

2018 -- H 7809

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS

Introduced By: Representatives Edwards, Canario, Cunha, and Marshall

Date Introduced: February 28, 2018

Referred To: House Finance

(Dept. of Administration)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-12-1 and 37-12-10 of the General Laws in Chapter 37-12  
2 entitled "Contractors' Bonds" are hereby amended to read as follows:

3 **37-12-1. Contractors required to give bond -- Terms and conditions.**

4 Every person (which word for the purposes of this chapter shall include a copartnership, a  
5 number of persons engaged in a joint enterprise, or a corporation), before being awarded a  
6 contract by the department of transportation or by the department of administration, as the case  
7 may be, and every person awarded such a contract as a general contractor or construction or  
8 project manager for the construction, improvement, completion, or repair of any public road or  
9 portion thereof or of any bridge in which the contract price shall be in excess of ~~fifty thousand~~  
10 ~~dollars (\$50,000)~~ one hundred thousand dollars (\$100,000), or for a contract for the construction,  
11 improvement, completion, or repair of any public building, or portion thereof, shall be required to  
12 furnish to the respective department a bond of that person to the state, with good and sufficient  
13 surety or sureties (hereafter in this chapter referred to as surety), acceptable to the respective  
14 department, in a sum not less than fifty percent (50%) and not more than one hundred percent  
15 (100%) of the contract price, conditioned that the contractor, principal in the bond, the person's  
16 executors, administrators, or successors, shall in all things, well and truly keep and perform the  
17 covenants, conditions, and agreements in the contract, and in any alterations thereof made as  
18 therein provided, on the person's part to be kept and performed, at the time and in the manner  
19 therein specified, and in all respects according to their true intent and meaning, and shall

1 indemnify and save harmless the state, the respective department, and all of its officers, agents,  
2 and employees, as therein stipulated, and shall also promptly pay for all such labor performed or  
3 furnished, together with penalties assessed pursuant to § 37-13-14.1(b), and for all such materials  
4 and equipment furnished, (which, as to equipment, shall mean payment of the reasonable rental  
5 value, as determined by the respective department, of its use during the period of its use), as shall  
6 be used in the carrying on of the work covered by the contract, or shall see that they are promptly  
7 paid for, whether or not the labor is directly performed for or furnished to the contractor or is  
8 even directly performed upon the work covered by the contract, and whether or not the materials  
9 are 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.~~ [In the sole  
17 discretion of the chief purchasing officer, the state may waive the bonding requirement for public  
18 works projects with a contract price of up to two hundred fifty thousand dollars \(\\$250,000\).  
19 Waiver of the bonding requirement for public works projects with a contract price in excess of  
20 two hundred fifty thousand dollars \(\\$250,000\) is expressly prohibited.](#)

21 **37-12-10. Retainers relating to contracts for public works, sewer, or water main**  
22 **construction.**

23 (a) Upon substantial completion of the work required by a contract aggregating in amount  
24 less than five hundred thousand dollars (\$500,000) with any municipality, or any agency or  
25 political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair, or  
26 improvement of sewers and water mains, or any public works project defined in § 37-13-1, the  
27 awarding authority may deduct from its payment a retention to secure satisfactory performance of  
28 the contractual work not exceeding five percent (5%) of the contract price unless otherwise  
29 agreed to by the parties. Upon substantial completion of the work required by a contract  
30 aggregating in an amount of five hundred thousand dollars (\$500,000) or greater with any  
31 municipality, or any agency or political subdivision thereof, for the construction, reconstruction,  
32 alteration, remodeling, repair, or improvement of sewers and water mains, or any public works  
33 project defined in § 37-13-1, the awarding authority may deduct from its payment a retention to  
34 secure satisfactory performance of the contractual work not exceeding five percent (5%) of the

1 contract price. In the case of periodic payments with respect to contracts less than the aggregate  
2 amount of five hundred thousand dollars (\$500,000), the awarding authority may deduct from its  
3 payment a retention to secure satisfactory performance of the contractual work not exceeding five  
4 percent (5%) of the approved amount of any periodic payment unless otherwise agreed to by the  
5 parties. In the case of periodic payments with respect to contracts in the aggregate amount of five  
6 hundred thousand dollars (\$500,000) or greater, the awarding authority may deduct from its  
7 payment a retention to secure satisfactory performance of the contractual work not exceeding five  
8 percent (5%) of the approved amount of any periodic payment.

