

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1422

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED AUGUST 10, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns enforcement of prevailing wage and contractor registration laws.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Labor Committee.



1 AN ACT concerning the payment of the prevailing wage on public
2 work and amending P.L.1963, c.150 and P.L.1999, c.238.

3

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

6

7 1. Section 4 of P.L.1963, c.150 (C.34:11-56.28) is amended to
8 read as follows:

9 4. The public body, any lessee to whom the public body is
10 leasing a property or premises and any lessor from whom the public
11 body is leasing or will be leasing a property or premises awarding
12 any contract for public work or otherwise undertaking any public
13 work shall:

14 (a) ascertain from the commissioner the prevailing wage rate in
15 the locality in which the public work is to be performed for each
16 craft or trade needed to perform the contract; and

17 (b) shall **【specify in the contract itself】** provide, in the
18 documents provided to each bidder for the contract for public work,
19 information regarding what the prevailing wage rate in the locality
20 is for each craft or trade or classification of all workers needed to
21 perform the contract during the anticipated term thereof, and, when
22 the contract is awarded, shall specify that information in the
23 contract itself. Nothing in this act however shall prohibit the
24 payment of more than the prevailing wage rate to any worker
25 employed on a public work.

26 (cf: P.L.2007, c.68, s.3)

27

28 2. Section 5 of P.L.1963, c.150 (C.34:11-56.29) is amended to
29 read as follows:

30 5. (a) Every contractor and subcontractor shall keep an
31 accurate record showing the name, craft or trade, and actual hourly
32 rate of wages paid to each worker employed by him in connection
33 with a public work and such records shall be preserved for two
34 years from date of payment. The record shall be open at all
35 reasonable hours to the inspection of the public body awarding the
36 contract, to any other party to the lease or agreement to lease
37 pursuant to which the public work is done, and to the commissioner.

38 (b) If, during a given workweek, a worker performs work in
39 multiple job classifications and two or more prevailing wage rates
40 are applicable to the separate classes of work performed pursuant to
41 the “New Jersey Prevailing Wage Act, P.L.1963, c.150 (C.34:11-
42 56.25 et seq.), the contractor shall pay the worker the highest of the
43 prevailing wage rates for all hours worked in that workweek, unless
44 the contractor's records clearly delineate which hours of work for
45 the worker were spent engaged in each separate class of work. If a

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.

1 worker is employed for a portion of a given workweek in work
2 which is not subject to that act and would otherwise be
3 compensated at a rate lower than the applicable prevailing wage
4 rate for the work performed during that workweek, the contractor
5 shall pay the worker the higher prevailing wage rate for all work
6 performed during the workweek, including work not subject to the
7 act, unless the contractor's records clearly delineate which hours of
8 work for the worker are spent engaged in work subject to the act
9 and which are not.

10 (cf: P.L.1990, c.27, s.4)

11

12 3. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
13 read as follows:

14 11. (a) Any employer who willfully hinders or delays the
15 commissioner in the performance of his duties in the enforcement of
16 this act, who contracts with a public body to perform public work
17 while debarred from doing so pursuant to section 14 of
18 P.L.1963, c.150 (C.34:11-56.38), or who fails to make, keep, and
19 preserve any records as required under the provisions of this act. or
20 falsifies any such record, or refuses to make any such record
21 accessible to the commissioner upon demand, or refuses to furnish a
22 sworn statement of such record or any other information required
23 for the proper enforcement of this act to the commissioner upon
24 demand, or pays or agrees to pay wages at a rate less than the rate
25 applicable under this act or otherwise violates any provision of this
26 act or of any regulation or order issued under this act shall be guilty
27 of a disorderly persons offense and shall, upon conviction therefor,
28 be fined not less than \$100.00 nor more than \$1,000 or be
29 imprisoned for not less than 10 nor more than 90 days, or by both
30 such fine and imprisonment. Each week, in any day of which a
31 worker is paid less than the rate applicable to him under this act and
32 each worker so paid, or in which any other willful violation of the
33 provisions of this section occurs, shall constitute a separate offense.

34 (b) As an alternative to or in addition to any other sanctions
35 provided by law for violations of any provision of P.L.1963, c.150
36 (C.34:11-56.25 et seq.), when the Commissioner of Labor and
37 Workforce Development finds that an employer has violated that
38 act, the commissioner is authorized to assess and collect
39 administrative penalties, up to a maximum of \$2,500 for a first
40 violation and up to a maximum of \$5,000 for each subsequent
41 violation, specified in a schedule of penalties to be promulgated as a
42 rule or regulation by the commissioner in accordance with the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.). When determining the amount of the penalty imposed because
45 of a violation, the commissioner shall consider factors which
46 include the history of previous violations by the employer, the
47 seriousness of the violation, the good faith of the employer and the
48 size of the employer's business. No administrative penalty shall be

