SENATE, No. 1053

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 30, 2020

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator JOSEPH P. CRYAN
District 20 (Union)

SYNOPSIS

Establishes waterfront wage standards.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 10/29/2020)

AN ACT establishing waterfront prevailing wage standards and supplementing chapter 11 of Title 34 of the Revised Statutes.

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

1. For the purposes of this act:

"Applicable waterfront prevailing wage rates" means the wage rates paid by virtue of collective bargaining agreements with waterfront employers employing the largest numbers of longshoremen, including collective bargaining agreements which apply to longshoremen working in waterfront facilities throughout the State, provided that if a collective bargaining agreement applying to a smaller locality or waterfront facility stipulates wage levels higher than the levels stipulated by collective bargaining agreements with State-wide application, the higher rates shall be the applicable waterfront prevailing wage rates for that locality or facility. Contributions by a waterfront employer for benefits made pursuant to a collective bargaining agreement shall be considered an integral part of the wage paid by the waterfront employer for the purpose of determining the applicable waterfront prevailing wage rates for purpose of this act.

"Carrier of freight by water" shall mean any person engaged, or who may hold himself out as willing to be engaged, whether as a common carrier, as a contract carrier, or otherwise, in the carriage of freight by water, except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in such service, and except for carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count.

"Classification" of longshoremen means categories of longshoremen, including: the kind of cargo they handle, such as break-bulk terminal cargo, break-bulk vessel cargo, or containers; job categories, such as laborers, equipment operators, checkers, crane operators, or mechanics; and duration of employment.

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

"Container" means any receptacle, box, carton or crate which is specifically designed and constructed so that it may be repeatedly used for the carriage of freight by a carrier of freight by water.

"Department" means the Department of Labor and Workforce Development of the State of New Jersey.

"Financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, or administered by a public body, or otherwise provided by the public body.

"Hiring agent" means an individual, who on behalf of any other person selects longshoremen for employment.

"Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality," the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of waterfront employers of classifications of longshoremen to engage in collective bargaining with the representatives of those classifications of longshoremen.

"Longshoreman" means an individual, other than a hiring agent, who is employed for work at a waterfront facility to:

(a) move waterborne freight on a vessel berthed at waterfront facilities, or to or from a barge, lighter or railroad car for transfer to or from the vessel;

(b) engage in direct and immediate checking of the freight or its custodial accounting or in the recording or tabulation of the hours worked at waterfront facilities by longshoremen;

(c) directly and immediately supervise longshoremen; or

(d) perform any other labor or services incidental to the movement of waterborne freight on vessels berthed at waterfront facilities, including, but not limited to, cargo repairmen, coopers, general maintenance workers, mechanical and miscellaneous workers, horse and cattle fitters, grain ceilers, port watchmen, and marine carpenters.

"Marine terminal" means an area located in the State which includes piers, and is used primarily for the moving, warehousing, distributing or packing of waterborne freight or freight to or from those piers, and which, inclusive of such piers, is under common ownership or control.

"Person" means an individual or any partnership, joint venture, association, corporation or any other legal entity other than a governmental entity.

"Pier" includes any wharf, pier, dock or quay.

"Port watchman" includes any watchman, gateman, groundsman, detective, guard, guardian or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in such capacity on any pier or other waterfront terminal.

"Public body" means the State of New Jersey, any of its political subdivisions, and any authority, instrumentality, or agency of the State of New Jersey or of any of its political subdivisions.

“Public waterfront facility” means a waterfront facility located in the State which:

(a) is owned, operated or administered by a public body;

(b) receives financial assistance that is approved, funded, authorized, or administered by a public body, or otherwise provided by the public body; or

(c) is owned, operated or administered by a waterfront employer who receives financial assistance that is approved, funded, authorized, or administered by a public body, or otherwise provided by the public body.

"Stevedore" means an employer of longshoremen who is a contractor or subcontractor, but not an employee, engaged for compensation pursuant to a contract or arrangement with a carrier of waterborne freight or operator of a waterfront facility, to move waterborne freight carried or consigned for carriage by the carrier on, onto, or from vessels of the carrier berthed at waterfront facilities, including:

(a) a contractor engaged for compensation pursuant to a contract or arrangement with a public entity, the United States, or any other state or territory thereof, to move freight carried or consigned for carriage between any point in a waterfront facility and a point outside of the waterfront facility on vessels berthed at the waterfront facility, or

(b) a contractor engaged for compensation pursuant to a contract or arrangement with any person to perform labor or services incidental to the movement of waterborne freight on, onto, or from vessels berthed at waterfront facilities, including, but not limited to, cargo storage, cargo repairing, coopering, general maintenance, mechanical and miscellaneous work, horse and cattle fitting, grain ceiling, and marine carpentry, or

(c) a contractor engaged for compensation pursuant to a contract or arrangement with any other person to perform labor or services involving, or incidental to, the movement of freight into or out of containers, which have been or which will be carried by a carrier of freight by water, on vessels berthed at waterfront facilities.

