

2022 -- S 2412 SUBSTITUTE A AS AMENDED

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LC004272/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- BUILDING SERVICE WORK

Introduced By: Senators Cano, Quezada, Lawson, Kallman, Ciccone, Burke, DiPalma,
Murray, Acosta, and Euer

Date Introduced: February 15, 2022

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) "Governmental agency" means a state or public agency, a county, municipality, or
19 school district.

1 (6) "Janitorial services" means performance of any duties such as, but not limited to:
2 cleaning and restocking bathrooms; floor cleaning, servicing, and maintenance for attached
3 carpeting, hard surfaces, and walk-off mats at all facility entrances (e.g., vacuuming, washing,
4 sweeping, stripping, waxing, buffing); cleaning of furniture, fixtures, and interior building surfaces
5 (e.g., dusting, washing, and periodic steam cleaning); all related activities under the other Facilities
6 Management and Maintenance Standards (FMMS), such as Solid Waste Management and
7 Integrated Pest Services; use of green cleaning procedures and practices in compliance with all
8 applicable standards.

9 (7) "Predecessor contract" means the contract preceding that to which is being bid upon or
10 which was recently awarded and to which the current succeeding contract and contractor provide
11 substantially the same building services to the same state purchasing entity or entities.

12 (8) "Public agency" means any body corporate and politic which has been or will be created
13 or established within this state, excepting cities and towns, and the university of Rhode Island board
14 of trustees, for all purchases that are funded by restricted, sponsored, or auxiliary monies, and the
15 council on postsecondary education for all purchases that are funded by restricted, sponsored, or
16 auxiliary monies.

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

22 (10) "Security guard services" means performance of any duties such as, but not limited to:
23 securing premises and personnel by patrolling property; inspecting buildings, equipment, and
24 access points; monitoring of surveillance equipment; investigating disturbances and notifying
25 tenant agency staff and/or police or fire departments in cases of emergency; monitoring and
26 authorizing entrance and departure of employees, visitors, and other persons to guard against theft
27 and maintain security of premises; incident reporting or maintaining a log of activities and
28 irregularities, such as equipment or property damage, theft, presence of unauthorized persons, or
29 unusual occurrences; vehicle patrols; inspection; responding to incidents requiring de-escalation
30 and/or physical intervention.

31 (11) "Standard benefits" means the greatest of:

32 (i) The benefit rate determined by the United States Department of Labor pursuant to the
33 "Service Contract Act of 1965" (41 U.S.C. §351, et seq.); or

34 (ii) The benefit rate established by the largest collective bargaining agreement (CBA)

1 covering at least one hundred (100) building service employees performing either janitorial or
2 security guard services, as applicable, other than those employed by a governmental agency or on
3 a governmental agency contract or subcontract in Providence County; or

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

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

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

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

11 (12) "Standard compensation" means each of the following:

12 (i) Standard wage;

13 (ii) Standard benefits; and

14 (iii) Standard paid leave.

15 (13) "Standard paid leave" means the greatest of:

16 Vacation and holiday paid days off determined by the United States Department of Labor
17 pursuant to the "Service Contract Act of 1965" (41 U.S.C. §351, et seq.) for all types; or

18 (i) Vacation and holiday paid days off established by the largest collective bargaining
19 agreement covering at least one hundred (100) building service employees performing either
20 janitorial or security guard services, as applicable, other than those employed by a governmental
21 agency or on a governmental agency contract or subcontract in Providence County, or

22 (ii) The vacation and holiday paid days off in the predecessor contract for the
23 corresponding type.

24 (14) "Standard wage" means the greatest of:

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

28 (ii) The wage rate established by the largest collective bargaining agreement covering at
29 least one hundred (100) building service employees performing either janitorial or security guard
30 services, as applicable, other than those employed by a governmental agency or on a governmental
31 agency contract or subcontract in Providence County; or

32 (iii) The wage rate in the predecessor contract for the corresponding type.

33 (15) "State agency" means any department, commission, council, board, bureau,
34 committee, institution, or other governmental entity of the executive or judicial branch of this state

1 not otherwise established as a body corporate and politic, and includes, without limitation, the
2 council on postsecondary education except for purchases which are funded by restricted, sponsored,
3 or auxiliary monies, the university of Rhode Island board of trustees, except for all purchases which
4 are funded by restricted, sponsored, or auxiliary monies, and the council on elementary and
5 secondary education.

