

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1465 Session of 2023

INTRODUCED BY DELLOSO, MADDEN, McNEILL, PIELLI, McANDREW, SANCHEZ, KRAJEWSKI, HILL-EVANS, NEILSON, KHAN, CIRESI, HADDOCK, KINSEY, O'MARA, D. WILLIAMS, GREEN, OTTEN, PISCIOTTANO, T. DAVIS AND KAZEEM, JUNE 21, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 17, 2023

AN ACT

1 Providing for minimum wage standards in underground
2 infrastructure work, for application of Prevailing Wage Act,
3 for enforcement, for penalties and appeals and for protection
4 from retaliation; and creating a private right of action.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Underground
9 Infrastructure Works Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Department." The Department of Labor and Industry of the
15 Commonwealth.

16 "ELECTRIC DISTRIBUTION COMPANY." AS DEFINED UNDER 66 PA.C.S. <--
17 § 2803 (RELATING TO DEFINITIONS).

1 "Prevailing Wage Act." The act of August 15, 1961 (P.L.987,
2 No.442), known as the Pennsylvania Prevailing Wage Act.

3 "Public utility." As defined by 66 Pa.C.S. § 102 (relating
4 to definitions).

5 "Underground infrastructure work." All construction,
6 reconstruction, demolition, alteration or repair work, other
7 than maintenance work, including traffic control, related to an
8 underground system of distribution, conveyance, transmission,
9 diversion, collection, treatment or storage that is owned, used
10 or maintained by a public utility. THE TERM DOES NOT INCLUDE <--
11 WORK PERFORMED FOR AN ELECTRIC DISTRIBUTION COMPANY.

12 "Workman." As defined under section 2(7) of the Prevailing
13 Wage Act.

14 Section 3. Minimum workplace standards required.

15 A public utility shall ensure that a contractor or
16 subcontractor that is engaged to perform underground
17 infrastructure work:

18 (1) Certifies that all workmen employed on an
19 underground infrastructure work have successfully completed
20 workplace safety and hazard mitigation training that
21 includes:

22 (i) A 10-hour construction safety training course
23 established by the Occupational Safety and Health
24 Administration of the United States Department of Labor.

25 (ii) An adult first-aid course that includes CPR/AED
26 that is deemed acceptable to the department in
27 consultation with the Department of Health.

28 (iii) If the project includes public roadways, an
29 onsite traffic control training course deemed acceptable
30 to the department, in consultation with Department of

1 Transportation.

2 (iv) Any other workplace safety or hazard mitigation
3 training that may be required by statute or regulation.

4 (2) Pays not less than the prevailing minimum wages and
5 fringe benefit rates as would be applicable to a project of
6 public work under the Prevailing Wage Act, and as specified
7 on a wage determination issued by the department, to each
8 workman employed to perform underground infrastructure work.

9 (3) Complies with applicable provisions of the
10 Prevailing Wage Act, including certification of payroll
11 records, as required by section 5.

12 (4) Maintains records demonstrating compliance with the
13 minimum requirements of this section for not less than two
14 years after the date of payment of wages.

15 Section 4. Application of Prevailing Wage Act.

16 (a) General rule.--The requirements of section 3(2) shall
17 apply to the prevailing minimum wages and fringe benefit rates
18 due and payable to and on behalf of any worker, in every trade
19 or craft, employed by a contractor, performing services on an
20 underground infrastructure work, and related certification of
21 payroll records, required by the Prevailing Wage Act.

22 (b) Duties of department.--

23 (1) The department shall enforce the requirements of
24 section 3(2) and (3) and this section and shall apply the
25 same administration and enforcement applicable to any project
26 undertaken under the requirements of the Prevailing Wage Act
27 to ensure compliance.

28 (2) The department shall, at the request of a public
29 utility, determine and make available the prevailing minimum
30 wage rates for underground infrastructure work.

1 (c) Duties of public utility.--

2 (1) A public utility and its contractors, engaged to
3 perform underground infrastructure work, shall comply with
4 all provisions and requirements of the Prevailing Wage Act
5 for all crafts and classifications of workmen who are
6 employed to perform work on an underground infrastructure
7 facility.

8 (2) A public utility shall, prior to entering into or
9 modifying a contract for underground infrastructure work,
10 request and obtain the prevailing minimum wage and benefit
11 rates determined by the department and make them available to
12 the public utility's contractors.

13 (3) A public utility shall perform the duties required
14 by a public body under the Prevailing Wage Act, including
15 requiring a contractor to file statements, in writing, in a
16 form or format prescribed by the department, certifying the
17 names of any and all workmen on underground infrastructure
18 work and the wages due to each workman.

