

[First Reprint]

SENATE, No. 4207

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 2, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Concerns apprenticeship programs of public works contractors.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on December 6, 2021, with amendments.



1 AN ACT concerning apprenticeship programs of public works
 2 contractors, amending and supplementing P.L.1999, c.238, and
 3 repealing section 2 of P.L.2019, c.518.

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

7
 8 1. Section 5 of P.L.1999, c.238 (C.34:11-56.52) is amended to
 9 read as follows:

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

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

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

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

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

24 (5) The contractor's tax identification number and
 25 unemployment insurance registration number;

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

34 (7) A certification form provided by the commissioner, with
 35 supporting documentation, establishing to the satisfaction of the
 36 commissioner that the registered apprenticeship program, as defined
 37 in section 3 of P.L.1999, c.238 (C.34:11-56.50), ¹["in which the
 38 contractor"]¹ meets all of the requirements of section¹ **[1** of
 39 P.L.2005, c.379 (C.34:11-56.58)] 6 of P.L. , c. (C.)
 40 (pending before the Legislature as this bill)¹ , and 29 C.F.R.
 41 ss.¹29.3, 29.4,¹ 29.5, 29.6 and 29.7;

42 (a) If it is determined by the commissioner that a registered
 43 apprenticeship program in which the contractor participates does
 44 not meet all of the requirements of 29 C.F.R. ss.¹29.3, 29.4,¹ 29.5,

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 December 6, 2021.

1 29.6 and 29.7, that determination of the commissioner shall, subject
2 to the requirements of subsection b. of section 9 of P.L.1999, c.238
3 (C.34:11-56.56), including the contractor's right to request a
4 hearing, result in initial registration application denial, registration
5 renewal denial, revocation, or suspension of the certificate of
6 registration to perform public work in New Jersey;

7 (b) The determination of the commissioner under this paragraph
8 shall only impact the contractor's ability to obtain or maintain its
9 public works contractor registration certificate under P.L.1999,
10 c.238 (C.34:11-56.48 et seq.), and shall not affect the status of the
11 registered apprenticeship program for the purpose of its continued
12 operation in New Jersey; ¹ [unless the registration application is
13 filed by a sponsor that does not meet the requirements of 29 C.F.R.
14 ss.29.3, 29.4, 29.5, 29.6 and 29.7, in which case that determination
15 of the commissioner shall, subject to the requirements of subsection
16 b. of section 4 of P.L. , c. (C.) (pending before the
17 Legislature as this bill), including the contractor's right to request a
18 hearing, result in initial registration application denial, registration
19 renewal denial, revocation, or suspension of the certificate of
20 registration of all contractors affiliated with the sponsor to perform
21 public work in New Jersey;]

22 (c) A determination by the commissioner under subparagraph (a)
23 of this paragraph (7) that a registered apprenticeship program in
24 which the contractor participates does not meet all of the
25 requirements of 29 C.F.R. ss. 29.3, 29.4, 29.5, 29.6 and 29.7 shall
26 result not only in initial registration application denial, registration
27 renewal denial, revocation or suspension of that contractor's
28 certificate of registration to perform public work in New Jersey, but
29 also shall result in the initial registration application denial,
30 registration renewal denial, revocation or suspension of every
31 contractor who is meeting the apprenticeship program participation
32 requirement through participation in the non-complaint registered
33 apprenticeship program; provided that any initial registration
34 application denial, registration renewal denial, revocation or
35 suspension shall be subject to the requirements of subsection b. of
36 section 9 of P.L. 1999, c.238 (C.34:11-56.56), including the
37 contractor's right to request a hearing;¹

38 and

39 (8) Any other relevant and appropriate information as
40 determined by the commissioner.

