

2021 -- S 0429

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- BUILDING SERVICE WORK

Introduced By: Senators Cano, Goodwin, Miller, Goldin, McCaffrey, Coyne, Lawson,
Quezada, Kallman, Burke, and Lombardi

Date Introduced: February 25, 2021

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 WORKS"
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 25

4 BUILDING SERVICE WORK

5 **37-25-1. Definitions.**

6 As used in this chapter:

7 (1) "Auxiliary" means an entity that exists to furnish goods or services to students, faculty,
8 or staff and that charges a fee directly related to the costs of goods or services and are considered
9 "restricted funds." Auxiliary enterprises are managed as essentially self-supporting activities.

10 (2) "Building service employee" or "employee" means any person performing building
11 services for a contractor under a contract with a state purchasing entity which is in excess of one
12 thousand dollars (\$1,000) and the principal purpose of such contract is to furnish services through
13 the use of building services employees.

14 (3) "Building services" means any janitorial or security guard services.

15 (4) "Contractor" means any contractor who employs employees to perform building
16 services under a contract with a state purchasing entity and shall include any of the contractor's
17 subcontractors.

18 (5) "Predecessor contract" means the contract preceding that to which is being bid upon or
19 which was recently awarded and to which the current succeeding contract and contractor provide

1 substantially the same building services to the same state purchasing entity or entities.

2 (6) "Public agency" mean any body corporate and politic which has been or will be created
3 or established within this state, excepting cities and towns, and the university of Rhode Island board
4 of trustees, for all purchases that are funded by restricted, sponsored, or auxiliary monies, and the
5 council on postsecondary education for all purchases that are funded by restricted, sponsored, or
6 auxiliary monies.

7 (7) "Restricted funds and sponsored funds" consists of those funds expendable for
8 operating purposes but restricted by donors or other outside agencies as to the specific purpose for
9 which they may be expended (e.g., endowment funds, gifts, scholarships, governmental grants,
10 private grants, auxiliary enterprises, restricted operational purposes with use-restrictions designated
11 by the appropriating body.)

12 (8)(i) "Standard benefits" means the greatest of the benefit rate determined by the United
13 States Department of Labor pursuant to the "Service Contract Act of 1965" (41 U.S.C. §351, et
14 seq.); or

15 (ii) The benefit rate established by the largest collective bargaining agreement covering at
16 least one hundred (100) building service employees performing either janitorial or security guard
17 services, as applicable, in Providence County; or

18 (iii) The benefit rate in the predecessor contract. Standard benefits shall be an hourly
19 supplement furnished by a contractor to an employee in one of the following ways:

20 (A) In the form of health and/or benefits (not including paid leave) that cost the employer
21 the entire required hourly supplement amount;

22 (B) By providing a portion of the required hourly supplement in the form of health and/or
23 other benefits (not including paid leave) and the balance in cash; or

24 (C) By providing the entire supplement in cash.

25 (9) "Standard compensation" means each of the:

26 (i) Standard wage;

27 (ii) Standard benefits; and

28 (iii) Standard paid leave.

29 (10) "Standard paid leave" means:

30 (i) The greatest of vacation and holiday paid days off determined by the United States
31 Department of Labor pursuant to the "Service Contract Act of 1965" (41 U.S.C. §351, et seq.) for
32 all types; or

33 (ii) Vacation and holiday paid days off established by the largest collective bargaining
34 agreement covering at least one hundred (100) building service employees performing either

1 janitorial or security guard services, as applicable, in Providence County, or

2 (3) The vacation and holiday paid days off in the predecessor contract for the corresponding
3 type.

4 (11) "Standard wage" means the greatest of:

5 (i) The wage rate determined by the United States Department of Labor pursuant to the
6 "Service Contract Act of 1965" (41 U.S.C. §351, et seq.) for Providence County for the relevant
7 type; or

8 (ii) The wage rate established by the largest collective bargaining agreement covering at
9 least one hundred (100) building service employees performing either janitorial or security guard
10 services, as applicable, in Providence County; or

11 (iii) A wage of at least fifteen dollars (\$15.00) per hour; or

12 (iv) The wage rate in the predecessor contract for the corresponding type.

