

2013 -- H 5472

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- APPRENTICESHIP

Introduced By: Representatives Carnevale, Ucci, Lombardi, Craven, and Palumbo

Date Introduced: February 14, 2013

Referred To: House Finance

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2 and Payment of Debts by Contractors" is hereby repealed.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 in any public works contract
14 awarded by the state, any municipality or quasi-governmental agency valued at one million
15 dollars (\$1,000,000) or more shall include a requirement that all bidders responding to an
16 invitation to bid on a public works project shall have an indentured Class A apprenticeship
17 program as defined herein for all apprenticeable crafts that will be employed on the project at the
18 time of bid, and that no less than fifteen percent (15%) of the labor hours worked on the project
19 shall be performed by apprentices in these programs. For purposes of this section, a Class A

1 Apprenticeship Program is an apprenticeship program that:

2 (1) Is currently registered with and approved by the U.S. Department of Labor or state

3 department of labor and training; and

4 (2) Has graduated at least three (3) apprentices to journeyperson status within the past

5 five (5) years; and

6 (3) The number of apprentices shall comply with the apprentice to journeyman ratio for

7 each trade approved by the apprenticeship council of the department of labor and training.

8 (b) Upon petition by a contractor in writing, an awarding authority may lower the fifteen

9 percent (15%) apprenticeship requirement of this section for a specific project for the following

10 reasons:

11 (1) The demonstrated lack of availability of apprentices in specific geographic areas; or

12 (2) A written determination by the awarding authority that compliance is unduly cost

13 prohibitive; or

14 (3) That participating contractors have demonstrated a good faith effort to comply with

15 the requirements of this section but have not been able to attain the fifteen percent (15%)

16 requirement;

17 (c) The department of labor and training must provide information and technical

18 assistance to affected governmental, quasi-governmental agencies, and any contractors awarded

19 any public works projects relative to their obligations under this statute;

20 (d) Any contractor awarded a public works contract shall collect and submit the

21 following data for each project covered by this section to the awarding authority:

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

23 (2) The name of each apprentice categorized by trade or craft, their apprentice

24 registration number, and the number of hours they have worked on the project;

25 (3) The name of each journey level worker categorized by trade or craft and the number

26 of hours they have worked on the project; and

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

28 (e) The awarding authority shall withhold the next scheduled payment to any contractor

29 or subcontractor who does not submit the information required by the provisions of this statute

30 and shall also notify the director of labor and training of the contractor's noncompliance. The

31 awarding authority shall withhold final payment until all of the provisions of this section are

32 complied with.

33 (f) The department of labor and training may also impose a penalty of up to five hundred

34 dollars (\$500) for each calendar day of noncompliance with this section, as determined by the

1 director of labor and training. Mere errors and/or omissions shall not be grounds for imposing a
2 penalty under this subsection.

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

5 (h) Failure of the contractors and subcontractors required to utilize apprentices or be
6 exempted shall be considered a material breach of their public works contract and they shall be
7 subject to any and all penalties that a material breach is responsible for in their contract with the
8 awarding authority.

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

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

31 (b) In addition to directing payment of wages or supplements including interest found to
32 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
33 three times the total amount found to be due. Further, if the amount of salary owed to an
34 employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds

1 five thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office
2 of the attorney general. The misdemeanor shall be punishable for a period of not more than one
3 year in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount
4 of the penalty, due consideration shall be given to the size of the employer's business, the good
5 faith of the employer, the gravity of the violation, the history of previous violations and the
6 failure to comply with recordkeeping or other nonwage requirements. The surety of the person,
7 firm, or corporation found to be in violation of the provisions of this chapter shall be bound to
8 pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the
9 department of labor and training for deposit in the state treasury; provided, however, it is hereby
10 provided that the general treasurer shall establish a dedicated "prevailing wages enforcement
11 fund" for the purpose of depositing the penalties paid as provided herein. There is hereby
12 appropriated to the annual budget of the department of labor and training the amount of the fund
13 collected annually under this section, to be used at the direction of the director of labor and
14 training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

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

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

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

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

33 (g) The director of labor and training, awarding authority, or hearing officer shall notify
34 the bonding company of any person, firm, or corporation suspected of violating any section of

1 this chapter. The notice shall be mailed certified mail, and shall enumerate the alleged violations
2 being investigated.

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

12 SECTION 4. 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 -- APPRENTICESHIP

1 This act would require that all bidders responding to an invitation to bid on a public
2 works project would have an indentured Class A apprenticeship program, and that no less than
3 fifteen percent (15%) of the project's labor hours be performed by apprentices in this program.

4 This act would take effect upon passage.

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