

52:38-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2002 **CHAPTER:** 44
NJSA: 52:38-1 (Public works contracts - labor agreements)
BILL NO: A1926 (Substituted for S1044)
SPONSOR(S): Egan
DATE INTRODUCED: February 21, 2002
COMMITTEE: **ASSEMBLY:** Labor; Appropriations

SENATE: ----

AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: **ASSEMBLY:** June 20, 2002
SENATE: June 24, 2002
DATE OF APPROVAL: July 25, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)
(Amendments during passage denoted by superscript numbers)

A1926

[SPONSORS STATEMENT](#): (Begins on page 4 of original bill) [Yes](#)
COMMITTEE STATEMENT: **ASSEMBLY:** Yes [3-11-2002 \(Labor\)](#)
[6-10-2002 \(Approp.\)](#)
SENATE: No
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No

S1044

[SPONSORS STATEMENT](#): (Begins on page 4 of original bill) [Yes](#)
Bill and Sponsors Statement identical to A1926
COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: [Yes](#)
FLOOR AMENDMENT STATEMENTS: No
LEGISLATIVE FISCAL ESTIMATE: No
VETO MESSAGE: No
GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

Yes

974.90 New Jersey. Legislature. Assembly. Labor Committee.
L123 Committee meeting, on ...A1926, held March 11, 2002. Trenton, 2002.
2002

NEWSPAPER ARTICLES:

Yes

"Labor law sets rules for public projects," 7-30-2002 Trenton Times, p.D1

P.L. 2002, CHAPTER 44, *approved July 25, 2002*
Assembly, No. 1926 (*Second Reprint*)

1 AN ACT concerning project ¹labor¹ agreements with ¹[appropriate]¹
2 labor organizations in connection with public works contracts.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. The Legislature finds and declares:

8 a The United States Supreme Court held in Building & Const.
9 Trades Council of Metropolitan Dist. v. Associated Builders &
10 Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993)
11 that state and local governments, when acting as market participants,
12 are permitted under the National Labor Relations Act (29 U.S.C. s.
13 151 et seq.) to enforce ¹bid specifications requiring contractors to
14 abide by¹ project ¹labor¹ agreements with labor organizations ¹for
15 construction projects owned by those state and local governments¹;

16 b. The Supreme Court commented in that case that ¹[the use of]
17 when a State or local governmental agency utilizes bid specifications
18 containing a¹ project ¹[agreements] labor agreement for a
19 construction project owned by the agency, the agency “does not
20 regulate the workings of market forces” in violation of National Labor
21 Relations Act pre-emption of such regulation, but is acting as a market
22 participant and¹ "exemplifies" the ¹[purposes of] workings of market
23 forces, and therefore is not prevented from doing so by¹ the National
24 Labor Relations Act;

25 c. New Jersey has a compelling interest in carrying out public
26 works projects at the lowest reasonable cost and the highest degree of
27 quality;

28 d. New Jersey ¹[must ensure that] has a compelling interest in
29 having¹ labor disputes ¹[are] in connection with public works
30 projects¹ resolved without the disruptions of strikes, lock-outs, or
31 slowdowns;

32 e. Project ¹labor¹ agreements ¹[provide] make possible¹ legally
33 enforceable guarantees that projects will be carried out in an orderly
34 and timely manner, without strikes, lock-outs, or slowdowns;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALA committee amendments adopted March 11, 2002.

² Assembly AAP committee amendments adopted June 13, 2002.

1 f. Project ¹labor¹ agreements also ¹make it possible to¹ provide
2 for peaceful, orderly, and mutually binding procedures for resolving
3 labor issues;

4 g. The State also has a compelling interest in guaranteeing that
5 public works projects meet the highest standards of safety and quality;

6 h. A highly skilled workforce ensures lower costs for repairs and
7 maintenance over the lifetime of the completed project;

8 i. Project ¹labor¹ agreements ¹make it possible to¹ provide the
9 State with a guarantee that public works projects are completed with
10 highly skilled workers;

11 j. Project ¹labor¹ agreements allow public agencies to more
12 accurately predict the actual cost of projects;

13 k. ²Project labor agreements make it possible to provide the State
14 with assurances that public works projects are completed with a
15 diverse workforce;

16 ¹.² Project ¹labor¹ agreements facilitate the efficient integration of
17 work schedules among different trades on project sites;

18 ²[l.] ²m.² Project ¹labor¹ agreements also promote harmonious and
19 productive work environments ¹in public works projects¹;

20 ²[m.] ²n.² New Jersey can best accomplish these goals by
21 encouraging¹, for suitable public works projects, ¹project ¹labor¹
22 agreements between public works contractors and subcontractors and
23 ¹[the appropriate]¹ labor organizations concerning important issues
24 of employment, including work hours, starting times, overtime rates,
25 and procedures for resolving disputes; and

26 ²[n.] ²o.² Project ¹labor¹ agreements, therefore, ¹give the State an
27 effective means to¹ advance the interests of efficiency, quality, and
28 timeliness of ¹suitable¹ public works projects.