"Waterborne freight" shall mean freight carried by or consigned for carriage by carriers of freight by water, including ships' stores, baggage and mail carried by or consigned for carriage by carriers of freight by water.

“Waterfront employer” means an operator of a waterfront facility, stevedore, or carrier of freight by water who employs longshoremen at a waterfront facility.

“Waterfront facility” means any marine terminal or pier, or any other waterfront terminal located in the State.

"Waterfront terminal" includes any warehouse, depot or other terminal located in the State, whether enclosed or open, any part of which is used by any person to perform labor or services involving, or incidental to, the movement of waterborne freight or freight.

2. Any waterfront employer who employs longshoremen at a waterfront facility, including, but not limited to, a public waterfront facility, shall pay each longshoreman a rate of wages not less than the applicable waterfront prevailing wage rate. Every waterfront employer employing longshoremen at waterfront facilities shall

keep an accurate record showing the name, classification, and hourly rate of wages actually paid to each longshoreman employed by the employer in connection with waterfront facilities. The records shall be preserved for two years from the date of payment, and shall be open at all reasonable hours to the inspection of the commissioner, of any public body which owns, administers or provides financial assistance to the waterfront facility where the longshoremen are employed, and of any labor organization representing longshoremen working at that waterfront facility or other waterfront facilities in the State.

3. The commissioner shall determine, establish and make public the waterfront prevailing wage rates for each waterfront facility and for each classification of longshoremen working at the facility. The prevailing wage shall be determined and computed in accordance with rules and regulations issued by the commissioner as he determines necessary to carry out the provisions of this act. The wage determination may be challenged within 30 days of issuance but only as to the accuracy of the wage information used. Such challenges shall be made by filing a written notice with the commissioner specifying the inaccurate wage information. All determinations of the waterfront prevailing wage rates made pursuant to this section shall be announced by the commissioner, prominently displayed on a webpage maintained by the department, and provided by mail to any public body, any representative of longshoremen, any waterfront employer, or any representative of any group of waterfront employers, who makes a written request to the commissioner to be provided the mailed notifications.

4. The commissioner shall have the authority to:

a. investigate and ascertain the wages of longshoremen employed in any waterfront facility in the State;

b. enter and inspect the place of business or employment of any waterfront employer employing longshoremen at any waterfront facility in the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of the waterfront employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of the longshoremen; copy any of those books, registers, payrolls, and other records as he or his authorized representative may deem necessary or appropriate; obtain proof of, and question, any longshoreman's identity to determine whether the longshoreman's identity is accurately and truthfully included or reported in any books, registers, payrolls, and other records of the waterfront employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment in the waterfront facility; and question the

longshoremen for the purpose of ascertaining whether the provisions of this act have been and are being complied with;

c. obtain from the waterfront employers full and correct statements in writing, including sworn statements, regarding wages, hours, names, addresses, and such other information pertaining to the waterfront employer's longshoremen and their employment as the commissioner, or his authorized representative deems necessary or appropriate; and

d. require any waterfront employer to file, within 10 days of receipt of a request, any records enumerated in subsections b. and c. of this section, sworn to as to their validity and accuracy. In the case of a public waterfront facility in which a public body has an agreement to make payments to a waterfront employer, if the waterfront employer fails to provide the requested records within 10 days, the commissioner may direct within 15 days the fiscal or financial officer charged with the custody and disbursements of the funds of the public body immediately to withhold from payment to the waterfront employer up to 25 percent of the amount, not to exceed $100,000, to be paid to the waterfront employer under the terms of the agreement. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records has been satisfied.

5. Waterfront employers employing longshoremen at waterfront facilities shall post the waterfront prevailing wage rates for each classification involved as determined by the commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay longshoremen their wages.