13 (12) "State agency" means any department, commission, council, board, bureau,
14 committee, institution, or other governmental entity of the executive or judicial branch of this state
15 not otherwise established as a body corporate and politic, and includes, without limitation, the
16 council on postsecondary education except for purchases which are funded by restricted, sponsored,
17 or auxiliary monies, the university of Rhode Island board of trustees, except for all purchases which
18 are funded by restricted, sponsored, or auxiliary monies, and the council on elementary and
19 secondary education.

20 (13) "State purchasing entity" means state and public agencies.

21 **37-25-2. Investigation and determination of standard compensation -- Filing of**
22 **schedule.**

23 The director of labor and training shall investigate and determine the standard
24 compensation to be paid as set forth in § 37-25-3 and post the rates on the director of labor and
25 training's website. In making a determination, the director may adopt and use such appropriate and
26 applicable prevailing wage determinations as have been made by the Secretary of Labor of the
27 United States of America in accordance with the Service Contract Act, (41 U.S.C. §351 et seq.), as
28 well as relevant collective bargaining agreements and previous state purchasing entity contracts.
29 Each contractor awarded a building service contract after July 1, 2021, shall contact the department
30 of labor and training on or before January first of each year, for the duration of the contract to
31 ascertain the standard compensation and shall make any necessary adjustments to such standard
32 compensation every January 1.

33 **37-25-3. Wage and supplement/benefit requirements.**

34 (a) Every call for bids for every contract for building services in excess of one thousand

1 dollars (\$1,000) to which a state purchasing entity is a party shall contain a provision stating the
2 standard compensation to be paid to building service employees which shall be made in accordance
3 with § 37-25-2. Every call for bids shall also specify the number of hours to be worked, and bidders
4 must submit pricing on a standard pricing sheet, to be created by the director of labor and training.
5 The contract shall provide for annual price adjustments of the standard compensation during the
6 term of the contract.

7 (b) All contractors and their subcontractors, who have been awarded contracts for building
8 services by a state purchasing entity in which public funds are used and of which the contract price
9 shall be in excess of one thousand dollars (\$1,000), shall pay their building service employees the
10 standard compensation and comply with the provisions set forth in this chapter. This requirement
11 shall apply regardless of whether the amount is payable at the time of the signing of the contract or
12 at a later date. Except that notwithstanding any language to the contrary in this section or chapter
13 the requirement to pay standard benefits shall not apply until the fiscal year beginning on July 1,
14 2022.

15 (c) Every contract within the scope of this chapter shall contain the further provision that
16 in the event it is found by the director of labor and training that any employee employed by the
17 contractor or any subcontractor performing building services covered by the contract has been or
18 is being paid compensation less than the compensation required by the contract to be paid as
19 aforsaid, the awarding party may terminate the contract. The awarding party shall complete the
20 work by contract or otherwise and the contractor and his or her sureties shall be liable to the
21 awarding party for any excess costs occasioned the state thereby.

22 **37-25-4. Overtime compensation.**

23 Any hours worked in any one week beyond forty (40) hours, or in any one day beyond
24 eight (8) hours, shall be compensated at the rate of one and one-half (1 ½) of the standard wage, in
25 addition to the standard benefit and standard paid leave.

26 **37-25-5. Posting of standard compensation.**

27 Each contractor awarded a contract for building services with a contract price in excess of
28 one thousand dollars (\$1,000), and each subcontractor who performs building service work on that
29 contract, shall post in conspicuous places wherever building service employees are employed,
30 posters which contain the current standard compensation and its components. The posters shall also
31 contain the rights and remedies described in §§ 37-25-7 and 37-25-8 for nonpayment of any wages
32 pursuant to this chapter. Posters shall be furnished to contractors and subcontractors at the time a
33 contract is awarded by the director of labor and training, who shall determine the size and content
34 thereof from time to time, at the time a contract is awarded. A contractor or subcontractor who fails

1 to comply with the provisions of this section shall be deemed guilty of a misdemeanor and shall
2 pay the director of labor and training one hundred dollars (\$100) for each calendar day of
3 noncompliance as determined by him or her. Contracts set shall not be awarded by a state
4 purchasing entity until the director of labor and training has prepared and delivered the poster to
5 the division of purchases and the contractor to whom the contract is to be awarded.