41 b. At the time of registration, and subsequently upon request,
42 the contractor shall submit to the commissioner documentation
43 demonstrating that the contractor has worker's compensation
44 insurance coverage for all workers as required by law.
45 (cf: P.L.2019, c.21, s.2)

46
47 2. Section 6 of P.L.1999, c.238 (C.34:11-56.53) is amended to
48 read as follows:

1 6. a. The contractor shall pay an initial annual non-refundable
2 registration fee of **【\$300】** \$500 to the commissioner. The non-
3 refundable registration fee for the second annual registration shall
4 be **【\$300】** \$500. Upon successful completion of two consecutive
5 years of registration, a contractor may elect to register for a two-
6 year period and pay a non-refundable registration fee of **【\$500】**
7 \$750.

8 b. A contractor who is performing public work on the effective
9 date of this act shall submit the registration application form and fee
10 to the commissioner within 30 days of the effective date of this act.

11 c. Registration fees collected pursuant to this act shall be
12 applied toward the enforcement and administration costs of the
13 Division of Workplace Standards, Office of Wage and Hour
14 Compliance, Public Contracts section and Registration section
15 within the department.

16 (cf: P.L.2003, c.91, s.3)

17

18 3. Section 7 of P.L.1999, c.238 (C.34:11-56.54) is amended to
19 read as follows:

20 7. Upon receipt of the fee, form and documentation required by
21 section 5 of this act, and upon a finding that the applicant for the
22 certificate of registration has met all of the requirements set forth at
23 section 5 of P.L.1999, C.238 (C.34:11-56.52), the commissioner
24 shall issue a certificate of registration to the contractor. A
25 registration certificate shall be valid for one calendar year from the
26 date of registration. Registrations shall be renewed not less than 30
27 days before the expiration date of the immediately preceding
28 registration.

29 (cf: P.L.1999, c.238, s.7)

30

31 4. (New section) a. Each contractor or sponsor as defined
32 herein, who is registered under P.L.1999, c.238 (C.34:11-56.48 et
33 seq.) to bid on and perform public work shall be under a continuing
34 obligation between registration certificate renewal cycles to ensure
35 compliance with the requirements of section 5 of P.L.1999, C.238
36 (C.34:11-56.52).

37 b. When between registration certificate renewal cycles it is
38 determined by the department that a contractor has failed to comply
39 with the requirements of section 5 of P.L.1999, C.238 (C.34:11-
40 56.52), provided it is also determined by the department that the
41 failure to comply with section 5 of P.L.1999, C.238 (C.34:11-56.52)
42 existed at the time of the contractor's most recent certificate of
43 registration application, whether that application was for contractor
44 registration renewal or initial approval, the department shall
45 consider the resulting failure of the contractor to accurately
46 complete its registration application to have been the making or
47 causing to be made of a false, deceptive or fraudulent statement on
48 the public works contractor registration form, which pursuant to

1 paragraph (7) of subsection a. of section 9 of P.L.1999, C.238
2 (C.34:11-56.56), constitutes grounds for revocation of the
3 contractor's certificate of registration.

4 c. When between registration certificate renewal cycles it is
5 determined by the department that a contractor has failed to comply
6 with section 5 of P.L.1999, C.238 (C.34:11-56.52), but where it is
7 also determined by the department that the failure to comply with
8 section 5 of P.L.1999, C.238 (C.34:11-56.52) did not exist at the
9 time of the contractor's most recent certificate of registration
10 application, whether that application was for contractor registration
11 renewal or initial approval, the department shall suspend the
12 contractor's certificate of registration pursuant to this section either
13 until the contractor establishes compliance with section 5 of
14 P.L.1999, C.238 (C.34:11-56.52) or until the beginning of the next
15 registration certificate renewal cycle, whichever occurs first.

16 d. When a contractor has had its registration certificate either
17 revoked or suspended under subsections b. or c. of this section, for
18 failure between registration certificate renewal cycles to comply
19 with section 5 of P.L.1999, C.238 (C.34:11-56.52), that registration
20 certificate revocation or suspension shall be taken into
21 consideration by the department as a prior offense when
22 determining whether to grant any subsequent certificate of
23 registration application.

