

34:11-56.38

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 67
NJSA: 34:11-56.38 (Reinforces prohibition of any debarred contractor using new business entity to circumvent the debarment; provides for suspension of contractor's registration pending hearing)
BILL NO: A3889 (Substituted for S2458)

SPONSOR(S) Egan and Others

DATE INTRODUCED: January 9, 2007

COMMITTEE: **ASSEMBLY:** Labor

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 8, 2007

SENATE: March 12, 2007

DATE OF APPROVAL: April 26, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (First reprint enacted)

A3889

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

S2458

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Laws extend prevailing wages for workers on public property," Home News Tribune, 4-27-07, p.A3

"Union pay extended in 2 new laws," Asbury Park Press, 4-27-07, p.B4

"Codey signs extension of fair pay laws," Courier-Post, 4-27-07, p.5B

RWH 4/24/08

P.L. 2007, CHAPTER 67, *approved April 26, 2007*
Assembly, No. 3889 (*First Reprint*)

1 AN ACT concerning the enforcement of prevailing wage
2 requirements and amending P.L.1963, c.150 and P.L.1999,
3 c.238.

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

7
8 1. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to
9 read as follows:

10 14. The public body awarding any contract for public work, or
11 otherwise undertaking any public work, or entering into a lease or
12 agreement to lease pursuant to which public work is to be done,
13 shall first ascertain from the commissioner the list of names of
14 contractors or subcontractors who have failed to pay prevailing
15 wages as determined in section 13 of this act, and no contract shall
16 be awarded to such contractor or subcontractor, or to any firm,
17 corporation or partnership in which such contractor or subcontractor
18 has an interest until three years have elapsed from the date of listing
19 as determined in section 13 of this act.

20 For purposes of this section, “interest” shall mean an interest in
21 the firm, corporation or partnership bidding on, or performing
22 public work, whether having the interest as an owner, partner,
23 officer, manager, employee, agent, consultant or representative.
24 The term ‘[shall] may’¹ also include, but not be limited to, all
25 instances in which the contractor or subcontractor listed by the
26 commissioner under section 13 of this act has received payments,
27 whether those payments are in the form of cash or any other form of
28 compensation from the firm, corporation or partnership, or when the
29 contractor or subcontractor listed by the commissioner under
30 section 13 of this act has entered into any contract or agreement
31 with the firm, corporation or partnership for services performed or
32 to be performed, for services that have been or will be assigned or
33 subletted, or for the sale, rental or lease of vehicles, tools,
34 equipment or supplies during the period from the initiation of the
35 proceedings under section 13 of this act against the contractor or
36 subcontractor until three years have elapsed from the date that the
37 contractor or subcontractor has been listed by the commissioner
38 under section 13 of this act. The term “interest” shall not include
39 shares held in a publicly traded corporation if the shares were not
40 received as compensation after the initiation of proceedings under
41 section 13 of this act from a firm, corporation or partnership
42 bidding or performing public work.

43 A rebuttable presumption that a contractor or subcontractor listed
44 by the commissioner under section 13 of this act has an interest in

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted February 26, 2007.

1 another firm, corporation or partnership ~~['shall]~~ may¹ arise if the
 2 two share any of the following capacities or characteristics: (1)
 3 perform similar work ¹within the same geographical area and within
 4 the same monetary range¹, (2) occupy the same premises, (3) have
 5 the same telephone number or fax number, (4) have the same email
 6 address or internet website, (5) ~~['perform work within the same~~
 7 geographical area, (6) contract within the same monetary range,
 8 ~~(7)']~~ ¹employ substantially the same ~~['work force]~~ administrative
 9 employees¹, ~~['(8)']~~ ¹(6) utilize the same tools and equipment,
 10 ~~['(9)']~~ ¹(7) employ or engage the services of any ¹'listed person or
 11 persons involved in the direction or control of the other, or ~~['(10)']~~
 12 ¹(8) list substantially the same work experience in order to obtain
 13 the requisite pre-qualification rating from the Department of
 14 Treasury, or any other entity, to participate in any public work.

15 If a rebuttable presumption has arisen that a contractor or
 16 subcontractor listed by the commissioner under section 13 of this
 17 act has an interest in another firm, corporation or partnership, the
 18 adversely affected contractor or subcontractor, including the firm,
 19 corporation or partnership, which would by virtue of a finding of
 20 “interest” be prevented under this section from being awarded
 21 public work, may request a hearing, which shall be conducted in
 22 accordance with the “Administrative Procedure Act,” P.L.1968,
 23 c.410 (C.52:14B-1 et seq.)
 24 (cf: P.L.1990, c.27, s.7)

25

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

28 3. As used in this act:

29 "Commissioner" means the Commissioner of Labor and
 30 Workforce Development or his duly authorized representatives.

31 "Contractor" means a person, partnership, association, joint stock
 32 company, trust, corporation, or other legal business entity or
 33 successor thereof who enters into a contract which is subject to the
 34 provisions of the "New Jersey Prevailing Wage Act," P.L.1963,
 35 c.150 (C.34:11-56.25 et seq.), and includes any subcontractor or
 36 lower tier subcontractor of a contractor as defined herein.

37 "Department" means the Department of Labor and Workforce
 38 Development.

39 "Director" means the Director of the Division of Wage and Hour
 40 Compliance in the Department of Labor and Workforce
 41 Development.

