

2014 -- H 7623 SUBSTITUTE A

LC004749/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

Introduced By: Representatives Carnevale, DeSimone, Hull, Bennett, and Guthrie

Date Introduced: February 26, 2014

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-13-3.1 of the General Laws in Chapter 37-13 entitled "Labor
2 and Payment of Debts by Contractors" is hereby repealed.

3 ~~37-13-3.1. State public works contract apprenticeship requirements. ---~~
4 ~~Notwithstanding any laws to the contrary, all general contractors and subcontractors who perform~~
5 ~~work on any public works contract awarded by the state after passage of this act and valued at one~~
6 ~~million dollars (\$1,000,000) or more shall employ apprentices required for the performance of the~~
7 ~~awarded contract. The number of apprentices shall comply with the apprentice to journeyman~~
8 ~~ratio for each trade approved by the apprenticeship council of the department of labor and~~
9 ~~training.~~

10 SECTION 2. Chapter 37-13 of the General Laws entitled "Labor and Payment of Debts
11 by Contractors" is hereby amended by adding thereto the following section:

12 **37-13-3.2. Public works contract apprenticeship requirements. -- (a) Notwithstanding**
13 **any laws to the contrary, all specifications in any invitations to bid on any public works contract**
14 **awarded by the state or quasi-governmental agency and/or any public-purpose corporation**
15 **created by the state valued at one million dollars (\$1,000,000) or more shall include:**

16 **(1) A requirement that all bidders responding to an invitation to bid on a public works**
17 **project shall have, at the time of bid, an apprenticeship program as defined herein for all**
18 **apprenticeable crafts that will be employed on the project and that no less than ten percent (10%)**

1 of the labor hours worked on the project shall be performed by apprentices in these programs; and
2 (2) An informational notice that registered apprenticeship program sponsors shall
3 encourage partnerships with veteran-related agencies and secondary schools, which provide
4 relevant career and technical education, to facilitate graduates of these schools and military
5 veterans being accepted into registered apprenticeship programs with credit when possible and
6 employed as registered apprentices.
7 (b) The provisions of this section shall only apply to contractors and subcontractors with
8 five (5) or more employees. For purposes of this section, an apprenticeship program is one that is
9 non-provisionally registered with and approved by any federally recognized state apprenticeship
10 agency and/or the United States department of labor, regardless of whether or not the program
11 qualifies as an employee welfare benefit plan under the Employment Retirement Security Act of
12 1974, in conformance with 29 C.F.R. 29 and 29 C.F.R. 30.
13 (c) All contractors responding to an invitation to bid on a public works project awarded
14 by the state or quasi-governmental agency and/or any public-purpose corporation created by the
15 state, shall, when possible, identify and specify in the total contract price which project costs
16 within the submitted bid price are directly or indirectly attributable to the apprenticeship
17 requirements pursuant to this section.
18 (d) Subject to the provisions of subsection (p) of this section, after May 1, 2017 and
19 notwithstanding any laws to the contrary, all specifications in any invitations to bid on any public
20 works contract awarded by any municipality valued at one million dollars (\$1,000,000) or more
21 shall include the provisions of subsection (a) of this section.
22 (e) Upon petition by a contractor in writing, a user agency may lower the ten percent
23 (10%) apprenticeship requirement of this section for a specific project for the following reasons:
24 (1) The demonstrated lack of availability of apprentices in specific geographic areas; or
25 (2) A written determination by the user agency that compliance is unduly cost
26 prohibitive; or
27 (3) That participating contractors have demonstrated a good faith effort to comply with
28 the requirements of this section but have not been able to attain the ten percent (10%)
29 requirement.
30 (f) The department of labor and training shall provide information and technical
31 assistance to any affected governmental or quasi-governmental agency and/or public-purpose
32 corporation created by the state, including any municipality subject to the provisions of this
33 statute, and any contractors awarded any public works projects relative to their obligations under
34 this statute.

1 (g) The awarding agency shall include an informational notice with invitations to bid on
2 public works contracts that shall be developed by the state apprenticeship agency and its state
3 apprenticeship council, to assist graduates of secondary career and technical education schools
4 and military veterans in entering employment as registered apprentices on public works projects.

