

2019 -- S 0713 SUBSTITUTE A

LC001781/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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. Legislative findings, intent, and purposes.

2 It is hereby found and declared as follows:

3 (1) It is the intent of the general assembly in enacting this act to protect the state's
4 proprietary and financial interests in major school construction projects by requiring participating
5 contractors and subcontractors working on such projects to maintain effective apprenticeship
6 training programs as a means for ensuring they will deploy properly trained craft labor required
7 for these projects.

8 (2) New school construction is a critical and pressing need for Rhode Island. A 2017
9 report commissioned by the School Building Authority, State of Rhode Island Schoolhouses,
10 identified more than 2.2 billion dollars (\$2,200,000,000) in deficiencies in the state's three
11 hundred six (306) public schools. Subsequently, state and local authorities won voter approval in
12 2018 authorizing the issuance of 250 million dollars (\$250,000,000) in general obligation bonds
13 over five (5) years to fund school construction projects. It is essential that these vital resources be
14 administered carefully to ensure the delivery of safe, timely, high-quality construction projects.
15 To this end, public contracts awarded for this work must fully comply with the intent and purpose
16 of existing state law provisions requiring the use of qualified, responsible bidders pursuant to §
17 45-55-5.

18 (3) School construction projects valued at five million dollars (\$5,000,000) or more are

1 inherently complex undertakings that utilize multiple site contractors and subcontractors and
2 dozens or even hundreds of skilled craft personnel in various specialized trades. Errors in
3 construction planning on such projects can result in cost overruns, inferior quality, increased
4 safety risks, and schedule delays that can disrupt the timely delivery of educational services. Such
5 effects are especially problematic where they are caused by flaws in project staffing insofar as
6 construction is both a highly skilled and labor-intensive industry. While these challenges exist
7 under virtually any market conditions, the construction industry is currently facing acute,
8 widespread labor shortages that pose unprecedented risks to future project delivery. Unless
9 effective policy responses are developed to address this skills crisis, it is estimated there will be a
10 national shortage of one million five hundred thousand (1,500,000) construction workers by
11 2022. Consider the following research studies: The Associated General Contractors of America,
12 Eighty Percent of Contractors Report Difficulty Finding Qualified Craft Workers to Hire As
13 Association Calls for Measures to Rebuild Workforce (August 29, 2018); Construction Labor
14 Market Analyzer, Construction Users RoundTable, The Long-Term Outlook for Construction 6
15 (2017); Petrochemical Update, Heather Doyle, Craft Labor Shortage Seriously Affecting Mega
16 Projects: Poll, (June 29, 2017). Given these circumstances, Rhode Island, like virtually all other
17 states, has been struggling for several years with this skills gap and has been working to address
18 the growing risks posed by this challenge. Building Futures, Gerard M. Waites, Ahead of the
19 Curve: Increasing Apprentice Utilization in Rhode Island's Construction Industry, (March 2013);
20 Building Futures, Beth Ashman-Collins, Phase 1 - Skills Gap Analysis, RI Construction Trades,
21 (April 25, 2008).

22 (4) These construction labor shortages, which have been extensively documented in both
23 national and local research reports, are already causing serious disruptions to project delivery in
24 the form of negative effects on project cost, schedule, safety, and quality. Consider the following
25 research studies: Virtual Builders Exchange, Adolfo Pesquera, Labor Shortages Spur Increased
26 Pay/Benefits, Yet Construction Firms Bullish on 2019, (January 4, 2019); Associated Builders
27 and Contractors, Inc., ABC Highlights Construction Worker Shortage During National
28 Apprenticeship Week, (November 15, 2017); The Aspen Institute: Workforce Strategies
29 Initiative, Maureen Conway and Allison Gerber, Construction Pre-Apprenticeship Programs:
30 Results from a National Survey 6-7 (2009).

31 (5) Substantial research also shows that apprenticeship training programs are one of the
32 most viable solutions for addressing these challenges because it has long been recognized as a
33 matter of public policy and industry practice that using apprenticeship training programs
34 effectively and reliably develops a skilled workforce to meet our nation's construction industry

1 needs, including critical infrastructure programs, such as educational facilities. To this end, the
2 U.S. Congress passed the National Apprenticeship Act, Pub. L. No. 75-308, 50 Stat. 664, in 1937
3 to promote the use of structured education and training in the skilled crafts and trades through
4 formal apprenticeship training programs.

