

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/JA

P.L. 2021, CHAPTER 336, *approved January 10, 2022*
Senate, No. 1053 (*First Reprint*)

1 AN ACT establishing waterfront prevailing wage standards and
2 supplementing chapter 11 of Title 34 of the Revised Statutes.

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

6
7 1. For the purposes of this act:

8 “Applicable waterfront prevailing wage rates” means the wage
9 rates paid by virtue of ¹the multiemployer¹ collective bargaining
10 agreements with waterfront employers ¹[employing the largest
11 numbers of longshoremen, including collective bargaining agreements
12 which apply to longshoremen working in waterfront facilities
13 throughout the State] in the Port of New York District¹, provided that
14 if a collective bargaining agreement applying to a smaller locality or
15 ¹single¹ waterfront facility stipulates wage ¹[levels higher than] rates
16 different from¹ the levels stipulated by ¹the multiemployer¹ collective
17 bargaining agreements with ¹[State-wide application, the higher]
18 waterfront employers in the Port of New York district, those different¹
19 rates shall be the applicable waterfront prevailing wage rates for that
20 locality or facility. Contributions by a waterfront employer for
21 benefits made pursuant to a collective bargaining agreement shall be
22 considered an integral part of the wage paid by the waterfront
23 employer for the purpose of determining the applicable waterfront
24 prevailing wage rates for purpose of this act.

25 "Carrier of freight by water" shall mean any person engaged, or
26 who may hold himself out as willing to be engaged, whether as a
27 common carrier, as a contract carrier, or otherwise, in the carriage of
28 freight by water, except for carriage of liquid cargoes in bulk in tank
29 vessels designed for use exclusively in such service, and except for
30 carriage by barge of bulk cargoes consisting of only a single
31 commodity loaded or carried without wrappers or containers and
32 delivered by the carrier without transportation mark or count.

33 “Classification” of longshoremen means categories of
34 longshoremen, including: the kind of cargo they handle, such as break-
35 bulk terminal cargo, break-bulk vessel cargo, or containers; job
36 categories, such as laborers, equipment operators, checkers, crane
37 operators, or mechanics; and duration of employment.

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 June 9, 2021.

1 "Commissioner" means the Commissioner of Labor and
2 Workforce Development or his duly authorized representatives.

3 "Container" means any receptacle, box, carton or crate which is
4 specifically designed and constructed so that it may be repeatedly used
5 for the carriage of freight by a carrier of freight by water.

6 "Department" means the Department of Labor and Workforce
7 Development of the State of New Jersey.

8 ¹"Division" means the Division of Wage and Hour Compliance in
9 the Department of Labor and Workforce Development.¹

10 "Financial assistance" means any loan, loan guarantee, grant,
11 incentive, tax exemption or other financial assistance that is approved,
12 funded, authorized, or administered by a public body, or otherwise
13 provided by the public body.

14 "Hiring agent" means an individual, who on behalf of any other
15 person selects longshoremen for employment.

16 "Locality" means any political subdivision of the State,
17 combination of the same or parts thereof, or any geographical area or
18 areas classified, designated and fixed by the commissioner from time
19 to time, provided that in determining the "locality," the commissioner
20 shall be guided by the boundary lines of political subdivisions or parts
21 thereof, or by a consideration of the areas with respect to which it has
22 been the practice of waterfront employers of classifications of
23 longshoremen to engage in collective bargaining with the
24 representatives of those classifications of longshoremen.

25 "Longshoreman" means an individual, other than a hiring agent,
26 who is employed for work at a waterfront facility to:

27 (a) move waterborne freight on a vessel berthed at waterfront
28 facilities, or to or from a barge, lighter or railroad car for transfer to or
29 from the vessel;

30 (b) engage in direct and immediate checking of the freight or its
31 custodial accounting or in the recording or tabulation of the hours
32 worked at waterfront facilities by longshoremen;

33 (c) directly and immediately supervise longshoremen; or

34 (d) perform any other labor or services incidental to the movement
35 of waterborne freight on vessels berthed at waterfront facilities,
36 including, but not limited to, cargo repairmen, coopers, general
37 maintenance workers, mechanical and miscellaneous workers, horse
38 and cattle fitters, grain ceilers, port watchmen, and marine carpenters.

39 "Marine terminal" means an area located in the State which
40 includes piers, and is used primarily for the moving, warehousing,
41 distributing or packing of waterborne freight or freight to or from
42 those piers, and which, inclusive of such piers, is under common
43 ownership or control.

44 "Person" means an individual or any partnership, joint venture,
45 association, corporation or any other legal entity other than a
46 governmental entity.

47 "Pier" includes any wharf, pier, dock or quay.

1 "Port watchman" includes any watchman, gateman, groundsman,
2 detective, guard, guardian or protector of property employed by the
3 operator of any pier or other waterfront terminal or by a carrier of
4 freight by water to perform services in such capacity on any pier or
5 other waterfront terminal.

6 "Public body" means the State of New Jersey, any of its political
7 subdivisions, and any authority, instrumentality, or agency of the State
8 of New Jersey or of any of its political subdivisions.

9 "Public waterfront facility" means a waterfront facility located in
10 the State which:

11 (a) is owned, operated or administered by a public body;

12 (b) receives financial assistance that is approved, funded,
13 authorized, or administered by a public body, or otherwise provided by
14 the public body; or

15 (c) is owned, operated or administered by a waterfront employer
16 who receives financial assistance that is approved, funded, authorized,
17 or administered by a public body, or otherwise provided by the public
18 body.

19 "Stevedore" means an employer of longshoremen who is a
20 contractor or subcontractor, but not an employee, engaged for
21 compensation pursuant to a contract or arrangement with a carrier of
22 waterborne freight or operator of a waterfront facility, to move
23 waterborne freight carried or consigned for carriage by the carrier on,
24 onto, or from vessels of the carrier berthed at waterfront facilities,
25 including:

26 (a) a contractor engaged for compensation pursuant to a contract
27 or arrangement with a public entity, the United States, or any other
28 state or territory thereof, to move freight carried or consigned for
29 carriage between any point in a waterfront facility and a point outside
30 of the waterfront facility on vessels berthed at the waterfront facility,
31 or

32 (b) a contractor engaged for compensation pursuant to a contract
33 or arrangement with any person to perform labor or services incidental
34 to the movement of waterborne freight on, onto, or from vessels
35 berthed at waterfront facilities, including, but not limited to, cargo
36 storage, cargo repairing, coopering, general maintenance, mechanical
37 and miscellaneous work, horse and cattle fitting, grain ceiling, and
38 marine carpentry, or

39 (c) a contractor engaged for compensation pursuant to a contract
40 or arrangement with any other person to perform labor or services
41 involving, or incidental to, the movement of freight into or out of
42 containers, which have been or which will be carried by a carrier of
43 freight by water, on vessels berthed at waterfront facilities.

44 "Waterborne freight" shall mean freight carried by or consigned for
45 carriage by carriers of freight by water, including ships' stores,
46 baggage and mail carried by or consigned for carriage by carriers of
47 freight by water.

1 “Waterfront employer” means an operator of a waterfront facility,
2 stevedore, or carrier of freight by water who employs longshoremen at
3 a waterfront facility.

4 “Waterfront facility” means any marine terminal or pier, or any
5 other waterfront terminal located in the State.

6 "Waterfront terminal" includes any warehouse, depot or other
7 terminal located in the State, whether enclosed or open, any part of
8 which is used by any person to perform labor or services involving, or
9 incidental to, the movement of waterborne freight or freight.
10

11 2. Any waterfront employer who employs longshoremen at a
12 waterfront facility¹ [, including, but not limited to, a public waterfront
13 facility,]¹ shall pay each longshoreman a rate of wages not less than
14 the applicable waterfront prevailing wage rate. Every waterfront
15 employer employing longshoremen at waterfront facilities shall keep
16 an accurate record showing the name, classification, and hourly rate of
17 wages actually paid to each longshoreman employed by the employer
18 in connection with waterfront facilities. The records shall be
19 preserved for two years from the date of payment, and shall be open at
20 all reasonable hours to the inspection of the commissioner, of any
21 public body which owns, administers or provides financial assistance
22 to the waterfront facility where the longshoremen are employed, and
23 of any labor organization representing longshoremen working at that
24 waterfront facility or other waterfront facilities in the State.
25

26 3. The commissioner shall determine, establish and make public
27 the waterfront prevailing wage rates for each waterfront facility and
28 for each classification of longshoremen working at the facility. ¹[The
29 prevailing wage shall be determined and computed in accordance with
30 rules and regulations issued by the commissioner as he determines
31 necessary to carry out the provisions of this act. The wage
32 determination may be challenged within 30 days of issuance but only
33 as to the accuracy of the wage information used. Such challenges shall
34 be made by filing a written notice with the commissioner specifying
35 the inaccurate wage information.]¹ All determinations of the
36 waterfront prevailing wage rates made pursuant to this section shall be
37 announced by the commissioner¹ [,] and¹ prominently displayed on a
38 webpage maintained by the department¹ [,] and provided by mail to any
39 public body, any representative of longshoremen, any waterfront
40 employer, or any representative of any group of waterfront employers,
41 who makes a written request to the commissioner to be provided the
42 mailed notifications]¹.
43

44 4. The commissioner shall have the authority to:

45 a. investigate and ascertain the wages of longshoremen employed
46 in any waterfront facility in the State;

1 b. enter and inspect the place of business or employment of any
2 waterfront employer employing longshoremen at any waterfront
3 facility in the State, ¹ **[for the purpose of examining and inspecting any**
4 **or all books, registers, payrolls, and other records of the waterfront**
5 **employer that in any way relate to or have a bearing upon the question**
6 **of wages, hours, and other conditions of employment of the**
7 **longshoremen; copy]** and question those employees and investigate
8 any facts, conditions or matters which the commissioner deems
9 appropriate to determine whether any person has violated any
10 provision of this act or rule or regulation adopted pursuant to this act
11 or which may aid in the enforcement of the provisions of this act;

12 c. administer oaths and examine witnesses under oath, issue
13 subpoenas, compel the attendance of witnesses and the production of
14 papers, books, accounts, records, payrolls, documents, and testimony,
15 and take depositions and affidavits in any proceeding before the
16 commissioner;

17 d. Copy¹ any ¹ **[of those]**¹ books, registers, payrolls, and other
18 records as ¹ **[he or his authorized representative may deem]** the
19 commissioner deems¹ necessary or appropriate; obtain proof of, and
20 question, any longshoreman's identity to determine whether the
21 longshoreman's identity is accurately and truthfully included or
22 reported in any books, registers, payrolls, and other records of the
23 waterfront employer ¹ **[that in any way relate to or have a bearing upon**
24 **the question of wages, hours, and other conditions of employment in**
25 **the waterfront facility;]**¹ and question the longshoremen for the
26 purpose of ascertaining whether the provisions of this act have been
27 and are being complied with;

28 ¹ **[c.] e.**¹ obtain from the waterfront employers full and correct
29 statements in writing, including sworn statements, regarding wages,
30 hours, names, addresses, and such other information pertaining to the
31 waterfront employer's longshoremen and their employment as the
32 commissioner¹ **[, or his authorized representative]**¹ deems necessary
33 or appropriate; and

34 ¹ **[d.] f.**¹ require any waterfront employer to file, within 10 days of
35 receipt of a request, any records enumerated in ¹ **[subsections b. and c.**
36 **of]**¹ this section, sworn to as to their validity and accuracy. In the
37 case of a public waterfront facility in which a public body has an
38 agreement to make payments to a waterfront employer, if the
39 waterfront employer fails to provide the requested records within 10
40 days, the commissioner may direct within 15 days the fiscal or
41 financial officer charged with the custody and disbursements of the
42 funds of the public body immediately to withhold from payment to the
43 waterfront employer up to 25 percent of the amount, not to exceed
44 \$100,000, to be paid to the waterfront employer under the terms of the
45 agreement. The amount withheld shall be immediately released upon
46 receipt by the public body of a notice from the commissioner
47 indicating that the request for records has been satisfied.

1 ¹If a person fails to comply with any subpoena lawfully issued, or
2 on the refusal of any witness to testify to any matter regarding which
3 he may be lawfully interrogated, it shall be the duty of the Superior
4 Court, on application by the commissioner, to compel obedience by
5 proceedings for contempt, as in the case of disobedience of the
6 requirements of a subpoena issued from the court or a refusal to testify
7 in the court.¹
8

9 5. Waterfront employers employing longshoremen at
10 waterfront facilities shall post the waterfront prevailing wage rates
11 for each classification involved as determined by the commissioner,
12 including the effective date of any changes thereof, in prominent
13 and easily accessible places at the site of the work or at such place
14 or places as are used by them to pay longshoremen their wages.
15

16 6. Any longshoreman or representative of longshoremen may
17 file with the commissioner a written complaint that the amount of
18 wages paid for work performed by the longshoreman at a waterfront
19 facility is less than the applicable waterfront prevailing wage rate
20 for that work, or a written complaint the longshoreman has suffered
21 a discharge or other discrimination in violation of section 11 of this
22 act, but the complaint may not be filed later than two years after the
23 alleged underpayment or discrimination occurs.
24

25 7. a. Any waterfront employer who willfully hinders or delays
26 the commissioner in the performance of his duties in the enforcement
27 of this act, or who fails to make, keep, and preserve any records as
28 required under the provisions of this act, or falsifies any such record,
29 or refuses to make any such record accessible to the commissioner
30 upon demand, or refuses to furnish a sworn statement of such record or
31 any other information required for the proper enforcement of this act
32 to the commissioner upon demand, or pays or agrees to pay wages at a
33 rate less than the rate applicable under this act, or, during the time that
34 the waterfront employer is included on the debarment list established
35 by the commissioner pursuant to section 9 of this act, employs
36 longshoremen at a waterfront facility, or who discriminates against a
37 longshoreman in violation of section 11 of this act, or otherwise
38 violates any provision of this act or of any regulation or order issued
39 under this act, shall have violated the provisions of this act and be
40 guilty of a disorderly persons offense and shall, upon conviction
41 therefor, be fined not less than \$1,000 nor more than \$2,500 or be
42 imprisoned for not less than 10 nor more than 90 days, or by both such
43 fine and imprisonment. Each week, in which there is a day in which
44 the waterfront employer employs longshoremen while on the
45 debarment list or in which a longshoreman is paid less than the rate
46 applicable under this act and each longshoreman so paid, shall
47 constitute a separate offense. Such fines shall be in addition to the
48 payment of any wage deficiencies.

