

[Second 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 Budget and Appropriations Committee on December 16, 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.

²Senate SBA committee amendments adopted December 16, 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; ¹Unless 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; ¹

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) ²willfully² makes or causes to be made, a false,
39 deceptive or fraudulent statement on the public works contractor
40 registration form; or **[(6)]** (7) otherwise violates any provision of
41 this act, shall be guilty of a disorderly persons offense **'[crime]'**
42 and shall, upon conviction, be subject to punishment by a fine of
43 not less than \$2,500 nor more than \$25,000 and disqualification
44 from bidding on '[all] or engaging in' public work '[contracts]'
45 for a period of up to three years'**['];** and shall be subject to 29 C.F.R.
46 s.29.8, the deregistration of a registered program for the failure to
47 operate and administer the apprenticeship program in accordance

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

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

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

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

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

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

46 (2) The contractor may notify the director of its request for an
47 opportunity to be heard and contest the immediate suspension in

1 writing within 72 hours of its receipt of immediate suspension
2 notification.

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

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

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

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

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

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

42

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

1 The industry standards for program completion shall be based upon
2 the training requirements as registered and certified by the United
3 States Department of Labor each individual occupation and craft
4 title published by the United States Department of Labor
5 Employment and Training Administration.

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

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

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

29
30 ²8. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to
31 read as follows:

32 3. As used in chapter 11 of Title 34 of the Revised Statutes:

33 "Apprenticeship Agreement" means a written agreement,
34 complying with 29 C.F.R. s.29.7, between an apprentice and either
35 the apprentice's program sponsor, or an apprenticeship committee
36 acting as agent for a program sponsor, which contains the terms and
37 conditions of the employment and training of the apprentice.

38 "Apprenticeship cohort" means the group of individual
39 apprentices registered to a specific individual program during a
40 one-year time frame, except that a cohort does not include the
41 apprentices whose apprenticeship agreement has been cancelled
42 during the probationary period.

43 "Apprenticeship committee" means those persons designated by
44 the sponsor to administer the program. A committee may be either
45 joint or non-joint, as follows:

46 (1) A joint committee is composed of an equal number of
47 representatives of the employer or employers and of the employees
48 represented by a bona fide collective bargaining agent or agents.

1 (2) A non-joint committee, which may also be known as a
2 unilateral or group non-joint committee, has employer
3 representatives, but does not have a bona fide collective bargaining
4 agent as a participant. A non-joint committee may include
5 employees.

6 "Apprenticeable occupation" means a skilled trade or technical
7 occupation that is included on the United States Department of
8 Labor's "List of Occupations Officially Recognized as
9 Apprenticeable by the Office of Apprenticeship".

10 "Apprenticeship program" means a plan containing all terms and
11 conditions for the qualification, recruitment, selection, employment,
12 and training of apprentices, as required under 29 C.F.R. ss.29 and
13 30, including such matters as the requirement for a written
14 apprenticeship agreement.

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

17 "Completion rate" means the percentage of an apprenticeship
18 cohort who receive a certificate of apprenticeship completion within
19 one year of the projected completion date.

20 "Contractor" means a person, partnership, association, joint stock
21 company, trust, corporation, or other legal business entity or
22 successor thereof who enters into a contract which is subject to the
23 provisions of the "New Jersey Prevailing Wage Act," P.L.1963,
24 c.150 (C.34:11-56.25 et seq.), and includes any subcontractor or
25 lower tier subcontractor of a contractor as defined herein.

26 "Department" means the Department of Labor and Workforce
27 Development.

28 "Director" means the Director of the Division of Wage and Hour
29 Compliance in the Department of Labor and Workforce
30 Development.

31 "Worker" includes laborer, mechanic, skilled or semi-skilled
32 laborer and apprentices or helpers employed by any contractor or
33 subcontractor and engaged in the performance of services directly
34 upon a public work, who have completed or are actively
35 participating in a registered apprenticeship program, regardless of
36 whether their work becomes a component part thereof, but does not
37 include material suppliers or their employees who do not perform
38 services at the job site.

39 "Registered apprenticeship program" or "program" means an
40 apprenticeship program which is registered with and approved by
41 the United States Department of Labor, which provides each trainee
42 with combined classroom and on-the-job training in an occupation
43 recognized as an apprenticeable occupation, and which involves the
44 attainment of manual, mechanical, or technical skills and
45 knowledge which, in accordance with the industry standard for the
46 specific apprenticeable occupation, are outlined under 29 C.F.R.
47 s.29.5.

1 "Sponsor" means any person, association, committee, or
2 organization operating an apprenticeship program and in whose
3 name the program is or will be registered or approved.

4 "Public bidding threshold" means the maximum amount under
5 which a bid may be made, and a contract may be awarded, for a
6 contract for public work without advertising pursuant to the
7 appropriate State law. ²

8 (cf: P.L.2019, c.518, s.1).

9
10 ²9. Section 4 of P.L.1999, c.238 (C.34:11-56.51) is amended to
11 read as follows:

12 4. No contractor shall bid on any contract which is for public
13 work as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26), or
14 for which payment of the prevailing wage is required by any other
15 provision of law, and which contract is for an amount greater than
16 the public bidding threshold, if one is established by State law,
17 unless the contractor is registered pursuant to this act. No
18 contractor shall list a subcontractor in a bid proposal for the
19 contract unless the subcontractor is registered pursuant to P.L.1999,
20 c.238 (C.34:11-56.48 et seq.) at the time the bid is made. No
21 contractor or subcontractor, including a subcontractor not listed in
22 the bid proposal, shall engage in the performance of any public
23 work subject to the contract, unless the contractor or subcontractor
24 is registered pursuant to that act.²

25 (cf: P.L.2019, c.376, s.2)

26
27 ²~~[8.] 10.~~² Section 2 of P.L.2019, c.518 (C.34:11-56.71) is
28 repealed.

29
30 ²~~[9.] 11.~~² This act shall take effect immediately.