

"PENNSYLVANIA PREVAILING WAGE ACT"

Act of 1961, P.L. 987, No. 442

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AN ACT

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

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

Section 1. Short Title.

This act shall be known and may be cited as the "Pennsylvania Prevailing Wage Act."

Section 2. Definitions.

As used in this act —

(1) "Department" means Department of Labor and Industry of the Commonwealth of Pennsylvania.

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

((2) amended Aug. 9, 1963, P.L. 653, No. 342)

(3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

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

(5) "Public work" means construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of twenty-five thousand dollars (\$25,000), but shall not include work performed under a rehabilitation or manpower training program.

((5) amended Aug. 9, 1963, P.L. 653, No. 342)

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

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

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

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

((9) added Aug. 9, 1963, P.L. 653, No. 342)

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

((10) added Aug. 9, 1963, P.L. 653, No. 342)

Section 2.1. Advisory Board, Powers and Duties.

(a) There is hereby created in the Department of Labor and Industry an Advisory Board consisting of seven members for the purpose of assisting the secretary in carrying out his duties under the act to which this is an amendment.

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

(c) Of the seven members, one shall be a representative of an association of general contractors engaged full-time in the building construction industry, one shall be a representative of an association of heavy and highway construction industry, one shall be a member of an historically established union representing labor in the building construction industry, one shall be a member of an historically established union representing labor in the heavy and highway construction industry, one shall be a member of an association representing a political subdivision, one shall be learned in the law and employed by the secretary, and one shall not be engaged in or employed by the building industry or by a public body but shall represent the general public.

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

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

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

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

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

(2.1 added Aug. 9, 1963, P.L. 653, No. 342)

Section 2.2. Appeals Board Powers and Duties.

(a) There is hereby created in the Department of Labor and Industry an Appeals Board consisting of seven members for the purpose of hearing and determining grievances arising out of the administration of the act to which this is an amendment.

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

(c) Of the seven members, one shall be a representative of an association of general contractors engaged full-time in the building construction industry, one shall be a representative of an association of heavy and highway contractors engaged full time in the heavy and highway construction industry, one shall be a member of an historically established union representing labor in the building construction industry, one shall be a member of an historically established union representing labor in the heavy

and highway construction industry, one shall be a member of an association representing a political subdivision, one shall be learned in the law and employed by the secretary, and one shall not be engaged in or employed by the building industry or by a public body but shall represent the general public. No member of the Advisory Board created by this amendatory act shall be appointed to the Appeals Board.

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

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

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

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

(2.2 added Aug. 9, 1963, P.L. 653, No. 342)

Section 3. Specifications.

The specifications for every contract for any public work to which any public body is a party, shall contain a provision stating the minimum wage rate that must be paid to the workmen employed in the performance of the contract.

(3 amended Aug. 9, 1963, P.L. 653, No. 342)

Section 4. Duty of Public Body.

It shall be the duty of every public body which proposes the making of a contract for any project of public work to determine from the secretary the prevailing minimum wage rates which shall be paid by the contractor to the workmen upon such project. Reference to such prevailing minimum rates shall be published in the notice issued for the purpose of securing bids for such project of public work. Whenever any contract for a project of public work is entered into, the prevailing minimum wages as determined by the secretary shall be incorporated into and made a part of such contract and shall not be altered during the period such contract is in force.

(4 amended Aug. 9, 1963, P.L. 653, No. 342)

Section 5. Prevailing Wage.

Not less than the prevailing minimum wages as determined hereunder shall be paid to all workmen employed on public work.

(5 amended Aug. 9, 1963, P.L. 653, No. 342)

Section 6. Duty of Contractor.

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

Section 7. Duty of Secretary.

