

[First Reprint]

SENATE, No. 3948

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 13, 2019

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Concerns labor harmony agreements in retail and distribution center projects.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on June 17, 2019, with amendments.



(Sponsorship Updated As Of: 6/21/2019)

1 AN ACT regarding labor harmony agreements in connection with
2 retail and distribution center projects and supplementing Title 52
3 of the Revised Statutes.

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

7
8 1. The Legislature hereby finds and declares that:

9 a. The State, through its investment in development projects
10 has a significant and ongoing economic interest in the financial
11 viability and competitiveness of those projects and their role in
12 promoting the vital sectors of the State's economy;

13 b. Major development projects with large retail establishments
14 and distribution centers, and the supply chain that ensures their
15 goods arrive on time and in good condition, provide essential
16 goods, services, and jobs for local residents, stimulate local
17 economies, and are a vital economic engine that provides revenue
18 for our communities and promotes vibrant downtowns and financial
19 stability;

20 c. There are labor organizations in New Jersey that represent
21 many retail and distribution center workers, and that actively
22 engage in organizing activities to unionize additional retail and
23 distribution center establishments in the State, which may include
24 strikes, pickets, boycotts, and other economic activity during labor
25 disputes;

26 d. New Jersey and other public bodies in the State have a
27 compelling interest in preventing disruptive labor disputes in
28 connection with projects in which the public bodies have
29 proprietary interests as investors, owners, or financiers; and

30 e. Labor harmony agreements make possible legally
31 enforceable guarantees that projects will be carried out in an orderly
32 and timely manner, without strikes, lock-outs, or slowdowns, thus
33 protecting the State's interest in these projects by promoting
34 harmonious and productive work environments.

35
36 2. As used in this section:

37 "Contractor" means a business entering into a contract or
38 agreement to undertake a covered retail or distribution project, or to
39 serve as the owner or operator of any facility, including but not
40 limited to a retail establishment or distribution center, that is part of
41 a covered retail or distribution project, or to provide services
42 integral to the operations of the covered retail or distribution project
43 or the facilities.

44 "Commissioner" means the Commissioner of Labor and
45 Workforce Development.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted June 17, 2019.

1 "Covered retail or distribution project" or "covered project"
2 means a project undertaken pursuant to an agreement entered into
3 after the effective date of this act between a public body and a
4 contractor in which:

- 5 a. one or more retail establishments or distribution centers are
6 part of the project;
7 b. the public body has a proprietary interest in the project or in
8 a retail establishment or distribution center in the project; and
9 c. the project includes at least one retail establishment which
10 will have more than 10 employees, or at least one distribution
11 center which will have more than 20 employees.

12 "Distribution center" means a warehouse, distribution center,
13 sortation facility, fulfillment center, or any other building stocked
14 with products or goods to be redistributed to retailers, to
15 wholesalers, or directly to consumers.

16 "Labor harmony agreement" means an agreement between a
17 contractor and one or more labor organizations, which requires, for
18 the duration of the agreement, that any participating labor
19 organization and its members agree to refrain from picketing, work
20 stoppages, boycotts, or other economic interference against the
21 contractor.

22 "Proprietary interest" means an economic and non-regulatory
23 interest of a public body in the economic or financial success of a
24 covered retail or distribution project, or the success of any facility
25 in the project, including a retail establishment or distribution center,
26 that could be adversely affected by labor-management conflict,
27 including, but not limited to, the interest of the public body as a
28 financier, investor, lessee, lessor, operator, or owner of the project,
29 facility, or property on which the project or facility is located, or as
30 the provider or facilitator of financial assistance to or for the
31 project, facility, or property, whether by direct loan or grant, or by a
32 guarantee, subsidy, deposit, credit enhancement or similar method,
33 and any interest of a public body derived from the ongoing receipt
34 by the public body of revenues from the project or facilities of the
35 project.

36 "Public body" means the State of New Jersey, any of its political
37 subdivisions, and any authority, instrumentality, or agency of the
38 State or of any of its political subdivisions, or any other entity
39 authorized to conduct economic development activity on behalf of a
40 public body.

41 "Retail establishment" means any retail store selling goods
42 primarily to members of the general public.

