

# SENATE, No. 3948

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 13, 2019

**Sponsored by:**

**Senator FRED H. MADDEN, JR.**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Concerns labor harmony agreements in retail and distribution center projects.

**CURRENT VERSION OF TEXT**

As introduced.



1   **AN ACT** regarding labor harmony agreements in connection with  
2       retail and distribution center projects and supplementing Title 52  
3       of the Revised Statutes.

4

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

7

8       1. The Legislature hereby finds and declares that:

9       a. The State, through its investment in development projects  
10      has a significant and ongoing economic interest in the financial  
11      viability and competitiveness of those projects and their role in  
12      promoting the vital sectors of the State's economy;

13      b. Major development projects with large retail establishments  
14      and distribution centers, and the supply chain that ensures their  
15      goods arrive on time and in good condition, provide essential  
16      goods, services, and jobs for local residents, stimulate local  
17      economies, and are a vital economic engine that provides revenue  
18      for our communities and promotes vibrant downtowns and financial  
19      stability;

20      c. There are labor organizations in New Jersey that represent  
21      many retail and distribution center workers, and that actively  
22      engage in organizing activities to unionize additional retail and  
23      distribution center establishments in the State, which may include  
24      strikes, pickets, boycotts, and other economic activity during labor  
25      disputes;

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

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

35

36      2. As used in this section:

37      "Contractor" means a business entering into a contract or  
38      agreement to undertake a covered retail or distribution project, or to  
39      serve as the owner or operator of any facility, including but not  
40      limited to a retail establishment or distribution center, that is part of  
41      a covered retail or distribution project, or to provide services  
42      integral to the operations of the covered retail or distribution project  
43      or the facilities.

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

46      "Covered retail or distribution project" or "covered project"  
47      means a project undertaken pursuant to an agreement entered into

1 after the effective date of this act between a public body and a  
2 contractor in which:

3 a. one or more retail establishments or distribution centers are  
4 part of the project;

5 b. the public body has a proprietary interest in the project or in  
6 a retail establishment or distribution center in the project; and

7 c. the project includes at least one retail establishment which  
8 will have more than 10 employees, or at least one distribution  
9 center which will have more than 20 employees.

10 "Distribution center" means a warehouse, distribution center,  
11 sortation facility, fulfillment center, or any other building stocked  
12 with products or goods to be redistributed to retailers, to  
13 wholesalers, or directly to consumers.

14 "Labor harmony agreement" means an agreement between a  
15 contractor and one or more labor organizations, which requires, for  
16 the duration of the agreement, that any participating labor  
17 organization and its members agree to refrain from picketing, work  
18 stoppages, boycotts, or other economic interference against the  
19 contractor.

20 "Proprietary interest" means an economic and non-regulatory  
21 interest of a public body in the economic or financial success of a  
22 covered retail or distribution project, or the success of any facility  
23 in the project, including a retail establishment or distribution center,  
24 that could be adversely affected by labor-management conflict,  
25 including, but not limited to, the interest of the public body as a  
26 financier, investor, lessee, lessor, operator, or owner of the project,  
27 facility, or property on which the project or facility is located, or as  
28 the provider or facilitator of financial assistance to or for the  
29 project, facility, or property, whether by direct loan or grant, or by a  
30 guarantee, subsidy, deposit, credit enhancement or similar method,  
31 and any interest of a public body derived from the ongoing receipt  
32 by the public body of revenues from the project or facilities of the  
33 project.

34 "Public body" means the State of New Jersey, any of its political  
35 subdivisions, and any authority, instrumentality, or agency of the  
36 State or of any of its political subdivisions, or any other entity  
37 authorized to conduct economic development activity on behalf of a  
38 public body.

39 "Retail establishment" means any retail store selling goods  
40 primarily to members of the general public.

41

42 3. a. Except as provided in subsection c. of this section, no  
43 public body shall enter into any contract or agreement under which  
44 the public body has a proprietary interest in a covered project unless  
45 the contract or agreement includes a precondition that the contractor  
46 and all subcontractors of the contractor enter into a labor harmony  
47 agreement with a labor organization which represents retail or  
48 distribution center employees in the State. The public body shall,

1 prior to entering into the contract or agreement, provide written  
2 disclosure to the contractor and any subcontractors of all  
3 requirements of this act relevant to the contract or agreement. If it  
4 is required that contractors submit bids or other proposals to be  
5 considered for the agreement or contract, the public body shall  
6 provide the written disclosure to each prospective bidder or other  
7 contractor as part of the specifications for bidding or otherwise  
8 seeking the contract or agreement for the project. The contractor or  
9 subcontractor shall incorporate the terms of the labor harmony  
10 agreement in any contract, subcontract, lease, sublease, operating  
11 agreement, concessionaire agreement, franchise agreement, or other  
12 agreement or instrument giving a right to any person or entity to  
13 own or operate a retail establishment or distribution center in the  
14 covered project.

