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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: Representative Joseph J. Solomon

Date Introduced: April 01, 2022

Referred To: House Corporations

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. Legislative findings and purpose.**

6 The general assembly hereby finds and declares:

7 (1) Large scale renewable energy projects are inherently complex undertakings that utilize
8 skilled craft personnel in various specialized construction trades. Errors in construction planning
9 on such projects can result in serious safety consequences, cost overruns, inferior quality, and
10 schedule delays that can disrupt the timely delivery of our state's renewable energy objectives. Such
11 effects are especially problematic, where they are caused by flaws in proper training and staffing,
12 insofar as renewable construction crafts are both a highly skilled and labor-intensive industry.
13 While these challenges exist under virtually any market conditions, the construction industry is
14 currently facing acute, widespread labor shortages that pose unprecedented risks to future project
15 delivery. Unless effective policy responses are developed to address this skills crisis, it is estimated
16 there will be a national shortage of one million five hundred thousand (1,500,000) construction
17 workers by 2022.

18 (2) Construction labor shortages, which have been extensively documented in both national

1 and local research reports, are already causing serious disruptions to project delivery in the form of
2 negative effects on project cost, schedule, safety, and quality. Consider the following research
3 studies: Virtual Builders Exchange, Associated General Contractors of America, Adolfo Pesquera,
4 Labor Shortages Spur Increased Pay/Benefits, Yet Construction Firms Bullish on 2019, Virtual
5 Builders Exchange (January Feb. 4, 2019); Associated Builders and Contractors, Inc., ABC
6 Highlights Construction Worker Shortage During National Apprenticeship Week, (November 15,
7 2017); The Aspen Institute: Workforce Strategies Initiative, Maureen Conway and Allison Gerber,
8 Aspen Inst., Workforce Strategies Initiative, Construction Pre-Apprenticeship Programs: Results
9 from a National Survey 6-7 (2009).

10 (3) The transition to a green economy will require a specially trained workforce. In order
11 to attract workers to meet the renewable energy goals and objectives of the general assembly, these
12 workers have to be well compensated. The compensation should take into consideration the
13 dangerousness of the work needed to be completed as well as current marketplace opportunities in
14 other less traditional careers.

15 (4) As a result of these findings, as well as the state's renewable energy goals and
16 objectives, the general assembly declares that the mandate of prevailing wage include every
17 covered renewable energy project under this chapter. It further declares that when the state or any
18 quasi-public corporation or agency is a market participant that the covered project shall be
19 constructed under a project labor agreement and shall also require apprenticeship utilization as
20 defined in this chapter.

21 **39-26.8-2. Definitions.**

22 For purposes of this chapter:

23 (1) "Apprenticeable" means any nationally recognized occupation that has a pre-existing
24 registered apprenticeship program approved pursuant to 29 C.F.R. Part 29 and Part 30.

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

32 (3) "Covered project" means a renewable energy project utilizing renewable energy
33 resources that is:

34 (i) Situated on land within the boundaries of this state;

- 1 (ii) Situated on or in the water within the boundaries of this state;
2 (iii) Commences construction on or after July 30, 2022;
3 (iv) Has a total nameplate capacity of two megawatts (2 MW) or more; and
4 (v) Is constructed and/or operated pursuant to chapters 26.1, 26.4, or 26.6 of title 39.

5 (4) "Department" means the department of labor and training.

6 (5) "Director" means the director of the department of labor and training.

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

11 (7) "Market participant" means when a covered project is completed under this chapter by
12 an entity receiving any permissive financial incentive, tax relief, or subsidy through participation
13 in programs of the state or any of its subdivisions or quasi-public corporations or agencies entities,
14 the state is a market participant.

15 (8) "Project labor agreement" means a single site collective bargaining agreement between
16 construction trade unions and site contractors allowed under 29 U.S.C. § 158(f) of the National
17 Labor Relations Act that governs the terms and conditions of employment for all craft labor on a
18 designated project.