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

48 (cf: P.L. 2003, c.91, s.1)

1 3. Section 9 of P.L.1999, c.238 (C.34:11-56.56) is amended to
2 read as follows:

3 9. a. A contractor who: (1) willfully hinders or delays the
4 commissioner in the performance of his duties in the enforcement of
5 this act; (2) fails to make, keep, and preserve any records as
6 required under the provisions of the "New Jersey Prevailing Wage
7 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (3) falsifies any such
8 record, or refuses to make any such record accessible to the
9 commissioner upon demand; (4) refuses to furnish a sworn
10 statement of such records or any other information required for the
11 enforcement of this act to the commissioner upon demand; (5) pays
12 or agrees to pay wages at a rate less than the rate prescribed by the
13 "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25
14 et seq.); or (6) otherwise violates any provision of this act, shall be
15 guilty of a disorderly persons offense.

16 b. As an alternative to or in addition to sanctions provided by
17 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
18 56.25 et seq.), the commissioner may, after providing the contractor
19 with notice of any alleged violation of this act, and with an
20 opportunity to request a hearing before the commissioner or his
21 designee:

22 (1) Deny renewal, revoke or suspend the registration of a
23 contractor for a period of not more than five years; or

24 (2) Require a contractor, as a condition of initial or continued
25 registration, to provide a surety bond payable to the State. The
26 surety bond shall be for the benefit of workers damaged by any
27 failure of a contractor to pay wages or benefits pursuant to or
28 otherwise comply with the provisions of the "New Jersey Prevailing
29 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) or this act. The
30 surety bond shall be in the amount and form that the commissioner
31 deems necessary for the protection of the contractor's workers, but
32 shall not exceed \$10,000 per worker. The surety bond shall be
33 issued by a surety that meets the requirements of N.J.S.2A:44-143.

34 c. The director may order the immediate suspension of a
35 contractor's registration, prior to a formal hearing on the revocation
36 of the contractor's registration pursuant to subsection b. of this
37 section, if the director determines that ordering an immediate
38 suspension is in the public interest and provided that the contractor
39 is afforded an opportunity to contest the immediate suspension in
40 the following manner:

41 (1) The director shall notify the contractor in writing of the
42 immediate revocation and the contractor's rights under the
43 subsection.

44 (2) The contractor may notify the director of its request for an
45 opportunity to be heard and contest the immediate suspension in
46 writing within 72 hours of its receipt of immediate suspension
47 notification.

48 (3) Within seven business days of receipt of the notification
49 from the contractor pursuant to paragraph (2) of this subsection, the

1 director shall grant the contractor a hearing to contest the immediate
2 suspension. The director shall permit the contractor to present
3 evidence at the hearing.

4 (4) The director shall issue a written decision within five
5 business days of the hearing either upholding or reversing the
6 contractor's immediate suspension. The decision shall include the
7 grounds for upholding or reversing the contractor's immediate
8 suspension.

9 (5) If the contractor disagrees with the written decision, the
10 contractor may appeal the decision to the commissioner, in
11 accordance with the "Administrative '[Procedures] Procedure'
12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

13 d. If the director '[has imposed an immediate] intends to
14 impose an immediate' suspension '[pursuant to] as set forth in'
15 subsection c. of this section, '[for the reason that, pursuant to]
16 based upon a rebuttable presumption as set forth in' section 14 of
17 P.L.1963, c.150 (C.34:11-56.38), '[a rebuttable presumption has
18 arisen that the registered contractor has an interest in a contractor,
19 subcontractor, firm, corporation or partnership listed by the
20 commissioner pursuant to section 13 of P.L.1963, c.150 (C.34:11-
21 56.37), the rebuttable presumption of interest by the registered
22 contractor in the contractor, subcontractor, firm, corporation or
23 partnership listed by the commissioner pursuant to section 13 of
24 P.L.1963, c.150 (C.34:11-56.37), may be addressed by the
25 registered contractor in accordance with the provisions set forth in
26 subsection c. of this section] the director shall provide the
27 contractor with a notice of intent to suspend and the contractor may
28 request a hearing before the Director of the Division of Wage and
29 Hour Compliance within 72 hours of the receipt of the notice of
30 intent to suspend in order to present evidence expeditiously in
31 support of the position that the suspension should not be imposed.
32 The suspension shall not take effect prior to the expiration of the 72
33 hour opportunity to request a hearing. If such a request is not made,
34 the suspension shall take effect at the end of the 72 hour period. If
35 such a request is made, the suspension shall take effect only after
36 the director conducts the hearing.

37 e. If the director orders the immediate suspension of a
38 contractor's registration pursuant to subsection b. of this section,
39 the violation shall have no effect on the registration of any
40 contractor or subcontractor, regardless of tier, in the contractual
41 chain with the suspended contractor' .

42 (cf: P.L.2003, c.91, s.5)

43

44 4. This act shall take effect immediately.

A3889 [1R]

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5

Reinforces prohibition of any debarred contractor using new business entity to circumvent the debarment; provides for suspension of contractor's registration pending hearing.

ASSEMBLY, No. 3889

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 9, 2007

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Prohibits debarred contractor from using new business entity to circumvent prevailing wage requirements; provides for suspension of contractor's registration pending hearing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/27/2007)

1 AN ACT concerning the enforcement of prevailing wage
2 requirements and amending P.L.1963, c.150 and P.L.1999,
3 c.238.

