

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1660 Session of
1989

INTRODUCED BY GIGLIOTTI, VROON, DeWEESE, TANGRETTI, COLAIZZO,
WAMBACH, ROBINSON, PISTELLA, KOSINSKI, HALUSKA, McNALLY,
MORRIS, TRELLO, MELIO, PETRONE, TRICH, WOZNIAK, LaGROTTA,
COLAFELLA, LAUGHLIN, DeLUCA, COWELL, OLASZ, PESCI, PRESSMANN,
CAPPABIANCA, SCRIMENTI, FREEMAN, STISH, TELEK, KONDRICH AND
KAISER, JUNE 7, 1989

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 7, 1989

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," defining "financing"; making amendments to
6 conform with these definitional amendments; specifying duties
7 of certain officers of public bodies; adding criminal and
8 civil remedies; and changing certain time limitations.

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

11 Section 1. Section 2(4) and (5) of the act of August 15,
12 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing
13 Wage Act, amended August 9, 1963 (P.L.653, No.342), are amended
14 and the section is amended by adding a clause to read:

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

16 * * *

17 (4) "Public body" means the Commonwealth of Pennsylvania,
18 any of its political subdivisions, any authority created by the
19 General Assembly of the Commonwealth of Pennsylvania or created

1 by the legislative body of any of its political subdivisions and
2 any instrumentality or agency of the Commonwealth of
3 Pennsylvania or any of its political subdivisions, including any
4 industrial development authority.

5 (5) "Public work" means construction, reconstruction,
6 demolition, alteration [and/or], repair [work other than] and
7 maintenance work, done under contract and paid for in whole or
8 in part out of the funds of a public body or financed in whole
9 or in part by a public body where the estimated cost of the
10 total project is in excess of twenty-five thousand dollars
11 (\$25,000), but shall not include work performed under a
12 rehabilitation [or manpower] training program. When a project is
13 to be constructed, reconstructed, altered, repaired or
14 maintained by a nonpublic body as a condition of a contract for
15 the eventual purchase or lease of a project by a public body, or
16 by an entity wholly or partially financed by a public body, such
17 construction, reconstruction, alteration, repairs or maintenance
18 shall be public work. The fact that a public body may wholly or
19 partially pay or finance a project to or through intermediary
20 agencies, bodies, corporations or other entities shall not
21 prevent a project which otherwise would qualify as a public work
22 from being a public work.

23 * * *

24 (11) "Financing" includes the supply of money, credit or
25 capital, as for example, in the case of a loan, grant, guaranty
26 or surety.

27 Section 2. Sections 3 and 4 of the act, amended August 9,
28 1963 (P.L.653, No.342), are amended to read:

29 Section 3. Specifications.--The specifications for every
30 contract for any public work [to which any public body is a

1 party,] shall contain a provision stating the minimum wage rate
2 that must be paid to the workmen employed in the performance of
3 the contract.

4 Section 4. Duty of Public Body.--It shall be the duty of the
5 chief executive officer and the treasurer, fiscal or financial
6 officer of every public body which proposes the making or
7 financing of a contract for any project of public work to
8 determine from the secretary the prevailing minimum wage rates
9 which shall be paid by the contractor to the workmen upon such
10 project. Reference to such prevailing minimum rates shall be
11 published at the direction of the chief executive officer and
12 the treasurer, fiscal or financial officer of the public body,
13 in the notice issued for the purpose of securing bids for such
14 project of public work. Whenever any contract for a project of
15 public work is entered into, the prevailing minimum wages as
16 determined by the secretary shall be incorporated into and made
17 a part of such contract and shall not be altered during the
18 period such contract is in force. Whenever any contract for a
19 project of public work is financed by a public body, it shall be
20 the duty of the chief executive officer and the treasurer,
21 fiscal or financial officer of the public body to include in the
22 financing agreement the requirement that the prevailing minimum
23 wages as determined by the secretary shall be incorporated into
24 and made a part of the contract for the project of public work
25 and shall not be altered during the period such contract is in
26 effect.