1 levied pursuant to this section unless the Commissioner of Labor
2 and Workforce Development provides the alleged violator with
3 notification of the violation and of the amount of the penalty by
4 certified mail and an opportunity to request a hearing before the
5 commissioner or his designee within 15 days following the receipt
6 of the notice. If a hearing is requested, the commissioner shall issue
7 a final order upon such hearing and a finding that a violation has
8 occurred. If no hearing is requested, the notice shall become a final
9 order upon expiration of the 15-day period. Payment of the penalty
10 is due when a final order is issued or when the notice becomes a
11 final order. Any penalty imposed pursuant to this section may be
12 recovered with costs in a summary proceeding commenced by the
13 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
14 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine
15 or penalty pursuant to this section shall be applied toward
16 enforcement and administration costs of the Division of Workplace
17 Standards in the Department of Labor and Workforce Development.

18 (c) When the Commissioner of Labor and Workforce
19 Development finds that the employer has violated provisions of
20 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may
21 refer the matter to the Attorney General or his designee for
22 investigation and prosecution. Nothing in this subsection shall be
23 deemed to limit the authority of the Attorney General to investigate
24 and prosecute violations of the New Jersey Code of Criminal
25 Justice, nor to limit the commissioner's ability to refer any matter
26 for criminal investigation or prosecution.

27 (d) If the commissioner makes an initial determination that an
28 employer has violated the provisions of P.L.1963, c.150 (C.34:11-
29 56.25 et seq.) by paying wages at rates less than the rates applicable
30 under that act, whether or not the commissioner refers the matter to
31 the Attorney General or other appropriate prosecutorial authority
32 for investigation or prosecution pursuant to subsection (c) of this
33 section, the commissioner may immediately issue a stop-work order
34 to cease all business operations at every site where the violation has
35 occurred. The stop-work order may be issued only against the
36 employer found to be in violation or non-compliance. If a stop-
37 work order has been issued against a subcontractor pursuant to this
38 subsection, the general contractor shall retain the right to terminate
39 the subcontractor from the project. The stop-work order shall
40 remain in effect until the commissioner issues an order releasing the
41 stop-work order upon finding that the employer has agreed to pay
42 wages at the required rate and has paid any wages due and any
43 penalty deemed satisfactory to the commissioner. As a condition for
44 release from a stop-work order, the commissioner may require the
45 employer to file with the department periodic reports for a
46 probationary period that shall not exceed two years that demonstrate
47 the employer's continued compliance with the provisions of
48 P.L.1963, c.150 (C.34:11-56.25 et seq.). The commissioner may

1 assess a civil penalty of \$5,000 per day against an employer for
2 each day that it conducts business operations that are in violation of
3 the stop-work order. That penalty shall be collected by the
4 commissioner in a summary proceeding in accordance with the
5 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
6 et seq.).
7 (cf: P.L.2019, c.158, s.1)
8

9 4. Section 13 of P.L.1963, c.150 (C.34:11-56.37) is amended to
10 read as follows:

11 13. a. In the event that the commissioner shall determine, after
12 investigation, that any contractor or subcontractor has failed to pay
13 the prevailing wage, has utilized on public work a subcontractor
14 who is debarred from public work pursuant to section 14 of
15 P.L.1963, c.150 (C.34:11-56.38) or does not meet the registration
16 requirements of "The Public Works Contractor Registration Act,
17 P.L.1999, c.238 (C.34:11-56.48 et seq.), or has performed work on
18 a public work, or maintained an interest in another contractor
19 performing work on a public work, while debarred from public
20 work pursuant to section 14 of P.L.1963, c.150 (C.34:11-56.38) or
21 not meeting the registration requirements of "The Public Works
22 Contractor Registration Act, P.L.1999, c.238 (C.34:11-56.48 et
23 seq.), he shall thereupon list and keep on record the name of such
24 contractor or subcontractor and forthwith give notice by mail of
25 such list to any public body who shall request the commissioner so
26 to do. Where the person responsible denies that a failure to pay the
27 prevailing wage or other willful violation has occurred, he shall
28 have the right to apply to the commissioner for a hearing which
29 must be afforded and a decision rendered within 48 hours of the
30 request for a hearing. If the commissioner rules against the
31 petitioning party he shall have the right to apply for injunctive relief
32 in the Superior Court against the listing by the commissioner.

33 b. The commissioner shall create, maintain, and distribute an
34 informational list for contractors and subcontractors who bid on and
35 perform public work, which includes but need not be limited to
36 wage payment, recordkeeping, and registration requirements, and
37 applicable penalties, pursuant to the "New Jersey Prevailing Wage
38 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) and "The Public
39 Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-
40 56.48 et seq.). The commissioner shall prominently display the
41 informational list on a website maintained by the Department of
42 Labor and Workforce Development and shall distribute to any
43 contractor, subcontractor, or public body, upon request, the
44 informational list, as well as the list of the names of contractors and
45 subcontractors who have failed to pay prevailing wages as
46 determined pursuant to subsection a. of this section, or who have
47 failed to pay any State employer payroll tax.

