

# SENATE, No. 937

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 16, 2018

**Sponsored by:**  
**Senator TROY SINGLETON**  
**District 7 (Burlington)**

### **SYNOPSIS**

Establishes New Jersey Commission on Construction Industry Independent Contractor Reform.

### **CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT establishing a commission to review and make  
2 recommendations regarding employee misclassification.

3

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

6

7 1. The Legislature finds and declares that:

8 a. The practice of misclassifying workers as alleged  
9 independent contractors, rather than in accordance with their actual  
10 status as employees, causes serious negative repercussions to our  
11 State's economy;

12 b. Workers who are improperly classified suffer an economic  
13 disadvantage and are involuntary disenfranchised from the social  
14 insurance benefits and basic worker protections provided to  
15 individuals classified as employees, including unemployment and  
16 disability insurance, Social Security wage credits, and employee  
17 health and pension benefits offered by the employer to its  
18 workforce;

19 c. Employers who willfully misclassify workers as independent  
20 contractors realize an unfair competitive advantage over employers  
21 who properly identify their workers as employees;

22 d. Evidence indicates that misclassification rates throughout  
23 the country are disproportionately higher in the construction  
24 industry compared to most other industries, a trend that is reflected  
25 in New Jersey with a United States Department of Labor study  
26 suggesting that 11.4 percent of New Jersey construction payroll  
27 workers were misclassified as independent contractors in 2014;

28 e. The State has undertaken significant efforts to address this  
29 problem, including the enactment of the "Construction Industry  
30 Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.),  
31 which sets standards for making the determination of an employee  
32 in the construction industry with respect to certain labor and tax  
33 laws, and also specifies penalties and employee rights; and

34 f. The State's efforts to address the problem of employee  
35 misclassification in the construction industry and to ensure  
36 contractor compliance with the "Construction Industry Independent  
37 Contractor Act" will be enhanced through the creation of an  
38 advisory body comprised of government officials and private sector  
39 representatives with expertise in this subject.

40

41 2. There is established in the Department of Labor and  
42 Workforce Development the New Jersey Commission on  
43 Construction Industry Independent Contractor Reform. The  
44 purpose of the commission is to develop recommendations for a  
45 comprehensive and strategic Statewide approach to addressing the  
46 problem of employee misclassification in the construction industry  
47 and to ensure contractor compliance with the "Construction  
48 Industry Independent Contractor Act" and any other applicable law

- 1 regarding employee misclassification. To fulfill the purpose of the  
2 commission, the commission shall be authorized to:
- 3 a. make recommendations to the Department of Labor and  
4 Workforce Development, the Office of the Attorney General, and the  
5 Department of the Treasury with respect to synchronizing each  
6 respective department's regulations and policies regarding employee  
7 misclassification;
  - 8 b. conduct public hearings to increase public awareness of the  
9 illegal nature and harms inflicted by employee misclassification in the  
10 construction industry and to highlight potential significant cases of  
11 misclassification that may warrant investigation by the appropriate  
12 government agency;
  - 13 c. make recommendations to enhance mechanisms for identifying  
14 employee misclassification in the construction industry;
  - 15 d. work with business, labor and community groups associated  
16 with the construction industry to develop educational materials to  
17 provide clear guidance regarding the difference between an  
18 independent contractor and an employee; and
  - 19 e. cooperate with State, federal and local social service agencies  
20 to identify ways to provide assistance to vulnerable populations that  
21 have been exploited by employee misclassification in the construction  
22 industry, including, but not limited to, immigrant workers.
- 23
- 24 3. a. The commission shall consist of thirteen voting members  
25 as follows:
- 26 (1) the Commissioner of Labor and Workforce Development, or  
27 a designee, who shall serve ex-officio;
  - 28 (2) the Attorney General, or a designee, who shall serve ex-  
29 officio;
  - 30 (3) the State Treasurer, or a designee, who shall serve ex-  
31 officio;
  - 32 (4) one member of the Senate, to be appointed by the President of  
33 the Senate; and one member of the General Assembly, to be appointed  
34 by the Speaker of the General Assembly;
  - 35 (5) two public members who shall be appointed by the President  
36 of the Senate and who shall include one representative of residential  
37 developers and one representative of commercial developers;
  - 38 (6) two public members who shall be appointed by the Speaker  
39 of the General Assembly and who shall include one representative  
40 of residential construction contractors and one representative of  
41 commercial construction contractors; and
  - 42 (7) four public members who shall be appointed by the  
43 Governor and who shall include representatives from three different  
44 building trades unions and one representative of the New Jersey  
45 AFL-CIO.
- 46 b. The Commissioner of Labor and Workforce Development or  
47 the commissioner's designee shall serve as chairperson of the  
48 commission. The commission shall organize as soon as practicable

1 following the appointment of its members and shall select a vice-  
2 chairperson from among the members. The chairperson shall  
3 appoint a secretary who need not be a member of the commission.