27 Section 3. Section 6 of the act is amended to read:

28 Section 6. Duty of Contractor.--Every contractor and
29 subcontractor shall keep an accurate record showing the name,
30 craft and the actual hourly rate of wage paid to each workman

1 employed by him in connection with public work, and such record
2 shall be preserved for two years from date of payment. The
3 record shall be open at all reasonable hours to the inspection
4 of the public body awarding or financing the contract and to the
5 secretary.

6 Section 4. Section 8 of the act, amended August 9, 1963
7 (P.L.653, No.342), is amended to read:

8 Section 8. Review of Rates, Petition and Hearing.--Any
9 prospective bidder or his representative, any representative of
10 any group of employers engaged in the particular type of
11 construction, reconstruction, alteration and demolition [or],
12 repair or maintenance work involved, any representative of any
13 craft or classification of workmen or the public body may,
14 within ten days after the publication and issue of the
15 specifications covering the particular contract for public work
16 involved, file with the secretary a verified petition to review
17 the determination of any such rate or rates. Within two days
18 thereafter a copy of such petition shall be filed with the
19 public body authorizing or financing the public work. The
20 petition shall set forth the facts upon which it is based. The
21 secretary shall, upon notice to the petitioner, the public body
22 authorizing or financing the public work and the recognized
23 collective bargaining representatives for the particular crafts
24 and classifications involved, and also to all persons entitled
25 to receive notice pursuant to subsection (a) of section 7
26 hereof, institute an investigation and hold a public hearing
27 within twenty days after the filing of such petition. Within ten
28 days thereafter, the secretary shall make a determination and
29 transmit it, in writing, to the public body and to the
30 interested parties. Such determination shall be final unless

1 within ten days an appeal is filed with the Appeals Board.

2 Upon receipt by the public body of the notice of the filing
3 of such petition, the public body awarding or financing the
4 contract or authorizing or financing the public work shall
5 extend the closing date for the submission of bids until five
6 days after the final determination of the general prevailing
7 minimum wage rates pursuant to this section and the publication
8 of such findings.

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

18 Section 5. Sections 9 and 10(a) and (b) of the act are
19 amended to read:

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

28 Section 10. Duty of Public Body.--(a) Before final payment
29 is made by, or on behalf of or with the financial assistance of
30 any public body of any sum or sums due on public work, it shall

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

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

1 workmen whose wages are unpaid, as shown by the verified
2 statement filed by any contractor, and may pay directly to any
3 workmen the amount shown to be due to him for such wages by the
4 statements filed as hereinbefore required, thereby discharging
5 the obligation of the contractor to the person receiving such
6 payment to the extent of the amount thereof.

7 * * *

8 Section 6. Section 11(a) of the act is amended and the
9 section is amended by adding subsections to read:

10 Section 11. Remedies and Penalties.--(a) The fiscal or
11 financial officer[, or] of any public body having public work
12 performed under which any workman shall have been paid less than
13 the prevailing wage, shall forthwith notify the secretary, in
14 writing, of the name of the person or firm failing to pay the
15 prevailing wages.

16 * * *

17 (i) Any chief executive officer, treasurer or financial
18 officer of any public body who shall wilfully, intentionally,
19 recklessly or negligently fail to fulfill any of his duties and
20 responsibilities under this act shall be guilty of a misdemeanor
21 of the third degree, and shall, upon conviction, be sentenced to
22 pay a fine of not exceeding two thousand five hundred dollars
23 (\$2,500) or to undergo imprisonment not exceeding one year, or
24 both.

25 (j) Whenever workmen have not received prevailing wages
26 wholly or partly because of the failure of the public body, its
27 chief executive officer or treasurer, fiscal or financial
28 officer to fulfill its or their duties and responsibilities
29 under this act, then the public body shall be liable for and
30 shall pay to the aggrieved workmen an amount equal to the

1 difference between the wages which they received and the
2 prevailing wages to which they were entitled.

3 Section 7. Section 13 of the act is amended to read:

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

10 Section 8. This act shall take effect immediately.