

2014 -- H 7623

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LC004749  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

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

Introduced By: Representatives Carnevale, DeSimone, Hull, Bennett, and Guthrie

Date Introduced: February 26, 2014

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-13-3.1 of the General Laws in Chapter 37-13 entitled "Labor  
2 and Payment of Debts by Contractors" is hereby repealed.

3 ~~37-13-3.1. State public works contract apprenticeship requirements. ---~~  
4 ~~Notwithstanding any laws to the contrary, all general contractors and subcontractors who perform~~  
5 ~~work on any public works contract awarded by the state after passage of this act and valued at one~~  
6 ~~million dollars (\$1,000,000) or more shall employ apprentices required for the performance of the~~  
7 ~~awarded contract. The number of apprentices shall comply with the apprentice to journeyman~~  
8 ~~ratio for each trade approved by the apprenticeship council of the department of labor and~~  
9 ~~training.~~

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

12 **37-13-3.2. Public works contract apprenticeship requirements. -- (a) Notwithstanding**  
13 **any laws to the contrary, all specifications in any invitations to bid in any public works contract**  
14 **awarded by the state, any municipality or quasi-governmental agency valued at one million**  
15 **dollars (\$1,000,000) or more shall include a requirement that all bidders responding to an**  
16 **invitation to bid on a public works project shall have an apprenticeship program as defined herein**  
17 **for all apprenticeable crafts that will be employed on the project at the time of bid, and that no**  
18 **less than fifteen percent (15%) of the labor hours worked on the project shall be performed by**

1 apprentices in these programs. The provisions of the section shall only apply to contractors and  
2 subcontractors with five (5) or more employees. For purposes of this section, an apprenticeship  
3 program is one that is non-provisionally registered with and approved by the U.S. Department of  
4 Labor in conformance with 29 C.F.R. 29 and 29 C.F.R. 30.

5 (b) Upon petition by a contractor in writing, a user agency may lower the fifteen percent  
6 (15%) apprenticeship requirement of this section for a specific project for the following reasons:

7 (1) The demonstrated lack of availability of apprentices in specific geographic areas; or

8 (2) A written determination by the user agency that compliance is unduly cost  
9 prohibitive; or

10 (3) That participating contractors have demonstrated a good faith effort to comply with  
11 the requirements of this section, but have not been able to attain the fifteen percent (15%)  
12 requirement.

13 (c) The department of labor and training must provide information and technical  
14 assistance to affected governmental, quasi-governmental agencies, and any contractors awarded  
15 any public works projects relative to their obligations under this statute.

16 (d) Any contractor and/or subcontractor awarded a public works contract shall collect and  
17 submit following data for each project covered by this section to the user agency on certified  
18 payroll forms as required by§ 37-13-13:

19 (1) The name and dollar value of the project that they are working on;

20 (2) The name of each apprentice categorized by trade or craft, their apprentice  
21 registration number, and the number of hours they have worked on the project;

22 (3) The name of each journey level worker categorized by trade or craft and the number  
23 of hours they have worked on the project; and

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

25 (e) The user agency shall withhold the next scheduled payment to any contractor or  
26 subcontractor who does not submit the information required by the provisions of this statute and  
27 shall also notify the director of labor and training of the contractor's noncompliance. The user  
28 agency shall withhold final payment until all of the provisions of this section are complied with.

29 (f) The department of labor and training may also impose a penalty of up to five hundred  
30 dollars (\$500) for each calendar day of noncompliance with this section, as determined by the  
31 director of labor and training. Insignificant errors and/or omissions shall not be grounds for  
32 imposing a penalty under this subsection.

33 (g) Any penalties assessed under this section shall be paid to the department of labor and  
34 training dedicated "prevailing wages enforcement fund."

1 (h) Failure of the contractors and subcontractors required to utilize apprentices or be  
2 exempted shall be considered a material breach of their public works contract and they shall be  
3 subject to any and all penalties as determined in their contract with the user agency.

4 (i) For the purposes of this section the term "user agency" shall mean the state,  
5 municipality, or quasi-governmental agency which is responsible for management of a public  
6 works contract awarded to a contractor.

