
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. **536** Session of
1961

MESSRS. WEINER AND VAN SANT, IN PLACE,
APRIL 17, 1961.

MR. MURRAY, COMMITTEE ON LABOR AND INDUSTRY,
AS AMENDED, JUNE 20, 1961.

AN ACT

Relating to public works contracts providing for prevailing wages im-
posing 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

- 1 Section 1 Short Title This act shall be known and may be cited
- 2 as the "Pennsylvania Prevailing Wage Act"
- 3 Section 2 Definitions As used in this act

EXPLANATION—CAPITAL LETTERS indicate new matter added to bill. Matter stricken through
is to be omitted from bill.
Underlining indicates new matter added to existing law. [Brackets] indicate matter
stricken from existing law.

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

3 (2) "Locality" means any political subdivision combination of the
4 same or parts thereof or any area or areas classified designated and fixed
5 by the secretary from time to time

6 (3) "Maintenance Work" means the repair of existing facilities
7 when the size type or extent of such facilities is not thereby changed
8 or increased

9 (4) "Public Body" means the Commonwealth of Pennsylvania any
10 of its political subdivisions any authority created by the General
11 Assembly of the Commonwealth of Pennsylvania and any instrumen-
12 tality or agency of the Commonwealth of Pennsylvania

13 (5) "Public Work" means construction reconstruction demolition
14 alteration and/or repair work other than maintenance work done under
15 contract and paid for in whole or in part out of the funds of a public
16 body except work performed under a rehabilitation program

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

19 (7) "Workman" includes laborer mechanic skilled semi-skilled la-
20 borer and apprentices employed by any contractor or subcontractor

1 and engaged in the performance of services directly upon the public
2 work project regardless of whether their work becomes a component
3 part thereof but does not include material suppliers or their employes
4 who do not perform services at the job site

5 (8) "Work Performed Under a Rehabilitation Program" means
6 work arranged by and at a State institution primarily for teaching
7 and upgrading the skills and employment opportunities of the inmates
8 of such institutions

9 Section 3 Specifications The specifications for every contract in
10 excess of two thousand dollars (\$2,000) for any public work to which
11 any public body is a party shall contain a provision stating the mini-
12 mum wage rate which can be paid (as shall be designated by the secre-
13 tary) to the workman employed in the performance of the contract
14 and the contract shall contain a stipulation that such workmen shall
15 be paid not less than such minimum wage rate

16 Section 4 Duty of Public Body The public body awarding any
17 contract for public work or otherwise undertaking any public work shall
18 ascertain from the secretary the general prevailing minimum wage
19 rate in the locality in which the public work is to be performed for
20 each craft needed to perform the contract and to the extent it may

1 be ascertainable under subsection (b) of section 7 of this act shall
2 specify in the contract itself what the general prevailing minimum
3 wage rate in the locality is for each craft or classification of all work-
4 men needed to perform the contract during the anticipated term thereof

5 Section 5 Prevailing Wage Not less than the general prevailing
6 minimum wage rate as determined under section 7 below for work
7 of a similar character in the locality in which the public work is per-
8 formed shall be paid to all workmen employed on public work

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

16 Section 7 Duty of Secretary (a) The secretary shall determine
17 the general prevailing minimum wage rate in the locality in which
18 the public work is to be performed for each craft or classification of
19 all workmen needed to perform public work contracts during the antici-
20 pated term thereof Provided however That employer contributions for

1 employe benefits pursuant to a bona fide collective bargaining agreement
2 shall be considered an integral part of the wage rate for the purpose
3 of determining the minimum wage rate under this act Nothing in this
4 act however shall prohibit the payment of more than the general pre-
5 vailing minimum wage rate to any workmen employed on public work
6 The secretary shall forthwith give notice by mail of all determinations
7 of general prevailing minimum wage rates made pursuant to this sec-
8 tion to any representative of any craft any employer or any representa-
9 tive of any group of employers who shall in writing request the
10 secretary so to do

