

2022 -- H 7027

=====
LC003686
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

—————
A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

Introduced By: Representatives Edwards, Bennett, Morales, Potter, Kennedy, Kazarian,
Kislak, and Fellela

Date Introduced: January 10, 2022

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Findings.

2 The General Assembly recognizes and declares that:

3 (1) It is the intent of the General Assembly in enacting this act to protect the state's
4 proprietary and financial interests in major school construction projects by requiring participating
5 contractors and subcontractors working on such projects to maintain effective apprenticeship
6 training programs as a means for ensuring they will deploy properly trained craft labor required for
7 these projects;

8 (2) New school construction is a critical and pressing need for Rhode Island. A 2017 report
9 commissioned by the School Building Authority, State of Rhode Island Schoolhouses, identified
10 more than two billion two hundred million dollars (\$2,200,000,000) in deficiencies in the state's
11 three hundred six (306) public schools. Subsequently, state and local authorities allocated millions
12 of dollars to fund new school construction. It is essential that these vital resources be administered
13 carefully to ensure the delivery of safe, timely, high-quality construction projects. To this end,
14 public contracts awarded for this work must fully comply with the intent and purpose of existing
15 state law provisions requiring the use of qualified, responsible bidders pursuant to § 45-55-5;

16 (3) School construction projects valued at five million dollars (\$5,000,000) or more are
17 inherently complex undertakings that utilize multiple site contractors and subcontractors and
18 dozens or even hundreds of skilled craft personnel in various specialized trades. Errors in

1 construction planning on such projects can result in cost overruns, inferior quality, increased safety
2 risks, and schedule delays that can disrupt the timely delivery of educational services. Such effects
3 are especially problematic where they are caused by flaws in project staffing insofar as construction
4 is both a highly skilled and labor-intensive industry. While these challenges exist under virtually
5 any market conditions, the construction industry is currently facing acute, widespread labor
6 shortages that pose unprecedented risks to future project delivery. Unless effective policy responses
7 are developed to address this skills crisis, it is estimated there will be a national shortage of one
8 million five hundred thousand (1,500,000) construction workers by 2022. Consider the following
9 research studies: The Associated General Contractors of America, Eighty Percent of Contractors
10 Report Difficulty Finding Qualified Craft Workers to Hire As Association Calls for Measures to
11 Rebuild Workforce (August 29, 2018); Construction Labor Market Analyzer, Construction Users
12 RoundTable, The Long-Term Outlook for Construction 6 (2017); Petrochemical Update, Heather
13 Doyle, Craft Labor Shortage Seriously Affecting Mega Projects: Poll, (June 29, 2017). Given these
14 circumstances, Rhode Island, like virtually all other states, has been struggling for several years
15 with this skills gap and has been working to address the growing risks posed by this challenge.
16 Building Futures, Gerard M. Waites, Ahead of the Curve: Increasing Apprentice Utilization in
17 Rhode Island's Construction Industry, (March 2013); Building Futures, Beth Ashman-Collins,
18 Phase 1 - Skills Gap Analysis, RI Construction Trades. (April 25, 2008);

19 (4) These construction labor shortages, which have been extensively documented in both
20 national and local research reports, are already causing serious disruptions to project delivery in
21 the form of negative effects on project cost, schedule, safety, and quality. Consider the following
22 research studies: Virtual Builders Exchange, Adolfo Pesquera, Labor Shortages Spur Increased
23 Pay/Benefits, Yet Construction Firms Bullish on 2019,(January 4, 2019); Associated Builders and
24 Contractors, Inc., ABC Highlights Construction Worker Shortage During National Apprenticeship
25 Week, (November 15, 2017); The Aspen Institute: Workforce Strategies Initiative, Maureen
26 Conway and Allison Gerber, Construction Pre-Apprenticeship Programs: Results from a National
27 Survey 6-7 (2009);

