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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1277 Session of  
2011

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INTRODUCED BY PERRY, BENNINGHOFF, AUMENT, BLOOM, BOYD, CLYMER,  
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MARSICO, METCALFE, MILLER, MILNE, MOUL, PICKETT, RAPP, ROAE,  
ROCK, SAYLOR, SCHRODER, SWANGER AND TALLMAN, APRIL 6, 2011

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 6, 2011

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AN ACT

1 Repealing 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."

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

8 Section 1. The act of August 15, 1961 (P.L.987, No.442),  
9 known as the Pennsylvania Prevailing Wage Act, is repealed:

10 [AN ACT

11 Relating to public works contracts; providing for prevailing  
12 wages; imposing duties upon the Secretary of Labor and  
13 Industry; providing remedies, penalties and repealing  
14 existing laws.

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17 Section 1. Short Title.--This act shall be known and may be  
18 cited as the "Pennsylvania Prevailing Wage Act."

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

20 (1) "Department" means Department of Labor and Industry of  
21 the Commonwealth of Pennsylvania.

22 (2) "Locality" means any political subdivision, or  
23 combination of the same, within the county in which the public  
24 work is to be performed. When no workmen for which a prevailing  
25 minimum wage is to be determined hereunder are employed in the  
26 locality, the locality may be extended to include adjoining  
27 political subdivisions where such workmen are employed in those  
28 crafts or trades for which there are no workmen employed in the  
29 locality as otherwise herein defined.

30 (3) "Maintenance work" means the repair of existing

1 facilities when the size, type or extent of such facilities is  
2 not thereby changed or increased.

3 (4) "Public body" means the Commonwealth of Pennsylvania,  
4 any of its political subdivisions, any authority created by the  
5 General Assembly of the Commonwealth of Pennsylvania and any  
6 instrumentality or agency of the Commonwealth of Pennsylvania.

7 (5) "Public work" means construction, reconstruction,  
8 demolition, alteration and/or repair work other than maintenance  
9 work, done under contract and paid for in whole or in part out  
10 of the funds of a public body where the estimated cost of the  
11 total project is in excess of twenty-five thousand dollars  
12 (\$25,000), but shall not include work performed under a  
13 rehabilitation or manpower training program.

14 (6) "Secretary" means the Secretary of Labor and Industry or  
15 his duly authorized deputy or representative.

16 (7) "Workman" includes laborer, mechanic, skilled and semi-  
17 skilled laborer and apprentices employed by any contractor or  
18 subcontractor and engaged in the performance of services  
19 directly upon the public work project, regardless of whether  
20 their work becomes a component part thereof, but does not  
21 include material suppliers or their employes who do not perform  
22 services at the job site.

23 (8) "Work performed under a rehabilitation program," means  
24 work arranged by and at a State institution primarily for  
25 teaching and upgrading the skills and employment opportunities  
26 of the inmates of such institutions.

27 (9) "Advisory Board" means the board created by section 2.1  
28 of this act.

29 (10) "Appeals Board" means the board created by section 2.2  
30 of this act. ((10) added Aug. 9, 1963, P.L.653, No.342)

1 Section 3. Specifications.--The specifications for every  
2 contract for any public work to which any public body is a  
3 party, shall contain a provision stating the minimum wage rate  
4 that must be paid to the workmen employed in the performance of  
5 the contract.

6 Section 4. Duty of Public Body.--It shall be the duty of  
7 every public body which proposes the making of a contract for  
8 any project of public work to determine from the secretary the  
9 prevailing minimum wage rates which shall be paid by the  
10 contractor to the workmen upon such project. Reference to such  
11 prevailing minimum rates shall be published in the notice issued  
12 for the purpose of securing bids for such project of public  
13 work. Whenever any contract for a project of public work is  
14 entered into, the prevailing minimum wages as determined by the  
15 secretary shall be incorporated into and made a part of such  
16 contract and shall not be altered during the period such  
17 contract is in force.