6 (16) "State purchasing entity" means state and public agencies.

7 **37-25-2. Investigation and determination of standard compensation -- Filing of**
8 **schedule.**

9 The director of labor and training shall investigate and determine the standard
10 compensation to be paid as set forth in § 37-25-3 and post the rates on the director of labor and
11 training's website. In making a determination, the director may adopt and use such appropriate and
12 applicable prevailing wage determinations as have been made by the Secretary of Labor of the
13 United States of America in accordance with the Service Contract Act, (41 U.S.C. §351 et seq.), as
14 well as relevant collective bargaining agreements (CBAs) and previous state purchasing entity
15 contracts.

16 **37-25-3. Wage and supplement/benefit requirements.**

17 (a) Every call for bids for every contract for building services in excess of one thousand
18 dollars (\$1,000) to which a state purchasing entity is a party shall contain a provision stating the
19 standard compensation to be paid to building service employees which shall be made in accordance
20 with § 37-25-2. Every call for bids shall also specify the number of hours to be worked, and bidders
21 shall submit pricing on a standard pricing sheet, to be created by the director of labor and training.
22 The contract shall provide for adjustments of the standard compensation during the term of the
23 contract.

24 (b) All contractors and their subcontractors, who have been awarded contracts for building
25 services by a state purchasing entity in which public funds are used and of which the contract price
26 shall be in excess of one thousand dollars (\$1,000), shall pay their building service employees the
27 standard compensation and comply with the provisions set forth in this chapter. This requirement
28 shall apply regardless of whether the amount is payable at the time of the signing of the contract or
29 at a later date. Except that notwithstanding any language to the contrary in this section or chapter
30 the requirement to pay standard benefits shall not apply until the fiscal year beginning on July 1,
31 2023.

32 (c) Every contract within the scope of this chapter shall contain the further provision that
33 in the event it is found by the director of labor and training that any employee employed by the
34 contractor or any subcontractor performing building services covered by the contract has been or

1 is being paid compensation less than the compensation required by the contract to be paid as
2 aforsaid, the awarding party may terminate the contract. The awarding party shall complete the
3 work by contract or otherwise and the contractor and his or her sureties shall be liable to the
4 awarding party for any excess costs the state suffers.

5 **37-25-4. Overtime compensation.**

6 Any hours worked in any one week beyond forty (40) hours, or in any one day beyond
7 eight (8) hours, for work subject to the provisions of this chapter shall be compensated at the rate
8 of one and one-half (1½) of the standard wage, in addition to the standard benefit and standard paid
9 leave.

10 **37-25-5. Posting of standard compensation.**

11 Each contractor awarded a contract for building services with a contract price in excess of
12 one thousand dollars (\$1,000), and each subcontractor who performs building service work on that
13 contract, shall post in conspicuous places wherever building service employees are employed,
14 posters which contain the current standard compensation and its components. The posters shall also
15 contain the rights and remedies described in §§ 37-25-7 and 37-25-8 for nonpayment of any wages
16 pursuant to this chapter. Posters shall be furnished to contractors and subcontractors at the time a
17 contract is awarded by the director of labor and training, who shall determine the size and content
18 thereof from time to time, at the time a contract is awarded. A contractor or subcontractor who fails
19 to comply with the provisions of this section shall be deemed guilty of a civil infraction and shall
20 pay the director of labor and training one hundred dollars (\$100) for each calendar day of
21 noncompliance as determined by the director. Contracts set shall not be awarded by a state
22 purchasing entity until the director of labor and training has prepared and delivered the poster to
23 the division of purchases and the contractor to whom the contract is to be awarded.

24 **37-25-6. Recordkeeping.**

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

32 (b) Every service contractor and subcontractor awarded a contract for building services, as
33 defined by this chapter, shall furnish a certified copy of his or her payroll records of his or her
34 employees employed on the contract to the state purchasing entity on a monthly basis for all work

1 completed in the preceding month on a uniform form prescribed by the director of labor and
2 training.