24
25 5. Section 9 of P.L.1999, c.238 (C.34:11-56.56) is amended to
26 read as follows:

27 9. a. A contractor who: (1) willfully hinders or delays the
28 commissioner in the performance of his duties in the enforcement of
29 this act; (2) fails to make, keep, and preserve any records as
30 required under the provisions of the "New Jersey Prevailing Wage
31 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (3) falsifies any such
32 record, or refuses to make any such record accessible to the
33 commissioner upon demand; (4) refuses to furnish a sworn
34 statement of such records or any other information required for the
35 enforcement of this act to the commissioner upon demand; (5) pays
36 or agrees to pay wages at a rate less than the rate prescribed by the
37 "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25
38 et seq.); (6) makes or causes to be made, a false, deceptive or
39 fraudulent statement on the public works contractor registration
40 form; or [(6)] (7) otherwise violates any provision of this act, shall
41 be guilty of a disorderly persons offense '【crime】' and shall, upon
42 conviction, be subject to punishment by a fine of not less than
43 \$2,500 nor more than \$25,000 and disqualification from bidding on
44 '【all】 or engaging in' public work '【contracts】' for a period of up
45 to three years'【; and shall be subject to 29 C.F.R. s.29.8, the
46 deregistration of a registered program for the failure to operate and
47 administer the apprenticeship program in accordance with the
48 program's registered provisions including, but not limited to, the

1 failure to provide on the job training or related classroom
2 instruction or the failure to register at least one apprentice pursuant
3 to 29 C.F.R. ss.29.3, 29.4, 29.5, 29.6 and 29.7 or, in the case of an
4 individual who is an officer or employee charged with the duty of
5 completion of the registration form for a sponsor,】. Where the
6 contractor has made or has caused to be made a false, deceptive or
7 fraudulent statement on the public works contractor registration
8 form in connection with the requirement of section 5 of P.L.1999,
9 c.238 (C.34:11-56.52) that the contractor participate in a registered
10 apprenticeship program for each craft that the contractor employs,
11 and where the false, deceptive or fraudulent statement was made by
12 an officer or employee charged with the duty of completion of the
13 registration form for a contractor, that officer or employee, upon
14 conviction, shall be subject to punishment¹ by the fine indicated in
15 this subsection or by imprisonment not exceeding six months, or
16 both.

17 b. As an alternative to or in addition to sanctions provided by
18 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
19 56.25 et seq.), the commissioner may, after providing the contractor
20 with notice of any alleged violation of this act, and with an
21 opportunity to request a hearing before the commissioner or his
22 designee:

23 (1) Deny renewal, revoke or suspend the registration of a
24 contractor for a period of not more than five years; or

25 (2) Require a contractor, as a condition of initial or continued
26 registration, to provide a surety bond payable to the State. The
27 surety bond shall be for the benefit of workers damaged by any
28 failure of a contractor to pay wages or benefits pursuant to or
29 otherwise comply with the provisions of the "New Jersey Prevailing
30 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) or this act. The
31 surety bond shall be in the amount and form that the commissioner
32 deems necessary for the protection of the contractor's workers, but
33 shall not exceed \$10,000 per worker. The surety bond shall be
34 issued by a surety that meets the requirements of N.J.S.2A:44-143.

35 c. The director may order the immediate suspension of a
36 contractor's registration, prior to a formal hearing on the revocation
37 of the contractor's registration pursuant to subsection b. of this
38 section, if the director determines that ordering an immediate
39 suspension is in the public interest and provided that the contractor
40 is afforded an opportunity to contest the immediate suspension in
41 the following manner:

42 (1) The director shall notify the contractor in writing of the
43 immediate revocation and the contractor's rights under the
44 subsection.