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

7
8 1. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to
9 read as follows:

10 14. The public body awarding any contract for public work, or
11 otherwise undertaking any public work, or entering into a lease or
12 agreement to lease pursuant to which public work is to be done,
13 shall first ascertain from the commissioner the list of names of
14 contractors or subcontractors who have failed to pay prevailing
15 wages as determined in section 13 of this act, and no contract shall
16 be awarded to such contractor or subcontractor, or to any firm,
17 corporation or partnership in which such contractor or subcontractor
18 has an interest until three years have elapsed from the date of listing
19 as determined in section 13 of this act.

20 For purposes of this section, "interest" shall mean an interest in
21 the firm, corporation or partnership bidding on, or performing
22 public work, whether having the interest as an owner, partner,
23 officer, manager, employee, agent, consultant or representative.
24 The term shall also include, but not be limited to, all instances in
25 which the contractor or subcontractor listed by the commissioner
26 under section 13 of this act has received payments, whether those
27 payments are in the form of cash or any other form of compensation
28 from the firm, corporation or partnership, or when the contractor or
29 subcontractor listed by the commissioner under section 13 of this
30 act has entered into any contract or agreement with the firm,
31 corporation or partnership for services performed or to be
32 performed, for services that have been or will be assigned or
33 subletted, or for the sale, rental or lease of vehicles, tools,
34 equipment or supplies during the period from the initiation of the
35 proceedings under section 13 of this act against the contractor or
36 subcontractor until three years have elapsed from the date that the
37 contractor or subcontractor has been listed by the commissioner
38 under section 13 of this act. The term "interest" shall not include
39 shares held in a publicly traded corporation if the shares were not
40 received as compensation after the initiation of proceedings under
41 section 13 of this act from a firm, corporation or partnership
42 bidding or performing public work.

43 A rebuttable presumption that a contractor or subcontractor listed
44 by the commissioner under section 13 of this act has an interest in
45 another firm, corporation or partnership shall arise if the two share

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 any of the following capacities or characteristics: (1) perform
2 similar work, (2) occupy the same premises, (3) have the same
3 telephone number or fax number, (4) have the same email address
4 or internet website, (5) perform work within the same geographical
5 area, (6) contract within the same monetary range, (7) employ
6 substantially the same work force, (8) utilize the same tools and
7 equipment, (9) employ or engage the services of any person or
8 persons involved in the direction or control of the other, or (10) list
9 substantially the same work experience in order to obtain the
10 requisite pre-qualification rating from the Department of Treasury,
11 or any other entity, to participate in any public work.

12 If a rebuttable presumption has arisen that a contractor or
13 subcontractor listed by the commissioner under section 13 of this
14 act has an interest in another firm, corporation or partnership, the
15 adversely affected contractor or subcontractor, including the firm,
16 corporation or partnership, which would by virtue of a finding of
17 “interest” be prevented under this section from being awarded
18 public work, may request a hearing, which shall be conducted in
19 accordance with the “Administrative Procedure Act,” P.L.1968,
20 c.410 (C.52:14B-1 et seq.)
21 (cf: P.L.1990, c.27, s.7)

22
23 2. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to
24 read as follows:

25 3. As used in this act:

26 "Commissioner" means the Commissioner of Labor and
27 Workforce Development or his duly authorized representatives.

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

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

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

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

45 (cf: P.L. 2003, c.91, s.1)

46
47 3. Section 9 of P.L.1999, c.238 (C.34:11-56.56) is amended to
48 read as follows:

1 9. a. A contractor who: (1) willfully hinders or delays the
2 commissioner in the performance of his duties in the enforcement of
3 this act; (2) fails to make, keep, and preserve any records as
4 required under the provisions of the "New Jersey Prevailing Wage
5 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (3) falsifies any such
6 record, or refuses to make any such record accessible to the
7 commissioner upon demand; (4) refuses to furnish a sworn
8 statement of such records or any other information required for the
9 enforcement of this act to the commissioner upon demand; (5) pays
10 or agrees to pay wages at a rate less than the rate prescribed by the
11 "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25
12 et seq.); or (6) otherwise violates any provision of this act, shall be
13 guilty of a disorderly persons offense.

14 b. As an alternative to or in addition to sanctions provided by
15 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
16 56.25 et seq.), the commissioner may, after providing the contractor
17 with notice of any alleged violation of this act, and with an
18 opportunity to request a hearing before the commissioner or his
19 designee:

20 (1) Deny renewal, revoke or suspend the registration of a
21 contractor for a period of not more than five years; or

22 (2) Require a contractor, as a condition of initial or continued
23 registration, to provide a surety bond payable to the State. The
24 surety bond shall be for the benefit of workers damaged by any
25 failure of a contractor to pay wages or benefits pursuant to or
26 otherwise comply with the provisions of the "New Jersey Prevailing
27 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) or this act. The
28 surety bond shall be in the amount and form that the commissioner
29 deems necessary for the protection of the contractor's workers, but
30 shall not exceed \$10,000 per worker. The surety bond shall be
31 issued by a surety that meets the requirements of N.J.S.2A:44-143.

32 c. The director may order the immediate suspension of a
33 contractor's registration, prior to a formal hearing on the revocation
34 of the contractor's registration pursuant to subsection b. of this
35 section, if the director determines that ordering an immediate
36 suspension is in the public interest and provided that the contractor
37 is afforded an opportunity to contest the immediate suspension in
38 the following manner:

39 (1) The director shall notify the contractor in writing of the
40 immediate revocation and the contractor's rights under the
41 subsection.

