

54 N.J.R. 1158(a)

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RULE PROPOSALS

Reporter

54 N.J.R. 1158(a)

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Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

Administrative Code Citation

Proposed Amendments: N.J.A.C. 12:62-1.2, 2.1, 2.2, 2.3, 2.4, and 2.6

Proposed New Rules: N.J.A.C. 12:62-2.7 and 2.8

Text

Public Works Contractor Registration

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:11-56.57.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2022-084.

Submit written comments by August 20, 2022, to:

David Fish, Executive Director
Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110

Email: david.fish@dol.nj.gov

The agency proposal follows:

Summary

The New Jersey Department of Labor and Workforce Development (Department) is proposing amendments at N.J.A.C. 12:62-1.2, 2.1, 2.2, 2.3, 2.4, and 2.6 and new rules at N.J.A.C. 12:62-2.7 and 2.8, in order to implement the following laws: P.L. 2019, c. 376; P.L. 2019, c. 518; P.L. 2021, c. 423; P.L. 2019, c. 44; and P.L. 2021, 253. Specifically, P.L. 2019, c. 376, expanded the scope of the New Jersey Public Works Contractor Registration Act (PWCRA), N.J.S.A. 34:11-56.48 et seq., to cover not only contractors who enter contracts for the performance of "public work," as that term is defined in the New Jersey Prevailing Wage Act (PWA), N.J.S.A. 34:11-56.25 et seq., but to also cover contractors who are required to pay its workers the prevailing wage rate "by any other provision of law." As a result, the Department is proposing an amendment to the definition of the term "contractor" at N.J.A.C. 12:62-1.2, and an amendment at N.J.A.C. 12:62-2, which describes the registration requirement, so as to add the phrase, "or for which payment of the prevailing wage is required by any other provision of law."

P.L. 2019, c. 518, added new definitions at N.J.S.A. 34:11-56.50 of the PWCRA for the terms, "apprenticeship agreement," "apprenticeship cohort," "apprenticeship committee," "apprenticeable occupation," "apprenticeship program," "completion rate," "sponsor," and amended the existing statutory definition for the term "registered apprenticeship program." As a result, the Department is proposing amendments at N.J.A.C. 12:62-1.2, which would add the above-listed new definitions from the PWCRA and amend the Department's existing regulatory definition for the term "registered apprenticeship program" in a manner consistent with the PWCRA.

P.L. 2021, c. 423, amended the PWCRA to:

(1) Impose minimum requirements (within Section 6, at P.L. 2021, c. 423) upon registered apprenticeship programs exclusively for the purpose of their use by contractors registered to perform public work in New Jersey to comply with the apprenticeship requirement at N.J.S.A. 34:11-65.52(a)(6) (and not for the purpose of affecting the apprenticeship program's registration status with the United States Department of Labor);

(2) Require that each registered apprenticeship program in which a contractor "participates" must meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7;

(3) Require each applicant, as a condition to being registered as a public works contractor, to certify that the registered apprenticeship program or programs in which it participates meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7;

(4) Delineate the sanctions that may be imposed by the Department against a contractor who is "participating in" a registered apprenticeship program that does not meet all of the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7;

(5) Impose a continuing obligation on registered public works contractors between registration certificate renewal cycles to comply with each of the requirements at N.J.S.A. 34:11-56.52, including the requirement at N.J.S.A. 34:11-56.52(a)(6), that the contractor participate in a registered apprenticeship program for each craft that it employs in the performance of public work;

(6) Describe the circumstances under which a contractor who fails to comply with the requirements at N.J.S.A. 34:11-56.52 between registration certificate renewal cycles will suffer a revocation of its contractor registration certificate;

(7) Add to the existing list of causes for a disorderly persons offense, the willful making or causing to be made of a false, deceptive, or fraudulent statement on a public works contractor registration form;

(8) Impose a specific set of penalties for conviction of such a disorderly persons offense; and

(9) Increase the annual non-refundable public works contractor registration fee from \$ 300.00 to \$ 500.00, and the optional two-year non-refundable registration renewal fee from \$ 500.00 to \$ 750.00.