29

30 2. For the purposes of this act:

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

39 ¹["Appropriate labor"] ² Labor¹ organization" means, with
40 respect to a contracted work on a public works project, an
41 organization which ¹[:

42 (1) Represents,] represents,¹ for purposes of collective bargaining,
43 employees ²[in one or more crafts or trades]² involved in the
44 performance of public ¹[work] works¹ contracts and eligible to be
45 paid prevailing wages under the "New Jersey Prevailing Wage Act",

1 P.L.1963, c.150 (C.34:11-56.25 et seq.)¹;

2 (2) Has entered into one or more labor agreements with one or
3 more employers in the building and construction industry;

4 (3) Has represented employees employed in projects similar to the
5 public works project; and

6 (4) Has] and has¹ the present ability to refer, provide or represent
7 sufficient numbers of qualified employees ²[in the crafts or trades
8 required by the contract]² to perform the contracted work², in a
9 manner consistent with the provisions of this act and any plan mutually
10 agreed upon by the labor organization and the public entity pursuant
11 to subsection g. of section 5 of this act².

12 "Project ¹labor¹ agreement" means a form of pre-hire collective
13 bargaining agreement covering terms and conditions of a specific
14 project.

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

18 ²"Public works project" means any public works project for the
19 construction, reconstruction, demolition or renovation of buildings at
20 the public expense, other than pumping stations or water or sewage
21 treatment plants, for which:

22 (1) It is required by law that workers be paid the prevailing wage
23 determined by the Commissioner of Labor pursuant to the provisions
24 of the "New Jersey Prevailing Wage Act", P.L.1963, c.150 (C.34:11-
25 56.26 et seq.); and

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

29
30 3. ²[A public entity or its representative may enter into a project
31 ¹labor¹ agreement with one or more]² ¹[appropriate]¹ ²[labor
32 organizations.]² A public entity may include ²[the] a² project ¹labor¹
33 agreement in a public works project on a project-by-project basis,
34 ¹[without limitation to the size, complexity or cost of the public works
35 project,]¹ if the public entity determines¹, taking into consideration
36 the size, complexity and cost of the public works project,¹ that², with
37 respect to that project² the project ¹labor¹ agreement will ²[¹, with
38 respect to that project,¹ promote] meet the requirements of section 5
39 of this act, including promoting² labor stability and ²[advance]
40 advancing² the interests of the public entity in cost, efficiency, skilled
41 labor force, quality, safety and timeliness. ²[¹The] If the public entity
42 determines that a project labor agreement will meet those requirements
43 with respect to a particular public works project, the public entity shall
44 either: directly negotiate in good faith a project labor agreement with
45 one or more labor organizations; or condition the award of a contract

1 to a construction manager upon a requirement that the construction
2 manager negotiate in good faith a project labor agreement with one or
3 more labor organizations. Upon the request of the public entity, the²
4 Commissioner of Labor shall assist in facilitating the negotiation of the
5 project labor agreement ²[and shall review the finalized project labor
6 agreement]². The decision by the public entity to ²[incorporate the]
7 require the inclusion of a² project ¹labor¹ agreement requirement shall
8 not be deemed to unduly restrict competition if the public entity finds
9 that the ¹project labor¹ agreement is reasonably related to the
10 satisfactory performance and completion of the public works project,
11 and any bidder for the public works project refusing to ¹[concur with
12 the] agree to abide by the conditions of the project labor¹ agreement
13 ²or the requirement to negotiate a project labor agreement² shall not
14 be regarded as a responsible bidder. ²Upon the request of the public
15 entity, the Commissioner of Labor shall review the finalized project
16 labor agreement and provide to the public entity, not more than 30
17 calendar days after the agreement is submitted to the commissioner by
18 the public entity, a written advisory statement regarding whether the
19 project labor agreement conforms with the provisions of this act.²
20

21 4. Any ²[negotiated]² project ¹labor¹ agreement ²negotiated
22 pursuant to this act² between the public entity or its representative
23 ²[with] or a construction manager and² one or more ¹[appropriate]¹
24 labor organizations shall be binding on all contractors and
25 subcontractors working on the public works project and may include
26 provisions that permit contractors and subcontractors working on the
27 public works project to retain a percentage of their current workforce,
28 and provisions that the successful bidder ²and any subcontractor of the
29 bidder² need not be a party to a labor agreement with the
30 ¹[appropriate]¹ labor organizations other than for the public works
31 project covered by the project ¹labor¹ agreement.
32

33 5. Each project ¹labor¹ agreement executed pursuant to the
34 provisions of this act shall:

35 a. Advance the interests of the public entity, including the
36 interests in cost, efficiency, quality, timeliness, skilled labor force, and
37 safety;

38 b. Contain guarantees against strikes, lock-outs, or other similar
39 actions;

40 c. Set forth effective, immediate, and mutually binding procedures
41 for resolving jurisdictional and labor disputes arising before the
42 completion of the work;

43 d. Be made binding on all contractors and subcontractors on the
44 public works project through the inclusion of appropriate bid
45 specifications in all relevant bid documents;

46 e. Require that each contractor and subcontractor working on the

1 public works project have an apprenticeship program; ¹[and]¹

2 f. Fully conform to all statutes, regulations ²[and],² executive
3 orders ²and applicable local ordinances² regarding the implementation
4 of set-aside goals for women and minority owned businesses, the
5 obligation to comply with which shall be expressly provided in the
6 project ¹labor¹ agreement¹; and