45 (2) The contractor may notify the director of its request for an
46 opportunity to be heard and contest the immediate suspension in
47 writing within 72 hours of its receipt of immediate suspension
48 notification.

1 (3) Within seven business days of receipt of the notification
2 from the contractor pursuant to paragraph (2) of this subsection, the
3 director shall grant the contractor a hearing to contest the immediate
4 suspension. The director shall permit the contractor to present
5 evidence at the hearing.

6 (4) The director shall issue a written decision within five
7 business days of the hearing either upholding or reversing the
8 contractor's immediate suspension. The decision shall include the
9 grounds for upholding or reversing the contractor's immediate
10 suspension.

11 (5) If the contractor disagrees with the written decision, the
12 contractor may appeal the decision to the commissioner, in
13 accordance with the "Administrative Procedure Act," P.L.1968,
14 c.410 (C.52:14B-1 et seq.).

15 d. If the director intends to impose an immediate suspension as
16 set forth in subsection c. of this section, based upon a rebuttable
17 presumption as set forth in section 14 of P.L.1963, c.150 (C.34:11-
18 56.38), the director shall provide the contractor with a notice of
19 intent to suspend and the contractor may request a hearing before
20 the Director of the Division of Wage and Hour Compliance within
21 72 hours of the receipt of the notice of intent to suspend in order to
22 present evidence expeditiously in support of the position that the
23 suspension should not be imposed. The suspension shall not take
24 effect prior to the expiration of the 72-hour opportunity to request a
25 hearing. If such a request is not made, the suspension shall take
26 effect at the end of the 72-hour period. If such a request is made,
27 the suspension shall take effect only after the director conducts the
28 hearing.

29 e. If the director orders the immediate suspension of a
30 contractor's registration pursuant to subsection b. of this section, the
31 violation shall have no effect on the registration of any contractor or
32 subcontractor, regardless of tier, in the contractual chain with the
33 suspended contractor, unless the registration form for the
34 contractual chain of contractors and subcontractors was filed by a
35 sponsor, in which case all of the contractors of whatever tier who
36 participated in the sponsor's apprenticeship program shall be
37 suspended and their registrations shall be revoked by the
38 commissioner.

39 (cf: P.L.2007, c.67, s.3)

40

41 6. (New section) A registered apprenticeship program shall
42 require the completion of the on the job training hours which
43 conform to the industry standards for learning the skills of a
44 specific craft or trade, as well as on the job organized, related
45 instruction in technical subjects related to the specific
46 apprenticeable occupation in conformance with industry standards.
47 The industry standards for program completion shall be based upon
48 the training requirements as registered and certified by the United

1 States Department of Labor each individual occupation and craft
2 title published by the United States Department of Labor
3 Employment and Training Administration.

4 The length of a program shall depend upon the complexity of the
5 occupation. Program duration shall be not less than one year and
6 not more than six years. During the program, the apprentice shall
7 receive both structured on the job training and related classroom
8 instruction. For each year of the program, the apprentice shall
9 receive at least 2,000 hours of on the job training and at least 144
10 hours of related classroom instruction.

11 The program shall include all other recommended minimum
12 requirements as outlined under 29 C.F.R. s.29.5 including, but not
13 limited to, a successful demonstration of competency, the
14 registration of program standards, the submission and publication of
15 program completion rates which meet the program performance
16 standards of enrollment and completion rates as outlined under 29
17 C.F.R. s.29.6, and meet the training recommendations, the terms
18 and conditions of the employment and training agreement between
19 the employer and the apprentice, and the publication of the
20 graduated wages scales to be paid to the apprentice as outlined
21 under 29 C.F.R. s.29.7.

22

23 7. (New section) Subcontractors of a contractor registered
24 pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) are not required
25 to register under that act if they do not perform work at any
26 construction site subject to that act.

27

28 8. Section 2 of P.L.2019, c.518 (C.34:11-56.71) is repealed.

29

30 9. This act shall take effect immediately.