28 (5) Substantial research also shows that apprenticeship training programs are one of the
29 most viable solutions for addressing these challenges because it has long been recognized as a
30 matter of public policy and industry practice that using apprenticeship training programs effectively
31 and reliably develops a skilled workforce to meet our nation's construction industry needs,
32 including critical infrastructure programs, such as educational facilities. To this end, the U.S.
33 Congress passed the National Apprenticeship Act, Pub. L. No. 75-308, 50 Stat. 664, in 1937 to
34 promote the use of structured education and training in the skilled crafts and trades through formal

1 apprenticeship training programs;

2 (6) The value, benefits, and utility of using apprenticeship-training programs in the
3 construction industry have been verified by numerous public and private research projects over the
4 past several years. Consider the following research studies: Case Western Reserve University and
5 U.S. Department of Commerce, *The Benefits and Costs of Apprenticeship: A Business Perspective*;
6 *The Council of Economic Advisors, Addressing America's Reskilling Challenge 7-8 (2018)*; *The*
7 *Workforce Training & Education Coordinating Board, a Washington state agency, Workforce*
8 *Training Results (2015)*; *U.S. Departments of Labor, Commerce, Education, and Health and*
9 *Human Services, What Works in Job Training: A Synthesis of the Evidence 8 (2014)*; *The Aspen*
10 *Institute: Workforce Strategies Initiative, Matt Helmer and Dave Altstadt, Apprenticeship:*
11 *Completion and Cancellation in the Building Trades 8-9 (2013)*; *Mathematica Policy Research,*
12 *Debbie Reed et. al, An Effectiveness Assessment and Cost-Benefit Analysis of Registered*
13 *Apprenticeship in ten (10) States (2012)*; and *Urban Institute, Robert Lerman et al., The Benefits*
14 *and Challenges of Registered Apprenticeship: Sponsors' Perspective ii (2009)* .

15 (7) Given these factors, apprenticeship programs that are operated in accordance with
16 federally established qualification standards under 29 C.F.R. § 29 have been relied upon for more
17 than eighty (80) years as the most effective and reliable method for conducting skills training in
18 construction, and such programs are broadly relied upon for addressing the industry's current skills
19 crisis. Recognizing these benefits, approximately a dozen states have enacted legislation requiring
20 contractors to participate in formal apprenticeship programs as a condition for performing public
21 works projects. Rhode Island adopted such a policy for general public works projects in 2014 by
22 enacting § 37-13-3.1. Private sector construction organizations, such as the Construction Users
23 Roundtable, support similar strategies and have recommended that those responsible for large
24 capital projects require site contractors to participate in credible skills training programs as a
25 condition of performing work on their projects. Consider the following research study:
26 *Construction Users Roundtable, Skilled Labor Shortage Risk Mitigation (January 2015)*; and

27 (8) Requiring contractors and subcontractors on major school construction projects to
28 participate in apprenticeship training programs will help ensure that craft labor personnel on such
29 projects are properly trained by verifying that they are either apprentices currently enrolled in bona
30 fide programs or graduates of such programs. These efforts will also promote needed workforce
31 development efforts in construction that are critical for ensuring future projects are properly staffed
32 with qualified construction craft personnel.

33 SECTION 2. Sections 37-13-1, 37-13-3.1 and 37-13-14.1 of the General Laws in Chapter
34 37-13 entitled "Labor and Payment of Debts by Contractors" are hereby amended to read as

1 follows:

2 **37-13-1. Definitions.**

3 As used in this chapter:

4 (1) "Approved apprenticeship program" or "apprenticeship program" means an
5 apprenticeship program that has been approved by the U.S. Department of Labor, or by a
6 recognized state apprenticeship agency, pursuant to 29 C.F.R. Parts 29 and 30; however, such
7 programs shall not include those that have obtained only provisional approval status. The required
8 apprenticeship programs may either be programs that have specifically allocated funding and are
9 subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.
10 ("ERISA"), or non-ERISA programs financed by general funds of employers.

11 ~~(1)~~(2) "Public works" means any public work consisting of grading, clearing, demolition,
12 improvement, completion, repair, alteration, or construction of any public road or any bridge, or
13 portion thereof, or any public building, or portion thereof, or any heavy construction, or any public
14 works projects of any nature or kind whatsoever.

15 (3) "School construction contract" means any construction contract for a school building
16 or any school-related facility that is funded with public money.

