

SENATE, No. 2850

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 21, 2009

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senators Cunningham, Buono, Gordon, Stack and Weinberg

SYNOPSIS

Extends service prevailing wage requirements to food service contracts and to local units and State authorities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/24/2009)

1 AN ACT concerning certain prevailing wage requirements and
2 amending the title and body of P.L. 2005, c. 379.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The title of P.L.2005, c.379 is amended to read as follows:

8 AN ACT establishing prevailing wage standards for certain **State**
9 **building** service contracts of public bodies and supplementing
10 chapter 11 of Title 34 of the Revised Statutes.
11 (cf: P.L.2005, c.379, title)

12
13 2. Section 1 of P.L.2005, c.379 (C.34:11-56.58) is amended to
14 read as follows:

15 1. It is declared to be the public policy of this State to establish
16 prevailing wage levels for the employees of contractors and
17 subcontractors furnishing building services or food services for or
18 at any property or premises owned or leased by **the State** a public
19 body in order to safeguard the efficiency and general well-being of
20 those employees and to protect them and their employers from the
21 effects of serious and unfair competition based on low wage levels
22 which are detrimental to efficiency and well-being.

23 (cf: P.L.2005, c.379, s.1)

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25 3. Section 2 of P.L.2005, c.379 (C.34:11-56.59) is amended to
26 read as follows:

27 2. As used in this act:

28 "Commissioner" means the Commissioner of Labor and
29 Workforce Development or the commissioner's duly authorized
30 representatives.

31 "Building services" means any cleaning or building maintenance
32 work, including but not limited to sweeping, vacuuming, floor
33 cleaning, cleaning of rest rooms, collecting refuse or trash, window
34 cleaning, engineering, securing, patrolling, or other work in
35 connection with the care, securing, or maintenance of an existing
36 building, except that "building services" shall not include any
37 maintenance work or other public work for which a contractor is
38 required to pay the "prevailing wage" as defined in section 2 of
39 P.L.1963, c.150 (C.34:11-56.26).

40 "Food services" means any work related to the preparation or
41 serving of food.

42 "Leased by the State a public body" means that not less than
43 55% of the property or premises is leased by **the State** a public
44 body, provided that the portion of the property or premises that is

EXPLANATION – Matter enclosed in bold-faced brackets **thus** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 leased by the **【State】** public body measures more than 20,000
2 square feet.

3 "Prevailing wage for building services" means the wage and
4 benefit rates designated by the commissioner based on the
5 determinations made by the General Services Administration
6 pursuant to the federal "Service Contract Act of 1965" (41 U.S.C.
7 s.351 et seq.), for the appropriate localities and classifications of
8 building service employees.

9 "Prevailing wage for food services" means the wage and benefit
10 rates designated by the commissioner based on the determinations
11 made by the General Services Administration pursuant to the
12 federal "Service Contract Act of 1965 (41 U.S.C. s.351 et seq.) for
13 the appropriate localities and classifications of food preparation and
14 service occupations.

15 **【"The State"】** "Public body" means the State of New Jersey, any
16 of its political subdivisions, and all 【of its】 departments, bureaus,
17 boards, commissions, agencies and instrumentalities thereof,
18 including any State institutions of higher education, 【but does not
19 include political subdivisions】 and any authority created by the
20 Legislature of the State of New Jersey.

21 "State institutions of higher education," means Rutgers, The
22 State University of New Jersey, the University of Medicine and
23 Dentistry of New Jersey and the New Jersey Institute of
24 Technology, and any of the State colleges or universities
25 established pursuant to chapter 64 of Title 18A of the New Jersey
26 Statutes, but does not include any county college established
27 pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

28 (cf: P.L.2005, c.379, s.2)

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30 4. Section 3 of P.L.2005, c.379 (C.34:11-56.60) is amended to
31 read as follows:

