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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 BUSINESSES AND PROFESSIONS - CONTRACTORS' REGISTRATION
AND LICENSING BOARD

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

Date Introduced: February 28, 2018

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 5-65-1 of the General Laws in Chapter 5-65 entitled "Contractors'
2 Registration and Licensing Board" is hereby amended to read as follows:

3 **5-65-1. Definitions.**

4 As used in this chapter:

5 (1) "Board" means the contractors' registration and licensing board established pursuant
6 to the provisions of Rhode Island general laws § 5-65-14 or its designees.

7 (2) "Claim" means an allegation that a person seeking payment of retainage breached the
8 person's contract for construction for the project; provided, however, that a "claim" shall be
9 subject to the applicable dispute resolution procedure, notice and other requirements in the
10 contract for construction.

11 ~~(2)~~(3) "Commission" means the building code commission supportive of the contractors'
12 registration and licensing board.

13 ~~(3)~~(4) (i) "Contractor" means a person who, in the pursuit of an independent business,
14 undertakes or offers to undertake or submits a bid, or for compensation and with or without the
15 intent to sell the structure arranges to construct, alter, repair, improve, move over public
16 highways, roads or streets or demolish a structure or to perform any work in connection with the
17 construction, alteration, repair, improvement, moving over public highways, roads or streets or
18 demolition of a structure, and the appurtenances thereto. For the purposes of this chapter,

1 "appurtenances" includes the installation, alteration or repair of wells connected to a structure
2 consistent with chapter 46-13.2. "Contractor" includes, but is not limited to, any person who
3 purchases or owns property and constructs or for compensation arranges for the construction of
4 one or more structures.

5 (ii) A certificate of registration is necessary for each "business entity" regardless of the
6 fact that each entity may be owned by the same individual.

7 (5) "Contract for construction" means a contract for which a lien may be established
8 under chapter 28 of title 34 on a project for which the person on whose contract with the project
9 owner has an original contract price of not less than two hundred fifty thousand dollars
10 (\$250,000); provided, however, that "contract for construction" shall not include a project
11 containing or designed to contain at least one, but not more than four (4) dwelling units.

12 (6) "Deliverable" means a project close-out document that shall be submitted by the
13 person seeking payment of retainage under the person's contract for construction; provided,
14 however, that a lien waiver or release, which is a deliverable, shall comply with chapter 28 of title
15 34; provided, further, that "deliverable" shall not include any document affirming, certifying or
16 confirming completion or correction of labor, materials or other items furnished or incomplete or
17 defective work.

18 ~~(4)~~(7) "Dwelling unit" means a single unit providing complete independent living
19 facilities for one or more persons, including permanent provisions for living, sleeping, eating,
20 cooking, and sanitation.

21 ~~(5)~~(8) "Hearing officer" means a person designated by the executive director, to hear
22 contested claims or cases, contested enforcement proceedings, and contested administrative fines,
23 in accordance with the ~~Administrative Procedures Act~~ "administrative procedures act", chapter 35
24 of title 42.

25 (9) "Incomplete or defective work" means labor, materials or any other item required for
26 full performance by a person seeking payment of retainage which remains to be furnished by the
27 person under the person's contract for construction or which has been furnished by the person but
28 requires correction, repair, further completion, revision or replacement; provided, however, that
29 "incomplete or defective work" shall not include deliverables or labor, materials or any other item
30 to be repaired or replaced after substantial or final completion pursuant to a warranty, guarantee
31 or other contractual obligation to correct defective work after substantial or final completion.

32 ~~(6)~~(10) "Monetary damages" means the dollar amount required in excess of the contract
33 amount necessary to provide the claimant with what was agreed to be provided under the terms of
34 the contract reduced by any amount due and unpaid to the respondent inclusive of any and all

1 awards and restitution.

2 (11) "Person" means any natural person, joint venture, partnership, corporation or other
3 business or legal entity who enters into a contract for construction.