17 ~~(2)~~(4) "School transportation services" means those transportation and related services
18 provided for the transportation of public and private students pursuant to §§ 16-21-1 and 16-21.1-
19 8.

20 (5) "User agency" means the state, municipality, quasi-governmental agency, or other
21 entity that is responsible for management of a school construction contract.

22 **37-13-3.1. State public works contract apprenticeship requirements.**

23 Notwithstanding any laws to the contrary, all general contractors and subcontractors who
24 perform work on any public works contract awarded by the state after passage of this act and valued
25 at one million dollars (\$1,000,000) or more shall employ apprentices required for the performance
26 of the awarded contract. The number of apprentices shall comply with the apprentice-to-
27 journeyman ratio for each trade approved by ~~the apprenticeship council of~~ the department of labor
28 and training. To the extent that any of the provisions contained in this section conflict with the
29 requirements for federal aid contracts, federal law and regulations shall control.

30 The provisions of this section shall not apply to contracts for school transportation services.

31 **37-13-14.1. Enforcement -- Hearings.**

32 (a) Before issuing an order or determination, the director of labor and training shall order
33 a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a
34 copy of the complaint or the purpose thereof, or a statement of the facts disclosed upon

1 investigation, which notice shall be served personally or by mail on any person, firm, or corporation
2 affected thereby. The person, firm, or corporation shall have an opportunity to be heard in respect
3 to the matters complained of at the time and place specified in the notice, which time shall be not
4 less than five (5) days from the service of the notice personally or by mail. The hearing shall be
5 held within ~~ten (10)~~ thirty (30) days from the order of hearing. The hearing shall be conducted by
6 the director of labor and training or his or her designee. The hearing officer in the hearing shall be
7 deemed to be acting in a judicial capacity and shall have the right to issue subpoenas, administer
8 oaths, and examine witnesses. The enforcement of a subpoena issued under this section shall be
9 regulated by Rhode Island civil practice law and rules. The hearing shall be expeditiously
10 conducted, and upon such hearing, the hearing officer shall determine the issues raised thereon and
11 shall make a determination and enter an order within ~~ten (10)~~ thirty (30) days of the close of the
12 hearing, and forthwith serve a copy of the order, with a notice of the filing thereof, upon the parties
13 to the proceeding, personally or by mail. The order shall dismiss the charges or direct payment of
14 wages or supplements found to be due, including interest at the rate of twelve percentum (12%) per
15 annum from the date of the underpayment to the date of payment, and may direct payment of
16 reasonable attorney's fees and costs to the complaining party.

17 (b) In addition to directing payment of wages or supplements including interest found to
18 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
19 three times the total amount found to be due. Further, if the amount of salary owed to an employee
20 pursuant to this chapter but not paid to the employee in violation of thereof exceeds five thousand
21 dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office of the attorney
22 general. The misdemeanor shall be punishable for a period of not more than one year in prison
23 and/or fined not more than one thousand dollars (\$1,000). In assessing the amount of the penalty,
24 due consideration shall be given to the size of the employer's business, the good faith of the
25 employer, the gravity of the violation, the history of previous violations, and the failure to comply
26 with recordkeeping or other nonwage requirements. The surety of the person, firm, or corporation
27 found to be in violation of the provisions of this chapter shall be bound to pay any penalties assessed
28 on such person, firm, or corporation. The penalty shall be paid to the department of labor and
29 training for deposit in the state treasury; provided, however, it is hereby provided that the general
30 treasurer shall establish a dedicated "prevailing wages enforcement fund" for the purpose of
31 depositing the penalties paid as provided herein. There is hereby appropriated to the annual budget
32 of the department of labor and training the amount of the fund collected annually under this section,
33 to be used at the direction of the director of labor and training for the sole purpose of enforcing
34 prevailing wage rates as provided in this chapter.

1 (c) For the purposes of this chapter, each day or part thereof of violation of any provision
2 of this chapter by a person, firm, or corporation, whether the violation is continuous or intermittent,
3 shall constitute a separate and succeeding violation.