6. Any longshoreman or representative of longshoremen may file with the commissioner a written complaint that the amount of wages paid for work performed by the longshoreman at a waterfront facility is less than the applicable waterfront prevailing wage rate for that work, or a written complaint the longshoreman has suffered a discharge or other discrimination in violation of section 11 of this act, but the complaint may not be filed later than two years after the alleged underpayment or discrimination occurs.

7. a. Any waterfront employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or who fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand,

or pays or agrees to pay wages at a rate less than the rate applicable under this act, or, during the time that the waterfront employer is included on the debarment list established by the commissioner pursuant to section 9 of this act, employs longshoremen at a waterfront facility, or who discriminates against a longshoreman in violation of section 11 of this act, or otherwise violates any provision of this act or of any regulation or order issued under this act, shall have violated the provisions of this act and be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than $1,000 nor more than $2,500 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in which there is a day in which the waterfront employer employs longshoremen while on the debarment list or in which a longshoreman is paid less than the rate applicable under this act and each longshoreman so paid, shall constitute a separate offense. Such fines shall be in addition to the payment of any wage deficiencies.

b. As an alternative to, or in addition to, any other sanctions provided by law for violations of any provision of this act, when the commissioner finds that an waterfront employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $2,500 for a first violation and up to a maximum of $5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the waterfront employer, the seriousness of the violation, the good faith of the waterfront employer and the size of the waterfront employer's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

c. When the commissioner finds that the waterfront employer has violated provisions of this act, the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

8. As an alternative to, or in addition to, any other sanctions provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to longshoremen under this act, and the waterfront employer may be required to make these payments to the commissioner to be held in a special account in trust for the longshoremen, and paid on order of the commissioner directly to the longshoreman or longshoremen affected. The waterfront employer shall also pay the commissioner an administrative fee equal to not less than 10 percent or more than 25 percent of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

9. If the commissioner determines that a waterfront employer has repeatedly failed to pay the waterfront prevailing wage, the commissioner shall add the name of the waterfront employer to a debarment list established and maintained by the commissioner of waterfront employers determined to have failed to pay the waterfront prevailing wage. The debarment list and each updating of the list shall be prominently displayed on a website maintained by the department and provided to any public body, any representative of longshoremen, any waterfront employer, or any representative of any group of waterfront employers who makes a written request to the commissioner to be notified of the debarment list and any updating of the list. Any waterfront employer placed on the debarment list pursuant to this section shall remain on the list until three years have elapsed from the date of listing. If the waterfront employer denies that a failure to pay the waterfront prevailing wage has occurred, the employer shall have the right to apply to the commissioner for a hearing which must be afforded and a decision rendered within 48 hours of the request for a hearing. If the commissioner rules against the waterfront employer, the waterfront employer shall have the right to apply for injunctive relief in the Superior Court against the listing by the commissioner.

It shall be a violation of this act for any waterfront employer to employ longshoremen at a waterfront facility, whether or not the facility is a public waterfront facility, during the time that the waterfront employer is included on the debarment list established by the commissioner pursuant to this section.

10. No public body shall approve, fund, authorize, or administer, or otherwise provide financial assistance to a waterfront facility, by means of any new or renewed agreement to do so, without first ascertaining that no waterfront employer employing longshoreman at the facility is on the current debarment list of names of waterfront employers who have failed to pay waterfront prevailing wages required by this act. No contract shall be awarded by a public body to any listed waterfront employer or to any other waterfront employer in which the listed waterfront employer has an interest.

For purposes of this section, "interest" means an interest, affiliation, relationship or connection of a waterfront employer listed pursuant to section 9 of this act in or with another waterfront employer employing, or seeking to employ, longshoremen at a waterfront facility, whether having the interest is as an owner, partner, officer, manager, employee, agent, consultant or representative. The listed waterfront employer shall be regarded as having an interest in another waterfront employer if the listed waterfront employer enters into a contract or agreement with the other waterfront employer for services performed or to be performed, for services that have been or will be assigned or subletted, or for the sale, rental or lease of vehicles, tools, equipment or supplies during the period from the initiation of the proceedings under section 9 of this act against the waterfront employer until three years have elapsed from the date that the waterfront employer was listed by the commissioner under section 9 of this act. The term "interest" shall not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of proceedings under section 9 of this act.

A rebuttable presumption that a waterfront employer listed by the commissioner under section 9 of this act has an interest in another waterfront employer may arise if the two share any of the following capacities or characteristics: occupy the same premises, have the same telephone number or fax number, have the same email address or internet website, employ substantially the same administrative employees, utilize the same tools and equipment, or employ or engage the services of any listed person or persons involved in the direction or control of the other.

