

# SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 989

## STATE OF NEW JERSEY 219th LEGISLATURE

ADOPTED FEBRUARY 11, 2021

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**SYNOPSIS**

“Healthy Terminals Act”; requires certain airport and train station workers to be paid certain wage rates and benefits under "New Jersey Prevailing Wage Act."

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Budget and Appropriations Committee.

(Sponsorship Updated As Of: 3/25/2021)

1 **AN ACT** concerning prevailing wages and benefits of certain airport  
2 and train station workers and amending and supplementing  
3 P.L.2005, c.379.  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 1. Section 1 of P.L.2005, c.379 (C.34:11-56.58) is amended to  
9 read as follows:

10 1. a. It is declared to be the public policy of this State to  
11 establish prevailing wage levels for the employees of contractors  
12 and subcontractors furnishing building services for any property or  
13 premises owned or leased by the State in order to safeguard the  
14 efficiency and general well-being of those employees and to protect  
15 them and their employers from the effects of serious and unfair  
16 competition based on low wage levels which are detrimental to  
17 efficiency and well-being.

18 b. It is further declared that:

19 In 2018, over 30 million passengers traveled through Newark  
20 Liberty International Airport, making this airport, combined with  
21 the Newark Liberty International Airport Train Station, one of the  
22 busiest transit hubs in the country.

23 The workers at the airport and train station often cannot afford  
24 employer-provided healthcare plans, and unaffordable healthcare  
25 expenses is one of the sources of the high rates of turnover for the  
26 workers in the airport and train station.

27 Improved retention rates of workers in the airport and train  
28 station is an investment in service and safety for all who pass  
29 through the airport and train station and compensating these  
30 workers so that they can afford healthcare and receive a prevailing  
31 wage is a way to increase retention.

32 (cf: P.L.2005, c.379, s.1)  
33

34 2. Section 2 of P.L.2005, c.379 (C.34:11-56.59) is amended to  
35 read as follows:

36 2. As used in this act:

37 "Commissioner" means the Commissioner of Labor and  
38 Workforce Development or the commissioner's duly authorized  
39 representatives.

40 "Building services" means any cleaning or building maintenance  
41 work, including but not limited to sweeping, vacuuming, floor  
42 cleaning, cleaning of rest rooms, collecting refuse or trash, window  
43 cleaning, engineering, securing, patrolling, or other work in  
44 connection with the care, securing, or maintenance of an existing  
45 building, except that "building services" shall not include any

**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 maintenance work or other public work for which a contractor is  
2 required to pay the "prevailing wage" as defined in section 2 of  
3 P.L.1963, c.150 (C.34:11-56.26).

4 "Leased by the State" means that not less than 55% of the  
5 property or premises is leased by the State, provided that the portion  
6 of the property or premises that is leased by the State measures  
7 more than 20,000 square feet.

8 "Prevailing wage for building services and covered airport or  
9 related location workers" means the wage and benefit rates  
10 designated by the commissioner based on the determinations made  
11 by the General Services Administration pursuant to the federal  
12 **["Service Contract Act of 1965" (41 U.S.C. s.351 et seq.)]**  
13 McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et  
14 seq.), for the appropriate localities and classifications of building  
15 service employees; provided, however, that in no event shall the  
16 prevailing wage rate applicable to a covered airport or related  
17 location worker on and after September 1, 2021 and every year  
18 thereafter be less than the following:

19 (1) any otherwise applicable minimum wage rate established  
20 through a policy of the Port Authority of New York and New  
21 Jersey; and

22 (2) an amount of wages or supplements equal to the rate for  
23 health and welfare for all occupations, designated by the  
24 commissioner based on the determinations made by the federal  
25 department of labor pursuant to the McNamara-O'Hara Service  
26 Contract Act of 1965 (41 U.S.C. 6701 et seq.) for the geographic  
27 region in which the covered airport location is located and in effect  
28 on the date of the designation by the commissioner; and

29 (3) paid leave equal to the paid leave requirements designated  
30 by the Commissioner the immediately preceding August 1, based on  
31 the determinations made by the General Services Administration  
32 pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41  
33 U.S.C. 6701 et seq.).

34 "The State" means the State of New Jersey and all of its  
35 departments, bureaus, boards, commissions, agencies and  
36 instrumentalities, including any State institutions of higher  
37 education, but does not include political subdivisions.

38 "State institutions of higher education," means Rutgers, The  
39 State University of New Jersey, Rowan University, the New Jersey  
40 Institute of Technology, and Montclair State University, and any of  
41 the State colleges or universities established pursuant to chapter 64  
42 of Title 18A of the New Jersey Statutes, but does not include any  
43 county college established pursuant to chapter 64A of Title 18A of  
44 the New Jersey Statutes.

