

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 796 Session of 2013

INTRODUCED BY MILLARD, AUMENT, BAKER, CAUSER, SCHLEGEL CULVER, CUTLER, DENLINGER, EVERETT, FLECK, GINGRICH, GRELL, GROVE, HAHN, C. HARRIS, HICKERNELL, KAUFFMAN, LAWRENCE, MAJOR, MARSICO, MILNE, MOUL, PEIFER, PICKETT, ROCK, ROSS, SAYLOR, STEVENSON, SWANGER, TALLMAN AND CLYMER, FEBRUARY 25, 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," raising the threshold for applicability; <--
6 FURTHER PROVIDING FOR SPECIFICATIONS; AND PROVIDING FOR
7 PROTECTION OF 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.

13 (4) "Public body" means the Commonwealth of Pennsylvania,
14 any of its political subdivisions, any authority created by the
15 General Assembly of the Commonwealth of Pennsylvania and any
16 instrumentality or agency of the Commonwealth of Pennsylvania.

17 (5) "Public work" means construction, reconstruction,
18 demolition, alteration and/or repair work other than maintenance
19 work, done under contract and paid for in whole or in part out
20 of the funds of a public body where the estimated cost of the
21 total project is in excess of [twenty-five thousand dollars
22 (\$25,000)] ~~seventy five thousand dollars (\$75,000)~~ ONE HUNDRED <--
23 THOUSAND DOLLARS (\$100,000), but shall not include work
24 performed under a rehabilitation or manpower training program.

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

27 (7) "Workman" includes laborer, mechanic, skilled and semi-
28 skilled laborer and apprentices employed by any contractor or
29 subcontractor and engaged in the performance of services
30 directly upon the public work project, regardless of whether

1 their work becomes a component part thereof, but does not
2 include material suppliers or their employes who do not perform
3 services at the job site.

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

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

10 (10) "Appeals Board" means the board created by section 2.2
11 of this act.

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

17 (B) NO PERSON SHALL INTENTIONALLY DIVIDE A CONSTRUCTION
18 PROJECT INTO MULTIPLE PARTS FOR THE PURPOSES OF CIRCUMVENTING
19 THIS ACT.

20 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

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

27 (B) NO CONTRACTOR OR SUBCONTRACTOR MAY DISCHARGE, THREATEN
28 OR OTHERWISE DISCRIMINATE OR RETALIATE AGAINST AN EMPLOYEE
29 REGARDING THE EMPLOYEE'S COMPENSATION, TERMS, CONDITIONS,
30 LOCATION OR PRIVILEGE OF EMPLOYMENT BECAUSE THE EMPLOYEE IS

1 REQUESTED BY THE SECRETARY TO PARTICIPATE IN AN INVESTIGATION,
2 HEARING OR INQUIRY HELD BY THE SECRETARY OR IN A COURT ACTION.

3 (C) (1) A WORKMAN WHO ALLEGES A VIOLATION OF THIS ACT MAY
4 BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR
5 APPROPRIATE INJUNCTIVE RELIEF OR DAMAGES, OR BOTH, WITHIN ONE
6 HUNDRED EIGHTY DAYS AFTER THE OCCURRENCE OF THE ALLEGED
7 VIOLATION.

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

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

20 Section 2 3. The amendment of section 2 of the act shall <--
21 apply to contracts entered into on or after the effective date
22 of this section.

23 Section 3 4. This act shall take effect in 60 days. <--