If the rebuttable presumption that a listed waterfront employer has an interest in another waterfront employer results in a determination to include of the other waterfront employer in the

debarment list, the other waterfront employer may request a hearing to challenge the determination, to be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

11. Any waterfront employer who discharges or in any other manner discriminates against any longshoreman because the longshoreman has made any complaint to his waterfront employer, to a representative of the longshoreman, a public body, or the commissioner that he has not been paid wages in accordance with the provisions of this act, or because the longshoreman has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because the longshoreman has testified or is about to testify in any such proceeding, or because the longshoreman has requested information from the waterfront employer relevant to such a proceeding, shall be in violation of this act, shall be guilty of a disorderly persons offense, and shall, upon conviction therefor, be fined not less than $1,000 nor more than $2,500. Such fines shall be in addition to the payment of any wage deficiencies.

12. If any longshoreman is paid by an waterfront employer less than the waterfront prevailing wage to which the longshoreman is entitled under the provisions of this act, or suffers discharge or other discrimination in violation of section 11 of this act, that longshoreman may recover in a civil action the full amount of such waterfront prevailing wage less any amount actually paid to the longshoremen by the waterfront employer together with costs and reasonable attorney's fees as allowed by the court, and in the case of discharge or other discrimination, reinstatement to employment with payment of any wages lost because of the discharge or discrimination. An agreement between longshoremen and a waterfront employer to pay less than the prevailing wage shall not be a defense to the action. Any longshoreman shall be entitled to maintain such action for and on behalf of himself or other longshoremen similarly situated, and the longshoreman or longshoremen may designate an agent or representative to maintain such action for and on behalf of all longshoremen similarly situated. At the request of any longshoreman paid less than the waterfront prevailing wage to which such longshoreman was entitled under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning longshoreman and may bring any legal action necessary to collect the claim, and the waterfront employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

13. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of longshoremen to

bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

14. The commissioner is authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

15. The provisions of this act shall be deemed to be severable and if any section, subsection, paragraph, sentence or other part of this act is declared to be unconstitutional or preempted by federal law, or the applicability thereof to any person or facility is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional, preempted or invalid.

16. This act shall take effect on the 180th day following enactment, but the commissioner shall take any anticipatory action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill establishes waterfront prevailing wage rates for longshoremen employed at waterfront facilities located in the State.

The bill directs the Commissioner of Labor and Workforce Development to determine, establish and make public the waterfront prevailing wage rates for each waterfront facility and for each classification of longshoremen working at the facility.

The bill defines the "applicable waterfront prevailing wage rates" as the wage rates paid by virtue of collective bargaining agreements with employers employing the largest numbers of longshoremen, including agreements which apply to longshoremen working in waterfront facilities throughout the State, provided that if an agreement applying to a smaller locality or waterfront facility stipulates wage levels higher than the levels stipulated by agreements with State-wide application, the higher rates shall be the applicable waterfront prevailing wage rates for that locality or facility. Contributions by a waterfront employer for benefits made pursuant to a collective bargaining agreement are defined by the bill to be an integral part of the wage rate for the purpose of determining applicable waterfront prevailing wage rates.

The bill sets requirements for waterfront employers of longshoremen to keep wage records and make them available to the commissioner and other specified parties, and to notify the longshoremen they employ of their rights under the bill.

The bill authorizes the commissioner to inspect records and worksites, accept complaints and use various measures to penalize

waterfront employers for violations of the bill's requirements, including criminal and administrative penalties, administering the collection of unpaid wages, and placing a waterfront employer for three years on a list of waterfront employers barred for employing longshoremen in any waterfront facility.

The bill prohibits a waterfront employer from employing longshoremen at any waterfront facility during the time that the waterfront employer is included on the debarment list, and prohibits any governmental entity from entering into a contract with a debarred waterfront employer, or providing financial assistance to a public waterfront facility, without first ascertaining that no debarred waterfront employer is employing longshoreman at the facility.

The bill also provides penalties against waterfront employers for discharge or other discrimination against employees for exercising their rights under the bill.

Finally, the bills permits a longshoreman paid less than the waterfront prevailing wage rate, or suffering retaliatory discharge or discrimination, to obtain in a civil action any wages due together with costs and attorney's fees, and, in a case of retaliation, reinstatement and payment of lost wages.