

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 665 Session of 2013

INTRODUCED BY MARSICO, MACKENZIE, PICKETT, AUMENT, F. KELLER, CUTLER, KAUFFMAN, CAUSER, BLOOM, TALLMAN, DUNBAR, WATSON, HICKERNELL, ROCK, MOUL, FLECK, SAYLOR, GROVE, EVERETT, BAKER, SWANGER, MILLARD, LAWRENCE, SCHLEGEL CULVER, MILLER, HAHN, C. HARRIS, M. K. KELLER, STEVENSON, GINGRICH, PEIFER, ROSS AND MILNE, FEBRUARY 12, 2013

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 16, 2013

AN ACT

1 Amending the act of August 15, 1961 (P.L.987, No.442), entitled
2 "An act relating to public works contracts; providing for
3 prevailing wages; imposing duties upon the Secretary of Labor
4 and Industry; providing remedies, penalties and repealing
5 existing laws," further providing for definitions; FURTHER <--
6 PROVIDING FOR SPECIFICATIONS; AND PROVIDING FOR PROTECTION OF
7 WORKMEN.

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

10 ~~Section 1. Section 2 of the act of August 15, 1961 (P.L.987, <--~~
11 ~~No.442), known as the Pennsylvania Prevailing Wage Act, amended~~
12 ~~August 9, 1963 (P.L.653, No.342), is amended to read:~~

13 SECTION 1. SECTIONS 2 AND 3 OF THE ACT OF AUGUST 15, 1961 <--
14 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE
15 ACT, AMENDED AUGUST 9, 1963 (P.L.653, NO.342), ARE AMENDED TO
16 READ:

17 Section 2. Definitions.--As used in this act--

18 (1) "Department" means Department of Labor and Industry of

1 the Commonwealth of Pennsylvania.

2 (2) "Locality" means any political subdivision, or  
3 combination of the same, within the county in which the public  
4 work is to be performed. When no workmen for which a prevailing  
5 minimum wage is to be determined hereunder are employed in the  
6 locality, the locality may be extended to include adjoining  
7 political subdivisions where such workmen are employed in those  
8 crafts or trades for which there are no workmen employed in the  
9 locality as otherwise herein defined.

10 (3) "Maintenance work" means the repair of existing  
11 facilities when the size, type or extent of such facilities is  
12 not thereby changed or increased. The term includes the  
13 following actions taken on roads:

14 (i) Replacement in kind, or compliance with current  
15 Department of Transportation design criteria and standards, of  
16 guide rails, curbs, pipes, line painting and other related road  
17 equipment.

18 (ii) Repair of pavement service by:

19 (A) laying bituminous material up to three and a half inches  
20 thick or up to four hundred twenty pounds per square yard on  
21 asphalt pavement, cement concrete or other hard surface,  
22 including associated milling, and related work raising existing  
23 paved shoulders to new grade; or

24 (B) patching of cement concrete surface to include joint  
25 spalling and repair work.

26 (iii) Widening of existing alignment which does not result  
27 in additional lanes or new shoulders.

28 (iv) Bridge cleaning, washing, resurfacing with blacktop,  
29 minor nonstructural repairs or improvements and painting, except  
30 when combined with complete bridge rehabilitation.

1 (4) "Public body" means the Commonwealth of Pennsylvania,  
2 any of its political subdivisions, any authority created by the  
3 General Assembly of the Commonwealth of Pennsylvania and any  
4 instrumentality or agency of the Commonwealth of Pennsylvania.

5 (5) "Public work" means construction, reconstruction,  
6 demolition, alteration and/or repair work other than maintenance  
7 work, done under contract and paid for in whole or in part out  
8 of the funds of a public body where the estimated cost of the  
9 total project is in excess of twenty-five thousand dollars  
10 (\$25,000), but shall not include work performed under a  
11 rehabilitation or manpower training program. The term includes  
12 combination maintenance/rehabilitation/reconstruction road  
13 projects on existing alignment in which nonmaintenance items  
14 exceed fifteen percent of the total project cost.

15 (6) "Secretary" means the Secretary of Labor and Industry or  
16 his duly authorized deputy or representative.

17 (7) "Workman" includes laborer, mechanic, skilled and semi-  
18 skilled laborer and apprentices employed by any contractor or  
19 subcontractor and engaged in the performance of services  
20 directly upon the public work project, regardless of whether  
21 their work becomes a component part thereof, but does not  
22 include material suppliers or their employees who do not perform  
23 services at the job site.