5 This notice, at minimum shall include and provide:

6 (1) Contact information for secondary schools that provide relevant career and technical
7 education and veteran-related agencies within the state;

8 (2) Information to bidders on the benefits of recruiting and accepting registered
9 apprenticeship program applicants who graduate from secondary schools that provide relevant
10 career and technical education;

11 (3) Information to bidders on establishing articulation agreements between registered
12 apprenticeship program sponsors and secondary schools that provide relevant career and technical
13 education, which allow graduates of these schools to receive credit in the registered
14 apprenticeship program upon acceptance; and

15 (4) Information to bidders on the benefits of recruiting and accepting registered
16 apprenticeships program applicants that have served in the military, including that veterans may
17 be eligible for preferred entry and credit in registered apprenticeship programs based on military
18 occupational service records and that veterans' benefits, such as the Montgomery GI Bill, are
19 applicable to registered apprenticeship programs.

20 (h) All contractors shall certify that they have received and read the informational notice
21 set forth in subsection (g) herein.

22 (i) Any contractor and/or subcontractor awarded a public works contract under this
23 section shall collect and submit the following data for each project covered by this section to the
24 user agency on certified payroll forms as required by § 37-13-13 shall include:

25 (1) The name and dollar amount of the project that they are working on;

26 (2) The name of each apprentice categorized by trade or craft, their apprentice
27 registration number, and the number of hours they have worked on the project;

28 (3) The name of each journey-level worker categorized by trade or craft and the number
29 of hours they have worked on the project; and

30 (4) If applicable, the number, type, and rationale for the exceptions granted.

31 (j) The user agency shall withhold the next scheduled payment to any contractor or
32 subcontractor who does not submit the information required by the provisions of this section and
33 shall also notify the director of labor and training of the contractor's noncompliance. The user
34 agency shall withhold final payment until all of the provisions of this section are complied with.

1 (k) The department of labor and training may also impose a penalty of up to five hundred
2 dollars (\$500) for each calendar day of noncompliance with this section, as determined by the
3 director of labor and training. Mere errors and/or omissions shall not be grounds for imposing a
4 penalty under this subsection.

5 (l) Any penalties assessed under this section shall be paid to the department of labor and
6 training dedicated "prevailing wages enforcement fund."

7 (m) Failure of the contractors and subcontractors required to utilize apprentices or be
8 exempted shall be considered a material breach of their public works contract and they shall be
9 subject to any and all penalties that a material breach is responsible for in their contract with the
10 user agency.

11 (n) For the purposes of this section the term "user agency" shall mean the state, any state
12 or quasi-governmental agency and/or public-purpose corporation created by the state, including
13 any municipality that is subject to the provisions of this section, which is responsible for
14 management of a public works contract awarded to a contractor.

15 (o) To the extent that any of the provisions contained in § 37-13-3.2 conflict with the
16 requirements for federal-aid contracts, federal law and regulations shall control.

17 (p) The director of the office of management and budget shall establish an apprenticeship
18 utilization advisory committee. The committee shall include the director of the office of
19 management and budget, or his/her designee who shall serve as chair of the committee, the
20 director of the department of labor and training, or his/her designee, a representative of the
21 apprenticeship council of the state apprenticeship agency, the executive director of the Rhode
22 Island League of Cities and Towns, or his/her designee, and at least one member representing the
23 Rhode Island municipal purchasing agents association to be designated by the governor. The
24 advisory committee shall meet regularly at the call of the chair to ascertain if the implementation
25 and requirements of this section by the state results in any direct or indirect increases in the cost
26 of any state public works project during the period of January 1, 2015 to January 1, 2017. The
27 committee shall provide a report to the general assembly by April 1, 2017 on the effects of the
28 apprenticeship labor requirements on public works projects, and if the requirements of this
29 section resulted in increased costs on state public works and whether compliance with this section
30 by cities and towns can be reasonably expected to increase the costs of public works projects of
31 cities and towns. If the apprenticeship utilization advisory committee determines that compliance
32 with the requirements of this section will result in additional public works project costs for a city
33 or town, the various cities and towns shall then be exempt from all requirements of this section
34 effective April 30, 2017.

