

**SENATE, No. 817**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED JANUARY 28, 2008

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Permits labor peace agreements in projects in which public entities have proprietary interests.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT permitting labor peace agreements in connection with  
2 certain projects in which public entities have proprietary  
3 interests.

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

7  
8 1. The Legislature finds and declares:

9 a. The New Jersey State Constitution and federal labor law  
10 guarantees workers the right to form or select any labor  
11 organization to act as their exclusive representative for the purpose  
12 of collective bargaining with their employer, or to refrain from such  
13 activity;

14 b. The United States Court of Appeals held in Hotel Employees  
15 and Restaurant Employees Union, Local 57 v. Sage Hospitality  
16 Resources, LLC, 390 F.3d 206 (3rd Cir. 2004) that a public entity's  
17 decision to condition a grant of tax increment financing to a  
18 developer of a hotel construction project upon the developer's  
19 acceptance of a labor neutrality agreement constitutes "market  
20 participation" that falls within the exception from preemption by  
21 federal labor law provided in Building and Construction Trades  
22 Council v. Associated Builders and Contractors, 507 U.S. 218  
23 (1993), commonly referred to as the Boston Harbor decision,  
24 because the public entity acted as reasonable investor in applying  
25 conditions to its investment in the project;

26 c. New Jersey has a compelling interest to ensure that a  
27 funding condition serves to advance or preserve the public entity's  
28 proprietary interest in a construction project or other project as an  
29 investor, owner or financier and that the scope of the funding  
30 condition is specifically tailored to the proprietary interest;

31 d. New Jersey has a compelling interest in having labor  
32 disputes in connection with construction projects or other projects  
33 in which a public entity has a proprietary interest as an investor,  
34 owner or financier resolved without strikes, lock-outs or other  
35 disruptions;

36 e. Labor peace agreements make possible legally enforceable  
37 guarantees that projects will be carried out in an orderly and timely  
38 manner, without strikes, lock-outs or slowdowns;

39 f. Labor peace agreements also make it possible to provide for  
40 peaceful, orderly, and mutually binding procedures for resolving  
41 labor issues, thus promoting harmonious and productive work  
42 environments;

43 g. Labor peace agreements also protect New Jersey worker  
44 rights guaranteed under the New Jersey Constitution.

45  
46 2. For the purposes of this Act:

47 "Bargaining Unit" means an appropriate group of workers for the  
48 purpose of collective bargaining as determined, if necessary, by the

1 New Jersey State Board of Mediation, Division of Private  
2 Employment Dispute Settlement.

3 “Construction” means any construction, reconstruction,  
4 demolition, alteration, custom fabrication, repair, or maintenance  
5 work, including, but not limited to, any work in which workers are  
6 required to be paid prevailing wage rates established pursuant to the  
7 “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25  
8 et seq.), and including any work subject to any other State law  
9 which requires the payment of the prevailing wage rates set  
10 pursuant to that act.

11 “Labor peace agreement” means an agreement entered into  
12 pursuant to this act between any employer employing workers in  
13 connection with the construction or operation of a project in which  
14 a public entity has a proprietary interest, and one or more labor  
15 organizations which represent those workers or, in the case of  
16 workers in the project not represented by a labor organization, a  
17 labor organization which seeks to represent those workers.

18 “Project in which a public entity has a proprietary interest”  
19 means any project, including a project involving the construction or  
20 operation of a hotel or other facility, in which a public entity has a  
21 proprietary interest as a financier, investor, lessee or owner of the  
22 project, the facility, or the property on which the project or facility  
23 is located.

24 “Public entity” means the State, any of its political subdivisions,  
25 any authority created by the Legislature and any instrumentality or  
26 agency of the State or any of its political subdivisions.

27  
28 3. A public entity may include, on a project-by-project basis, a  
29 labor peace agreement in a project in which a public entity has a  
30 proprietary interest if the public entity determines that the  
31 agreement serves to advance or preserve that proprietary interest,  
32 that the scope of the labor peace agreement is specifically limited to  
33 that proprietary interest, and that the agreement meets the  
34 requirements of sections 4 and 5 of this act. If the public entity  
35 makes these determinations with respect to a particular project, any  
36 requirement that the labor peace agreement be included in the  
37 project shall not be deemed to unduly restrict competition and any  
38 bidder for the project refusing to comply with the requirement for a  
39 labor peace agreement shall not be regarded as a responsible bidder.  
40

41 4. Any labor peace agreement entered into pursuant to this act  
42 between a construction manager, contractor or developer and one or  
43 more labor organizations shall be binding on all construction  
44 managers, contractors, subcontractors, developers or operators who  
45 employ workers in connection with the construction, but no  
46 construction manager, contractor, subcontractor, developer or  
47 operator shall be required to be a party to a collective bargaining  
48 agreement or labor peace agreement with the labor organizations

