

CHAPTER 44

AN ACT concerning project labor agreements with labor organizations in connection with public works contracts.

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

C.52:38-1 Findings, declarations relative to project labor agreements.

1. The Legislature finds and declares:
 - a. The United States Supreme Court held in *Building & Const. Trades Council of Metropolitan Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993) that state and local governments, when acting as market participants, are permitted under the National Labor Relations Act (29 U.S.C. s. 151 et seq.) to enforce bid specifications requiring contractors to abide by project labor agreements with labor organizations for construction projects owned by those state and local governments;
 - b. The Supreme Court commented in that case that when a State or local governmental agency utilizes bid specifications containing a project labor agreement for a construction project owned by the agency, the agency “does not regulate the workings of market forces” in violation of National Labor Relations Act pre-emption of such regulation, but is acting as a market participant and “exemplifies” the workings of market forces, and therefore is not prevented from doing so by the National Labor Relations Act;
 - c. New Jersey has a compelling interest in carrying out public works projects at the lowest reasonable cost and the highest degree of quality;
 - d. New Jersey has a compelling interest in having labor disputes in connection with public works projects resolved without the disruptions of strikes, lock-outs, or slowdowns;
 - e. Project labor agreements make possible legally enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lock-outs, or slowdowns;
 - f. Project labor agreements also make it possible to provide for peaceful, orderly, and mutually binding procedures for resolving labor issues;
 - g. The State also has a compelling interest in guaranteeing that public works projects meet the highest standards of safety and quality;
 - h. A highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of the completed project;
 - i. Project labor agreements make it possible to provide the State with a guarantee that public works projects are completed with highly skilled workers;
 - j. Project labor agreements allow public agencies to more accurately predict the actual cost of projects;
 - k. Project labor agreements make it possible to provide the State with assurances that public works projects are completed with a diverse workforce;
 - l. Project labor agreements facilitate the efficient integration of work schedules among different trades on project sites;
 - m. Project labor agreements also promote harmonious and productive work environments in public works projects;
 - n. New Jersey can best accomplish these goals by encouraging, for suitable public works projects, project labor agreements between public works contractors and subcontractors and labor organizations concerning important issues of employment, including work hours, starting times, overtime rates, and procedures for resolving disputes; and
 - o. Project labor agreements, therefore, give the State an effective means to advance the interests of efficiency, quality, and timeliness of suitable public works projects.

C.52:38-2 Definitions relative to project labor agreements.

2. For the purposes of this act:

"Apprenticeship program" means a registered apprenticeship program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the bureau, or registered by a State apprenticeship agency recognized by the bureau.

"Labor organization" means, with respect to a contracted work on a public works project, an

organization which represents, for purposes of collective bargaining, employees involved in the performance of public works contracts and eligible to be paid prevailing wages under the "New Jersey Prevailing Wage Act", P.L.1963, c.150 (C.34:11-56.25 et seq.) and has the present ability to refer, provide or represent sufficient numbers of qualified employees to perform the contracted work, in a manner consistent with the provisions of this act and any plan mutually agreed upon by the labor organization and the public entity pursuant to subsection g. of section 5 of this act.

"Project labor agreement" means a form of pre-hire collective bargaining agreement covering terms and conditions of a specific project.

"Public entity" means the State, any of its political subdivisions, any authority created by the Legislature and any instrumentality or agency of the State or of any of its political subdivisions.

"Public works project" means any public works project for the construction, reconstruction, demolition or renovation of buildings at the public expense, other than pumping stations or water or sewage treatment plants, for which:

(1) It is required by law that workers be paid the prevailing wage determined by the Commissioner of Labor pursuant to the provisions of the "New Jersey Prevailing Wage Act", P.L.1963, c.150 (C.34:11-56.25 et seq.); and

(2) The public entity estimates that the total cost of the project, exclusive of any land acquisition costs, will equal or exceed \$5 million.

C.52:38-3 Public entity to include project labor agreements in certain public works projects.

