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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS - BUILDING MAINTENANCE  
CONTRACTS -- DISPLACED WORKER ACT

Introduced By: Senators Tassoni, Ciccone, Miller, and Metts

Date Introduced: March 10, 2011

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

3 CHAPTER 2.4

4 DISPLACED PUBLIC BUILDING MAINTENANCE SERVICE EMPLOYEES

5 **37-2.4-1. Definitions.** – (a) "Awarding authority" means any person that awards or  
6 otherwise contracts for janitorial or building maintenance service performed within the state of  
7 Rhode Island including any subcontracts for janitorial or building maintenance services, but  
8 excluding state buildings or R.F.P.'s for state-leased space.

9 (b) "Contractor" means any person that employs ten (10) or more individuals and that  
10 enters into a service contract with the awarding authority for janitorial or building maintenance  
11 service.

12 (c) "Employee" means any person employed as a service employee of a subcontractor  
13 who works at least ten (10) hours per week and whose primary place of employment is in the  
14 State of Rhode Island under a contract to provide janitorial or building maintenance services.  
15 "Employee" does not include a person who is a managerial, supervisory or confidential employee,  
16 including those employees who would be so defined under the federal Fair Labor Standards Act,  
17 or state employee.

18 (d) "Person" means any individual, proprietorship, partnership, joint venture, corporation,

1 limited liability company, trust, association, educational institution or other entity that may  
2 employ individuals or enters into contracts.

3 (e) "Service contract" means a contract that has the principal purpose of providing  
4 janitorial or building maintenance services through the use of employees.

5 (f) "Subcontractor" means any person who is not an employee who enters into a contract  
6 with a contractor at any tier or who assists the contractor or subcontractor in performing a service  
7 contract.

8 (g) "Successor service contract" means a service contract for the performance of  
9 essentially the same services as were previously performed pursuant to a different service  
10 contract at the same facility that terminated within the previous thirty (30) days. A service  
11 contract entered into more than ninety (90) days after the termination of predecessor service  
12 contract shall be considered a "successor service contract" if its execution was delayed for the  
13 purpose of avoiding application of this chapter.

14 **37-2.4-2. Notification.** – (a) As soon as an awarding authority awards a service contract  
15 to a successor contractor or successor subcontractor, the awarding authority shall notify the  
16 terminated contractor or subcontractor that a successor service contract has been or will be  
17 awarded in place of its contract. Such notice shall be in writing and shall identify the name and  
18 address of the successor contractor. The terminated contractor shall, within three (3) working  
19 days after receiving that notification, provide to the successor contractor identified by the  
20 awarding authority, the name, date of hire, and job classification of each employee employed at  
21 the site or sites covered by the terminated service contract at the time of the contract termination.

22 (b) If the terminated contractor has not learned the identity of the successor contractor, if  
23 any, the terminated contractor or subcontractor shall provide that information to the awarding  
24 authority, which shall be responsible for providing that information to the successor contractor as  
25 soon as that contractor has been selected.

26 (c) The requirements of this section shall be equally applicable to all subcontractors of a  
27 terminated contractor.

28 **37-2.4-3. Retention of displaced workers.** – (a) A successor contractor or successor  
29 subcontractor shall retain for a ninety (90) day transition employment period employees who  
30 have been employed by the terminated contractor or its subcontractors, if any, for the preceding  
31 four (4) months or longer at the site or sites covered by the successor service contract. This  
32 requirement shall be stated by awarding authorities in all initial bid packages that are governed by  
33 this chapter.

34 (b) The successor contractor or successor subcontractor shall make a written offer of

1 employment to each employee, as required by this section, in the employee's primary language or  
2 another language in which the employee is literate. That offer shall state the time within which  
3 the employee must accept that offer, but in no case may the time be less than ten (10) days from  
4 the date the notice is given nor later than five (5) days prior to the commencement of the  
5 successor service contract. Nothing in this section requires the successor contractor or successor  
6 subcontractor to pay the same wages or offer the same benefits as were provided by the prior  
7 contractor or subcontractor.