45 "Covered airport or related location" means the Newark Liberty  
46 International Airport and the Newark Liberty International Airport  
47 Train Station.

48 "Covered airport or related location employer" means:

1     (1) any person, corporation, limited liability company, or  
2     association employing any covered airport or related location  
3     worker in an occupation, industry, trade, business or service; or

4     (2) any person who contracts with a person to perform work  
5     related to the preparation or delivery of food for consumption on  
6     airplanes departing from a covered airport or related location.

7     “Covered airport or related location employer” shall not include  
8     a public agency.

9     “Covered airport or related location worker” means:

10    (1) any person employed to perform work at a covered airport or  
11    related location, provided at least half of the employee's time during  
12    any workweek is performed at a covered airport and related  
13    location; or

14    (2) any person who performs work related to the preparation or  
15    delivery of food for consumption on airplanes departing from a  
16    covered airport or related location.

17    “Covered airport or related location worker” shall not include  
18    persons employed in an executive, administrative, or professional  
19    capacity as defined in subparagraph 1 of paragraph (a) of section 13  
20    of the Fair Labor Standards Act of 1938 (29 U.S.C. s.213 et seq.).  
21    persons employed by a public agency.

22    “Public agency” means:

23    (1) any department or agency of the State of New Jersey and  
24    any political subdivision thereof;

25    (2) the New Jersey Transit Corporation; and

26    (3) the Port Authority of New York and New Jersey.

27    (cf: P.L.2017, c.178, s.65)

28  
29    3. Section 4 of P.L.2005, c.379 (C.34:11-56.61) is amended to  
30    read as follows:

31    4. Each contractor and subcontractor shall keep an accurate  
32    record showing the name, classification, and actual hourly rate of  
33    wages and any benefits paid to each worker employed by him to  
34    perform building services pursuant to a State contract or  
35    subcontract, and shall preserve those records for two years after the  
36    date of payment. **【The record】** Each covered airport or related  
37    location employer shall keep an accurate record showing the name,  
38    classification, and actual hourly rate of wages and any benefits paid  
39    to each covered airport or related location employee, and shall  
40    preserve those records for two years after the date of payment.  
41    Such records shall be open at all reasonable hours to inspection by  
42    the Director of the Division of Purchase and Property and the  
43    commissioner.

44    (cf: P.L.2005, c.379. s.4)

45  
46    4. Section 5 of P.L.2005, c.379 (C.34:11-56.62) is amended to  
47    read as follows:

1       5. Any worker paid less than the prevailing wage for building  
2 services and covered airport or related location workers to which  
3 the worker is entitled by the provisions of this act may recover in a  
4 civil action the full amount of the prevailing wage for building  
5 services and covered airport or related location workers less any  
6 amount actually paid to the worker by the employer together with  
7 any costs and reasonable attorney's fees allowed by the court, and  
8 an agreement between the worker and the employer to work for less  
9 than the prevailing wage for building services and covered airport  
10 or related location workers shall not be a defense to the action. The  
11 worker shall be entitled to maintain an action for and on behalf of  
12 the worker or other workers similarly situated and the worker or  
13 workers may designate an agent or representative to maintain such  
14 actions for and on behalf of all workers similarly situated. At the  
15 request of any worker paid less than the prevailing wage for  
16 building services and covered airport or related location workers  
17 required under the provisions of this act, the commissioner may  
18 take an assignment of the wage claim in trust for the assigning  
19 worker or workers and may bring any legal action necessary to  
20 collect the claim, and the employer shall be required to pay any  
21 costs and such reasonable attorney's fee as are allowed by the court.  
22 (cf: P.L.2005, c.379, s.5)

23  
24       5. Section 6 of P.L.2005, c.379 (C.34:11-56.63) is amended to  
25 read as follows:

26       6. The commissioner shall have the authority to:

27       a. investigate and ascertain the wages of any employees of a  
28 contractor or subcontractor furnishing building services for any  
29 property or premises owned or leased by the State, or of any  
30 covered airport or related location workers;

31       b. enter and inspect the place of business or employment of any  
32 contractor or subcontractor furnishing building services for any  
33 property or premises owned or leased by the State, or of any  
34 covered airport or related location employer for the purpose of  
35 examining and inspecting any or all books, registers, payrolls, and  
36 other records of any such contractor or subcontractor, or of any  
37 covered airport or related location employer that in any way relate  
38 to or have a bearing upon the question of wages, hours, and other  
39 conditions of employment of any employees of such contractor or  
40 subcontractor, or of any covered airport or related location workers;  
41 copy any or all of such books, registers, payrolls, and other records  
42 as the commissioner may deem necessary or appropriate; and  
43 question the employees of such contractor or subcontractor or any  
44 covered airport or related location workers for the purpose of  
45 ascertaining whether the provisions of this act have been and are  
46 being complied with;

