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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

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

Introduced By: Senators Lombardi, and McCaffrey

Date Introduced: April 12, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 37-13 of the General Laws entitled "Labor and Payment of Debts
2 by Contractors" is hereby amended by adding thereto the following section:

3 **37-13-5.1. Payments to subcontractors.**

4 (a) Definitions:

5 (1) Subcontractor defined. For the purposes of this chapter, "subcontractor" means a
6 person or entity that has entered into a contract with a contractor as defined in §37-13-2 to
7 provide a portion of the work or service on a project which the contractor has agreed to perform,
8 and who has been approved by the awarding authority in writing as a person or entity performing
9 labor or furnishing of materials on a public works project as defined in §37-13-1.

10 (2) Substantial performance defined. For the purposes of this chapter, "substantial
11 performance" means an honest endeavor in good faith by one party to perform that party's
12 obligations under a contract, when the results of that party's endeavor are beneficial to and are
13 retained by the other party.

14 (b) Periodic payments to subcontractors. Upon receipt of a periodic payment from an
15 awarding authority, a contractor shall pay to each subcontractor any amount owed to the
16 subcontractor for labor performed or materials provided, less any amount specified in any court
17 proceeding barring such payment or any amount claimed due from the subcontractor to the
18 contractor.

1 (c) Payment upon substantial completion. Not later than the sixty-five (65) days after
2 each subcontractor substantially completes its work in accordance with the plans and
3 specifications, the entire balance due under the subcontract, less amounts retained by the
4 awarding authority as the estimated cost of completing any incomplete or unsatisfactory items of
5 the subcontractor's work, shall be due to the subcontractor; and the awarding authority shall pay
6 that amount to the contractor. Upon receipt of payments for labor or materials provided by a
7 subcontractor, the contractor shall pay to that subcontractor the full amount received from the
8 awarding authority less any amount specified in any court proceedings barring such payment or
9 any amount claimed due from the subcontractor by the contractor.

10 (d) Demand for direct payment. If within seventy (70) days after the subcontractor has
11 substantially completed the subcontract work, the subcontractor has not received from the
12 contractor the balance due under the subcontract, including any amount due for extra labor and
13 materials furnished to the contractor pursuant to a change order, less any amount retained by the
14 awarding authority as the estimated cost of completing any incomplete and unsatisfactory items
15 of the subcontractor's work, the subcontractor may demand direct payment of that balance from
16 the awarding authority. The demand shall be by a sworn statement sent by certified mail to the
17 awarding authority, and a copy shall be sent by certified mail to the contractor at the same time.
18 The demand shall contain an itemized accounting of the balance due under the subcontract and a
19 statement of the status of completion of the subcontract work. Within ten (10) days after receipt
20 of the demand for direct payment, the contractor shall submit a reply to the demand by sworn
21 statement to the awarding authority by certified mail and a copy shall be sent by certified mail to
22 the subcontractor. The reply shall contain an itemized accounting of payments made to the
23 subcontractor, amounts owed to the subcontractor, including any amount due for extra labor and
24 materials furnished to the contractor, and the amount due for each claim made by the contractor
25 against the subcontractor.

26 (e) Direct payment by awarding authority. Within fifteen (15) days after receipt of the
27 demand by the awarding authority, but in no event prior to the seventieth day after substantial
28 completion of the subcontract work, the awarding authority shall make direct payment to the
29 subcontractor of the balance due under the subcontract including any amount due for extra labor
30 and materials furnished to the contractor pursuant to a change order, less any amount:

31 (1) Retained by the awarding authority as the estimated cost of completing any
32 outstanding work or unsatisfactory items of work;

33 (2) Specified in any court proceedings barring such payment; or

34 (3) Disputed by the contractor in the sworn reply; provided, however, that the awarding

1 authority shall not deduct from a direct payment any amount as provided in this section if the
2 reply is not work to or for which the sworn reply does not contain an itemized accounting as
3 required by 37-13-5.1(d). The awarding authority shall make further direct payments to the
4 subcontractor after the removal of the basis for deductions from direct payments made as
5 provided in subsections (e)(i) and (e)(ii) of this section.

6 (f) Deposit of deducted amount. The awarding authority shall withhold an amount equal
7 to the disputed amount as determined by 37-13-5.1(g) unless both parties agree to release the
8 disputed amount to a mutually agreed upon escrow agent. If the monies are released to an escrow
9 agent, the agent shall keep an accounting of said monies and shall not release the monies to either
10 party until directed by a court of competent jurisdiction or until a signed settlement agreement is
11 provided to the agent including a release from liability from all parties. The agent shall send a
12 copy of the court order or the settlement agreement to the awarding authority.