43
44 3. a. Except as provided in subsection c. of this section, no
45 public body shall enter into any contract or agreement under which
46 the public body has a proprietary interest in a covered project unless
47 the contract or agreement includes a precondition that the contractor
48 and all subcontractors of the contractor enter into a labor harmony

1 agreement with a labor organization which represents retail or
2 distribution center employees in the State. The public body shall,
3 prior to entering into the contract or agreement, provide written
4 disclosure to the contractor and any subcontractors of all
5 requirements of this act relevant to the contract or agreement. If it
6 is required that contractors submit bids or other proposals to be
7 considered for the agreement or contract, the public body shall
8 provide the written disclosure to each prospective bidder or other
9 contractor as part of the specifications for bidding or otherwise
10 seeking the contract or agreement for the project. The contractor or
11 subcontractor shall incorporate the terms of the labor harmony
12 agreement in any contract, subcontract, lease, sublease, operating
13 agreement, concessionaire agreement, franchise agreement, or other
14 agreement or instrument giving a right to any person or entity to
15 own or operate a retail establishment or distribution center in the
16 covered project.

17 b. The duration of the labor harmony agreement shall be a
18 period of not less than five years from the date on which the
19 covered project becomes fully operational. The requirement to
20 include a labor harmony agreement shall apply to any successor
21 contractor, or any of its subcontractors, who takes the place of an
22 initial contractor or subcontractor if the replacement occurs during
23 the time in which a public body continues to have a proprietary
24 interest in the project, and duration of the labor harmony agreement
25 with the replacement contractor or subcontractor shall be a period
26 of not less than five years commencing with the date of replacement
27 or the date on which the covered project becomes fully operational,
28 whichever is later.

29 c. A public body may enter into a contract or agreement with a
30 contractor without entering into a labor harmony agreement only if
31 the public body determines that the covered project would not be
32 able to go forward if a labor harmony agreement is required. Such
33 determination shall only be made after soliciting input from any
34 labor organizations with which a labor ¹~~peace~~ harmony¹
35 agreement would ¹otherwise¹ be required ¹~~hereunder~~¹. The
36 determination shall be supported by a written finding by the public
37 body which provides documentation of the specific basis for the
38 determination. The written determination shall be submitted to the
39 commissioner, who shall review the determination and make public
40 a finding on the determination within not more than 15 business
41 days after the submission. If the commissioner approves the
42 determination, the determination shall be, together with the
43 commissioner's statement of approval, included in any public
44 materials provided to any board or agency official in connection
45 with the covered project and maintained and made available to the
46 public by the public body. If the commissioner does not approve
47 the determination, the contract or agreement shall be subject to the
48 requirement of subsection a. of this section to include a

1 precondition that the contractor and all subcontractors of the
2 contractor enter into a labor harmony agreement.

3 d. The requirements of this act regarding the inclusion of a
4 labor harmony agreement in any agreement or contract for a
5 contractor to undertake a covered project shall not be deemed to
6 unduly restrict competition, and any bidder refusing to comply with
7 the requirements of this act regarding labor harmony agreements
8 shall not be regarded as a responsible bidder. No agreement or
9 contract to undertake a covered retail or distribution project entered
10 into after the effective date of this act between a public body and a
11 contractor shall be valid or enforceable if it does not comply with
12 the requirements of this act regarding the inclusion of labor
13 harmony agreements.

14 e. Labor harmony agreements shall not be required by this act
15 with respect to any construction work undertaken in connection
16 with a covered project.

17

18 4. Each public body which enters into a contract which is
19 subject to the provisions of this act regarding labor harmony
20 agreements shall submit to the commissioner evidence of an
21 executed labor harmony agreement and, if the public body
22 determines that a labor harmony agreement will prevent a project
23 from going forward, a copy of the determination and documentation
24 supporting the finding. The public body shall provide, in a timely
25 manner as required by the commissioner, information regarding any
26 changes in the information submitted.

27

28 5. The commissioner shall adopt rules and regulations pursuant
29 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
30 1 et seq.) to effectuate the purposes of this act. These rules and
31 regulations shall provide a model labor harmony agreement, and
32 shall provide remedies and procedures for public bodies to enforce
33 compliance with the provisions of this act and any labor harmony
34 agreement entered into pursuant to this act, including provisions for
35 reimbursement of any costs or damages incurred by the public body
36 in connection with any noncompliance with the provisions of this
37 act or the agreements.

38

39 6. This act shall take effect on the 90th day after enactment.