18 Section 5. Prevailing Wage.--Not less than the prevailing  
19 minimum wages as determined hereunder shall be paid to all  
20 workmen employed on public work.

21 Section 6. Duty of Contractor.--Every contractor and  
22 subcontractor shall keep an accurate record showing the name,  
23 craft and the actual hourly rate of wage paid to each workman  
24 employed by him in connection with public work, and such record  
25 shall be preserved for two years from date of payment. The  
26 record shall be open at all reasonable hours to the inspection  
27 of the public body awarding the contract and to the secretary.

28 Section 7. Duty of Secretary.--The secretary shall, after  
29 consultation with the advisory board, determine the general  
30 prevailing minimum wage rate in the locality in which the public

1 work is to be performed for each craft or classification of all  
2 workmen needed to perform public work contracts during the  
3 anticipated term thereof: Provided, however, That employer and  
4 employe contributions for employe benefits pursuant to a bona  
5 fide collective bargaining agreement shall be considered an  
6 integral part of the wage rate for the purpose of determining  
7 the minimum wage rate under this act. Nothing in this act,  
8 however, shall prohibit the payment of more than the general  
9 prevailing minimum wage rate to any workman employed on public  
10 work. The secretary shall forthwith give notice by mail of all  
11 determinations of general prevailing minimum wage rates made  
12 pursuant to this section to any representative of any craft, any  
13 employer or any representative of any group of employers, who  
14 shall in writing request the secretary so to do.

15 Section 8. Review of Rates, Petition and Hearing.--Any  
16 prospective bidder or his representative, any representative of  
17 any group of employers engaged in the particular type of  
18 construction, reconstruction, alteration and demolition or  
19 repair work involved, any representative of any craft or  
20 classification of workmen or the public body may, within ten  
21 days after the publication and issue of the specifications  
22 covering the particular contract for public work involved, file  
23 with the secretary a verified petition to review the  
24 determination of any such rate or rates. Within two days  
25 thereafter a copy of such petition shall be filed with the  
26 public body authorizing the public work. The petition shall set  
27 forth the facts upon which it is based. The secretary shall,  
28 upon notice to the petitioner, the public body authorizing the  
29 public work and the recognized collective bargaining  
30 representatives for the particular crafts and classifications

1 involved, and also to all persons entitled to receive notice  
2 pursuant to subsection (a) of section 7 hereof, institute an  
3 investigation and hold a public hearing within twenty days after  
4 the filing of such petition. Within ten days thereafter, the  
5 secretary shall make a determination and transmit it, in  
6 writing, to the public body and to the interested parties. Such  
7 determination shall be final unless within ten days an appeal is  
8 filed with the Appeals Board.

9       Upon receipt by the public body of the notice of the filing  
10 of such petition, the public body awarding the contract or  
11 authorizing the public work shall extend the closing date for  
12 the submission of bids until five days after the final  
13 determination of the general prevailing minimum wage rates  
14 pursuant to this section and the publication of such findings.

15       Upon the filing of any such petition, notice thereof and of  
16 the extension of the closing date for submission of bids, shall  
17 be given forthwith by the awarding public body in a special  
18 bulletin to all interested parties as defined herein, notice  
19 shall also be given to the bidders by the awarding body of the  
20 final determination of the secretary or Appeals Board which  
21 shall also be included in the contract. The determination of the  
22 secretary or Appeals Board shall be included in the contract.

23       Section 9. Posting of Rates.--Contractors and sub-  
24 contractors performing public work for a public body subject to  
25 the provisions of this act shall post the general prevailing  
26 minimum wage rates for each craft and classification involved,  
27 as determined by the secretary, including the effective date of  
28 any changes thereof, in prominent and easily accessible places  
29 at the site of the work, or at such place or places as are used  
30 by them to pay workmen their wages.

