

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2116 Session of
2005

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JOSEPHS, LaGROTTA, MARKOSEK, OLIVER, RAMALEY, SANTONI,
SOLOBAY, STURLA, TANGRETTI, TIGUE AND WANSACZ,
OCTOBER 24, 2005

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 24, 2005

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, providing for requirements for performance of
3 Commonwealth contracts by United States labor; and imposing
4 penalties.

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

7 Section 1. Title 62 of the Pennsylvania Consolidated
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 46

10 INSOURCING OF JOBS

11 Sec.

12 4601. Short title of chapter.

13 4602. Definitions.

14 4603. Requirements for State contracts.

15 4604. Prohibited activities.

16 4605. Civil penalties.

1 4606. Creation of board.

2 § 4601. Short title of chapter.

3 This chapter shall be known and may be cited as the Keep
4 Pennsylvanians Working Act.

5 § 4602. Definitions.

6 The following words and phrases when used in this chapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Specific knowledge." Special knowledge possessed by an
10 individual of the petitioning organization's product, service,
11 research, equipment, techniques, management or other interests
12 and its application in international markets, or an advanced
13 level of knowledge or expertise in the organization's processes
14 and procedures. The term shall not include commodity services
15 such as general programming in any programming language,
16 networking, engineering or other general services.

17 § 4603. Requirements for State contracts.

18 (a) General rule.--The Commonwealth, its agencies and
19 political subdivisions shall not award any contract under this
20 title to a contractor or subcontractor who utilizes a labor
21 force comprised of L-1 or H-1B visa holders unless such labor
22 possesses specific knowledge as defined by United States
23 immigration law, 8 CFR 214.2(1) (relating to special
24 requirements for admission, extension, and maintenance of
25 status), and as specifically stated in the agency's request for
26 proposals.

27 (b) Certification.--A contractor or subcontractor submitting
28 a bid or a request for proposal shall certify in writing that no
29 L-1 or H-1B visa holders will be or are working on any State
30 contract awarded to them, either directly or through a partner

1 or parent. In the case the contractor or subcontractor provides
2 services for contracts that specifically request workers with
3 special knowledge and the contractor supplies L-1 or H-1B visa
4 holders to provide services that meet the test of specialized
5 knowledge, the contractor must submit a justification in writing
6 that explains the use of L-1 or H-1B visa holders and what
7 efforts they have made to ensure that such specialized knowledge
8 can not be found within the United States. Further, the
9 contractor must advertise to United States resident workers on a
10 State-provided Internet website the need for specialized
11 knowledge for a period of 60 days prior to the start of work on
12 the contract or part thereof and must hire United States
13 residents for work requiring specialized knowledge if said
14 United States resident labor is available.

15 § 4604. Prohibited activities.

16 During the term of a contract with the Commonwealth, the
17 contractor or any subcontractor shall not transfer work under
18 the contract to any work force that requires immigrant labor
19 needing an L-1 or H-1B visa unless specific knowledge can be
20 documented.

21 § 4605. Civil penalties.

22 (a) Right of action.--The Attorney General may bring an
23 action for a civil penalty for violation of this chapter.

24 (b) Penalties.--Any contractor or subcontractor contracting
25 with the Commonwealth who knew or should have known that the
26 provisions of this chapter were not being complied with may be
27 subject to any or all of the following civil penalties:

28 (1) The contract with the Commonwealth in noncompliance
29 shall be void.

30 (2) The contractor or subcontractor shall be prohibited

1 from bidding on or being awarded any contract with the
2 Commonwealth for a period of at least one year.

3 (3) For each violation of section 4604 (relating to
4 prohibited activities), the contractor or subcontractor shall
5 be assessed a penalty of \$5,000, an amount equal to 20% of
6 the value of the contract or the amount paid by the
7 department for the insourced work, whichever is greater.

8 § 4606. Creation of board.

9 The Department of Labor and Industry shall promulgate
10 regulations that provide for the creation of a dispute
11 arbitration board that reviews challenges to contractors' use of
12 specialized knowledge. The board shall consist of the following
13 members:

14 (1) One member from a large (over 200 employees)
15 technology company.

16 (2) Four members from small (under 200 employees)
17 technology companies.

18 (3) Two at-large members from outside the technology
19 industry.

20 Section 2. This act shall apply to all contracts entered
21 into on or after July 1, 2005.

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