1 b. As an alternative to, or in addition to, any other sanctions
2 provided by law for violations of any provision of this act, when the
3 commissioner finds that an waterfront employer has violated that act,
4 the commissioner is authorized to assess and collect administrative
5 penalties, up to a maximum of \$2,500 for a first violation and up to a
6 maximum of \$5,000 for each subsequent violation, specified in a
7 schedule of penalties to be promulgated as a rule or regulation by the
8 commissioner in accordance with the "Administrative Procedure Act,"
9 P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount
10 of the penalty imposed because of a violation, the commissioner shall
11 consider factors which include the history of previous violations by the
12 waterfront employer, the seriousness of the violation, the good faith of
13 the waterfront employer and the size of the waterfront employer's
14 business. No administrative penalty shall be levied pursuant to this
15 section unless the commissioner provides the alleged violator with
16 notification of the violation and of the amount of the penalty by
17 certified mail and an opportunity to request a hearing before the
18 commissioner or his designee within 15 days following the receipt of
19 the notice. If a hearing is requested, the commissioner shall issue a
20 final order upon such hearing and a finding that a violation has
21 occurred. If no hearing is requested, the notice shall become a final
22 order upon expiration of the 15-day period. Payment of the penalty is
23 due when a final order is issued or when the notice becomes a final
24 order. Any penalty imposed pursuant to this section may be recovered
25 with costs in a summary proceeding commenced by the commissioner
26 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
27 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant
28 to this section shall be applied toward enforcement and administration
29 costs of the ¹Division of Workplace Standards in the Department of
30 Labor] division¹.

31 c. When the commissioner finds that the waterfront employer has
32 violated provisions of this act, the commissioner may refer the matter
33 to the Attorney General or his designee for ¹criminal¹ investigation
34 and prosecution. Nothing in this subsection shall be deemed to limit
35 the authority of the Attorney General to investigate and prosecute
36 violations of the New Jersey Code of Criminal Justice, nor to limit the
37 commissioner's ability to refer any matter for criminal investigation or
38 prosecution.

39
40 8. As an alternative to, or in addition to, any other sanctions
41 provided by law for violation of this act, the commissioner is
42 authorized to supervise the payment of amounts due to
43 longshoremen under this act, and the waterfront employer may be
44 required to make these payments to the commissioner to be held in
45 a special account in trust for the longshoremen, and paid on order of
46 the commissioner directly to the longshoreman or longshoremen
47 affected. The waterfront employer shall also pay the commissioner
48 an administrative fee equal to not less than 10 percent or more than

1 25 percent of any payment made to the commissioner pursuant to
2 this section. The amount of the administrative fee shall be specified
3 in a schedule of fees to be promulgated by rule or regulation of the
4 commissioner in accordance with the "Administrative Procedure
5 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be
6 applied toward enforcement and administration costs of the
7 Division of Workplace Standards in the Department of Labor.

8
9 9. If the commissioner determines that a waterfront employer has
10 ~~1~~repeatedly on more than one occasion~~1~~ failed to pay the waterfront
11 prevailing wage, the commissioner shall add the name of the
12 waterfront employer to a debarment list established and maintained by
13 the commissioner of waterfront employers determined to have failed to
14 pay the waterfront prevailing wage. The debarment list and each
15 updating of the list shall be prominently displayed on a website
16 maintained by the department ~~1~~and provided to any public body, any
17 representative of longshoremen, any waterfront employer, or any
18 representative of any group of waterfront employers who makes a
19 written request to the commissioner to be notified of the debarment list
20 and any updating of the list~~1~~. Any waterfront employer placed on the
21 debarment list pursuant to this section shall remain on the list until
22 three years have elapsed from the date of listing. If the waterfront
23 employer denies that a failure to pay the waterfront prevailing wage
24 has occurred, the employer ~~1~~shall have the right to apply to the
25 commissioner for a hearing which must be afforded and a decision
26 rendered within 48 hours of the request for a hearing. If the
27 commissioner rules against the waterfront employer, the waterfront
28 employer shall have the right to apply for injunctive relief in the
29 Superior Court against the listing by the commissioner ~~1~~may request a
30 hearing, which shall be conducted in accordance with the
31 "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et
32 seq.)~~1~~.

33 It shall be a violation of this act for any waterfront employer to
34 employ longshoremen at a waterfront facility, whether or not the
35 facility is a public waterfront facility, during the time that the
36 waterfront employer is included on the debarment list established by
37 the commissioner pursuant to this section.

38
39 10. No public body shall approve, fund, authorize, or administer,
40 or otherwise provide financial assistance to a waterfront facility, by
41 means of any new or renewed agreement to do so, without first
42 ascertaining that no waterfront employer employing longshoreman
43 at the facility is on the current debarment list of names of
44 waterfront employers who have failed to pay waterfront prevailing
45 wages required by this act. No contract shall be awarded by a
46 public body to any listed waterfront employer or to any other

1 waterfront employer in which the listed waterfront employer has an
2 interest.

3 For purposes of this section, "interest" means an interest,
4 affiliation, relationship or connection of a waterfront employer
5 listed pursuant to section 9 of this act in or with another waterfront
6 employer employing, or seeking to employ, longshoremen at a
7 waterfront facility, whether having the interest is as an owner,
8 partner, officer, manager, employee, agent, consultant or
9 representative. The listed waterfront employer shall be regarded as
10 having an interest in another waterfront employer if the listed
11 waterfront employer enters into a contract or agreement with the
12 other waterfront employer for services performed or to be
13 performed, for services that have been or will be assigned or
14 subletted, or for the sale, rental or lease of vehicles, tools,
15 equipment or supplies during the period from the initiation of the
16 proceedings under section 9 of this act against the waterfront
17 employer until three years have elapsed from the date that the
18 waterfront employer was listed by the commissioner under section 9
19 of this act. The term "interest" shall not include shares held in a
20 publicly traded corporation if the shares were not received as
21 compensation after the initiation of proceedings under section 9 of
22 this act.

23 A rebuttable presumption that a waterfront employer listed by
24 the commissioner under section 9 of this act has an interest in
25 another waterfront employer may arise if the two share any of the
26 following capacities or characteristics: occupy the same premises,
27 have the same telephone number or fax number, have the same
28 email address or internet website, employ substantially the same
29 administrative employees, utilize the same tools and equipment, or
30 employ or engage the services of any listed person or persons
31 involved in the direction or control of the other.

32 If the rebuttable presumption that a listed waterfront employer
33 has an interest in another waterfront employer results in a
34 determination to include of the other waterfront employer in the
35 debarment list, the other waterfront employer may request a hearing
36 to challenge the determination, to be conducted in accordance with
37 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.).

39
40 11. Any waterfront employer who discharges or in any other
41 manner discriminates against any longshoreman because the
42 longshoreman has made any complaint to his waterfront employer,
43 to a representative of the longshoreman, a public body, or the
44 commissioner that he has not been paid wages in accordance with
45 the provisions of this act, or because the longshoreman has caused
46 to be instituted or is about to cause to be instituted any proceeding
47 under or related to this act, or because the longshoreman has
48 testified or is about to testify in any such proceeding, or because the

1 longshoreman has requested information from the waterfront
2 employer relevant to such a proceeding, shall be in violation of this
3 act, shall be guilty of a disorderly persons offense, and shall, upon
4 conviction therefor, be fined not less than \$1,000 nor more than
5 \$2,500. Such fines shall be in addition to the payment of any wage
6 deficiencies.

7
8 12. If any longshoreman is paid by an waterfront employer less
9 than the waterfront prevailing wage to which the longshoreman is
10 entitled under the provisions of this act, or suffers discharge or
11 other discrimination in violation of section 11 of this act, that
12 longshoreman may recover in a civil action the full amount of such
13 waterfront prevailing wage less any amount actually paid to the
14 longshoremen by the waterfront employer together with costs and
15 reasonable attorney's fees as allowed by the court, and in the case of
16 discharge or other discrimination, reinstatement to employment
17 with payment of any wages lost because of the discharge or
18 discrimination. An agreement between longshoremen and a
19 waterfront employer to pay less than the prevailing wage shall not
20 be a defense to the action. Any longshoreman shall be entitled to
21 maintain such action for and on behalf of himself or other
22 longshoremen similarly situated, and the longshoreman or
23 longshoremen may designate an agent or representative to maintain
24 such action for and on behalf of all longshoremen similarly situated.
25 At the request of any longshoreman paid less than the waterfront
26 prevailing wage to which such longshoreman was entitled under the
27 provisions of this act, the commissioner may take an assignment of
28 the wage claim in trust for the assigning longshoreman and may
29 bring any legal action necessary to collect the claim, and the
30 waterfront employer shall be required to pay the costs and such
31 reasonable attorney's fees as may be allowed by the court.

32
33 13. Nothing in this act shall be deemed to interfere with, impede,
34 or in any way diminish the right of longshoremen to bargain
35 collectively through representatives of their own choosing in order to
36 establish ¹【wages in excess of any applicable minimum under】 wage
37 rates that are different than wage rates set by¹ this act.

38
39 ¹14. Except for waterfront employers located in the Port of New
40 York district, no waterfront employer shall be permitted to operate in
41 New Jersey, unless it is registered with the department as a waterfront
42 employer on a form, which may be an electronic form provided by the
43 commissioner. The form shall require the following information:

44 a. The name, principal business address and telephone number of
45 the waterfront employer;

46 b. Whether the waterfront employer is a corporation, partnership,
47 sole proprietorship, or other form of business entity;

1 c. If the waterfront employer's principal business address is not
2 within the State, the name and address of the waterfront employer's
3 custodian of records and agent for service of process in this State;

4 d. The name and address of each person with a financial interest
5 in the waterfront employer and the percentage interest, except that if
6 the waterfront employer is a publicly-traded corporation, the
7 waterfront employer shall supply the names and addresses of the
8 corporation's officers;

9 e. The waterfront employer's tax identification number and
10 unemployment insurance registration number;

11 f. A certification form provided by the commissioner, with
12 documentation satisfactory to the commissioner, that the waterfront
13 employer has all valid and effective licenses, registrations or
14 certificates required by State law, including registrations or
15 certifications required to do business in the State of New Jersey; and

16 g. Other relevant and appropriate information as determined by
17 the commissioner.

18 At the time of registration, and subsequently upon request, the
19 waterfront employer shall submit to the commissioner documentation
20 demonstrating that the waterfront employer has workers'
21 compensation insurance coverage for all workers as required by law.¹
22

23 ¹15. The waterfront employer shall pay an initial annual non-
24 refundable registration fee of \$300 to the commissioner. The non-
25 refundable registration fee for the second annual registration shall be
26 \$300. Upon successful completion of two consecutive years of
27 registration, a waterfront employer may elect to register for a two-year
28 period and pay a non-refundable registration fee of \$500.¹
29

30 ¹16. A contractor who is operating on the effective date of this act
31 shall submit the registration application form and fee to the
32 Commissioner within 30 days of the effective date of this act.¹
33

34 ¹17. Registration fees collected pursuant to this act shall be
35 applied toward the enforcement and administration costs of the
36 division.¹
37

38 ¹18. Upon receipt of the fee, form and documentation required by
39 sections 14 and 15 of this act, the commissioner shall issue a
40 certificate of registration to the waterfront employer. A registration
41 certificate shall be valid for one calendar year from the date of
42 registration. Registrations shall be renewed not less than 30 days prior
43 to the expiration date of the immediately preceding registration.¹
44

45 ¹19. Each waterfront employer shall, as a condition to receipt of
46 any financial assistance from a public body, submit to the public body
47 the waterfront employer's certificate of registration and the certificates
48 of registration for all known subcontractors who are waterfront

1 employers. Applications for registration shall not be acceptable as a
2 substitute for a certificate of registration for the purposes of
3 compliance with this section.¹
4

5 ¹20. a. The commissioner is authorized, as an alternative to or in
6 addition to any other sanctions or remedies provided by this act, to
7 take the actions indicated in subsection b. of this section if a waterfront
8 employer:

9 (1) Willfully hinders or delays the commissioner in the
10 performance of his duties under this act;

11 (2) Fails to make, keep and preserve any records required under
12 the provisions of this act;

13 (3) Falsifies any required record, or refuses to make it accessible to
14 the commissioner upon demand;

15 (4) Refuses to furnish a sworn statement of any records or other
16 information required for the enforcement of this act to the
17 commissioner on demand;

18 (5) Pays or agrees to pay wages at a rate less than the rate
19 prescribed under this act; or

20 (6) Otherwise violates any provision of this act.