6 **37-25-6. Recordkeeping.**

7 (a) Every contractor with a contract price in excess of one thousand dollars (\$1,000) for
8 building services, and each subcontractor who performs work on those building services, shall keep
9 an accurate record showing the name, occupation, and actual compensation paid to each worker
10 employed by him or her in connection with the contract or work. The director and his or her
11 authorized representatives shall have the right to enter any place of employment at all reasonable
12 hours, for the purpose of inspecting the wage records and seeing that all provisions of this chapter
13 are complied with.

14 (b) Every service contractor and subcontractor awarded a contract for building services, as
15 defined by this chapter, shall furnish a certified copy of his or her payroll records of his or her
16 employees employed on the contract to the state purchasing entity on a monthly basis for all work
17 completed in the preceding month on a uniform form prescribed by the director of labor and
18 training.

19 (c) The state purchasing entity, contractor and subcontractors shall provide any and all
20 payroll records of labor and training within ten (10) days of their request by the director or designee.

21 **37-25-7. Enforcement.**

22 (a) The director of labor and training may promulgate reasonable rules and regulations to
23 enforce the provisions of this chapter.

24 (b) Before issuing an order or determination, the director of labor and training shall order
25 a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a
26 copy of the complaint or the purpose thereof, together with a copy of the complaint or the purpose
27 thereof, or a statement of the facts disclosed upon investigation, which notice shall be served
28 personally or by mail on any person, firm, or corporation affected thereby. The person, firm, or
29 corporation shall have an opportunity to be heard in respect to the matters complained of at the time
30 and place specified in the notice, which time shall be not less than five (5) days from the service of
31 the notice personally or by mail. The hearing shall be held within ten (10) days from the order of
32 hearing. The hearing shall be conducted by the director of labor and training or his or her designee.
33 The hearing officer in the hearing shall be deemed to be acting in a judicial capacity and shall have
34 the right to issue subpoenas, administer oaths, and examine witnesses. The enforcement of a

1 subpoena issued under this section shall be regulated by the Rhode Island superior court rules of
2 civil procedure. The hearing shall be expeditiously conducted, and upon such hearing, the hearing
3 officer shall determine the issues raised thereon and shall make a determination and enter an order
4 within ten (10) days of the close of the hearing, and forthwith serve a copy of the order, with a
5 notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The order
6 shall dismiss the charges or direct payment of wages or supplements found to be due, including
7 interest at the rate of twelve percent (12%) per annum from the date of the underpayment to the
8 date of payment, and may direct payment of reasonable attorneys' fees and costs to the complaining
9 party.

10 (c) In addition to directing payment of wages or supplements including interest found to
11 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
12 three (3) times the total amount found to be due. Further, if the amount of salary owed to an
13 employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds five
14 thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office of
15 the attorney general. The misdemeanor shall be punishable for a period of not more than one year
16 in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount of the
17 penalty, due consideration shall be given to the size of the employer's business, the good faith of
18 the employer, the gravity of the violation, the history of previous violations, and the failure to
19 comply with recordkeeping or other nonwage requirements. The surety of the person, firm, or
20 corporation found to be in violation of the provisions of this chapter shall be bound to pay any
21 penalties assessed on such person, firm, or corporation. The penalty shall be paid to the department
22 of labor and training for deposit in the state treasury; provided, however, it is hereby provided that
23 the general treasurer shall establish a dedicated "standard compensation enforcement fund" for the
24 purpose of depositing the penalties paid as provided herein. There is hereby appropriated to the
25 annual budget of the department of labor and training the amount of the fund collected annually
26 under this section, to be used at the direction of the director of labor and training for the sole purpose
27 of enforcing standard compensation as provided in this chapter.