As a result of P.L. 2021, c. 423, the Department is proposing the following changes at N.J.A.C. 12:62:

(1) Proposed new N.J.A.C. 12:62-2.8, which would contain each of the requirements enumerated within Section 6 at P.L. 2021, c. 423, for registered apprenticeship programs in which contractors "participate" as a condition to being registered by the Department as a public works contractor pursuant to N.J.S.A. 34:11-56.52(a)(6);

(2) An amendment at N.J.A.C. 12:62-2.1, which would add two new requirements to the contractor registration application, namely: (i) a statement by the contractor that the registered apprenticeship program or programs in which it participates meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7; and (ii) a statement by the contractor that it is in possession of documentation that will be made [page=1159] available to the Department, upon request, establishing that the registered apprenticeship program or programs in which the contractor participates meet all of the requirements at N.J.A.C. 12:62-2.8, and 29 CFR 29.3 through 29.7;

(3) Amendments at N.J.A.C. 12:62-2.4, regarding denial, suspension, or revocation of a public works contractor registration certificate, to indicate that: (i) if it is determined that a registered apprenticeship program in which the contractor participates does not meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7, that determination will result in initial registration application denial, registration renewal denial, revocation, or suspension of the contractor's certificate of registration to perform public work in New Jersey, subject to the contractor's right to request a hearing pursuant to N.J.S.A. 34:11-56.56; (ii) if it is determined that a registered apprenticeship program in which a contractor participates does not meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7, that determination shall result not only in initial registration application denial, registration renewal denial, revocation, or suspension of that contractor's certificate of registration to perform public work in New Jersey, but also shall result in the initial registration application denial, registration renewal denial, revocation, or suspension of every contractor who would be meeting the apprenticeship requirement through participation in the non-compliant registered apprenticeship program, provided that any initial registration application denial, registration renewal denial, revocation, or suspension shall be subject to the requirements at N.J.S.A. 34:11-56.56, including the contractor's right to request a hearing; and (iii) a determination that a registered apprenticeship program does not meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7, shall only impact the contractor's ability to obtain or maintain its public works contractor registration certificate pursuant to the PWCRA, and shall not affect the status of the registered apprenticeship program for the purpose of its continuing operation in New Jersey;

(4) Proposed new N.J.A.C. 12:62-2.7 states that each contractor who is registered pursuant to the PWCRA to bid on, and perform, public work shall be under a continuing obligation between registration renewal cycles to ensure compliance with the requirements at N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1, and to impose upon each registered public works contractor an affirmative obligation between registration certificate renewal cycles to provide written notification to the Department of certain changes having occurred, such as a change in ownership of the contractor, a change in the principal place of business address or telephone number of the contractor, a change in

business structure of the contractor, a change in the names and addresses of corporate officers or persons with financial interest of the contractor and the percentage of interest of the latter, a change in the contractor's tax identification number or unemployment insurance registration number, a change in the licenses, registrations, or certificates held by the contractor, a change in the craft or crafts employed by the contractor in the performance of public work, a change in the registered apprenticeship program or programs in which the contractor participates, and changes to other "relevant and appropriate information" required by the Department to be included on the contractor registration certificate application;

(5) Amendments at N.J.A.C. 12:62-2.4, regarding denial, suspension, or revocation of a public works contractor registration certificate, to describe the circumstances under which a contractor who fails to comply with the requirements at N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1 between registration certificate renewal cycles will suffer a suspension of its contractor registration certificate and the circumstances under which a contractor who fails to comply with the requirements at N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1 between registration certificate renewal cycles will suffer a revocation of its contractor registration certificate;

(6) Amendments at N.J.A.C. 12:62-2.3, Disorderly persons offense, to: (i) reflect the updated list of acts that, if committed by a contractor, constitute a disorderly persons offense; (ii) include the specific penalties enumerated in the law for such a disorderly persons offense; and (iii) indicate, as it states in the law, that where a contractor has made, or caused to be made, a false, deceptive, or fraudulent statement on a contractor registration certificate application in connection with the statutory and regulatory requirement that the contractor participate in a registered apprenticeship program for each craft that the contractor employs, and where the false, deceptive, or fraudulent statement was made by an officer or employee charged with the duty of completion of the contractor registration certificate application for a contractor, that officer or employee, upon conviction of the disorderly persons offense, shall be subject to punishment by the fine indicated at N.J.A.C. 12:62-2.3, or by imprisonment not exceeding six months, or both; and

(7) Amendments at N.J.A.C. 12:62-2.1, so as to reflect the increases to the non-refundable annual registration fee and the optional two-year non-refundable registration fee.