11 (b) In determining the minimum wage rates the secretary shall
12 ascertain and consider the applicable wage rates including employer
13 contributions for employe benefits established by bona fide collective
14 bargaining agreements **NEGOTIATED ON AN INDUSTRY WIDE**
15 **BASIS** for and during the anticipated term of the construction contracts
16 between the historically established and recognized bargaining repre-
17 sentatives of the workmen in the particular crafts or classifications of all
18 workmen involved and their employers or the bargaining representatives
19 of the employers employing workmen in such crafts and classifications and
20 the effective date of any change thereof

1 Section 8 Review of Rates Petition and Hearing Any prospective
2 bidder or his representative any representative of any group of employers
3 engaged in the particular type of construction reconstruction alteration
4 and demolition or repair work involved any representative of any craft
5 or classification of workmen or the public body may within ten days
6 after the publication and issue of the specifications covering the particu-
7 lar contract for public work involved file with the secretary a verified
8 petition to review the determination of any such rate or rates Within
9 two days thereafter a copy of such petition shall be filed with the public
10 body authorizing the public work The petition shall set forth the facts
11 upon which it is based The secretary shall upon notice to the petitioner
12 the public body authorizing the public work and the recognized collec-
13 tive bargaining representatives for the particular crafts and classifica-
14 tions involved and also to all persons entitled to receive notice pursuant
15 to subsection (a) of section 7 hereof institute an investigation and hold a
16 public hearing within twenty days after the filing of such petition Within
17 ten days thereafter the secretary shall make a determination and trans-
18 mit it in writing to the public body and to the interested parties Such
19 determination shall be final

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

6 Upon the filing of any such petition notice thereof and of the ex-
7 tension of the closing date for submission of bids shall be given forth-
8 with by the awarding public body in a special bulletin to all interested
9 parties as defined herein notice shall also be given to the bidders by the
10 awarding body of the final determination of the secretary which shall
11 also be included in the contract The determination of the secretary shall
12 be included in the contract

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

1 Section 10 Duty of Public Body (a) Before final payment is made
2 by or on behalf of any public body of any sum or sums due on public
3 work it shall be the duty of the treasurer of the public body or other
4 officer or person charged with the custody and disbursement of the funds
5 of the public body to require the contractor and subcontractor to file
6 statements in writing in form satisfactory to the secretary certifying to
7 the amounts then due and owing from such contractor and subcontractor
8 filing such statement to any and all workmen for wages due on account
9 of public work setting forth therein the names of the persons whose
10 wages are unpaid and the amount due to each respectively which state-
11 ment so to be filed shall be verified by the oath of the contractor and
12 subcontractor as the case may be that he has read such statement sub-
13 scribed by him knows the contents thereof and that the same is true
14 of his own knowledge Provided nevertheless That nothing herein shall
15 impair the right of a contractor to receive final payment because of the
16 failure of any subcontractor to comply with provisions of this act

17 (b) In case any workman shall have filed a protest in writing within
18 three months from the date of the occurrence of the incident complained
19 of with the secretary objecting to the payment of any contractor to

1 the extent of the amount or amounts due or to become due to the said
2 workman for wages for labors performed on public works

3 The secretary shall direct the fiscal or financial officer of the public
4 body or other person charged with the custody and disbursements of the
5 funds of the public body to deduct from the whole amount of any
6 payment on account thereof the sum or sums admitted by any contractor
7 in such statement or statements so filed to be due and owing by him on
8 account of wages earned on such public work before making payment
9 of the amount certified for payment and may withhold the amount so
10 deducted for the benefit of the workmen whose wages are unpaid as
11 shown by the verified statement filed by any contractor and may pay
12 directly to any workmen the amount shown to be due to him for such
13 wages by the statements filed as hereinbefore required thereby dis-
14 charging the obligation of the contractor to the person receiving such
15 payment to the extent of the amount thereof