1 Section 10. Duty of Public Body.--(a) Before final payment  
2 is made by, or on behalf of any public body of any sum or sums  
3 due on public work, it shall be the duty of the treasurer of the  
4 public body or other officer or person charged with the custody  
5 and disbursement of the funds of the public body to require the  
6 contractor and subcontractor to file statements, in writing, in  
7 form satisfactory to the secretary, certifying to the amounts  
8 then due and owing from such contractor and subcontractor,  
9 filing such statement to any and all workmen for wages due on  
10 account of public work, setting forth therein the names of the  
11 persons whose wages are unpaid and the amount due to each  
12 respectively, which statement so to be filed shall be verified  
13 by the oath of the contractor and subcontractor, as the case may  
14 be, that he has read such statement subscribed by him, knows the  
15 contents thereof and that the same is true of his own knowledge:  
16 Provided, nevertheless, That nothing herein shall impair the  
17 right of a contractor to receive final payment because of the  
18 failure of any subcontractor to comply with provisions of this  
19 act.

20 (b) In case any workman shall have filed a protest, in  
21 writing, within three months from the date of the occurrence of  
22 the incident complained of, with the secretary, objecting to the  
23 payment to any contractor to the extent of the amount or amounts  
24 due or to become due to the said workman for wages or for labors  
25 performed on public works, the secretary shall direct the fiscal  
26 or financial officer of the public body, or other person charged  
27 with the custody and disbursements of the funds of the public  
28 body, to deduct from the whole amount of any payment on account  
29 thereof the sum or sums admitted by any contractor in such  
30 statement or statements so filed, to be due and owing by him on

1 account of wages earned on such public work before making  
2 payment of the amount certified for payment and may withhold the  
3 amount so deducted for the benefit of the workmen whose wages  
4 are unpaid, as shown by the verified statement filed by any  
5 contractor, and may pay directly to any workmen the amount shown  
6 to be due to him for such wages by the statements filed as  
7 hereinbefore required, thereby discharging the obligation of the  
8 contractor to the person receiving such payment to the extent of  
9 the amount thereof.

10 (c) Any contractor or subcontractor who shall, under oath,  
11 verify the statement required to be filed under this section,  
12 which is known to him to be false, shall be guilty of a  
13 misdemeanor, and shall, upon conviction, be sentenced to pay a  
14 fine of not exceeding two thousand five hundred dollars (\$2,500)  
15 or to undergo imprisonment not exceeding five years, or both.

16 Section 11. Remedies and Penalties.--(a) The fiscal or  
17 financial officer, or any public body having public work  
18 performed under which any workman shall have been paid less than  
19 the prevailing wage, shall forthwith notify the secretary, in  
20 writing, of the name of the person or firm failing to pay the  
21 prevailing wages.

22 (b) Any workman may, within three months from the date of  
23 the occurrence of the incident complained of, file a protest, in  
24 writing, with the secretary objecting to the amount of wages  
25 paid for services performed by him on public work as being less  
26 than the prevailing wages for such services.

27 (c) Whenever a fiscal or financial officer of any public  
28 body shall notify the secretary that any person or firm required  
29 to pay its workmen the prevailing wage under this act has failed  
30 so to do, or whenever any workman employed upon public work

1 shall have filed a timely protest objecting that he has been  
2 paid less than prevailing wages as required by this act, it  
3 shall be the duty of and the secretary shall forthwith  
4 investigate the matter and determine whether or not there has  
5 been a failure to pay the prevailing wages and whether such  
6 failure was intentional or otherwise. In any such investigation,  
7 the secretary shall provide for an appropriate hearing upon due  
8 notice to interested parties including the workmen, the employer  
9 and their respective representative, if any.