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

21 (10) "Renewable energy resources" means renewable power generation sources, as defined
22 in chapter 26 of title 39.

23 **39-26.8-3. Responsibilities of developers.**

24 (a) Any covered project in which the state or any of its subdivisions, or quasi-public
25 corporations or agencies are a market participant shall require the developer and/or its contractors
26 to enter into a project labor agreement with the unions whose members will be constructing the
27 project.

28 (b) Any covered project in which the state or any of its subdivisions, or quasi-public
29 corporations or agencies are a market participant shall ensure that all specifications in any
30 invitations to bid on any covered project valued at five million dollars (\$5,000,000) or more shall
31 include a requirement that all bidders responding to an invitation to bid shall have an approved
32 apprenticeship program for all apprenticeable crafts or trades that will be employed on the project
33 at the time of bid. All bidders responding to such invitation to bid shall also provide proof in the
34 bid package of the existence of an approved apprenticeship program for all crafts or trades that will

1 be employed on the project by all contractors and subcontractors needed for the project.

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

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

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

10 (3) Participates in a non-provisionally registered apprenticeship program pursuant to 29
11 C.F.R. Part 29 and Part 30 for the occupations the contractor will employ for its awarded scope of
12 work on the covered project;

13 (4) Ensure that no less than fifteen percent (15%), of the labor hours worked on the project
14 shall be performed by registered apprentices for all apprenticeable crafts or trades that will be
15 employed on the project, which provisions shall only apply to contractors and subcontractors with
16 five (5) or more employees;

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

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

19 (ii) Has not defaulted on any project;

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

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

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

28 (7) Has not misclassified and will not misclassify labor employees as independent
29 contractors.

30 (d) The developer of a covered project shall submit to the director the sworn certification
31 of compliance specified in subsection (c) of this section not later than thirty (30) days prior to
32 commencement of construction of the project. Such sworn certification shall be considered a public
33 document that shall be made available without redaction on the department's Internet website not
34 later than seven (7) days after being submitted to the director.

1 **39-26.8-4. Responsibilities of contractors and subcontractors.**

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

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

6 (2) Be subject to all reporting and compliance requirements of chapter 13 of title 37.
7 Contractors and subcontractors that violate this section shall be subject to penalties and sanctions
8 in accordance with chapter 13 of title 37.

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

12 **39-26.8-5. Enforcement.**

13 (a) If the sworn certification required by § 39-26.8-3 contains false, misleading, or
14 materially inaccurate information, the contractor or subcontractor that executed such sworn
15 certification, shall, after notice and opportunity to be heard, be entitled to a hearing pursuant to the
16 provisions of chapter 35 of title 42. After the hearing, the director may revoke his, her or its business
17 license and refer the matter to the attorney general for prosecution pursuant to § 39-26.8-9 or
18 impose a civil fine of not less than four hundred dollars (\$400) nor more than one thousand dollars
19 (\$1,000) for each false, misleading or materially inaccurate information contained in the sworn
20 certification.

21 (b) The failure of the developer of a covered project, to take reasonable steps to ensure that
22 the sworn certification submitted to the director, pursuant to § 39-26.8-3, is accurate and truthful,
23 shall constitute a violation of this section and shall be subject to penalties and sanctions for conduct
24 constituting noncompliance. The department shall promulgate rules and regulations, establishing
25 the penalties and sanctions, applicable for a violation of § 39-26.8-3.

26 **39-26.8-6. Notice of public works' contracts violations.**

27 (a) Pursuant to chapter 16.1 of title 42, the department is hereby authorized and directed to
28 pay to mechanics, laborers and workers, from any accrued payments withheld under the terms of a
29 terminated public works' contract, any wages found to be due such mechanics, laborers and
30 workers.

