

2022 -- S 2740 SUBSTITUTE A

LC005573/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- LABOR STANDARDS IN
RENEWABLE ENERGY PROJECTS

Introduced By: Senators Ruggerio, McCaffrey, Goodwin, and Euer

Date Introduced: March 24, 2022

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND
2 CARRIERS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 26.8

4 LABOR STANDARDS IN RENEWABLE ENERGY PROJECTS

5 **39-26.8-1. Short title.**

6 This chapter shall be known and may be cited as "Labor Standards in Renewable Energy
7 Projects."

8 **39-26.8-2. Definitions.**

9 For the purposes of this chapter:

10 (1) "Approved apprenticeship program" or "apprenticeship program" means an
11 apprenticeship program that has been approved by the U.S. Department of Labor, or by a
12 recognized state apprenticeship agency, pursuant to 29 C.F.R. Parts 29 and 30; however, such
13 programs shall not include those that have obtained only provisional approval status. The required
14 apprenticeship programs may either be programs that have specifically allocated funding and are
15 subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.
16 ("ERISA"), or non-ERISA programs financed by general funds of employers.

17 (2) "Covered project" means a renewable energy project that:

18 (i) Utilizes renewable energy resources;

- 1 (ii) Is situated on land;
2 (iii) Is situated on or in water;
3 (iv) Has a construction commencement date on or after April 1, 2023;
4 (v) Has a total nameplate capacity of two megawatts (2MW) or more in aggregate size; and
5 (vi) Is constructed and or operated pursuant to chapters 26.1, 26.4 or 26.6 of title 39.

6 (3) "Department" means the department of labor and training.

7 (4) "Director" means the director of the department of labor and training.

8 (5) "Labor organization" means any organization which exists and is constituted for the
9 purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning
10 grievances, terms or conditions of employment, or of other mutual aid or protection and which is
11 not a company union as defined in § 28-7-3.

12 (6) "Labor peace agreement" means an agreement between an entity and a labor
13 organization that, at a minimum, protects the state's proprietary interest by prohibiting labor
14 organizations and members from engaging in picketing, work stoppages, boycotts, and any other
15 economic interference during the deployment of a covered project. This agreement means that the
16 applicant has agreed not to disrupt efforts by the labor organizations to communicate with, and
17 attempt to organize and represent, the applicant's employees. This requirement shall not be
18 applicable to maintenance work performed on renewable energy solar projects.

19 (7) "Renewable energy project" means the construction, installation, use, maintenance,
20 operation, changing or retiring of a renewable energy resource.

21 (8) "Renewable energy resources" means any renewable power generation source listed in
22 § 39-26-5(a).

23 **39-26.8-3. Responsibilities of developers and the state, its subdivisions or quasi-public**
24 **agencies.**

25 (a) When a covered project receives any financial incentives, tax relief or subsidies from
26 the state or any of its subdivisions or quasi-public agencies, the developer and its contractors shall
27 enter into a labor peace agreement with the unions constructing the project.

28 (b) All specifications in any invitations to bid on any covered project under this section
29 that is valued at five million dollars (\$5,000,000) or more shall include a requirement that all
30 responding bidders shall have an approved apprenticeship program for all crafts or trades with
31 apprenticeship programs that will be employed on the project at the time of bid. All responding
32 bidders shall also provide proof in the bid package of the existence of an approved apprenticeship
33 program for all crafts or trades that will be employed on the project by all contractors and
34 subcontractors.

1 (c) The developer of a covered project shall take all necessary actions to ensure that each
2 contractor and subcontractor involved in the construction of the project completes a sworn
3 certification that the prime contractor, general contractor, or subcontractor:

4 (1) Has the necessary resources to perform the portion of the covered project to which the
5 contractor or subcontractor is assigned, including the necessary technical, financial and personnel
6 resources;

7 (2) Has all required contractor, specialty contractor or trade licenses, certifications or
8 certificates required of any business entity or individual by applicable state or local law;

9 (3) May participate in apprenticeship programs pursuant to 29 C.F.R. Part 29 and Part 30
10 for the occupations the contractor will employ for its awarded scope of work on the covered project;

11 (4) When the contractor or subcontractor has five (5) or more employees, ensure that no
12 less than fifteen percent (15%) of the labor hours worked on the project shall be performed by
13 registered apprentices for all crafts or trades with approved apprenticeship programs that will be
14 employed on the project;

15 (5) During the previous three (3) years:

16 (i) Has not been debarred by any government agency;

17 (ii) Has not defaulted on any project;

18 (iii) Has not had any license, certification or other credential relating to the business
19 revoked or suspended; and

20 (iv) Has not been found in violation of any law applicable to the contractor's or
21 subcontractor's business that resulted in the payment of a fine, back pay damages or any other type
22 of penalty in the amount of five thousand dollars (\$5,000) or more;

23 (6) Will pay personnel employed on the project not less than the applicable wage and fringe
24 benefit rates for the classification in which such personnel is employed for the project; and

25 (7) Has not misclassified and will not misclassify labor employees as independent
26 contractors.

27 **39-26.8-4. Labor peace agreement.**

28 The owner or developer of a covered project or a third party acting on behalf of the owner
29 or developer, as a condition of any agreement with a public entity, shall enter into a labor peace
30 agreement with a labor organization actively representing employees providing necessary
31 operations for the renewable energy system.

32 **39-26.8-5. Prevailing wage payment for construction operation and maintenance**
33 **employees.**

34 (a) Each contractor and subcontractor on a covered project shall:

1 (1) Pay each construction employee wages and benefits that are not less than the prevailing
2 wage and fringe benefit rates in compliance with chapter 13 of title 37 for the corresponding
3 classification in which the employee is employed, and

4 (2) Be subject to all reporting and compliance requirements of chapter 13 of title 37.

