

SENATE, No. 1422

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns enforcement of prevailing wage and contractor registration laws.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the payment of the prevailing wage on public
2 work and amending P.L.1963, c.150 and P.L.1999, c.238.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 4 of P.L.1963, c.150 (C.34:11-56.28) is amended to
8 read as follows:

9 4. The public body, any lessee to whom the public body is
10 leasing a property or premises and any lessor from whom the public
11 body is leasing or will be leasing a property or premises awarding
12 any contract for public work or otherwise undertaking any public
13 work shall:

14 (a) ascertain from the commissioner the prevailing wage rate in
15 the locality in which the public work is to be performed for each
16 craft or trade needed to perform the contract; and

17 (b) shall **【specify in the contract itself】** provide, in the
18 documents provided to each bidder for the contract for public work,
19 information regarding what the prevailing wage rate in the locality
20 is for each craft or trade or classification of all workers needed to
21 perform the contract during the anticipated term thereof, and, when
22 the contract is awarded, shall specify that information in the
23 contract itself. Nothing in this act however shall prohibit the
24 payment of more than the prevailing wage rate to any worker
25 employed on a public work.

26 (cf: P.L.2007, c.68, s.3)

27

28 2. Section 5 of P.L.1963, c.150 (C.34:11-56.29) is amended to
29 read as follows:

30 5. a. Every contractor and subcontractor shall keep an accurate
31 record showing the name, craft or trade, and actual hourly rate of
32 wages paid to each worker employed by him in connection with a
33 public work and such records shall be preserved for two years from
34 date of payment. Each public entity on a public work project
35 exceeding a contract amount exceeding \$5 million shall employ an
36 independent Clerk of the Works to keep records of each worker on
37 their project. The record shall be open at all reasonable hours to the
38 inspection of the public body awarding the contract, to any other
39 party to the lease or agreement to lease pursuant to which the public
40 work is done, and to the commissioner.

41 b. If, during a given workweek, a worker performs work in
42 multiple job classifications and two or more prevailing wage rates
43 are applicable to the separate classes of work performed pursuant to
44 the “New Jersey Prevailing Wage Act, P.L.1963, c.150 (C.34:11-

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 56.25 et seq.), the contractor shall pay the worker the highest of the
2 prevailing wage rates for all hours worked in that workweek, unless
3 the contractor's records clearly delineate which hours of work for
4 the worker were spent engaged in each separate class of work. If a
5 worker is employed for a portion of a given workweek in work
6 which is not subject to that act and would otherwise be
7 compensated at a rate lower than the applicable prevailing wage
8 rate for the work performed during that workweek, the contractor
9 shall pay the worker the higher prevailing wage rate for all work
10 performed during the workweek, including work not subject to the
11 act, unless the contractor's records clearly delineate which hours of
12 work for the worker are spent engaged in work subject to the act
13 and which are not.

14 (cf: P.L.1990, c.27, s.4)

15
16 3. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
17 read as follows:

18 11. (a) Any employer who willfully hinders or delays the
19 commissioner in the performance of his duties in the enforcement of
20 this act, who contracts with a public body to perform public work
21 while debarred from doing so pursuant to section 14 of P.L.1963,
22 c.150 (C.34:11-56.38), or fails to make, keep, and preserve any
23 records as required under the provisions of this act, or falsifies any
24 such record, or refuses to make any such record accessible to the
25 commissioner upon demand, or refuses to furnish a sworn statement
26 of such record or any other information required for the proper
27 enforcement of this act to the commissioner upon demand, or pays
28 or agrees to pay wages at a rate less than the rate applicable under
29 this act or otherwise violates any provision of this act or of any
30 regulation or order issued under this act shall be guilty of a
31 disorderly persons offense and shall, upon conviction therefor, be
32 fined not less than \$100.00 nor more than \$1,000 or be imprisoned
33 for not less than 10 nor more than 90 days, or by both such fine and
34 imprisonment. Each week, in any day of which a worker is paid
35 less than the rate applicable to him under this act and each worker
36 so paid, or in which any other violation of the provisions of this
37 section occurs, shall constitute a separate offense.

38 (b) As an alternative to or in addition to any other sanctions
39 provided by law for violations of any provision of P.L.1963, c.150
40 (C.34:11-56.25 et seq.), when the Commissioner of Labor finds that
41 an employer has violated that act, the commissioner is authorized to
42 assess and collect administrative penalties, up to a maximum of
43 \$2,500 for a first violation and up to a maximum of \$5,000 for each
44 subsequent violation, specified in a schedule of penalties to be
45 promulgated as a rule or regulation by the commissioner in
46 accordance with the "Administrative Procedure Act," P.L.1968,
47 c.410 (C.52:14B-1 et seq.). When determining the amount of the
48 penalty imposed because of a violation, the commissioner shall

1 consider factors which include the history of previous violations by
2 the employer, the seriousness of the violation, the good faith of the
3 employer and the size of the employer's business. No
4 administrative penalty shall be levied pursuant to this section unless
5 the Commissioner of Labor provides the alleged violator with
6 notification of the violation and of the amount of the penalty by
7 certified mail and an opportunity to request a hearing before the
8 commissioner or his designee within 15 days following the receipt
9 of the notice. If a hearing is requested, the commissioner shall
10 issue a final order upon such hearing and a finding that a violation
11 has occurred. If no hearing is requested, the notice shall become a
12 final order upon expiration of the 15-day period. Payment of the
13 penalty is due when a final order is issued or when the notice
14 becomes a final order. Any penalty imposed pursuant to this section
15 may be recovered with costs in a summary proceeding commenced
16 by the commissioner pursuant to the "Penalty Enforcement Law of
17 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as
18 a fine or penalty pursuant to this section shall be applied toward
19 enforcement and administration costs of the Division of Workplace
20 Standards in the Department of Labor.