21 b. The commissioner may, after providing the waterfront
22 employer with notice of the alleged violation and an opportunity to
23 request a hearing before the commissioner or his designee:

24 (1) Deny renewal, revoke or suspend the registration of a
25 waterfront employer for a period of not more than five years; or

26 (2) Require a waterfront employer, as a condition of initial or
27 continued registration, to provide a surety bond payable to the State.
28 The surety bond shall be for the benefit of workers damaged by any
29 failure of a waterfront employer to pay wages or benefits pursuant to
30 or otherwise comply with the provisions of this act. The surety bond
31 shall be in the amount and form that the Commissioner deems
32 necessary for the protection of the waterfront employer's workers, but
33 shall not exceed \$10,000 per worker. The surety bond shall be issued
34 by surety that meets the requirements of N.J.S.2A:44-143.

35 c. The commissioner is authorized and empowered to prescribe,
36 adopt, promulgate, rescind and enforce rules and regulations as may be
37 required for the administration and enforcement of the provisions of
38 this act.¹
39

40 ¹**[14.]** 21.¹ The commissioner is authorized and empowered to
41 prescribe, adopt, promulgate, rescind and enforce rules and
42 regulations as may be required for the administration and
43 enforcement of the provisions of this act.
44

45 ¹**[15.]** 22.¹ The provisions of this act shall be deemed to be
46 severable and if any section, subsection, paragraph, sentence or
47 other part of this act is declared to be unconstitutional or preempted

S1053 [1R]

13

1 by federal law, or the applicability thereof to any person or facility
2 is held invalid, the remainder of this act shall not thereby be
3 deemed to be unconstitutional, preempted or invalid.

4

5 **¹[16.] 23.¹** This act shall take effect on the 180th day following
6 enactment, but the commissioner shall take any anticipatory action
7 in advance as shall be necessary for the implementation of this act.

8

9

10

11

12

Establishes waterfront wage standards.

CHAPTER 336

AN ACT establishing waterfront prevailing wage standards and supplementing chapter 11 of Title 34 of the Revised Statutes.

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

C.34:11-56.77 Definitions relative to waterfront prevailing wage standards.

1. For the purposes of this act:

“Applicable waterfront prevailing wage rates” means the wage rates paid by virtue of the multiemployer collective bargaining agreements with waterfront employers in the Port of New York District, provided that if a collective bargaining agreement applying to a smaller locality or single waterfront facility stipulates wage rates different from the levels stipulated by the multiemployer collective bargaining agreements with waterfront employers in the Port of New York district, those different rates shall be the applicable waterfront prevailing wage rates for that locality or facility. Contributions by a waterfront employer for benefits made pursuant to a collective bargaining agreement shall be considered an integral part of the wage paid by the waterfront employer for the purpose of determining the applicable waterfront prevailing wage rates for purpose of this act.

"Carrier of freight by water" shall mean any person engaged, or who may hold himself out as willing to be engaged, whether as a common carrier, as a contract carrier, or otherwise, in the carriage of freight by water, except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in such service, and except for carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count.

“Classification” of longshoremen means categories of longshoremen, including: the kind of cargo they handle, such as break-bulk terminal cargo, break-bulk vessel cargo, or containers; job categories, such as laborers, equipment operators, checkers, crane operators, or mechanics; and duration of employment.

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

"Container" means any receptacle, box, carton or crate which is specifically designed and constructed so that it may be repeatedly used for the carriage of freight by a carrier of freight by water.

"Department" means the Department of Labor and Workforce Development of the State of New Jersey.

“Division” means the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development.

"Financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, or administered by a public body, or otherwise provided by the public body.

"Hiring agent" means an individual, who on behalf of any other person selects longshoremen for employment.

"Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality," the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of waterfront employers of classifications of longshoremen to engage in collective bargaining with the representatives of those classifications of longshoremen.

"Longshoreman" means an individual, other than a hiring agent, who is employed for work at a waterfront facility to:

- (a) move waterborne freight on a vessel berthed at waterfront facilities, or to or from a barge, lighter or railroad car for transfer to or from the vessel;
- (b) engage in direct and immediate checking of the freight or its custodial accounting or in the recording or tabulation of the hours worked at waterfront facilities by longshoremen;
- (c) directly and immediately supervise longshoremen; or
- (d) perform any other labor or services incidental to the movement of waterborne freight on vessels berthed at waterfront facilities, including, but not limited to, cargo repairmen, coopers, general maintenance workers, mechanical and miscellaneous workers, horse and cattle fitters, grain ceilers, port watchmen, and marine carpenters.

"Marine terminal" means an area located in the State which includes piers, and is used primarily for the moving, warehousing, distributing or packing of waterborne freight or freight to or from those piers, and which, inclusive of such piers, is under common ownership or control.

"Person" means an individual or any partnership, joint venture, association, corporation or any other legal entity other than a governmental entity.

"Pier" includes any wharf, pier, dock or quay.

"Port watchman" includes any watchman, gateman, groundsman, detective, guard, guardian or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in such capacity on any pier or other waterfront terminal.

"Public body" means the State of New Jersey, any of its political subdivisions, and any authority, instrumentality, or agency of the State of New Jersey or of any of its political subdivisions.

"Public waterfront facility" means a waterfront facility located in the State which:

- (a) is owned, operated or administered by a public body;
- (b) receives financial assistance that is approved, funded, authorized, or administered by a public body, or otherwise provided by the public body; or
- (c) is owned, operated or administered by a waterfront employer who receives financial assistance that is approved, funded, authorized, or administered by a public body, or otherwise provided by the public body.

"Stevedore" means an employer of longshoremen who is a contractor or subcontractor, but not an employee, engaged for compensation pursuant to a contract or arrangement with a carrier of waterborne freight or operator of a waterfront facility, to move waterborne freight carried or consigned for carriage by the carrier on, onto, or from vessels of the carrier berthed at waterfront facilities, including:

- (a) a contractor engaged for compensation pursuant to a contract or arrangement with a public entity, the United States, or any other state or territory thereof, to move freight carried or consigned for carriage between any point in a waterfront facility and a point outside of the waterfront facility on vessels berthed at the waterfront facility, or
- (b) a contractor engaged for compensation pursuant to a contract or arrangement with any person to perform labor or services incidental to the movement of waterborne freight on, onto, or from vessels berthed at waterfront facilities, including, but not limited to, cargo storage, cargo repairing, cooping, general maintenance, mechanical and miscellaneous work, horse and cattle fitting, grain ceiling, and marine carpentry, or
- (c) a contractor engaged for compensation pursuant to a contract or arrangement with any other person to perform labor or services involving, or incidental to, the movement of freight into or out

of containers, which have been or which will be carried by a carrier of freight by water, on vessels berthed at waterfront facilities.

"Waterborne freight" shall mean freight carried by or consigned for carriage by carriers of freight by water, including ships' stores, baggage and mail carried by or consigned for carriage by carriers of freight by water.

"Waterfront employer" means an operator of a waterfront facility, stevedore, or carrier of freight by water who employs longshoremen at a waterfront facility.

"Waterfront facility" means any marine terminal or pier, or any other waterfront terminal located in the State.

"Waterfront terminal" includes any warehouse, depot or other terminal located in the State, whether enclosed or open, any part of which is used by any person to perform labor or services involving, or incidental to, the movement of waterborne freight or freight.

C.34:11-56.78 Longshoreman's rate of wages.

2. Any waterfront employer who employs longshoremen at a waterfront facility shall pay each longshoreman a rate of wages not less than the applicable waterfront prevailing wage rate. Every waterfront employer employing longshoremen at waterfront facilities shall keep an accurate record showing the name, classification, and hourly rate of wages actually paid to each longshoreman employed by the employer in connection with waterfront facilities. The records shall be preserved for two years from the date of payment, and shall be open at all reasonable hours to the inspection of the commissioner, of any public body which owns, administers or provides financial assistance to the waterfront facility where the longshoremen are employed, and of any labor organization representing longshoremen working at that waterfront facility or other waterfront facilities in the State.

C.34:11-56.79 Determination, establishment, publicizing of waterfront prevailing wage rates.

3. The commissioner shall determine, establish and make public the waterfront prevailing wage rates for each waterfront facility and for each classification of longshoremen working at the facility. All determinations of the waterfront prevailing wage rates made pursuant to this section shall be announced by the commissioner and prominently displayed on a webpage maintained by the department.

C.34:11-56.80 Authority of commissioner.

4. The commissioner shall have the authority to:

a. investigate and ascertain the wages of longshoremen employed in any waterfront facility in the State;

b. enter and inspect the place of business or employment of any waterfront employer employing longshoremen at any waterfront facility in the State, and question those employees and investigate any facts, conditions or matters which the commissioner deems appropriate to determine whether any person has violated any provision of this act or rule or regulation adopted pursuant to this act or which may aid in the enforcement of the provisions of this act;

c. administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner;

d. Copy any books, registers, payrolls, and other records as the commissioner deems necessary or appropriate; obtain proof of, and question, any longshoreman's identity to determine whether the longshoreman's identity is accurately and truthfully included or reported in any books, registers, payrolls, and other records of the waterfront employer and question the longshoremen

for the purpose of ascertaining whether the provisions of this act have been and are being complied with;

e. obtain from the waterfront employers full and correct statements in writing, including sworn statements, regarding wages, hours, names, addresses, and such other information pertaining to the waterfront employer's longshoremen and their employment as the commissioner deems necessary or appropriate; and

f. require any waterfront employer to file, within 10 days of receipt of a request, any records enumerated in this section, sworn to as to their validity and accuracy. In the case of a public waterfront facility in which a public body has an agreement to make payments to a waterfront employer, if the waterfront employer fails to provide the requested records within 10 days, the commissioner may direct within 15 days the fiscal or financial officer charged with the custody and disbursements of the funds of the public body immediately to withhold from payment to the waterfront employer up to 25 percent of the amount, not to exceed \$100,000, to be paid to the waterfront employer under the terms of the agreement. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records has been satisfied.

If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

C.34:11-56.81 Posting of waterfront prevailing wage rates.

5. Waterfront employers employing longshoremen at waterfront facilities shall post the waterfront prevailing wage rates for each classification involved as determined by the commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay longshoremen their wages.

C.34:11-56.82 Filing complaint with commissioner.

6. Any longshoreman or representative of longshoremen may file with the commissioner a written complaint that the amount of wages paid for work performed by the longshoreman at a waterfront facility is less than the applicable waterfront prevailing wage rate for that work, or a written complaint the longshoreman has suffered a discharge or other discrimination in violation of section 11 of this act, but the complaint may not be filed later than two years after the alleged underpayment or discrimination occurs.

C.34:11-56.83 Violations relative to performance of duties by the commissioner.

7. a. Any waterfront employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or who fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act, or, during the time that the waterfront employer is included on the debarment list established by the commissioner pursuant to section 9 of this act, employs longshoremen at a waterfront facility, or who discriminates against a longshoreman in violation of section 11 of this act, or otherwise violates any provision of this act or of any regulation or order

issued under this act, shall have violated the provisions of this act and be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$1,000 nor more than \$2,500 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in which there is a day in which the waterfront employer employs longshoremen while on the debarment list or in which a longshoreman is paid less than the rate applicable under this act and each longshoreman so paid, shall constitute a separate offense. Such fines shall be in addition to the payment of any wage deficiencies.

b. As an alternative to, or in addition to, any other sanctions provided by law for violations of any provision of this act, when the commissioner finds that an waterfront employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the waterfront employer, the seriousness of the violation, the good faith of the waterfront employer and the size of the waterfront employer's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the division.

c. When the commissioner finds that the waterfront employer has violated provisions of this act, the commissioner may refer the matter to the Attorney General or his designee for criminal investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

C.34:11-56.84 Waterfront employer's payment to commissioner.

8. As an alternative to, or in addition to, any other sanctions provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to longshoremen under this act, and the waterfront employer may be required to make these payments to the commissioner to be held in a special account in trust for the longshoremen, and paid on order of the commissioner directly to the longshoreman or longshoremen affected. The waterfront employer shall also pay the commissioner an administrative fee equal to not less than 10 percent or more than 25 percent of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

C.34:11-56.85 Debarment list.

9. If the commissioner determines that a waterfront employer has on more than one occasion failed to pay the waterfront prevailing wage, the commissioner shall add the name of the waterfront employer to a debarment list established and maintained by the commissioner of waterfront employers determined to have failed to pay the waterfront prevailing wage. The debarment list and each updating of the list shall be prominently displayed on a website maintained by the department. Any waterfront employer placed on the debarment list pursuant to this section shall remain on the list until three years have elapsed from the date of listing. If the waterfront employer denies that a failure to pay the waterfront prevailing wage has occurred, the employer may request a hearing, which shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

It shall be a violation of this act for any waterfront employer to employ longshoremen at a waterfront facility, whether or not the facility is a public waterfront facility, during the time that the waterfront employer is included on the debarment list established by the commissioner pursuant to this section.

