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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- SUBCONTRACTOR PAYMENT ACT

Introduced By: Senators Gallo, Lynch, P Fogarty, Lombardo, and Lombardi

Date Introduced: March 06, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 37 of the General Laws entitled "PUBLIC PROPERTY AND
2 WORKS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 2.5

4 SUBCONTRACTOR PAYMENT ACT

5 **37-2.5-1. Method of payment to subcontractors under certain public works**
6 **contracts. -- Every contract awarded pursuant to this chapter shall provide that subcontractor**
7 **payments are provided for in accordance with the provisions of this chapter.**

8 **37-2.5-2. Definitions. -- For purposes of this chapter:**

9 (1) "Subcontractor" means a person who files a sub-bid and receives a subcontract as a
10 result of that filed sub-bid or who is approved, in writing, by the awarding authority pursuant to
11 this chapter, as a person performing labor or both performing labor and furnishing materials
12 pursuant to a contract with the general contractor.

13 **37-2.5-3. Deposit of amounts in dispute. -- (a) Forthwith after the general contractor**
14 **awarded a contract, pursuant to this title, receives payment on account of periodic estimate, the**
15 **general contractor shall pay to each subcontractor the amount paid for the labor performed and**
16 **the materials furnished by that subcontractor, less any amount specified in any court proceedings**
17 **barring such payment and also less any amount claimed due from the subcontractor by the**
18 **general contractor.**

19 (b) Not later than the sixty-fifth (65th) day after each subcontractor substantially

1 completes his or her work in accordance with the plans and specifications, the entire balance due
2 under the subcontract, less amounts retained by the awarding authority as the estimated cost of
3 completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and
4 the awarding authority shall pay that amount to the general contractor. The general contractor
5 shall forthwith pay to the subcontractor the full amount received from the awarding authority less
6 any amount specified in any court proceedings barring such payment and also less any amount
7 claimed due from the subcontractor by the general contractor.

8 (c) Each payment made by the awarding authority to the general contractor pursuant to
9 this section for the labor performed and the materials furnished by a subcontractor shall be made
10 to the general contractor for the account of that subcontractor; and the awarding authority shall
11 take reasonable steps to compel the general contractor to make each such payment to each
12 subcontractor. If the awarding authority has received a demand for the direct payment from a
13 subcontractor for any amount which has already been included in a payment to the general
14 contractor or which is to be included in a payment to the general contractor for payment to the
15 subcontractor as provided in subsections (a) and (b) herein, the awarding authority shall act upon
16 the demand as provided in this section.

17 (d) If, within seventy (70) days after the subcontractor has substantially completed the
18 subcontract work, the subcontractor has not received from the general contractor the balance due
19 under the subcontract including any amount due for extra labor and materials furnished to the
20 general contractor, less any amount retained by the awarding authority as the estimated cost of
21 completing the incomplete and unsatisfactory items of work, the subcontractor may demand
22 direct payment of that balance from the awarding authority pursuant to this chapter. The demand
23 shall be by a sworn statement delivered to or sent by certified mail to the general contractor at the
24 same time. The demand shall contain a detailed breakdown of the balance due under the
25 subcontract and also a statement of the status of completion of the subcontract work which shall
26 be valid even if delivered or mailed prior to the seventieth (70th) day after the subcontractor has
27 substantially completed the subcontract work. Within ten (10) days after the subcontractor has
28 delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to
29 the general contractor, the general contractor may reply to the demand. The reply shall be by a
30 sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall
31 be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall
32 contain a detailed breakdown of the balance due under the subcontract including any amount due
33 for extra labor and materials furnished to the general contractor and of the amount due for each
34 claim made by the general contractor against the subcontractor.

1 (e) Within fifteen (15) days after receipt of the demand by the awarding authority, but in
2 no event prior to the seventieth (70th) day after substantial completion of the subcontract work,
3 the awarding authority shall make direct payment to the subcontractor of the balance due under
4 the subcontract including any amount due for extra labor and materials furnished to the general
5 contractor, less any amount: (1) Retained by the awarding authority as the estimated cost of
6 completing the incomplete or unsatisfactory items of work; (2) Specified in any court proceedings
7 barring such payment; or (3) Disputed by the general contractor in the sworn reply; provided, that
8 the awarding authority shall not deduct from a direct payment any amount as provided in
9 subdivision (3) if the reply is not sworn to, or for which the sworn reply does not contain the
10 detailed breakdown required by subsection (d) herein. The awarding authority shall make further
11 direct payments to the subcontractor forthwith after the removal of the basis for deductions from
12 direct payments made as provided in subdivisions (1) and (2) of this subsection.

13 (f) The awarding authority shall forthwith deposit the amount deducted from a direct
14 payment as provided in subsection 37-2.5-3(e) in an interest-bearing joint account in the names of
15 the general contractor and the subcontractor in a bank in Rhode Island selected by awarding
16 authority or agreed upon by the general contractor and the subcontractor and shall notify the
17 general contractor and the subcontractor of the date of the deposit and the bank receiving the
18 deposit. The bank shall pay the amount in the account, including accrued interest, as provided in
19 an agreement between the general contractor and the subcontractor or as determined by decree of
20 a court of competent jurisdiction.

