

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.