

SENATE, No. 591

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

SYNOPSIS

Extends service prevailing wage requirements to certain food service contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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 certain public bodies and
10 supplementing 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 for any property or
18 premises owned or leased by the State and food services for any
19 property or premises owned or leased by public schools, in order to
20 safeguard the efficiency and general well-being of those employees
21 and to protect them and their employers from the effects of serious
22 and unfair competition based on low wage levels which are
23 detrimental to efficiency and well-being, and to help to facilitate the
24 delivery of those services by well-trained, experienced employees
25 in a manner that best safeguards the safety and health of employees
26 and members of the public, including students, who use the
27 buildings and food services.

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

29

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

32 2. As used in this act:

33 "Commissioner" means the Commissioner of Labor and
34 Workforce Development or the commissioner's duly authorized
35 representatives.

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

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

3 "Leased by the State means that not less than 55% of the
4 property or premises is leased by the State, provided that the portion
5 of the property or premises that is leased by the State measures
6 more than 20,000 square feet.

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

13 "Prevailing wage for food services" means the wage and benefit
14 rates determined by the General Services Administration pursuant
15 to the federal "Service Contract Act of 1965 (41 U.S.C. s.351 et
16 seq.) for the appropriate localities and classifications of food
17 preparation and service occupations, except that the prevailing wage
18 for food services shall not apply to contracts for food services at
19 properties or premises owned or leased by public schools until the
20 reimbursement rate for meals under the federal "Child Nutrition Act
21 of 1966", P.L. 89-642 (42 U.S.C.1771 et seq.), has increased to a
22 level equaling or exceeding 102% of the level of that
23 reimbursement rate as of December 1, 2009, and except that:

24 (1) Prior to fiscal year 2012, the minimum rates for cash wages
25 and health benefits shall both be 0% of the rates determined by the
26 General Services Administration;

27 (2) During fiscal year 2012, the minimum rate for cash wages
28 benefits shall be 80% of the rate determined by the General
29 Services Administration for cash wages and the minimum rate for
30 health benefits shall be 0% of the rate determined by the General
31 Services Administration for health benefits;

32 (3) During fiscal year 2013, the minimum rate for cash wages
33 benefits shall be 90% of the rate determined by the General
34 Services Administration for cash wages and the minimum rate for
35 health benefits shall be 25% of the rate determined by the General
36 Services Administration for health benefits;

37 (4) During fiscal year 2014, the minimum rate for cash wages
38 benefits shall be 100% of the rate determined by the General
39 Services Administration for cash wages and the minimum rate for
40 health benefits shall be 50% of the rate determined by the General
41 Services Administration for health benefits; and

42 (5) During fiscal year 2015 and each successive fiscal year, the
43 minimum rate for cash wages benefits shall be 100% of the rate
44 determined by the General Services Administration for cash wages
45 and the minimum rate for health benefits shall be 100% of the rate
46 determined by the General Services Administration for health
47 benefits.

1 “Public body” means in the case of prevailing wage for building
2 services, the State, and means, in the case of prevailing wage for
3 food services, a public school.

4 “Public school” means a school, under college grade, which
5 derives its support entirely or in part from public funds.

6 “A State” means the State of New Jersey and all of its
7 departments, bureaus, boards, commissions, agencies and
8 instrumentalities, including any State institutions of higher
9 education, but does not include political subdivisions.

10 “State institutions of higher education” means Rutgers, The State
11 University of New Jersey, the University of Medicine and Dentistry
12 of New Jersey and the New Jersey Institute of Technology, and any
13 of the State colleges or universities established pursuant to chapter
14 64 of Title 18A of the New Jersey Statutes, but does not include any
15 county college established pursuant to chapter 64A of Title 18A of
16 the New Jersey Statutes.

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

18
19 4. Section 3 of P.L.2005, c.379 (C.34:11-56.60) is amended to
20 read as follows:

21 3. Every contract to furnish building services for or at any
22 property or premises owned or leased by the State, and every
23 contract to furnish food services for or at any property or premises
24 owned or leased by a public school, whether or not the work is paid
25 from public funds, and whether or not the State or the public school
26 are parties to the contract, shall contain a provision stating the
27 prevailing wage for building services or food service rates that are
28 applicable to the workers employed in the performance of the
29 contract and shall contain a stipulation that those workers shall be
30 paid not less than the indicated prevailing wage for the applicable
31 building services or food service rates. The contract shall provide
32 for annual adjustments of the prevailing wage for building services
33 or food services, as applicable, during the term of the contract, and
34 shall provide that if it is found that any worker employed by the
35 contractor or any subcontractor covered by the contract, has been
36 paid less than the required prevailing wage, the State Treasurer, the
37 public body, the lessee to whom the public body is leasing a
38 property or premises or the lessor from whom the public body is
39 leasing a property or premises may terminate the contractor or
40 subcontractor's right to proceed with the work, and the contractor
41 and his sureties shall be liable to the **【State】** public body, any lessee
42 to whom the public body is leasing a property, or any lessor from
43 whom the public body is leasing a property, or any lessor from
44 whom the public body is leasing a property or premises for any
45 excess costs occasioned by the termination.