9 (b) The retainage shall be paid to any contractor or subcontractor within ninety (90) days  
10 of the date the work is accepted by the awarding authority unless a dispute exists with respect to  
11 the work. If payment is not made within ninety (90) days for any reason other than a dispute,  
12 which, if resolved and it is not the fault of the contractor, interest shall be assessed at the rate of  
13 ten percent (10%) per annum on all money which is to be paid to the contractor or subcontractor.

14 (c) The retainage shall be paid to any contractor or subcontractor within ninety (90) days  
15 of the date his or her work is completed and accepted by the awarding authority. If payment is not  
16 made, interest shall be assessed at the rate of ten percent (10%) per annum.

17 (d) There shall also be deducted and retained from the contract price an additional sum  
18 sufficient to pay the estimated cost of municipal police traffic control on any public works  
19 project. Municipalities shall directly pay the officers working traffic details and shall bill and be  
20 reimbursed by the withholding authority for which the contract is being performed every thirty  
21 (30) days until the project is complete.

22 (e) Notwithstanding the foregoing, with respect to projects located within the town of  
23 Warren, the withholding authority shall hold an amount from the contract price which shall be  
24 reasonably sufficient to pay the estimated cost of municipal police traffic control. The  
25 withholding authority shall pay to the town of Warren within seventy-two (72) hours of written  
26 demand the actual costs of police traffic control associated with said project on an ongoing basis.

27 [\(f\) The director of the department of administration shall establish, by rule and regulation](#)  
28 [adopted in accordance with chapter 35 of title 42, methods for the interim release of retainage.](#)

29 SECTION 2. Section 42-11.1-3 of the General Laws in Chapter 42-11.1 entitled "Prompt  
30 Payment by Department of Administration" is hereby amended to read as follows:

31 **42-11.1-3. Time period for payment.**

32 (a) All bills shall be paid within thirty (30) ~~working~~ [calendar](#) days of receipt of a proper  
33 invoice or other contractual dates for periodic payments, except when a contractor has failed to  
34 submit a bill in accordance with contractually imposed time frames.

1 (b) Each contractor shall make payment to subcontractors within ~~ten (10)~~ five (5)  
2 calendar days of receipt of payment by the state; provided, however, that the contractor may  
3 setoff a payment due to a subcontractor by an amount equal to the amount of an unpaid legally  
4 enforceable debt owed by the subcontractor to the contractor or any amount which the contractor  
5 is entitled to withhold under the terms of the contract entered into by the contractor and  
6 subcontractor, or any amount owed by the subcontractor to the contractor by way of a statutory  
7 obligation, or enforceable lien, of which the contractor or subcontractor had previous knowledge  
8 or notice, or has reason to believe exists.

9 (c) Each subcontractor shall make payments to its lower tier subcontractors within five  
10 (5) calendar days of receipt of payment by the prime contractor.

11 ~~(d)~~ This section shall not apply to contractors or subcontractors performing work  
12 pursuant to a contract awarded by the department of transportation unless the subcontractor  
13 provides a payment and performance bond in an amount equal to the contract between the  
14 contractor and subcontractor.

15 (e) The director of the department of administration shall adopt regulations in accordance  
16 with the administrative procedures act, chapter 35 of title 42, which are consistent with this  
17 chapter, and chapter 2 of title 37 (state purchases act), governing the prompt payment by  
18 contractors to subcontractors.

19 SECTION 3. 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

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1           This act would authorize regulations for the interim release of retainage, raise the  
2 threshold amount required for a contractor bond from fifty thousand dollars (\$50,000) to one  
3 hundred thousand dollars (\$100,000), allow a waiver of bond in the discretion of the purchasing  
4 officer, for projects with a value of up to two hundred fifty thousand dollars (\$250,000), reduce  
5 the required time for payment of contractors to thirty (30) calendar day, reduce the required time  
6 for payment from contractors to subcontractors to five (5) calendar days, and authorize  
7 regulations for prompt payment to subcontractors.

8           This act would take effect upon passage.

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