

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1155 Session of 2013

INTRODUCED BY MILLER, DUNBAR, F. KELLER, PICKETT, SAYLOR, GINGRICH, METCALFE, AUMENT, KNOWLES, KAUFFMAN, CUTLER, MENTZER, MOUL, BLOOM, ROCK, C. HARRIS, GROVE, SWANGER, LAWRENCE, DENLINGER, GRELL, MARSICO AND EVERETT, APRIL 9, 2013

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 9, 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; providing  
 6 for duties of contractors, trustees or third parties managing  
 7 fringe benefit payments; further providing for duty of  
 8 secretary; providing for right of workmen to challenge fringe  
 9 benefit payments allocation; further providing for remedies  
 10 and penalties; and providing for prohibited conduct.

11 The General Assembly of the Commonwealth of Pennsylvania  
 12 hereby enacts as follows:

13 Section 1. Section 2 of the act of August 15, 1961 (P.L.987,  
 14 No.442), known as the Pennsylvania Prevailing Wage Act, is  
 15 amended by adding a paragraph to read:

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

17 \* \* \*

18 (11) "Fringe benefit" means medical or hospital care,  
 19 pensions on retirement or death, compensation for injuries or  
 20 illness resulting from occupational activity or insurance to

1 provide any of the foregoing. The term also means unemployment  
2 benefits, life insurance, disability insurance, sickness  
3 insurance or accident insurance, vacation or holiday pay and  
4 defraying the costs of apprenticeship program. The term does not  
5 include any other fees.

6 Section 2. The act is amended by adding a section to read:

7 Section 6.1. Duties of Contractors, Trustees or Third  
8 Parties Managing Fringe Benefit Payments.--The secretary shall  
9 require contractors, trustees or third parties managing the  
10 administration of fringe benefit payments under a collective  
11 bargaining agreement to maintain accurate records of fringe  
12 benefit payments made to each worker. The records must contain a  
13 clear description of each item for which funds were allocated in  
14 a fringe benefit payment. The secretary must be provided access  
15 to the records.

16 Section 3. Section 7 of the act, amended August 9, 1963  
17 (P.L.653, No.342), is amended to read:

18 Section 7. Duty of Secretary.--The secretary shall, after  
19 consultation with the advisory board, determine the general  
20 prevailing minimum wage rate in the locality in which the public  
21 work is to be performed for each craft or classification of all  
22 workmen needed to perform public work contracts during the  
23 anticipated term thereof: Provided, however, That employer and  
24 employe contributions for employe fringe benefits pursuant to a  
25 bona fide collective bargaining agreement shall be considered an  
26 integral part of the wage rate for the purpose of determining  
27 the minimum wage rate under this act. Nothing in this act,  
28 however, shall prohibit the payment of more than the general  
29 prevailing minimum wage rate to any workman employed on public  
30 work. The secretary shall forthwith give notice by mail of all

1 determinations of general prevailing minimum wage rates made  
2 pursuant to this section to any representative of any craft, any  
3 employer or any representative of any group of employers, who  
4 shall in writing request the secretary so to do.

5 Section 4. The act is amended by adding a section to read:

6 Section 10.1. Right of Workmen to Challenge Fringe Benefit  
7 Payments Allocation.--(a) Within three months from the date of  
8 the occurrence of the incident complained of, a workman may file  
9 a protest in writing with the secretary objecting to the misuse  
10 of a fringe benefit payment made by an employer to a contractor,  
11 trustee or third party administering fringe benefit payments  
12 under a collective bargaining agreement. A protest made under  
13 this subsection must be based on the alleged use of payments for  
14 purposes not covered by a fringe benefit.

15 (b) A contractor or labor organization may not retaliate  
16 against a worker who makes a complaint under subsection (a) with  
17 respect to hiring, job assignments, seniority or another job-  
18 related matter. A workman aggrieved under this section has a  
19 cause of action against the contractor or labor organization. In  
20 rendering a judgment in an action brought under this act, a  
21 court shall order, as it considers appropriate, the payment of  
22 back wages and fringe benefits, seniority rights, actual damages  
23 or a combination of the remedies. A court shall also award the  
24 complainant all or a portion of the costs of litigation,  
25 including reasonable attorney fees and witness fees if it  
26 determines the award is appropriate.

27 Section 5. Section 11 of the act is amended by adding a  
28 subsection to read:

29 Section 11. Remedies and Penalties.--\* \* \*

30 (i) If, after notice and hearing as required by this

1 section, the secretary determines that a contractor, third  
2 person or trustee administering fringe benefit payments under a  
3 collective bargaining agreement utilized payments made by  
4 employers for fringe benefits for a purpose not permitted under  
5 this act and the misuse was intentional, the secretary shall:

6 (1) order restitution of the amount misused back to fringe  
7 benefit purposes; and

8 (2) impose an administrative penalty of up to ten thousand  
9 dollars (\$10,000) on the trustee or third party.

10 In addition, the secretary may prohibit the trustee or third  
11 party from administering payments made by an employer under this  
12 act for up to three years. The secretary may request the  
13 Attorney General to investigate the third party or trustee to  
14 determine possible criminal violations.

15 Section 6. The act is amended by adding a section to read:

16 Section 13.1. Prohibited Conduct.--A contractor or labor  
17 organization may not discriminate against a workman on  
18 assignment to work to a public project based on his contribution  
19 to or his failure to contribute to a fund utilized for political  
20 activity. A workman aggrieved under this section has a cause of  
21 action against the labor organization. A court, in rendering a  
22 judgment in an action brought under this act, shall order, as it  
23 considers appropriate, the payment of back wages and fringe  
24 benefits, seniority rights, damages or a combination of the  
25 remedies. A court shall also award the complainant all or a  
26 portion of the costs of litigation, including reasonable  
27 attorney fees and witness fees if it determines that the award  
28 is appropriate.

29 Section 7. This act shall take effect in 60 days.