13 (g) Authority discharged. All direct payments and all deductions from demands for direct
14 payments deposited in an interest bearing account pursuant to §37-13-5.1(f) shall be deducted
15 from amounts payable to the contractor at the time of receipt of a demand for direct payment
16 from a subcontractor and out of amounts which later become payable to the contractor and in the
17 order of receipt of such demands from subcontractors. All direct payments shall discharge the
18 obligation of the awarding authority to the contractor to the extent of such payment.

19 (h) Priority over creditors. The awarding authority shall deduct from payments to a
20 contractor amounts which, together with the deposits pursuant to §37-13-5.1(f) are sufficient to
21 satisfy all unpaid balances of demands for direct payment received from subcontractors. All such
22 amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in
23 such deductions prior to any claims against such amounts by creditors of the contractor.

24 (i) Demand for unpaid periodic payments. If the subcontractor does not receive periodic
25 payment as provided in §37-13-5.1(b), or if the contractor does not submit a periodic estimate for
26 the value of the labor or materials performed or furnished by the subcontractor and the
27 subcontractor does not receive payment for same when due less the deductions provided for in
28 §37-13-5.1(b), the subcontractor may demand direct payment by following the procedure set forth
29 in §37-13-5.1(d) and the contractor may file a sworn statement as provided in that subsection. A
30 demand, made after the first day of the month following that for which the subcontractor
31 performed or furnished the labor and materials, for which the subcontractor seeks payment shall
32 be valid even if mailed prior to the time payment was due on a periodic estimate from the
33 contractor. Thereafter the awarding authority shall proceed as provided in §37-13-5.1(e).

34 (j) No assignment of rights. Any assignment by a subcontractor of the rights under this

1 section to a surety company furnishing a bond under the provisions of §37-13-14 shall be invalid.
2 The assignment or subrogation rights of the surety to amounts included in a demand for direct
3 payment which are in the possession of the awarding authority or which are on deposit pursuant
4 §37-13-5.1(h) shall be subordinate to the rights of all subcontractors who are entitled to be paid
5 under this section and who have not been paid in full.

6 (k) Petition in equity. A contractor or a subcontractor shall enforce a claim to any portion
7 of the amount of a demand for direct payment deposited in accordance with §37-13-5.1(f) by a
8 petition in equity in the superior court against the other, and the awarding authority shall be a
9 necessary party. A subcontractor shall enforce a claim for direct payment or a right to require a
10 deposit as provided in §37-13-5.1(f) by a petition in equity in the superior court against the
11 awarding authority, and the contractor shall not be a necessary party. Upon motion of any party,
12 the court shall advance for speedy trial any petition filed as provided for in this section. The court
13 shall enter an interlocutory decree upon which execution shall issue for any part of a claim found
14 due and, upon motion of any party, shall advance for speedy trial the petition to collect the
15 remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to
16 appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of
17 any subcontractor with the petition of one or more subcontractors on the same general contract
18 unless the court finds that a substantial portion of the evidence of the same events during the
19 course of construction (other than the fact that the claims sought to be consolidated arise under
20 the same general contract) is applicable to the petitions sought to be consolidated and that such
21 consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding
22 shall not include interest on the disputed amount deposited in excess of the interest earned for the
23 period of any such deposit.

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

26 **37-12-2. Rights of persons furnishing labor and materials.**

27 (a) Right of action. Every person who shall have performed labor and every person who
28 shall have furnished or supplied labor, material, or equipment in the prosecution of the work
29 provided for in the contract, in respect of which a payment bond is furnished under § 37-12-1,
30 and who has not been paid in full therefor before the expiration of a period of ninety (90) days
31 after the day on which the last of the labor was performed or furnished by him or her, or material
32 or equipment furnished or supplied by him or her for which a claim is made, shall have the right
33 to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of
34 institution of the suit and to prosecute the action to final execution and judgment for the sum or

1 sums justly due him or her; provided, however, that any person having direct contractual
2 relationship with a subcontractor but no contractual relationship express or implied with the
3 contractor furnishing the payment bond shall have a right of action upon the payment bond upon
4 giving written notice to the contractor within ninety (90) days from the date on which the person
5 furnished or performed the last of the labor, or furnished or supplied the last of the material or
6 equipment for which the claim is made, stating with substantial accuracy the amount claimed and
7 the name of the party to whom the labor was furnished or performed or the material or equipment
8 was furnished or supplied. The notice shall be served by mailing the same by certified mail,
9 postage prepaid, in an envelope addressed to the contractor at any place he or she maintains an
10 office, conducts his or her business, or his or her residence.

11 [\(b\) Attorneys' fees and costs. A judgment, decree or other award in favor of any claimant](#)
12 [under this section shall include reasonable attorneys' fees and costs.](#)

13 SECTION 3. 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 -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

- 1 This act would add to the protection afforded to subcontractors on public work contracts,
- 2 and would provide for the award of reasonable attorneys' fees and costs.
- 3 This act would take effect upon passage.

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