42 (2) The contractor may notify the director of its request for an
43 opportunity to be heard and contest the immediate suspension in
44 writing within 72 hours of its receipt of immediate suspension
45 notification.

46 (3) Within seven business days of receipt of the notification
47 from the contractor pursuant to paragraph (2) of this subsection, the
48 director shall grant the contractor a hearing to contest the immediate

1 suspension. The director shall permit the contractor to present
2 evidence at the hearing.

3 (4) The director shall issue a written decision within five
4 business days of the hearing either upholding or reversing the
5 contractor's immediate suspension. The decision shall include the
6 grounds for upholding or reversing the contractor's immediate
7 suspension.

8 (5) If the contractor disagrees with the written decision, the
9 contractor may appeal the decision to the commissioner, in
10 accordance with the "Administrative Procedures Act," P.L.1968,
11 c.410 (C.52:14B-1 et seq.).

12 d. If the director has imposed an immediate suspension pursuant
13 to subsection c. of this section, for the reason that, pursuant to
14 section 14 of P.L.1963, c.150 (C.34:11-56.38), a rebuttable
15 presumption has arisen that the registered contractor has an interest
16 in a contractor, subcontractor, firm, corporation or partnership listed
17 by the commissioner pursuant to section 13 of P.L.1963, c.150
18 (C.34:11-56.37), the rebuttable presumption of interest by the
19 registered contractor in the contractor, subcontractor, firm,
20 corporation or partnership listed by the commissioner pursuant to
21 section 13 of P.L.1963, c.150 (C.34:11-56.37), may be addressed by
22 the registered contractor in accordance with the provisions set forth
23 in subsection c. of this section.

24 (cf: P.L.2003, c.91, s.5)

25

26 4. This act shall take effect immediately.

27

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29

STATEMENT

30

31 This bill prohibits a contractor or subcontractor who, as a result
32 of their failure to pay the prevailing wage on public work, has been
33 debarred, from using a firm, corporation or partnership in which the
34 contractor has an interest to circumvent the debarment.

35 Current law prohibits a public body from contracting with a
36 contractor or subcontractor, if they have an interest in any firm,
37 corporation or partnership who has failed to pay the prevailing
38 wage rate, until three years have elapsed from the date of their
39 debarment listing.

40 The bill clarifies that an "interest" exists when a contractor or
41 subcontractor listed on the commissioner's debarment list has
42 received payments in any form of compensation from the firm,
43 corporation or partnership, or when the contractor or subcontractor
44 has entered into any contract or agreement with the firm,
45 corporation or partnership for services performed or to be
46 performed, for services that have been or will be assigned or
47 subletted, or for the sale, rental or lease of vehicles, tools,
48 equipment or supplies during a specified time period.

1 The bill creates a rebuttable presumption that, under certain
2 circumstances, a contractor or subcontractor who is on the
3 Department of Labor and Workforce Development debarment list
4 has an interest in another firm, corporation or partnership and shifts
5 the burden of proof from the department to the individual contractor
6 to prove otherwise under certain circumstances. The rebuttable
7 presumption is established if a firm, corporation or partnership: (1)
8 performs similar work, (2) occupies the same premises, (3) has the
9 same telephone number or fax number, (4) has the same email
10 address or internet website, (5) performs work within the same
11 geographical area, (6) contracts within the same monetary range, (7)
12 employs substantially the same work force, (8) utilizes the same
13 tools and equipment, (9) employs or engages the services of any
14 person or persons involved in the direction or control of the other,
15 or (10) lists substantially the same work experience as the
16 contractor or subcontractor in order to obtain the requisite pre-
17 qualification rating from the Department of Treasury, or any other
18 entity, to participate in any public work construction project.

19 The bill further permits the Department of Labor and Workforce
20 Development to immediately suspend a contractor's registration
21 prior to a formal hearing on the revocation of the contractor's
22 registration if the Director of the Division of Wage and Hour
23 Compliance within the department determines that an immediate
24 suspension is in the public interest.

25 The bill also provides that the contractor must be afforded an
26 opportunity to contest the immediate suspension in the following
27 manner:

28 (1) The director shall notify the contractor in writing of the
29 immediate revocation and the contractor's rights.

30 (2) The contractor may notify the director of its request for an
31 opportunity to be heard and contest the immediate suspension in
32 writing within 72 hours of its receipt of immediate suspension
33 notification.

34 (3) Within seven business days of receipt of the notification
35 from the contractor, the director shall grant the contractor a hearing
36 to contest the immediate suspension. The director shall permit the
37 contractor to present evidence at the hearing.

38 (4) The director shall issue a written decision within five
39 business days of the hearing either upholding or reversing the
40 contractor's immediate suspension. The decision shall include the
41 grounds for upholding or reversing the contractor's immediate
42 suspension.

43 (5) If the contractor disagrees with the written decision, the
44 contractor may appeal the decision to the commissioner, in
45 accordance with the "Administrative Procedures Act."

46 Finally, the bill states that if the director imposes an immediate
47 suspension because a rebuttable presumption has arisen that the
48 registered contractor has an interest in a contractor or subcontractor
49 listed by the commissioner, the rebuttable presumption of interest

A3889 EGAN, VAN DREW

7

- 1 may be addressed by the registered contractor pursuant to the same
- 2 expedited procedures.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3889

with committee amendment

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2007

The Assembly Labor committee reports favorably and with committee amendments Assembly Bill No. 3889.

