

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 260 Session of 2017

INTRODUCED BY KAUFFMAN, IRVIN, JAMES, DIAMOND, MENTZER, FEE, SAYLOR, MOUL, BLOOM, STAATS, HICKERNELL, PHILLIPS-HILL, MCGINNIS, ROTHMAN, ZIMMERMAN, WARD, TALLMAN, LAWRENCE, MARSICO AND B. MILLER, JANUARY 31, 2017

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 31, 2017

AN ACT

1 Repealing 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."

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

8 Section 1. The act of August 15, 1961 (P.L.987, No.442),
 9 known as the Pennsylvania Prevailing Wage Act, is repealed:

10 [AN ACT

11 Relating to public works contracts; providing for prevailing
 12 wages; imposing duties upon the Secretary of Labor and
 13 Industry; providing remedies, penalties and repealing
 14 existing laws.

15 Section 1. Short Title.--This act shall be known and may be
 16 cited as the "Pennsylvania Prevailing Wage Act."

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), but shall not include work performed under a
23 rehabilitation or manpower training program.

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

26 (7) "Workman" includes laborer, mechanic, skilled and semi-
27 skilled laborer and apprentices employed by any contractor or
28 subcontractor and engaged in the performance of services
29 directly upon the public work project, regardless of whether
30 their work becomes a component part thereof, but does not

1 include material suppliers or their employes who do not perform
2 services at the job site.

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

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

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

11 Section 2.1. Advisory Board, Powers and Duties.--(a) There
12 is hereby created in the Department of Labor and Industry an
13 Advisory Board consisting of seven members for the purpose of
14 assisting the secretary in carrying out his duties under the act
15 to which this is an amendment.

16 (b) Except for the member employed by the secretary, each
17 member of the Advisory Board shall be appointed by the Governor
18 and shall receive a compensation of thirty dollars (\$30) per day
19 for each day actually spent in the performance of his duties
20 plus necessary expenses.

21 (c) Of the seven members, one shall be a representative of
22 an association of general contractors engaged full-time in the
23 building construction industry, one shall be a representative of
24 an association of heavy and highway contractors engaged full
25 time in the heavy and highway construction industry, one shall
26 be a member of an historically established union representing
27 labor in the building construction industry, one shall be a
28 member of an historically established union representing labor
29 in the heavy and highway construction industry, one shall be a
30 member of an association representing a political subdivision,

1 one shall be learned in the law and employed by the secretary,
2 and one shall not be engaged in or employed by the building
3 industry or by a public body but shall represent the general
4 public.

5 (d) At least two weeks' public notice shall be given in the
6 manner prescribed by regulation of the board prior to any
7 meeting of the board. Four members of the board shall constitute
8 a quorum.

9 (e) The Advisory Board shall have the power and duty to--

10 (1) Consult with the secretary at his request concerning any
11 matter arising under the administration of this act.

12 (2) Advise and assist the secretary in carrying out the
13 duties provided for him by section 7 of this act.

14 (3) Promulgate rules and regulations necessary to carry out
15 the duties placed upon the board by this act.

16 Section 2.2. Appeals Board Powers and Duties.--(a) There is
17 hereby created in the Department of Labor and Industry an
18 Appeals Board consisting of seven members for the purpose of
19 hearing and determining grievances arising out of the
20 administration of the act to which this is an amendment.

21 (b) Except for the member employed by the secretary, each
22 member of the Appeals Board shall be appointed by the Governor
23 and shall receive a compensation of thirty dollars (\$30) per day
24 for each day actually spent in the performance of his duties
25 plus necessary expenses.

26 (c) Of the seven members, one shall be a representative of
27 an association of general contractors engaged full-time in the
28 building construction industry, one shall be a representative of
29 an association of heavy and highway contractors engaged full
30 time in the heavy and highway construction industry, one shall

1 be a member of an historically established union representing
2 labor in the building construction industry, one shall be a
3 member of an historically established union representing labor
4 in the heavy and highway construction industry, one shall be a
5 member of an association representing a political subdivision,
6 one shall be learned in the law and employed by the secretary,
7 and one shall not be engaged in or employed by the building
8 industry or by a public body but shall represent the general
9 public. No member of the Advisory Board created by this
10 amendatory act shall be appointed to the Appeals Board.