21 (c) When the Commissioner of Labor finds that the employer
22 has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.),
23 the commissioner may refer the matter to the Attorney General or
24 his designee for investigation and prosecution. Nothing in this
25 subsection shall be deemed to limit the authority of the Attorney
26 General to investigate and prosecute violations of the New Jersey
27 Code of Criminal Justice, nor to limit the commissioner's ability to
28 refer any matter for criminal investigation or prosecution.
29 (cf: P.L.2003, c.276, s.1)

30

31 4. Section 13 of P.L.1963, c.150 (C.34:11-56.37) is amended to
32 read as follows:

33 13. a. In the event that the commissioner shall determine, after
34 investigation, that any contractor or subcontractor has failed to pay
35 the prevailing wage, has utilized on the public work a subcontractor
36 who is debarred from public work pursuant to section 14 of
37 P.L.1963, c.150 (C.34:11-56.38) or does not meet the registration
38 requirements of "the Public Works Contractor Registration Act,
39 P.L.1999, c.238 (C.34:11-56.48 et seq.), or has performed work on
40 a public work, or maintained an interest in another contractor
41 performing work on a public work, while debarred from public
42 work pursuant to section 14 of P.L.1963, c.150 (C.34:11-56.38) or
43 not meeting the registration requirements of "the Public Works
44 Contractor Registration Act, P.L.1999, c.238 (C.34:11-56.48 et
45 seq.), he shall thereupon list and keep on record the name of such
46 contractor or subcontractor and forthwith give notice by mail of
47 such list to any public body who shall request the commissioner so
48 to do. Where the person responsible denies that a failure to pay the

1 prevailing wage or other violation has occurred, he shall have the
2 right to apply to the commissioner for a hearing which must be
3 afforded and a decision rendered within 48 hours of the request for
4 a hearing. If the commissioner rules against the petitioning party he
5 shall have the right to apply for injunctive relief in the Superior
6 Court against the listing by the commissioner.

7 b. The commissioner shall create, maintain, and distribute an
8 informational list for contractors and subcontractors who bid on and
9 perform public work, which includes but need not be limited to
10 wage payment, recordkeeping, and registration requirements, and
11 applicable penalties, pursuant to the "New Jersey Prevailing Wage
12 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) and "The Public
13 Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-
14 56.48 et seq.). The commissioner shall prominently display the
15 informational list on a website maintained by the Department of
16 Labor and Workforce Development and shall distribute to any
17 contractor, subcontractor, or public body, upon request, the
18 informational list, as well as the list of the names of contractors and
19 subcontractors who have failed to pay prevailing wages as
20 determined pursuant to subsection a. of this section, or who have
21 failed to pay any State employer payroll tax.

22 (cf: P.L.2015, c.282)

23
24 5. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to
25 read as follows:

26 14. The public body awarding any contract for public work, or
27 otherwise undertaking any public work, or entering into a lease or
28 agreement to lease pursuant to which public work is to be done,
29 shall first ascertain from the commissioner the list of names of
30 contractors or subcontractors who have failed to pay prevailing
31 wages as determined in section 13 of this act, and no contract shall
32 be awarded to such contractor or subcontractor, or to any firm,
33 corporation or partnership in which such contractor or subcontractor
34 has an interest until three years have elapsed from the date of listing
35 as determined in section 13 of this act, and it shall be a violation of
36 P.L.1963, c.150 (C.34:11-56.25 et seq.) for a contractor or
37 subcontractor, once placed on the debarment list, to have or
38 maintain an interest in any contractor or subcontractor which
39 performs public work. In the case of a contractor or subcontractor
40 who performs work on a public work, or maintains an interest in a
41 contractor or subcontractor performing public work. while debarred
42 from public work pursuant to section 14 of P.L.1963, c.150
43 (C.34:11-56.38), the period of debarment shall be extended an
44 additional five years.

45 For purposes of this section, "interest" shall mean an interest in
46 the firm, corporation or partnership bidding on, or performing
47 public work, whether having the interest as an owner, partner,
48 officer, manager, employee, agent, consultant or representative.

