

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 637** Session of
2011

INTRODUCED BY WARD, BREWSTER, SCARNATI, McILHINNEY,
EICHELBERGER, D. WHITE, VOGEL, RAFFERTY, BRUBAKER, ORIE,
FONTANA, ALLOWAY, GREENLEAF, WAUGH, ARGALL, PICCOLA AND
WASHINGTON, FEBRUARY 24, 2011

AS AMENDED ON THIRD CONSIDERATION, MAY 23, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in contracts for public works, providing for
3 verification of the employment eligibility of all employees
4 for purposes of wage reporting and employment eligibility;
5 prescribing penalties; and establishing good faith immunity
6 under certain circumstances.

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

9 Section 1. Chapter 39 of Title 62 of the Pennsylvania
10 Consolidated Statutes is amended by adding a subchapter to read:

11 SUBCHAPTER F

12 EMPLOYMENT VERIFICATION

13 Sec.

14 3951. Scope of subchapter.

15 3952. Definitions.

16 3953. Verification.

17 3954. Violations.

18 3955. Enforcement and sanctions.

19 3956. Protection from retaliation.

1 3957. Good faith immunity.

2 § 3951. Scope of subchapter.

3 This subchapter relates to verification of employment on
4 certain public works projects.

5 § 3952. Definitions.

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

9 "Department." The Department of Labor and Industry of the
10 Commonwealth.

11 "Employee." An individual HIRED BY A PUBLIC WORKS CONTRACTOR ←
12 AFTER THE EFFECTIVE DATE OF THIS SUBCHAPTER for whom a public
13 works contractor is required by law to file a Form W-2 with the
14 Internal Revenue Service.

15 "EVP." The E-Verify Program operated by the Department of
16 Homeland Security that electronically verifies employment
17 eligibility for employees.

18 "INA." The Immigration and Nationality Act (66 Stat. 163, 8
19 U.S.C. § 1101 et seq.).

20 ~~"NVS." The Social Security Number Verification Service~~ ←
21 ~~operated by the Social Security Administration.~~

22 "Public body." The Commonwealth of Pennsylvania, any of its
23 political subdivisions, any authority created by the General
24 Assembly of the Commonwealth and any instrumentality or agency
25 of the Commonwealth.

26 "Public work." Construction, reconstruction, demolition,
27 alteration and repair work other than maintenance work, done
28 under contract and paid for in whole or in part out of the funds
29 of a public body where the estimated cost of the total project
30 is in excess of \$25,000. The term shall not include work

1 performed under a rehabilitation or manpower training program.

2 "Public works contractor." A contractor that provides goods
3 or services under a contract involving a public works project.

4 "Public works project." A project involving a public work.

5 "Secretary." The Secretary of Labor and Industry of the
6 Commonwealth.

7 "Subcontractor." A person, other than a natural person,
8 regardless of its tier, including, but not limited to, a
9 staffing agency, that performs work for a public works
10 contractor under a contract for a public work.

11 "Willful." Action or conduct undertaken intentionally or
12 with reckless disregard for or deliberate ignorance of the
13 requirements and obligations established by this subchapter.

14 § 3953. Verification.

15 (a) General rule.--As a precondition of being awarded a
16 contract for a public work, and prior to the execution of the
17 contract, a public works contractor shall provide the
18 ~~Commonwealth agency~~ PUBLIC BODY with which the contract will be ←
19 made a verification statement in which it shall represent the
20 following SUBJECT TO AND CONSISTENT WITH FEDERAL IMMIGRATION ←
21 LAW:

22 ~~(1) The public works contractor has verified the~~ ←
23 ~~employment eligibility of all of its then existing employees~~
24 ~~for wage reporting purposes through NVS in accordance with~~
25 ~~Federal law governing the use of NVS.~~

26 ~~(2)~~ (1) The public works contractor will verify the ←
27 employment eligibility of a new employee for employment
28 purposes prior to the commencement of work by the new
29 employee through EVP in accordance with Federal law governing
30 the use of EVP.

1 ~~(3)~~ (2) The public works contractor will provide the ←
2 Commonwealth agency PUBLIC BODY with the verification ←
3 statement required under subsection (b) from each
4 subcontractor it uses or intends to use on the public works
5 project prior to the commencement of any work by the
6 subcontractor on the public works project.

7 ~~(4)~~ (3) The public works contractor will provide a ←
8 certification from the department verifying that the
9 contractor has not previously violated this subchapter.

10 (b) Subcontractor verification statements.--Prior to the
11 execution of a subcontract with a public works contractor, a
12 subcontractor shall provide the public works contractor with a
13 verification statement containing substantially the same
14 information about the subcontractor as required under subsection
15 (a) about the public works contractor. The subcontractor shall
16 submit the verification statement to the contractor prior to the
17 commencement of any work by the subcontractor on the public
18 works project.

19 (c) Form.--The verification statement required by this
20 section shall be on a form prescribed by the secretary and shall
21 comply with the following additional requirements:

22 (1) The statement shall include a certification that the
23 information in the statement is true and correct and that the
24 person signing the statement understands that the submission
25 of false or misleading information in connection with the
26 verification shall subject the person and the public works
27 contractor or subcontractor, as the case may be, to sanctions
28 provided by law.

