

## CHAPTER 68

AN ACT requiring prevailing wages be paid for construction work on State-owned properties and amending P.L.1963, c.150.

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

1. Section 2 of P.L.1963, c.150 (C.34:11-56.26) is amended to read as follows:

C.34:11-56.26 Definitions.

2. As used in this act:

- (1) "Department" means the Department of Labor and Workforce Development of the State of New Jersey.

- (2) "Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade.

- (3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

- (4) "Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

- (5) "Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

- (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

- (b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

- (6) "Commissioner" means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

- (7) "Workman" or "worker" includes laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purpose of P.L.1963, c.150 (C.34:11-56.25 et seq.), contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

- (8) "Work performed under a rehabilitation program" means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.

(9) "Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

(10) "Act" means the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) and the rules and regulations issued hereunder.

(11) "Prevailing wage contract threshold amount" means:

(a) In the case of any public work paid for in whole or in part out of the funds of a municipality in the State of New Jersey or done on property or premises owned by a public body or leased or to be leased by the municipality, the dollar amount established for the then current calendar year by the commissioner through rules and regulations promulgated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which amount shall be equal to \$9,850 on July 1, 1994 and which amount shall be adjusted on July 1 every five calendar years thereafter in direct proportion to the rise or fall in the average of the Consumer Price Indices for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made; and

(b) In the case of any public work other than a public work described in paragraph (a) of this subsection, an amount equal to \$2,000.

(12) "Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation.

2. Section 3 of P.L.1963, c.150 (C.34:11-56.27) is amended to read as follows:

C.34:11-56.27 Prevailing wage rate required in contract.

3. Every contract in excess of the prevailing wage contract threshold amount for any public work to which any public body is a party or for public work to be done on property or premises owned by a public body or leased or to be leased by a public body shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workers employed in the performance of the contract and the contract shall contain a stipulation that such workers shall be paid not less than such prevailing wage rate. Such contract shall also contain a provision that in the event it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable for any excess costs occasioned thereby to the public body, any lessee to whom the public body is leasing a property or premises or any lessor from whom the public body is leasing or will be leasing a property or premises.

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

C.34:11-56.28 Specification of prevailing wage rate by craft in contract.

4. The public body, any lessee to whom the public body is leasing a property or premises and any lessor from whom the public body is leasing or will be leasing a property

or premises awarding any contract for public work or otherwise undertaking any public work shall ascertain from the commissioner the prevailing wage rate in the locality in which the public work is to be performed for each craft or trade needed to perform the contract and shall specify in the contract itself what the prevailing wage rate in the locality is for each craft or trade or classification of all workers needed to perform the contract during the anticipated term thereof. Nothing in this act however shall prohibit the payment of more than the prevailing wage rate to any worker employed on a public work.

4. Section 9 of P.L.1963, c.150 (C.34:11-56.33) is amended to read as follows:

C.34:11-56.33 Statement by contractor of amounts due workers; deductions from payment to contractor; payments to workers.

9. (a) Before final payment is made by or on behalf of any public body or before any lessee to whom the public body is leasing a property or premises or any lessor from whom the public body is leasing or will be leasing a property or premises makes such payment, of any sum or sums due on a public work, it shall be the duty of the treasurer of the public body or other officer or person charged with the custody and disbursement of the funds of the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, as the case may be, to require the contractor and subcontractor to file written statements with the public body in a form satisfactory to the commissioner certifying to the amounts then due and owing from such contractor and subcontractor filing such statement to any and all workers for wages due on account of the public work, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively, which statement shall be verified by the oath of the contractor or subcontractor, as the case may be, that he has read such statement subscribed by him, knows the contents thereof, and that the same is true of his own knowledge; provided, however, that nothing herein shall impair the right of a contractor to receive final payment because of the failure of any subcontractor to comply with provisions of this act.

(b) In case any worker shall have filed a protest in writing within three months from the date of the occurrence of the incident complained of with the commissioner, objecting to the payment to any contractor to the extent of the amount or amounts due or to become due to the worker for wages for work performed on a public work, the commissioner may direct the fiscal or financial officer of the public body or other person charged with the custody and disbursements of the funds of the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, as the case may be, to deduct from the whole amount of any payment, the sum or sums admitted by any contractor in such statement or statements so filed to be due and owing by him on account of wages earned on such public work.

Such fiscal or financial officer, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, shall withhold the amount so deducted for the benefit of the worker whose wages are unpaid as shown by the verified statement filed by such contractor, and shall pay directly to any worker the amount shown by such statement to be due to him for such wages. Such payment shall thereby discharge the obligation of the contractor to the person receiving such payment to the extent of the amount thereof.

5. Section 10 of P.L.1963, c.150 (C.34:11-56.34) is amended to read as follows:

C.34:11-56.34 Notice of failure to pay prevailing wages; protest by worker.

10. (a) The fiscal or financial officer of any public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, having public work performed under which any worker shall have been paid less than the prevailing wage shall forthwith notify the commissioner in writing of the name of the person or firm failing to pay the prevailing wages.

(b) Any worker may within two years from the date of the occurrence of the incident complained of file a protest in writing with the commissioner objecting to the amount of wages paid for service performed by him on a public work as being less than the prevailing wages for such services.

(c) It shall not constitute a failure to pay the prevailing wage rates for the work of a particular craft or classification where the prevailing wage rate determined for a specific craft or classification has been paid and thereafter one or more craft unions contend that the work should have been assigned to their members instead of the members of the specific craft to whom it was assigned or by whom it was performed.

6. This act shall take effect immediately.

Approved April 26, 2007.