This bill strengthens the existing prohibition against any contractor or subcontractor who has been debarred from public work due to violations of the prevailing wage law from using a firm, corporation or partnership in which the contractor has an interest to circumvent the debarment.

Current law prohibits a public body from contracting with a contractor or subcontractor which has an interest in any debarred firm, corporation or partnership until three years have elapsed from the date of their debarment listing. The bill clarifies the meaning of "interest" by stipulating that an interest may exist when a contractor or subcontractor listed on the commissioner's debarment list has received payments in any form of compensation from the firm, corporation or partnership, or when the contractor or subcontractor has entered into any contract or agreement with the firm, corporation or partnership for services performed or to be performed, for services that have been or will be assigned or subletted, or for the sale, rental or lease of vehicles, tools, equipment or supplies during a specified time period.

The bill provides that a rebuttable presumption may arise that a contractor or subcontractor who is debarred from prevailing wage work has an interest in another firm, corporation or partnership and shifts the burden of proof from the department to the individual contractor to prove otherwise under certain circumstances. The rebuttable presumption may arise if a firm, corporation or partnership:

1. Performs similar work within the same geographical area and contracts within the same monetary range;
2. Occupies the same premises,
3. Has the same telephone number or fax number;
4. Has the same email address or internet website;
5. Employs substantially the same administrative employees;
6. Utilizes the same tools and equipment;
7. Employs or engages the services of any debarred person or persons involved in the direction or control of the other; or

8. Lists substantially the same work experience as the contractor or subcontractor in order to obtain the requisite pre-qualification rating from the Department of Treasury, or any other entity, to participate in any public work construction project.

The bill permits the Department of Labor and Workforce Development to immediately suspend a contractor's registration prior to a formal hearing on the revocation of the contractor's registration if the Director of the Division of Wage and Hour Compliance determines that an immediate suspension is in the public interest.

The bill requires that the contractor be afforded an opportunity to contest the immediate suspension in the following manner:

1. The director is required to notify the contractor in writing of the immediate revocation and the contractor's rights.

2. The contractor may notify the director of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt the notification.

3. The director is required, within seven business days of receipt of the contractor's notification, to grant the contractor a hearing to present evidence to contest the immediate suspension;

4. The director is required, within five business days of the hearing, to issue a written decision, which includes the grounds for upholding or reversing the contractor's immediate suspension;

5. If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedures Act."

The bill provides that before the director imposes an immediate suspension based upon a rebuttable presumption that a debarred contractor has an interest in another firm, the director is required to first provide the contractor with a notice of intent to suspend and give the contractor a 72-hour period to request a hearing to present evidence as to why the suspension should not be imposed. This procedure would occur before, and in addition to, the hearing which would occur during the suspension under the bill.

If the director imposes an immediate suspension because a rebuttable presumption has arisen that the registered contractor has an interest in a debarred contractor or subcontractor, the rebuttable presumption of interest may be addressed by the registered contractor pursuant to the same expedited procedures.

The bill provides that if the director orders the immediate suspension of a contractor's registration, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

COMMITTEE AMENDMENTS

The amendments adopted by committee modify the circumstances under which a rebuttable presumption may be established that a

debarred contractor has an interest in another firm. Under the unamended bill, the presumption applies if debarred contractor and the other firm both perform similar work, perform work within the same geographical area, or contract within the same monetary range. Under the amendments, all three conditions must apply. Under the amendments, the presumption applies if the debarred contractor and the firm employ substantially the same workforce, while the amendments apply the presumption if the debarred contractor and the firm employ substantially the same administrative employees.

The amendments provide that before the director imposes an immediate suspension based upon a rebuttable presumption that a debarred contractor has an interest in another firm, the director is required to first provide the contractor with a notice of intent to suspend and give the contractor a 72-hour period to request a hearing to present evidence as to why the suspension should not be imposed.

Finally, the amendments provide that if the director orders the immediate suspension of a contractor's registration, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

As reported, the bill is identical to S-2458(1R).

SENATE, No. 2458

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 9, 2007

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Prohibits debarred contractor from using new business entity to circumvent prevailing wage requirements; provides for suspension of contractor's registration pending hearing.

CURRENT VERSION OF TEXT

As introduced.



S2458 MADDEN

2

1 AN ACT concerning the enforcement of prevailing wage
2 requirements and amending P.L.1963, c.150 and P.L.1999,
3 c.238.

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

7
8 1. Section 14 of P.L.1963, c.150 (C.34:11-56.38) is amended to
9 read as follows:

10 14. The public body awarding any contract for public work, or
11 otherwise undertaking any public work, or entering into a lease or
12 agreement to lease pursuant to which public work is to be done,
13 shall first ascertain from the commissioner the list of names of
14 contractors or subcontractors who have failed to pay prevailing
15 wages as determined in section 13 of this act, and no contract shall
16 be awarded to such contractor or subcontractor, or to any firm,
17 corporation or partnership in which such contractor or subcontractor
18 has an interest until three years have elapsed from the date of listing
19 as determined in section 13 of this act.