4 (d) In addition to the above, any person, firm, or corporation found in violation of any of
5 the provisions of this chapter by the director of labor and training, an awarding authority, or the
6 hearing officer, shall be ineligible to bid on, or be awarded work by, an awarding authority or
7 perform any such work for a period of no less than eighteen (18) months and no more than thirty-
8 six (36) months from the date of the order entered by the hearing officer. Once a person, firm, or
9 corporation is found to be in violation of this chapter, all pending bids with any awarding authority
10 shall be revoked, and any bid awarded by an awarding authority prior to the commencement of the
11 work shall also be revoked.

12 (e) In addition to the above, any person, firm, or corporation found to have committed two
13 (2) or more willful violations in any period of eighteen (18) months of any of the provisions of this
14 chapter by the hearing officer, which violations are not arising from the same incident, shall be
15 ineligible to bid on, or be awarded work by, an awarding authority or perform any work for a period
16 of sixty (60) months from the date of the second violation.

17 (f) The order of the hearing officer shall remain in full force and effect unless stayed by
18 order of the superior court.

19 (g) The director of labor and training, awarding authority, or hearing officer shall notify
20 the bonding company of any person, firm, or corporation suspected of violating any section of this
21 chapter. The notice shall be mailed certified mail and shall enumerate the alleged violations being
22 investigated.

23 (h) In addition to the above, any person, firm, or corporation found to have willfully made
24 a false or fraudulent representation on certified payroll records [or in reporting their apprenticeship](#)
25 [information to any government agency](#) shall be referred to the office of the attorney general. A first
26 violation of this section shall be considered a misdemeanor and shall be punishable for a period of
27 not more than one year in prison and/or fined one thousand dollars (\$1,000). A second or
28 subsequent violation of this section shall be considered a felony and shall be punishable for a period
29 of not more than three (3) years imprisonment, a fine of three thousand dollars (\$3,000), or both.
30 Further, any person, firm, or corporation found to have willfully made a false or fraudulent
31 representation on certified payroll records [or in reporting their apprenticeship information to any](#)
32 [government agency](#) shall be required to pay a civil penalty to the department of labor and training
33 in an amount of no less than two thousand dollars (\$2,000) and not greater than fifteen thousand
34 dollars (\$15,000) per representation.

1 SECTION 3. Chapter 37-13 of the General Laws entitled "Labor and Payment of Debts by
2 Contractors" is hereby amended by adding thereto the following section:

3 **37-13-3.3. Public school construction contract apprenticeship requirements.**

4 (a) Notwithstanding any laws to the contrary, all specifications in any invitations to bid on
5 any school construction contract valued at five million dollars (\$5,000,000) or more shall include
6 a requirement that all bidders responding to an invitation to bid on a school construction contract
7 shall have an approved apprenticeship program for all apprenticable crafts or trades that will be
8 employed on the project at the time of bid. All bidders responding to such invitation to bid shall
9 also provide proof in the bid package of the existence of an approved apprenticeship program for
10 all crafts or trades that will be employed on the project by all contractors and subcontractors needed
11 for the project. All general contractors and subcontractors who perform work on any school
12 construction contract valued at five million dollars (\$5,000,000) or more that is awarded after the
13 effective date of this chapter shall ensure that no less than ten percent (10%), but with a goal of at
14 least fifteen percent (15%), of the labor hours worked on the project shall be performed by
15 apprentices for all apprenticable crafts or trades that will be employed on the project. The provisions
16 of the section shall only apply to contractors and subcontractors with five (5) or more employees.

17 (b) The ten percent (10%) apprenticeship requirement shall be applied per month.

18 (c) All bids for such school construction contracts valued at five million dollars
19 (\$5,000,000) or more must fully comply with the intent and purpose of existing state law provisions
20 requiring the use of qualified, responsible bidders pursuant to § 45-55-5, including the criteria that
21 invitation for such bids shall reference this chapter when enumerating the objective measurable
22 criteria that will be used to make awards, as required by § 45-55-5 (b).