5 (6) The value, benefits, and utility of using apprenticeship training programs in the
6 construction industry have been verified by numerous public and private research projects over
7 the past several years. Consider the following research studies: Case Western Reserve University
8 and U.S. Department of Commerce, The Benefits and Costs of Apprenticeship: A Business
9 Perspective; The Council of Economic Advisors, Addressing America's Reskilling Challenge 7-8
10 (2018); The Workforce Training & Education Coordinating Board, a Washington state agency,
11 Workforce Training Results (2015); U.S. Departments of Labor, Commerce, Education, and
12 Health and Human Services, What Works in Job Training: A Synthesis of the Evidence 8 (2014);
13 The Aspen Institute: Workforce Strategies Initiative, Matt Helmer and Dave Altstadt,
14 Apprenticeship: Completion and Cancellation in the Building Trades 8-9 (2013); Mathematica
15 Policy Research, Debbie Reed et. al, An Effectiveness Assessment and Cost-Benefit Analysis of
16 Registered Apprenticeship in 10 States (2012); and Urban Institute, Robert Lerman et al., The
17 Benefits and Challenges of Registered Apprenticeship: Sponsors' Perspective ii (2009).

18 (7) Given these factors, apprenticeship programs that are operated in accordance with
19 federally established qualification standards under 29 C.F.R. § 29 have been relied upon for more
20 than eighty (80) years as the most effective and reliable method for conducting skills training in
21 construction, and such programs are broadly relied upon for addressing the industry's current
22 skills crisis. Recognizing these benefits, numerous states have enacted legislation requiring
23 contractors to participate in formal apprenticeship programs as a condition for performing public
24 works projects. Rhode Island adopted such a policy for general public works projects in 2014 by
25 enacting § 37-13-3.1. Private sector construction organizations, such as the Construction Users
26 Roundtable, support similar strategies and have recommended that those responsible for large
27 capital projects require site contractors to participate in credible skills training programs as a
28 condition of performing work on their projects. Consider the following research study:
29 Construction Users Roundtable, Skilled Labor Shortage Risk Mitigation (January 2015).

30 (8) Requiring contractors and subcontractors on major school construction projects to
31 participate in apprenticeship training programs will help ensure that craft labor personnel on such
32 projects are properly trained by verifying that they are either apprentices currently enrolled in
33 bona fide programs or graduates of such programs. These efforts will also promote needed
34 workforce development efforts in construction that are critical for ensuring future projects are

1 [properly staffed with qualified construction craft personnel.](#)

2 SECTION 2. Sections 37-13-3.1 and 37-13-14.1 of the General Laws in Chapter 37-13
3 entitled "Labor and Payment of Debts by Contractors" are hereby amended to read as follows:

4 **37-13-3.1. State public works contract apprenticeship requirements.**

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

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

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

33 (b) In addition to directing payment of wages or supplements including interest found to
34 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to

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

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

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

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

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

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

5 (h) In addition to the above, any person, firm, or corporation found to have willfully
6 made a false or fraudulent representation on certified payroll records or in reporting their
7 apprenticeship information to any governmental agency shall be referred to the office of the
8 attorney general. A first violation of this section shall be considered a misdemeanor and shall be
9 punishable for a period of not more than one year in prison and/or fined one thousand dollars
10 (\$1,000). A second or subsequent violation of this section shall be considered a felony and shall
11 be punishable for a period of not more than three (3) years imprisonment, a fine of three thousand
12 dollars (\$3,000), or both. Further, any person, firm, or corporation found to have willfully made a
13 false or fraudulent representation on certified payroll records or in reporting their apprenticeship
14 information to any governmental agency shall be required to pay a civil penalty to the department
15 of labor and training in an amount of no less than two thousand dollars (\$2,000) and not greater
16 than fifteen thousand dollars (\$15,000) per representation.

17 SECTION 3. Chapter 37-13 of the General Laws entitled "Labor and Payment of Debts
18 by Contractors" is hereby amended by adding thereto the following sections:

19 **37-13-3.2. Definitions.**

20 For purposes of this section:

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

28 (2) "School construction contract" shall mean any construction contract for a school
29 building or any school-related facility that is funded with public money.

30 (3) "User agency" shall mean the state, municipality, quasi-governmental agency, or
31 other entity that is responsible for management of a school construction contract.

32 **37-13-3.3. School construction contract apprenticeship requirements.**

33 (a) Notwithstanding any laws to the contrary, all specifications in any invitations to bid
34 on any school construction contract valued at five million dollars (\$5,000,000) or more shall

1 include a requirement that all bidders responding to an invitation to bid on a school construction
2 contract shall have an approved apprenticeship program for all suitable crafts or trades as
3 determined by the state department of labor and training that will be employed on the project at
4 the time of bid. All bidders responding to such invitation to bid shall also provide proof in the bid
5 package of the existence of an approved apprenticeship program for all suitable crafts or trades as
6 determined by the state department of labor and training that will be employed on the project by
7 all contractors and subcontractors needed for the project. All general contractors and
8 subcontractors who perform work on any school construction contract valued at five million
9 dollars (\$5,000,000) or more that is awarded after passage of this section shall ensure that no less
10 than ten percent (10%) of the labor hours worked on the project shall be performed by apprentices
11 for all suitable crafts or trades as determined by the state department of labor and training that
12 will be employed on the project. The provisions of this section shall only apply to contractors and
13 subcontractors with five (5) or more employees.