20 For purposes of this section, “interest” shall mean an interest in
21 the firm, corporation or partnership bidding on, or performing
22 public work, whether having the interest as an owner, partner,
23 officer, manager, employee, agent, consultant or representative.
24 The term shall also include, but not be limited to, all instances in
25 which the contractor or subcontractor listed by the commissioner
26 under section 13 of this act has received payments, whether those
27 payments are in the form of cash or any other form of compensation
28 from the firm, corporation or partnership, or when the contractor or
29 subcontractor listed by the commissioner under section 13 of this
30 act has entered into any contract or agreement with the firm,
31 corporation or partnership for services performed or to be
32 performed, for services that have been or will be assigned or
33 subletted, or for the sale, rental or lease of vehicles, tools,
34 equipment or supplies during the period from the initiation of the
35 proceedings under section 13 of this act against the contractor or
36 subcontractor until three years have elapsed from the date that the
37 contractor or subcontractor has been listed by the commissioner
38 under section 13 of this act. The term “interest” shall not include
39 shares held in a publicly traded corporation if the shares were not
40 received as compensation after the initiation of proceedings under
41 section 13 of this act from a firm, corporation or partnership
42 bidding or performing public work.

43 A rebuttable presumption that a contractor or subcontractor listed
44 by the commissioner under section 13 of this act has an interest in
45 another firm, corporation or partnership shall arise if the two share

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 any of the following capacities or characteristics: (1) perform
2 similar work, (2) occupy the same premises, (3) have the same
3 telephone number or fax number, (4) have the same email address
4 or internet website, (5) perform work within the same geographical
5 area, (6) contract within the same monetary range, (7) employ
6 substantially the same work force, (8) utilize the same tools and
7 equipment, (9) employ or engage the services of any person or
8 persons involved in the direction or control of the other, or (10) list
9 substantially the same work experience in order to obtain the
10 requisite pre-qualification rating from the Department of Treasury,
11 or any other entity, to participate in any public work.

12 If a rebuttable presumption has arisen that a contractor or
13 subcontractor listed by the commissioner under section 13 of this
14 act has an interest in another firm, corporation or partnership, the
15 adversely affected contractor or subcontractor, including the firm,
16 corporation or partnership, which would by virtue of a finding of
17 “interest” be prevented under this section from being awarded
18 public work, may request a hearing, which shall be conducted in
19 accordance with the “Administrative Procedure Act,” P.L.1968,
20 c.410 (C.52:14B-1 et seq.)
21 (cf: P.L.1990, c.27, s.7)

22
23 2. Section 3 of P.L.1999, c.238 (C.34:11-56.50) is amended to
24 read as follows:

25 3. As used in this act:

26 "Commissioner" means the Commissioner of Labor and
27 Workforce Development or his duly authorized representatives.

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

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

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

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

45 (cf: P.L. 2003, c.91, s.1)

46
47 3. Section 9 of P.L.1999, c.238 (C.34:11-56.56) is amended to
48 read as follows:

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1 9. a. A contractor who: (1) willfully hinders or delays the
2 commissioner in the performance of his duties in the enforcement of
3 this act; (2) fails to make, keep, and preserve any records as
4 required under the provisions of the "New Jersey Prevailing Wage
5 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (3) falsifies any such
6 record, or refuses to make any such record accessible to the
7 commissioner upon demand; (4) refuses to furnish a sworn
8 statement of such records or any other information required for the
9 enforcement of this act to the commissioner upon demand; (5) pays
10 or agrees to pay wages at a rate less than the rate prescribed by the
11 "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25
12 et seq.); or (6) otherwise violates any provision of this act, shall be
13 guilty of a disorderly persons offense.

14 b. As an alternative to or in addition to sanctions provided by
15 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
16 56.25 et seq.), the commissioner may, after providing the contractor
17 with notice of any alleged violation of this act, and with an
18 opportunity to request a hearing before the commissioner or his
19 designee:

20 (1) Deny renewal, revoke or suspend the registration of a
21 contractor for a period of not more than five years; or

22 (2) Require a contractor, as a condition of initial or continued
23 registration, to provide a surety bond payable to the State. The
24 surety bond shall be for the benefit of workers damaged by any
25 failure of a contractor to pay wages or benefits pursuant to or
26 otherwise comply with the provisions of the "New Jersey Prevailing
27 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) or this act. The
28 surety bond shall be in the amount and form that the commissioner
29 deems necessary for the protection of the contractor's workers, but
30 shall not exceed \$10,000 per worker. The surety bond shall be
31 issued by a surety that meets the requirements of N.J.S.2A:44-143.

32 c. The director may order the immediate suspension of a
33 contractor's registration, prior to a formal hearing on the revocation
34 of the contractor's registration pursuant to subsection b. of this
35 section, if the director determines that ordering an immediate
36 suspension is in the public interest and provided that the contractor
37 is afforded an opportunity to contest the immediate suspension in
38 the following manner:

39 (1) The director shall notify the contractor in writing of the
40 immediate revocation and the contractor's rights under the
41 subsection.

42 (2) The contractor may notify the director of its request for an
43 opportunity to be heard and contest the immediate suspension in
44 writing within 72 hours of its receipt of immediate suspension
45 notification.

46 (3) Within seven business days of receipt of the notification
47 from the contractor pursuant to paragraph (2) of this subsection, the
48 director shall grant the contractor a hearing to contest the immediate

1 suspension. The director shall permit the contractor to present
2 evidence at the hearing.

3 (4) The director shall issue a written decision within five
4 business days of the hearing either upholding or reversing the
5 contractor's immediate suspension. The decision shall include the
6 grounds for upholding or reversing the contractor's immediate
7 suspension.

8 (5) If the contractor disagrees with the written decision, the
9 contractor may appeal the decision to the commissioner, in
10 accordance with the "Administrative Procedures Act," P.L.1968,
11 c.410 (C.52:14B-1 et seq.).