P.L. 2019, c. 44, amended the definition at N.J.S.A. 34:11-56.26 of the PWA for the term, "custom fabrication," to include not only the fabrication of plumbing, heating, cooling, ventilation, or exhaust duct systems, and mechanical insulation, but also, "any other fabrication which is either of components or structures pre-fabricated to specifications for a particular project of public work or of other materials finished into components without further modification for use in a project of public work or for use in a type or classification of a project of public work." P.L. 2021, c. 253, amended the definition at N.J.S.A. 34:11-56.26 of the PWA for the term, "custom fabrication," further, so as to include "one or more signs in a project which cost a total of more than \$ 30,000 and are part of a project upon completion." As a result, the Department is proposing to replace the definition of the term "custom fabrication," which appears at N.J.A.C. 12:62-1.2, that would be consistent with the statute.

Not directly related to any particular provision at P.L. 2021, c. 423, but prompted by the comprehensive Department review of N.J.A.C. 12:62 occasioned by the passage of P.L. 2021, c. 423, and the other laws listed above, the Department is proposing to amend N.J.A.C. 12:62-2.2 to clarify that in order for a certificate of registration issued by the Department, the applicant must not simply submit a completed form and fee (which is what the rule currently states), but must also be found by the Department to have met all of the requirements for registration found at N.J.S.A. 34:56.52 and N.J.A.C. 12:62-2.1.

Also prompted by the comprehensive departmental review of N.J.A.C. 12:62 occasioned by the passage of P.L. 2021, c. 423, and the other laws listed above, the Department is proposing amendments at N.J.A.C. 12:62-2.4, regarding denial, suspension, and revocation of a contractor's registration certificate, which would incorporate at N.J.A.C. 12:62, provisions of the PWCRA that empower the Department to impose an immediate suspension of a contractor's registration certificate pending revocation. The PWCRA states that the Director of the Division of Wage and Hour Compliance, within the Department, may order the immediate suspension of a contractor's registration certificate pending revocation if the Director determines that ordering such an immediate suspension would be "in the public interest." Within the proposed amendments it states that when the Director is determining whether an

immediate suspension pending revocation would be in the "public interest," the Director shall consider among the following factors: (1) the contractor's history of violations of the PWA, PWCRA, or the rules promulgated by the Department to implement those laws, namely, N.J.A.C. 12:60 and 12:62; (2) the seriousness of the alleged violation or violations that form the basis for the underlying revocation action; (3) whether an immediate suspension pending revocation is necessary in order to ensure that workers will not be harmed by the contractor's conduct on a public works project or projects during the pendency of the contractor's hearing on the merits of the underlying registration certificate revocation; and (4) other aggravating factors, such as whether the contractor has falsified testimony or statements, has attempted to evade the Department's investigation, has attempted to intimidate or coerce workers from cooperating with the Department's investigation, whether there is a history of the contractor not adhering to settlement agreements regarding the payment of wages, fees, and/or penalties, and whether the contractor has a history of hiring subcontractors who have been found to be in violation of the PWA, the PWCRA, or the rules promulgated by the Department to implement those laws, namely, N.J.A.C. 12:60 and 12:62. This list of factors is modeled, in part, on the factors set forth at existing N.J.A.C. 12:60-7.3, for consideration by the Director when determining whether to impose an immediate suspension pending debarment pursuant to the PWA. The PWA and the PWCRA are two parts of one overall legislative scheme, and it seems appropriate that the same or similar criteria should be applied [page=1160] by the Director when determining whether to impose an immediate suspension under both laws.

The amendments would also indicate, as expressly required at P.L. 2021, c. 423, that whereas an immediate suspension of a contractor's registration certificate pending revocation will not ordinarily have an effect on the registration certificate of other contractors or subcontractors in the "contractual chain," if "the registration form for the contractual chain of contractors and subcontractors was filed by a sponsor," then, "all of the contractors of whatever tier who participated in the sponsor's apprenticeship program shall be suspended and their registrations shall be revoked by the Commissioner."

