

SENATE, No. 875

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Concerns registration of contractors and sets criteria for responsible bidders in public work.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning registration of contractors and setting criteria
2 for responsible bidders in public work, amending P.L.1963, c.150,
3 and amending and supplementing P.L.1999, c.238.

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

7
8 1. Section 3 of P.L.1963, c.150 (C.34:11-56.27) is amended to
9 read as follows:

10 3. a. Every contract in excess of the prevailing wage contract
11 threshold amount for any public work to which any public body is a
12 party or for public work to be done on property or premises owned
13 by a public body or leased or to be leased by a public body shall
14 contain a provision stating the prevailing wage rate which can be
15 paid (as shall be designated by the commissioner) to the workers
16 employed in the performance of the contract and the contract shall
17 contain a stipulation that such workers shall be paid not less than
18 such prevailing wage rate. Such contract shall also contain a
19 provision that in the event it is found that any worker, employed by
20 the contractor or any subcontractor covered by said contract, has
21 been paid a rate of wages less than the prevailing wage required to
22 be paid by such contract, the public body, the lessee to whom the
23 public body is leasing a property or premises or the lessor from
24 whom the public body is leasing or will be leasing a property or
25 premises may terminate the contractor's or subcontractor's right to
26 proceed with the work, or such part of the work as to which there
27 has been a failure to pay required wages and to prosecute the work
28 to completion or otherwise. The contractor and his sureties shall be
29 liable for any excess costs occasioned thereby to the public body,
30 any lessee to whom the public body is leasing a property or
31 premises or any lessor from whom the public body is leasing or will
32 be leasing a property or premises.

33 b. Every contract subject to the provisions of subsection a. of
34 this section shall provide that every worker employed in the
35 performance of that contract is an apprentice participating in a
36 registered apprenticeship program or has completed a registered
37 apprenticeship, unless the contractor or subcontractor certifies that
38 every worker shall be paid not less than the journeyworker's rate
39 established for the apprenticeable trade performed pursuant to
40 P.L.1963, c.150 (C.34:11-56.25 et seq.).
41 (cf: P.L.2007, c.68, s.2)

42
43 2. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to
44 read as follows:

45 3. As used in this act:

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 "Commissioner" means the Commissioner of Labor and
2 Workforce Development or his duly authorized representatives.

3 "Contractor" means a person, partnership, association, joint stock
4 company, trust, corporation, or other legal business entity or
5 successor thereof who enters into a contract which is subject to the
6 provisions of the "New Jersey Prevailing Wage Act," P.L.1963,
7 c.150 (C.34:11-56.25 et seq.), or into a contract under which
8 workers are required by any other State law to be paid prevailing
9 wage rates set pursuant to that act, and includes any subcontractor
10 or lower tier subcontractor of a contractor as defined herein.

11 "Department" means the Department of Labor and Workforce
12 Development.

13 "Director" means the Director of the Division of Wage and Hour
14 Compliance in the Department of Labor and Workforce
15 Development.

16 "Worker" includes laborer, mechanic, skilled or semi-skilled
17 laborer and apprentices or helpers employed by any contractor or
18 subcontractor and engaged in the performance of services directly
19 upon a public work, who have completed or are actively
20 participating in a registered apprenticeship program, regardless of
21 whether their work becomes a component part thereof, but does not
22 include material suppliers or their employees who do not perform
23 services at the job site.

24 "Registered apprenticeship program" means an apprenticeship
25 program which is registered with and approved by the United States
26 Department of Labor and which provides each trainee with
27 combined classroom and on-the-job training in an occupation
28 recognized as an apprenticeable trade and meets the program
29 standards of enrollment and graduation under 29 C.F.R. s.29.6.

30 "Responsible bidder" means a contractor who bids upon a
31 contract subject to the provisions of the "New Jersey Prevailing
32 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), or a contract
33 under which workers are required by any other State law to be paid
34 prevailing wage rates set pursuant to that act, and who meets all of
35 the requirements of section 5 of P.L.1999, c.238 (C.34:11-56.52).

