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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 435

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE COMMUNITY WORKFORCE AGREEMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 3. COMMUNITY WORKFORCE AGREEMENT ACT.

§ 301. Title; application.

(a) This chapter shall be known as “The Community Workforce Agreement Act.

(b) Definitions.

For the purposes of this Chapter:

(1) “Apprenticeship program” means a registered apprenticeship program approved by the Delaware Department of Labor pursuant to Chapter 2 of Title 19, an apprenticeship program registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the Bureau, or an apprentice program registered by a State apprenticeship agency recognized by the Bureau.

(2) “Labor organization engaged in the construction industry” means an organization which represents, for purposes of collective bargaining, employees involved in the performance of public works contracts and eligible to be paid prevailing wages under § 6960 of Title 29 and has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work, in a manner consistent with the provisions of this act.

(3) “Community workforce agreement” means a form of pre-hire collective bargaining agreement covering terms and conditions of a specific project.

(4) “Public entity” means the State, any of its political subdivisions, any authority created by the Legislature and any instrumentality or agency of the State or of any of its political subdivisions, including school districts.

(5) "Public works project" means any contract or aggregate of contracts, utilizing state funds, relating to a public works project for new construction (including painting and decorating) or for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of buildings or works) to which this State or any subdivision thereof is a party and for which it is required by law that workers be paid the prevailing wage paid prevailing wages under § 6960 of Title 29.

§ 302. Hiring of skilled workers and community workforce agreements.

(a) Purpose.

The Legislature finds and declares:

(1) The United States Supreme Court held in Building & Const. Trades Council of Metropolitan Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993) that state and local governments, when acting as market participants, are permitted under the National Labor Relations Act (29 U.S.C. s. 151 et seq.) to enforce bid specifications requiring contractors to abide by collective bargaining agreements with labor organizations, including requirements for participation in apprenticeship programs, for construction projects owned by those state and local governments;

(2) Delaware also has a compelling interest in guaranteeing that public works projects meet the highest standards of safety and quality;

(3) A highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of the completed project;

(4) Delaware has a compelling interest in carrying out public works projects at the lowest reasonable cost and the highest degree of quality;

(5) Apprenticeship programs make it possible to provide the State with a guarantee that public works projects are completed with highly skilled workers;

(6) Delaware has a compelling interest in having labor disputes in connection with public works projects resolved without the disruptions of strikes, lock-outs, or slowdowns;

(7) Community workforce agreements make possible legally enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lock-outs, or slowdowns;

(8) Community workforce agreements also make it possible to provide for peaceful, orderly, and mutually binding procedures for resolving labor issues;

(9) Community workforce agreements and apprenticeship programs make it possible to provide the State with a guarantee that public works projects are completed with highly skilled workers;

(10) Community workforce agreements allow public agencies to more accurately predict the actual cost of projects;

(11) Community workforce agreements make it possible to provide the State with assurances that public works projects are completed with a diverse workforce;

(12) Community workforce agreements facilitate the efficient integration of work schedules among different trades on project sites;

(13) Community workforce agreements also promote harmonious and productive work environments in public works projects;

(14) Delaware can best accomplish these goals by providing, on public works projects, Community workforce agreements between public works contractors and subcontractors and labor organizations concerning important issues of employment, including work hours, starting times, overtime rates, and procedures for resolving disputes; and

(15) Community workforce agreements, therefore, give Delaware an effective means to advance the interests of efficiency, quality, and timeliness of public works projects.

(b) Eligibility and Negotiation of Community Workforce Agreements.

(1) For all projects, where the public entity estimates that the total cost of the project, exclusive of any land acquisition costs, will equal or exceed \$3 million, and which are subject to contract procedures under § 6962 of Title 29 and covered by this chapter, a public entity shall include a community workforce agreement in a public works project on a project-by-project basis.

