

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 919

H.P. 676

House of Representatives, February 20, 2003

### **An Act To Require Public Improvement Projects Contractors and Subcontractors To Meet Certain Criteria**

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative DUPLESSIE of Westbrook.  
Cosponsored by Senator HATCH of Somerset and  
Representatives: GERZOFSKY of Brunswick, HATCH of Skowhegan, HUTTON of  
Bowdoinham, PATRICK of Rumford, PINEAU of Jay, USHER of Westbrook, Senator:  
EDMONDS of Cumberland.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 5 MRSA §1743-D** is enacted to read:

6 **§1743-D. Contractor and subcontractor responsibility**

8 **1. Requirements for contractors and subcontractors.** A  
10 contractor or subcontractor performing work on a public  
12 improvement project subject to this chapter must meet the  
14 following criteria and the applicable requirements of subsections  
16 2 to 5.

18 **A.** The contractor or subcontractor must comply with state  
20 and federal prevailing wage laws by paying the appropriate  
22 prevailing wage and submitting certified payroll records in  
24 a timely manner to the public official in charge of the  
26 public improvement project.

28 **B.** The contractor or subcontractor must maintain or  
30 participate in a bona fide apprentice training program for  
32 each apprenticeable trade or occupation that is represented  
34 in the contractor's or subcontractor's workforce and  
36 approved by the Standing Committee on Apprenticeship of the  
38 Maine Jobs Council under Title 26, section 2006 or other  
40 state-recognized program.

42 **C.** The contractor or subcontractor must maintain  
44 comprehensive health and hospitalization benefits for  
46 employees and their families, at that contractor or  
48 subcontractor's expense.

**D.** The contractor or subcontractor must maintain  
appropriate workers' compensation coverage for all employees.

**E.** The contractor or subcontractor must properly classify  
employees as employees rather than as independent  
contractors and must treat them as employees for purposes of  
workers' compensation coverage, unemployment compensation  
and Social Security taxes and income tax withholding.

**F.** The contractor or subcontractor must comply with any  
local ordinance or requirement regarding employment.

44 **2. Contractor's certification of intent to comply; proof of**  
46 **insurance.** When a contractor submits a bid to perform work on a  
48 public improvement project subject to this chapter, the  
contractor shall certify in writing and under oath that the  
contractor will comply with the requirements of subsection 1.  
The contractor shall also provide written proof that the

2 contractor complies with subsection 1, paragraphs B, C and D to  
3 the public official in charge of the public improvement project.

4 **3. Subcontractor's certification of intent to comply; proof**  
5 **of insurance.** Before a contractor enters into a contract with a  
6 subcontractor, the contractor must obtain a document from the  
7 subcontractor certifying under oath that the subcontractor will  
8 comply with the requirements of subsection 1. The subcontractor  
9 shall also provide written proof that the subcontractor complies  
10 with subsection 1, paragraphs B, C and D. The contractor shall  
11 deliver copies of the certification and proof to the public  
12 official in charge of the public improvement project.

14 **4. Failure to provide certification before contract is**  
15 **signed.** A public official may not award a contract to any  
16 contractor who fails to comply with subsection 2. A contractor  
17 may not award a subcontract to any subcontractor who fails to  
18 comply with subsection 3.

20 **5. Failure to comply during term of contract.** A contractor  
21 must comply at all times during the term of the contract with the  
22 requirements of subsection 1 and must weekly certify under oath  
23 and in writing that the contractor complies with those  
24 requirements. A subcontractor must comply at all times during  
25 the term of the contract with the requirements of subsection 1  
26 and must weekly certify under oath and in writing that the  
27 subcontractor complies with those requirements.

28 **6. Penalties for failure to comply during term of**  
29 **contract.** A contractor or subcontractor who fails to comply with  
30 subsection 5 is subject to the penalties set forth in this  
31 subsection, as determined by the public official in charge of the  
32 public improvement project. A contractor is liable for  
33 noncompliance by any person who is performing work under a  
34 subcontract with the contractor.

36 A. The public official in charge of the public improvement  
37 project may order the contractor or subcontractor to cease  
38 work until compliance is attained.

40 B. The public official in charge of the public improvement  
41 project may withhold payment due under any contract or  
42 subcontract until compliance is obtained.

44 C. The public official in charge of the public improvement  
45 project may permanently remove the contractor or  
46 subcontractor from the job.

48 D. The public official in charge of the public improvement  
49 project may assess liquidated damages against the contractor  
50

2           or subcontractor in the amount of 5% of the dollar value of  
3           the contract.

4           7. Disbarment from future work. A contractor or  
5           subcontractor that has violated any provision of this section is  
6           barred from performing work on another public improvement project  
7           for 6 months for the first violation, 3 years for the 2nd  
8           violation and permanently for a 3rd violation.

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## SUMMARY

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13           This bill enacts criteria that must be met by any contractor  
14           or subcontractor performing work on a public improvement  
15           project. The bill requires that the contractor or subcontractor  
16           comply with prevailing wage laws, provide employer-paid health  
17           and hospitalization benefits to employees, maintain  
18           apprenticeship programs and properly classify employees for  
19           purposes of workers' compensation, unemployment and other tax  
20           purposes. The bill provides penalties for contractors or  
21           subcontractors who fail to comply with the requirements of the  
22           law, including refusal to allow the person to bid on or perform  
23           work on future projects, liquidated damages, withholding of  
24           payments under the contract and cessation of work on the  
25           project. Contractors are liable for noncompliance by their  
26           subcontractors.