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

5 **37-25-7. Enforcement.**

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

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

27 (c) In addition to directing payment of wages or supplements including interest found to
28 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
29 three (3) times the total amount found to be due. Further, if the amount of salary owed to an
30 employee pursuant to this chapter but not paid to the employee in violation thereof exceeds five
31 thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office of
32 the attorney general. The misdemeanor shall be punishable for a period of not more than one year
33 in prison and/or a fine of not more than one thousand dollars (\$1,000). In assessing the amount of
34 the penalty, due consideration shall be given to the size of the employer's business, the good faith

1 of the employer, the gravity of the violation, the history of previous violations, and the failure to
2 comply with recordkeeping or other nonwage requirements. The surety of the person, firm, or
3 corporation found to be in violation of the provisions of this chapter shall be bound to pay any
4 penalties assessed on such person, firm, or corporation. The penalty shall be paid to the department
5 of labor and training for deposit in the state treasury; provided, however, it is hereby provided that
6 the general treasurer shall establish a dedicated "standard compensation enforcement fund" for the
7 purpose of depositing the penalties paid as provided herein. There is hereby appropriated to the
8 annual budget of the department of labor and training the amount of the fund collected annually
9 under this section, to be used at the direction of the director of labor and training for the sole purpose
10 of enforcing standard compensation as provided in this chapter.

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

14 (e) In addition to the above, any person, firm, or corporation found in violation of any of
15 the provisions of this chapter by the director of labor and training or his or her hearing officer, shall
16 be ineligible to bid on, or be awarded work by a state purchasing entity or perform any such work
17 for a period of no less than eighteen (18) months and no more than thirty-six (36) months from the
18 date of the order entered by the hearing officer. Once a person, firm, or corporation is found to be
19 in violation of this chapter, all pending bids with a state purchasing entity shall be revoked, and any
20 bid awarded by a state purchasing entity prior to the commencement of the work shall also be
21 revoked.

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

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

29 (h) In addition to the above, any person, firm, or corporation found to have willfully made
30 a false or fraudulent representation on certified payroll records shall be referred to the office of the
31 attorney general. A first violation of this section shall be considered a misdemeanor and shall be
32 punishable for a period of not more than one year in prison and/or a fine of one thousand dollars
33 (\$1,000). A second or subsequent violation of this section shall be considered a felony and shall be
34 punishable for a period of not more than three (3) years imprisonment, a fine of three thousand

1 dollars (\$3,000), or both. Further, any person, firm, or corporation found to have willfully made a
2 false or fraudulent representation on certified payroll records shall be required to pay a civil penalty
3 to the department of labor and training in an amount of no less than two thousand dollars (\$2,000)
4 and not greater than fifteen thousand dollars (\$15,000) per representation.

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

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

13 (k) In case of failure of any person to comply with any subpoena lawfully issued, or
14 subpoena duces tecum, or on the refusal of any witness to testify to any matter regarding which he
15 or she may be lawfully interrogated, the provisions of chapter 35 of title 42 ("administrative
16 procedures") shall apply.

17 (l) Except as otherwise provided in this chapter, any employer who shall violate or fail to
18 comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be
19 punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars
20 (\$1,000) for each separate offense, or by imprisonment of up to one year, or by both fine and
21 imprisonment. Each day of failure to pay wages due an employee at the time specified in this
22 chapter shall constitute a separate and distinct violation

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

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

26 (a) An employee or former employee, or any organization representing such an employee
27 or former employee, of a contractor or subcontractor may bring a civil action for a violation of §
28 37-25-3 for appropriate injunctive relief including reinstatement, or actual damages, or both within
29 three (3) years after the occurrence of the alleged violation. An action commenced pursuant to this
30 section may be brought in the superior court for the county where the alleged violation occurred,
31 the county where the complainant resides, or the county where the person against whom in the civil
32 complaint is filed resides or has their principal place of business. Any contractor or subcontractor
33 who violates the provisions of § 37-25-3 shall be liable to the affected employee or employees in
34 the amount of back pay or unpaid wages or benefits, plus interest. A civil action filed in court under

1 this section may be instituted instead of, but not in addition to the director of labor and training
2 enforcement procedures authorized by this chapter, provided the civil action is filed prior to the
3 date the director of labor and training issues notice of an administrative hearing.