7 g. Include a ²publicly available² plan ²[which is in full
8 conformance with the requirements of all applicable statutes,
9 regulations and executive orders and is mutually agreed upon by the
10 public entity and the participating labor organization or
11 organizations]² regarding the ²[share] shares² of employment and
12 apprenticeship positions in the public works project for minority group
13 members and women¹ ²which is in full conformance with the
14 requirements of all applicable statutes, regulations, executive orders
15 and local ordinances and is mutually agreed upon by the participating
16 labor organizations and the public entity which will own the facilities
17 which are built, altered or repaired under the public works project,
18 provided that any shares mutually agreed upon pursuant to this
19 subsection shall equal or exceed the requirements of other statutes,
20 regulations, executive orders or local ordinances;

21 h. Require the contract for the public works project to provide
22 whatever resources may be needed to prepare for apprenticeship a
23 number of women and minority members sufficient to enable
24 compliance with the plan agreed upon pursuant to subsection g. of this
25 section and provide that the use of those resources be administered
26 jointly by the participating labor organizations and the public entity or
27 community-based organizations selected by the public entity; and

28 i. Require the public body to monitor, or arrange to have a State
29 agency monitor, the amount and share of work done on the project by
30 minority group members and women and the progression of minority
31 group members and women into apprentice and journey worker
32 positions and require the public body to make public, or have the State
33 agency make public, all records of monitoring conducted pursuant to
34 this subsection².

35
36 ² 6. The Commissioner of Labor shall make an annual report to the
37 Governor and the Legislature on the effectiveness of all project labor
38 agreements entered into pursuant to this act in advancing the purposes
39 of this act and in meeting the requirements of this act, including any
40 recommendations deemed necessary by the commissioner to better
41 effectuate those purposes. The report shall include a reporting, review
42 and analysis of the information obtained from the monitoring
43 conducted pursuant to subsection i. of section 5 of this act, an analysis
44 of the effectiveness of the project labor agreements in meeting the
45 objectives of section 5 of this act, and a comparison of the
46 performance of public works projects with project labor agreements

1 to the performance of public works projects without project labor
2 agreements.

3 The first report shall be made on or before December 31, 2003, and
4 subsequent reports shall be made on December 31 of each year
5 thereafter. The report issued on December 31, 2006 shall include an
6 analysis of the overall effectiveness of the implementation of the act
7 from the time of its enactment and any recommendations regarding
8 legislation to make changes in the act deemed necessary by the
9 commissioner to better effectuate those purposes.²

10

11 ¹[6.] 7.¹ This act shall take effect immediately.

12

13

14

15

16 Concerns public works contracts and project labor agreements with
17 labor organizations.

ASSEMBLY, No. 1926

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

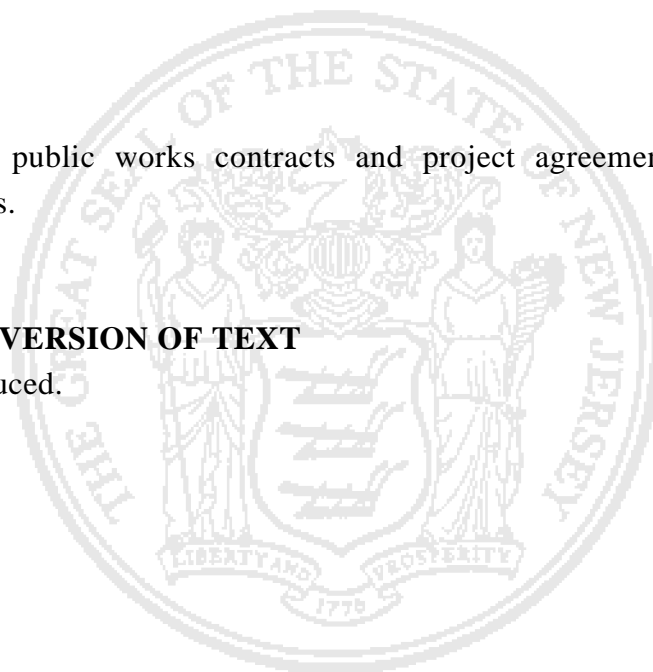
Assemblymen Wolfe, D'Amato, Blee, Thompson, Geist, Wisniewski, Diegnan, Barnes, Ahearn, Assemblywoman Friscia, Assemblymen Guear, Chivukula, Caraballo, Van Drew, Johnson, Green, DiGaetano, Assemblywoman Greenstein, Assemblymen Eagler, Edwards, Assemblywomen Weinberg, Previte, Assemblymen Roberts, Burzichelli, Conaway, Conners, Cryan, Greenwald, Fisher, Assemblywoman Cruz-Perez and Assemblyman R.Smith

SYNOPSIS

Concerns public works contracts and project agreements with labor organizations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/12/2002)

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. The Legislature finds and declares:

8 a. The United States Supreme Court held in Building & Const.
9 Trades Council of Metropolitan Dist. v. Associated Builders &
10 Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993)
11 that state and local governments, when acting as market participants,
12 are permitted under the National Labor Relations Act (29 U.S.C. s.
13 151 et seq.) to enforce project agreements with labor organizations;

14 b. The Supreme Court commented in that case that the use of
15 project agreements "exemplifies" the purposes of the National Labor
16 Relations Act;

17 c. New Jersey has a compelling interest in carrying out public
18 works projects at the lowest reasonable cost and the highest degree of
19 quality;

