

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 REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 1, 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 AND prescribing penalties; and establishing good faith
6 immunity 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:

SUBCHAPTER F

EMPLOYMENT VERIFICATION

- 13 Sec.
- 14 3951. Scope of subchapter.
- 15 3952. Definitions.
- 16 3953. Verification.
- 17 3954. Violations.
- 18 3955. Enforcement and sanctions.



1 3956. Protection from retaliation.

2 ~~3957. Good faith immunity.~~

3 § 3951. Scope of subchapter.

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

6 § 3952. Definitions.

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

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

12 "Employee." An individual hired by a public works contractor
13 after the effective date of this subchapter for whom a public
14 works contractor is required by law to file a Form W-2 with the
15 Internal Revenue Service.

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

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

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

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

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

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

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

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

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

13 § 3953. Verification.

14 (a) General rule.--As a precondition of being awarded a
15 contract for a public work, and prior to the execution of the
16 contract, a public works contractor shall provide the public
17 body with which the contract will be made a verification
18 statement in which it shall represent the following ~~subject to~~ ←
19 and consistent with Federal immigration law:

20 (1) The public works contractor ~~will verify the~~ ←
21 ~~employment eligibility of a new employee for employment~~
22 ~~purposes prior to the commencement of work by the new~~
23 ~~employee through EVP in accordance with Federal law governing~~
24 ~~the use of EVP HAS REGISTERED WITH AND PARTICIPATES IN EVP~~ ←
25 AND WILL CONTINUE TO PARTICIPATE IN EVP THROUGHOUT THE LENGTH
26 OF THE CONTRACT.

27 (2) The public works contractor will provide the public
28 body with the verification statement required under
29 subsection (b) from each subcontractor it uses or intends to
30 use on the public works project prior to the commencement of

1 any work by the subcontractor on the public works project.

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

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

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

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

24 (2) The statement shall be signed by a representative of
25 the public works contractor or subcontractor, as applicable,
26 who has sufficient knowledge and authority to make the
27 representations and certifications contained in the
28 statement.

29 (d) Discrimination prohibited.--In conducting the employment ←
30 eligibility required by this section, a A public works ←

1 contractor or its subcontractor, IN PERFORMING THE DUTIES UNDER ←
2 THIS SUBCHAPTER, shall not discriminate against any employee on
3 the basis of race, ethnicity, color or national origin.
4 § 3954. Violations.

5 The following shall constitute a violation of this
6 subchapter:

7 ~~(1) Employment by a public works contractor or~~ ←
8 ~~subcontractor of an employee whose employment eligibility has~~
9 ~~not been verified by EVP as required by this subchapter.~~

10 ~~(2) (1) Use by a public works contractor of a~~ ←
11 ~~subcontractor on a public works project prior to the~~
12 ~~submission by the subcontractor of a verification statement~~
13 ~~required by this subchapter.~~

14 ~~(3) (2) Commencement of work by a subcontractor on a~~ ←
15 ~~public works project prior to submitting to the public works~~
16 ~~contractor a verification statement required by this~~
17 ~~subchapter.~~

18 ~~(4) Making a false statement or misrepresentation in a~~ ←
19 ~~verification statement required by this subchapter.~~

20 (3) THE PUBLIC WORKS CONTRACTOR OR SUBCONTRACTOR DOES ←
21 NOT PARTICIPATE IN EVP THROUGHOUT THE LENGTH OF THE CONTRACT
22 AS STATED AS TRUE AND CORRECT UNDER THE VERIFICATION
23 STATEMENT REQUIRED BY THIS SUBCHAPTER.

24 § 3955. Enforcement and sanctions.

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

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

1 (c) Audits.--To ensure compliance with the requirements of
2 this subchapter, the secretary shall conduct complaint-based and
3 random audits of public works contractors and subcontractors in
4 this Commonwealth. In conducting such audits, the secretary
5 shall evaluate the process utilized by the public works
6 contractors and subcontractors in complying with the
7 requirements of this subchapter.

8 (d) Sanctions.--A public works contractor or subcontractor
9 that willfully engages in violations described in section
10 3954(1), (2) or (3):

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

15 (2) For a second offense relating to the public
16 contract:

17 (i) At the discretion of the public body with which
18 the public works contractor has contracted, may be
19 subject to termination of the contract by the public body
20 without recourse against or penalty to the public body
21 and a fine of up to \$2,000. The right of the public body ←
22 to terminate the contract under this subparagraph may not
23 be waived.

24 (ii) At the discretion of the public works
25 contractor with whom the subcontractor has contracted,
26 may be subject to termination of the subcontract by the
27 public works contractor without recourse against or
28 penalty to the public works contractor. The right of the
29 public works contractor to terminate the subcontract
30 under this subparagraph may not be waived.

1 (3) For a third or subsequent offense relating to the
2 public contract, at the discretion of the secretary, in
3 addition to the sanctions in paragraph (2), shall be subject
4 to debarment under section 531 (relating to debarment or
5 suspension) for ~~one year~~ THREE YEARS.



6 § 3956. Protection from retaliation.

7 (a) General rule.--It shall be unlawful for a public works
8 contractor or subcontractor to discharge, threaten or otherwise
9 retaliate or discriminate against an employee regarding
10 compensation or other terms or conditions of employment because
11 the employee:

12 (1) participates in an investigation, hearing or inquiry
13 held by the secretary or any other governmental authority
14 under this subchapter; or

15 (2) reports or makes a complaint regarding the violation
16 of this subchapter to a public works contractor,
17 subcontractor or governmental authority.

18 (b) Actions.--

19 (1) Any employee who suffers retaliation or
20 discrimination in violation of this section may bring an
21 action in a court of common pleas in accordance with
22 established civil procedures of this Commonwealth.

23 (2) The action must be brought within three years from
24 the date the employee knew of the retaliation or
25 discrimination.

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

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

30 (2) Restitution equal to three times the amount of the

1 employee's wages and fringe benefits calculated from the date
2 of the violation or discrimination.

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

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

6 ~~§ 3957. Good faith immunity.~~ ←

7 ~~A public works contractor or subcontractor that relies in~~
8 ~~good faith on EVP procedures to verify the employment~~
9 ~~eligibility of employees shall be immune from the sanctions~~
10 ~~authorized under section 3955 (relating to enforcement and~~
11 ~~sanctions) in the event that incorrect information has been~~
12 ~~provided to the public works contractor or subcontractor.~~

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