5 (b) Contractors and subcontractors that violate subsection (a)(1) of this section, shall be
6 subject to penalties and sanctions in accordance with chapter 13 of title 37.

7 (c) Each operations and maintenance employee employed in a building or facility that is
8 constructed as a covered project shall be paid wages and benefits that are not less than the prevailing
9 wage and fringe benefit rates in compliance with chapter 13 of title 37.

10 **39-26.8-6. Sworn certification of compliance.**

11 (a) The developer of a covered project shall submit to the department a sworn certification
12 of compliance with this chapter, not later than thirty (30) days prior to commencement of
13 construction of the project. Such sworn certification shall be considered a public document, and
14 shall be made available, without redaction, on the department's website, not later than seven (7)
15 days after being submitted to the department.

16 (b) If the sworn certification contains false, misleading, or materially inaccurate
17 information, the contractor or subcontractor that executed such sworn certification, shall, after
18 notice and opportunity to be heard, be subject to penalties and sanctions by the department.

19 **39-26.8-7. Payment of wages due.**

20 The department is hereby authorized and directed to pay to mechanics, laborers and
21 workers, from any accrued payments withheld under the terms of a terminated public works'
22 contract, any wages found to be due such mechanics, laborers and workers.

23 **39-26.8-8. Recordkeeping obligations.**

24 (a) Each employer that is subject to the provisions of this chapter shall:

25 (1) Keep, maintain and preserve records relating to the wages and hours worked by each
26 mechanic, laborer and worker and a schedule of the occupation or work classification at which each
27 mechanic, laborer or worker on the project is employed, during each work day and week. These
28 records shall be maintained in such manner and form as the director establishes to assure the proper
29 payments due to such persons or employee welfare funds under this chapter, regardless of any
30 contractual relationship alleged to exist between the contractor and such person; and

31 (2) Submit a monthly certified payroll record to the contracting agency or to the developer
32 of a covered project, which shall consist of a complete copy of the payroll records, accompanied
33 by a statement signed by the employer that indicates:

34 (i) Such records are accurate;

1 (ii) The rate of wages paid to each mechanic, laborer or worker and the amount of payment
2 or contributions paid or payable on behalf of each such person to any employee welfare fund, is
3 not less than the prevailing rate of wages and the amount of payment or contributions paid or
4 payable on behalf of each such person to any employee welfare fund and not less than those
5 required by the contract to be paid;

6 (iii) The employer has complied with the applicable provisions of this chapter;

7 (iv) Each such person is covered by a workers' compensation insurance policy for the
8 duration of such person's employment, which shall be demonstrated by submitting to the
9 contracting agency the name of the workers' compensation insurance carrier covering each such
10 person, the effective and expiration dates of each policy and each policy number;

11 (v) The employer has not received any kickbacks, as defined in 41 U.S.C. 52, from any
12 employee or employee welfare fund; and

13 (vi) Pursuant to the provisions of this chapter, the employer is aware that filing a certified
14 payroll which the employer knows to be false is a felony, for which the employer may be fined up
15 to five thousand dollars (\$5,000), imprisoned for up to five (5) years, or both.

16 (b) Notwithstanding any contrary provisions of the general laws, the certified payroll shall
17 be considered a public record and every person shall have the right to inspect and copy such records.

18 (c) Except as provided in subsection (b) of this section, any copy of records made available
19 for inspection as copies and furnished upon request to the public or any public agency by the
20 awarding body or the department of labor and training shall be redacted to prevent disclosure of an
21 individual's name, address, and social security number. The name and address of the contractor
22 awarded the contract or the subcontractor performing the contract shall not be redacted. Any copy
23 of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley Trust
24 Fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating
25 contributions to participants shall be redacted only to prevent disclosure of an individual's full
26 social security number, but shall provide the last four digits of the social security number. Any
27 copy of records made available for inspection by, or furnished to, a joint labor-management
28 committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29
29 U.S.C. Sec. 175a) shall be redacted only to prevent disclosure of an individual's social security
30 number.

31 (d) Notwithstanding any other provision of law, agencies and law enforcement agencies
32 investigating violations of law shall, upon request, be provided unredacted copies of certified
33 payroll records. Any copies of records or certified payroll made available for inspection and
34 furnished upon request to the public by an agency or law enforcement agency investigating a

1 violation of law shall be marked or redacted to prevent disclosure of an individual's name, address,
2 and social security number.

3 **39-26.8-9. Power and enforcement of the department of labor and training.**

4 (a) The director of the department of labor and training and his or her designated
5 representatives shall have the right to enter any place of business of employment to inspect
6 employment records and to ensure that the provisions of this chapter are complied with as well as
7 the power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of
8 witnesses and production of documents, and to take depositions and affidavits.

9 (b) The department of labor and training shall promulgate regulations to implement this
10 chapter.

11 **39-26.8-10. Severability.**

12 If any provision of this chapter or the application thereof to any person or circumstances is
13 held invalid, such invalidity shall not affect other provisions or applications of the chapter, which
14 can be given effect without the invalid provision or application, and to this end the provisions of
15 this chapter are declared to be severable.

16 SECTION 2. 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 UTILITIES AND CARRIERS -- LABOR STANDARDS IN
RENEWABLE ENERGY PROJECTS

1 This act would add a new chapter known as the Labor Standards in Renewable Energy
2 Projects. It would provide definitions, responsibilities of the developer and the state, prevailing
3 wage payment, sworn certification of compliance, payment of wages due, and record keeping with
4 the power of enforcement vested in the department of labor and training.

5 This act would take effect upon passage.

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