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

27 c. A public body may enter into a contract or agreement with a  
28 contractor without entering into a labor harmony agreement only if  
29 the public body determines that the covered project would not be  
30 able to go forward if a labor harmony agreement is required. Such  
31 determination shall only be made after soliciting input from any  
32 labor organizations with which a labor peace agreement would be  
33 required hereunder. The determination shall be supported by a  
34 written finding by the public body which provides documentation of  
35 the specific basis for the determination. The written determination  
36 shall be submitted to the commissioner, who shall review the  
37 determination and make public a finding on the determination  
38 within not more than 15 business days after the submission. If the  
39 commissioner approves the determination, the determination shall  
40 be, together with the commissioner's statement of approval,  
41 included in any public materials provided to any board or agency  
42 official in connection with the covered project and maintained and  
43 made available to the public by the public body. If the  
44 commissioner does not approve the determination, the contract or  
45 agreement shall be subject to the requirement of subsection a. of  
46 this section to include a precondition that the contractor and all  
47 subcontractors of the contractor enter into a labor harmony  
48 agreement.

1       d. The requirements of this act regarding the inclusion of a  
2 labor harmony agreement in any agreement or contract for a  
3 contractor to undertake a covered project shall not be deemed to  
4 unduly restrict competition, and any bidder refusing to comply with  
5 the requirements of this act regarding labor harmony agreements  
6 shall not be regarded as a responsible bidder. No agreement or  
7 contract to undertake a covered retail or distribution project entered  
8 into after the effective date of this act between a public body and a  
9 contractor shall be valid or enforceable if it does not comply with  
10 the requirements of this act regarding the inclusion of labor  
11 harmony agreements.

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

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16       4. Each public body which enters into a contract which is  
17 subject to the provisions of this act regarding labor harmony  
18 agreements shall submit to the commissioner evidence of an  
19 executed labor harmony agreement and, if the public body  
20 determines that a labor harmony agreement will prevent a project  
21 from going forward, a copy of the determination and documentation  
22 supporting the finding. The public body shall provide, in a timely  
23 manner as required by the commissioner, information regarding any  
24 changes in the information submitted.

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26       5. The commissioner shall adopt rules and regulations pursuant  
27 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
28 1 et seq.) to effectuate the purposes of this act. These rules and  
29 regulations shall provide a model labor harmony agreement, and  
30 shall provide remedies and procedures for public bodies to enforce  
31 compliance with the provisions of this act and any labor harmony  
32 agreement entered into pursuant to this act, including provisions for  
33 reimbursement of any costs or damages incurred by the public body  
34 in connection with any noncompliance with the provisions of this  
35 act or the agreements.

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

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#### STATEMENT

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42       This bill requires the State, or any other public body, to include a  
43 labor harmony agreement as part of any contract it enters with a  
44 contractor in connection with a retail or distribution project in  
45 which a public body has a proprietary interest as a financier,  
46 investor, lessee, lessor, operator, or owner of the project or its  
47 property or facilities of the project, as a provider of financial

1 assistance for the project or facilities, or as a receipt of revenues  
2 from the project or facilities of the project.

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

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

12 A labor harmony agreement would apply for at least five years  
13 after the contract is entered into and, apply, also for a period of at  
14 least five years, to successor contractors who take the place of  
15 initial contractors during the time in which public bodies continue  
16 to have a proprietary interest in the project.

17 A public body would be allowed to enter into a contract without  
18 a labor harmony agreement only if it issues a written public  
19 statement documenting the basis of its determination that the labor  
20 harmony agreement would prevent the project from going forward,  
21 subject to the review and approval of the Commissioner of Labor  
22 and Workforce Development. The bill also directs public bodies to  
23 submit to the commissioner up to date information regarding  
24 covered projects, labor harmony agreements, and any collective  
25 bargaining agreement entered into in connection with the labor  
26 harmony agreements, and directs the commissioner to provide  
27 annual reports of that information.

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