



General Assembly

January Session, 2001

Raised Bill No. 1417

LCO No. 4792

Referred to Committee on Government Administration and
Elections

Introduced by:
(GAE)

***AN ACT CONCERNING RESPONSIBLE CONTRACTORS FOR STATE
AND MUNICIPAL PUBLIC WORKS PROJECTS.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (a) Each contract for the construction, alteration or
2 repair of any public works project by the state or any of its agents, or
3 by any political subdivision of the state or any of its agents, for which
4 the total cost of all work to be performed by all contractors and
5 subcontractors in connection with new construction is four hundred
6 thousand dollars or more or for which the total cost of all work to be
7 performed by all contractors and subcontractors in connection with
8 any alteration or repair is one hundred thousand dollars or more shall
9 contain the following provisions concerning treatment of employees:

10 (1) The contractor and all lower tiered subcontractors performing
11 work under the contract shall properly classify workers as employees
12 rather than as independent contractors and treat them accordingly for
13 purposes of workers' compensation, insurance coverage,
14 unemployment taxes, Social Security and income tax withholding.

15 (2) For the purposes of subdivision (1), any person who meets nine
16 or more of the following criteria shall be deemed to be an employee of
17 the contractor or subcontractor:

18 (A) The person is required to comply with the contractor's or
19 subcontractor's instructions about when, where and how work is done;

20 (B) The person has been trained by the contractor or subcontractor;

21 (C) The person is integrated into the contractor's or subcontractor's
22 general business operations;

23 (D) The person is required to render services personally;

24 (E) The person uses assistants provided by the contractor or
25 subcontractor;

26 (F) The person has a continuing relationship with the contractor or
27 subcontractor;

28 (G) The person is required to work a set number of hours;

29 (H) The person is required to devote substantially full-time work to
30 the contractor or subcontractor;

31 (I) The person works at the contractor's or subcontractor's premises
32 or job site;

33 (J) The person is required to perform work in a preset sequence;

34 (K) The person is required to submit regular progress reports;

35 (L) The person is paid by the hour, week or month, and payroll
36 deductions include federal and state income taxes, and FICA
37 insurance;

38 (M) The person is reimbursed for all business and travel expenses;

39 (N) The person uses the contractor's or subcontractor's tools and

40 materials;

41 (O) The person has no significant investment in the facilities that are
42 used;

43 (P) The person has no risk of loss;

44 (Q) The person works for only one business;

45 (R) The person does not offer services to the public;

46 (S) The person can be discharged by the contractor or subcontractor;

47 (T) The person can terminate the relationship without incurring
48 liability.

49 (3) The contractor and all lower tiered subcontractors performing
50 work under the contract and utilizing the services of mechanics,
51 laborers or workers who are not classified as employees under these
52 provisions shall provide written notice to said mechanics, laborers and
53 workers of their status as independent contractors. Said notice shall
54 include a provision advising the mechanics, laborers and workers that
55 they are not eligible for workers' compensation, health insurance or
56 unemployment compensation from the contractor or subcontractor.

57 (b) Each contractor under subsection (a) of this section shall
58 incorporate the requirements of said subsection (a) in each subcontract
59 and require that each subcontractor incorporate the requirements of
60 said subsection (a) in all subsequent subcontracts so that all lower
61 tiered subcontractors performing work under the contract shall be
62 bound by the provisions of said subsection (a).

63 (c) If the state or a political subdivision of the state determines that a
64 contractor or any lower tiered subcontractor has failed to comply with
65 this section, the state or political subdivision may require corrective
66 action to be taken by the contractor or may terminate the contract, in
67 addition to any other remedy available to the state or political

68 subdivision.

69 Sec. 2. (NEW) (a) (1) Any contractor or subcontractor, or any officer,
70 agent, superintendent, foreman or employee of a contractor or
71 subcontractor, who wilfully violates any provision of section 1 of this
72 act, shall, for a first offense, be fined not more than twenty-five
73 thousand dollars or imprisoned not more than one year or both, and
74 for a subsequent wilful offense, be fined not more than fifty thousand
75 dollars or imprisoned not more than two years or both.

76 (2) Any contractor or subcontractor, or any officer, agent,
77 superintendent, foreman or employee of a contractor or subcontractor
78 who, without a wilful intent to do so, violates any provision of section
79 1 of this act shall, for a first offense, be fined not more than ten
80 thousand dollars or imprisoned not more than six months or both and,
81 for a subsequent offense, be fined not more than twenty-five thousand
82 dollars or imprisoned not more than one year or both.