C.34:11-56.86 Financial assistance, contract restrictions by public body.

10. No public body shall approve, fund, authorize, or administer, or otherwise provide financial assistance to a waterfront facility, by means of any new or renewed agreement to do so, without first ascertaining that no waterfront employer employing longshoreman at the facility is on the current debarment list of names of waterfront employers who have failed to pay waterfront prevailing wages required by this act. No contract shall be awarded by a public body to any listed waterfront employer or to any other waterfront employer in which the listed waterfront employer has an interest.

For purposes of this section, "interest" means an interest, affiliation, relationship or connection of a waterfront employer listed pursuant to section 9 of this act in or with another waterfront employer employing, or seeking to employ, longshoremen at a waterfront facility, whether having the interest is as an owner, partner, officer, manager, employee, agent, consultant or representative. The listed waterfront employer shall be regarded as having an interest in another waterfront employer if the listed waterfront employer enters into a contract or agreement with the other waterfront employer 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 the period from the initiation of the proceedings under section 9 of this act against the waterfront employer until three years have elapsed from the date that the waterfront employer was listed by the commissioner under section 9 of this act. The term "interest" shall not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of proceedings under section 9 of this act.

A rebuttable presumption that a waterfront employer listed by the commissioner under section 9 of this act has an interest in another waterfront employer may arise if the two share any of the following capacities or characteristics: occupy the same premises, have the same telephone number or fax number, have the same email address or internet website, employ substantially the same administrative employees, utilize the same tools and equipment, or employ or engage the services of any listed person or persons involved in the direction or control of the other.

If the rebuttable presumption that a listed waterfront employer has an interest in another waterfront employer results in a determination to include of the other waterfront employer in the debarment list, the other waterfront employer may request a hearing to challenge the

determination, to be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.34:11-56.87 Penalty for discharging complaining longshoreman.

11. Any waterfront employer who discharges or in any other manner discriminates against any longshoreman because the longshoreman has made any complaint to his waterfront employer, to a representative of the longshoreman, a public body, or the commissioner that he has not been paid wages in accordance with the provisions of this act, or because the longshoreman has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because the longshoreman has testified or is about to testify in any such proceeding, or because the longshoreman has requested information from the waterfront employer relevant to such a proceeding, shall be in violation of this act, shall be guilty of a disorderly persons offense, and shall, upon conviction therefor, be fined not less than \$1,000 nor more than \$2,500. Such fines shall be in addition to the payment of any wage deficiencies.

C.34:11-56.88 Recovery of funds by longshoreman.

12. If any longshoreman is paid by a waterfront employer less than the waterfront prevailing wage to which the longshoreman is entitled under the provisions of this act, or suffers discharge or other discrimination in violation of section 11 of this act, that longshoreman may recover in a civil action the full amount of such waterfront prevailing wage less any amount actually paid to the longshoremen by the waterfront employer together with costs and reasonable attorney's fees as allowed by the court, and in the case of discharge or other discrimination, reinstatement to employment with payment of any wages lost because of the discharge or discrimination. An agreement between longshoremen and a waterfront employer to pay less than the prevailing wage shall not be a defense to the action. Any longshoreman shall be entitled to maintain such action for and on behalf of himself or other longshoremen similarly situated, and the longshoreman or longshoremen may designate an agent or representative to maintain such action for and on behalf of all longshoremen similarly situated. At the request of any longshoreman paid less than the waterfront prevailing wage to which such longshoreman was entitled under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning longshoreman and may bring any legal action necessary to collect the claim, and the waterfront employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

C.34:11-56.89 Immunity.

13. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of longshoremen to bargain collectively through representatives of their own choosing in order to establish wage rates that are different than wage rates set by this act.

C.34:11-56.90 Registration form for waterfront employer.

14. Except for waterfront employers located in the Port of New York district, no waterfront employer shall be permitted to operate in New Jersey, unless it is registered with the department as a waterfront employer on a form, which may be an electronic form provided by the commissioner. The form shall require the following information:

- a. The name, principal business address and telephone number of the waterfront employer;

b. Whether the waterfront employer is a corporation, partnership, sole proprietorship, or other form of business entity;

c. If the waterfront employer's principal business address is not within the State, the name and address of the waterfront employer's custodian of records and agent for service of process in this State;

d. The name and address of each person with a financial interest in the waterfront employer and the percentage interest, except that if the waterfront employer is a publicly-traded corporation, the waterfront employer shall supply the names and addresses of the corporation's officers;

e. The waterfront employer's tax identification number and unemployment insurance registration number;

f. A certification form provided by the commissioner, with documentation satisfactory to the commissioner, that the waterfront employer has all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in the State of New Jersey; and

g. Other relevant and appropriate information as determined by the commissioner.

At the time of registration, and subsequently upon request, the waterfront employer shall submit to the commissioner documentation demonstrating that the waterfront employer has workers' compensation insurance coverage for all workers as required by law.

C.34:11-56.91 Registration fee.

15. The waterfront employer shall pay an initial annual non-refundable registration fee of \$300 to the commissioner. The non-refundable registration fee for the second annual registration shall be \$300. Upon successful completion of two consecutive years of registration, a waterfront employer may elect to register for a two-year period and pay a non-refundable registration fee of \$500.

C.34:11-56.92 Registration of contractor operating on the effective date of this act.

16. A contractor who is operating on the effective date of this act shall submit the registration application form and fee to the Commissioner within 30 days of the effective date of this act.

C.34:11-56.93 Use of registration fees.

17. Registration fees collected pursuant to this act shall be applied toward the enforcement and administration costs of the division.

C.34:11-56.94 Certificate of registration issuance.

18. Upon receipt of the fee, form and documentation required by sections 14 and 15 of this act, the commissioner shall issue a certificate of registration to the waterfront employer. A registration certificate shall be valid for one calendar year from the date of registration. Registrations shall be renewed not less than 30 days prior to the expiration date of the immediately preceding registration.

C.34:11-56.95 Submission of waterfront employer's certificate to public body.

19. Each waterfront employer shall, as a condition to receipt of any financial assistance from a public body, submit to the public body the waterfront employer's certificate of registration and the certificates of registration for all known subcontractors who are waterfront employers. Applications for registration shall not be acceptable as a substitute for a certificate of registration for the purposes of compliance with this section.

C.34:11-56.96 Commissioner's authorization of sanctions.

20. a. The commissioner is authorized, as an alternative to or in addition to any other sanctions or remedies provided by this act, to take the actions indicated in subsection b. of this section if a waterfront employer:

(1) Willfully hinders or delays the commissioner in the performance of his duties under this act;

(2) Fails to make, keep and preserve any records required under the provisions of this act;

(3) Falsifies any required record, or refuses to make it accessible to the commissioner upon demand;

(4) Refuses to furnish a sworn statement of any records or other information required for the enforcement of this act to the commissioner on demand;

(5) Pays or agrees to pay wages at a rate less than the rate prescribed under this act; or

(6) Otherwise violates any provision of this act.

b. The commissioner may, after providing the waterfront employer with notice of the alleged violation and an opportunity to request a hearing before the commissioner or his designee:

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

(2) Require a waterfront employer, as a condition of initial or continued registration, to provide a surety bond payable to the State. The surety bond shall be for the benefit of workers damaged by any failure of a waterfront employer to pay wages or benefits pursuant to or otherwise comply with the provisions of this act. The surety bond shall be in the amount and form that the Commissioner deems necessary for the protection of the waterfront employer's workers, but shall not exceed \$10,000 per worker. The surety bond shall be issued by surety that meets the requirements of N.J.S.2A:44-143.

c. The commissioner is authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

C.34:11-56.97 Rules, regulations.

21. The commissioner is authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

C.34:11-56.98 Severability.

22. The provisions of this act shall be deemed to be severable and if any section, subsection, paragraph, sentence or other part of this act is declared to be unconstitutional or preempted by federal law, or the applicability thereof to any person or facility is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional, preempted or invalid.

23. This act shall take effect on the 180th day following enactment, but the commissioner shall take any anticipatory action in advance as shall be necessary for the implementation of this act.

Approved January 10, 2022.

SENATE, No. 1053

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 30, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Establishes waterfront wage standards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/29/2020)

1 AN ACT establishing waterfront prevailing wage standards and
2 supplementing chapter 11 of Title 34 of the Revised Statutes.

3

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

6

7 1. For the purposes of this act:

8 "Applicable waterfront prevailing wage rates" means the wage
9 rates paid by virtue of collective bargaining agreements with
10 waterfront employers employing the largest numbers of
11 longshoremen, including collective bargaining agreements which
12 apply to longshoremen working in waterfront facilities throughout
13 the State, provided that if a collective bargaining agreement
14 applying to a smaller locality or waterfront facility stipulates wage
15 levels higher than the levels stipulated by collective bargaining
16 agreements with State-wide application, the higher rates shall be the
17 applicable waterfront prevailing wage rates for that locality or
18 facility. Contributions by a waterfront employer for benefits made
19 pursuant to a collective bargaining agreement shall be considered an
20 integral part of the wage paid by the waterfront employer for the
21 purpose of determining the applicable waterfront prevailing wage
22 rates for purpose of this act.

23 "Carrier of freight by water" shall mean any person engaged, or
24 who may hold himself out as willing to be engaged, whether as a
25 common carrier, as a contract carrier, or otherwise, in the carriage
26 of freight by water, except for carriage of liquid cargoes in bulk in
27 tank vessels designed for use exclusively in such service, and
28 except for carriage by barge of bulk cargoes consisting of only a
29 single commodity loaded or carried without wrappers or containers
30 and delivered by the carrier without transportation mark or count.

31 "Classification" of longshoremen means categories of
32 longshoremen, including: the kind of cargo they handle, such as
33 break-bulk terminal cargo, break-bulk vessel cargo, or containers;
34 job categories, such as laborers, equipment operators, checkers,
35 crane operators, or mechanics; and duration of employment.

36 "Commissioner" means the Commissioner of Labor and
37 Workforce Development or his duly authorized representatives.

38 "Container" means any receptacle, box, carton or crate which is
39 specifically designed and constructed so that it may be repeatedly
40 used for the carriage of freight by a carrier of freight by water.

41 "Department" means the Department of Labor and Workforce
42 Development of the State of New Jersey.

43 "Financial assistance" means any loan, loan guarantee, grant,
44 incentive, tax exemption or other financial assistance that is
45 approved, funded, authorized, or administered by a public body, or
46 otherwise provided by the public body.

47 "Hiring agent" means an individual, who on behalf of any other
48 person selects longshoremen for employment.

1 "Locality" means any political subdivision of the State,
2 combination of the same or parts thereof, or any geographical area
3 or areas classified, designated and fixed by the commissioner from
4 time to time, provided that in determining the "locality," the
5 commissioner shall be guided by the boundary lines of political
6 subdivisions or parts thereof, or by a consideration of the areas with
7 respect to which it has been the practice of waterfront employers of
8 classifications of longshoremen to engage in collective bargaining
9 with the representatives of those classifications of longshoremen.

10 "Longshoreman" means an individual, other than a hiring agent,
11 who is employed for work at a waterfront facility to:

12 (a) move waterborne freight on a vessel berthed at waterfront
13 facilities, or to or from a barge, lighter or railroad car for transfer to
14 or from the vessel;

15 (b) engage in direct and immediate checking of the freight or its
16 custodial accounting or in the recording or tabulation of the hours
17 worked at waterfront facilities by longshoremen;

18 (c) directly and immediately supervise longshoremen; or

19 (d) perform any other labor or services incidental to the
20 movement of waterborne freight on vessels berthed at waterfront
21 facilities, including, but not limited to, cargo repairmen, coopers,
22 general maintenance workers, mechanical and miscellaneous
23 workers, horse and cattle fitters, grain ceilers, port watchmen, and
24 marine carpenters.

25 "Marine terminal" means an area located in the State which
26 includes piers, and is used primarily for the moving, warehousing,
27 distributing or packing of waterborne freight or freight to or from
28 those piers, and which, inclusive of such piers, is under common
29 ownership or control.

30 "Person" means an individual or any partnership, joint venture,
31 association, corporation or any other legal entity other than a
32 governmental entity.

33 "Pier" includes any wharf, pier, dock or quay.

34 "Port watchman" includes any watchman, gateman, groundsman,
35 detective, guard, guardian or protector of property employed by the
36 operator of any pier or other waterfront terminal or by a carrier of
37 freight by water to perform services in such capacity on any pier or
38 other waterfront terminal.

39 "Public body" means the State of New Jersey, any of its political
40 subdivisions, and any authority, instrumentality, or agency of the
41 State of New Jersey or of any of its political subdivisions.

42 "Public waterfront facility" means a waterfront facility located in
43 the State which:

44 (a) is owned, operated or administered by a public body;

45 (b) receives financial assistance that is approved, funded,
46 authorized, or administered by a public body, or otherwise provided
47 by the public body; or

1 (c) is owned, operated or administered by a waterfront employer
2 who receives financial assistance that is approved, funded,
3 authorized, or administered by a public body, or otherwise provided
4 by the public body.