1 other than for the construction covered by the labor peace  
2 agreement. Any labor peace agreement entered into pursuant to this  
3 act between a developer or operator of a project in which a public  
4 entity has a proprietary interest, including a hotel project, and any  
5 labor organization shall be binding on the developer and operator,  
6 but the developer or operator shall not be required to be a party to a  
7 collective bargaining agreement or labor peace agreement other  
8 than for the project covered by the labor peace agreement. No labor  
9 peace agreement entered into pursuant to this act between a  
10 developer or operator of a project and one or more unions shall  
11 apply after the time during which the public entity has a proprietary  
12 interest in the project as a financier, investor, lessee or owner of the  
13 project, including the duration of any loan for a project made,  
14 guaranteed, subsidized, administered or authorized by the public  
15 entity and including the duration of any contract with the public  
16 entity for a developer or operator to operate a facility in connection  
17 with the project.

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19 5. Each labor peace agreement executed pursuant to the  
20 provisions of this act shall include provisions:

21 a. Which guarantee against strikes, lock-outs, or other similar  
22 actions which may cause economic disruption of the project in  
23 which the public entity has a proprietary interest;

24 b. Which guarantee that employers maintain neutrality with  
25 respect to the rights of workers working on the project to choose a  
26 labor organization to be their collective bargaining representative,  
27 including guarantees that no employer will take any action nor  
28 make any statement that directly or indirectly states or implies any  
29 opposition by the employer to the selection by those workers of a  
30 collective bargaining representative;

31 c. That a labor organization is guaranteed the right to obtain  
32 recognition as the exclusive collective bargaining representative by  
33 demonstrating to an agreed-upon, neutral third-party or the New  
34 Jersey State Board of Mediation, Division of Private Employment  
35 Dispute Settlement that a majority of workers in the bargaining unit  
36 have shown their preference to have the labor organization be their  
37 representative by signing authorization cards indicating that  
38 preference;

39 d. Setting forth effective, immediate, and mutually binding  
40 procedures for resolving all disputes relating to employment  
41 conditions or negotiations thereof, including a provision that any  
42 dispute over what constitutes an appropriate bargaining unit will be  
43 determined by the New Jersey State Board of Mediation, Division  
44 of Private Employment Dispute Settlement; and

45 e. Which make the agreement binding on all construction  
46 managers, contractors, subcontractors, developers or operators  
47 employing workers on the project through the inclusion of  
48 appropriate bid specifications in all relevant bid documents.



1       2. Which guarantee that employers maintain neutrality with  
2 respect to the rights of workers working on the project to choose a  
3 labor organization to be their collective bargaining representative;

4       3. That a labor organization is guaranteed the right to obtain  
5 recognition as the exclusive collective bargaining representative by  
6 demonstrating to an agreed-upon, neutral third-party or the New  
7 Jersey State Board of Mediation that a majority of workers in the  
8 bargaining unit have shown their preference to have the labor  
9 organization be their representative by signing authorization cards  
10 indicating that preference;

11       4. Setting forth effective, immediate, and mutually binding  
12 procedures for resolving all disputes relating to employment  
13 conditions or negotiations thereof, including a provision that any  
14 dispute over what constitutes an appropriate bargaining unit will be  
15 determined by the New Jersey State Board of Mediation; and

16       5. Which make the agreement binding on all contractors,  
17 subcontractors, construction managers, developers or operators  
18 working on the project through the inclusion of appropriate bid  
19 specifications in all relevant bid documents.

20       A labor peace agreement entered into in connection with  
21 construction does not require any employer to be a party to a  
22 collective bargaining agreement or labor peace agreement with the  
23 labor organizations other than for the construction covered by the  
24 labor peace agreement. Likewise, a developer or operator of a  
25 project who enters into labor peace agreements is not required by  
26 the bill to be a party to a collective bargaining agreement or labor  
27 peace agreement other than for the project covered by the labor  
28 peace agreement. A labor peace agreement for a project applies  
29 only during the time in which the public entity has a proprietary  
30 interest in the project as a financier, investor or owner, including  
31 the duration of any loan for the project made, guaranteed,  
32 subsidized, authorized or administered by the public entity and  
33 including the duration of any contract with the public entity for the  
34 developer or operator to operate a facility in connection with the  
35 project.

36       The bill is not intended to modify, impair, override or supersede  
37 any provision of P.L.2002, c.44 (C.52:38-1 et seq.) or the  
38 application of any provision of that act to any project labor  
39 agreement entered into pursuant to that act.