32 3. Every contract to furnish building services or food services
33 for or at any property or premises owned or leased by 【the State】 a
34 public body, whether or not the work is paid from public funds,
35 shall contain a provision stating the prevailing wage for building
36 services or food service rates that are applicable to the workers
37 employed in the performance of the contract and shall contain a
38 stipulation that those workers shall be paid not less than the
39 indicated prevailing wage for building services or food service
40 rates. The contract shall provide for annual adjustments of the
41 prevailing wage for building services or food services during the
42 term of the contract, and shall provide that if it is found that any
43 worker employed by the contractor or any subcontractor covered by
44 the contract, has been paid less than the required prevailing wage,
45 the 【State Treasurer】 public body, the lessee to whom the public
46 body is leasing a property or premises or the lessor from whom the
47 public body is leasing a property or premises may terminate the

1 contractor or subcontractor's right to proceed with the work, and the
2 contractor and his sureties shall be liable to the **【State】 public body,**
3 any lessee to whom the public body is leasing a property, or any
4 lessor from whom the public body is leasing a property, or any
5 lessor from whom the public body is leasing a property or premises
6 for any excess costs occasioned by the termination.

7 (cf: P.L.2005, c.379, s.3)

8
9 5. Section 4 of P.L.2005, c.379 (C.34:11-56.61) is amended to
10 read as follows:

11 4. Each contractor and subcontractor shall keep an accurate
12 record showing the name, classification, and actual hourly rate of
13 wages and any benefits paid to each worker employed by him to
14 perform building services **【pursuant to a State contract or**
15 **subcontract】** or food services for or at any property or premises
16 owned or leased by a public body, and shall preserve those records
17 for two years after the date of payment. The record shall be open at
18 all reasonable hours to inspection by the **【Director of the Division**
19 **of Purchase and Property】** public body, by the lessor or lessee of
20 the public body, and the commissioner.

21 (cf: P.L.2005, c.379, s.4)

22
23 6. Section 5 of P.L.2005, c.379 (C.34:11-56.62) is amended to
24 read as follows:

25 5. Any worker paid less than the prevailing wage for building
26 services or food services to which the worker is entitled by the
27 provisions of this act may recover in a civil action the full amount
28 of the prevailing wage for building services or food services less
29 any amount actually paid to the worker by the employer together
30 with any costs and reasonable attorney's fees allowed by the court,
31 and an agreement between the worker and the employer to work for
32 less than the prevailing wage for building services or food services
33 shall not be a defense to the action. The worker shall be entitled to
34 maintain an action for and on behalf of the worker or other workers
35 similarly situated and the worker or workers may designate an agent
36 or representative to maintain such actions for and on behalf of all
37 workers similarly situated. At the request of any worker paid less
38 than the prevailing wage for building services or food services
39 required under the provisions of this act, the commissioner may
40 take an assignment of the wage claim in trust for the assigning
41 worker or workers and may bring any legal action necessary to
42 collect the claim, and the employer shall be required to pay any
43 costs and such reasonable attorney's fee as are allowed by the court.

44 (cf: P.L.2005, c.379, s.5)

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46 7. Section 6 of P.L.2005, c.379 (C.34:11-56.63) is amended to
47 read as follows:

1 6. The commissioner shall have the authority to:

2 a. investigate and ascertain the wages of any employees of a
3 contractor or subcontractor furnishing building services or food
4 services for or at any property or premises owned or leased by **the**
5 **State** a public body;

6 b. enter and inspect the place of business or employment of any
7 contractor or subcontractor furnishing building services or food
8 services for or at any property or premises owned or leased by **the**
9 **State** a public body, for the purpose of examining and inspecting
10 any or all books, registers, payrolls, and other records of any such
11 contractor or subcontractor that in any way relate to or have a
12 bearing upon the question of wages, hours, and other conditions of
13 employment of any employees of such contractor or subcontractor;
14 copy any or all of such books, registers, payrolls, and other records
15 as the commissioner may deem necessary or appropriate; and
16 question the employees of such contractor or subcontractor for the
17 purpose of ascertaining whether the provisions of this act have been
18 and are being complied with;