3. A public entity may include a project labor agreement in a public works project on a project-by-project basis, if the public entity determines, taking into consideration the size, complexity and cost of the public works project, that, with respect to that project the project labor agreement will meet the requirements of section 5 of this act, including promoting labor stability and advancing the interests of the public entity in cost, efficiency, skilled labor force, quality, safety and timeliness. If the public entity determines that a project labor agreement will meet those requirements with respect to a particular public works project, the public entity shall either: directly negotiate in good faith a project labor agreement with one or more labor organizations; or condition the award of a contract to a construction manager upon a requirement that the construction manager negotiate in good faith a project labor agreement with one or more labor organizations. Upon the request of the public entity, the Commissioner of Labor shall assist in facilitating the negotiation of the project labor agreement. The decision by the public entity to require the inclusion of a project labor agreement requirement shall not be deemed to unduly restrict competition if the public entity finds that the project labor agreement is reasonably related to the satisfactory performance and completion of the public works project, and any bidder for the public works project refusing to agree to abide by the conditions of the project labor agreement or the requirement to negotiate a project labor agreement shall not be regarded as a responsible bidder. Upon the request of the public entity, the Commissioner of Labor shall review the finalized project labor agreement and provide to the public entity, not more than 30 calendar days after the agreement is submitted to the commissioner by the public entity, a written advisory statement regarding whether the project labor agreement conforms with the provisions of this act.

C.52:38-4 Project labor agreement binding.

4. Any project labor agreement negotiated pursuant to this act between the public entity or its representative or a construction manager and one or more labor organizations shall be binding on all contractors and subcontractors working on the public works project and may include provisions that permit contractors and subcontractors working on the public works project to retain a percentage of their current workforce, and provisions that the successful bidder and any subcontractor of the bidder need not be a party to a labor agreement with the labor organizations other than for the public works project covered by the project labor agreement.

C.52:38-5 Requirements for project labor agreement.

5. Each project labor agreement executed pursuant to the provisions of this act shall:

- a. Advance the interests of the public entity, including the interests in cost, efficiency, quality, timeliness, skilled labor force, and safety;
- b. Contain guarantees against strikes, lock-outs, or other similar actions;
- c. Set forth effective, immediate, and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work;
- d. Be made binding on all contractors and subcontractors on the public works project through the inclusion of appropriate bid specifications in all relevant bid documents;
- e. Require that each contractor and subcontractor working on the public works project have an apprenticeship program;
- f. Fully conform to all statutes, regulations, executive orders and applicable local ordinances regarding the implementation of set-aside goals for women and minority owned businesses, the obligation to comply with which shall be expressly provided in the project labor agreement;
- g. Include a publicly available plan regarding the shares of employment and apprenticeship positions in the public works project for minority group members and women which is in full conformance with the requirements of all applicable statutes, regulations, executive orders and local ordinances and is mutually agreed upon by the participating labor organizations and the public entity which will own the facilities which are built, altered or repaired under the public works project, provided that any shares mutually agreed upon pursuant to this subsection shall equal or exceed the requirements of other statutes, regulations, executive orders or local ordinances;
- h. Require the contract for the public works project to provide whatever resources may be needed to prepare for apprenticeship a number of women and minority members sufficient to enable compliance with the plan agreed upon pursuant to subsection g. of this section and provide that the use of those resources be administered jointly by the participating labor organizations and the public entity or community-based organizations selected by the public entity; and
- i. Require the public body to monitor, or arrange to have a State agency monitor, the amount and share of work done on the project by minority group members and women and the progression of minority group members and women into apprentice and journey worker positions and require the public body to make public, or have the State agency make public, all records of monitoring conducted pursuant to this subsection.

C.52:38-Annual report to Governor, Legislature.

6. The Commissioner of Labor shall make an annual report to the Governor and the Legislature on the effectiveness of all project labor agreements entered into pursuant to this act in advancing the purposes of this act and in meeting the requirements of this act, including any recommendations deemed necessary by the commissioner to better effectuate those purposes. The report shall include a reporting, review and analysis of the information obtained from the monitoring conducted pursuant to subsection i. of section 5 of this act, an analysis of the effectiveness of the project labor agreements in meeting the objectives of section 5 of this act, and a comparison of the performance of public works projects with project labor agreements to the performance of public works projects without project labor agreements.

The first report shall be made on or before December 31, 2003, and subsequent reports shall be made on December 31 of each year thereafter. The report issued on December 31, 2006 shall include an analysis of the overall effectiveness of the implementation of the act from the time of its enactment and any recommendations regarding legislation to make changes in the act deemed necessary by the commissioner to better effectuate those purposes.

7. This act shall take effect immediately.

Approved July 25, 2002.