20 d. New Jersey must ensure that labor disputes are resolved without
21 the disruptions of strikes, lock-outs, or slowdowns;

22 e. Project agreements provide legally enforceable guarantees that
23 projects will be carried out in an orderly and timely manner, without
24 strikes, lock-outs, or slowdowns;

25 f. Project agreements also provide for peaceful, orderly, and
26 mutually binding procedures for resolving labor issues;

27 g. The State also has a compelling interest in guaranteeing that
28 public works projects meet the highest standards of safety and quality;

29 h. A highly skilled workforce ensures lower costs for repairs and
30 maintenance over the lifetime of the completed project;

31 i. Project agreements provide the State with a guarantee that public
32 works projects are completed with highly skilled workers;

33 j. Project agreements allow public agencies to more accurately
34 predict the actual cost of projects;

35 k. Project agreements facilitate the efficient integration of work
36 schedules among different trades on project sites;

37 l. Project agreements also promote harmonious and productive
38 work environments;

39 m. New Jersey can best accomplish these goals by encouraging
40 project agreements between public works contractors and
41 subcontractors and the appropriate labor organizations concerning
42 important issues of employment, including work hours, starting times,
43 overtime rates, and procedures for resolving disputes; and

44 n. Project agreements, therefore, advance the interests of
45 efficiency, quality, and timeliness of public works projects.

1 2. For the purposes of this act:

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

10 "Appropriate labor organization" means, with respect to a
11 contracted work on a public works project, an organization which:

12 (1) Represents, for purposes of collective bargaining, employees
13 in one or more crafts or trades involved in the performance of public
14 work contracts and eligible to be paid prevailing wages under the
15 "New Jersey Prevailing Wage Act", P.L.1963, c.150 (C.34:11-56.25
16 et seq.);

17 (2) Has entered into one or more labor agreements with one or
18 more employers in the building and construction industry;

19 (3) Has represented employees employed in projects similar to the
20 public works project; and

21 (4) Has the present ability to refer, provide or represent sufficient
22 numbers of qualified employees in the crafts or trades required by the
23 contract to perform the contracted work.

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

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

29

30 3. A public entity or its representative may enter into a project
31 agreement with one or more appropriate labor organizations. A public
32 entity may include the project agreement in a public works project on
33 a project-by-project basis, without limitation to the size, complexity
34 or cost of the public works project, if the public entity determines that
35 the project agreement will promote labor stability and advance the
36 interests of the public entity in cost, efficiency, skilled labor force,
37 quality, safety and timeliness. The decision by the public entity to
38 incorporate the project agreement requirement shall not be deemed to
39 unduly restrict competition if the public entity finds that the agreement
40 is reasonably related to the satisfactory performance and completion
41 of the public works project, and any bidder for the public works
42 project refusing to concur with the agreement shall not be regarded as
43 a responsible bidder.

44

45 4. Any negotiated project agreement between the public entity or
46 its representative with one or more appropriate labor organizations

1 shall be binding on all contractors and subcontractors working on the
2 public works project and may include provisions that permit
3 contractors and subcontractors working on the public works project
4 to retain a percentage of their current workforce, and provisions that
5 the successful bidder need not be a party to a labor agreement with the
6 appropriate labor organizations other than for the public works project
7 covered by the project agreement.

8
9 5. Each project agreement executed pursuant to the provisions of
10 this act shall:

11 a. Advance the interests of the public entity, including the interests
12 in cost, efficiency, quality, timeliness, skilled labor force, and safety;

13 b. Contain guarantees against strikes, lock-outs, or other similar
14 actions;

15 c. Set forth effective, immediate, and mutually binding procedures
16 for resolving jurisdictional and labor disputes arising before the
17 completion of the work;

18 d. Be made binding on all contractors and subcontractors on the
19 public works project through the inclusion of appropriate bid
20 specifications in all relevant bid documents;

21 e. Require that each contractor and subcontractor working on the
22 public works project have an apprenticeship program; and

23 f. Fully conform to all statutes, regulations and executive orders
24 regarding the implementation of set-aside goals for women and
25 minority owned businesses, the obligation to comply with which shall
26 be expressly provided in the project agreement.

27
28 6. This act shall take effect immediately.
29
30

31 STATEMENT
32

33 This bill authorizes any public entity that undertakes a public works
34 project to enter into a project agreement with one or more appropriate
35 labor organizations. The bill authorizes the public entity to include the
36 project agreement in public works projects, on a project-by-project
37 basis, if the public entity determines that the agreement will promote
38 labor stability and advance the interests of the public entity in cost,
39 efficiency, quality, skilled labor force, safety and timeliness. The
40 public entities to which this authorization is extended include any
41 agency, authority or instrumentality of the State or any of its political
42 subdivisions. The bill requires that, to be eligible as a party to a
43 project agreement, a labor organization shall:

44 1. Represent in collective bargaining employees in the crafts or
45 trades involved in public work contracts and subject to the "New
46 Jersey Prevailing Wage Act";

1 2. Have entered into labor agreements with building and
2 construction employers;

3 3. Have represented employees in public works projects like those
4 under the project agreement; and

5 4. Be able to refer, provide or represent sufficient numbers of
6 qualified employees in the crafts or trades required by the contract.