31 (b) The department is further authorized and directed to distribute a list to all departments
32 of the state and political subdivisions of the state, giving the names of persons or firms, whom the
33 director has found to have:

34 (1) Disregarded their obligations under this chapter to employees and subcontractors on

1 public works' projects;

2 (2) Been barred from federal government contracts in accordance with the provisions of
3 the Davis-Bacon Act, ch. 411, 46 Stat. 1494 (1931), 40 U.S.C. § 276a-2; or

4 (3) Submitted false, misleading or materially inaccurate information, under this chapter.

5 **39-26.8-7. Recordkeeping obligation.**

6 Each employer, subject to the provisions of this chapter, shall:

7 (1) Keep, maintain and preserve such records relating to the wages and hours worked by
8 each person performing the work of any mechanic, laborer, or worker and a schedule of the
9 occupation or work classification at which each person performing the work of any mechanic,
10 laborer, or worker on the project is employed, during each work day and week in such manner and
11 form as the director establishes to ensure the proper payments due to such persons or employee
12 welfare funds under this chapter, regardless of any contractual relationship alleged to exist between
13 the contractor and such person; provided, however, such employer shall have the option of keeping,
14 maintaining and preserving such records in an electronic format; and

15 (2) Submit monthly to the contracting agency or to the developer of a covered project by
16 mail, electronic mail or other method accepted by such agency, or such developer, a certified
17 payroll, that shall consist of a complete copy of such records, accompanied by a statement signed
18 by the employer that indicates:

19 (i) Such records are correct;

20 (ii) The rate of wages paid to each person, performing the work of any mechanic, laborer,
21 or worker and the amount of payment or contributions paid or payable on behalf of each such
22 person to any employee welfare fund, is not less than the prevailing rate of wages and the amount
23 of payment or contributions paid or payable on behalf of each such person to any employee welfare
24 fund, as determined by the director, pursuant to this chapter, and not less than those required by the
25 contract to be paid;

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

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

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

33 (vi) Pursuant to the provisions of this chapter, the employer has been notified that
34 knowingly filing a certified payroll which the employer knows to be false is a felony, for which the

1 employer may be fined up to five thousand dollars (\$5,000), imprisoned for up to five (5) years, or
2 both pursuant to § 39-26.8-9. Notwithstanding any contrary provisions of the general laws, the
3 certified payroll shall be considered a public record and every person shall have the right to inspect
4 and copy such records.

5 **39-26.8-8. Power and enforcement of the department of labor and training.**

6 (a) The director, the director's designated representatives shall:

7 (1) Have the right to enter any place of business of employment to inspect employment
8 records and to ensure compliance with the provisions of this chapter; and

9 (2) The power to administer oaths and examine witnesses under oath, issue subpoenas,
10 subpoenas duces tecum, compel the attendance of witnesses, and production of documents, and to
11 take depositions and affidavits.

12 (b) The department shall promulgate rules and regulations to ensure the implementation of
13 and compliance with the provisions of this chapter by the entities and parties to which it applies.

14 **39-26.8-9. Penalty for knowing false certification.**

15 Every person knowingly providing a false certification of information required pursuant to
16 §§ 39-26.8-3 or 39-26.8-7 shall be punished by imprisonment not to exceed five (5) years or a fine
17 not to exceed five thousand dollars (\$5,000), or both.

18 **39-26.8-10. Severability.**

19 If any provision of this chapter, or its application to any person or circumstance, is held
20 invalid, the remainder of the chapter and the application of the provision to other persons or
21 circumstances shall not be affected by the invalidity.

22 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 establish the labor standards applicable to renewable energy projects
2 undertaken within the State of Rhode Island, including, but not limited to, payment of the prevailing
3 wage by applicants and the requirement that projects be constructed under project labor agreements
4 utilizing apprenticeships. The act would also set forth the conditions and procedures for applicants
5 related to labor agreements with enforcement by the department of labor and training (DLT).

6 This act would take effect upon passage.

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