14 (b) All bids for such school construction contracts valued at five million dollars
15 (\$5,000,000) or more shall fully comply with the intent and purpose of existing state law
16 provisions requiring the use of qualified, responsible bidders pursuant to § 45-55-5, including the
17 criteria that invitation for such bids shall reference this section when enumerating the objective
18 measurable criteria that will be used to make awards, as required by § 45-55-5(b).

19 (c) For the purposes of this section, the ten percent (10%) apprenticeship requirement
20 shall be applied per month.

21 (d) Upon petition by a contractor in writing, a user agency may lower the ten percent
22 (10%) apprenticeship requirement of this section for a specific project for one or more crafts or
23 trades for the following reasons:

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

25 (2) Participating contractors have demonstrated a good faith effort to comply with the
26 requirements of this section but have not been able to attain the ten percent (10%) requirement.

27 (e) Any determination by a user agency to lower the apprenticeship requirements
28 according to this section shall be provided in writing, to the contractor and to the state department
29 of labor and training.

30 (f) The state department of labor and training shall provide information and technical
31 assistance to any affected user agencies and contractors awarded any school construction
32 contracts relative to their obligations under this section.

33 (g) Any contractor or subcontractor awarded a school construction contract shall collect
34 and submit the following data for each project covered by this section to the user agency on

1 certified payroll forms, as required by § 37-13-13:

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

3 (2) The name of each apprentice, categorized by trade or craft; each apprentice's
4 registration number; the name and address of each apprentice's approved apprenticeship program;
5 and the number of hours each apprentice has worked on the project for each month being
6 reported;

7 (3) The name of each journey level worker, categorized by trade or craft, and the number
8 of hours each has worked on the project for each month being reported; and

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

10 (h) Upon receiving the data from any contractor or subcontractor awarded a school
11 construction contract, the user agency shall provide the department of administration and the
12 department of labor and training with said data. The department of administration shall develop
13 procedures for using and comparing said data and shall annually publish a report with aggregate
14 data related to apprenticeships.

15 (i) The user agency shall withhold the next scheduled payment to any contractor or
16 subcontractor who does not submit the information required by the provisions of this section and
17 shall also notify the director of labor and training of the contractor's noncompliance. The user
18 agency shall withhold final payment until all of the information required by the provisions of this
19 section has been provided.

20 (j) The department of labor and training may also impose a penalty of up to five hundred
21 dollars (\$500) for each calendar day that any contractor or subcontractor does not comply with
22 the requirement to submit data pursuant to the provisions of this section, as determined by the
23 director of labor and training. Such penalty shall be paid by the contractor or subcontractor to the
24 department of labor and training. Mere errors or omissions shall not be grounds for imposing a
25 penalty under this subsection. The severity of any penalties shall be based on the facts and
26 circumstances involved in the violation, including whether there are repeat or multiple violations
27 and/or willful conduct.

28 (k) Any penalties assessed pursuant to the provisions of this section shall be paid to the
29 department of labor and training's dedicated "prevailing wages enforcement fund."

30 (l) Failure of the contractors and subcontractors required to utilize apprentices or be
31 exempted shall be considered a material breach of their school construction contract, and they
32 shall be subject to any and all penalties that a material breach is responsible for in their contract
33 with the user agency.

34 (m) Any contractor or subcontractor aggrieved by any action taken by the director of the

1 state department of labor and training or his or her designated hearing officer, pursuant to the
2 provisions of chapter 13 of title 37, may obtain a review thereof for the purpose of obtaining
3 relief from the action or lack of action, pursuant to § 37-13-15.

4 (n) To the extent that any of the provisions contained in § 37-13-3.3 conflict with the
5 requirements for federal aid contracts, federal law and regulations shall control.

6 SECTION 4. This act shall take effect on July 1, 2019, and shall be effective for all
7 contracts entered into on and after July 1, 2019.

=====
LC001781/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

1 This act would require that bidders on any school construction contract valued at five
2 million dollars (\$5,000,000) or more must have an apprenticeship program that complies with the
3 provisions of this act. Further, this act would provide that any entity with an apprenticeship
4 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
6 entered into on and after July 1, 2019.

=====
LC001781/SUB A
=====