7 The legislation makes a project agreement binding on all
8 contractors and subcontractors working on the public works project,
9 but permits the agreement to allow the contractors and subcontractors
10 to retain a percentage of their current workforce and provide that the
11 contractors and subcontractors need not be parties to any labor
12 agreement other than for the project covered by the project agreement.

13 Each project agreement entered into under the bill must:

14 1. Advance the interests of the public entity with respect to cost,
15 efficiency, quality, timeliness, skilled labor force and safety;

16 2. Contain guarantees against strikes, lock-outs or similar actions;

17 3. Provide binding procedures to resolve jurisdictional and labor
18 disputes arising before the work is completed;

19 4. Be made binding on all contractors and subcontractors on the
20 public works project through the inclusion of appropriate bid
21 specifications in all relevant bid documents;

22 5. Require all of the contractors and subcontractors to have
23 registered apprenticeship programs; and

24 6. Conform with all requirements of law regarding set-aside goals
25 for women and minority owned businesses.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1926

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 2002

The Assembly Labor Committee reports favorably Assembly Bill No.1926, with committee amendments.

As amended, this bill permits, but does not require, any public entity undertaking a public works project to enter into a project labor agreement with one or more labor organizations. The bill authorizes the public entity to include the project labor agreement in public works projects, on a project-by-project basis, if the public entity determines, taking into consideration the size, complexity and cost of a public works project, that the agreement will promote labor stability and advance the interests of the public entity in cost, efficiency, quality, skilled labor force, safety and timeliness.

The public entities to which this authorization is extended include any agency, authority or instrumentality of the State or any of its political subdivisions. The bill requires that a labor organization, to participate in a project labor agreement, represent in collective bargaining employees in the crafts or trades involved in public work contracts and be able to refer, provide or represent sufficient numbers of the employees required by the contract. The bill directs the Commissioner of Labor to assist in facilitating the negotiation of the project labor agreement and review the finalized project labor agreement.

The bill makes a project labor agreement binding on all contractors and subcontractors working on the public works project, but permits the agreement to allow the contractors and subcontractors to retain a percentage of their current workforce and provides that the contractors and subcontractors need not be parties to any labor agreement other than for the project covered by the project labor agreement.

Each project labor agreement entered into under the bill must: advance the interests of the public entity with respect to cost, efficiency, quality, timeliness, skilled labor force and safety; contain guarantees against strikes, lock-outs or similar actions; provide binding procedures to resolve jurisdictional and labor disputes; be binding on all contractors and subcontractors on the public works project by means of bid specifications in all relevant bid documents;

require all contractors and subcontractors to have registered apprenticeship programs; conform with all requirements regarding set-aside goals for women and minority owned businesses; and include a plan mutually agreed upon by the public entity and the participating labor organizations regarding the share of employment and apprenticeship positions in the public works project for minority group members and women.

The committee amendments:

1. Modify the findings of the bill to state that project labor agreements may, but do not always, help to achieve the indicated benefits for public entities, emphasizing the need for public entities to consider in each case whether a project labor agreement will help it meet its goals.

2. Define the labor organizations which may participate in project labor agreements as any labor organization which represents sufficient numbers of workers with the needed skills, removing restrictive requirements that the organization has entered previous agreements and has represented workers in similar previous projects.

3. Require a public entity to consider the size, complexity and cost of a public works project when determining whether a project labor agreement will benefit the entity.

4. Direct the Commissioner of Labor to assist in facilitating the negotiation of the project labor agreement and review the finalized project labor agreement.

5. Require that each project labor agreement include a plan mutually agreed upon by the public entity and participating labor organizations regarding the share of employment and apprenticeship positions in the project for minority group members and women.

MINORITY STATEMENT

By Assemblyman Gregg

The Minority believes that this legislation is in clear conflict with our government's role to ensure and promote open competition on government projects, while maintaining government neutrality toward construction contractors' labor relations. New Jersey's open public bidding law principles, that construction work should be awarded and performed on the basis of merit through open competition, without favoritism to special interest groups, is not supported by blatant discriminatory legislation such as this.

It has been argued that the only benefit PLA's offer to the public on public projects is a guarantee of labor harmony; however, occasionally such pledges have been violated. The guarantee of labor peace is evidently purchased at the price of reducing the opportunity for nonunion contractors to compete to operate under union rules governing such matters as staffing requirements that undermine the economies that might ordinarily give such contractors an advantage. PLA's constrict the number of bidders on a project compared with

those without PLA's, and are likely to reduce the savings to the public that would accrue if nonunion contractors who are employed were allowed to follow their routine methods.

The New Jersey Supreme Court has struck down PLA's in the past for being in violation of competitive bidding laws. In 1994, the Court said; "Bidding statutes are for the benefit of the taxpayers...their aim is to secure for the public the benefits of unfettered competition." (*George Harms Construction v. Turnpike Authority*). Furthermore, on February 17, 2001, President George W. Bush revoked President Clinton's executive order which encouraged, but did not require, Federal agencies to consider PLA's on projects costing more than \$5 million. President Bush described his order as necessary to promote "economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects." (*EO No. 13202 of 2/17/01. "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations."*)

Therefore, it is my opinion that it is implausible to claim that by leaving aside the threat of labor strikes, PLA's avoid increasing construction costs; rather, they tend to foreclose competition by most nonunion contractors and inevitably impose union constraints on the use of labor that would not otherwise exist; PLA's instead increase costs. In fact union workers really are more productive and better trained than their nonunion counterparts, and if union workplace regulations do not really impede efficiency, then union contractors should be able to win their fair share of public as well as private contracts without the need to exclude nonunion contractors through onerous contract stipulations.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1926

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 2002

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1926 (1R) with committee amendments.