19 (4) COSTS OR EXPENSES INCURRED BY A PUBLIC UTILITY UNDER <--
20 THIS ACT MAY NOT BE RECOVERED FROM RATEPAYERS.

21 (d) Duties of contractor and subcontractor.--A contractor or
22 subcontractor who performs underground infrastructure work shall
23 pay not less than the prevailing minimum wages and fringe
24 benefit rates determined by the department to every worker in
25 every trade or craft employed on an underground infrastructure
26 work.

27 Section 5. Enforcement.

28 In addition to the duties specified in section 4, the
29 department shall enforce and investigate alleged violations of
30 this act. In enforcing this act, the department may take any of

1 the following actions:

2 (1) Request the production of documents or inspect
3 records of a public utility or contractor at any reasonable
4 time for the purpose of an investigation that relates to
5 compliance with this act.

6 (2) If an entity fails to produce a record relating to
7 compliance with this act, petition Commonwealth Court to
8 enforce a subpoena or order issued by the department under
9 this act.

10 Section 6. Penalties and appeals.

11 ~~(a) Power of department. If the department determines that <--~~
12 ~~a violation of this act has occurred, the department may:~~

13 ~~(1) For a violation of section 3(1) or (4), require~~
14 ~~corrective action and assess an administrative fine of \$2,500~~
15 ~~for a first violation or \$5,000 for a subsequent violation.~~

16 ~~(2) For a violation of section 3(2) or (3) or 4(d),~~
17 ~~apply the same remedies and penalties contained under the~~
18 ~~Prevailing Wage Act.~~

19 ~~(b) Administrative procedure. A finding of a violation~~
20 ~~under subsection (a)(1) shall be subject to the provisions of 2-~~
21 ~~Pa.C.S. (relating to administrative law and procedure).~~

22 (A) POWER OF DEPARTMENT.--IF THE DEPARTMENT DETERMINES THAT <--
23 A VIOLATION OF THIS ACT HAS OCCURRED, THE DEPARTMENT MAY APPLY
24 THE SAME REMEDIES AND PENALTIES CONTAINED UNDER THE PREVAILING
25 WAGE ACT.

26 ~~(e)~~ (B) Appeal.--A finding of a violation under subsection <--
27 ~~(a)(2)~~ (A) may be appealed under section 2.2(e)(1) of the <--
28 Prevailing Wage Act and 34 Pa. Code § 213.3 (relating to appeals
29 from determinations of the Secretary). A final determination by
30 the appeals board under the Prevailing Wage Act may be appealed

1 under 2 Pa.C.S.

2 Section 7. Protection from retaliation.

3 (a) Retaliation prohibited.--A public utility or its
4 contractors may not discharge, threaten or otherwise retaliate
5 or discriminate against an employee regarding compensation or
6 other terms or conditions of employment because the employee
7 participates in an investigation, hearing or inquiry by the
8 department or reports an alleged violation of this act to the
9 department.

10 (b) Private right of action.--An employee who suffers
11 retaliation or discrimination under subsection (a) may bring an
12 action in a court of common pleas in accordance with the
13 Pennsylvania Rules of Civil Procedure. The action must be
14 brought within three years from the date the employee knew of
15 the retaliation or discrimination.

16 (c) Relief.--If an employee prevails in an action commenced
17 under subsection (b), the employee shall be entitled to the
18 following relief:

19 (1) Reinstatement of the employee, if applicable.

20 (2) Restitution equal to three times the amount of the
21 employee's wages and fringe benefits calculated from the date
22 of the retaliation or discrimination.

23 (3) Reasonable attorney fees and costs of the action.

24 (4) Any other legal and equitable relief the court deems
25 appropriate.

26 Section 8. Pennsylvania Public Utility Commission orders.

27 The Pennsylvania Public Utility Commission shall, in its
28 authority and oversight of public utilities under 66 Pa.C.S.
29 (relating to public utilities), consider and request information
30 on employees of contractors and subcontractors of public

1 utilities and may include conditions related to workplace safety
2 and hazard training, prevailing minimum wage standards and any
3 other safety or economic labor standard deemed of importance by
4 the commission in formal actions or decisions that it
5 undertakes.

6 Section 9. Applicability.

7 This act shall apply to underground infrastructure work by a
8 public utility that is performed under contract on or after the
9 effective date of this section.

10 Section 10. Effective date.

11 This act shall take effect in 180 days.