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

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

3 4. Each contractor and subcontractor shall keep an accurate
4 record showing the name, classification, and actual hourly rate of
5 wages and any benefits paid to each worker employed by him to
6 perform building services **【pursuant to a State contract or**
7 **subcontract】** or food services for or at any property or premises
8 owned or leased by a public body, which services are subject to the
9 provisions of this act, and shall preserve those records for two years
10 after the date of payment. The record shall be open at all
11 reasonable hours to inspection by the **【Director of the Division of**
12 **Purchase and Property】** public body, by the lessor or lessee of the
13 public body, and the commissioner.
14 (cf: P.L.2005, c.379, s.4)

15
16 6. Section 5 of P.L.2005, c.379 (C.34:11-56.62) is amended to
17 read as follows:

18 5. Any worker paid less than the prevailing wage for building
19 services or food services to which the worker is entitled by the
20 provisions of this act may recover in a civil action the full amount
21 of the prevailing wage for building services or food services less
22 any amount actually paid to the worker by the employer together
23 with any costs and reasonable attorney's fees allowed by the court,
24 and an agreement between the worker and the employer to work for
25 less than the prevailing wage for building services or food services
26 shall not be a defense to the action. The worker shall be entitled to
27 maintain an action for and on behalf of the worker or other workers
28 similarly situated and the worker or workers may designate an agent
29 or representative to maintain such actions for and on behalf of all
30 workers similarly situated. At the request of any worker paid less
31 than the prevailing wage for building services or food services
32 required under the provisions of this act, the commissioner may
33 take an assignment of the wage claim in trust for the assigning
34 worker or workers and may bring any legal action necessary to
35 collect the claim, and the employer shall be required to pay any
36 costs and such reasonable attorney's fee as are allowed by the court.
37 (cf: P.L.2005, c.379, s.5)

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

41 6. The commissioner shall have the authority to:

42 a. investigate and ascertain the wages of any employees of a
43 contractor or subcontractor furnishing, subject to the provisions of
44 this act, building services or food services for or at any property or
45 premises owned or leased by **【the State】** a public body;

46 b. enter and inspect the place of business or employment of any
47 contractor or subcontractor furnishing, subject to the provisions of

1 this act, building services or food services for or at any property or
2 premises owned or leased by **【the State】** a public body, for the
3 purpose of examining and inspecting any or all books, registers,
4 payrolls, and other records of any such contractor or subcontractor
5 that in any way relate to or have a bearing upon the question of
6 wages, hours, and other conditions of employment of any
7 employees of such contractor or subcontractor; copy any or all of
8 such books, registers, payrolls, and other records as the
9 commissioner may deem necessary or appropriate; and question the
10 employees of such contractor or subcontractor for the purpose of
11 ascertaining whether the provisions of this act have been and are
12 being complied with;

13 c. require from such contractor or subcontractor full and
14 correct statements in writing, including sworn statements, with
15 respect to wages, hours, names, addresses, and other information
16 pertaining to the contractor or subcontractor's workers and their
17 employment as the commissioner may deem necessary or
18 appropriate; and

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

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

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

39 9. Any contractor or subcontractor who discharges or in any
40 other manner discriminates against any worker because the worker
41 has made any complaint to the worker's employer, to the **【State**
42 **Treasurer】** public body or to the commissioner that the worker has
43 not been paid wages in accordance with the provisions of this act,
44 or because the worker has caused to be instituted or is about to
45 cause to be instituted any proceeding under or related to this act, or
46 because the worker has testified or is about to testify in any such
47 proceeding shall be guilty of a disorderly persons offense and shall,

1 upon conviction therefor, be fined not less than \$100 nor more than
2 \$1,000.

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

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

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STATEMENT

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44 This bill extends the scope of P.L.2005, c.379 (C.34:11-56.58 et
45 seq.), which currently requires that contractors providing building
46 services for properties owned or leased by the State pay their
47 employees the prevailing wage rates set under the federal "Services

1 Contract Act of 1965.” Under the bill, the prevailing wage rates set
2 under that federal act would also apply to contracts to provide food
3 services for properties owned or leased by public schools, but only
4 when the reimbursement rate for meals under the federal “Child
5 Nutrition Act of 1966” has increased to a level equaling or
6 exceeding 102% of the level of that reimbursement rate as of
7 December 1, 2010. The bill provides that the minimum requirement
8 for the prevailing wage for food services covered under the bill
9 would be phased in as follows:

- 10 1. Prior to fiscal year 2012, 0% of the federal rates for cash
11 wages and health benefits;
- 12 2. During fiscal year 2012, 80% of the federal rate for cash
13 wages and 0% of the federal rate for health benefits;
- 14 3. During fiscal year 2013, 90% of the federal rate for cash
15 wages and 25% of the federal rate for health benefits;
- 16 4. During fiscal year 2014, 100% of the federal rate for cash
17 wages and 50% of the federal rate for health benefits;
- 18 5. During all fiscal years after fiscal year 2014, 100% of the
19 federal rate for cash wages and 100% of the federal rate for health
20 benefits.

21 The bill’s prevailing wage requirements apply to services
22 furnished for or at any property or premises owned or leased by a
23 public body, regardless of whether or not the work is paid from
24 public funds, or whether or not the public body is a party to the
25 contract.