36 "State wage, benefits and tax laws" means all State laws
37 regarding the payment by a contractor of wages, benefits and taxes,
38 including, but not limited to: P.L.1965, c.173 (C.34:11-4.1 et seq.);
39 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
40 56.25 et seq.); the "New Jersey State Wage and Hour Law,"
41 P.L.1966, c.113 (C.34:11-56a et seq.); the workers' compensation
42 law, R.S.34:15-1 et seq.; the "unemployment compensation law,"
43 R.S.43:21-1 et seq.; the "Construction Industry Independent
44 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.); the
45 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
46 et al.); P.L.2008, c.17 (C.43:21-39.1 et al); and the "New Jersey
47 Gross Income Tax Act," N.J.S.54A:1-1 et seq.

48 (cf: P.L.2019, c.21, s.1)

1 3. Section 4 of P.L.1999, c.238 (C.34:11-56.51) is amended to
2 read as follows:

3 4. No contractor shall bid on any contract for public work as
4 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26), or any
5 other work in which workers are required by any other State law to
6 be paid prevailing wage rates set pursuant to P.L.1963, c.150
7 (C.34:11-56.25 et seq.), unless the contractor has demonstrated
8 itself to be a responsible bidder by complying with all of the
9 requirements of section 5 of P.L.1999, c.238 (C.34:11-56.52) and is
10 registered pursuant to this act. No contractor shall list a
11 subcontractor in a bid proposal for the contract unless the
12 subcontractor has demonstrated itself to be a responsible bidder by
13 complying with all of the requirements of section 5 of P.L.1999,
14 c.238 (C.34:11-56.52) and is registered pursuant to P.L.1999, c.238
15 (C.34:11-56.48 et seq.) at the time the bid is made. No contractor
16 or subcontractor, including a subcontractor not listed in the bid
17 proposal, shall engage in the performance of any public work
18 subject to the contract, unless the contractor or subcontractor has
19 demonstrated itself to be a responsible bidder by complying with all
20 of the requirements of section 5 of P.L.1999, c.238 (C.34:11-56.52)
21 and is registered pursuant to that act.
22 (cf: P.L.2003, c.91, s.2)

23
24 4. Section 5 of P.L.1999, c.238 (C.34:11-56.52) is amended to
25 read as follows:

26 5. a. A contractor shall register in writing with the department
27 on a form provided by the commissioner. The form shall require the
28 following information, and the contractor shall not be registered
29 unless all of the required information is provided:

30 (1) The name, principal business address and telephone number
31 of the contractor;

32 (2) Whether the contractor is a corporation, partnership, sole
33 proprietorship, or other form of business entity;

34 (3) If the contractor's principal business address is not within the
35 State, the name and address of the contractor's custodian of records
36 and agent for service of process in this State;

37 (4) The name and address of each person with a financial
38 interest in the contractor and the percentage interest, except that if
39 the contractor is a publicly-traded corporation, the contractor shall
40 supply the names and addresses of the corporation's officers;

41 (5) The contractor's tax identification number and
42 unemployment insurance registration number;

43 (6) A certification form provided by the commissioner, with
44 documentation satisfactory to the commissioner, that the contractor;

45 (a) has all valid and effective licenses, registrations or
46 certificates required by federal, State, county or local law,
47 including, but not limited to licenses, registrations or certifications

1 required to do business in the State of New Jersey, and **the**
2 contractor, **perform the work it seeks to perform;**

3 (b) has not been debarred by a federal or State government
4 agency or authority in the past three years;

5 (c) has not had any type of business, contracting or trade
6 license, registration or other certificate suspended or revoked in the
7 past year; and

8 (d) has not been convicted of any crime of the first, second or
9 third degree directly relating to the operation of the construction
10 business or any other crime which would disqualify the contractor
11 from being pre-qualified by the Division of Property Management
12 and Construction; and

13 (e) if directly employing craftworkers, participates in a
14 registered apprenticeship program as defined in section 3 of
15 P.L.1999, c.238 (C.34:11-56.50) for each craft they employ; and

16 (7) Any other relevant and appropriate information as
17 determined by the commissioner.

18 b. At the time of registration, and subsequently upon request,
19 the contractor shall submit to the commissioner documentation
20 demonstrating that the contractor has worker's compensation
21 insurance coverage for all workers as required by law.

