

ASSEMBLY, No. 1433

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Assemblyman RUBEN J. RAMOS, JR.

District 33 (Hudson)

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District 34 (Essex and Passaic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

**Assemblymen DeAngelo, Giblin, Cryan, Diegnan, Assemblywomen
Lampitt, Tucker, Wagner, Quijano and Assemblyman Johnson**

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/11/2012)

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)

24

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, but shall not mean work related to the preparation
42 or serving of food in a park or wildlife management area owned by
43 a public body.

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】** a public body" means that not less than
2 55% of the property or premises is leased by **【the State】** a public
3 body, provided that the portion of the property or premises that is
4 leased by the **【State】** public body measures more than 20,000
5 square feet.

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

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

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

24 "State institutions of higher education," means Rutgers, The
25 State University of New Jersey, the University of Medicine and
26 Dentistry of New Jersey and the New Jersey Institute of
27 Technology, and any of the State colleges or universities
28 established pursuant to chapter 64 of Title 18A of the New Jersey
29 Statutes, but does not include any county college established
30 pursuant to chapter 64A of Title 18A of the New Jersey Statutes.
31 (cf: P.L.2005, c.379, s.2)

32
33 4. Section 3 of P.L.2005, c.379 (C.34:11-56.60) is amended to
34 read as follows:

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

1 paid less than the required prevailing wage, the **【State Treasurer】**
2 public body, the lessee to whom the public body is leasing a
3 property or premises or the lessor from whom the public body is
4 leasing a property or premises may terminate the contractor or
5 subcontractor's right to proceed with the work, and the contractor
6 and his sureties shall be liable to the **【State】** public body, any lessee
7 to whom the public body is leasing a property, or any lessor from
8 whom the public body is leasing a property, or any lessor from
9 whom the public body is leasing a property or premises for any
10 excess costs occasioned by the termination.

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

12

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

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

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

26

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

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

1 costs and such reasonable attorney's fee as are allowed by the court.
2 (cf: P.L.2005, c.379, s.5)

3
4 7. Section 6 of P.L.2005, c.379 (C.34:11-56.63) is amended to
5 read as follows:

6 6. The commissioner shall have the authority to:

7 a. investigate and ascertain the wages of any employees of a
8 contractor or subcontractor furnishing building services or food
9 services for or at any property or premises owned or leased by **[the**
10 **State]** a public body;

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

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

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

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

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

3 9. Any contractor or subcontractor who discharges or in any
4 other manner discriminates against any worker because the worker
5 has made any complaint to the worker's employer, to the [State
6 Treasurer] public body or to the commissioner that the worker has
7 not been paid wages in accordance with the provisions of this act,
8 or because the worker has caused to be instituted or is about to
9 cause to be instituted any proceeding under or related to this act, or
10 because the worker has testified or is about to testify in any such
11 proceeding shall be guilty of a disorderly persons offense and shall,
12 upon conviction therefor, be fined not less than \$100 nor more than
13 \$1,000.

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

STATEMENT

For purposes of this bill, food services is defined as any work related to the preparation or serving of food, excluding any work

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- 1 related to the preparation or serving of food in a park or wildlife
- 2 management area owned by a public body.