

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 951 Session of
2009

INTRODUCED BY MCILHINNEY, GORDNER, RAFFERTY, ALLOWAY, FOLMER,
M. WHITE AND FONTANA, JUNE 11, 2009

REFERRED TO LABOR AND INDUSTRY, JUNE 11, 2009

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 remedies and penalties.

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

8 Section 1. Section 11 of the act of August 15, 1961
9 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage
10 Act, is amended to read:

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

17 (b) Any workman may, within three months from the date of
18 the occurrence of the incident complained of, file a protest, in
19 writing, with the secretary objecting to the amount of wages

1 paid for services performed by him on public work as being less
2 than the prevailing wages for such services.

3 (c) Whenever a fiscal or financial officer of any public
4 body shall notify the secretary that any person or firm required
5 to pay its workmen the prevailing wage under this act has failed
6 so to do, or whenever any workman employed upon public work
7 shall have filed a timely protest objecting that he has been
8 paid less than prevailing wages as required by this act, it
9 shall be the duty of and the secretary shall forthwith
10 investigate the matter and determine whether or not there has
11 been a failure to pay the prevailing wages and whether such
12 failure was intentional or otherwise. In any such investigation,
13 the secretary shall provide for an appropriate hearing upon due
14 notice to interested parties including the workmen, the employer
15 and their respective representative, if any.

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

25 (e) In the event that the secretary shall determine, after
26 notice and hearing as required by this section, that any person
27 or firm has failed to pay the prevailing wages and that such
28 failure was intentional, [he shall thereupon notify all public
29 bodies of the name or names of such persons or firms and no
30 contract shall be awarded to such persons or firms or to any

1 firm, corporation or partnership in which such persons or firms
2 have an interest until three years have elapsed from the date of
3 the notice to the public bodies aforesaid.] the secretary is
4 authorized to assess and collect administrative penalties up to
5 double the amount of underpayment of wages for the first
6 offense, up to ten times the amount of underpayment of wages for
7 a second offense and, if a third violation occurs within ten
8 years from the first notice, the secretary shall notify all
9 public bodies of the name of the person or firm and no contract
10 shall be awarded to the person or firm or to any firm,
11 corporation or partnership in which the person or firm has an
12 interest until three years have elapsed from the date of the
13 notice of the third offense. The secretary may in addition
14 thereto request the Attorney General to proceed to recover the
15 penalties for the Commonwealth of Pennsylvania which are payable
16 under subsection (f) of this section.

17 (f) Whenever it shall be determined by the secretary, after
18 notice and hearing as required by this section, that any person
19 or firm has failed to pay the prevailing wages and that such
20 failure was intentional, such persons or firm shall be liable to
21 the Commonwealth of Pennsylvania for liquidated damages, in
22 addition to damages for any other breach of the contract in the
23 amount of the underpayment of wages due any workman engaged in
24 the performance of such contract.

25 (g) It shall not constitute a failure to pay the prevailing
26 wage rates for the work of a particular craft or classification
27 where the prevailing wage rates determined for a specific craft
28 or classification has been paid, and it is asserted that one or
29 more bona fide craft unions contend that the work should have
30 been assigned to their members instead of the members of the

1 specific craft to whom it was assigned or by whom it was
2 performed.

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

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

8 (2) After there has been a finding by the secretary in the
9 manner required by this section that any person or firm has
10 failed to pay the prevailing wages prescribed by this act and
11 thereafter there shall be a failure by such person or firm to
12 pay the prevailing wages prescribed by this act, or there shall
13 be a subsequent failure of such person or firm to comply with
14 any opportunity to adjust any differences which shall be
15 afforded him by the secretary.

16 Section 2. The amendment of section 11 of the act shall
17 apply to a person or firm that has failed to pay prevailing
18 wages in violation of section 11(e) of the act on or after the
19 effective date of this section.

20 Section 3. This act shall take effect in 60 days.