12 d. If the director has imposed an immediate suspension pursuant
13 to subsection c. of this section, for the reason that, pursuant to
14 section 14 of P.L.1963, c.150 (C.34:11-56.38), a rebuttable
15 presumption has arisen that the registered contractor has an interest
16 in a contractor, subcontractor, firm, corporation or partnership listed
17 by the commissioner pursuant to section 13 of P.L.1963, c.150
18 (C.34:11-56.37), the rebuttable presumption of interest by the
19 registered contractor in the contractor, subcontractor, firm,
20 corporation or partnership listed by the commissioner pursuant to
21 section 13 of P.L.1963, c.150 (C.34:11-56.37), may be addressed by
22 the registered contractor in accordance with the provisions set forth
23 in subsection c. of this section.

24 (cf: P.L.2003, c.91, s.5)

25

26 4. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill prohibits a contractor or subcontractor who, as a result
32 of their failure to pay the prevailing wage on public work, has been
33 debarred, from using a firm, corporation or partnership in which the
34 contractor has an interest to circumvent the debarment.

35 Current law prohibits a public body from contracting with a
36 contractor or subcontractor, if they have an interest in any firm,
37 corporation or partnership who has failed to pay the prevailing
38 wage rate, until three years have elapsed from the date of their
39 debarment listing.

40 The bill clarifies that an "interest" exists when a contractor or
41 subcontractor listed on the commissioner's debarment list has
42 received payments in any form of compensation from the firm,
43 corporation or partnership, or when the contractor or subcontractor
44 has entered into any contract or agreement with the firm,
45 corporation or partnership for services performed or to be
46 performed, for services that have been or will be assigned or
47 subletted, or for the sale, rental or lease of vehicles, tools,
48 equipment or supplies during a specified time period.

1 The bill creates a rebuttable presumption that, under certain
2 circumstances, a contractor or subcontractor who is on the
3 Department of Labor and Workforce Development debarment list
4 has an interest in another firm, corporation or partnership and shifts
5 the burden of proof from the department to the individual contractor
6 to prove otherwise under certain circumstances. The rebuttable
7 presumption is established if a firm, corporation or partnership: (1)
8 performs similar work, (2) occupies the same premises, (3) has the
9 same telephone number or fax number, (4) has the same email
10 address or internet website, (5) performs work within the same
11 geographical area, (6) contracts within the same monetary range, (7)
12 employs substantially the same work force, (8) utilizes the same
13 tools and equipment, (9) employs or engages the services of any
14 person or persons involved in the direction or control of the other,
15 or (10) lists substantially the same work experience as the
16 contractor or subcontractor in order to obtain the requisite pre-
17 qualification rating from the Department of Treasury, or any other
18 entity, to participate in any public work construction project.

19 The bill further permits the Department of Labor and Workforce
20 Development to immediately suspend a contractor's registration
21 prior to a formal hearing on the revocation of the contractor's
22 registration if the Director of the Division of Wage and Hour
23 Compliance within the department determines that an immediate
24 suspension is in the public interest.

25 The bill also provides that the contractor must be afforded an
26 opportunity to contest the immediate suspension in the following
27 manner:

28 (1) The director shall notify the contractor in writing of the
29 immediate revocation and the contractor's rights.

30 (2) The contractor may notify the director of its request for an
31 opportunity to be heard and contest the immediate suspension in
32 writing within 72 hours of its receipt of immediate suspension
33 notification.

34 (3) Within seven business days of receipt of the notification
35 from the contractor, the director shall grant the contractor a hearing
36 to contest the immediate suspension. The director shall permit the
37 contractor to present evidence at the hearing.

38 (4) The director shall issue a written decision within five
39 business days of the hearing either upholding or reversing the
40 contractor's immediate suspension. The decision shall include the
41 grounds for upholding or reversing the contractor's immediate
42 suspension.

43 (5) If the contractor disagrees with the written decision, the
44 contractor may appeal the decision to the commissioner, in
45 accordance with the "Administrative Procedures Act."

46 Finally, the bill states that if the director imposes an immediate
47 suspension because a rebuttable presumption has arisen that the
48 registered contractor has an interest in a contractor or subcontractor
49 listed by the commissioner, the rebuttable presumption of interest

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7

- 1 may be addressed by the registered contractor pursuant to the same
- 2 expedited procedures.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2458

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2007

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No.2458.

This bill strengthens the existing prohibition against any contractor or subcontractor who has been debarred from public work due to violations of the prevailing wage law from using a firm, corporation or partnership in which the contractor has an interest to circumvent the debarment.

Current law prohibits a public body from contracting with a contractor or subcontractor if they have an interest in any firm, corporation or partnership who has failed to pay the prevailing wage rate, until three years have elapsed from the date of their debarment listing.

The bill clarifies that an “interest” exists when a contractor or subcontractor listed on the commissioner’s debarment list has received payments in any form of compensation from the firm, corporation or partnership, or when the contractor or subcontractor has entered into any contract or agreement with the firm, corporation or partnership for services performed or to be performed, for services that have been or will be assigned or sublet, or for the sale, rental or lease of vehicles, tools, equipment or supplies during a specified time period.