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

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

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

17 (e) The filing of a civil action under this section shall not preclude the director of labor and
18 training from referring a matter to the attorney general as provided § 37-25-7(c), from prohibiting
19 a contractor or subcontractor from bidding on or otherwise participating in contracts as provided in
20 § 37-25-7(e), (f) and (i), or from prohibiting termination of work on failure to pay agreed wages
21 pursuant to § 37-25-3(c).

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

29 **37-25-9. Retaliation.**

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

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

1 under this section; or

2 (2) Participates in any investigation, hearing or inquiry held by the director of labor and
3 training under §§ 37-25-7 or 37-25-8, or upon a review of an investigation under this section, or
4 for participating in a private right of action brought under this chapter. In the event a contractor or
5 subcontractor retaliates or discriminates against an employee in violation of this section, the
6 affected employee may file an action in any court of competent jurisdiction and the court shall
7 order reinstatement and/or restitution of the affected employee, as appropriate, with back pay to the
8 date of the violation, and an additional amount in liquidated damages equal to two (2) times the
9 amount of back pay and reasonable attorneys' fees and costs.

10 (b) As used in this section to discharge, threaten, or otherwise discriminate against any
11 employee includes threatening to contact or contacting United States immigration authorities or
12 otherwise threatening to report an employee's suspected citizenship or immigration status or the
13 suspected citizenship or immigration status of an employee's family or household to United States
14 immigration authorities.

15 **37-25-10. Contractor liability.**

16 (a) A contractor shall be liable for any debt resulting from an action under this chapter,
17 owed to an employee or third party on the wage claimant's behalf, incurred by a subcontractor at
18 any tier acting under, by, or for the contractor or its subcontractors for the employee's performance
19 of labor. The provisions of this section shall not be deemed to limit the liability of a subcontractor
20 under any other provision of law.

21 (b) No agreement or release by an employee or subcontractor to waive liability assigned to
22 a contractor under this section shall be valid. The provisions of this section shall not be deemed to
23 impair the rights of a contractor to maintain an action against a subcontractor for owed wages that
24 are paid by a contractor pursuant to this section.

25 (c) Notwithstanding any other provision of law, the remedies available for a claim pursuant
26 to subsection (a) of this section shall only be civil and administrative actions.

27 (d) In the case of a private civil action by an employee, such employee may designate any
28 person, organization or collective bargaining agent authorized to file a complaint on his or her
29 behalf pursuant to § 37-25-8, to make a wage claim on his or her behalf.

30 (e) In the case of an action against a subcontractor, the contractor shall be considered jointly
31 and severally liable for any unpaid wages benefits, wage supplements, penalties, liquidated
32 damages, attorneys' fees and any other costs resulting from such action.

33 (f) Nothing herein shall preclude the attorney general from bringing a civil action to collect
34 unpaid wages and penalties on behalf of employees pursuant to this section.

1 (g) Before bringing a civil action pursuant to this section, an employee, or third party on
2 such employee's behalf, shall give the contractor notice of the alleged violation. The notice need
3 only describe the general nature of the claim and shall not limit the liability of the contractor or
4 preclude subsequent amendments of an action to encompass additional employees employed by the
5 subcontractor. An employee, or third party on such employee's behalf, may not bring a civil action
6 until ten (10) business days after giving the contractor notice of the alleged violation and may not
7 bring a civil action if the contractor corrects the alleged violation. An employee, or third party on
8 such employee's behalf, is not required to give notice to a contractor pursuant to this subsection
9 before bringing a civil action pursuant to this section if any employee, or third party on any
10 employee's behalf, previously has given notice to such contractor of the same alleged violation or
11 a prior alleged violation by the same subcontractor.

12 **37-25-11. Severability.**

13 If any section or provision or the application of the section or provision of this chapter to
14 any person or circumstances shall be held invalid, the validity of the remainder of the sections and
15 the applicability of the sections or provisions to other persons or circumstances shall not be
16 affected.

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

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LC004272/SUB A
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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 would determine
4 that standard compensation rate and its wage, benefit, and leave components. This act would also
5 provide for enforcement and would establish a private right of action.

6 This act would take effect upon passage.

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