1 SECTION 3. Section 37-13-14.1 of the General Laws in Chapter 37-13 entitled "Labor
2 and Payment of Debts by Contractors" is hereby amended to read as follows:

3 **37-13-14.1. Enforcement -- Hearings. --** (a) Before issuing an order or determination,
4 the director of labor and training shall order a hearing thereon at a time and place to be specified,
5 and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a
6 statement of the facts disclosed upon investigation, which notice shall be served personally or by
7 mail on any person, firm, or corporation affected thereby. The person, firm, or corporation shall
8 have an opportunity to be heard in respect to the matters complained of at the time and place
9 specified in the notice, which time shall be not less than five (5) days from the service of the
10 notice personally or by mail. The hearing shall be held within ten (10) days from the order of
11 hearing. The hearing shall be conducted by the director of labor and training or his or her
12 designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity,
13 and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The
14 enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil
15 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the
16 hearing officer shall determine the issues raised thereon and shall make a determination and enter
17 an order within ten (10) days of the close of the hearing, and forthwith serve a copy of the order,
18 with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The
19 order shall dismiss the charges or direct payment of wages or supplements found to be due,
20 including interest at the rate of twelve percentum (12%) per annum from the date of the
21 underpayment to the date of payment, and may direct payment of reasonable attorney's fees and
22 costs to the complaining party.

23 (b) In addition to directing payment of wages or supplements including interest found to
24 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
25 three times the total amount found to be due. Further, if the amount of salary owed to an
26 employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds
27 five thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office
28 of the attorney general. The misdemeanor shall be punishable for a period of not more than one
29 year in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount
30 of the penalty, due consideration shall be given to the size of the employer's business, the good
31 faith of the employer, the gravity of the violation, the history of previous violations and the
32 failure to comply with recordkeeping or other nonwage requirements. The surety of the person,
33 firm, or corporation found to be in violation of the provisions of this chapter shall be bound to
34 pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the

1 department of labor and training for deposit in the state treasury; provided, however, it is hereby
2 provided that the general treasurer shall establish a dedicated "prevailing wages enforcement
3 fund" for the purpose of depositing the penalties paid as provided herein. There is hereby
4 appropriated to the annual budget of the department of labor and training the amount of the fund
5 collected annually under this section, to be used at the direction of the director of labor and
6 training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

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

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

18 (e) In addition to the above, any person, firm, or corporation found to have committed
19 two (2) or more willful violations in any period of eighteen (18) months of any of the provisions
20 of this chapter by the hearing officer, which violations are not arising from the same incident,
21 shall be ineligible to bid on or be awarded work by an awarding authority or perform any work
22 for a period of sixty (60) months from the date of the second violation.

23 (f) The order of the hearing officer shall remain in full force and effect unless stayed by
24 order of the superior court.

25 (g) The director of labor and training, awarding authority, or hearing officer shall notify
26 the bonding company of any person, firm, or corporation suspected of violating any section of
27 this chapter. The notice shall be mailed certified mail, and shall enumerate the alleged violations
28 being investigated.

29 (h) In addition to the above, any person, firm, or corporation found to have willfully
30 made a false or fraudulent representation on certified payroll records [or in reporting their](#)
31 [apprenticeship information to any governmental or quasi-governmental agency and/or public-](#)
32 [purpose corporation created by the state](#) shall be referred to the office of the attorney general. The
33 false or fraudulent representation shall be considered a misdemeanor and shall be punishable for a
34 period of not more than one year in prison and/or fined one thousand dollars (\$1,000). Further,

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

5 SECTION 4. This act shall take effect on January 1, 2015 and shall be effective for all
6 contracts entered into on and after January 1, 2015 by the state or quasi-governmental agencies
7 and/or public-purpose corporations created by the state. This act may be effective for all contracts
8 entered into by any municipality on or after May 1, 2017.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

1 This act would require that all bidders responding to an invitation to bid on a public
2 works project valued at one million dollars (\$1,000,000) or more have an apprenticeship program
3 and that at least ten percent (10%) of the labor hours are performed by apprentices.

4 This act would take effect on January 1, 2015 and would be effective for all contracts
5 entered into on and after January 1, 2015 by the state or quasi-governmental agencies and/or
6 public-purpose corporations created by the state. This act may be effective for all contracts
7 entered into by any municipality on or after May 1, 2017.

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