The bill provides that a rebuttable presumption may arise that a contractor or subcontractor who is debarred from prevailing wage work has an interest in another firm, corporation or partnership and shifts the burden of proof from the department to the individual contractor to prove otherwise under certain circumstances. The bill, as amended by the committee, states that a rebuttable presumption may arise if a firm, corporation or partnership share any of the following capacities or characteristics: (1) perform similar work within the same geographical area and within the same monetary range, (2) occupy the same premises, (3) have the same telephone number or fax number, (4) have the same email address or internet website, (5) employ substantially the same administrative employees, (6) utilize the same tools and equipment, (7) employ or engage the services of any listed person or persons involved in the direction or control of the other, or (8) list substantially the same work experience in order to obtain the

requisite pre-qualification rating from the Department of Treasury, or any other entity, to participate in any public work.

The bill further permits the Department of Labor and Workforce Development to immediately suspend a contractor's registration prior to a formal hearing on the revocation of the contractor's registration if the Director of the Division of Wage and Hour Compliance within the department determines that an immediate suspension is in the public interest.

The bill also provides that the contractor must be afforded an opportunity to contest the immediate suspension in the following manner:

(1) The director shall notify the contractor in writing of the immediate suspension and the contractor's rights.

(2) The contractor may notify the director of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt of immediate suspension notification.

(3) Within seven business days of receipt of the notification from the contractor, the director shall grant the contractor a hearing to contest the immediate suspension. The director shall permit the contractor to present evidence at the hearing.

(4) The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's immediate suspension. The decision shall include the grounds for upholding or reversing the contractor's immediate suspension.

(5) If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act."

The bill provides that before the director imposes an immediate suspension based upon a rebuttable presumption that a debarred contractor has an interest in another firm, the director is required to first provide the contractor with a notice of intent to suspend and give the contractor a 72-hour period to request a hearing to present evidence as to why the suspension should not be imposed. This procedure would occur before, and in addition to, the hearing which would occur during the suspension under the bill.

If the director imposes an immediate suspension because a rebuttable presumption has arisen that the registered contractor has an interest in a debarred contractor or subcontractor, the rebuttable presumption of interest may be addressed by the registered contractor pursuant to the same expedited procedures.

The bill provides that if the director orders the immediate suspension of a contractor's registration, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

This bill, as amended, is identical to Assembly Bill No.3889.

Apr-26-07 Acting Governor Signs Legislation Closing Prevailing Wage Loop Holes

FOR IMMEDIATE RELEASE:
April 26, 2007

FOR MORE INFORMATION:
Press Office - 609-777-2600

ACTING GOVERNOR SIGNS LEGISLATION CLOSING P REVAILING WAGE LOOP HOLES

TRENTON – On behalf of the Corzine Administration, Acting Governor Richard J. Codey today signed two pieces of legislation closing loopholes in New Jersey 's prevailing wage laws.

"This legislation builds on the tremendous progress we've made with our prevailing wage laws," said Acting Governor Codey. "It closes the loopholes that have allowed a few contractors to shortchange New Jersey 's working families, preserves a level playing field, and helps ensure that people who work hard and play by the rules have a fair chance to earn a living and support a family."

"This legislation strengthens our Prevailing Wage Act and provides the Department of Labor and Workforce Development with stronger tools to protect the wages of the men and women who build our vital infrastructure – roads, bridges, health care facilities, schools and other crucial structures," said Labor Commissioner David J. Socolow.

Under A3890/S2457, construction work on publicly-owned property is now subject to the P revailing Wage law, even when the property is leased to a private business and the private business contracts for the construction work.

The second piece of legislation, A3889/S2458 gives the Department new tools to more effectively enforce the P revailing Wage Act. This legislation makes it harder for debarred contractors to reconstitute their businesses under a new name to continue to bid on publicly funded construction projects. A debarred company is not eligible to bid on these contracts during the three-year term of their debarment.

The new law also empowers the Department to immediately suspend the registration of a contractor that faces revocation of that registration for serious

violations or a pattern of violations of the Prevailing Wage law. The registration will remain suspended until the case for revocation is decided.

"Now, we have one more assurance that workers will receive a living wage for their families," said Senator Joseph V. Doria, (D-Hudson). "This law takes out any ambiguity that contractors may use to sidestep our prevailing wage law."

"We need to do all that we can to help working families," said Assemblyman Joseph V. Egan (D-Middlesex). "The financial protections that unions have earned for hard-working men and women must not be eroded."

"Making sure contractors and subcontractors are paying a prevailing wage is only fair," said Jeff Van Drew (D-Cape May/Atlantic/Cumberland). "These measures close loopholes that would have allowed contractors or subcontractors to circumvent the state's prevailing wage protections."

A3890/S2457 was sponsored in the Assembly by Assemblypersons Joseph V. Egan (D-Middlesex, Somerset), Jeff Van Drew (D-Cape May, Atlantic, Cumberland), Paul D. Moriarty (D-Camden, Gloucester), Valerie Vainieri Huttel (D-Bergen), and Linda R. Greenstein (D-Mercer, Middlesex) It was sponsored in the Senate by Senator Joseph V. Doria (D-Hudson).

A3889/S2458 was sponsored in the Assembly by Assemblypersons Joseph V. Egan (D-Middlesex, Somerset), Jeff Van Drew (D-Cape May, Atlantic, Cumberland), Frederick Scalera (D-Bergen, Essex, Passaic), Neil M. Cohen (D-Union), and Linda R. Greenstein (D-Mercer, Middlesex). It was sponsored in the Senate by Senators Fred H. Madden, Jr. (D-Camden, Gloucester) and Ellen Karcher, (D-Monmouth).