47       c. require from such contractor or subcontractor, or covered  
48 airport or related location employer, full and correct statements in

1 writing, including sworn statements, with respect to wages, hours,  
2 names, addresses, and other information pertaining to the contractor  
3 or subcontractor's workers, or covered airport or related location  
4 workers, and their employment as the commissioner may deem  
5 necessary or appropriate; and

6 d. require any contractor or subcontractor, or covered airport or  
7 related location employer, to file, within 10 days of receipt of a  
8 request, any records enumerated in subsections b. and c. of this  
9 section, sworn as to their validity and accuracy, If the contractor or  
10 subcontractor fails to provide the requested records within 10 days,  
11 the State Treasurer may immediately withhold from payment to the  
12 employer up to 25% of the amount, not to exceed \$100,000, to be  
13 paid to the employer under the terms of the contract pursuant to  
14 which the building services work is being performed. The amount  
15 withheld shall be immediately released upon receipt by the State  
16 Treasurer of a notice from the commissioner indicating that the  
17 request for records has been satisfied.

18 (cf: P.L.2005, c.379, s.6)

19  
20 6. Section 7 of P.L.2005, c.379 (C.34:11-56.64) is amended to  
21 read as follows:

22 7. Any contractor or subcontractor, or covered airport or  
23 related location employer, who willfully hinders or delays the  
24 commissioner in the performance of the commissioner's duties in  
25 the enforcement of this act, or fails to make, keep, and preserve any  
26 records as required under the provisions of this act, or falsifies any  
27 such record, or refuses to make any such record accessible to the  
28 commissioner upon demand, or refuses to furnish a sworn statement  
29 of such record or any other information required for the proper  
30 enforcement of this act to the commissioner upon demand, or pays  
31 or agrees to pay wages at a rate less than the rate applicable under  
32 this act or otherwise violates any provision of this act or of any  
33 regulation or order issued under this act shall be guilty of a  
34 disorderly persons offense and shall, upon conviction therefor, be  
35 fined not less than \$100.00 nor more than \$1,000 or be imprisoned  
36 for not less than 10 nor more than 90 days, or by both such fine and  
37 imprisonment. Each week, in any day of which a worker is paid  
38 less than the rate applicable to that worker under this act and each  
39 worker so paid, shall constitute a separate offense.

40 As an alternative to or in addition to any other sanctions  
41 provided by law for violations of any provision of this act, if the  
42 commissioner finds that a contractor or subcontractor, or covered  
43 airport or related location employer, has violated the act, the  
44 commissioner is authorized to assess and collect administrative  
45 penalties, up to a maximum of \$250 for a first violation and up to a  
46 maximum of \$500 for each subsequent violation, specified in a  
47 schedule of penalties to be promulgated as a rule or regulation by  
48 the commissioner in accordance with the "Administrative Procedure

1 Act," P.L.1968, c.410 (C. 52:14B-1 et seq.). When determining the  
2 amount of the penalty imposed because of a violation, the  
3 commissioner shall consider factors which include the history of  
4 previous violations by the contractor or subcontractor, or covered  
5 airport or related location employer, the seriousness of the  
6 violation, the good faith of the contractor or subcontractor, or  
7 covered airport or related location employer, and the size of the  
8 contractor's or subcontractor's, or covered airport or related location  
9 employer's, business. No administrative penalty shall be levied  
10 pursuant to this section unless the commissioner provides the  
11 alleged violator with notification of the violation and of the amount  
12 of the penalty by certified mail and an opportunity to request a  
13 hearing before the commissioner or the commissioner's designee  
14 within 15 days following the receipt of the notice. If a hearing is  
15 requested, the commissioner shall issue a final order upon such  
16 hearing and a finding that a violation has occurred. If no hearing is  
17 requested, the notice shall become a final order upon expiration of  
18 the 15-day period. Payment of the penalty shall be due when a final  
19 order is issued or when the notice becomes a final order. Any  
20 penalty imposed pursuant to this section may be recovered with  
21 costs in a summary proceeding commenced by the commissioner  
22 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,  
23 c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty  
24 pursuant to this section shall be applied toward enforcement and  
25 administration costs of the Division of Workplace Standards in the  
26 Department of Labor and Workforce Development.  
27 (cf: P.L.2005, c.379, s.7)

28  
29 7. Section 8 of P.L.2005, c.379 (C.34:11-56.65) is amended to  
30 read as follows:

31 8. As an alternative to any other sanctions or in addition  
32 thereto, herein or otherwise provided by law for violation of this  
33 act, the commissioner is authorized to supervise the payment of  
34 amounts due to workers under this act, and the contractor or  
35 subcontractor, or covered airport or related location employer, may  
36 be required to make these payments to the commissioner to be held  
37 in a special account in trust for the workers, and paid on order of  
38 the commissioner directly to the worker or workers affected. The  
39 contractor or subcontractor, or covered airport or related location  
40 employer shall also pay the commissioner an administrative fee  
41 equal to not less than 10% or more than 25% of any payment made  
42 to the commissioner pursuant to this section. The amount of the  
43 administrative fee shall be specified in a schedule of fees to be  
44 promulgated by rule or regulation of the commissioner in  
45 accordance with the "Administrative Procedure Act," P.L.1968, c.  
46 410 (C. 52:14B-1 et seq.). The fee shall be applied toward  
47 enforcement and administration costs of the Division of Workplace

1 Standards in the Department of Labor and Workforce Development.  
2 (cf: P.L.2005, c.379, s.8)

3

4 8. Section 9 of P.L.2005, c.379 (C.34:11-56.66) is amended to  
5 read as follows:

6 9. Any contractor or subcontractor, or covered airport or  
7 related location employer, who discharges or in any other manner  
8 discriminates against any worker because the worker has made any  
9 complaint to the worker's employer, to the State Treasurer or to the  
10 commissioner that the worker has not been paid wages in  
11 accordance with the provisions of this act, or because the worker  
12 has caused to be instituted or is about to cause to be instituted any  
13 proceeding under or related to this act, or because the worker has  
14 testified or is about to testify in any such proceeding shall be guilty  
15 of a disorderly persons offense and shall, upon conviction therefor,  
16 be fined not less than \$100 nor more than \$1,000.

17 As an alternative to or in addition to any other sanctions  
18 provided by law for violations of any provision of this act, if the  
19 commissioner finds that a contractor or subcontractor, or a covered  
20 airport or related location employer, has violated the act, the  
21 commissioner is authorized to assess and collect administrative  
22 penalties, up to a maximum of \$250 for a first violation and up to a  
23 maximum of \$500 for each subsequent violation, specified in a  
24 schedule of penalties to be promulgated as a rule or regulation by  
25 the commissioner in accordance with the "Administrative Procedure  
26 Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the  
27 amount of the penalty imposed because of a violation, the  
28 commissioner shall consider factors which include the history of  
29 previous violations by the contractor or subcontractor, or covered  
30 airport or related location employer, the seriousness of the  
31 violation, the good faith of the contractor or subcontractor, or  
32 covered airport or related location employer, and the size of the  
33 contractor's or subcontractor's, or covered airport or related location  
34 employer's, business. No administrative penalty shall be levied  
35 pursuant to this section unless the commissioner provides the  
36 alleged violator with notification of the violation and of the amount  
37 of the penalty by certified mail and an opportunity to request a  
38 hearing before the commissioner or the commissioner's designee  
39 within 15 days following the receipt of the notice. If a hearing is  
40 requested, the commissioner shall issue a final order upon such  
41 hearing and a finding that a violation has occurred. If no hearing is  
42 requested, the notice shall become a final order upon expiration of  
43 the 15-day period. Payment of the penalty shall be due when a final  
44 order is issued or when the notice becomes a final order. Any  
45 penalty imposed pursuant to this section may be recovered with  
46 costs in a summary proceeding commenced by the commissioner  
47 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,  
48 c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty



1 pursuant to this section shall be applied toward enforcement and  
2 administration costs of the Division of Workplace Standards in the  
3 Department of Labor and Workforce Development.  
4 (cf: P.L.2005, c.379, s.9)  
5

6 9. (New section) Not earlier than September 1, 2021, every  
7 covered airport or related location employer shall pay a covered  
8 airport or related location worker a wage of not less than the  
9 prevailing wage rate applicable to that covered airport or related  
10 location worker. Nothing in this article shall alter or limit any  
11 employer's obligation to pay any otherwise applicable prevailing  
12 wage under the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
13 (C.34:11-56.25 et seq.) or the prevailing wage levels for the  
14 employees of contractors and subcontractors furnishing building  
15 services established under P.L.2005, c.379 (C.34:11-56.58 et seq.).  
16

17 10. (New section) On August 1, 2021 and each August 1  
18 thereafter, the commissioner shall designate the supplemental  
19 benefits rate and paid leave requirements required under the  
20 determinations made by the General Services Administration  
21 pursuant to the federal McNamara-O'Hara Service Contract Act of  
22 1965 (41 U.S.C. 6701 et seq.). The commissioner shall publicly  
23 post the designated supplemental benefits rates and paid leave  
24 requirements.  
25

26 11. (New section) The commissioner, in consultation with the  
27 Department of Transportation and the Attorney General, shall  
28 promulgate rules and regulations, pursuant to the "Administrative  
29 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six  
30 months of the date of enactment of this act, to implement the  
31 provisions of this act.  
32

33 12. This act shall take effect immediately.