1 The term may also include, but not be limited to, all instances in
2 which the contractor or subcontractor listed by the commissioner
3 under section 13 of this act has received payments, whether those
4 payments are in the form of cash or any other form of compensation
5 from the firm, corporation or partnership, or when the contractor or
6 subcontractor listed by the commissioner under section 13 of this
7 act has entered into any contract or agreement with the firm,
8 corporation or partnership for services performed or to be
9 performed, for services that have been or will be assigned or
10 subletted, or for the sale, rental or lease of vehicles, tools,
11 equipment or supplies during the period from the initiation of the
12 proceedings under section 13 of this act against the contractor or
13 subcontractor until three years have elapsed from the date that the
14 contractor or subcontractor has been listed by the commissioner
15 under section 13 of this act. The term "interest" shall not include
16 shares held in a publicly traded corporation if the shares were not
17 received as compensation after the initiation of proceedings under
18 section 13 of this act from a firm, corporation or partnership
19 bidding or performing public work.

20 A rebuttable presumption that a contractor or subcontractor listed
21 by the commissioner under section 13 of this act has an interest in
22 another firm, corporation or partnership may arise if the two share
23 any of the following capacities or characteristics: (1) perform
24 similar work within the same geographical area and within the same
25 monetary range, (2) occupy the same premises, (3) have the same
26 telephone number or fax number, (4) have the same email address
27 or internet website, (5) employ substantially the same
28 administrative employees, (6) utilize the same tools and equipment,
29 (7) employ or engage the services of any listed person or persons
30 involved in the direction or control of the other, or (8) list
31 substantially the same work experience in order to obtain the
32 requisite pre-qualification rating from the Department of the
33 Treasury, or any other entity, to participate in any public work.

34 If a rebuttable presumption has arisen that a contractor or
35 subcontractor listed by the commissioner under section 13 of this
36 act has an interest in another firm, corporation or partnership, the
37 adversely affected contractor or subcontractor, including the firm,
38 corporation or partnership, which would by virtue of a finding of
39 "interest" be prevented under this section from being awarded
40 public work, may request a hearing, which shall be conducted in
41 accordance with the "Administrative Procedure Act," P.L.1968,
42 c.410 (C.52:14B-1 et seq.).
43 (cf: P.L.2007, c.76, s.1)

44

45 6. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to
46 read as follows:

47 3. As used in this act:

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 subject to any other State law
8 which requires the payment of the prevailing wage rates set by that
9 act, and includes any subcontractor or lower tier subcontractor of a
10 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 (cf: P.L.2019,c.21, s.1)

31

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

34 4. No contractor shall bid on any contract for public work as
35 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26), or public
36 work subject to any other State law which requires the payment of
37 the prevailing wage rates set by the "New Jersey Prevailing Wage
38 Act," P.L.1963,c.150 (C.34:11-56.25 et seq.), unless the contractor
39 is registered pursuant to this act. No contractor shall list a
40 subcontractor in a bid proposal for the contract unless the
41 subcontractor is registered pursuant to P.L.1999, c.238 (C.34:11-
42 56.48 et seq.) at the time the bid is made. No contractor or
43 subcontractor, including a subcontractor not listed in the bid
44 proposal, shall engage in the performance of any public work
45 subject to the contract, unless the contractor or subcontractor is
46 registered pursuant to that act.

47 (cf: P.L.2003, c.91, s.2)

1 8. Section 5 of P.L.1999, c.238 (C.34:11-56.52) is amended to
2 read as follows:

3 5. a. A contractor shall register in writing with the department
4 on a form provided by the commissioner. The form shall require the
5 following information:

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

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

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

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

17 (5) The contractor's tax identification number and
18 unemployment insurance registration number;

19 (6) A certification form provided by the commissioner, with
20 documentation satisfactory to the commissioner, that the contractor
21 has all valid and effective licenses, registrations or certificates
22 required by State law, including registrations or certifications
23 required to do business in the State of New Jersey, and the
24 contractor, if directly employing craftworkers, participates in a
25 registered apprenticeship program as defined in section 3 of
26 P.L.1999, c.238 (C.34:11-56.50) for each craft they employ; **and**

27 (7) Any violations by the contractor of any federal or state
28 prevailing wage law during the immediately preceding ten years;
29 and

30 (8) Any other relevant and appropriate information as
31 determined by the commissioner.

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

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

37

38 9. Section 6 of P.L.1999, c.+238 (C.34:11-56.53) is amended to
39 read as follows:

40 6. a. The contractor shall pay an initial annual non-refundable
41 registration fee of **[\$300]** \$500 to the commissioner. The non-
42 refundable registration fee for the second annual registration shall
43 be **[\$300]** \$500. Upon successful completion of two consecutive
44 years of registration, a contractor may elect to register for a two-
45 year period and pay a non-refundable registration fee of **[\$500]**
46 \$750.

1 also any public work in which prevailing wage rates are required to
2 be paid under other laws, including the laws regarding public works
3 contracts of the Economic Development Authority, county
4 improvement authorities, the Casino Reinvestment Development
5 Authority, the Educational Facilities Financing Authority, and the
6 Health Care Facilities Financing Authority.

7 The bill requires a contractor registering under that act to
8 disclose all violations by the contractor of any federal or state
9 prevailing wage law during the preceding ten years, and increases
10 the registration fees under that act from \$300 to \$500 for the first
11 and second year of registration, and increases the fee charged to a
12 contractor who subsequently chooses to register for a two-year
13 period from \$500 to \$750.