Assembly Bill No.1926 (1R), as amended, permits, but does not require, any public entity undertaking a "public works project" to enter into a project labor agreement with one or more labor organizations. A public works project is a project that is for the construction, reconstruction, demolition or renovation of buildings at the public expense (other than pumping stations or water or sewage treatment plants), is subject to the prevailing wage law, and has total costs (other than land acquisition costs) of \$5 million or more.

The bill authorizes the public entity to include the project labor agreement in public works projects, on a project-by-project basis, if the public entity determines, taking into consideration the size, complexity and cost of a public works project, that the agreement will promote labor stability and advance the interests of the public entity in cost, efficiency, quality, skilled labor force, safety and timeliness.

The public entities to which this authorization is extended include any agency, authority or instrumentality of the State or any of its political subdivisions. The bill requires that a labor organization, to participate in a project labor agreement, represent in collective bargaining employees involved in public work contracts and be able to refer, provide or represent sufficient numbers of the employees required by the contract. The bill allows the public agency to request the assistance of the Commissioner of Labor in facilitating the negotiation of the project labor agreement and request the commissioner to review the finalized project labor agreement.

The bill makes a project labor agreement binding on all contractors and subcontractors working on the public works project, but permits the agreement to allow the contractors and subcontractors to retain a percentage of their current workforce and provides that the contractors and subcontractors need not be parties to any labor agreement other than for the project covered by the project labor agreement.

Each project labor agreement entered into under the bill must: advance the interests of the public entity with respect to cost, efficiency, quality, timeliness, skilled labor force and safety; contain guarantees against strikes, lock-outs or similar actions; provide binding procedures to resolve jurisdictional and labor disputes; be binding on all contractors and subcontractors on the public works project by means of bid specifications in all relevant bid documents; require all contractors and subcontractors to have registered apprenticeship programs; conform with all requirements regarding set-aside goals for women and minority owned businesses; include a publicly available plan regarding the share of employment and apprenticeship positions in the public works project for minority group members and women; require provision of the resources needed to prepare sufficient numbers of minority group members and women for apprenticeship to meet the negotiated job and apprenticeship goals for those groups; and require monitoring and public reporting of the numbers of minority group members and women in apprenticeships and jobs on the project and their progression into apprentice and journey worker positions.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note. There may be some administrative costs incurred by the Department of Labor, but those costs are not known at this time.

COMMITTEE AMENDMENTS:

The amendments:

1. Modify the Legislative findings in the bill to state that project labor agreements make it possible to provide the State with assurances that public works projects are completed with a diverse workforce.
2. Limit the coverage of the bill to public works projects that are for the construction, reconstruction, demolition or renovation of buildings at the public expense (other than pumping stations or water or sewage treatment plants), and exclude any project that is not subject to the prevailing wage law or which has a total cost (other than land acquisition costs) of less than \$5 million.
3. Permit, instead of require, the public entity to have the Commissioner of Labor assist negotiations and review the finalized project labor agreement (PLA), and require the commissioner to complete any requested review within 30 days and limit the commissioner's review to an advisory statement regarding the PLA's conformity with the standards provided under the bill.
4. Allow a public entity to condition the award of a public works contract on having the construction manager negotiate the PLA with unions, instead of requiring the public body in all cases to do the negotiations directly.
5. Clarify that a public entity that owns the facilities under the project may negotiate shares of jobs and apprenticeships for minority

group members and women that are greater than the minimum required by law.

6. Require that the resources be provided as needed to prepare numbers of minority group members and women for apprenticeship sufficient to meet the negotiated job and apprenticeship goals for those groups.

7. Require monitoring and public reporting of the numbers of minority group members and women in apprenticeships and jobs on the project and their progression into apprentice and journey worker positions.

8. Direct the Commissioner of Labor to make annual reports on the effectiveness of all PLAs entered into pursuant to the bill in advancing the purposes of the bill and meeting its requirements, with the report issued on December 31, 2006 including 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.

SENATE, No. 1044

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

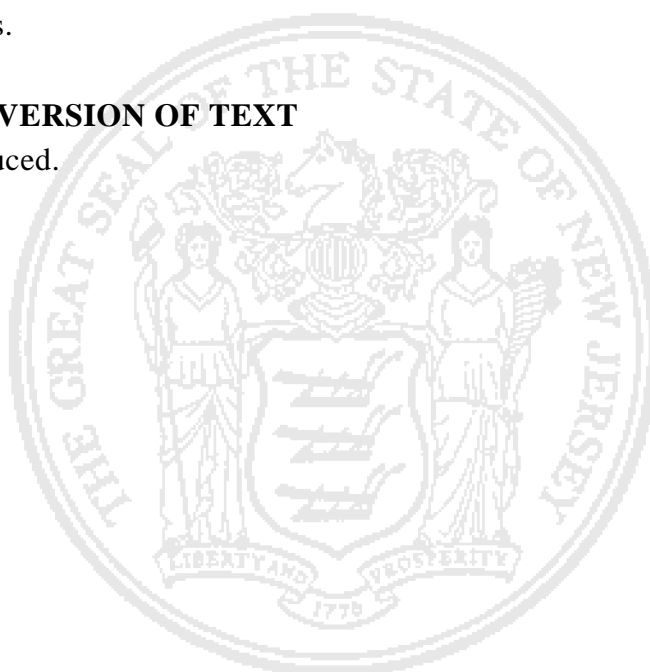
Senators Codey, Kenny, Girgenti, Turner, Coniglio, Bryant, Baer, Furnari, B.Smith, Suliga, Lesniak, Matheussen, Adler, Singer, Vitale, Sacco, Buono and James

