

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2135 Session of
1988

INTRODUCED BY LaGROTTA, COHEN, DOMBROWSKI, PISTELLA, KOSINSKI,
MICHLOVIC, TIGUE, ITKIN, JOHNSON, VEON, BELARDI AND PETRONE,
FEBRUARY 1, 1988

REFERRED TO COMMITTEE ON LABOR RELATIONS, FEBRUARY 1, 1988

AN ACT

1 Providing for certain protections of construction workers'
2 fringe benefit funds if prime contractors or subcontractors
3 are delinquent in their payments to the fund.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Construction
8 Workers' Fringe Benefit Security Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Construction employer." A person in the business of
14 building, constructing, altering or repairing any building,
15 road, bridge or structure in this Commonwealth.

16 "Construction fund." All moneys which are in the custody of
17 the owner of a project and which are designated for the
18 construction, alteration or repair of any private or public

1 project.

2 "Fringe benefits." Any benefits agreed to be paid by a
3 construction employer to a fringe benefit fund.

4 "Fringe benefit fund." Any fund established pursuant to the
5 terms of a collective bargaining agreement entered into between
6 a construction employer and a representative labor organization,
7 or pursuant to the terms of a fringe benefit trust indenture
8 entered into between the trustees of a fund and the construction
9 employer, for the collection, investment and payment of fringe
10 benefits.

11 "Prime contractor." A construction employer who has a direct
12 contract with the owner of a public or private project.

13 "Private project." The construction, repair or alteration of
14 any building, road, bridge or structure or any other
15 improvements to real property for any person other than the
16 Commonwealth, or any agency, commission or department thereof,
17 or any county, municipality or school district, or any agency or
18 instrumentality thereof.

19 "Public project." The construction, alteration or repair of
20 any building, road, bridge or structure or any other
21 improvements to real property for the Commonwealth, or any
22 agency, commission or department thereof, or any county,
23 municipality or school district, or any agency or
24 instrumentality thereof.

25 "Public project owner." The head of the public agency with
26 jurisdiction over the public project.

27 "Subcontractor." A construction employer who has a contract
28 with a prime contractor or with the subcontractor of the prime
29 contractor.

30 "Worker." Any person engaged in a skilled or unskilled

1 construction trade or craft in this Commonwealth.

2 Section 3. Subcontractor's delinquent payments and notices.

3 (a) General rule.--If a subcontractor is at least four weeks
4 delinquent in the payment of fringe benefits, as certified by
5 the trustees of the specific fringe benefit fund or by their
6 designated representative, the fringe benefit fund shall be
7 entitled to the relief provided pursuant to section 5 of this
8 act, provided that the fringe benefit fund shall have given
9 written notice within 45 days of the date of the existence of a
10 delinquency by certified mail, return receipt requested, to the
11 prime contractor and the subcontractor advising them of the
12 delinquency.

13 (b) Claim for payment.--If the delinquency is not rectified
14 within 30 days after receipt of notice by the prime contractor,
15 the fringe benefit fund shall give written notice, by certified
16 mail, return receipt requested, to the subcontractor, prime
17 contractor and private or public project owner of the fringe
18 benefit funds claimed for payment of fringe benefits from the
19 construction fund.

20 Section 4. Prime contractor's delinquent payments and notices.

21 (a) General rule.--If a prime contractor is at least four
22 weeks delinquent in the payment of fringe benefits, as certified
23 by the trustees of the specific fringe benefit fund or by their
24 designated representative, the fringe benefit fund shall be
25 entitled to the relief provided pursuant to section 5 of this
26 act, provided that the fringe benefit fund shall have given
27 written notice, within 45 days of the date of the existence of a
28 delinquency, by certified mail, return receipt requested, to the
29 prime contractor and the private or public project owner,
30 advising them of the delinquency.

1 (b) Claim for payment.--If the delinquency is not rectified
2 within 30 days after receipt of notice by the prime contractor,
3 the fringe benefit fund shall give written notice, by certified
4 mail, return receipt requested, to the subcontractor, prime
5 contractor and private or public project owner of the fringe
6 benefit funds claimed for payment of fringe benefits from the
7 construction fund.