Finally, as part of the comprehensive review of N.J.A.C. 12:62 mentioned above, it came to the Department's attention that the address to which requests for hearings pursuant to the PWCRA must be submitted to the Division of Wage and Hour Compliance does not include an email address. Consequently, the Department is proposing an amendment at N.J.A.C. 12:62-2.6(b)1, which would add an email address to the existing mailing address that appears within the rule.

As the Department has provided a 60-day comment period for this notice of proposal, the notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The vast majority of the proposed amendments and new rules either mirror P.L. 2019, c. 376; P.L. 2019, c. 518; P.L. 2021, c. 423; P.L. 2019, c. 44; and P.L. 2021, c. 253, or are necessitated by those laws. Therefore, whatever positive or negative social impact might be felt would derive in the first instance from those laws and not the proposed amendments and new rules. That said, it is the Department's belief that the proposed amendments and new rules would have a positive social impact in that they would minimize any possible confusion as to questions of PWCRA coverage, the prerequisites, and continuing requirements for registration of a contractor under the PWCRA, the sanctions which may be imposed against contractors under the PWCRA, and the procedures for exercise of appeal rights by contractors against whom sanctions are assessed by the Department. Furthermore, the proposed amendments and new rules would have a positive social impact in that they would assist the Department in its effort to ensure that only responsible employers who adhere to New Jersey law and who value and are contributing on an ongoing basis to the development in this State of a highly trained and highly skilled workforce, are benefiting from taxpayer supported public works construction contracts. Finally, with specific regard to those proposed amendments and new rules that would assist the Department in its effort to enforce the PWCRA's apprenticeship requirement, the beneficial social impact of registered apprenticeships described at 51 N.J.R. 806(a) is relevant. That is, the enhanced level of orientation and training that comes with registered apprenticeship programs inures, of course, to the benefit of the individuals receiving that training, but also to their employers, co-workers, and to the general public, in that registered apprenticeship programs promote a culture of workplace safety that saves both lives and money. Registered apprenticeship programs are an important tool for developing a skilled

workforce. Access to that skilled workforce benefits the State's employers and is critical for New Jersey's social and economic future.

Economic Impact

As indicated in the Social Impact statement, the vast majority of the proposed amendments and new rules either mirror the above-listed laws or are necessitated by them. Therefore, whatever positive or negative economic impact might be felt by employers would derive in the first instance from the above-listed laws, not from the proposed amendments and new rules. Nevertheless, in that many of the proposed amendments and new rules would assist the Department in its effort to enforce the PWCRA's apprenticeship requirement, this might result in an increase in the number of registered apprenticeship programs in the State. The economic benefit of apprenticeship programs for both workers and employers is well established and discussed at length at 51 N.J.R. 806(a).

The proposed amendments and new rules would reflect an increase in registration fees, as well as heightened penalties for the disorderly persons offense associated with violating the PWCRA. The former would result in a higher cost to all registered contractors but is necessary for the Department's effective enforcement of the PWCRA. The latter would impact only those contractors who run afoul of the PWCRA. Both the increase in registration fees and heightened penalties for the disorderly persons offense associated with violating the PWCRA are expressly required by P.L. 2021, c. 423, and the Department has no discretion to deviate from that statutory mandate.

Finally, it is the Department's belief that the proposed amendments and new rules would have a positive economic impact in that they would minimize any possible confusion as to questions of PWCRA coverage, the prerequisites, and continuing requirements for registration of a contractor under the PWCRA, the sanctions that may be imposed against contractors under the PWCRA, and the procedures for exercise of appeal rights by contractors against whom sanctions are ordered by the Department. It is the Department's hope that minimizing confusion as to these issues will avoid costs for those impacted by the above-cited laws of unnecessary litigation, which might otherwise result.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rules are not subject to any Federal standards or requirements. Specifically, the proposed amendments and new rules are governed by State law, N.J.S.A. 34:11-56.48 et seq., which requires that contractors register with the Department of Labor and Workforce Development as a condition to performing "public work," as that term is defined within the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. There are no Federal standards or requirements that impose a registration requirement as a condition to performing "public work," as that term is defined within the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