83 (3) Any contractor or subcontractor convicted of wilfully violating
84 any provision of section 1 of this act shall, in addition to any criminal
85 penalty imposed, be prohibited from contracting, directly or indirectly,
86 with the state or any political subdivision of the state for the
87 construction, alteration or repair of any public works project, or from
88 performing any work on the same as a contractor or subcontractor, for
89 a period of five years from the date of such conviction. Any contractor
90 or subcontractor convicted of violating any provision of section 1 of
91 this act, without wilful intent, shall, in addition to any criminal penalty
92 imposed, be prohibited from contracting, directly or indirectly, with
93 the state or any political subdivision of the state for the construction,
94 alteration or repair of any public works project or from performing any
95 work on the same as a contractor or subcontractor, for a period of not
96 more than six months from the date of such conviction for a first
97 offense and not more than three years from the date of conviction for
98 any subsequent offense. After final conviction and disposition of a
99 violation pursuant to subdivision (1) or (2) of this subsection, in any

100 court, the clerk of said court shall send a notice of said conviction to
101 the Attorney General, who shall send written notice to all state
102 agencies which contract for public works projects and to the
103 appropriate agencies of political subdivisions of the state, stating that
104 the contractor or subcontractor is prohibited from contracting, directly
105 or indirectly, with the state or any political subdivision of the state for
106 the period of time required under this subdivision. The Attorney
107 General may take such action as may be necessary to enforce the
108 provisions of this subdivision, and the superior court shall have
109 jurisdiction to enjoin or invalidate any contract award made in
110 violation of this subdivision.

111 (b) (1) As an alternative to initiating criminal proceedings pursuant
112 to subsection (a) of this section, the Attorney General may issue a
113 written warning or, after notice and opportunity for hearing, issue a
114 civil citation. For each violation, a separate citation may be issued
115 requiring any or all of the following: That the violation be rectified,
116 that restitution be made to the aggrieved party or that a civil penalty of
117 not more than twenty-five thousand dollars for each violation be paid
118 to the state, not later than twenty-one days after the date of issuance of
119 said citation. For the purposes of this subdivision, each failure to pay
120 an employee the appropriate rate of pay for any pay period may be
121 deemed a separate violation and the pay period shall be a minimum of
122 forty hours unless such employee has worked fewer than forty hours
123 during that week.

124 (2) In the case of a civil citation under subdivision (1) of this
125 subsection, the Attorney General may also order that a bond in an
126 amount necessary to rectify the violation and to ensure compliance
127 with this act, and with other provisions of law, be filed with the
128 contracting authority, conditioned upon payment of said rate of
129 wages, including payments to health and welfare funds and pension
130 funds, or the equivalent payment in wages, on said public works
131 project to any person performing work within classifications as
132 determined by the contracting authority. Upon any failure to comply

133 with the requirements set forth in said citation, the Attorney General
134 may order the cessation of all or the relevant portion of the work on
135 the project site. In addition, any contractor or subcontractor failing to
136 comply with the requirements set forth in said citation or order shall
137 be prohibited from contracting, directly or indirectly, with the state or
138 any political subdivision of the state for the construction, alteration or
139 repair of any public works project, or from performing any work on
140 the same as a contractor or subcontractor, for a period of one year from
141 the date of issuance of said citation or order. Any contractor or
142 subcontractor who receives three citations or orders occurring on three
143 different occasions, each of which includes a finding of intent, within a
144 three-year period shall automatically be debarred for a period of two
145 years from the date of issuance of the third such citation or order. Any
146 debarment under this subdivision shall also apply to all affiliates of the
147 contractor or subcontractor, as well as any successor company or
148 corporation that the Attorney General, upon investigation, determines
149 to not have a true independent existence apart from that of the
150 violating contractor or subcontractor.

151 (3) Any person aggrieved by any citation or order issued pursuant
152 to this subsection may appeal said citation or order in accordance with
153 the provisions of chapter 54 of the general statutes.

154 (4) If any person fails to comply with the requirements set forth in
155 any order or citation issued by the Attorney General under this
156 subsection or fails to pay any civil penalty or restitution imposed
157 under such an order or citation within twenty-one days after the date
158 of issuance of such citation or order, excluding any time during which
159 an administrative or judicial appeal of the order or citation remains
160 pending, the Attorney General may refer the matter to the Chief State's
161 Attorney.

162 (5) In addition to the provisions of subdivision (4) of this subsection,
163 if any civil penalty imposed by a citation or order issued by the
164 Attorney General remains unpaid beyond the time period specified for

165 payment in said subdivision (4), such penalty amount, together with
166 interest on the penalty at the rate of eighteen per cent per annum, shall
167 be a lien upon the real estate and personal property of the person who
168 has failed to pay said penalty. Said lien shall take effect by operation of
169 law on the day immediately following the due date for payment of
170 said fine, and, unless dissolved by payment, shall as of said date be
171 considered a tax due and owing to the state. In addition, no officer of
172 any corporation which fails to pay any such penalty may incorporate
173 or serve as an officer in any corporation which did not have a legal
174 existence as of the date said fine became due and owing to the state.

175 (c) Civil and criminal penalties pursuant to this section shall apply
176 to employers solely with respect to their wage and benefit obligations
177 to their own employees.

Statement of Purpose:

To ensure that state and municipal public works contractors and subcontractors properly classify workers as employees rather than as independent contractors and treat them accordingly for purposes of workers' compensation, insurance coverage, unemployment taxes, Social Security and income tax withholding.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]