5 "Stevedore" means an employer of longshoremen who is a
6 contractor or subcontractor, but not an employee, engaged for
7 compensation pursuant to a contract or arrangement with a carrier
8 of waterborne freight or operator of a waterfront facility, to move
9 waterborne freight carried or consigned for carriage by the carrier
10 on, onto, or from vessels of the carrier berthed at waterfront
11 facilities, including:

12 (a) a contractor engaged for compensation pursuant to a contract
13 or arrangement with a public entity, the United States, or any other
14 state or territory thereof, to move freight carried or consigned for
15 carriage between any point in a waterfront facility and a point
16 outside of the waterfront facility on vessels berthed at the
17 waterfront facility, or

18 (b) a contractor engaged for compensation pursuant to a contract
19 or arrangement with any person to perform labor or services
20 incidental to the movement of waterborne freight on, onto, or from
21 vessels berthed at waterfront facilities, including, but not limited to,
22 cargo storage, cargo repairing, coopering, general maintenance,
23 mechanical and miscellaneous work, horse and cattle fitting, grain
24 ceiling, and marine carpentry, or

25 (c) a contractor engaged for compensation pursuant to a contract
26 or arrangement with any other person to perform labor or services
27 involving, or incidental to, the movement of freight into or out of
28 containers, which have been or which will be carried by a carrier of
29 freight by water, on vessels berthed at waterfront facilities.

30 "Waterborne freight" shall mean freight carried by or consigned
31 for carriage by carriers of freight by water, including ships' stores,
32 baggage and mail carried by or consigned for carriage by carriers of
33 freight by water.

34 "Waterfront employer" means an operator of a waterfront
35 facility, stevedore, or carrier of freight by water who employs
36 longshoremen at a waterfront facility.

37 "Waterfront facility" means any marine terminal or pier, or any
38 other waterfront terminal located in the State.

39 "Waterfront terminal" includes any warehouse, depot or other
40 terminal located in the State, whether enclosed or open, any part of
41 which is used by any person to perform labor or services involving,
42 or incidental to, the movement of waterborne freight or freight.

43

44 2. Any waterfront employer who employs longshoremen at a
45 waterfront facility, including, but not limited to, a public waterfront
46 facility, shall pay each longshoreman a rate of wages not less than
47 the applicable waterfront prevailing wage rate. Every waterfront
48 employer employing longshoremen at waterfront facilities shall

1 keep an accurate record showing the name, classification, and
2 hourly rate of wages actually paid to each longshoreman employed
3 by the employer in connection with waterfront facilities. The
4 records shall be preserved for two years from the date of payment,
5 and shall be open at all reasonable hours to the inspection of the
6 commissioner, of any public body which owns, administers or
7 provides financial assistance to the waterfront facility where the
8 longshoremen are employed, and of any labor organization
9 representing longshoremen working at that waterfront facility or
10 other waterfront facilities in the State.

11

12 3. The commissioner shall determine, establish and make
13 public the waterfront prevailing wage rates for each waterfront
14 facility and for each classification of longshoremen working at the
15 facility. The prevailing wage shall be determined and computed in
16 accordance with rules and regulations issued by the commissioner
17 as he determines necessary to carry out the provisions of this act.
18 The wage determination may be challenged within 30 days of
19 issuance but only as to the accuracy of the wage information used.
20 Such challenges shall be made by filing a written notice with the
21 commissioner specifying the inaccurate wage information. All
22 determinations of the waterfront prevailing wage rates made
23 pursuant to this section shall be announced by the commissioner,
24 prominently displayed on a webpage maintained by the department,
25 and provided by mail to any public body, any representative of
26 longshoremen, any waterfront employer, or any representative of
27 any group of waterfront employers, who makes a written request to
28 the commissioner to be provided the mailed notifications.

29

30 4. The commissioner shall have the authority to:

31 a. investigate and ascertain the wages of longshoremen
32 employed in any waterfront facility in the State;

33 b. enter and inspect the place of business or employment of any
34 waterfront employer employing longshoremen at any waterfront
35 facility in the State, for the purpose of examining and inspecting
36 any or all books, registers, payrolls, and other records of the
37 waterfront employer that in any way relate to or have a bearing
38 upon the question of wages, hours, and other conditions of
39 employment of the longshoremen; copy any of those books,
40 registers, payrolls, and other records as he or his authorized
41 representative may deem necessary or appropriate; obtain proof of,
42 and question, any longshoreman's identity to determine whether the
43 longshoreman's identity is accurately and truthfully included or
44 reported in any books, registers, payrolls, and other records of the
45 waterfront employer that in any way relate to or have a bearing
46 upon the question of wages, hours, and other conditions of
47 employment in the waterfront facility; and question the

1 longshoremen for the purpose of ascertaining whether the
2 provisions of this act have been and are being complied with;

3 c. obtain from the waterfront employers full and correct
4 statements in writing, including sworn statements, regarding wages,
5 hours, names, addresses, and such other information pertaining to
6 the waterfront employer's longshoremen and their employment as
7 the commissioner, or his authorized representative deems necessary
8 or appropriate; and

9 d. require any waterfront employer to file, within 10 days of
10 receipt of a request, any records enumerated in subsections b. and c.
11 of this section, sworn to as to their validity and accuracy. In the
12 case of a public waterfront facility in which a public body has an
13 agreement to make payments to a waterfront employer, if the
14 waterfront employer fails to provide the requested records within 10
15 days, the commissioner may direct within 15 days the fiscal or
16 financial officer charged with the custody and disbursements of the
17 funds of the public body immediately to withhold from payment to
18 the waterfront employer up to 25 percent of the amount, not to
19 exceed \$100,000, to be paid to the waterfront employer under the
20 terms of the agreement. The amount withheld shall be immediately
21 released upon receipt by the public body of a notice from the
22 commissioner indicating that the request for records has been
23 satisfied.

24
25 5. Waterfront employers employing longshoremen at
26 waterfront facilities shall post the waterfront prevailing wage rates
27 for each classification involved as determined by the commissioner,
28 including the effective date of any changes thereof, in prominent
29 and easily accessible places at the site of the work or at such place
30 or places as are used by them to pay longshoremen their wages.

31
32 6. Any longshoreman or representative of longshoremen may
33 file with the commissioner a written complaint that the amount of
34 wages paid for work performed by the longshoreman at a waterfront
35 facility is less than the applicable waterfront prevailing wage rate
36 for that work, or a written complaint the longshoreman has suffered
37 a discharge or other discrimination in violation of section 11 of this
38 act, but the complaint may not be filed later than two years after the
39 alleged underpayment or discrimination occurs.

40
41 7. a. Any waterfront employer who willfully hinders or delays
42 the commissioner in the performance of his duties in the
43 enforcement of this act, or who fails to make, keep, and preserve
44 any records as required under the provisions of this act, or falsifies
45 any such record, or refuses to make any such record accessible to
46 the commissioner upon demand, or refuses to furnish a sworn
47 statement of such record or any other information required for the
48 proper enforcement of this act to the commissioner upon demand,

1 or pays or agrees to pay wages at a rate less than the rate applicable
2 under this act, or, during the time that the waterfront employer is
3 included on the debarment list established by the commissioner
4 pursuant to section 9 of this act, employs longshoremen at a
5 waterfront facility, or who discriminates against a longshoreman in
6 violation of section 11 of this act, or otherwise violates any
7 provision of this act or of any regulation or order issued under this
8 act, shall have violated the provisions of this act and be guilty of a
9 disorderly persons offense and shall, upon conviction therefor, be
10 fined not less than \$1,000 nor more than \$2,500 or be imprisoned
11 for not less than 10 nor more than 90 days, or by both such fine and
12 imprisonment. Each week, in which there is a day in which the
13 waterfront employer employs longshoremen while on the debarment
14 list or in which a longshoreman is paid less than the rate applicable
15 under this act and each longshoreman so paid, shall constitute a
16 separate offense. Such fines shall be in addition to the payment of
17 any wage deficiencies.

18 b. As an alternative to, or in addition to, any other sanctions
19 provided by law for violations of any provision of this act, when the
20 commissioner finds that an waterfront employer has violated that
21 act, the commissioner is authorized to assess and collect
22 administrative penalties, up to a maximum of \$2,500 for a first
23 violation and up to a maximum of \$5,000 for each subsequent
24 violation, specified in a schedule of penalties to be promulgated as a
25 rule or regulation by the commissioner in accordance with the
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
27 seq.). When determining the amount of the penalty imposed
28 because of a violation, the commissioner shall consider factors
29 which include the history of previous violations by the waterfront
30 employer, the seriousness of the violation, the good faith of the
31 waterfront employer and the size of the waterfront employer's
32 business. No administrative penalty shall be levied pursuant to this
33 section unless the commissioner provides the alleged violator with
34 notification of the violation and of the amount of the penalty by
35 certified mail and an opportunity to request a hearing before the
36 commissioner or his designee within 15 days following the receipt
37 of the notice. If a hearing is requested, the commissioner shall
38 issue a final order upon such hearing and a finding that a violation
39 has occurred. If no hearing is requested, the notice shall become a
40 final order upon expiration of the 15-day period. Payment of the
41 penalty is due when a final order is issued or when the notice
42 becomes a final order. Any penalty imposed pursuant to this section
43 may be recovered with costs in a summary proceeding commenced
44 by the commissioner pursuant to the "Penalty Enforcement Law of
45 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as
46 a fine or penalty pursuant to this section shall be applied toward
47 enforcement and administration costs of the Division of Workplace
48 Standards in the Department of Labor.

1 c. When the commissioner finds that the waterfront employer
2 has violated provisions of this act, the commissioner may refer the
3 matter to the Attorney General or his designee for investigation and
4 prosecution. Nothing in this subsection shall be deemed to limit the
5 authority of the Attorney General to investigate and prosecute
6 violations of the New Jersey Code of Criminal Justice, nor to limit
7 the commissioner's ability to refer any matter for criminal
8 investigation or prosecution.

9
10 8. As an alternative to, or in addition to, any other sanctions
11 provided by law for violation of this act, the commissioner is
12 authorized to supervise the payment of amounts due to
13 longshoremen under this act, and the waterfront employer may be
14 required to make these payments to the commissioner to be held in
15 a special account in trust for the longshoremen, and paid on order of
16 the commissioner directly to the longshoreman or longshoremen
17 affected. The waterfront employer shall also pay the commissioner
18 an administrative fee equal to not less than 10 percent or more than
19 25 percent of any payment made to the commissioner pursuant to
20 this section. The amount of the administrative fee shall be specified
21 in a schedule of fees to be promulgated by rule or regulation of the
22 commissioner in accordance with the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be
24 applied toward enforcement and administration costs of the
25 Division of Workplace Standards in the Department of Labor.

26
27 9. If the commissioner determines that a waterfront employer
28 has repeatedly failed to pay the waterfront prevailing wage, the
29 commissioner shall add the name of the waterfront employer to a
30 debarment list established and maintained by the commissioner of
31 waterfront employers determined to have failed to pay the
32 waterfront prevailing wage. The debarment list and each updating
33 of the list shall be prominently displayed on a website maintained
34 by the department and provided to any public body, any
35 representative of longshoremen, any waterfront employer, or any
36 representative of any group of waterfront employers who makes a
37 written request to the commissioner to be notified of the debarment
38 list and any updating of the list. Any waterfront employer placed
39 on the debarment list pursuant to this section shall remain on the list
40 until three years have elapsed from the date of listing. If the
41 waterfront employer denies that a failure to pay the waterfront
42 prevailing wage has occurred, the employer shall have the right to
43 apply to the commissioner for a hearing which must be afforded and
44 a decision rendered within 48 hours of the request for a hearing. If
45 the commissioner rules against the waterfront employer, the
46 waterfront employer shall have the right to apply for injunctive
47 relief in the Superior Court against the listing by the commissioner.

1 It shall be a violation of this act for any waterfront employer to
2 employ longshoremen at a waterfront facility, whether or not the
3 facility is a public waterfront facility, during the time that the
4 waterfront employer is included on the debarment list established
5 by the commissioner pursuant to this section.

6
7 10. No public body shall approve, fund, authorize, or administer,
8 or otherwise provide financial assistance to a waterfront facility, by
9 means of any new or renewed agreement to do so, without first
10 ascertaining that no waterfront employer employing longshoreman
11 at the facility is on the current debarment list of names of
12 waterfront employers who have failed to pay waterfront prevailing
13 wages required by this act. No contract shall be awarded by a
14 public body to any listed waterfront employer or to any other
15 waterfront employer in which the listed waterfront employer has an
16 interest.

17 For purposes of this section, "interest" means an interest,
18 affiliation, relationship or connection of a waterfront employer
19 listed pursuant to section 9 of this act in or with another waterfront
20 employer employing, or seeking to employ, longshoremen at a
21 waterfront facility, whether having the interest is as an owner,
22 partner, officer, manager, employee, agent, consultant or
23 representative. The listed waterfront employer shall be regarded as
24 having an interest in another waterfront employer if the listed
25 waterfront employer enters into a contract or agreement with the
26 other waterfront employer for services performed or to be
27 performed, for services that have been or will be assigned or
28 subletted, or for the sale, rental or lease of vehicles, tools,
29 equipment or supplies during the period from the initiation of the
30 proceedings under section 9 of this act against the waterfront
31 employer until three years have elapsed from the date that the
32 waterfront employer was listed by the commissioner under section 9
33 of this act. The term "interest" shall not include shares held in a
34 publicly traded corporation if the shares were not received as
35 compensation after the initiation of proceedings under section 9 of
36 this act.