19 c. require from such contractor or subcontractor full and
20 correct statements in writing, including sworn statements, with
21 respect to wages, hours, names, addresses, and other information
22 pertaining to the contractor or subcontractor's workers and their
23 employment as the commissioner may deem necessary or
24 appropriate; and

25 d. require any contractor or subcontractor to file, within 10
26 days of receipt of a request, any records enumerated in subsections
27 b. and c. of this section, sworn as to their validity and accuracy~~].~~
28 If the public body is a party to the contract and the contractor or
29 subcontractor fails to provide the requested records within 10 days,
30 the **State Treasurer** commissioner may, within 15 days, direct the
31 fiscal or financial officer charged with the custody and
32 disbursements of the funds of the public body which contracted for
33 the public work to immediately withhold from payment to the
34 employer up to 25% of the amount, not to exceed \$100,000, to be
35 paid to the employer under the terms of the contract pursuant to
36 which the building services or food services work is being
37 performed. The amount withheld shall be immediately released
38 upon receipt by the **State Treasurer** public body of a notice from
39 the commissioner indicating that the request for records has been
40 satisfied.

41 (cf: P.L.2005, c.379, s.6)

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43 8. Section 9 of P.L.2005, c.379 (C.34:11-56.66) is amended to
44 read as follows:

45 9. Any contractor or subcontractor who discharges or in any
46 other manner discriminates against any worker because the worker
47 has made any complaint to the worker's employer, to the **State**

1 Treasurer] public body or to the commissioner that the worker has
2 not been paid wages in accordance with the provisions of this act,
3 or because the worker has caused to be instituted or is about to
4 cause to be instituted any proceeding under or related to this act, or
5 because the worker has testified or is about to testify in any such
6 proceeding shall be guilty of a disorderly persons offense and shall,
7 upon conviction therefor, be fined not less than \$100 nor more than
8 \$1,000.

9 As an alternative to or in addition to any other sanctions
10 provided by law for violations of any provision of this act, if the
11 commissioner finds that a contractor or subcontractor has violated
12 the act, the commissioner is authorized to assess and collect
13 administrative penalties, up to a maximum of \$250 for a first
14 violation and up to a maximum of \$500 for each subsequent
15 violation, specified in a schedule of penalties to be promulgated as a
16 rule or regulation by the commissioner in accordance with the
17 "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et
18 seq.). When determining the amount of the penalty imposed
19 because of a violation, the commissioner shall consider factors
20 which include the history of previous violations by the contractor or
21 subcontractor, the seriousness of the violation, the good faith of the
22 contractor or subcontractor and the size of the contractor's or
23 subcontractor's business. No administrative penalty shall be levied
24 pursuant to this section unless the commissioner provides the
25 alleged violator with notification of the violation and of the amount
26 of the penalty by certified mail and an opportunity to request a
27 hearing before the commissioner or the commissioner's designee
28 within 15 days following the receipt of the notice. If a hearing is
29 requested, the commissioner shall issue a final order upon such
30 hearing and a finding that a violation has occurred. If no hearing is
31 requested, the notice shall become a final order upon expiration of
32 the 15-day period. Payment of the penalty shall be due when a final
33 order is issued or when the notice becomes a final order. Any
34 penalty imposed pursuant to this section may be recovered with
35 costs in a summary proceeding commenced by the commissioner
36 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
37 c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty
38 pursuant to this section shall be applied toward enforcement and
39 administration costs of the Division of Workplace Standards in the
40 Department of Labor and Workforce Development.
41 (cf: P.L.2005, c.379, s.9)

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43 9. This act shall take effect on the 60th day following
44 enactment and apply to contracts entered into, renewed, extended,
45 or amended on or after that date.

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This bill extends the scope of P.L.2005, c.379 (C.34:11-56.58 et seq.), which currently requires that contractors providing building services for properties owned or leased by the State pay their employees the prevailing wage rates set under the federal “Services Contract Act of 1965.” Under the bill, the prevailing wage rates set under that federal act would also apply to contracts to provide food services for or at properties owned or leased by any political subdivision or authority of the State.