22 (cf: P.L.2019, c.21, s.2)

23

24 5. (New section) The Legislature finds that there is a need to
25 ensure that all public work subject to the provisions of the "New
26 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et
27 seq.), or any other State law requiring the payment of prevailing
28 wage rates set pursuant to that act, is performed by responsible,
29 qualified contractors that maintain the capacity, expertise, personnel
30 and other qualifications and resources necessary to successfully
31 perform public contracts in a timely, reliable and cost-effective
32 manner. Nothing in P.L.1999, c.238 (C.34:11-56.48 et seq.), or any
33 other law of this State, shall be construed as preventing any
34 political subdivision of the State from setting standards, criteria or
35 requirements for the qualifications of contractors bidding for public
36 work with the political subdivision which equal or exceed the
37 standards, criteria or requirements of P.L.1999, c.238 (C.34:11-
38 56.48 et seq.), or any other State law, including, but not limited to,
39 standards regarding technical qualifications, competency,
40 experience, adequacy of resources, including equipment, facilities,
41 finances and personnel and the qualifications and provisions for
42 training of the personnel, and having a satisfactory record regarding
43 past project performance, safety, and business integrity and
44 compliance with laws applicable to its contracting business,
45 including, but not limited to, licensing laws, tax laws, prompt
46 payment laws, wage and hour laws, prevailing wage laws, and
47 environmental laws.

1 6. (New section) No contractor or subcontractor shall be
2 registered pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) if the
3 contractor or subcontractor has, in any of the three most recent
4 calendar years occurring after the effective date of this act, been
5 determined by the commissioner to have a total of three or more
6 knowing and willful violations of State wage, benefit and tax laws,
7 as defined in section 3 of P.L.1999, c.238 (C.34:11-56.50),
8 occurring on two or more public contracts.

9
10 7. This act shall take effect immediately and its provisions
11 shall apply to each new registration or renewal of a registration
12 made pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) on or
13 after 90th day after the effective date of this act.

14
15
16 STATEMENT

17
18 This bill requires any contractor or subcontractor who registers
19 to contract for public work pursuant to the “Public Works
20 Contractor Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et
21 seq.) to demonstrate that it is a responsible bidder by complying
22 with all of the requirements of section 5 of P.L.1999, c.238
23 (C.34:11-56.52). The bill amends that section to add to those
24 requirements a requirement to submit, as part of the registration, a
25 certification, with documentation satisfactory to the commissioner,
26 that the contractor or subcontractor:

27 1. Has not been debarred by a federal or State government
28 agency or authority in the past three years;

29 2. Has not had any type of business, contracting or trade
30 license, registration or other certificate suspended or revoked in the
31 past year; and

32 3. Has not been convicted of any crime of the first, second and
33 third degrees directly relating to the construction business or any
34 other crime which would disqualify the contractor from being pre-
35 qualified by the Division of Property Management and
36 Construction.

37 The bill provides that no contractor shall be registered if, in any
38 of the three most recent calendar years, the contractor has been
39 determined to have a total of three or more knowing and willful
40 violations of State wage, benefits and tax laws occurring on two or
41 more public contracts.

42 The bill requires every contract subject to State prevailing wage
43 requirements to require each worker employed under the contract to
44 be enrolled in, or have completed, a registered apprenticeship,
45 unless the contractor or subcontractor certifies that the worker is
46 paid not less than the journeyworker wage rate.

47 The bill also provides that nothing in the bill, or any other law of
48 this State, shall be construed as preventing any political subdivision

1 of the State from setting standards, criteria or requirements for the
2 qualifications of contractors bidding for public work with the
3 political subdivision which equal or exceed the standards, criteria or
4 requirements of the bill or any other State law, including, but not
5 limited to, standards concerning technical qualifications,
6 competency, experience, adequacy of resources, including
7 equipment, facilities, finances and personnel and the qualifications
8 and provisions for training of the personnel, and having a
9 satisfactory record regarding past project performance, safety, and
10 business integrity and compliance with laws applicable to its
11 contracting business, including, but not limited to, licensing laws,
12 tax laws, prompt payment laws, wage and hour laws, prevailing
13 wage laws, and environmental laws.

14 Finally, the bill clarifies that contractor registration requirements
15 of the “Public Works Contractor Registration Act” apply to any
16 contractor bidding for any work in which workers are required to be
17 paid prevailing wage rates set pursuant to the State’s prevailing
18 wage law, P.L.1963, c.150 (C.34:11-56.25 et seq.), whether they are
19 required to pay those rates by the prevailing wage law or by any
20 other law.