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

31 (e) In addition to the above, any person, firm, or corporation found in violation of any of
32 the provisions of this chapter by the director of labor and training or his or her hearing officer, shall
33 be ineligible to bid on, or be awarded work by a state purchasing entity or perform any such work
34 for a period of no less than eighteen (18) months and no more than thirty-six (36) months from the

1 date of the order entered by the hearing officer. Once a person, firm, or corporation is found to be
2 in violation of this chapter, all pending bids with a state purchasing entity shall be revoked, and any
3 bid awarded by a state purchasing entity prior to the commencement of the work shall also be
4 revoked.

5 (f) In addition to the above, any person, firm, or corporation found to have committed two
6 (2) or more willful violations in any period of eighteen (18) months of any of the provisions of this
7 chapter by the hearing officer, which violations are not arising from the same incident, shall be
8 ineligible to bid on, or be awarded work by a state purchasing entity or perform any work for a
9 period of sixty (60) months from the date of the second violation.

10 (g) The order of the hearing officer shall remain in full force and effect unless stayed by
11 order of the superior court.

12 (h) In addition to the above, any person, firm, or corporation found to have willfully made
13 a false or fraudulent representation on certified payroll records shall be referred to the office of the
14 attorney general. A first violation of this section shall be considered a misdemeanor and shall be
15 punishable for a period of not more than one year in prison and/or a fine of one thousand dollars
16 (\$1,000). A second or subsequent violation of this section shall be considered a felony and shall be
17 punishable for a period of not more than three (3) years imprisonment, a fine of three thousand
18 dollars (\$3,000), or both. Further, any person, firm, or corporation found to have willfully made a
19 false or fraudulent representation on certified payroll records shall be required to pay a civil penalty
20 to the department of labor and training in an amount of no less than two thousand dollars (\$2,000)
21 and not greater than fifteen thousand dollars (\$15,000) per representation.

22 (i) Any effort of any employer to obstruct the director and his or her authorized
23 representatives in the performance of their duties shall be deemed a violation of this chapter and
24 punishable as such.

25 (j) The director and his or her authorized representatives shall have power to administer
26 oaths and examine witnesses under oath, issue subpoenas, subpoenas duces tecum, compel the
27 attendance of witnesses, and the production of papers, books, accounts, records, payrolls,
28 documents, and testimony, and to take depositions and affidavits in any proceeding before the
29 director.

30 (k) In case of failure of any person to comply with any subpoena lawfully issued, or
31 subpoena duces tecum, or on the refusal of any witness to testify to any matter regarding which he
32 or she may be lawfully interrogated, it shall be the duty of the superior court, or any judge thereof,
33 on application by the director, to compel obedience by proceedings in the nature of those for
34 contempt.

1 (l) Except as otherwise provided in this chapter, any employer who shall violate or fail to
2 comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be
3 punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars
4 (\$1,000) for each separate offense, or by imprisonment of up to one year, or by both fine and
5 imprisonment. Each day of failure to pay wages due an employee at the time specified in this
6 chapter shall constitute a separate and distinct violation

7 (m) The director is hereby empowered to enforce his or her decision in the superior court
8 for the county of Providence.

9 **37-25-8. Private right of action.**

10 (a) An employee or former employee, or any organization representing such an employee
11 or former employee, of a contractor or subcontractor may bring a civil action for a violation of §
12 37-25-3 for appropriate injunctive relief including reinstatement, or actual damages, or both within
13 three (3) years after the occurrence of the alleged violation. An action commenced pursuant to this
14 section, may be brought in the superior court for the county where the alleged violation occurred,
15 the county where the complainant resides, or the county where the person against whom in the civil
16 complaint is filed resides or has their principal place of business. Any contractor or subcontractor
17 who violates the provisions of § 37-25-3 shall be liable to the affected employee or employees in
18 the amount of back pay or unpaid wages or benefits, plus interest. A civil action filed in court under
19 this section may be instituted instead of, but not in addition to the director of labor and training
20 enforcement procedures authorized by this section, provided the civil action is filed prior to the
21 date the director of labor and training issues notice of an administrative hearing.