24 (8) "Work performed under a rehabilitation program," means  
25 work arranged by and at a State institution primarily for  
26 teaching and upgrading the skills and employment opportunities  
27 of the inmates of such institutions.

28 (9) "Advisory Board" means the board created by section 2.1  
29 of this act.

30 (10) "Appeals Board" means the board created by section 2.2

1 of this act.

2 SECTION 3. SPECIFICATIONS.--(A) THE SPECIFICATIONS FOR <--  
3 EVERY CONTRACT FOR ANY PUBLIC WORK TO WHICH ANY PUBLIC BODY IS A  
4 PARTY, SHALL CONTAIN A PROVISION STATING THE MINIMUM WAGE RATE  
5 THAT MUST BE PAID TO THE WORKMEN EMPLOYED IN THE PERFORMANCE OF  
6 THE CONTRACT.

7 (B) NO PERSON SHALL INTENTIONALLY DIVIDE A CONSTRUCTION  
8 PROJECT INTO MULTIPLE PARTS FOR THE PURPOSES OF CIRCUMVENTING  
9 THIS ACT.

10 SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

11 SECTION 13.1. PROTECTION OF WORKMEN.--(A) NO CONTRACTOR OR  
12 SUBCONTRACTOR MAY DISCHARGE, THREATEN OR OTHERWISE DISCRIMINATE  
13 OR RETALIATE AGAINST A WORKMAN REGARDING THE EMPLOYEE'S  
14 COMPENSATION, TERMS, CONDITIONS, LOCATION OR PRIVILEGES OF  
15 EMPLOYMENT BECAUSE THE WORKMAN EXERCISED HIS RIGHTS UNDER  
16 SECTION 11(B) OR 13.

17 (B) NO CONTRACTOR OR SUBCONTRACTOR MAY DISCHARGE, THREATEN  
18 OR OTHERWISE DISCRIMINATE OR RETALIATE AGAINST AN EMPLOYEE  
19 REGARDING THE EMPLOYEE'S COMPENSATION, TERMS, CONDITIONS,  
20 LOCATION OR PRIVILEGE OF EMPLOYMENT BECAUSE THE EMPLOYEE IS  
21 REQUESTED BY THE SECRETARY TO PARTICIPATE IN AN INVESTIGATION,  
22 HEARING OR INQUIRY HELD BY THE SECRETARY OR IN A COURT ACTION.

23 (C) (1) A WORKMAN WHO ALLEGES A VIOLATION OF THIS ACT MAY  
24 BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR  
25 APPROPRIATE INJUNCTIVE RELIEF OR DAMAGES, OR BOTH, WITHIN ONE  
26 HUNDRED EIGHTY DAYS AFTER THE OCCURRENCE OF THE ALLEGED

1 VIOLATION.

2 (2) IT SHALL BE A DEFENSE TO AN ACTION UNDER THIS SECTION IF  
3 THE DEFENDANT PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE  
4 ACTION BY THE EMPLOYER OCCURRED FOR SEPARATE AND LEGITIMATE  
5 REASONS, WHICH ARE NOT MERELY PRETEXTUAL.

6 (D) A COURT, IN RENDERING A JUDGMENT IN AN ACTION BROUGHT  
7 UNDER THIS ACT, SHALL ORDER, AS THE COURT CONSIDERS APPROPRIATE,  
8 REINSTATEMENT OF THE EMPLOYEE, THE PAYMENT OF BACK WAGES, FULL  
9 REINSTATEMENT OF FRINGE BENEFITS AND SENIORITY RIGHTS, DAMAGES  
10 OR A COMBINATION OF THE REMEDIES. A COURT MAY ALSO AWARD THE  
11 COMPLAINANT ALL OR A PORTION OF THE COSTS OF LITIGATION,  
12 INCLUDING REASONABLE ATTORNEY FEES AND WITNESS FEES, IF THE  
13 COURT DETERMINES THAT THE AWARD IS APPROPRIATE.

14 SECTION 4. THE AMENDMENT OF SECTION 2 OF THE ACT SHALL APPLY  
15 TO CONTRACTS ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS  
16 SECTION.

17 Section 2 5. This act shall take effect in 60 days.

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