7 (j) To the extent that any of the provisions contained in § 37-13-3.2 conflict with the  
8 requirements for federal aid contracts, federal law and regulations shall control.

9 SECTION 3. Section 37-13-14.1 of the General Laws in Chapter 37-13 entitled "Labor  
10 and Payment of Debts by Contractors" is hereby amended to read as follows:

11 **37-13-14.1. Enforcement -- Hearings.** -- (a) Before issuing an order or determination,  
12 the director of labor and training shall order a hearing thereon at a time and place to be specified,  
13 and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a  
14 statement of the facts disclosed upon investigation, which notice shall be served personally or by  
15 mail on any person, firm, or corporation affected thereby. The person, firm, or corporation shall  
16 have an opportunity to be heard in respect to the matters complained of at the time and place  
17 specified in the notice, which time shall be not less than five (5) days from the service of the  
18 notice personally or by mail. The hearing shall be held within ten (10) days from the order of  
19 hearing. The hearing shall be conducted by the director of labor and training or his or her  
20 designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity,  
21 and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The  
22 enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil  
23 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the  
24 hearing officer shall determine the issues raised thereon and shall make a determination and enter  
25 an order within ten (10) days of the close of the hearing, and forthwith serve a copy of the order,  
26 with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The  
27 order shall dismiss the charges or direct payment of wages or supplements found to be due,  
28 including interest at the rate of twelve percentum (12%) per annum from the date of the  
29 underpayment to the date of payment, and may direct payment of reasonable attorney's fees and  
30 costs to the complaining party.

31 (b) In addition to directing payment of wages or supplements including interest found to  
32 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to  
33 three times the total amount found to be due. Further, if the amount of salary owed to an  
34 employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds

1 five thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office  
2 of the attorney general. The misdemeanor shall be punishable for a period of not more than one  
3 year in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount  
4 of the penalty, due consideration shall be given to the size of the employer's business, the good  
5 faith of the employer, the gravity of the violation, the history of previous violations and the  
6 failure to comply with recordkeeping or other nonwage requirements. The surety of the person,  
7 firm, or corporation found to be in violation of the provisions of this chapter shall be bound to  
8 pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the  
9 department of labor and training for deposit in the state treasury; provided, however, it is hereby  
10 provided that the general treasurer shall establish a dedicated "prevailing wages enforcement  
11 fund" for the purpose of depositing the penalties paid as provided herein. There is hereby  
12 appropriated to the annual budget of the department of labor and training the amount of the fund  
13 collected annually under this section, to be used at the direction of the director of labor and  
14 training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

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

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

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

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

33 (g) The director of labor and training, awarding authority, or hearing officer shall notify  
34 the bonding company of any person, firm, or corporation suspected of violating any section of

1 this chapter. The notice shall be mailed certified mail, and shall enumerate the alleged violations  
2 being investigated.

3 (h) In addition to the above, any person, firm, or corporation found to have willfully  
4 made a false or fraudulent representation on certified payroll records [or in reporting their](#)  
5 [apprenticeship information to any governmental agency](#) shall be referred to the office of the  
6 attorney general. The false or fraudulent representation shall be considered a misdemeanor and  
7 shall be punishable for a period of not more than one year in prison and/or fined one thousand  
8 dollars (\$1,000). Further, any person, firm, or corporation found to have willfully made a false or  
9 fraudulent representation on certified payroll records shall be required to pay a civil penalty to the  
10 department of labor and training in an amount of no less than two thousand dollars (\$2,000) and  
11 not greater than fifteen thousand dollars (\$15,000) per representation.

12 SECTION 4. 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 -- LABOR AND PAYMENT OF DEBTS  
BY CONTRACTORS

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1           This act would require that all bidders responding to an invitation to bid on a public  
2 works project valued at one million dollars (\$1,000,000) or more have an apprenticeship program  
3 and that at least fifteen percent (15%) of the labor hours are performed by apprentices.

4           This act would take effect upon passage.

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