22 (b) An action instituted pursuant to this section may be brought by one or more employees
23 or former employees on behalf of himself/herself or themselves and other employees similarly
24 situated or by any person, including any organization, alleging violations, except that no employee
25 shall be a party plaintiff to any such action unless he/she gives his/her consent in writing to become
26 such a party and such consent is filed in the court in which such action is brought.

27 (c) In an action filed under this section in which the plaintiff prevails, the court shall, in
28 addition to any judgment awarded to the plaintiff, require reasonable attorneys' fees and the costs
29 of the action to be paid by the defendant.

30 (d) The court in an action filed under this section shall award affected employees or former
31 employees liquidated damages in an amount equal to two (2) times the amount of unpaid wages or
32 benefits owed. Unpaid fringe benefit contributions owed pursuant to this section in any form shall
33 be paid to the appropriate benefit fund; however, in the absence of an appropriate fund the benefit
34 shall be paid directly to the individual.

1 (e) The filing of a civil action under this section shall not preclude the director of labor and
2 training from referring a matter to the attorney general as provided § 37-25-8(c), from prohibiting
3 a contractor or subcontractor from bidding on or otherwise participating in contracts as provided in
4 § 37-25-8(e), (f) and (i), or from prohibiting termination of work on failure to pay agreed wages
5 pursuant to § 37-25-3(c).

6 (f) Any person, firm, or corporation found to have willfully made a false or fraudulent
7 representation in connection with wage obligations owed on a contract shall be required to pay a
8 civil penalty to the department of labor and training in an amount of no less than one thousand
9 dollars (\$1,000) and not greater than three thousand dollars (\$3,000) per representation. Such
10 penalties shall be recoverable in civil actions filed pursuant to this section. For purposes of this
11 subsection "willfully" shall mean representations that are known to be false, or representations
12 made with deliberate ignorance or reckless disregard for their truth or falsity.

13 **37-25-9. Retaliation.**

14 (a) An employer shall not discharge, threaten, or otherwise discriminate against an
15 employee, or former employee, regarding compensation terms, conditions, locations or privileges
16 of employment because the employee or former employee, or a person or organization acting on
17 his or her behalf:

18 (1) Reports or makes a complaint under this section, or otherwise asserts his or her rights
19 under this section; or

20 (2) Participates in any investigation, hearing or inquiry held by the director of labor and
21 training under § 37-25-8 or upon a review of an investigation under this section, or for participating
22 in a private right of action brought under this section. In the event a contractor or subcontractor
23 retaliates or discriminates against an employee in violation of this section, the affected employee
24 may file an action in any court of competent jurisdiction and the court shall order reinstatement
25 and/or restitution of the affected employee, as appropriate, with back pay to the date of the
26 violation, and an additional amount in liquidated damages equal to two (2) times the amount of
27 back pay and reasonable attorneys' fees and costs.

28 (b) As used in this section to discharge, threaten, or otherwise discriminate against any
29 employee includes threatening to contact or contacting United States immigration authorities or
30 otherwise threatening to report an employee's suspected citizenship or immigration status or the
31 suspected citizenship or immigration status of an employee's family or household to United States
32 immigration authorities.

33 **37-25-10. Severability.**

34 If any section or provision or the application of the section or provision of this chapter to

1 any person or circumstances shall be held invalid, the validity of the remainder of the sections and
2 the applicability of the sections or provisions to other persons or circumstances shall not be
3 affected.

4 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 -- BUILDING SERVICE WORK

1 This act would require that janitors and security guards employed, pursuant to state
2 contracts worth more than one thousand dollars (\$1,000) of janitorial or security services, be paid
3 a standard compensation rate. The director of the department of labor and training will determine
4 that standard compensation rate and its wage, benefit, and leave components.

5 This act would take effect upon passage.

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