23 (d) Upon petition by a contractor in writing, a user agency may lower the ten percent (10%)
24 apprenticeship requirement of this section for a specific project for one or more crafts or trades for
25 the following reasons:

26 (1) The demonstrated lack of availability of apprentices and/or lack of apprentice programs
27 in specific geographic areas; or

28 (2) Participating contractors have demonstrated a good faith effort to comply with the
29 requirements of this section but have not been able to attain the ten percent (10%) requirement.

30 (e) Any determination by a user agency to lower the apprenticeship requirements according
31 to this subsection shall be provided in writing, to the contractor and to the state department of labor
32 and training.

33 (f) The state department of labor and training shall provide information and technical
34 assistance to any affected user agencies and contractors awarded any school construction contracts

1 relative to their obligations under this chapter.

2 (g) Any contractor or subcontractor awarded a school construction contract shall collect
3 and submit the following data for each project covered by this section to the user agency on certified
4 payroll forms, as required by § 37-13-13:

5 (1) The name and dollar value of the project being worked on;

6 (2) The name of each apprentice, categorized by trade or craft; each apprentice's
7 registration number; the name and address of each apprentice's approved apprenticeship program;
8 and the number of hours each apprentice has worked on the project for each month being reported;

9 (3) The name of each journey level worker, categorized by trade or craft, and the number
10 of hours each has worked on the project for each month being reported; and

11 (4) If applicable, the number, type, and rationale for the exceptions granted.

12 (h) Upon receiving the data from any contractor or subcontractor awarded a school
13 construction contract, the user agency shall provide the department of administration with said data.
14 The department of administration shall develop procedures for using and comparing said data and
15 shall annually publish a report with aggregate data related to apprenticeships.

16 (i) Upon receiving the data from any contractor or subcontractor awarded a school
17 construction project, the user agency shall provide the department of administration and the
18 department of labor and training with said data. The department of administration shall develop
19 procedures for using and comparing said data and shall annually publish a report with aggregate
20 data related to apprenticeships.

21 (j) The user agency shall withhold the next scheduled payment to any contractor or
22 subcontractor who does not submit the information required by the provisions of this section and
23 shall also notify the director of labor and training of the contractor's noncompliance. The user
24 agency shall withhold final payment until all of the information requested by the provisions of this
25 section have been provided.

26 (k) The department of labor and training may also impose a penalty of up to five hundred
27 dollars (\$500) for each calendar day that any contractor or subcontractor does not comply with the
28 requirement to submit data pursuant to the provisions of this section, as determined by the director
29 of the department of labor and training. Such penalty shall be paid by the contractor or
30 subcontractor to the department of labor and training. Mere errors and inadvertent omissions shall
31 not be grounds for imposing a penalty under this section. The severity of any penalties shall be
32 based on the facts and circumstances involved in the violation including whether there are reports
33 or multiple violations and/or willful conduct.

34 (l) All penalties assessed pursuant to the provisions of this section shall be paid to the

1 department of labor and training's dedicated "prevailing wage enforcement fund" and be deposited
2 in a restricted receipt account.

3 (m) Failure of the contractors and subcontractors required to utilize apprentices or be
4 exempted shall be considered a material breach of their school construction contract, and they shall
5 be subject to any and all applicable penalties under their contract with the user agency.

6 (n) Any contractor or subcontractor aggrieved by any action taken by the director of the
7 department of labor and training or the director's designated hearing officer, pursuant to the
8 provisions of chapter 13 of title 37, may obtain a review thereof for the purpose of obtaining relief
9 from the action or lack of action pursuant to § 37-13-15.

10 (o) To the extent that any of the provisions contained in this chapter conflict with the
11 requirements for federal aid contracts, federal law and regulations shall control.

12 SECTION 4. This act shall take effect upon passage and shall be effective for all contracts
13 entered into on and after July 1, 2022.

=====
LC003686
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

1 This act would require that bidders on public school construction contracts valued at five
2 million dollars (\$5,000,000) or more must have an apprenticeship program that complies with the
3 provisions of this act. This act would also provide that any entity with an apprenticeship program
4 shall truthfully report information regarding the program to the department of labor and training
5 (DLT).

6 This act would take effect upon passage and would be effective for all contracts entered
7 into on and after July 1, 2022.

=====
LC003686
=====