21 (g) All direct payments and all deductions from demands for direct payments deposited in
22 an interest-bearing account or accounts in a bank pursuant to subsection 37-2.5-3(f) shall be made
23 out of amounts payable to the general contractor at the time of receipt of a demand for direct
24 payment from a subcontractor and out of amounts which later become payable to the general
25 contractor and in the order of receipt of such demands from subcontractors. All direct payments
26 shall discharge the obligation of the awarding to the general contractor to the extent of such
27 payment.

28 (h) The awarding authority shall deduct from payments to a general contractor amounts
29 which, together with the deposits in interest-bearing accounts pursuant to subsection 37-2.5-3(f),
30 are sufficient to satisfy all unpaid balances of demands for direct payment received from sub
31 contractors. All such amounts shall be earmarked for such direct payments, and the
32 subcontractors shall have a right in such deductions prior to any claims against such amounts by
33 creditors of the general contractor.

34 (i) If the subcontractor does not receive payment as provided in subsection 37-2.5-3(a) or

1 if the general contractor does not submit a periodic estimate for the value of the labor or materials
2 performed or furnished by the subcontractor and the subcontractor does not receive payment for
3 same when due, less the deduction provided for in subsection 37-2.5-3(a), the subcontractor may
4 demand direct payment by following the procedure in subsection 37-2.5-3(d) and the general
5 contractor may file a sworn reply as provided in that same section. A demand made after the first
6 day of the month following that for which the subcontractor performed or furnished the labor and
7 materials for which the subcontractor seeks payment shall be valid even if delivered or mailed
8 prior to the time payment was due on a periodic estimate from the general contractor. Thereafter,
9 the awarding authority shall proceed as provided in subsections 37-2.5-3(e), (f), (g) and (h).

10 **37-2.5-4. Assignment prohibited.** -- Any assignment by a subcontractor of the rights
11 under this section to a surety company furnishing a bond under this chapter shall be invalid. The
12 assignment and subrogation rights of the surety to amounts included in a demand for direct
13 payment which are in the possession of the awarding authority pursuant to this chapter or which
14 are on deposit pursuant to subsection (f) herein shall be subordinate to the rights of all
15 subcontractors who are entitled to be paid under this chapter and who have not been paid in full.

16 **37-2.5-5. Enforcement of claim.** -- A general contractor or a subcontractor shall enforce
17 a claim to any portion of the amount of a demand for direct payment deposited as provided in
18 subsection 37-2.5-3(f) by a petition in equity in the superior court against the other and the bank
19 shall not be a necessary party. A subcontractor shall enforce a claim for direct payment or a right
20 to require a deposit as provided in subsection 37-2.5-3(f) by a petition in equity in the superior
21 court against the awarding authority and the general contractor shall not be a necessary party.
22 Upon motion of any party the court shall advance for speedy trial any petition filed as provided in
23 this section. The court of proper jurisdiction shall enter an interlocutory decree upon which
24 execution shall issue for any part of a claim found due pursuant to this chapter and, upon motion
25 of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any
26 party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a
27 final decree. The court shall not consolidate for trial the petition of any subcontractor with the
28 petition of one or more subcontractors or the same general contract unless the court finds that a
29 substantial portion of the evidence of the same events during the course of construction (other
30 than the fact the claims sought to be consolidated arise under the same general contract) is
31 applicable to the petitions sought to be consolidated and that such consolidation will prevent
32 unnecessary duplication of evidence. A decree in any such proceeding shall not include interest
33 on the disputed amount deposited in excess of the interest directly earned for the period of any
34 such deposit. No person except a subcontractor filing a demand for direct payment for which no

1 funds due the general contractor are available for direct payment shall have a right to file a
2 petition in a court of equity against the awarding authority claiming a demand for direct payment
3 premature and such subcontractor must file the petition before the awarding authority has made a
4 direct payment to the subcontractor and has made a deposit of the disputed portion as provided in
5 section 37-2.5-3.

6 **37-2.5-6. Payment reduction.** -- In any petition to collect any claim for which a
7 subcontractor has filed a demand for direct payment the court shall, upon motion of the general
8 contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority
9 as provided in subsections 37-2.5-3(e) and 37-2.5-3(f), any amount held under a trustee writ of
10 attachment pursuant to a restraining order or in junction.

11 **37-2.5-7. Severability.** -- The provisions of this chapter shall be severable, and if any
12 court declares any phrase, clause, sentence, or provision of this chapter to be invalid, or its
13 applicability to any government, agency, person, or circumstance is declared invalid, the
14 remainder of the chapter and its relevant applicability shall not be affected. The provisions of this
15 chapter shall be liberally construed to give effect to the purposes thereof.

16 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 PUBLIC PROPERTY AND WORKS -- SUBCONTRACTOR PAYMENT ACT

- 1 This act would create the subcontractor payment act to provide subcontractors a method
- 2 to enforce and collect payment for work performed on certain public works contracts.
- 3 This act would take effect upon passage.

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