

2014 -- S 2393

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LC004403
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

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

Introduced By: Senator David E. Bates

Date Introduced: February 12, 2014

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-13-3.1 and 37-13-14.1 of the General Laws in Chapter 37-13
2 entitled "Labor and Payment of Debts by Contractors" are hereby amended to read as follows:

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 (a) Notwithstanding any laws to the contrary, all specifications in any invitations to bid in
11 any public works contract awarded by the state valued at ten million dollars (\$10,000,000) or
12 more shall include a notice that all bidders responding to an invitation to bid on a public works
13 project may employ apprentices for apprenticeable crafts that will be employed on the project at
14 the time of bid. For purposes of this section, an apprentice shall include an individual that:

15 (1) Is enrolled in a program which is non-provisionally registered with and approved by
16 the United States Department of Labor in conformance with 29 C.F.R. 29 and 29 C.F.R. 30; or

17 (2) Is a graduate of a state of Rhode Island career and technical high school who does not
18 possess a journeyman's license.

1 (b) The department of labor and training must provide information and technical
2 assistance to affected governmental bodies and any contractors awarded any public works
3 projects relative to their obligations under this statute.

4 (c) In the event a contractor and/or subcontractor awarded a public works contract
5 employs apprentices on a project, that contractor and/or subcontractor shall collect and submit the
6 following data for each project covered by this section to the user agency on certified payroll
7 forms required by § 37-13-13:

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

9 (2) The name of each apprentice categorized by trade or craft, their apprentice
10 registration number, where applicable, and the number of hours they have worked on the project;
11 and

12 (3) The name of each journey level worker categorized by trade or craft and the number
13 of hours they have worked on the project.

14 (d) The user agency shall withhold the next scheduled payment to any contractor or
15 subcontractor who does not submit the information required by the provisions of this statute and
16 shall also notify the director of labor and training of the contractor's noncompliance. The user
17 agency shall withhold final payment until all of the provisions of this section are complied with.

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

22 (f) Any penalties assessed under this statute shall be paid to the department of labor and
23 training dedicated "prevailing wages enforcement fund."

24 (g) For the purposes of this section the term "user agency" shall mean the state agency
25 which is responsible for management of a public works contract awarded to a contractor.

26 **37-13-14.1. Enforcement -- Hearings. --** (a) Before issuing an order or determination,
27 the director of labor and training shall order a hearing thereon at a time and place to be specified,
28 and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a
29 statement of the facts disclosed upon investigation, which notice shall be served personally or by
30 mail on any person, firm, or corporation affected thereby. The person, firm, or corporation shall
31 have an opportunity to be heard in respect to the matters complained of at the time and place
32 specified in the notice, which time shall be not less than five (5) days from the service of the
33 notice personally or by mail. The hearing shall be held within ten (10) days from the order of
34 hearing. The hearing shall be conducted by the director of labor and training or his or her

1 designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity,
2 and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The
3 enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil
4 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the
5 hearing officer shall determine the issues raised thereon and shall make a determination and enter
6 an order within ten (10) days of the close of the hearing, and forthwith serve a copy of the order,
7 with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The
8 order shall dismiss the charges or direct payment of wages or supplements found to be due,
9 including interest at the rate of twelve percentum (12%) per annum from the date of the
10 underpayment to the date of payment, and may direct payment of reasonable attorney's fees and
11 costs to the complaining party.

12 (b) In addition to directing payment of wages or supplements including interest found to
13 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
14 three times the total amount found to be due. Further, if the amount of salary owed to an
15 employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds
16 five thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office
17 of the attorney general. The misdemeanor shall be punishable for a period of not more than one
18 year in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount
19 of the penalty, due consideration shall be given to the size of the employer's business, the good
20 faith of the employer, the gravity of the violation, the history of previous violations and the
21 failure to comply with recordkeeping or other nonwage requirements. The surety of the person,
22 firm, or corporation found to be in violation of the provisions of this chapter shall be bound to
23 pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the
24 department of labor and training for deposit in the state treasury; provided, however, it is hereby
25 provided that the general treasurer shall establish a dedicated "prevailing wages enforcement
26 fund" for the purpose of depositing the penalties paid as provided herein. There is hereby
27 appropriated to the annual budget of the department of labor and training the amount of the fund
28 collected annually under this section, to be used at the direction of the director of labor and
29 training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

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

33 (d) In addition to the above, any person, firm, or corporation found in violation of any of
34 the provisions of this chapter by the director of labor and training, an awarding authority, or the

1 hearing officer, shall be ineligible to bid on or be awarded work by an awarding authority or
2 perform any such work for a period of no less than eighteen (18) months and no more than thirty-
3 six (36) months from the date of the order entered by the hearing officer. Once a person, firm, or
4 corporation is found to be in violation of this chapter, all pending bids with any awarding
5 authority shall be revoked, and any bid awarded by an awarding authority prior to the
6 commencement of the work shall also be revoked.

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

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

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

18 (h) In addition to the above, any person, firm, or corporation found to have willfully
19 made a false or fraudulent representation on certified payroll records [or in reporting their](#)
20 [apprenticeship information to any governmental agency](#) shall be referred to the office of the
21 attorney general. The false or fraudulent representation shall be considered a misdemeanor and
22 shall be punishable for a period of not more than one year in prison and/or fined one thousand
23 dollars (\$1,000). Further, any person, firm, or corporation found to have willfully made a false or
24 fraudulent representation on certified payroll records shall be required to pay a civil penalty to the
25 department of labor and training in an amount of no less than two thousand dollars (\$2,000) and
26 not greater than fifteen thousand dollars (\$15,000) per representation.

27 SECTION 2. This act shall take effect on January 1, 2015 and shall be effective for all
28 contracts entered into on and after January 1, 2015.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would require all specifications in any invitation to bid in any public works
2 contract awarded by the state valued at ten million dollars or more include a notice that all
3 bidders may employ apprentices for apprenticeable crafts that will be employed on the project.

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