1 c. The commissioner shall create, maintain, and distribute an
2 informational list of labor organizations that represent workers who
3 engage in public work, which shall contain information about
4 required hourly rates, required fringe benefit rates, and regions in
5 which the labor organizations represent workers. The
6 commissioner shall prominently display the informational list on a
7 website maintained by the Department of Labor and Workforce
8 Development and shall distribute to any contractor, subcontractor,
9 labor organization, or public body, upon request, the informational
10 list for use on public work, including projects for which the cost is
11 below the prevailing wage contract threshold amount.
12 (cf: P.L. 2019, c.61, s.1)

13

14 5. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to
15 read as follows:

16 14. The public body awarding any contract for public work, or
17 otherwise undertaking any public work, or entering into a lease or
18 agreement to lease pursuant to which public work is to be done,
19 shall first ascertain from the commissioner the list of names of
20 contractors or subcontractors who have failed to pay prevailing
21 wages as determined in section 13 of this act, and no contract shall
22 be awarded to such contractor or subcontractor, or to any firm,
23 corporation or partnership in which such contractor or subcontractor
24 has an interest until three years have elapsed from the date of listing
25 as determined in section 13 of this act, and it shall be a violation of
26 P.L.1963, c.150 (C.34:11-56.25 et seq.) for a contractor or
27 subcontractor, once placed on the debarment list, to have or
28 maintain an interest in any contractor or subcontractor which
29 performs public work. In the case of a contractor or subcontractor
30 who performs work on a public work, or maintains an interest in a
31 contractor or subcontractor performing public work. while debarred
32 from public work pursuant to section 14 of P.L.1963, c.150
33 (C.34:11-56.38), the period of debarment shall be extended an
34 additional five years.

35 For purposes of this section, "interest" shall mean an interest in
36 the firm, corporation or partnership bidding on, or performing
37 public work, whether having the interest as an owner, partner,
38 officer, manager, employee, agent, consultant or representative.
39 The term may also include, but not be limited to, all instances in
40 which the contractor or subcontractor listed by the commissioner
41 under section 13 of this act has received payments, whether those
42 payments are in the form of cash or any other form of compensation
43 from the firm, corporation or partnership, or when the contractor or
44 subcontractor listed by the commissioner under section 13 of this
45 act has entered into any contract or agreement with the firm,
46 corporation or partnership for services performed or to be
47 performed, for services that have been or will be assigned or
48 subletted, or for the sale, rental or lease of vehicles, tools,

1 equipment or supplies during the period from the initiation of the
2 proceedings under section 13 of this act against the contractor or
3 subcontractor until three years have elapsed from the date that the
4 contractor or subcontractor has been listed by the commissioner
5 under section 13 of this act. The term "interest" shall not include
6 shares held in a publicly traded corporation if the shares were not
7 received as compensation after the initiation of proceedings under
8 section 13 of this act from a firm, corporation or partnership
9 bidding or performing public work.

10 A rebuttable presumption that a contractor or subcontractor listed
11 by the commissioner under section 13 of this act has an interest in
12 another firm, corporation or partnership may arise if the two share
13 any of the following capacities or characteristics: (1) perform
14 similar work within the same geographical area and within the same
15 monetary range, (2) occupy the same premises, (3) have the same
16 telephone number or fax number, (4) have the same email address
17 or internet website, (5) employ substantially the same
18 administrative employees, (6) utilize the same tools and equipment,
19 (7) employ or engage the services of any listed person or persons
20 involved in the direction or control of the other, or (8) list
21 substantially the same work experience in order to obtain the
22 requisite pre-qualification rating from the Department of the
23 Treasury, or any other entity, to participate in any public work.

24 If a rebuttable presumption has arisen that a contractor or
25 subcontractor listed by the commissioner under section 13 of this
26 act has an interest in another firm, corporation or partnership, the
27 adversely affected contractor or subcontractor, including the firm,
28 corporation or partnership, which would by virtue of a finding of
29 "interest" be prevented under this section from being awarded
30 public work, may request a hearing, which shall be conducted in
31 accordance with the "Administrative Procedure Act,"
32 P.L.1968, c.410 (C.52:14B-1 et seq.).

33 (cf: P.L.2007, c.76, s.1)

34

35 6. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to
36 read as follows:

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

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

43 "Apprenticeship cohort" means the group of individual
44 apprentices registered to a specific individual program during a
45 one-year time frame, except that a cohort does not include the
46 apprentices whose apprenticeship agreement has been cancelled
47 during the probationary period.