16 (c) Any contractor or subcontractor who shall under oath verify
17 the statement required to be filed under this section which is known to
18 him to be false shall be guilty of a misdemeanor and shall upon convic-
19 tion be sentenced to pay a fine of not exceeding two thousand five hun-

1 dred dollars (\$2,500) or to undergo imprisonment not exceeding five
2 years or both

3 Section 11 Remedies and Penalties (a) The fiscal or financial officer
4 or any public body having public work performed under which any
5 workman shall have been paid less than the prevailing wage shall forth-
6 with notify the secretary in writing of the name of the person or firm
7 failing to pay the prevailing wages

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

13 (c) Whenever a fiscal or financial officer of any public body shall
14 notify the secretary that any person or firm required to pay its work-
15 men the prevailing wage under this act has failed so to do or when-
16 ever any workman employed upon public work shall have filed a timely
17 protest objecting that he has been paid less than prevailing wages as
18 required by this act it shall be the duty of and the secretary shall
19 forthwith investigate the matter and determine whether or not there
20 has been a failure to pay the prevailing wages and whether such fail-

1 ure was intentional or otherwise in any such investigation the secretary
2 shall provide for an appropriate hearing upon due notice to interested
3 parties including the workmen the employer and their respective repre-
4 sentative if any

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

13 (e) In the event that the secretary shall determine after notice
14 and hearing as required by this section that any person or firm has
15 failed to pay the prevailing wages and that such failure was inten-
16 tional he shall thereupon notify all public bodies of the name or names
17 of such persons or firms and no contract shall be awarded to such
18 persons or firms or to any firm corporation or partnership in which
19 such persons or firms have an interest until three years have elapsed
20 from the date of the notice to the public bodies aforesaid the secretary

1 may in addition thereto request the Attorney General to proceed to
2 recover the penalties for the Commonwealth of Pennsylvania which
3 are payable under subsection (f) of this section

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

11 (g) It shall not constitute a failure to pay the prevailing wage
12 rates for the work of a particular craft or classification where the pre-
13 vailing wage rates determined for a specific craft or classification has
14 been paid and it is asserted that one or more bona fide craft unions
15 contend that the work should have been assigned to their members in-
16 stead of the members of the specific craft to whom it was assigned or
17 by whom it was performed

18 (h) The following shall constitute substantial evidence of inten-
19 tional failure to pay prevailing wage rates

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

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

11 Section 12 Termination of Contracts In any case where the secre-
12 tary shall have determined that any person or firm has failed to pay
13 the prevailing wages under subsections (e) and (f) of section 11 hereof
14 he may direct the public body to terminate and the public body may
15 terminate any such contractor's right to proceed with the public work

16 Section 13 Workmen's Rights Any workman paid less than the
17 rates specified in the contract shall have a right of action for the dif-
18 ference between the wage so paid and the wages stipulated in the
19 contract which right of action shall be instituted within six months.
20 from the occurrence of the event creating such right

1 Section 14 Rules and Regulations The secretary is hereby author-
2 ized and empowered to prescribe adopt promulgate rescind and enforce
3 rules and regulations pertaining to the administration and enforcement
4 of the provisions of this act

5 Section 15 Application of Act This act shall have no application
6 to any public works subject to the Walsh-Healey Act the act of June
7 30 1936 Chapter 881 49 Stat 2036 41 USCA Sections 35-45 or the
8 Davis Bacon Act the act of March 3 1931 40 U S Code 276 (a)

9 Section 16 Repealer All acts and parts of acts are repealed in so
10 far as they are inconsistent herewith

11 Section 17 Effective Date This act shall take effect on the first day
12 of the sixth month following date of final enactment

We certify that this bill has passed the Senate and the House of Representatives.

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Chief Clerk, Senate

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President pro tempore, Senate

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Speaker, House of Representatives

Approved The day of A. D. 1961.

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Governor