4 (12) "Prime contractor" means a person who enters into a contract for construction with
5 the project owner.

6 (13) "Retainage" means a portion or percentage of a payment due pursuant to a contract
7 for construction that is withheld to ensure full performance of the contract for construction.

8 ~~(7)~~(14) "Staff" means the executive director for the contractors' registration and licensing
9 board, and any other staff necessary to carry out the powers, functions and duties of the board
10 including inspectors, hearing officers and other supportive staff.

11 ~~(8)~~(15) "State" means the state of Rhode Island.

12 ~~(9)~~(16) "Structure" means (i) any commercial building; or (ii) any building containing
13 one or more residences and their appurtenances. The board's dispute resolution process shall
14 apply only to residential structures containing dwelling units as defined in the state building code
15 or residential portions of other types of buildings without regard to how many units any structure
16 may contain. The board retains jurisdiction and may conduct hearings regarding violations
17 against all contractors required to be registered or licensed by the board.

18 ~~(10)~~(17) "Substantially" means any violation, which affects the health, safety, and
19 welfare of the general public.

20 (18) "Substantial completion" means the stage in the progress of the project when the
21 work required by the contract for construction with the project owner is sufficiently complete in
22 accordance with the contract for construction so that the project owner may occupy or utilize the
23 work for its intended use; provided, further, that "substantial completion" may apply to the entire
24 project or a phase of the entire project if the contract for construction with the project owner
25 expressly permits substantial completion to apply to defined phases of the project.

26 SECTION 2. Section 37-12-10 of the General Laws in Chapter 37-12 entitled
27 "Contractors' Bonds" is hereby repealed.

28 ~~37-12-10. Retainers relating to contracts for public works, sewer, or water main~~
29 ~~construction.~~

30 ~~(a) Upon substantial completion of the work required by a contract aggregating in amount~~
31 ~~less than five hundred thousand dollars (\$500,000) with any municipality, or any agency or~~
32 ~~political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair, or~~
33 ~~improvement of sewers and water mains, or any public works project defined in § 37-13-1, the~~
34 ~~awarding authority may deduct from its payment a retention to secure satisfactory performance of~~

1 ~~the contractual work not exceeding five percent (5%) of the contract price unless otherwise~~
2 ~~agreed to by the parties. Upon substantial completion of the work required by a contract~~
3 ~~aggregating in an amount of five hundred thousand dollars (\$500,000) or greater with any~~
4 ~~municipality, or any agency or political subdivision thereof, for the construction, reconstruction,~~
5 ~~alteration, remodeling, repair, or improvement of sewers and water mains, or any public works~~
6 ~~project defined in § 37-13-1, the awarding authority may deduct from its payment a retention to~~
7 ~~secure satisfactory performance of the contractual work not exceeding five percent (5%) of the~~
8 ~~contract price. In the case of periodic payments with respect to contracts less than the aggregate~~
9 ~~amount of five hundred thousand dollars (\$500,000), the awarding authority may deduct from its~~
10 ~~payment a retention to secure satisfactory performance of the contractual work not exceeding five~~
11 ~~percent (5%) of the approved amount of any periodic payment unless otherwise agreed to by the~~
12 ~~parties. In the case of periodic payments with respect to contracts in the aggregate amount of five~~
13 ~~hundred thousand dollars (\$500,000) or greater, the awarding authority may deduct from its~~
14 ~~payment a retention to secure satisfactory performance of the contractual work not exceeding five~~
15 ~~percent (5%) of the approved amount of any periodic payment.~~

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

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

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

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

34 SECTION 3. Chapter 37-12 of the General Laws entitled "Contractors Bonds and" is

1 hereby amended by adding thereto the following section:

2 **37-12-10.1 Contractor/subcontractor retainage.**

3 (a) No contract for construction as defined in § 5-65-1(5) shall include retainage that
4 exceeds five percent (5%) of any progress payment.