11 (d) Four members of the board shall constitute a quorum and
12 the board shall neither sit for purposes of hearing any
13 grievance nor make any determination unless a quorum is present.

14 (e) The Appeals Board shall have the power and duty to--

15 (1) Hear and determine any grievance or appeal arising out
16 of the administration of this act.

17 (2) Promulgate rules and regulations necessary to carry out
18 the duties placed upon the board by this act: Provided, however,
19 That any such rules and regulations shall provide for notice of
20 filing of grievances and appeals, public hearings, right of
21 representation and all other procedures required by due process
22 of law.

23 Section 3. Specifications.--The specifications for every
24 contract for any public work to which any public body is a
25 party, shall contain a provision stating the minimum wage rate
26 that must be paid to the workmen employed in the performance of
27 the contract.

28 Section 4. Duty of Public Body.--It shall be the duty of
29 every public body which proposes the making of a contract for
30 any project of public work to determine from the secretary the

1 prevailing minimum wage rates which shall be paid by the
2 contractor to the workmen upon such project. Reference to such
3 prevailing minimum rates shall be published in the notice issued
4 for the purpose of securing bids for such project of public
5 work. Whenever any contract for a project of public work is
6 entered into, the prevailing minimum wages as determined by the
7 secretary shall be incorporated into and made a part of such
8 contract and shall not be altered during the period such
9 contract is in force.

10 Section 5. Prevailing Wage.--Not less than the prevailing
11 minimum wages as determined hereunder shall be paid to all
12 workmen employed on public work.

13 Section 6. Duty of Contractor.--Every contractor and
14 subcontractor shall keep an accurate record showing the name,
15 craft and the actual hourly rate of wage paid to each workman
16 employed by him in connection with public work, and such record
17 shall be preserved for two years from date of payment. The
18 record shall be open at all reasonable hours to the inspection
19 of the public body awarding the contract and to the secretary.

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

1 prevailing minimum wage rate to any workman employed on public
2 work. The secretary shall forthwith give notice by mail of all
3 determinations of general prevailing minimum wage rates made
4 pursuant to this section to any representative of any craft, any
5 employer or any representative of any group of employers, who
6 shall in writing request the secretary so to do.

7 Section 8. Review of Rates, Petition and Hearing.--Any
8 prospective bidder or his representative, any representative of
9 any group of employers engaged in the particular type of
10 construction, reconstruction, alteration and demolition or
11 repair work involved, any representative of any craft or
12 classification of workmen or the public body may, within ten
13 days after the publication and issue of the specifications
14 covering the particular contract for public work involved, file
15 with the secretary a verified petition to review the
16 determination of any such rate or rates. Within two days
17 thereafter a copy of such petition shall be filed with the
18 public body authorizing the public work. The petition shall set
19 forth the facts upon which it is based. The secretary shall,
20 upon notice to the petitioner, the public body authorizing the
21 public work and the recognized collective bargaining
22 representatives for the particular crafts and classifications
23 involved, and also to all persons entitled to receive notice
24 pursuant to subsection (a) of section 7 hereof, institute an
25 investigation and hold a public hearing within twenty days after
26 the filing of such petition. Within ten days thereafter, the
27 secretary shall make a determination and transmit it, in
28 writing, to the public body and to the interested parties. Such
29 determination shall be final unless within ten days an appeal is
30 filed with the Appeals Board.

1 Upon receipt by the public body of the notice of the filing
2 of such petition, the public body awarding the contract or
3 authorizing the public work shall extend the closing date for
4 the submission of bids until five days after the final
5 determination of the general prevailing minimum wage rates
6 pursuant to this section and the publication of such findings.