(2) The public entity shall do one of the following taking into consideration the size, complexity and cost of the public works project, the need for promoting labor stability and advancing the interests of the public entity in cost, efficiency, skilled labor force, quality, safety and timeliness, and, in the case of a public entity which is a political subdivision, promotes employment of residents of the political subdivision:

a. Directly negotiate in good faith a community workforce agreement with one or more labor organizations engaged in the construction industry.

b. Condition the award of a contract to a contractor upon a requirement that the contractor negotiate in good faith a community workforce agreement with one or more labor organizations engaged in the construction industry.

(3) If the contractor and the labor organizations engaged in the construction industry cannot agree to the terms of the Community workforce agreement, the Governor shall appoint a designee to assist the parties in reaching a Community workforce agreement.

80 § 303. Community workforce agreement.

81 (a) Any community workforce agreement negotiated pursuant to this Act between the public entity or its
82 representative or a construction manager and one or more labor organizations shall be binding on all contractors and
83 subcontractors working on the public works project.

84 (b) The contents of the community workforce agreement, pursuant to this act, shall do all of the following:

85 (1) Advance the interests of the public entity, including the interests in cost, efficiency, quality, timeliness,
86 skilled labor force, and safety.

87 (2) Set forth effective, immediate, and mutually binding procedures for resolving jurisdictional labor disputes
88 and grievances arising before the completion of work.

89 (3) Contain guarantees against strikes, lockouts, or similar actions.

90 (4) Ensure a reliable source of skilled and experienced labor.

91 (5) Set forth goals for apprenticeship hours to be performed by minority group members, members of
92 disadvantaged communities, and women and set forth goals for total hours to be performed by minority group
93 members, members of disadvantaged communities, and women.

94 (6) Include measures giving minority group members, members of disadvantaged communities, and women
95 priority in referral and placement from the referral systems of signatory unions, programs to provide on-the-job or off-
96 the-job outreach and training, and programs to provide incentives for, or otherwise facilitate, their hiring and
97 employment

98 (7) Bind all contractors and subcontractors on all construction projects, public works projects, or improvement
99 projects utilizing any state funds through the inclusion of appropriate bid specifications in all relevant bid documents.

100 (8) Provide that the successful bidder and any subcontractor of the bidder need not be a party to a labor
101 agreement with the labor organizations other than for the public works project covered by the community workforce
102 agreement.

103 (9) Provide that the successful bidder and any subcontractor of the bidder working on the public works project
104 will be permitted to retain a percentage of up to ten percent of their current workforce.

105 (10) Fully conform to all statutes, regulations, executive orders and applicable local ordinances regarding the
106 implementation of set-aside goals for women and minority owned businesses, the obligation to comply with which
107 shall be expressly provided in the project labor agreement;

108 (11) Include such other terms as the parties deem appropriate, including provisions that promote employment
109 of residents of a political subdivision on the public works project.

(c) Covered projects funded in part by federal funds shall include a community workforce agreement compliant with applicable Executive Orders.

§ 304. Registration with the Department.

(a) Every contractor has to be registered with the Department in order to obtain community workforce agreement bids. Contractors must provide annual rosters to the Department including all of the following information for each employee:

(1) Gender.

(2) Race.

(3) Confirmation of the address of the employee if the employee is a member of a disadvantaged community.

(4) Hours worked.

§ 305. Monitoring and reporting.

The Department shall monitor and provide an annual report to the Governor and General Assembly on the effectiveness of all project labor agreements entered into pursuant to this Act in advancing the purposes of this Act, and in meeting the requirements of this Act, including any recommendations the Department believes are necessary to effectuate those purpose more effectively. The report shall include a review and analysis of the amount and share of work done on projects by minority group members, members of disadvantaged communities, and women for each trade craft.

§ 306. Severability.

Nothing in this Act shall be construed to contravene any state or federal law or to jeopardize the State's entitlement to federal funding. If any provision of this Act or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Act that can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Act are declared to be severable.

Section 2. This Act shall take effect on January 1, 2023.

SYNOPSIS

This bill is the Community Workforce Agreement Act. It requires that all large public works construction projects, utilizing state funds, are to be governed by a Community Workforce Agreement with labor organizations engaged in the construction industry to provide structure and stability and promote efficient completion.