37 A rebuttable presumption that a waterfront employer listed by
38 the commissioner under section 9 of this act has an interest in
39 another waterfront employer may arise if the two share any of the
40 following capacities or characteristics: occupy the same premises,
41 have the same telephone number or fax number, have the same
42 email address or internet website, employ substantially the same
43 administrative employees, utilize the same tools and equipment, or
44 employ or engage the services of any listed person or persons
45 involved in the direction or control of the other.

46 If the rebuttable presumption that a listed waterfront employer
47 has an interest in another waterfront employer results in a
48 determination to include of the other waterfront employer in the

1 debarment list, the other waterfront employer may request a hearing
2 to challenge the determination, to be conducted in accordance with
3 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.).

5
6 11. Any waterfront employer who discharges or in any other
7 manner discriminates against any longshoreman because the
8 longshoreman has made any complaint to his waterfront employer,
9 to a representative of the longshoreman, a public body, or the
10 commissioner that he has not been paid wages in accordance with
11 the provisions of this act, or because the longshoreman has caused
12 to be instituted or is about to cause to be instituted any proceeding
13 under or related to this act, or because the longshoreman has
14 testified or is about to testify in any such proceeding, or because the
15 longshoreman has requested information from the waterfront
16 employer relevant to such a proceeding, shall be in violation of this
17 act, shall be guilty of a disorderly persons offense, and shall, upon
18 conviction therefor, be fined not less than \$1,000 nor more than
19 \$2,500. Such fines shall be in addition to the payment of any wage
20 deficiencies.

21
22 12. If any longshoreman is paid by an waterfront employer less
23 than the waterfront prevailing wage to which the longshoreman is
24 entitled under the provisions of this act, or suffers discharge or
25 other discrimination in violation of section 11 of this act, that
26 longshoreman may recover in a civil action the full amount of such
27 waterfront prevailing wage less any amount actually paid to the
28 longshoremen by the waterfront employer together with costs and
29 reasonable attorney's fees as allowed by the court, and in the case of
30 discharge or other discrimination, reinstatement to employment
31 with payment of any wages lost because of the discharge or
32 discrimination. An agreement between longshoremen and a
33 waterfront employer to pay less than the prevailing wage shall not
34 be a defense to the action. Any longshoreman shall be entitled to
35 maintain such action for and on behalf of himself or other
36 longshoremen similarly situated, and the longshoreman or
37 longshoremen may designate an agent or representative to maintain
38 such action for and on behalf of all longshoremen similarly situated.
39 At the request of any longshoreman paid less than the waterfront
40 prevailing wage to which such longshoreman was entitled under the
41 provisions of this act, the commissioner may take an assignment of
42 the wage claim in trust for the assigning longshoreman and may
43 bring any legal action necessary to collect the claim, and the
44 waterfront employer shall be required to pay the costs and such
45 reasonable attorney's fees as may be allowed by the court.

46
47 13. Nothing in this act shall be deemed to interfere with,
48 impede, or in any way diminish the right of longshoremen to

1 bargain collectively through representatives of their own choosing
2 in order to establish wages in excess of any applicable minimum
3 under this act.

4

5 14. The commissioner is authorized and empowered to
6 prescribe, adopt, promulgate, rescind and enforce rules and
7 regulations as may be required for the administration and
8 enforcement of the provisions of this act.

9

10 15. The provisions of this act shall be deemed to be severable
11 and if any section, subsection, paragraph, sentence or other part of
12 this act is declared to be unconstitutional or preempted by federal
13 law, or the applicability thereof to any person or facility is held
14 invalid, the remainder of this act shall not thereby be deemed to be
15 unconstitutional, preempted or invalid.

16

17 16. This act shall take effect on the 180th day following
18 enactment, but the commissioner shall take any anticipatory action
19 in advance as shall be necessary for the implementation of this act.

20

21

22

STATEMENT

23

24 This bill establishes waterfront prevailing wage rates for
25 longshoremen employed at waterfront facilities located in the State.

26 The bill directs the Commissioner of Labor and Workforce
27 Development to determine, establish and make public the
28 waterfront prevailing wage rates for each waterfront facility and for
29 each classification of longshoremen working at the facility.

30 The bill defines the “applicable waterfront prevailing wage
31 rates” as the wage rates paid by virtue of collective bargaining
32 agreements with employers employing the largest numbers of
33 longshoremen, including agreements which apply to longshoremen
34 working in waterfront facilities throughout the State, provided that
35 if an agreement applying to a smaller locality or waterfront facility
36 stipulates wage levels higher than the levels stipulated by
37 agreements with State-wide application, the higher rates shall be the
38 applicable waterfront prevailing wage rates for that locality or
39 facility. Contributions by a waterfront employer for benefits made
40 pursuant to a collective bargaining agreement are defined by the bill
41 to be an integral part of the wage rate for the purpose of
42 determining applicable waterfront prevailing wage rates.

43 The bill sets requirements for waterfront employers of
44 longshoremen to keep wage records and make them available to the
45 commissioner and other specified parties, and to notify the
46 longshoremen they employ of their rights under the bill.

47 The bill authorizes the commissioner to inspect records and
48 worksites, accept complaints and use various measures to penalize

S1053 SINGLETON, SWEENEY

12

1 waterfront employers for violations of the bill's requirements,
2 including criminal and administrative penalties, administering the
3 collection of unpaid wages, and placing a waterfront employer for
4 three years on a list of waterfront employers barred for employing
5 longshoremen in any waterfront facility.

6 The bill prohibits a waterfront employer from employing
7 longshoremen at any waterfront facility during the time that the
8 waterfront employer is included on the debarment list, and prohibits
9 any governmental entity from entering into a contract with a
10 debarred waterfront employer, or providing financial assistance to a
11 public waterfront facility, without first ascertaining that no debarred
12 waterfront employer is employing longshoreman at the facility.

13 The bill also provides penalties against waterfront employers for
14 discharge or other discrimination against employees for exercising
15 their rights under the bill.

16 Finally, the bills permits a longshoreman paid less than the
17 waterfront prevailing wage rate, or suffering retaliatory discharge or
18 discrimination, to obtain in a civil action any wages due together
19 with costs and attorney's fees, and, in a case of retaliation,
20 reinstatement and payment of lost wages.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1053

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 2021

The Assembly Labor Committee reports favorably and with committee amendments Senate Bill No. 1053.

As amended, this bill establishes waterfront prevailing wage rates for longshoremen employed at waterfront facilities located in the State.

The bill directs the Commissioner of Labor and Workforce Development to determine, establish and make public the waterfront prevailing wage rates for each waterfront facility and for each classification of longshoremen working at the facility.

As amended, the bill defines the “applicable waterfront prevailing wage rates” as the wage rates set by collective bargaining agreements with waterfront employers in the Port of New York District. Contributions by a waterfront employer for benefits made pursuant to a collective bargaining agreement are defined by the bill to be an integral part of the wage rate for the purpose of determining applicable waterfront prevailing wage rates.

The bill sets requirements for waterfront employers of longshoremen to keep wage records and make them available to the commissioner and other specified parties, and to notify the longshoremen they employ of their rights under the bill.

As amended, the bill requires and sets registration fees for all waterfront employers in the State except waterfront employers located in the Port of New York District, prohibits unregistered waterfront employers from receiving financial assistance from any public body, indicates reasons and procedures for the non-renewal, revocation, or suspension of a registration, and requires surety bonds from registrants of up to \$10,000 per worker to be able to compensate any workers damaged by any employer failure to pay the required wage rate.

The bill authorizes the commissioner to inspect records and worksites, accept complaints and use various measures to penalize waterfront employers for violations of the bill’s requirements, including criminal and administrative penalties, administering the collection of unpaid wages, and placing a waterfront employer for three years on a list of waterfront employers barred for employing longshoremen in any waterfront facility.

The bill prohibits a waterfront employer from employing longshoremen at any waterfront facility during the time that the

waterfront employer is included on the debarment list, and prohibits any governmental entity from entering into a contract with a debarred waterfront employer, or providing financial assistance to a public waterfront facility, without first ascertaining that no debarred waterfront employer is employing longshoreman at the facility.

The bill also provides penalties against waterfront employers for discharge or other discrimination against employees for exercising their rights under the bill.

As amended, the bill permits local prevailing wage rates set by collective bargaining to be different from the State prevailing wage, not just higher wage rates.

Finally, the bills permit a longshoreman paid less than the waterfront prevailing wage rate, or suffering retaliatory discharge or discrimination, to obtain in a civil action any wages due together with costs and attorney's fees, and, in a case of retaliation, reinstatement and payment of lost wages.

As amended and released by the committee, this bill is identical to Assembly Bill No. 4562 (1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1. Define the State “applicable waterfront prevailing wage rates” as the wage rates set by collective bargaining agreements with waterfront employers in the Port of New York District, rather than the wage rates set by agreements with the waterfront employers employing the largest number of waterfront employees in the State;
2. Require and set registration fees for all waterfront employers in the State except waterfront employers located in the Port of New York District, prohibit unregistered waterfront employers from receiving financial assistance from any public body, indicate reasons and procedures for the non-renewal, revocation, or suspension of a registration, and require surety bonds from registrants of up to \$10,000 per worker to be able to compensate any workers damaged by any employer failure to pay the required wage rate;
3. Permit local prevailing wage rates set by collective bargaining to be different from the State prevailing wage, not just higher wage rates, as permitted in the bill in its current non-amended form, but lower rates as well; and
4. Make various modifications in procedures regarding department investigations of possible violations, employer record keeping, and appeals by employers of debarment decisions.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1053

STATE OF NEW JERSEY

DATED: AUGUST 10, 2020

The Senate Labor Committee reports favorably Senate Bill, No. 1053.

This bill establishes waterfront prevailing wage rates for longshoremen employed at waterfront facilities located in the State.

The bill directs the Commissioner of Labor and Workforce Development to determine, establish and make public the waterfront prevailing wage rates for each waterfront facility and for each classification of longshoremen working at the facility.

The bill defines the “applicable waterfront prevailing wage rates” as the wage rates paid by virtue of collective bargaining agreements with employers employing the largest numbers of longshoremen, including agreements which apply to longshoremen working in waterfront facilities throughout the State, provided that if an agreement applying to a smaller locality or waterfront facility stipulates wage levels higher than the levels stipulated by agreements with State-wide application, the higher rates shall be the applicable waterfront prevailing wage rates for that locality or facility. Contributions by a waterfront employer for benefits made pursuant to a collective bargaining agreement are defined by the bill to be an integral part of the wage rate for the purpose of determining applicable waterfront prevailing wage rates.

The bill sets requirements for waterfront employers of longshoremen to keep wage records and make them available to the commissioner and other specified parties, and to notify the longshoremen they employ of their rights under the bill.

The bill authorizes the commissioner to inspect records and worksites, accept complaints and use various measures to penalize waterfront employers for violations of the bill’s requirements, including criminal and administrative penalties, administering the collection of unpaid wages, and placing a waterfront employer for three years on a list of waterfront employers barred for employing longshoremen in any waterfront facility.

The bill prohibits a waterfront employer from employing longshoremen at any waterfront facility during the time that the waterfront employer is included on the debarment list, and prohibits any governmental entity from entering into a contract with a debarred waterfront employer, or providing financial assistance to a public

waterfront facility, without first ascertaining that no debarred waterfront employer is employing longshoreman at the facility.

The bill also provides penalties against waterfront employers for discharge or other discrimination against employees for exercising their rights under the bill.

Finally, the bills permits a longshoreman paid less than the waterfront prevailing wage rate, or suffering retaliatory discharge or discrimination, to obtain in a civil action any wages due together with costs and attorney's fees, and, in a case of retaliation, reinstatement and payment of lost wages.

ASSEMBLY, No. 4562

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 24, 2020

Sponsored by:
Assemblywoman ANNETTE QUIJANO
District 20 (Union)

SYNOPSIS

Establishes waterfront wage standards.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing waterfront prevailing wage standards and
2 supplementing chapter 11 of Title 34 of the Revised Statutes.

3

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

6

7 1. For the purposes of this act:

8 "Applicable waterfront prevailing wage rates" means the wage
9 rates paid by virtue of collective bargaining agreements with
10 waterfront employers employing the largest numbers of
11 longshoremen, including collective bargaining agreements which
12 apply to longshoremen working in waterfront facilities throughout
13 the State, provided that if a collective bargaining agreement
14 applying to a smaller locality or waterfront facility stipulates wage
15 levels higher than the levels stipulated by collective bargaining
16 agreements with State-wide application, the higher rates shall be the
17 applicable waterfront prevailing wage rates for that locality or
18 facility. Contributions by a waterfront employer for benefits made
19 pursuant to a collective bargaining agreement shall be considered an
20 integral part of the wage paid by the waterfront employer for the
21 purpose of determining the applicable waterfront prevailing wage
22 rates for purpose of this act.

23 "Carrier of freight by water" shall mean any person engaged, or
24 who may hold himself out as willing to be engaged, whether as a
25 common carrier, as a contract carrier, or otherwise, in the carriage
26 of freight by water, except for carriage of liquid cargoes in bulk in
27 tank vessels designed for use exclusively in such service, and
28 except for carriage by barge of bulk cargoes consisting of only a
29 single commodity loaded or carried without wrappers or containers
30 and delivered by the carrier without transportation mark or count.

