

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 541 Session of
2015

INTRODUCED BY KAUFFMAN, BLOOM, SACCONI, MENTZER, MARSICO, GROVE,
CUTLER, TALLMAN, DIAMOND, FEE, RAPP, MCGINNIS, METCALFE,
SAYLOR, EVERETT, DELOZIER, M. K. KELLER, LAWRENCE, HICKERNELL
AND MOUL, FEBRUARY 23, 2015

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 23, 2015

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10 repealed:

11 [AN ACT

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

16 Section 2. Section 1 of the act is repealed:

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

Section 3. Sections 2, 2.1, 2.2, 3, 4 and 5 of the act,
amended or added August 9, 1963 (P.L.653, No.342), are repealed:

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

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

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

(3) "Maintenance work" means the repair of existing
facilities when the size, type or extent of such facilities is
not thereby changed or increased.

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

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

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

(7) "Workman" includes laborer, mechanic, skilled and semi-

1 skilled laborer and apprentices employed by any contractor or
2 subcontractor and engaged in the performance of services
3 directly upon the public work project, regardless of whether
4 their work becomes a component part thereof, but does not
5 include material suppliers or their employees who do not perform
6 services at the job site.

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

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

13 (10) "Appeals Board" means the board created by section 2.2
14 of this act.

15 Section 2.1. Advisory Board, Powers and Duties.--(a) There
16 is hereby created in the Department of Labor and Industry an
17 Advisory Board consisting of seven members for the purpose of
18 assisting the secretary in carrying out his duties under the act
19 to which this is an amendment.

20 (b) Except for the member employed by the secretary, each
21 member of the Advisory Board shall be appointed by the Governor
22 and shall receive a compensation of thirty dollars (\$30) per day
23 for each day actually spent in the performance of his duties
24 plus necessary expenses.

25 (c) Of the seven members, one shall be a representative of
26 an association of general contractors engaged full-time in the
27 building construction industry, one shall be a representative of
28 an association of heavy and highway contractors engaged full
29 time in the heavy and highway construction industry, one shall
30 be a member of an historically established union representing

1 labor in the building construction industry, one shall be a
2 member of an historically established union representing labor
3 in the heavy and highway construction industry, one shall be a
4 member of an association representing a political subdivision,
5 one shall be learned in the law and employed by the secretary,
6 and one shall not be engaged in or employed by the building
7 industry or by a public body but shall represent the general
8 public.

9 (d) At least two weeks' public notice shall be given in the
10 manner prescribed by regulation of the board prior to any
11 meeting of the board. Four members of the board shall constitute
12 a quorum.

13 (e) The Advisory Board shall have the power and duty to--

14 (1) Consult with the secretary at his request concerning any
15 matter arising under the administration of this act.

16 (2) Advise and assist the secretary in carrying out the
17 duties provided for him by section 7 of this act.

18 (3) Promulgate rules and regulations necessary to carry out
19 the duties placed upon the board by this act.

20 Section 2.2. Appeals Board Powers and Duties.--(a) There is
21 hereby created in the Department of Labor and Industry an
22 Appeals Board consisting of seven members for the purpose of
23 hearing and determining grievances arising out of the
24 administration of the act to which this is an amendment.

25 (b) Except for the member employed by the secretary, each
26 member of the Appeals Board shall be appointed by the Governor
27 and shall receive a compensation of thirty dollars (\$30) per day
28 for each day actually spent in the performance of his duties
29 plus necessary expenses.

30 (c) Of the seven members, one shall be a representative of

1 an association of general contractors engaged full-time in the
2 building construction industry, one shall be a representative of
3 an association of heavy and highway contractors engaged full
4 time in the heavy and highway construction industry, one shall
5 be a member of an historically established union representing
6 labor in the building construction industry, one shall be a
7 member of an historically established union representing labor
8 in the heavy and highway construction industry, one shall be a
9 member of an association representing a political subdivision,
10 one shall be learned in the law and employed by the secretary,
11 and one shall not be engaged in or employed by the building
12 industry or by a public body but shall represent the general
13 public. No member of the Advisory Board created by this
14 amendatory act shall be appointed to the Appeals Board.

15 (d) Four members of the board shall constitute a quorum and
16 the board shall neither sit for purposes of hearing any
17 grievance nor make any determination unless a quorum is present.

18 (e) The Appeals Board shall have the power and duty to--

19 (1) Hear and determine any grievance or appeal arising out
20 of the administration of this act.

21 (2) Promulgate rules and regulations necessary to carry out
22 the duties placed upon the board by this act: Provided, however,
23 That any such rules and regulations shall provide for notice of
24 filing of grievances and appeals, public hearings, right of
25 representation and all other procedures required by due process
26 of law.

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

1 the contract.

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

14 Section 5. Prevailing Wage.--Not less than the prevailing
15 minimum wages as determined hereunder shall be paid to all
16 workmen employed on public work.]

17 Section 4. Section 6 of the act is repealed:

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

25 Section 5. Sections 7 and 8 of the act, amended August 9,
26 1963 (P.L.653, No.342), are repealed:

27 [Section 7. Duty of Secretary.--The secretary shall, after
28 consultation with the advisory board, determine the general
29 prevailing minimum wage rate in the locality in which the public
30 work is to be performed for each craft or classification of all

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

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

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

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

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

22 Section 6. Sections 9, 10, 11, 12, 13, 14, 15, 16 and 17 of
23 the act are repealed:

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

1 by them to pay workmen their wages.

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

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

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

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

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

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

28 (c) Whenever a fiscal or financial officer of any public
29 body shall notify the secretary that any person or firm required
30 to pay its workmen the prevailing wage under this act has failed

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

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

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

1 are payable under subsection (f) of this section.

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

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

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

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

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

1 Section 12. Failure to Comply, Termination.--In any case
2 where the secretary shall have determined that any person or
3 firm has failed to pay the prevailing wages under subsections
4 (e) and (f) of section 11 hereof, he may direct the public body
5 to terminate, and the public body may terminate, any such
6 contractor's right to proceed with the public work.

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

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

17 Section 15. Application of Act.--This act shall have no
18 application to any public works subject to the Walsh-Healey Act,
19 the act of June 30, 1936, chapter 881, 49 Stat. 2036, 41 USCA
20 sections 35-45, or the Davis Bacon Act, the act of March 3,
21 1931, 40 U. S. Code 276 (a).

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

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

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