

2010 -- S 2373

LC00531

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

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

Introduced By: Senators Ruggerio, McCaffrey, Walaska, Jabour, and Goodwin

Date Introduced: February 11, 2010

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-13-7 of the General Laws in Chapter 37-13 entitled "Labor and
2 Payment of Debts by Contractors" is hereby amended to read as follows:

3 **37-13-7. Specification in contract of amount and frequency of payment of wages. --**

4 (a) Every call for bids for every contract in excess of one thousand dollars (\$1,000), to which the
5 state of Rhode Island or any political subdivision thereof or any public agency or quasi-public
6 agency is a party, for construction, alteration, and/or repair, including painting and decorating, of
7 public buildings or public works of the state of Rhode Island or any political subdivision thereof,
8 or any public agency or quasi-public agency and which requires or involves the employment of
9 employees, shall contain a provision stating the minimum wages to be paid various types of
10 employees which shall be based upon the wages that will be determined by the director of labor
11 and training to be prevailing for the corresponding types of employees employed on projects of a
12 character similar to the contract work in the city, town, village, or other appropriate political
13 subdivision of the state of Rhode Island in which the work is to be performed. Every contract
14 shall contain a stipulation that the contractor or his or her subcontractor shall pay all the
15 employees employed directly upon the site of the work, unconditionally and not less often than
16 once a week, and without subsequent deduction or rebate on any account, the full amounts
17 accrued at time of payment computed at wage rates not less than those stated in the call for bids,
18 regardless of any contractual relationships which may be alleged to exist between the contractor

1 or subcontractor and the employees, and that the scale of wages to be paid shall be posted by the
2 contractor in a prominent and easily accessible place at the site of the work; and the further
3 stipulation that there may be withheld from the contractor so much of the accrued payments as
4 may be considered necessary to pay to the employees employed by the contractor, or any
5 subcontractor on the work, the difference between the rates of wages required by the contract to
6 be paid the employees on the work and the rates of wages received by the employees and not
7 refunded to the contractor, subcontractors, or their agents.

8 (b) The terms "wages", "scale of wages", "wage rates", "minimum wages", and
9 "prevailing wages" shall include:

10 (1) The basic hourly rate of pay; and

11 (2) The amount of:

12 (A) The rate of contribution made by a contractor or subcontractor to a trustee or to a
13 third person pursuant to a fund, plan, or program; and

14 (B) The rate of costs to the contractor or subcontractor which may be reasonably
15 anticipated in providing benefits to employees pursuant to an enforceable commitment to carry
16 out a financially responsible plan or program which was communicated in writing to the
17 employees affected, for medical or hospital care, pensions on retirement or death, compensation
18 for injuries or illness resulting from occupational activity, or insurance to provide any of the
19 foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or
20 accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other
21 similar programs, or for other bona fide fringe benefits, but only where the contractor or
22 subcontractor is not required by other federal, state, or local law to provide any of the benefits;
23 provided, that the obligation of a contractor or subcontractor to make payment in accordance with
24 the prevailing wage determinations of the director of labor and training insofar as this chapter of
25 this title and other acts incorporating this chapter of this title by reference are concerned may be
26 discharged by the making of payments in cash, by the making of contributions of a type referred
27 to in subsection (b)(2), or by the assumption of an enforceable commitment to bear the costs of a
28 plan or program of a type referred to in this subdivision, or any combination thereof, where the
29 aggregate of any payments, contributions, and costs is not less than the rate of pay described in
30 subsection (b)(1) plus the amount referred to in subsection (b)(2).

31 (i) Notwithstanding any other law, rule, regulation, agreement, or practice to the contrary,
32 commencing on July 1, 2010, a contractor or subcontractor is not permitted to make payment of
33 the cash equivalent of any applicable healthcare benefit, as predetermined per each classification
34 by the director of labor and training, directly to the employee in lieu of actually purchasing the

1 healthcare benefit for said employee for the applicable time period. The contractor or
2 subcontractor must actually purchase the healthcare benefit for the employee for the covered
3 period of time from a licensed third-party healthcare insurance provider.

4 (ii) The contractor or subcontractor must also provide a proof of purchase of the health
5 care benefit to the employee and the employee's bargaining agent, if applicable. "Proof of
6 purchase" is defined as documents substantially similar to declaration pages in an insurance
7 policy indicating the entity providing the health benefit coverage or insurance therefore, the
8 identity of the individual covered the type and amount of coverage, and the coverage period.

9 (iii) Any contractor or subcontractor who fails to comply with the requirements of this
10 section shall be required to pay a civil penalty to the director of labor and training in an amount of
11 no less than one thousand dollars (\$1,000) and not greater than three thousand dollars (\$3,000)
12 per violation. Such penalties shall be recoverable in civil actions filed pursuant to this section by
13 the director of labor and training.

14 (iv) The director of labor and training is authorized to obtain injunctive relief against
15 continuing violations of this section.

16 (v) Any employee or bargaining agent who has been aggrieved by the failure of a
17 contractor or subcontractor to actually purchase the healthcare benefit for employees and provide
18 them and/or their bargaining agent with a proof of purchase under this section may pursue a
19 private right of action under the terms of section 37-13-17 of the general laws.

20 (c) The term "employees", as used in this section, shall include employees of contractors
21 or subcontractors performing jobs on various types of public works including mechanics,
22 apprentices, teamsters, chauffeurs, and laborers engaged in the transportation of gravel or fill to
23 the site of public works, the removal and/or delivery of gravel or fill or ready-mix concrete, sand,
24 bituminous stone, or asphalt flowable fill from the site of public works, or the transportation or
25 removal of gravel or fill from one location to another on the site of public works, and the
26 employment of the employees shall be subject to the provisions of subsections (a) and (b).

27 (d) The terms "public agency" and "quasi-public agency" shall include, but not be
28 limited to, the Rhode Island industrial recreational building authority, the Rhode Island economic
29 development corporation, the Rhode Island airport corporation, the Rhode Island industrial
30 facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and
31 mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island
32 public transit authority, the Rhode Island student loan authority, the water resources board
33 corporate, the Rhode Island health and education building corporation, the Rhode Island higher
34 education assistance authority, the Rhode Island turnpike and bridge authority, the Narragansett

1 Bay water quality management district commission, Rhode Island telecommunications authority,
2 the convention center authority, the board of governors for higher education, the board of regents
3 for elementary and secondary education, the capital center commission, the housing resources
4 commission, the Quonset Point-Davisville management corporation, the Rhode Island children's
5 crusade for higher education, the Rhode Island depositors economic protection corporation, the
6 Rhode Island lottery commission, the Rhode Island partnership for science and technology, the
7 Rhode Island public building authority, and the Rhode Island underground storage tank board.

8 (e) If any one or more subsections of this section shall for any reason be adjudged
9 unconstitutional or otherwise invalid, the judgment shall not affect, impair, or invalidate the
10 remaining subsections.

11 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 --LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

- 1 This act would prohibit contractors and subcontractors from making payment of the cash
- 2 equivalent of any applicable healthcare benefit directly to their employees in lieu of actually
- 3 purchasing the health care benefits for said employee for the applicable time period.
- 4 This act would take effect upon passage.

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