31 "Classification" of longshoremen means categories of
32 longshoremen, including: the kind of cargo they handle, such as
33 break-bulk terminal cargo, break-bulk vessel cargo, or containers;
34 job categories, such as laborers, equipment operators, checkers,
35 crane operators, or mechanics; and duration of employment.

36 "Commissioner" means the Commissioner of Labor and
37 Workforce Development or his duly authorized representatives.

38 "Container" means any receptacle, box, carton or crate which is
39 specifically designed and constructed so that it may be repeatedly
40 used for the carriage of freight by a carrier of freight by water.

41 "Department" means the Department of Labor and Workforce
42 Development of the State of New Jersey.

43 "Financial assistance" means any loan, loan guarantee, grant,
44 incentive, tax exemption or other financial assistance that is
45 approved, funded, authorized, or administered by a public body, or
46 otherwise provided by the public body.

47 "Hiring agent" means an individual, who on behalf of any other
48 person selects longshoremen for employment.

1 "Locality" means any political subdivision of the State,
2 combination of the same or parts thereof, or any geographical area
3 or areas classified, designated and fixed by the commissioner from
4 time to time, provided that in determining the "locality," the
5 commissioner shall be guided by the boundary lines of political
6 subdivisions or parts thereof, or by a consideration of the areas with
7 respect to which it has been the practice of waterfront employers of
8 classifications of longshoremen to engage in collective bargaining
9 with the representatives of those classifications of longshoremen.

10 "Longshoreman" means an individual, other than a hiring agent,
11 who is employed for work at a waterfront facility to:

12 (a) move waterborne freight on a vessel berthed at waterfront
13 facilities, or to or from a barge, lighter or railroad car for transfer to
14 or from the vessel;

15 (b) engage in direct and immediate checking of the freight or its
16 custodial accounting or in the recording or tabulation of the hours
17 worked at waterfront facilities by longshoremen;

18 (c) directly and immediately supervise longshoremen; or

19 (d) perform any other labor or services incidental to the
20 movement of waterborne freight on vessels berthed at waterfront
21 facilities, including, but not limited to, cargo repairmen, coopers,
22 general maintenance workers, mechanical and miscellaneous
23 workers, horse and cattle fitters, grain ceilers, port watchmen, and
24 marine carpenters.

25 "Marine terminal" means an area located in the State which
26 includes piers, and is used primarily for the moving, warehousing,
27 distributing or packing of waterborne freight or freight to or from
28 those piers, and which, inclusive of such piers, is under common
29 ownership or control.

30 "Person" means an individual or any partnership, joint venture,
31 association, corporation or any other legal entity other than a
32 governmental entity.

33 "Pier" includes any wharf, pier, dock or quay.

34 "Port watchman" includes any watchman, gateman, groundsman,
35 detective, guard, guardian or protector of property employed by the
36 operator of any pier or other waterfront terminal or by a carrier of
37 freight by water to perform services in such capacity on any pier or
38 other waterfront terminal.

39 "Public body" means the State of New Jersey, any of its political
40 subdivisions, and any authority, instrumentality, or agency of the
41 State of New Jersey or of any of its political subdivisions.

42 "Public waterfront facility" means a waterfront facility located in
43 the State which:

44 (a) is owned, operated or administered by a public body;

45 (b) receives financial assistance that is approved, funded,
46 authorized, or administered by a public body, or otherwise provided
47 by the public body; or

1 (c) is owned, operated or administered by a waterfront employer
2 who receives financial assistance that is approved, funded,
3 authorized, or administered by a public body, or otherwise provided
4 by the public body.

5 "Stevedore" means an employer of longshoremen who is a
6 contractor or subcontractor, but not an employee, engaged for
7 compensation pursuant to a contract or arrangement with a carrier
8 of waterborne freight or operator of a waterfront facility, to move
9 waterborne freight carried or consigned for carriage by the carrier
10 on, onto, or from vessels of the carrier berthed at waterfront
11 facilities, including:

12 (a) a contractor engaged for compensation pursuant to a contract
13 or arrangement with a public entity, the United States, or any other
14 state or territory thereof, to move freight carried or consigned for
15 carriage between any point in a waterfront facility and a point
16 outside of the waterfront facility on vessels berthed at the
17 waterfront facility, or

18 (b) a contractor engaged for compensation pursuant to a contract
19 or arrangement with any person to perform labor or services
20 incidental to the movement of waterborne freight on, onto, or from
21 vessels berthed at waterfront facilities, including, but not limited to,
22 cargo storage, cargo repairing, coopering, general maintenance,
23 mechanical and miscellaneous work, horse and cattle fitting, grain
24 ceiling, and marine carpentry, or

25 (c) a contractor engaged for compensation pursuant to a contract
26 or arrangement with any other person to perform labor or services
27 involving, or incidental to, the movement of freight into or out of
28 containers, which have been or which will be carried by a carrier of
29 freight by water, on vessels berthed at waterfront facilities.

30 "Waterborne freight" shall mean freight carried by or consigned
31 for carriage by carriers of freight by water, including ships' stores,
32 baggage and mail carried by or consigned for carriage by carriers of
33 freight by water.

34 "Waterfront employer" means an operator of a waterfront
35 facility, stevedore, or carrier of freight by water who employs
36 longshoremen at a waterfront facility.

37 "Waterfront facility" means any marine terminal or pier, or any
38 other waterfront terminal located in the State.

39 "Waterfront terminal" includes any warehouse, depot or other
40 terminal located in the State, whether enclosed or open, any part of
41 which is used by any person to perform labor or services involving,
42 or incidental to, the movement of waterborne freight or freight.

43
44 2. Any waterfront employer who employs longshoremen at a
45 waterfront facility, including, but not limited to, a public waterfront
46 facility, shall pay each longshoreman a rate of wages not less than
47 the applicable waterfront prevailing wage rate. Every waterfront
48 employer employing longshoremen at waterfront facilities shall

1 keep an accurate record showing the name, classification, and
2 hourly rate of wages actually paid to each longshoreman employed
3 by the employer in connection with waterfront facilities. The
4 records shall be preserved for two years from the date of payment,
5 and shall be open at all reasonable hours to the inspection of the
6 commissioner, of any public body which owns, administers or
7 provides financial assistance to the waterfront facility where the
8 longshoremen are employed, and of any labor organization
9 representing longshoremen working at that waterfront facility or
10 other waterfront facilities in the State.

11

12 3. The commissioner shall determine, establish and make
13 public the waterfront prevailing wage rates for each waterfront
14 facility and for each classification of longshoremen working at the
15 facility. The prevailing wage shall be determined and computed in
16 accordance with rules and regulations issued by the commissioner
17 as he determines necessary to carry out the provisions of this act.
18 The wage determination may be challenged within 30 days of
19 issuance but only as to the accuracy of the wage information used.
20 Such challenges shall be made by filing a written notice with the
21 commissioner specifying the inaccurate wage information. All
22 determinations of the waterfront prevailing wage rates made
23 pursuant to this section shall be announced by the commissioner,
24 prominently displayed on a webpage maintained by the department,
25 and provided by mail to any public body, any representative of
26 longshoremen, any waterfront employer, or any representative of
27 any group of waterfront employers, who makes a written request to
28 the commissioner to be provided the mailed notifications.

29

30 4. The commissioner shall have the authority to:

31 a. investigate and ascertain the wages of longshoremen
32 employed in any waterfront facility in the State;

33 b. enter and inspect the place of business or employment of any
34 waterfront employer employing longshoremen at any waterfront
35 facility in the State, for the purpose of examining and inspecting
36 any or all books, registers, payrolls, and other records of the
37 waterfront employer that in any way relate to or have a bearing
38 upon the question of wages, hours, and other conditions of
39 employment of the longshoremen; copy any of those books,
40 registers, payrolls, and other records as he or his authorized
41 representative may deem necessary or appropriate; obtain proof of,
42 and question, any longshoreman's identity to determine whether the
43 longshoreman's identity is accurately and truthfully included or
44 reported in any books, registers, payrolls, and other records of the
45 waterfront employer that in any way relate to or have a bearing
46 upon the question of wages, hours, and other conditions of
47 employment in the waterfront facility; and question the

1 longshoremen for the purpose of ascertaining whether the
2 provisions of this act have been and are being complied with;

3 c. obtain from the waterfront employers full and correct
4 statements in writing, including sworn statements, regarding wages,
5 hours, names, addresses, and such other information pertaining to
6 the waterfront employer's longshoremen and their employment as
7 the commissioner, or his authorized representative deems necessary
8 or appropriate; and

9 d. require any waterfront employer to file, within 10 days of
10 receipt of a request, any records enumerated in subsections b. and c.
11 of this section, sworn to as to their validity and accuracy. In the
12 case of a public waterfront facility in which a public body has an
13 agreement to make payments to a waterfront employer, if the
14 waterfront employer fails to provide the requested records within 10
15 days, the commissioner may direct within 15 days the fiscal or
16 financial officer charged with the custody and disbursements of the
17 funds of the public body immediately to withhold from payment to
18 the waterfront employer up to 25 percent of the amount, not to
19 exceed \$100,000, to be paid to the waterfront employer under the
20 terms of the agreement. The amount withheld shall be immediately
21 released upon receipt by the public body of a notice from the
22 commissioner indicating that the request for records has been
23 satisfied.

24
25 5. Waterfront employers employing longshoremen at
26 waterfront facilities shall post the waterfront prevailing wage rates
27 for each classification involved as determined by the commissioner,
28 including the effective date of any changes thereof, in prominent
29 and easily accessible places at the site of the work or at such place
30 or places as are used by them to pay longshoremen their wages.

31
32 6. Any longshoreman or representative of longshoremen may
33 file with the commissioner a written complaint that the amount of
34 wages paid for work performed by the longshoreman at a waterfront
35 facility is less than the applicable waterfront prevailing wage rate
36 for that work, or a written complaint the longshoreman has suffered
37 a discharge or other discrimination in violation of section 11 of this
38 act, but the complaint may not be filed later than two years after the
39 alleged underpayment or discrimination occurs.

40
41 7. a. Any waterfront employer who willfully hinders or delays
42 the commissioner in the performance of his duties in the
43 enforcement of this act, or who fails to make, keep, and preserve
44 any records as required under the provisions of this act, or falsifies
45 any such record, or refuses to make any such record accessible to
46 the commissioner upon demand, or refuses to furnish a sworn
47 statement of such record or any other information required for the
48 proper enforcement of this act to the commissioner upon demand,

1 or pays or agrees to pay wages at a rate less than the rate applicable
2 under this act, or, during the time that the waterfront employer is
3 included on the debarment list established by the commissioner
4 pursuant to section 9 of this act, employs longshoremen at a
5 waterfront facility, or who discriminates against a longshoreman in
6 violation of section 11 of this act, or otherwise violates any
7 provision of this act or of any regulation or order issued under this
8 act, shall have violated the provisions of this act and be guilty of a
9 disorderly persons offense and shall, upon conviction therefor, be
10 fined not less than \$1,000 nor more than \$2,500 or be imprisoned
11 for not less than 10 nor more than 90 days, or by both such fine and
12 imprisonment. Each week, in which there is a day in which the
13 waterfront employer employs longshoremen while on the debarment
14 list or in which a longshoreman is paid less than the rate applicable
15 under this act and each longshoreman so paid, shall constitute a
16 separate offense. Such fines shall be in addition to the payment of
17 any wage deficiencies.

18 b. As an alternative to, or in addition to, any other sanctions
19 provided by law for violations of any provision of this act, when the
20 commissioner finds that an waterfront employer has violated that
21 act, the commissioner is authorized to assess and collect
22 administrative penalties, up to a maximum of \$2,500 for a first
23 violation and up to a maximum of \$5,000 for each subsequent
24 violation, specified in a schedule of penalties to be promulgated as a
25 rule or regulation by the commissioner in accordance with the
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
27 seq.). When determining the amount of the penalty imposed
28 because of a violation, the commissioner shall consider factors
29 which include the history of previous violations by the waterfront
30 employer, the seriousness of the violation, the good faith of the
31 waterfront employer and the size of the waterfront employer's
32 business. No administrative penalty shall be levied pursuant to this
33 section unless the commissioner provides the alleged violator with
34 notification of the violation and of the amount of the penalty by
35 certified mail and an opportunity to request a hearing before the
36 commissioner or his designee within 15 days following the receipt
37 of the notice. If a hearing is requested, the commissioner shall
38 issue a final order upon such hearing and a finding that a violation
39 has occurred. If no hearing is requested, the notice shall become a
40 final order upon expiration of the 15-day period. Payment of the
41 penalty is due when a final order is issued or when the notice
42 becomes a final order. Any penalty imposed pursuant to this section
43 may be recovered with costs in a summary proceeding commenced
44 by the commissioner pursuant to the "Penalty Enforcement Law of
45 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as
46 a fine or penalty pursuant to this section shall be applied toward
47 enforcement and administration costs of the Division of Workplace
48 Standards in the Department of Labor.

