

2007 -- H 5831

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - CONTRACTS

Introduced By: Representatives Singleton, and Ehrhardt

Date Introduced: March 01, 2007

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 6.1

4 PUBLIC CONTRACTS FOR SERVICES - PROHIBITION AGAINST FIRMS EMPLOYING

5 ILLEGAL ALIENS

6 **42-6.1-1. Short title.** -- This chapter shall be known and may be cited as the "Prohibition
7 Against Public Contracts for Services with Firms Employing Illegal Aliens Act.

8 **42-6.1-2. Definitions.** -- As used in this chapter, unless the context requires otherwise:

9 (1) "Basic pilot program" means the basic pilot employment verification program created
10 in public law 208, 104th Congress, as amended, and expanded in public law 156, 108th Congress,
11 as amended, that is administered by the United States Department of Homeland Security.

12 (2) "Contractor" means a person, firm or business having a public contract for services
13 with a state agency or political subdivision of the state.

14 (3) "Department" means the department of labor and training.

15 (4) "Executive director" means the executive director of the department of labor and
16 training.

17 (5) "Political subdivision" means any city, town, special district, school district, local
18 improvement district, or any other kind of municipal, quasi-municipal, or public corporation.

19 (6) "Public contract for services" means any type of agreement, regardless of what the

1 agreement may be called, between a state agency or political subdivision and a contractor for the
2 procurement of services.

3 (7) "Services" means the furnishing of labor, time, or effort by a contractor or a
4 subcontractor not involving the delivery of a specific end product other than reports that are
5 merely incidental to the required performance.

6 (8) "State agency" means any department, commission, council, board, bureau,
7 committee, institution of higher education, agency, or other governmental unit of the executive,
8 legislative, or judicial branch of state government.

9 **42-6.1-3. Illegal aliens - prohibition - public contracts for services. --** (a) A state
10 agency or political subdivision shall not enter into or renew a public contract for services with a
11 contractor who knowingly employs or contracts with an illegal alien to perform work under the
12 contract or who knowingly contracts with a subcontractor who knowingly employs or contracts
13 with an illegal alien to perform work under the contract. Prior to executing a public contract for
14 services, each prospective contractor shall certify that, at the time of the certification, it does not
15 knowingly employ or contract with an illegal alien and that the contractor has participated or
16 attempted to participate in the basic pilot program in order to verify that it does not employ any
17 illegal aliens.

18 (b) Each public contract for services shall include a provision that the contractor shall
19 not:

20 (1) Knowingly employ or contract with an illegal alien to perform work under the public
21 contract for services; or

22 (2) Enter into a contract with a subcontractor that fails to certify to the contractor that the
23 subcontractor shall not knowingly employ or contract with an illegal alien to perform work under
24 the public contract for services.

25 (c) Each public contract for services shall also include the following provisions:

26 (1) A provision stating that the contractor has verified or attempted to verify through
27 participation in the basic pilot program that the contractor does not employ any illegal aliens and,
28 if the contractor is not accepted into the basic pilot program prior to entering into a public
29 contract for services, that the contractor shall apply to participate in the basic pilot program every
30 three (3) months until the contractor is accepted or the public contract for services has been
31 completed, whichever is earlier. The provision specified in this subdivision shall not be required
32 or effective in a public contract for services if the basic pilot program is discontinued.

33 (2) A provision that prohibits the contractor from using basic pilot program procedures to
34 undertake preemployment screening of job applicants while the public contract for services is

1 being performed.

2 (3) A provision that, if the contractor obtains actual knowledge that a subcontractor
3 performing work under the public contract for services knowingly employs or contracts with an
4 illegal alien, the contractor shall be required to:

5 (i) Notify the subcontractor and the contracting state agency or political subdivision
6 within three (3) days that the contractor has actual knowledge that the subcontractor is employing
7 or contracting with an illegal alien; and

8 (ii) Terminate the subcontract with the subcontractor if within three (3) days of receiving
9 the notice required pursuant to subparagraph (a) of this subparagraph (III) the subcontractor does
10 not stop employing or contracting with the illegal alien; except that the contractor shall not
11 terminate the contract with the subcontractor if during such three (3) days the subcontractor
12 provides information to establish that the subcontractor has not knowingly employed or
13 contracted with an illegal alien.

14 (4) A provision that requires the contractor to comply with any reasonable request by the
15 department made in the course of an investigation that the department is undertaking pursuant to
16 the authority established in subsection (5) of this section.

17 (d) If a contractor violates a provision of the public contract for services required
18 pursuant to this chapter, the state agency or political subdivision may terminate the contract for a
19 breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and
20 consequential damages to the state agency or political subdivision.

21 (e) A state agency or political subdivision shall notify the office of the secretary of state if
22 a contractor violates a provision of a public contract for services required pursuant to this chapter
23 and the state agency or political subdivision terminates the contract for such breach. Based on this
24 notification, the secretary of state shall maintain a list that includes the name of the contractor, the
25 state agency or political subdivision that terminated the public contract for services, and the date
26 of the termination. A contractor shall be removed from the list if two (2) years have passed since
27 the date the contract was terminated, or if a court of competent jurisdiction determines that there
28 has not been a violation of the provision of the public contract for services required pursuant to
29 this chapter. A state agency or political subdivision shall notify the office of the secretary of state
30 if a court has made such a determination. The list shall be available for public inspection at the
31 office of the secretary of state and shall be published on the internet on the website maintained by
32 the office of the secretary of state.

33 (f) The department may investigate whether a contractor is complying with the provisions
34 of a public contract for services required pursuant to this chapter. The department may conduct

1 on-site inspections where a public contract for services is being performed, request and review
2 documentation that proves the citizenship of any person performing work on a public contract for
3 services, or take any other reasonable steps that are necessary to determine whether a contractor is
4 complying with the provisions of a public contract for services required pursuant to this chapter.
5 The department shall receive complaints of suspected violations of a provision of a public
6 contract for services required pursuant to this chapter and shall have discretion to determine
7 which complaints, if any, are to be investigated. The results of any investigation shall not
8 constitute final agency action. The department is authorized to promulgate rules and regulations
9 to implement the provisions of this chapter.

10 (g) The executive director shall notify any state agency or political subdivision if he or
11 she suspects that there has been a breach of a provision in a public contract for services required
12 pursuant to this chapter.

13 **42-6.1-4. Appropriation. --** In addition to any other appropriation, there is hereby
14 appropriated, out of any moneys in the general fund not otherwise appropriated, to the department
15 of labor and training, for allocation to the director's office, for the fiscal year beginning July 1,
16 2008, so much thereof as may be necessary, for the implementation of this act.

17 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT - CONTRACTS

1 This act would prohibit state agencies and political subdivisions from contracting for
2 personal services with firms that employ illegal aliens.

3 This act would take effect upon passage.

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