7 Upon the filing of any such petition, notice thereof and of
8 the extension of the closing date for submission of bids, shall
9 be given forthwith by the awarding public body in a special
10 bulletin to all interested parties as defined herein, notice
11 shall also be given to the bidders by the awarding body of the
12 final determination of the secretary or Appeals Board which
13 shall also be included in the contract. The determination of the
14 secretary or Appeals Board shall be included in the contract.

15 Section 9. Posting of Rates.--Contractors and sub-
16 contractors performing public work for a public body subject to
17 the provisions of this act shall post the general prevailing
18 minimum wage rates for each craft and classification involved,
19 as determined by the secretary, including the effective date of
20 any changes thereof, in prominent and easily accessible places
21 at the site of the work, or at such place or places as are used
22 by them to pay workmen their wages.

23 Section 10. Duty of Public Body.--(a) Before final payment
24 is made by, or on behalf of any public body of any sum or sums
25 due on public work, it shall be the duty of the treasurer of the
26 public body or other officer or person charged with the custody
27 and disbursement of the funds of the public body to require the
28 contractor and subcontractor to file statements, in writing, in
29 form satisfactory to the secretary, certifying to the amounts
30 then due and owing from such contractor and subcontractor,

1 filing such statement to any and all workmen for wages due on
2 account of public work, setting forth therein the names of the
3 persons whose wages are unpaid and the amount due to each
4 respectively, which statement so to be filed shall be verified
5 by the oath of the contractor and subcontractor, as the case may
6 be, that he has read such statement subscribed by him, knows the
7 contents thereof and that the same is true of his own knowledge:
8 Provided, nevertheless, That nothing herein shall impair the
9 right of a contractor to receive final payment because of the
10 failure of any subcontractor to comply with provisions of this
11 act.

12 (b) In case any workman shall have filed a protest, in
13 writing, within three months from the date of the occurrence of
14 the incident complained of, with the secretary, objecting to the
15 payment to any contractor to the extent of the amount or amounts
16 due or to become due to the said workman for wages or for labors
17 performed on public works, the secretary shall direct the fiscal
18 or financial officer of the public body, or other person charged
19 with the custody and disbursements of the funds of the public
20 body, to deduct from the whole amount of any payment on account
21 thereof the sum or sums admitted by any contractor in such
22 statement or statements so filed, to be due and owing by him on
23 account of wages earned on such public work before making
24 payment of the amount certified for payment and may withhold the
25 amount so deducted for the benefit of the workmen whose wages
26 are unpaid, as shown by the verified statement filed by any
27 contractor, and may pay directly to any workmen the amount shown
28 to be due to him for such wages by the statements filed as
29 hereinbefore required, thereby discharging the obligation of the
30 contractor to the person receiving such payment to the extent of

1 the amount thereof.

2 (c) Any contractor or subcontractor who shall, under oath,
3 verify the statement required to be filed under this section,
4 which is known to him to be false, shall be guilty of a
5 misdemeanor, and shall, upon conviction, be sentenced to pay a
6 fine of not exceeding two thousand five hundred dollars (\$2,500)
7 or to undergo imprisonment not exceeding five years, or both.

8 Section 11. Remedies and Penalties.--(a) The fiscal or
9 financial officer, or any public body having public work
10 performed under which any workman shall have been paid less than
11 the prevailing wage, shall forthwith notify the secretary, in
12 writing, of the name of the person or firm failing to pay the
13 prevailing wages.

14 (b) Any workman may, within three months from the date of
15 the occurrence of the incident complained of, file a protest, in
16 writing, with the secretary objecting to the amount of wages
17 paid for services performed by him on public work as being less
18 than the prevailing wages for such services.

19 (c) Whenever a fiscal or financial officer of any public
20 body shall notify the secretary that any person or firm required
21 to pay its workmen the prevailing wage under this act has failed
22 so to do, or whenever any workman employed upon public work
23 shall have filed a timely protest objecting that he has been
24 paid less than prevailing wages as required by this act, it
25 shall be the duty of and the secretary shall forthwith
26 investigate the matter and determine whether or not there has
27 been a failure to pay the prevailing wages and whether such
28 failure was intentional or otherwise. In any such investigation,
29 the secretary shall provide for an appropriate hearing upon due
30 notice to interested parties including the workmen, the employer

1 and their respective representative, if any.