1 c. When the commissioner finds that the waterfront employer
2 has violated provisions of this act, the commissioner may refer the
3 matter to the Attorney General or his designee for investigation and
4 prosecution. Nothing in this subsection shall be deemed to limit the
5 authority of the Attorney General to investigate and prosecute
6 violations of the New Jersey Code of Criminal Justice, nor to limit
7 the commissioner's ability to refer any matter for criminal
8 investigation or prosecution.

9
10 8. As an alternative to, or in addition to, any other sanctions
11 provided by law for violation of this act, the commissioner is
12 authorized to supervise the payment of amounts due to
13 longshoremen under this act, and the waterfront employer may be
14 required to make these payments to the commissioner to be held in
15 a special account in trust for the longshoremen, and paid on order of
16 the commissioner directly to the longshoreman or longshoremen
17 affected. The waterfront employer shall also pay the commissioner
18 an administrative fee equal to not less than 10 percent or more than
19 25 percent of any payment made to the commissioner pursuant to
20 this section. The amount of the administrative fee shall be specified
21 in a schedule of fees to be promulgated by rule or regulation of the
22 commissioner in accordance with the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be
24 applied toward enforcement and administration costs of the
25 Division of Workplace Standards in the Department of Labor.

26
27 9. If the commissioner determines that a waterfront employer
28 has repeatedly failed to pay the waterfront prevailing wage, the
29 commissioner shall add the name of the waterfront employer to a
30 debarment list established and maintained by the commissioner of
31 waterfront employers determined to have failed to pay the
32 waterfront prevailing wage. The debarment list and each updating
33 of the list shall be prominently displayed on a website maintained
34 by the department and provided to any public body, any
35 representative of longshoremen, any waterfront employer, or any
36 representative of any group of waterfront employers who makes a
37 written request to the commissioner to be notified of the debarment
38 list and any updating of the list. Any waterfront employer placed
39 on the debarment list pursuant to this section shall remain on the list
40 until three years have elapsed from the date of listing. If the
41 waterfront employer denies that a failure to pay the waterfront
42 prevailing wage has occurred, the employer shall have the right to
43 apply to the commissioner for a hearing which must be afforded and
44 a decision rendered within 48 hours of the request for a hearing. If
45 the commissioner rules against the waterfront employer, the
46 waterfront employer shall have the right to apply for injunctive
47 relief in the Superior Court against the listing by the commissioner.

1 It shall be a violation of this act for any waterfront employer to
2 employ longshoremen at a waterfront facility, whether or not the
3 facility is a public waterfront facility, during the time that the
4 waterfront employer is included on the debarment list established
5 by the commissioner pursuant to this section.
6

7 10. No public body shall approve, fund, authorize, or administer,
8 or otherwise provide financial assistance to a waterfront facility, by
9 means of any new or renewed agreement to do so, without first
10 ascertaining that no waterfront employer employing longshoreman
11 at the facility is on the current debarment list of names of
12 waterfront employers who have failed to pay waterfront prevailing
13 wages required by this act. No contract shall be awarded by a
14 public body to any listed waterfront employer or to any other
15 waterfront employer in which the listed waterfront employer has an
16 interest.

17 For purposes of this section, "interest" means an interest,
18 affiliation, relationship or connection of a waterfront employer
19 listed pursuant to section 9 of this act in or with another waterfront
20 employer employing, or seeking to employ, longshoremen at a
21 waterfront facility, whether having the interest is as an owner,
22 partner, officer, manager, employee, agent, consultant or
23 representative. The listed waterfront employer shall be regarded as
24 having an interest in another waterfront employer if the listed
25 waterfront employer enters into a contract or agreement with the
26 other waterfront employer for services performed or to be
27 performed, for services that have been or will be assigned or
28 subletted, or for the sale, rental or lease of vehicles, tools,
29 equipment or supplies during the period from the initiation of the
30 proceedings under section 9 of this act against the waterfront
31 employer until three years have elapsed from the date that the
32 waterfront employer was listed by the commissioner under section 9
33 of this act. The term "interest" shall not include shares held in a
34 publicly traded corporation if the shares were not received as
35 compensation after the initiation of proceedings under section 9 of
36 this act.

37 A rebuttable presumption that a waterfront employer listed by
38 the commissioner under section 9 of this act has an interest in
39 another waterfront employer may arise if the two share any of the
40 following capacities or characteristics: occupy the same premises,
41 have the same telephone number or fax number, have the same
42 email address or internet website, employ substantially the same
43 administrative employees, utilize the same tools and equipment, or
44 employ or engage the services of any listed person or persons
45 involved in the direction or control of the other.

46 If the rebuttable presumption that a listed waterfront employer
47 has an interest in another waterfront employer results in a
48 determination to include of the other waterfront employer in the

1 debarment list, the other waterfront employer may request a hearing
2 to challenge the determination, to be conducted in accordance with
3 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.).

5
6 11. Any waterfront employer who discharges or in any other
7 manner discriminates against any longshoreman because the
8 longshoreman has made any complaint to his waterfront employer,
9 to a representative of the longshoreman, a public body, or the
10 commissioner that he has not been paid wages in accordance with
11 the provisions of this act, or because the longshoreman has caused
12 to be instituted or is about to cause to be instituted any proceeding
13 under or related to this act, or because the longshoreman has
14 testified or is about to testify in any such proceeding, or because the
15 longshoreman has requested information from the waterfront
16 employer relevant to such a proceeding, shall be in violation of this
17 act, shall be guilty of a disorderly persons offense, and shall, upon
18 conviction therefor, be fined not less than \$1,000 nor more than
19 \$2,500. Such fines shall be in addition to the payment of any wage
20 deficiencies.

21
22 12. If any longshoreman is paid by an waterfront employer less
23 than the waterfront prevailing wage to which the longshoreman is
24 entitled under the provisions of this act, or suffers discharge or
25 other discrimination in violation of section 11 of this act, that
26 longshoreman may recover in a civil action the full amount of such
27 waterfront prevailing wage less any amount actually paid to the
28 longshoremen by the waterfront employer together with costs and
29 reasonable attorney's fees as allowed by the court, and in the case of
30 discharge or other discrimination, reinstatement to employment
31 with payment of any wages lost because of the discharge or
32 discrimination. An agreement between longshoremen and a
33 waterfront employer to pay less than the prevailing wage shall not
34 be a defense to the action. Any longshoreman shall be entitled to
35 maintain such action for and on behalf of himself or other
36 longshoremen similarly situated, and the longshoreman or
37 longshoremen may designate an agent or representative to maintain
38 such action for and on behalf of all longshoremen similarly situated.
39 At the request of any longshoreman paid less than the waterfront
40 prevailing wage to which such longshoreman was entitled under the
41 provisions of this act, the commissioner may take an assignment of
42 the wage claim in trust for the assigning longshoreman and may
43 bring any legal action necessary to collect the claim, and the
44 waterfront employer shall be required to pay the costs and such
45 reasonable attorney's fees as may be allowed by the court.

46
47 13. Nothing in this act shall be deemed to interfere with,
48 impede, or in any way diminish the right of longshoremen to

1 bargain collectively through representatives of their own choosing
2 in order to establish wages in excess of any applicable minimum
3 under this act.

4

5 14. The commissioner is authorized and empowered to
6 prescribe, adopt, promulgate, rescind and enforce rules and
7 regulations as may be required for the administration and
8 enforcement of the provisions of this act.

9

10 15. The provisions of this act shall be deemed to be severable
11 and if any section, subsection, paragraph, sentence or other part of
12 this act is declared to be unconstitutional or preempted by federal
13 law, or the applicability thereof to any person or facility is held
14 invalid, the remainder of this act shall not thereby be deemed to be
15 unconstitutional, preempted or invalid.

16

17 16. This act shall take effect on the 180th day following
18 enactment, but the commissioner shall take any anticipatory action
19 in advance as shall be necessary for the implementation of this act.

20

21

22

STATEMENT

23

24 This bill establishes waterfront prevailing wage rates for
25 longshoremen employed at waterfront facilities located in the State.

26 The bill directs the Commissioner of Labor and Workforce
27 Development to determine, establish and make public the
28 waterfront prevailing wage rates for each waterfront facility and for
29 each classification of longshoremen working at the facility.

30 The bill defines the “applicable waterfront prevailing wage
31 rates” as the wage rates paid by virtue of collective bargaining
32 agreements with employers employing the largest numbers of
33 longshoremen, including agreements which apply to longshoremen
34 working in waterfront facilities throughout the State, provided that
35 if an agreement applying to a smaller locality or waterfront facility
36 stipulates wage levels higher than the levels stipulated by
37 agreements with State-wide application, the higher rates shall be the
38 applicable waterfront prevailing wage rates for that locality or
39 facility. Contributions by a waterfront employer for benefits made
40 pursuant to a collective bargaining agreement are defined by the bill
41 to be an integral part of the wage rate for the purpose of
42 determining applicable waterfront prevailing wage rates.

43 The bill sets requirements for waterfront employers of
44 longshoremen to keep wage records and make them available to the
45 commissioner and other specified parties, and to notify the
46 longshoremen they employ of their rights under the bill.

47 The bill authorizes the commissioner to inspect records and
48 worksites, accept complaints and use various measures to penalize

1 waterfront employers for violations of the bill's requirements,
2 including criminal and administrative penalties, administering the
3 collection of unpaid wages, and placing a waterfront employer for
4 three years on a list of waterfront employers barred for employing
5 longshoremen in any waterfront facility.

6 The bill prohibits a waterfront employer from employing
7 longshoremen at any waterfront facility during the time that the
8 waterfront employer is included on the debarment list, and prohibits
9 any governmental entity from entering into a contract with a
10 debarred waterfront employer, or providing financial assistance to a
11 public waterfront facility, without first ascertaining that no debarred
12 waterfront employer is employing longshoreman at the facility.

13 The bill also provides penalties against waterfront employers for
14 discharge or other discrimination against employees for exercising
15 their rights under the bill.

16 Finally, the bills permits a longshoreman paid less than the
17 waterfront prevailing wage rate, or suffering retaliatory discharge or
18 discrimination, to obtain in a civil action any wages due together
19 with costs and attorney's fees, and, in a case of retaliation,
20 reinstatement and payment of lost wages.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4562

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 2021

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 4562.

As amended, this bill establishes waterfront prevailing wage rates for longshoremen employed at waterfront facilities located in the State.

The bill directs the Commissioner of Labor and Workforce Development to determine, establish and make public the waterfront prevailing wage rates for each waterfront facility and for each classification of longshoremen working at the facility.

As amended, the bill defines the “applicable waterfront prevailing wage rates” as the wage rates set by collective bargaining agreements with waterfront employers in the Port of New York District. Contributions by a waterfront employer for benefits made pursuant to a collective bargaining agreement are defined by the bill to be an integral part of the wage rate for the purpose of determining applicable waterfront prevailing wage rates.

The bill sets requirements for waterfront employers of longshoremen to keep wage records and make them available to the commissioner and other specified parties, and to notify the longshoremen they employ of their rights under the bill.

As amended, the bill requires and sets registration fees for all waterfront employers in the State except waterfront employers located in the Port of New York District, prohibits unregistered waterfront employers from receiving financial assistance from any public body, indicates reasons and procedures for the non-renewal, revocation, or suspension of a registration, and requires surety bonds from registrants of up to \$10,000 per worker to be able to compensate any workers damaged by any employer failure to pay the required wage rate.

The bill authorizes the commissioner to inspect records and worksites, accept complaints and use various measures to penalize waterfront employers for violations of the bill’s requirements, including criminal and administrative penalties, administering the collection of unpaid wages, and placing a waterfront employer for three years on a list of waterfront employers barred for employing longshoremen in any waterfront facility.

The bill prohibits a waterfront employer from employing longshoremen at any waterfront facility during the time that the

waterfront employer is included on the debarment list, and prohibits any governmental entity from entering into a contract with a debarred waterfront employer, or providing financial assistance to a public waterfront facility, without first ascertaining that no debarred waterfront employer is employing longshoreman at the facility.

The bill also provides penalties against waterfront employers for discharge or other discrimination against employees for exercising their rights under the bill.

As amended, the bill permits local prevailing wage rates set by collective bargaining to be different from the State prevailing wage.

Finally, the bills permit a longshoreman paid less than the waterfront prevailing wage rate, or suffering retaliatory discharge or discrimination, to obtain in a civil action any wages due together with costs and attorney's fees, and, in a case of retaliation, reinstatement and payment of lost wages.

As amended and released by the committee, this bill is identical to Senate Bill No. 1053 (1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1. Define the State “applicable waterfront prevailing wage rates” as the wage rates set by collective bargaining agreements with waterfront employers in the Port of New York District, rather than the wage rates set by agreements with the waterfront employers employing the largest number of waterfront employees in the State;
2. Require and set registration fees for all waterfront employers in the State except waterfront employers located in the Port of New York District, prohibit unregistered waterfront employers from receiving financial assistance from any public body, indicate reasons and procedures for the non-renewal, revocation, or suspension of a registration, and require surety bonds from registrants of up to \$10,000 per worker to be able to compensate any workers damaged by any employer failure to pay the required wage rate;
3. Permit local prevailing wage rates set by collective bargaining to be different from the State prevailing wage, not just higher wage rates, as permitted in the bill in its current non-amended form, but lower rates as well; and
4. Make various modifications in procedures regarding department investigations of possible violations, employer record keeping, and appeals by employers of debarment decisions.