29 (2) The statement shall be signed by a representative of
30 the public works contractor or subcontractor, as applicable,

1 who has sufficient knowledge and authority to make the
2 representations and certifications contained in the
3 statement.

4 (d) Discrimination prohibited.--In conducting the employment
5 eligibility required by this section, a public works contractor
6 or its subcontractor shall not discriminate against any employee
7 on the basis of race, ethnicity, color or national origin.

8 § 3954. Violations.

9 The following shall constitute a violation of this
10 subchapter:

11 (1) Employment by a public works contractor or
12 subcontractor of an employee whose employment eligibility has
13 not been verified by ~~NVS~~ or EVP as required by this ←
14 subchapter.

15 (2) Use by a public works contractor of a subcontractor
16 on a public works project prior to the submission by the
17 subcontractor of a verification statement required by this
18 subchapter.

19 (3) Commencement of work by a subcontractor on a public
20 works project prior to submitting to the public works
21 contractor a verification statement required by this
22 subchapter.

23 (4) Making a false statement or misrepresentation in a
24 verification statement required by this subchapter.

25 § 3955. Enforcement and sanctions.

26 (a) General rule.--The secretary shall enforce the
27 provisions of this subchapter.

28 (b) Investigation of complaints.--The secretary shall
29 accept, review and investigate in a timely manner any credible
30 complaint that a public works contractor or subcontractor has

1 violated a provision of this subchapter.

2 (c) Audits.--To ensure compliance with the requirements of
3 this subchapter, the secretary shall conduct complaint-based and
4 random audits of public works contractors and subcontractors in
5 this Commonwealth. In conducting such audits, the secretary
6 shall utilize NVS and EVP to verify the employment eligibility ←
7 of employees for wage reporting purposes and employment
8 eligibility, as appropriate, in accordance with Federal law
9 governing the use of NVS and EVP EVALUATE THE PROCESS UTILIZED ←
10 BY THE PUBLIC WORKS CONTRACTORS AND SUBCONTRACTORS IN COMPLYING
11 WITH THE REQUIREMENTS OF THIS SUBCHAPTER.

12 (d) Sanctions.--A public works contractor or subcontractor
13 that willfully violates section 274A of the INA (8 U.S.C. § ←
14 1324a) or willfully engages in violations described in section
15 3954(1), (2) or (3):

16 (1) For a first offense relating to the public contract,
17 a warning letter may be issued by the secretary detailing the
18 violation. The letter shall be posted on the department's
19 Internet website.

20 (2) For a second offense relating to the public
21 contract:

22 (i) At the discretion of the Commonwealth agency ←
23 PUBLIC BODY with which the public works contractor has ←
24 contracted, may be subject to termination of the contract
25 by the Commonwealth agency PUBLIC BODY without recourse ←
26 against or penalty to the Commonwealth agency PUBLIC BODY ←
27 and a fine of up to \$2,000. The right of the Commonwealth ←
28 agency PUBLIC BODY to terminate the contract under this ←
29 subparagraph may not be waived.

30 (ii) At the discretion of the public works

1 contractor with whom the subcontractor has contracted,
2 may be subject to termination of the subcontract by the
3 public works contractor without recourse against or
4 penalty to the public works contractor. The right of the
5 public works contractor to terminate the subcontract
6 under this subparagraph may not be waived.

7 (3) For a third or subsequent offense relating to the
8 public contract, at the discretion of the secretary, in
9 addition to the sanctions in paragraph (2), shall be subject
10 to debarment under section 531 (relating to debarment or
11 suspension) for one year.

12 § 3956. Protection from retaliation.

13 (a) General rule.--It shall be unlawful for a public works
14 contractor or subcontractor to discharge, threaten or otherwise
15 retaliate or discriminate against an employee regarding
16 compensation or other terms or conditions of employment because
17 the employee:

18 (1) participates in an investigation, hearing or inquiry
19 held by the secretary or any other governmental authority
20 under this subchapter; or

21 (2) reports or makes a complaint regarding the violation
22 of this subchapter to a public works contractor,
23 subcontractor or governmental authority.

24 (b) Actions.--

25 (1) Any employee who suffers retaliation or
26 discrimination in violation of this section may bring an
27 action in a court of common pleas in accordance with
28 established civil procedures of this Commonwealth.

29 (2) The action must be brought within three years from
30 the date the employee knew of the retaliation or

1 discrimination.

2 (c) Relief.--If an employee prevails in an action commenced
3 under this section, the employee shall be entitled to the
4 following relief:

5 (1) Reinstatement of the employee, if applicable.

6 (2) Restitution equal to three times the amount of the
7 employee's wages and fringe benefits calculated from the date
8 of the violation or discrimination.

9 (3) Reasonable attorney fees and costs of the action.

10 (4) Any other legal and equitable relief as the court
11 deems appropriate.

12 § 3957. Good faith immunity.

13 A public works contractor or subcontractor that relies in
14 good faith on ~~NVS~~ and EVP procedures to verify the employment ←
15 eligibility of employees shall be immune from the sanctions
16 authorized under section 3955 (relating to enforcement and
17 sanctions) in the event that incorrect information has been
18 provided to the public works contractor or subcontractor.

19 Section 2. This act shall take effect in 60 days.