5 (b) Not later than fourteen (14) days after reaching substantial completion as defined in §
6 5-65-1(18), the prime contractor shall submit to the project owner a notice of substantial
7 completion, substantially in the form provided in this subsection, stating the date on which the
8 project was substantially complete.

9 FORM FOR NOTICE OF SUBSTANTIAL
10 COMPLETION NOTICE OF SUBSTANTIAL COMPLETION

11 For [project name]

12 To [project owner]:

13 The undersigned hereby gives notice that the project was substantially complete, as
14 defined under § 5-65-1(18), on [date of substantial completion]. This notice is certified as made
15 in good faith on [date of notice].

16 By _____

17 [prime contractor]

18 Accepted:

19 By _____

20 [project owner]

21 Dated: _____

22 (c) The project owner shall accept or reject the notice of substantial completion within
23 fourteen (14) days of receipt of the notice. The project owner shall indicate its acceptance by
24 signing the notice in the space provided, and shall deliver the notice to the prime contractor
25 within the same fourteen (14) day period. If the project owner fails to deliver the notice to the
26 prime contractor within the fourteen (14) day period, the notice shall be deemed accepted. If the
27 project owner rejects the notice of substantial completion, the project owner shall, within fourteen
28 (14) days of receipt of the notice described in subsection (b) of this section, notify the prime
29 contractor in writing of the rejection, and include in the rejection the factual and contractual basis
30 for the rejection, and a certification that the rejection is made in good faith. A rejection of the
31 notice shall be subject to the dispute resolution provisions of the contract for construction, which,
32 notwithstanding any provision in the contract to the contrary, shall be commenced by the prime
33 contractor within seven (7) days of receipt of the rejection of the project owner. The prime
34 contractor and project owner shall prosecute the dispute resolution procedures diligently.

1 expeditiously, and in good faith. A notice of substantial completion not rejected by the project
2 owner within fourteen (14) days of receipt of the notice and in accordance with this subsection
3 shall be deemed accepted by the project owner. Upon an express or deemed acceptance of a
4 notice of substantial completion, the date of substantial completion shall be the date stated in the
5 prime contractor's notice for all purposes, and the acceptance shall be final and binding on the
6 project owner and its successors and assignees.

7 (d) Not later than fourteen (14) days after the express or deemed acceptance of the notice
8 of substantial completion or, in the case of a dispute, final and binding resolution of the dispute,
9 the project owner shall submit to the prime contractor a written list describing all incomplete or
10 defective work items and deliverables required of the prime contractor under the prime
11 contractor's contract for construction. The list shall be certified by the project owner as made in
12 good faith. Not later than twenty-one (21) days after the express or deemed acceptance of the
13 notice of substantial completion, or, in the case of a dispute, final and binding resolution of the
14 dispute, the prime contractor shall submit to each person from whom the prime contractor is
15 withholding retainage, a written list describing all incomplete or defective work items and
16 deliverables required by the person under the person's contract for construction, which list may
17 include items beyond those on the project owner's list. The list shall be certified by the prime
18 contractor as made in good faith.

19 (e) The project owner and prime contractor shall fulfill their obligations pursuant to
20 subsections (b), (c) and (d) of this section in good faith and in a timely manner. Except where the
21 contract for construction shall provide for an earlier submission, following the expiration of sixty
22 (60) days after substantial completion or, in the case of a dispute under subsection (c) of this
23 section, final and binding resolution of the dispute, a person may submit a written application for
24 payment of retainage in the form required by the person's contract for construction. An
25 application for payment of retainage shall be accompanied by a written list identifying the
26 incomplete or defective work items and deliverables on its received list that the person has
27 completed, repaired and delivered. The list shall be certified by the person submitting the
28 application for payment of retainage as made in good faith. Subject to subsection (f) of this
29 section, an application for payment of retainage shall be paid not later than thirty (30) days
30 following submission of the application; provided, however, that the time period for payment of
31 an application for retainage by the person at each tier of contract below the owner of the project
32 may be extended by seven (7) days longer than the time period applicable to the person at the tier
33 of contract above the person.