4 c. The presence of seven members of the commission shall  
5 constitute a quorum. The commission may conduct business  
6 without a quorum, but may only vote on recommendations when a  
7 quorum is present.

8 d. The public members shall serve without compensation, but  
9 shall be reimbursed for expenses actually incurred in the  
10 performance of their duties, except that no funds shall be  
11 appropriated or allocated to the commission.

12 e. The commission shall be entitled to call to its assistance and  
13 avail itself of the services of the employees of any State department,  
14 board, bureau, commission or agency it may require and as may be  
15 available to it for its purposes.

16 f. The commission may meet and hold hearings at the places it  
17 designates during the sessions or recesses of the Legislature.

18 g. The Department of Labor and Workforce Development shall  
19 provide staff support to the commission.

20 h. Vacancies in the membership of the commission shall be  
21 filled in the same manner provided for the original appointments.

22  
23 4. The commission shall report its findings and  
24 recommendations to the Governor and Legislature pursuant to  
25 section 2 of P.L.1991, c.164 (C.52:14-19.1) no later than 18 months  
26 after the date of organization of the commission. The findings and  
27 recommendations shall include, but not be limited to, information  
28 on the status of the implementation of the "Construction Industry  
29 Independent Contractor Act" and of any publicly available  
30 information regarding the enforcement of that act, such as: cases  
31 filed; wages and taxes recovered on behalf of the State; outcomes of  
32 cases; legal or administrative barriers to successful implementation;  
33 a review of the process used to adjudicate misclassification cases;  
34 and proposals for any additional legislative action that may be  
35 needed to enhance the State's efforts to address employee  
36 misclassification in the construction industry.

37  
38 5. This act shall take effect immediately and shall expire upon  
39 the submission of the commission's report.

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41 STATEMENT

42

43 This bill establishes the New Jersey Commission on  
44 Construction Industry Independent Contractor Reform within the  
45 Department of Labor and Workforce Development. The purpose of  
46 the commission is to develop recommendations for a  
47 comprehensive and strategic Statewide approach to addressing the  
48 problem of employee misclassification in the construction industry

1 and to ensure contractor compliance with the “Construction  
2 Industry Independent Contractor Act,” P.L.2007, c.114 (C.34:20-1  
3 et seq.), and any other applicable law regarding employee  
4 misclassification. To fulfill its purpose, the commission is  
5 authorized to: make recommendations to the Department of Labor  
6 and Workforce Development, the Office of the Attorney General, and  
7 the Department of the Treasury with respect to synchronizing each  
8 respective department’s regulations and policies regarding employee  
9 misclassification; conduct public hearings to increase public awareness  
10 of the illegal nature and harms inflicted by employee misclassification  
11 in the construction industry and to highlight potential significant cases  
12 of misclassification that may warrant investigation by the appropriate  
13 government agency; make recommendations to enhance mechanisms  
14 for identifying employee misclassification in the construction industry;  
15 work with business, labor and community groups associated with the  
16 construction industry to develop educational materials to provide clear  
17 guidance regarding the difference between an independent contractor  
18 and an employee; and cooperate with State, federal and local social  
19 service agencies to identify ways to provide assistance to vulnerable  
20 populations that have been exploited by employee misclassification in  
21 the construction industry.

22 Under the bill, the commission is required to consist of thirteen  
23 voting members as follows:

24 (1) three ex-officio members, or their designees, that include the  
25 Commissioner of Labor and Workforce Development, the Attorney  
26 General, and the State Treasurer;

27 (2) one member of the Senate, to be appointed by the President of  
28 the Senate; and one member of the General Assembly, to be appointed  
29 by the Speaker of the General Assembly;

30 (3) two public members who shall be appointed by the President  
31 of the Senate and who shall include one representative of residential  
32 developers and one representative of commercial developers;

33 (4) two public members who shall be appointed by the Speaker  
34 of the General Assembly and who shall include one representative  
35 of residential construction contractors and one representative of  
36 commercial construction contractors; and

37 (5) four public members who shall be appointed by the  
38 Governor and who shall include representatives from three different  
39 building trades unions and one representative of the New Jersey FL-  
40 CIO.

41 The commission must report its findings and recommendations  
42 to the Governor and Legislature no later than 18 months after the  
43 date of organization of the commission. The findings and  
44 recommendations must include, but are not be limited to,  
45 information on the status of the implementation of the  
46 “Construction Industry Independent Contractor Act” and of any  
47 publicly available information regarding the enforcement of that  
48 act.