SYNOPSIS

Concerns public works contracts and project agreements with labor organizations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/31/2002)

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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Legislature finds and declares:

8 a. The United States Supreme Court held in Building & Constr.
9 Trades Council of Metropolitan Dist. v. Associated Builders &
10 Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993)

11 that state and local governments, when acting as market participants,
12 are permitted under the National Labor Relations Act (29 U.S.C. s.
13 151 et seq.) to enforce project agreements with labor organizations;

14 b. The Supreme Court commented in that case that the use of
15 project agreements "exemplifies" the purposes of the National Labor
16 Relations Act;

17 c. New Jersey has a compelling interest in carrying out public
18 works projects at the lowest reasonable cost and the highest degree of
19 quality;

20 d. New Jersey must ensure that labor disputes are resolved without
21 the disruptions of strikes, lock-outs, or slowdowns;

22 e. Project agreements provide legally enforceable guarantees that
23 projects will be carried out in an orderly and timely manner, without
24 strikes, lock-outs, or slowdowns;

25 f. Project agreements also provide for peaceful, orderly, and
26 mutually binding procedures for resolving labor issues;

27 g. The State also has a compelling interest in guaranteeing that
28 public works projects meet the highest standards of safety and quality;

29 h. A highly skilled workforce ensures lower costs for repairs and
30 maintenance over the lifetime of the completed project;

31 i. Project agreements provide the State with a guarantee that public
32 works projects are completed with highly skilled workers;

33 j. Project agreements allow public agencies to more accurately
34 predict the actual cost of projects;

35 k. Project agreements facilitate the efficient integration of work
36 schedules among different trades on project sites;

37 l. Project agreements also promote harmonious and productive
38 work environments;

39 m. New Jersey can best accomplish these goals by encouraging
40 project agreements between public works contractors and
41 subcontractors and the appropriate labor organizations concerning
42 important issues of employment, including work hours, starting times,
43 overtime rates, and procedures for resolving disputes; and

44 n. Project agreements, therefore, advance the interests of
45 efficiency, quality, and timeliness of public works projects.

1 2. For the purposes of this act:

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

10 "Appropriate labor organization" means, with respect to a
11 contracted work on a public works project, an organization which:

12 (1) Represents, for purposes of collective bargaining, employees
13 in one or more crafts or trades involved in the performance of public
14 work contracts and eligible to be paid prevailing wages under the
15 "New Jersey Prevailing Wage Act", P.L.1963, c.150 (C.34:11-56.25
16 et seq.);

17 (2) Has entered into one or more labor agreements with one or
18 more employers in the building and construction industry;

19 (3) Has represented employees employed in projects similar to the
20 public works project; and

21 (4) Has the present ability to refer, provide or represent sufficient
22 numbers of qualified employees in the crafts or trades required by the
23 contract to perform the contracted work.

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

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

29

30 3. A public entity or its representative may enter into a project
31 agreement with one or more appropriate labor organizations. A public
32 entity may include the project agreement in a public works project on
33 a project-by-project basis, without limitation to the size, complexity
34 or cost of the public works project, if the public entity determines that
35 the project agreement will promote labor stability and advance the
36 interests of the public entity in cost, efficiency, skilled labor force,
37 quality, safety and timeliness. The decision by the public entity to
38 incorporate the project agreement requirement shall not be deemed to
39 unduly restrict competition if the public entity finds that the agreement
40 is reasonably related to the satisfactory performance and completion
41 of the public works project, and any bidder for the public works
42 project refusing to concur with the agreement shall not be regarded as
43 a responsible bidder.

44 4. Any negotiated project agreement between the public entity or
45 its representative with one or more appropriate labor organizations
46 shall be binding on all contractors and subcontractors working on the

1 public works project and may include provisions that permit
2 contractors and subcontractors working on the public works project
3 to retain a percentage of their current workforce, and provisions that
4 the successful bidder need not be a party to a labor agreement with the
5 appropriate labor organizations other than for the public works project
6 covered by the project agreement.

7
8 5. Each project agreement executed pursuant to the provisions of
9 this act shall:

10 a. Advance the interests of the public entity, including the interests
11 in cost, efficiency, quality, timeliness, skilled labor force, and safety;

12 b. Contain guarantees against strikes, lock-outs, or other similar
13 actions;

14 c. Set forth effective, immediate, and mutually binding procedures
15 for resolving jurisdictional and labor disputes arising before the
16 completion of the work;

17 d. Be made binding on all contractors and subcontractors on the
18 public works project through the inclusion of appropriate bid
19 specifications in all relevant bid documents;

20 e. Require that each contractor and subcontractor working on the
21 public works project have an apprenticeship program; and

22 f. Fully conform to all statutes, regulations and executive orders
23 regarding the implementation of set-aside goals for women and
24 minority owned businesses, the obligation to comply with which shall
25 be expressly provided in the project agreement.