8 Section 5. Remedies.

9 (a) General rule.--Upon receipt of the notice required under
10 sections 3(b) and 4(b), a private or public project owner shall
11 withhold, from the sums otherwise due the prime contractor, a
12 sum equal to the amount claimed due by the fringe benefit fund
13 and any further sums subsequently demanded by the fringe benefit
14 fund arising out of work performed at the private or public
15 project, and these sums shall be segregated from the
16 construction fund and held in trust by the private or public
17 project owner or deposited with the clerk of the court of common
18 pleas and paid to the fringe benefit fund claiming the
19 delinquency.

20 (b) Amount withheld.--The amount withheld or deposited by
21 the private or public project owner shall not exceed the amount
22 due and owing from that owner to the prime contractor at the
23 time notice is received by the owner.

24 (c) Limit of liability.--The extent to which notice for a
25 subcontractor delinquency shall create liability upon the owner
26 shall be limited to the amount due and owing, at the time notice
27 is received, by the owner to the prime contractor, or by the
28 prime contractor to the delinquent subcontractor or by the
29 subcontractor who is in privity with the delinquent
30 subcontractor, whichever is less.

1 (d) Notice of contest.--Payment by the private or public
2 project owner to the fringe benefit fund shall be made within 45
3 days of such demand, unless and only to the extent that the
4 subcontractor or prime contractor against whom such delinquency
5 claim has been asserted notifies the owner and the fringe
6 benefit fund in writing, by certified mail, return receipt
7 requested, prior to the expiration of the 45-day period that it
8 contests the claim of the fringe benefit fund. Whenever a notice
9 of contest has been sent by the claimed delinquent construction
10 employer, the private or public project owner shall hold a sum
11 in the amount claimed due by the fringe benefit fund as trustee,
12 and payment therefrom shall be made upon the entry of a final
13 judgment of a court of competent jurisdiction or upon receipt of
14 the consent of all of the parties.

15 (e) Interpleading.--Any private or public project owner,
16 prime contractor or subcontractor who makes a proper payment to
17 a fringe benefit fund or deposits the payment with the clerk of
18 the court of common pleas, in accordance with subsection (a),
19 shall be released of any obligation to any party in privity with
20 that private or public project owner, prime contractor or
21 subcontractor, to the extent of the payment or deposit made.
22 With regard to actions commenced by a fringe benefit fund in the
23 courts of this Commonwealth, the private or public project owner
24 shall not be named a party in such action if the total
25 delinquent sum demanded by the fringe benefit fund is deposited
26 with the clerk of the court of common pleas prior to the
27 commencement of an action.

28 (f) Remedy restrictions.--Fringe benefit funds entitled to
29 the remedies against a private or public project owner provided
30 pursuant to this section and sections 3 and 4 are entitled only

1 to those fringe benefits earned by workers on the particular
2 project constructed for the owner.

3 (g) Bankruptcy.--If a construction employer files for
4 insolvency or makes an assignment of rights pursuant to the laws
5 of this Commonwealth, any delinquent fringe benefits shall be
6 entitled to the same priority as delinquent wages in such
7 proceedings.

8 (h) False notices.--If a notice filed pursuant to section 3
9 or 4 is willfully or knowingly in excess of the amounts due the
10 fringe benefit fund, the fund shall be responsible for any
11 damages incurred.

12 (i) Costs.--All costs and fees arising out of the procedures
13 established in this section shall be the responsibility of the
14 delinquent party. Where no delinquency is determined, the costs,
15 fees and damages arising out of the procedures established in
16 this section shall be the responsibility of the fringe benefit
17 fund.

18 (j) Additional remedies.--The remedies provided pursuant to
19 this act shall be in addition and not in lieu of any other
20 remedies provided under the laws of this Commonwealth.

21 Section 6. Limitation on remedies.

22 (a) General rule.--The provisions of this act shall apply
23 only to fringe benefit funds which are:

24 (1) located within and established for the benefit of
25 workers in this Commonwealth; or

26 (2) located outside of this Commonwealth but cover
27 workers employed by any construction employer in the
28 construction, repair or alteration of any private project or
29 public project within this Commonwealth.

30 (b) Real property.--The remedies provided herein are

1 effective as against the construction fund. No rights against
2 the real property upon which the project is constructed, altered
3 or repaired shall be created by this act.

4 Section 7. Effective date.

5 This act shall take effect in 60 days.