10 (d) In the event that the secretary shall determine, after  
11 notice and hearing as required by this section, that any person  
12 or firm has failed to pay the prevailing wages and that such  
13 failure was not intentional, he shall afford such person or firm  
14 a reasonable opportunity to adjust the matter by making payment  
15 or providing adequate security for the payment of the amounts  
16 required to be paid under this act as prevailing wages to the  
17 workmen affected on such terms and conditions as shall be  
18 approved by the secretary.

19 (e) In the event that the secretary shall determine, after  
20 notice and hearing as required by this section, that any person  
21 or firm has failed to pay the prevailing wages and that such  
22 failure was intentional, he shall thereupon notify all public  
23 bodies of the name or names of such persons or firms and no  
24 contract shall be awarded to such persons or firms or to any  
25 firm, corporation or partnership in which such persons or firms  
26 have an interest until three years have elapsed from the date of  
27 the notice to the public bodies aforesaid. The secretary may in  
28 addition thereto request the Attorney General to proceed to  
29 recover the penalties for the Commonwealth of Pennsylvania which  
30 are payable under subsection (f) of this section.

1 (f) Whenever it shall be determined by the secretary, after  
2 notice and hearing as required by this section, that any person  
3 or firm has failed to pay the prevailing wages and that such  
4 failure was intentional, such persons or firm shall be liable to  
5 the Commonwealth of Pennsylvania for liquidated damages, in  
6 addition to damages for any other breach of the contract in the  
7 amount of the underpayment of wages due any workman engaged in  
8 the performance of such contract.

9 (g) It shall not constitute a failure to pay the prevailing  
10 wage rates for the work of a particular craft or classification  
11 where the prevailing wage rates determined for a specific craft  
12 or classification has been paid, and it is asserted that one or  
13 more bona fide craft unions contend that the work should have  
14 been assigned to their members instead of the members of the  
15 specific craft to whom it was assigned or by whom it was  
16 performed.

17 (h) The following shall constitute substantial evidence of  
18 intentional failure to pay prevailing wage rates:

19 (1) Any acts of omission or commission done wilfully or with  
20 a knowing disregard of the rights of workmen resulting in the  
21 payment of less than prevailing wage rates.

22 (2) After there has been a finding by the secretary in the  
23 manner required by this section that any person or firm has  
24 failed to pay the prevailing wages prescribed by this act and  
25 thereafter there shall be a failure by such person or firm to  
26 pay the prevailing wages prescribed by this act, or there shall  
27 be a subsequent failure of such person or firm to comply with  
28 any opportunity to adjust any differences which shall be  
29 afforded him by the secretary.

30 Section 12. Failure to Comply, Termination.--In any case

1 where the secretary shall have determined that any person or  
2 firm has failed to pay the prevailing wages under subsections  
3 (e) and (f) of section 11 hereof, he may direct the public body  
4 to terminate, and the public body may terminate, any such  
5 contractor's right to proceed with the public work.

6 Section 13. Workmen's Rights.--Any workmen paid less than  
7 the rates specified in the contract shall have a right of action  
8 for the difference between the wage so paid and the wages  
9 stipulated in the contract, which right of action shall be  
10 instituted within six months from the occurrence of the event  
11 creating such right.

12 Section 14. Rules and Regulations.--The secretary is hereby  
13 authorized and empowered to prescribe, adopt, promulgate,  
14 rescind and enforce rules and regulations pertaining to the  
15 administration and enforcement of the provisions of this act.

16 Section 15. Application of Act.--This act shall have no  
17 application to any public works subject to the Walsh-Healey Act,  
18 the act of June 30, 1936, chapter 881, 49 Stat. 2036, 41 USCA  
19 sections 35-45, or the Davis Bacon Act, the act of March 3,  
20 1931, 40 U. S. Code 276 (a).

21 Section 16. Repealer.--All acts and parts of acts are  
22 repealed in so far as they are inconsistent herewith.

23 Section 17. Effective Date.--This act shall take effect on  
24 the first day of the sixth month following date of final  
25 enactment.]

26 Section 2. This act shall take effect in 60 days.