26
27 6. This act shall take effect immediately.
28
29

30 STATEMENT
31

32 This bill authorizes any public entity that undertakes a public works
33 project to enter into a project agreement with one or more appropriate
34 labor organizations. The bill authorizes the public entity to include the
35 project agreement in public works projects, on a project-by-project
36 basis, if the public entity determines that the agreement will promote
37 labor stability and advance the interests of the public entity in cost,
38 efficiency, quality, skilled labor force, safety and timeliness. The
39 public entities to which this authorization is extended include any
40 agency, authority or instrumentality of the State or any of its political
41 subdivisions. The bill requires that, to be eligible as a party to a
42 project agreement, a labor organization shall:

43 1. Represent in collective bargaining employees in the crafts or
44 trades involved in public work contracts and subject to the "New
45 Jersey Prevailing Wage Act";

46 2. Have entered into labor agreements with building and

1 construction employers;

2 3. Have represented employees in public works projects like those
3 under the project agreement; and

4 4. Be able to refer, provide or represent sufficient numbers of
5 qualified employees in the crafts or trades required by the contract.

6 The legislation makes a project agreement binding on all
7 contractors and subcontractors working on the public works project,
8 but permits the agreement to allow the contractors and subcontractors
9 to retain a percentage of their current workforce and provide that the
10 contractors and subcontractors need not be parties to any labor
11 agreement other than for the project covered by the project agreement.

12 Each project agreement entered into under the bill must:

13 1. Advance the interests of the public entity with respect to cost,
14 efficiency, quality, timeliness, skilled labor force and safety;

15 2. Contain guarantees against strikes, lock-outs or similar actions;

16 3. Provide binding procedures to resolve jurisdictional and labor
17 disputes arising before the work is completed;

18 4. Be made binding on all contractors and subcontractors on the
19 public works project through the inclusion of appropriate bid
20 specifications in all relevant bid documents;

21 5. Require all of the contractors and subcontractors to have
22 registered apprenticeship programs; and

23 6. Conform with all requirements of law regarding set-aside goals
24 for women and minority owned businesses.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1044

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 20, 2002

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 1044.

Senate Bill No. 1044, as amended, permits, but does not require, any public entity undertaking a "public works project" to enter into a project labor agreement with one or more labor organizations. A public works project is a project that is for construction, reconstruction, demolition or renovation of buildings at the public expense (other than pumping stations or water or sewage treatment plants), is subject to the prevailing wage law, and has total costs (other than land acquisition costs) of \$5 million or more.

The bill, as amended, authorizes the public entity to include the project labor agreement in public works projects, on a project-by-project basis, if the public entity determines, taking into consideration the size, complexity and cost of a public works project, that the agreement will promote labor stability and advance the interests of the public entity in cost, efficiency, quality, skilled labor force, safety and timeliness.

The public entities to which this authorization is extended include any agency, authority or instrumentality of the State or any of its political subdivisions. The bill, as amended, requires that a labor organization, to participate in a project labor agreement, represent in collective bargaining employees involved in public works contracts and be able to refer, provide or represent sufficient numbers of the employees required by the contract.

The bill, as amended, allows the public agency to request the assistance of the Commissioner of Labor in facilitating the negotiation of the project labor agreement and request the commissioner to review the finalized project labor agreement. The bill, as amended, requires the commissioner to complete any requested review within 30 days and limits the commissioner's review to an advisory statement regarding the PLA's conformity with the standards provided under the bill.

The bill, as amended, makes a project labor agreement binding on all contractors and subcontractors working on the public works project, but permits the agreement to allow the contractors and

subcontractors to retain a percentage of their current workforce and provides that the contractors and subcontractors need not be parties to any labor agreement other than for the project covered by the project labor agreement.

Each project labor agreement entered into under the bill, as amended, must: advance the interests of the public entity with respect to cost, efficiency, quality, timeliness, skilled labor force and safety; contain guarantees against strikes, lock-outs or similar actions; provide binding procedures to resolve jurisdictional and labor disputes; be binding on all contractors and subcontractors on the public works project by means of bid specifications in all relevant bid documents; require all contractors and subcontractors to have registered apprenticeship programs; conform with all requirements regarding set-aside goals for women and minority owned businesses; include a publicly available plan regarding the share of employment and apprenticeship positions in the public works project for minority group members and women; require provision of the resources needed to prepare sufficient numbers of minority group members and women for apprenticeship to meet the negotiated job and apprenticeship goals for those groups; and require monitoring and public reporting of the numbers of minority group members and women in apprenticeships and jobs on the project and their progression into apprentice and journey worker positions.

The bill, as amended, allows a public entity to condition the award of a public works contract on having the construction manager negotiate the PLA with unions, instead of requiring the public entity in all cases to do the negotiations directly.

Finally, the bill, as amended, directs the Commissioner of Labor to make annual reports on the effectiveness of all PLAs entered into pursuant to the bill in advancing the purposes of the bill and meeting its requirements, with the report issued on December 31, 2006 including 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.

The bill, as amended, is identical to Assembly Bill No. 1926 (2R).