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

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

7 (2) A non-joint committee, which may also be known as a
8 unilateral or group non-joint committee, has employer
9 representatives, but does not have a bona fide collective bargaining
10 agent as a participant. A non-joint committee may include
11 employees.

12 "Apprenticeable occupation" means a skilled trade or technical
13 occupation that is included on the United States Department of
14 Labor's "List of Occupations Officially Recognized as
15 Apprenticeable by the Office of Apprenticeship".

16 "Apprenticeship program" means a plan containing all terms and
17 conditions for the qualification, recruitment, selection, employment,
18 and training of apprentices, as required under 29 C.F.R. ss.29 and
19 30, including such matters as the requirement for a written
20 apprenticeship agreement.

21 "Commissioner" means the Commissioner of Labor and
22 Workforce Development or his duly authorized representatives.

23 "Completion rate" means the percentage of an apprenticeship
24 cohort who receive a certificate of apprenticeship completion within
25 one year of the projected completion date.

26 "Contractor" means a person, partnership, association, joint stock
27 company, trust, corporation, or other legal business entity or
28 successor thereof who enters into a contract which is subject to the
29 provisions of the "New Jersey Prevailing Wage Act,"
30 P.L.1963, c.150 (C.34:11-56.25 et seq.) or subject to any other State
31 law which requires the payment of the prevailing wage rates set by
32 that act., and includes any subcontractor or lower tier subcontractor
33 of a contractor as defined herein.

34 "Department" means the Department of Labor and Workforce
35 Development.

36 "Director" means the Director of the Division of Wage and Hour
37 Compliance in the Department of Labor and Workforce
38 Development.

39 "Worker" includes laborer, mechanic, skilled or semi-skilled
40 laborer and apprentices or helpers employed by any contractor or
41 subcontractor and engaged in the performance of services directly
42 upon a public work, who have completed or are actively
43 participating in a registered apprenticeship program, regardless of
44 whether their work becomes a component part thereof, but does not
45 include material suppliers or their employees who do not perform
46 services at the job site.

47 "Registered apprenticeship program" or "program" means an
48 apprenticeship program which is registered with and approved by

1 the United States Department of Labor, which provides each trainee
2 with combined classroom and on-the-job training in an occupation
3 recognized as an apprenticeable occupation, and which involves the
4 attainment of manual, mechanical, or technical skills and
5 knowledge which, in accordance with the industry standard for the
6 specific apprenticeable occupation, are outlined under 29 C.F.R.
7 s.29.5.

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

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

12

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

15 4. No contractor shall bid on any contract for public work as
16 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26), or [for
17 which payment of the prevailing wage is required by any other
18 provision of law] public work subject to any other State law which
19 requires the payment of the prevailing wage rates set by the "New
20 Jersey Prevailing Wage Act," P.L.1963,c.150 (C.34:11-56.25 et
21 seq.), unless the contractor is registered pursuant to this act. No
22 contractor shall list a subcontractor in a bid proposal for the
23 contract unless the subcontractor is registered pursuant to
24 P.L.1999, c.238 (C.34:11-56.48 et seq.) at the time the bid is made.
25 No contractor or subcontractor, including a subcontractor not listed
26 in the bid proposal, shall engage in the performance of any public
27 work subject to the contract, unless the contractor or subcontractor
28 is registered pursuant to that act.

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

30

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

33 5. a. A contractor shall register in writing with the department
34 on a form provided by the commissioner. The form shall require the
35 following information:

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

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

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

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

47 (5) The contractor's tax identification number and
48 unemployment insurance registration number;

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

9 (7) Any willful violations by the contractor of any federal or
10 state prevailing wage law during the immediately preceding five
11 years; and

12 (8) Any other relevant and appropriate information as
13 determined by the commissioner.

14 b. At the time of registration, and subsequently upon request,
15 the contractor shall submit to the commissioner documentation
16 demonstrating that the contractor has worker's compensation
17 insurance coverage for all workers as required by law.

18 (cf: P.L.2019, c.21, s.2)

19

20 9. Section 6 of P.L.1999, c.238 (C.34:11-56.53) is amended to
21 read as follows:

22 6. a. The contractor shall pay an initial annual non-refundable
23 registration fee of **[\$300]** \$500 to the commissioner. The non-
24 refundable registration fee for the second annual registration shall
25 be **[\$300]** \$500. Upon successful completion of two consecutive
26 years of registration, a contractor may elect to register for a two-
27 year period and pay a non-refundable registration fee of **[\$500]**
28 \$750.

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

32 c. Registration fees collected pursuant to this act shall be
33 applied toward the enforcement and administration costs of the
34 Division of Workplace Standards, Office of Wage and Hour
35 Compliance, Public Contracts section and Registration section
36 within the department.

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

38

39 10. This act shall take effect immediately.