2 (d) In the event that the secretary shall determine, after
3 notice and hearing as required by this section, that any person
4 or firm has failed to pay the prevailing wages and that such
5 failure was not intentional, he shall afford such person or firm
6 a reasonable opportunity to adjust the matter by making payment
7 or providing adequate security for the payment of the amounts
8 required to be paid under this act as prevailing wages to the
9 workmen affected on such terms and conditions as shall be
10 approved by the secretary.

11 (e) In the event that the secretary shall determine, after
12 notice and hearing as required by this section, that any person
13 or firm has failed to pay the prevailing wages and that such
14 failure was intentional, he shall thereupon notify all public
15 bodies of the name or names of such persons or firms and no
16 contract shall be awarded to such persons or firms or to any
17 firm, corporation or partnership in which such persons or firms
18 have an interest until three years have elapsed from the date of
19 the notice to the public bodies aforesaid. The secretary may in
20 addition thereto request the Attorney General to proceed to
21 recover the penalties for the Commonwealth of Pennsylvania which
22 are payable under subsection (f) of this section.

23 (f) Whenever it shall be determined by the secretary, after
24 notice and hearing as required by this section, that any person
25 or firm has failed to pay the prevailing wages and that such
26 failure was intentional, such persons or firm shall be liable to
27 the Commonwealth of Pennsylvania for liquidated damages, in
28 addition to damages for any other breach of the contract in the
29 amount of the underpayment of wages due any workman engaged in
30 the performance of such contract.

1 (g) It shall not constitute a failure to pay the prevailing
2 wage rates for the work of a particular craft or classification
3 where the prevailing wage rates determined for a specific craft
4 or classification has been paid, and it is asserted that one or
5 more bona fide craft unions contend that the work should have
6 been assigned to their members instead of the members of the
7 specific craft to whom it was assigned or by whom it was
8 performed.

9 (h) The following shall constitute substantial evidence of
10 intentional failure to pay prevailing wage rates:

11 (1) Any acts of omission or commission done wilfully or with
12 a knowing disregard of the rights of workmen resulting in the
13 payment of less than prevailing wage rates.

14 (2) After there has been a finding by the secretary in the
15 manner required by this section that any person or firm has
16 failed to pay the prevailing wages prescribed by this act and
17 thereafter there shall be a failure by such person or firm to
18 pay the prevailing wages prescribed by this act, or there shall
19 be a subsequent failure of such person or firm to comply with
20 any opportunity to adjust any differences which shall be
21 afforded him by the secretary.

22 Section 12. Failure to Comply, Termination.--In any case
23 where the secretary shall have determined that any person or
24 firm has failed to pay the prevailing wages under subsections
25 (e) and (f) of section 11 hereof, he may direct the public body
26 to terminate, and the public body may terminate, any such
27 contractor's right to proceed with the public work.

28 Section 13. Workmen's Rights.--Any workmen paid less than
29 the rates specified in the contract shall have a right of action
30 for the difference between the wage so paid and the wages

1 stipulated in the contract, which right of action shall be
2 instituted within six months from the occurrence of the event
3 creating such right.

4 Section 14. Rules and Regulations.--The secretary is hereby
5 authorized and empowered to prescribe, adopt, promulgate,
6 rescind and enforce rules and regulations pertaining to the
7 administration and enforcement of the provisions of this act.

8 Section 15. Application of Act.--This act shall have no
9 application to any public works subject to the Walsh-Healey Act,
10 the act of June 30, 1936, chapter 881, 49 Stat. 2036, 41 USCA
11 sections 35-45, or the Davis Bacon Act, the act of March 3,
12 1931, 40 U. S. Code 276 (a).

13 Section 16. Repealer.--All acts and parts of acts are
14 repealed in so far as they are inconsistent herewith.

15 Section 17. Effective Date.--This act shall take effect on
16 the first day of the sixth month following date of final
17 enactment.]

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