SENATE, No. 1825

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Senator FRED H. MADDEN, JR.
District 4 (Camden and Gloucester)

SYNOPSIS

Concerns labor harmony agreements for hospitality projects.

CURRENT VERSION OF TEXT

As introduced.

AN ACT regarding labor harmony agreements in connection with hospitality projects, and supplementing Title 52 of the Revised Statutes.

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

1. The Legislature hereby finds and declares that:

a. the State, through its investment in development projects has a significant and ongoing economic interest in the financial viability and competitiveness of those projects;

b. development projects that include hospitality establishments provide essential services and jobs for local residents, stimulate local economies, are a vital economic engine that provides revenue for our communities and promotes vibrant downtowns and financial stability, and have a direct impact on the reputation of New Jersey as a viable tourism market;

c. there are labor organizations in New Jersey that currently represent thousands of hospitality workers, and actively engage in organizing activities to unionize additional hospitality establishments in the State which may include strikes, pickets, boycotts, and other economic activity during labor disputes;

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

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

2. As used in this act:

"Contractor" means a business entering into a contract or agreement to undertake a covered hospitality project, or to serve as the owner or operator of any facility, including but not limited to a hospitality establishment that is part of a covered hospitality project, or to provide services integral to the operations of the covered hospitality project or the facilities.

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

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

(1) one or more hospitality establishments are part of the project;

(2) the public body has a proprietary interest in the project or in a hospitality establishment in the project; and

(3) the project includes not less than one hospitality establishment which will have more than 10 employees.

"Labor harmony agreement" means an agreement between a contractor and one or more labor organizations which represent hospitality employees, which requires, for the duration of the agreement: that any participating labor organization which represents hospitality employees and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the contractor.

“Labor organization which represents hospitality employees” means a labor organization that is the collective bargaining agent for employees at any hospitality establishment within a 50-mile radius of the covered hospitality project and is the collective bargaining agent for not less than 1,000 employees at hospitality establishments in the State of New Jersey, or if no such organization exists, any labor organization that is the collective bargaining agent for not less than 1,000 employees at hospitality establishments in the State of New Jersey.

"Proprietary interest" means an economic and non-regulatory interest of a public body in the economic or financial success of a covered hospitality project, or the success of any facility in the project, including a hospitality establishment, that could be adversely affected by labor-management conflict, including, but not limited to, the proprietary interest of the public body as a financier, investor, lessee, lessor, operator, or owner of the project, facility, or property on which the project or facility is located, or as the provider or facilitator of financial assistance to or for the project, facility, or property, whether by direct loan or grant, or by a guarantee, subsidy, deposit, credit enhancement or similar method, and any interest of a public body derived from the ongoing receipt by the public body of revenues from the project or facilities of the project.

"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, or any other entity authorized to conduct economic development activity on behalf of a public body.

3. a. Except as provided in subsection c. of this section, no public body shall enter into any contract or agreement under which the public body has a proprietary interest in a covered project unless the contract or agreement includes a precondition that the contractor and all subcontractors of the contractor enter into a labor harmony agreement with a labor organization which represents hospitality employees. The public body shall, prior to entering into the contract or agreement, provide written disclosure to the contractor and any

subcontractors of all requirements of this act relevant to the contract or agreement. If it is required that contractors submit bids or other proposals to be considered for the agreement or contract, the public body shall provide the written disclosure to each prospective bidder or other contractor as part of the specifications for bidding or otherwise seeking the contract or agreement for the project. The contractor or subcontractor shall incorporate the terms of the labor harmony agreement in any contract, subcontract, lease, sublease, operating agreement, concessionaire agreement, franchise agreement or other agreement or instrument giving a right to any person or entity to own or operate a hospitality establishment in the covered project.

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

c. A public body may enter into a contract or agreement with a contractor without entering into a labor harmony agreement only if the public body determines that the covered project would not be able to go forward if a labor harmony agreement is required. Such determination shall only be made after soliciting input from any labor organizations with which a labor harmony agreement would otherwise be required. The determination shall be supported by a written finding by the public body which provides documentation of the specific basis for the determination. The written determination shall be submitted to the commissioner, who shall review the determination and make public a finding on the determination within not more than 15 business days after the submission. If the commissioner approves the determination, the determination shall be, together with the commissioner's statement of approval, included in any public materials provided to any board or agency official in connection with the covered project and maintained and made available to the public by the public body. If the commissioner does not approve the determination, the contract or agreement shall be subject to the requirement of subsection a. of this section to include a precondition that the contractor and all subcontractors of the contractor enter into a labor harmony agreement.

d. The requirements of this act regarding the inclusion of a labor harmony agreement in any agreement or contract for a

contractor to undertake a covered project shall not be deemed to unduly restrict competition, and any bidder refusing to comply with the requirements of this act regarding labor harmony agreements shall not be regarded as a responsible bidder. No agreement or contract to undertake a covered hospitality project entered into after the effective date of this act between a public body and a contractor shall be valid or enforceable if it does not comply with the requirements of this act regarding the inclusion of labor harmony agreements.

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

4. Each public body which enters into a contract which is subject to the provisions of this act regarding labor harmony agreements shall submit to the commissioner evidence of an executed labor harmony agreement, and, if the public body determines that a labor harmony agreement will prevent a project from going forward, a copy of the determination and documentation supporting the finding. The public body shall provide, in a timely manner as required by the commissioner, up to date information regarding any changes in the information submitted. The commissioner shall make information submitted pursuant to this section available to the public, and shall provide to the Legislature, and make public, an annual report of all covered hospitality projects, and all instances of public bodies determining not to require labor harmony agreements.

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

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

STATEMENT

This bill requires the State, or any other public body, to include a labor harmony agreement as part of any contract it enters with a contractor in connection with a hospitality project in which a public body has a proprietary interest as a financier, investor, lessee,

lessor, operator, or owner of the project or its property or facilities of the project, as a provider of financial assistance for the project or facilities, or as a receipt of revenues from the project or facilities of the project.

The bill defines a contractor as a business that enters into a contract to undertake a covered hospitality project, serve as the operator of any facility that is part of a covered project, or provide services integral to project operations.

A labor harmony agreement is defined as an agreement between a contractor and a labor organization representing hospitality employees, which requires, for the duration of the agreement, that the labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic actions against the contractor.

A labor harmony agreement would apply for not less than five years after the covered project becomes fully operational and, apply, also for a period of not less than five years, to successor contractors who take the place of initial contractors during the time in which public bodies continue to have a proprietary interest in the project.

A public body would be allowed to enter into a contract without a labor harmony agreement only if it issues a written public statement documenting the basis of its determination that the labor harmony agreement would prevent the project from going forward, subject to the review and approval of the Commissioner of Labor and Workforce Development. The bill also directs public bodies to submit to the commissioner evidence of a labor harmony agreement and up to date information regarding and changes in submitted information. The commissioner is directed to make the submitted information public in an annual report of all covered projects and all instances of public bodies not requiring labor harmony agreements.

The commissioner is directed to adopt regulations which include the provision of remedies and procedures for public bodies to enforce compliance with the provisions of the bill and labor harmony agreements entered into under the bill.