

2016 -- S 2229

LC003913

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS - CONTRACTORS' BONDS

Introduced By: Senators McCaffrey, Doyle, Miller, Jabour, and Lynch Prata

Date Introduced: January 27, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Sections 37-12-1, 37-12-2 and 37-12-3 of the General Laws in Chapter 37-12 entitled "Contractors' Bonds" are hereby amended to read as follows:

**37-12-1. Contractors required to give bond -- Terms and conditions.** -- Every person (which word for the purposes of this chapter shall include a copartnership, a number of persons engaged in a joint enterprise, or a corporation), before being awarded a contract by the department of transportation or by the department of administration, as the case may be, and every person awarded such a contract as a general contractor or construction or project manager for the construction, improvement, completion, or repair of any public road or portion thereof or of any bridge in which the contract price shall be in excess of fifty thousand dollars (\$50,000), or for a contract for the construction, improvement, completion, or repair of any public building, or portion thereof, shall be required to furnish to the respective department a bond of that person to the state, with good and sufficient surety or sureties (hereafter in this chapter referred to as surety), acceptable to the respective department, in a sum not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price, conditioned that the contractor, principal in the bond, the person's executors, administrators, or successors, shall in all things, well and truly keep and perform the covenants, conditions, and agreements in the contract, and in any alterations thereof made as therein provided, on the person's part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the state, the respective department, and all of its

1 officers, agents, and employees, as therein stipulated, and shall also promptly pay for all such  
2 labor performed or furnished, [together with any penalties, assessments, and fines due under law](#)  
3 [for nonpayment or late payment of wages due](#), and for all such materials and equipment  
4 furnished, (which as to equipment shall mean payment of the reasonable rental value, as  
5 determined by the respective department, of its use during the period of its use), as shall be used  
6 in the carrying on of the work covered by the contract, or shall see that they are promptly paid  
7 for, whether or not the labor is directly performed for or furnished to the contractor or is even  
8 directly performed upon the work covered by the contract, and whether or not the materials are  
9 furnished to the contractor or become component parts of the work, and whether or not the  
10 equipment is furnished to the contractor or even directly used upon the work. The bond shall  
11 contain the provisions that it is subject to all such rights and powers of the respective department  
12 and such other provisions as are set forth in the contract and the plans, specifications, and  
13 proposal incorporated by reference in the contract, and that no extension of the time of  
14 performance of the contract or delay in the completion of the work thereunder or any alterations  
15 thereof, made as therein provided, shall invalidate the bond or release the liability of the surety  
16 thereunder. Waiver of the bonding requirements of this section is expressly prohibited.

17 **37-12-2. Rights of persons furnishing labor and materials.** -- Every person who shall  
18 have performed labor and every person who shall have furnished or supplied labor, material, or  
19 equipment in the prosecution of the work provided for in the contract, in respect of which a  
20 payment bond is furnished under § 37-12-1, and who has not been paid in full therefor before the  
21 expiration of a period of ninety (90) days after the day on which the last of the labor was  
22 performed or furnished by him or her, or material or equipment furnished or supplied by him or  
23 her for which a claim is made, shall have the right to sue on the payment bond for the amount, or  
24 the balance thereof, unpaid at the time of institution of the suit and to prosecute the action to final  
25 execution and judgment for the sum or sums justly due him or her [in addition to other available](#)  
26 [relief](#); provided, however, that any person having direct contractual relationship with a  
27 subcontractor but no contractual relationship express or implied with the contractor furnishing the  
28 payment bond shall have a right of action upon the payment bond upon giving written notice to  
29 the contractor within ninety (90) days from the date on which the person furnished or performed  
30 the last of the labor, or furnished or supplied the last of the material or equipment for which the  
31 claim is made, stating with substantial accuracy the amount claimed and the name of the party to  
32 whom the labor was furnished or performed or the material or equipment was furnished or  
33 supplied. The notice shall be served by mailing the same by certified mail, postage prepaid, in an  
34 envelope addressed to the contractor at any place he or she maintains an office, conducts his or

1 her business, or his or her residence.

2 **37-12-3. Remedies of creditors and state -- Priority of claims. --** The remedy on the  
3 bond shall be by a civil action brought in the superior court for the counties of Providence and  
4 Bristol and in any suit brought on the bond the rights of the state shall be prior to those of all  
5 creditors. [The rights of the state shall include any penalties, assessments, and fines due under law](#)  
6 [for nonpayment or late payment of wages due.](#) The rights of persons who shall have performed  
7 labor as aforesaid shall be prior to the rights of all other creditors, and there shall be no priorities  
8 among laborers or among other creditors under the bond. The state, either after having recovered  
9 a judgment against the contractor on the contract or without having recovered a judgment, may  
10 bring a suit on the bond against the contractor and surety on the bond, and may join as parties  
11 defendant in the suit any persons claiming to have rights under the bond as creditors; and, if it has  
12 not brought such a suit, it may at any time before a final and conclusive decree, intervene and  
13 become a party in any suit brought, as hereafter provided in this chapter, by any person claiming  
14 to be a creditor under the bond.

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

=====  
LC003913  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC PROPERTY AND WORKS - CONTRACTORS' BONDS

\*\*\*

- 1           This act would expand the penalties which public works contractors can be assessed for  
2 failing to properly pay persons for the services they provide to them.  
3           This act would take effect upon passage.

=====  
LC003913  
=====