(f) into the account.

47       (c) Use of account.--Money in the account and interest  
48       earned on the account is appropriated on a continuing basis to  
49       the department for the purposes of administering and enforcing  
50       the provisions of this article.

51       Section 2407-C. Protection from retaliation.

1     (a) General rule.--It shall be unlawful for a public works  
2 contractor or subcontractor to discharge, threaten or otherwise  
3 retaliate or discriminate against an employee regarding  
4 compensation or other terms or conditions of employment because  
5 the employee:

6         (1) participates in an investigation, hearing or inquiry  
7 held by the secretary or any other governmental authority  
8 under this article; or

9         (2) reports or makes a complaint regarding the violation  
10 of this article to a public works contractor or subcontractor  
11 or to any governmental authority.

12     (b) Actions.--

13         (1) An employee who suffers retaliation or  
14 discrimination in violation of this section may bring an  
15 action in a court of common pleas in accordance with  
16 established civil procedures of this Commonwealth.

17         (2) The action must be brought within 180 days from the  
18 date the employee knew of the retaliation or discrimination.

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

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

23         (2) Restitution equal to three times the amount of the  
24 employee's wages and fringe benefits calculated from the date  
25 of the retaliation or discrimination.

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

27         (4) Any other legal and equitable relief as the court  
28 deems appropriate.

29     Section 2408-C. Good faith immunity.

30     A public works contractor or subcontractor that relies in  
31 good faith on EVP procedures to verify employment eligibility of  
32 new employees under this article shall be immune from the  
33 sanctions authorized under section 2405-C and shall have no  
34 liability to an individual who is not hired or who is discharged  
35 from employment in the event that incorrect information has been  
36 provided to the public works contractor or subcontractor. A  
37 public works contractor or subcontractor that can produce  
38 written acknowledgment provided by an applicable Federal agency  
39 of use of EVP is considered to have acted in good faith.

40     Section 2409-C. Public works contractor and subcontractor  
41 liability.

42     Nothing in this article may be construed to render a public  
43 works contractor liable for the action of a subcontractor or a  
44 subcontractor liable for an action of another subcontractor.

45     Section 2410-C. Rules and regulations.

46     The department may promulgate rules and regulations necessary  
47 to administer and enforce this article.

48     Section 2411-C. Cooperation among departments.

49     The department may enter into agreements with the Department  
50 of Labor and Industry or any other Commonwealth agency to  
51 provide for the cooperative enforcement of the provisions of

1 this article.

2 Section 3. Repeals are as follows:

3 (1) The General Assembly declares that the repeal under  
4 paragraph (2) is necessary to effectuate the addition of  
5 Article XXIV-C of the act.

6 (2) The act of July 5, 2012 (P.L.1086, No.127), known as  
7 the Public Works Employment Verification Act, is repealed.

8 Section 4. The addition of Article XXIV-C of the act is a  
9 continuation of the act of July 5, 2012 (P.L.1086, No.127),  
10 known as the Public Works Employment Verification Act. Except as  
11 otherwise provided in Article XXIV-C of the act, all activities  
12 initiated under the Public Works Employment Verification Act  
13 shall continue and remain in full force and effect and may be  
14 completed under Article XXIV-C of the act. Orders, regulations,  
15 rules and decisions which were made under the Public Works  
16 Employment Verification Act and which are in effect on the  
17 effective date of section 3(2) of this act shall remain in full  
18 force and effect until revoked, vacated or modified under  
19 Article XXIV-C of the act. Contracts, obligations and collective  
20 bargaining agreements entered into under the Public Works  
21 Employment Verification Act are not affected nor impaired by the  
22 repeal of the Public Works Employment Verification Act.

23 Section 5. This act shall take effect in 60 days.