The secretary shall, after consultation with the advisory board, determine the general prevailing

minimum wage rate in the locality in which the public work is to be performed for each craft or classification of all workmen needed to perform public work contracts during the anticipated term thereof: Provided, however, That employer and employe contributions for employe benefits pursuant to a bona fide collective bargaining agreement shall be considered an integral part of the wage rate for the purpose of determining the minimum wage rate under this act. Nothing in the act, however, shall prohibit the payment of more than the general prevailing minimum wage rate to any workman employed on public work. The secretary shall forthwith give notice by mail of all determinations of general prevailing minimum wage rates made pursuant to this section to any representative of any craft, any employer or any representative of any group of employers, who shall in writing request the secretary so to do.

(7 amended Aug. 9, 1963, P.L. 653, No. 342)

Section 8. Review of Rates, Petition and Hearing.

Any prospective bidder or his representative, any representative of any group of employers engaged in the particular type of construction, reconstruction, alteration and demolition or repair work involved, any representative of any craft or classification of workmen or the public body may, within ten days after the publication and issue of the specifications covering the particular contract for public work involved, file with the secretary a verified petition to review the determination of any such rate or rates. Within two days thereafter a copy of such petition shall be filed with the public body authorizing the public work. The petition shall set forth the facts upon which it is based. The secretary shall, upon notice to the petitioner, the public body authorizing the public work and the recognized collective bargaining representatives for the particular crafts and classifications involved, and also to all persons entitled to receive notice pursuant to subsection (a) of section 7 hereof, institute an investigation and hold a public hearing within twenty days after the filing of such petition. Within ten days thereafter, the secretary shall make a determination and transmit it, in writing, to the public body and to the interested parties. Such determination shall be final unless within ten days an appeal is filed with the Appeals Board.

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

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

(8 amended Aug. 9, 1963, P.L. 653, No. 342)

Section 9. Posting of Rates.

Contractors and subcontractors performing public work for a public body subject to the provisions of this act shall post the general prevailing minimum wage rates for each craft and classification involved, as determined by the secretary, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work, or at such place or places as are used by them to pay workmen their wages.

Section 10. Duty of Public Body.

(a) Before final payment is made by, or on behalf of any public body of any sum or sums due on public work, it shall be the duty of the treasurer of the public body or other officer or person charged with the custody and disbursement of the funds of the public body to require the contractor and subcontractor to file statements, in writing, in form satisfactory to the secretary, certifying to the amounts then due and owing from such contractor and subcontractor, filing such statement to any

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

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

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

Section 11. Remedies and Penalties.

(a) The fiscal or financial officer, or any public body having public work performed under which any workman shall have been paid less than the prevailing wage, shall forthwith notify the secretary, in writing, of the name of the person or firm failing to pay the prevailing wages.

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

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

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

(e) In the event that the secretary shall determine, after notice and hearing as required by this section, that any person or firm has failed to pay the prevailing wages and that such failure was intentional, he shall thereupon notify all public bodies of the name or names of such persons or firms and no contract shall be awarded to such persons or firms or to any firm, corporation or partnership in which such persons or firms have an interest until three years have elapsed from the date of the notice to the public bodies aforesaid. The secretary may in addition thereto request the Attorney General to proceed to recover the

penalties for the Commonwealth of Pennsylvania which are payable under subsection (f) of this section.

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

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

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

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

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

Section 12. Failure to Comply, Termination.

In any case where the secretary shall have determined that any person or firm has failed to pay the prevailing wages under subsections (e) and (f) of section 11 hereof, he may direct the public body to terminate, and the public body may terminate, any such contractor's right to proceed with the public work.

Section 13. Workmen's Rights.

Any workmen paid less than the rates specified in the contract shall have a right of action for the difference between the wage so paid and the wages stipulated in the contract, which right of action shall be instituted within six months from the occurrence of the event creating such right.

Section 14. Rules and Regulations.

The secretary is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations pertaining to the administration and enforcement of the provisions of this act.

Section 15. Application of Act.

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

Section 16. Repealer.

All acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 17. Effective Date.

This act shall take effect on the first day of the sixth month following date of final enactment.