

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4194

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 23, 2025

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 4194.

Under current law, contractors or subcontractors who have failed to pay prevailing wages are prohibited from receiving public works contracts for a period of three years. Under this bill, this prohibition will also apply to any corporation or other legal entity which is owned or operated as a cooperative, in which at least one approved vendor of the cooperative is a contractor or subcontractor who has failed to pay prevailing wages.

The bill defines “cooperative” as a system of collective ownership of a corporation or other legal entity in which the shareholders or other co-owners each also have a long term proprietary interest or other long term arrangement of control over the operations of the business.

As amended, the bill expands provisions regarding cooperative purchasing agreements with other states, providing that a contracting unit may only purchase and contract for construction services for a public works project through a cooperative purchasing agreement competitively bid in compliance with the bill and let by a contracting unit in the State. Public works projects undertaken by a contracting unit through a cooperative purchasing agreement are subject to the “Public Works Contractor Registration Act,” and the “New Jersey Prevailing Wage Act.”

The bill prohibits contracting units from using time-and-materials contracts available through a cooperative purchasing agreement for public works construction projects subject to the “New Jersey Prevailing Wage Act.” The bill defines “time-and-materials contract” as a contract for the actual costs for materials and acquiring services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit.

Further, the bill requires accurate, up-to-date information on each contractor, including principal business addresses and contact details. Awarded contractors must submit certified payroll records for every public works project, which the contracting unit must keep for at least three years. Contractors that fail to submit required certified payroll records more than three times, or are found in violation of prevailing

wage requirements, are barred from performing public works under a cooperative. Contracting units must conduct monthly checks against the Department of Labor and Workforce Development's debarment list, terminate any contract or subcontract with a newly debarred party, and publicly post on its website, cost and compliance information for all public works projects completed in the preceding month. Contracting units that fail to comply will be prohibited by the Director of the Division of Local Government Services in the Department of Community Affairs from serving as a lead agency for a cooperative purchasing agreement.

Finally, the bill authorizes contracting units to award indefinite delivery, indefinite quantity (IDIQ) contracts for goods or services, including public works, provided the contract is let through a free, open, and competitive process, with a defined procedure for issuing individual purchase orders.

As amended and reported by the committee, Assembly Bill No. 4194 is identical to Senate Bill No. 3041 (1R), which was amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) indicate the bill's prohibition applies to a cooperative in which any cooperative-approved vendor, not any member of the cooperative, has failed to pay the prevailing wage required by law;

(2) define "vendor" as any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract;

(3) provide that a contracting unit may only purchase and contract for construction services for a public works project through a cooperative purchasing agreement competitively bid in compliance with the bill and let by a contracting unit in the State of New Jersey;

(4) prohibit a contracting unit from using time-and-materials contracts available through a cooperative purchasing agreement for public works construction projects subject to the "New Jersey Prevailing Wage Act";

(5) define "time-and-materials contract" as a contract for the actual costs for materials and acquiring services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit;

(6) require a contracting unit that awards a cooperative contract for public works construction to verify and maintain an accurate copy of:

(a) the name, principal business address in the State, and telephone number of the contractor or;

(b) if the contractor's principal business address is not within the State, the name and address of the contractor's custodian of records and agent for service of process in this State;

(7) require a contracting unit that establishes a cooperative purchasing agreement for public works construction to submit copies of certified payroll records for every public works construction project performed under the contract and retain those copies for a period of not less than three years. Contractors that fail to submit required certified payroll records more than three times, or are found in violation of prevailing wage requirements, are barred from performing public works under a cooperative;

(8) require a contracting unit to publicly post on its website, cost and compliance information for all public works projects completed in the preceding month;

(9) require a contracting unit to conduct monthly checks against the Department of Labor and Workforce Development's debarment list and terminate any contract or subcontract with a newly debarred party;

(10) provide that a contracting unit that fails to comply will be prohibited by the Director of the Division of Local Government Services in the Department of Community Affairs from serving as a lead agency for a cooperative purchasing agreement; and

(11) make technical corrections to the bill.