8 (c) If at any time the successor contractor or successor subcontractor, upon commencing  
9 service under the subcontract determines that fewer employees are needed to perform services  
10 under the successor service contract or successor subcontract than were required by the  
11 terminated contractor under the terminated contract or terminated subcontract, the successor  
12 contractor or successor subcontractor shall retain employees by seniority within each job  
13 classification.

14 (d) The successor contractor or successor subcontractor, upon commencing service under  
15 the successor service contract, shall provide a list of its employees and a list of employees of its  
16 subcontractors providing services at the site or sites covered under that contract to the awarding  
17 authority. These lists shall indicate which of these employees were employed at the site or sites  
18 by the terminated contractor or terminated subcontractor. The successor contractor or successor  
19 subcontractor shall also provide a list of any of the terminated contractor's employees who were  
20 not retained either by the successor contractor or successor subcontractor, stating the reason these  
21 employees were not retained.

22 (e) During the ninety (90) day transition employment period, the successor contractor or  
23 successor subcontractor shall maintain a preferential hiring list of eligible covered employees not  
24 retained by the successor contractor or successor subcontractor from which the successor  
25 contractor or successor subcontractor shall hire additional employees until such time as all of the  
26 terminated contractor's or terminated subcontractor's employees have been offered employment  
27 with the successor contractor or successor subcontractor.

28 (f) During the initial ninety (90) day transition employment period, the successor  
29 contractor or successor subcontractor shall not discharge without cause an employee retained  
30 pursuant to this chapter. Cause shall be based only on the performance or conduct of the  
31 particular employee.

32 **37-2.4-4. Enforcement.** – (a) An employee who was not offered employment or who has  
33 been discharged in violation of this chapter by a successor contractor or successor subcontractor,  
34 or an agent of the employee, may bring an action in any superior court of the State of Rhode

1 Island having jurisdiction over the party against:

2 (1) A successor contractor or successor subcontractor for any violation of any duty  
3 imposed upon that successor contractor or successor subcontractor by this chapter; or

4 (2) An awarding authority for any violation of any duty imposed upon that awarding  
5 authority by this chapter.

6 (b) Upon finding a violation of this chapter, the court shall award back-pay, including the  
7 value of benefits, for each day during which the violation has occurred and continues to occur.

8 The amount of back-pay shall be calculated as the greater of either of the following:

9 (1) The average regular rate of pay received by the employee during the last year of the  
10 employee's employment in the same occupation classification multiplied by the average hours  
11 worked during the last years of the employee's employment; or

12 (2) The final regular rate of pay received by the employee at the time of termination of  
13 the predecessor contract multiplied by the number of hours usually worked by the employee.

14 (c) The court may order a preliminary or permanent injunction to stop the continued  
15 violation of this chapter.

16 (d) If the employee or his or her agent is the prevailing party in the legal action, the court  
17 shall award the employee or his or her agent reasonable attorneys' fees and costs as part of the  
18 costs recoverable.

19 (e) This section shall not be construed to limit an employee's right to bring a cause of  
20 action for wrongful termination.

21 (f) Any contractor who violates this chapter shall pay penalties per employee per day of  
22 violation of fifty dollars (\$50.00) to one hundred dollars (\$100). Each day a violation continues  
23 shall constitute a separate violation.

24 **37-2.4-5. Severability. -- If any provision or provisions of this chapter or any application**  
25 **thereof is held invalid by any court of law, that invalidity shall not affect any other provisions or**  
26 **applications of this chapter that can be given effect notwithstanding that invalidity.**

27 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 MAINTENANCE  
CONTRACTS -- DISPLACED WORKER ACT

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- 1 This act would provide some job protection for private employees of business that have
- 2 contracts for janitorial or building maintenance contracts but would exclude state buildings.
- 3 This act would take effect upon passage.

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