34 (f) Not more than the following amounts may be withheld from the payment of retainage:

1 (1) For incomplete, incorrect or missing deliverables, either the value of the deliverables
2 as mutually agreed upon in writing by the parties to the contract for construction of the person
3 seeking payment of retainage pursuant to the contractor if no value has been agreed upon in
4 writing by the parties, the reasonable value of the deliverables which shall not exceed two and
5 one-half percent (2.5%) of the total adjusted contract price of the person seeking payment of
6 retainage;

7 (2) One hundred fifty percent (150%) of the reasonable cost to complete or correct
8 incomplete or defective work items; and

9 (3) The reasonable value of claims and any costs, expenses and attorneys' fees incurred as
10 a result of the claims if permitted in the contract for construction of the person seeking the
11 payment of retainage. No amount shall be withheld from the payment of retainage unless the
12 person seeking payment has received, before the date that the payment is due, a description, in
13 writing, of the incomplete or defective work items and incomplete, incorrect or missing
14 deliverables, the factual and contractual basis for the claims and the value attributable to each
15 incomplete or defective work item, deliverable and claim. The writing shall be certified as made
16 in good faith. A person may submit additional applications for payment of retainage in the form
17 required by the person's contract for construction following completion or correction of
18 incomplete or defective work items, the furnishing of deliverables or the resolution of claims. The
19 additional applications shall be paid, and amounts may be withheld from payment, in accordance
20 with subsection (f) and this subsection.

21 (g) Retainage held by the project owner on account of the prime contractor's self-
22 performed labor, materials and equipment shall be eligible for payment to the same extent as if
23 the labor, materials and equipment had been provided by a person under a contract for
24 construction with the prime contractor.

25 (h) If the prime contractor has not been declared in default under the requirements of the
26 contract for construction with the project owner and subject to this section, the project owner
27 shall not withhold any part of the retainage of a person under a contract for construction with the
28 prime contractor or the prime contractor's proportional retainage calculated thereon for a claim
29 that the project owner asserts against the prime contractor that is not based on the performance of
30 the person or a default of the person's contract for construction.

31 (i) A contract for construction may establish the date of the month for submission of an
32 application for payment of retainage; provided, however, that the contract may not restrict the
33 submission to less frequently than one application per calendar month. An application submitted
34 prior to the date established in the contract for construction shall be deemed submitted as of the

1 date established in the contract. A rejection of an application for payment of retainage and a
2 dispute regarding incomplete or defective work items, deliverables or claims shall be subject to
3 the applicable dispute resolution procedure. A provision in a contract for construction that
4 requires a person to delay commencement of the applicable dispute resolution procedure for more
5 than thirty (30) days after either the rejection of an application for payment of retainage or written
6 notice of the dispute is provided, whichever first occurs, shall be void and unenforceable. The
7 payment of retainage shall be subject to subsection (e) of this section.

8 (j) A communication required by this section to be in writing may be submitted in
9 electronic form and by electronic means.

10 (k) A provision in a contract for construction which purports to waive, limit or subvert
11 this section or redefine or expand the conditions for achievement of substantial completion for
12 payment of retainage shall be void and unenforceable.

13 (l) Any contract under this section, as defined by § 37-13-1, that exceeds twelve (12)
14 months in duration shall allow those subcontractors who are substantially complete within the
15 first third (1/3) of the project to request through the prime contractor, release of retainage
16 pursuant to subsections (b), (c), (d) and (e) of this section.

17 SECTION 4. Notwithstanding any general or special law to the contrary, this act shall not
18 apply to a contract for construction relating to a project for which the owner's contract was
19 entered into prior to the effective date of this act.

20 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - CONTRACTORS' REGISTRATION
AND LICENSING BOARD

- 1 This act would provide procedures relative to contractor/subcontractor retainage.
- 2 This act would take effect upon passage.

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