

2016 -- H 8269

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LC006085
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- CONTRACTORS' BONDS

Introduced By: Representative John J. DeSimone

Date Introduced: May 27, 2016

Referred To: House Finance

It is enacted by the General Assembly as follows:

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

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

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

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

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

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

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

24 The state of Rhode Island, or any municipality or any agency or political subdivision
25 thereof, for the construction, reconstruction, alteration, remodeling, repair, or improvement of any
26 public works and/or sewers, water mains, or any public works project defined in §37-13-1, shall
27 not withhold more than five percent (5%) as a retainer in relation to any construction contract.

28 (b) No general contractor or construction manager who has been awarded a contract by
29 the state of Rhode Island, any municipality or any agency or political subdivision thereof, for the
30 construction, reconstruction, alteration, remodeling, repair, or improvement of sewers and water
31 mains, or any public works project defined in §37-13-1 shall withhold more than five percent
32 (5%) from any subcontractors who perform work on any public works project as noted above.

33 (c) Upon substantial completion of any public works project as noted above, or the
34 issuance of a permanent certificate of occupancy, whichever occurs first, any and all retainage as

1 noted above shall be paid to the contractor or construction manager within fifty-five (55) days,
2 except as to an amount sufficient to equal one hundred fifty percent (150%) times the value of
3 any punch list as determined by the owner with respect to each project. The general contractor or
4 the construction manager shall make final payment to each subcontractor within ten (10) days of
5 receiving payment from the owner, less the withheld retainage of one hundred fifty percent
6 (150%) of the value of the punch list not completed by the subcontractor. Upon satisfactory
7 completion of the punch list, any and all monies withheld shall be paid to the general contractor
8 or to the construction manager within fifty-five (55) days and the general contractor or
9 construction manager shall pay the subcontractor within ten (10) days of receiving payment from
10 the owner.

11 (d) Section 37-12-10 shall not apply to highway or heavy construction projects that are
12 procured by either the Rhode Island Department of Transportation, a public corporation, a public
13 agency or any city or town in Rhode Island.

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO PUBLIC PROPERTY AND WORKS -- CONTRACTORS' BONDS

1 This act would prohibit the state, general contractors, and construction managers from
2 withholding more than five percent (5%) as a retainer with respect to any sewer, water main, or
3 other public works construction contract.

4 This act would take effect upon passage.

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