

2019 -- S 0713

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Senators Ciccone, Miller, Goodwin, McCaffrey, and Lynch Prata

Date Introduced: March 21, 2019

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  
5 perform work on any public works contract awarded by the state after passage of this act and  
6 valued at one million dollars (\$1,000,000) or more shall employ apprentices required for the  
7 performance of the awarded contract. ~~The number of apprentices shall comply with the~~  
8 ~~apprentice to journeyman ratio for each trade approved by the apprenticeship council of the~~  
9 ~~department of labor and training. To the extent that any of the provisions contained in this section~~  
10 ~~conflict with the requirements for federal aid contracts, federal law and regulations shall control.~~

11 **37-13-14.1. Enforcement -- Hearings.**

12 (a) Before issuing an order or determination, the director of labor and training shall order  
13 a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a  
14 copy of the complaint or the purpose thereof, or a statement of the facts disclosed upon  
15 investigation, which notice shall be served personally or by mail on any person, firm, or  
16 corporation affected thereby. The person, firm, or corporation shall have an opportunity to be  
17 heard in respect to the matters complained of at the time and place specified in the notice, which  
18 time shall be not less than five (5) days from the service of the notice personally or by mail. The

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

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

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

34 (d) In addition to the above, any person, firm, or corporation found in violation of any of

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

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

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

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

19 (h) In addition to the above, any person, firm, or corporation found to have willfully  
20 made a false or fraudulent representation on certified payroll records [or in reporting their](#)  
21 [apprenticeship information to any governmental agency](#) shall be referred to the office of the  
22 attorney general. A first violation of this section shall be considered a misdemeanor and shall be  
23 punishable for a period of not more than one year in prison and/or fined one thousand dollars  
24 (\$1,000). A second or subsequent violation of this section shall be considered a felony and shall  
25 be punishable for a period of not more than three (3) years imprisonment, a fine of three thousand  
26 dollars (\$3,000), or both. Further, any person, firm, or corporation found to have willfully made a  
27 false or fraudulent representation on certified payroll records shall be required to pay a civil  
28 penalty to the department of labor and training in an amount of no less than two thousand dollars  
29 (\$2,000) and not greater than fifteen thousand dollars (\$15,000) per representation.

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

32 **37-13-3.2. Public school construction contract apprenticeship requirements.**

33 [\(a\) Notwithstanding any laws to the contrary, all specifications in any invitations to bid in](#)  
34 [any public school construction contract awarded by the state, any municipality or quasi-](#)

1 governmental agency valued at five million dollars (\$5,000,000) or more shall include a  
2 requirement that all bidders responding to an invitation to bid on a public school construction  
3 project shall have an apprenticeship program as defined herein for all apprenticeable crafts that  
4 will be employed on the project at the time of bid, and that no less than fifteen percent (15%) of  
5 the labor hours worked on the project shall be performed by apprentices in these programs. The  
6 provisions of the section shall only apply to contractors and subcontractors with five (5) or more  
7 employees. For purposes of this section, an apprenticeship program is one that:

8 (1) Is non-provisionally registered with and approved by the United States Department of  
9 Labor in conformance with 29 C.F.R. 29 and 29 C.F.R.30; and

10 (b) For the purposes of this section the term "user agency" means the state, municipality,  
11 or quasi-governmental agency which is responsible for management of a public school  
12 construction contract awarded to a contractor.

13 (c) Upon petition by a contractor in writing, a user agency may lower the fifteen percent  
14 (15%) apprenticeship requirement of this section for a specific project for the following reasons:

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

16 (2) A written determination by the user agency that compliance is unduly cost  
17 prohibitive; or

18 (3) That participating contractors have demonstrated a good faith effort to comply with  
19 the requirements of this section but have not been able to attain the fifteen percent (15%)  
20 requirement.

21 (d) The department of labor and training must provide information and technical  
22 assistance to affected governmental, quasi-governmental agencies, and any contractors awarded  
23 any public school construction projects relative to their obligations under this statute.

24 (e) Any contractor or subcontractor awarded a public school construction contract shall  
25 collect and submit the following data for each project covered by this section to the user agency  
26 on certified payroll forms as required by § 37-13-13:

27 (1) The name and dollar value of the project being worked on;

28 (2) The name of each apprentice, categorized by trade or craft, each apprentice's  
29 registration number, and the number of hours each has worked on the project;

30 (3) The name of each journey level worker, categorized by trade or craft, and the number  
31 of hours each worked on the project; and

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

33 (f) Upon receiving the data from any contractor or subcontractor awarded a public school  
34 construction contract, the user agency shall provide the department of administration with said

1 data. The department of administration shall develop procedures for using and comparing said  
2 data and shall annually publish a report with aggregate data related to apprenticeships.

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

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

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

13 (j) Failure of the contractors and subcontractors required to utilize apprentices or be  
14 exempted shall be considered a material breach of their public school construction contract and  
15 they shall be subject to any and all penalties that a material breach is responsible for in their  
16 contract with the user agency.

17 (k) To the extent that any of the provisions contained in § 37-13-3.2 conflict with the  
18 requirements for federal-aid contracts, federal law and regulations shall control.

19 SECTION 3. This act shall take effect on July 1, 2019 and would be effective for all  
20 contracts entered into on and after July 1, 2019.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO PROPERTY AND WORKS - LABOR AND PAYMENT OF DEBTS BY  
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1           This act would require that bidders on any public school construction project valued at  
2 five million dollars (\$5,000,000) or more must have an apprenticeship program that complies  
3 with the provisions of this act. Further, this act would provide that any entity with an  
4 apprenticeship program shall truthfully report information regarding the program.

5           This act would take effect on July 1, 2019 and would be effective for all contracts entered  
6 into on and after July 1, 2019.

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