Inasmuch as P.L. 2021, c. 423, requires that each applicant as a condition to being registered as a public works contractor in New Jersey certify to the Department that the registered apprenticeship program or programs in which it participates meet the requirements at 29 CFR 29.3 through 29.7, and inasmuch as the proposed amendments and new rules reflect that statutory requirement, the proposed amendments and new rules have a connection to the Federal apprenticeship rules. However, as mentioned in the Summary above, and as reflected at both P.L. 2021, c. 423, and the amendments and new rules being proposed to implement P.L. 2021, c. 423, these minimum requirements are being imposed exclusively for the purpose of assessing whether public works contractor registration applicants and registrants in New Jersey comply with the apprenticeship requirement at N.J.S.A. 34:11-65.52(a)(6) and are not being proposed for the purpose of affecting the apprenticeship program's registration status with the United States Department of Labor.

Jobs Impact

The Department does not anticipate that the proposed amendments and new rules would result in either the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments and new rules would have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rules would impose reporting, recordkeeping, and compliance requirements on small businesses, as that term is defined within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, pursuant to the P.L. 2021, c. 423, and the implementing rulemaking amendments and new rules, all contractors, regardless of size, who wish to register with the Department of Labor and Workforce Development to perform public work would be required to certify to the Department that the registered apprenticeship program or programs in which the contractor participates meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7. The contractor would also be required to retain and make available to the Department for inspection upon request documentation establishing that the registered apprenticeship program or programs in which the contractor participates meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7. As indicated within 51 N.J.R. 806(a), which addressed amendments at N.J.A.C. 12:62 for implementation of P.L. 2019, c. 21, the Department has already gone to some lengths to ensure that its rules regarding the PWCRA's apprenticeship requirement ease the potential [page=1161] administrative burden on covered employers, including small employers. There is nothing more that the Department can do on this front within the four corners of the statute. That is, P.L. 2019, c. 376, expands the scope of the PWCRA to cover not only contractors who enter into contracts for the performance of "public work," as that term is defined in the PWA, but also to cover contractors who are required to pay its workers the prevailing wage rate "by any other provision of law." P.L. 2019, c. 518, adds new definitions within N.J.S.A. 34:11-56.50 of the PWCRA for the terms, "apprenticeship agreement," "apprenticeship cohort," "apprenticeship committee," "apprenticeable occupation," "apprenticeship program," "completion rate," and "sponsor," and amends the existing statutory definition for the term "registered apprenticeship program." P.L. 2021, c. 423, amends the PWCRA to: (1) impose minimum requirements (within Section 6, of P.L. 2021, c. 423) upon registered apprenticeship programs exclusively for the purpose of their use by contractors registered to perform public work in New Jersey in complying with the apprenticeship requirement at N.J.S.A. 34:11-65.52(a)(6); (2) require that each registered apprenticeship program in which a contractor "participates" must meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7; (3) require each applicant as a condition to being registered as a public works contractor to certify that the registered apprenticeship program or programs in which it participates meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7; (4) delineate the sanctions that may be imposed by the Department against a contractor who is "participating in" a registered apprenticeship program that does not meet all of the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7; (5) impose a continuing obligation on registered public works contractors between registration certificate renewal cycles to comply with each of the requirements at N.J.S.A. 34:11-56.52, including the requirement at N.J.S.A. 34:11-56.52(a)(6) that the contractor participate in a registered apprenticeship program for each craft that it employs in the performance of public work; (6) describe the circumstances under which a contractor who fails to comply with the requirements at N.J.S.A. 34:11-56.52 between registration certificate renewal cycles will suffer a suspension of its contractor registration certificate; (7) describe the circumstances under which a contractor who fails to comply with the requirements at N.J.S.A. 34:11-56.52 between registration certificate renewal cycles will suffer a revocation of its contractor registration certificate; (8) add to the existing enumerated list of causes for a disorderly persons offense, the willful making, or causing to be made, of a false, deceptive, or fraudulent statement on a public works contractor registration form; (9) impose a specific set of penalties for conviction of such a disorderly persons offense; and (10) increase the annual non-refundable public works contractor registration fee from \$ 300.00 to \$ 500.00, and the optional two-year non-refundable registration renewal fee from \$ 500.00 to \$ 750.00. P.L. 2019, c. 44, amends the definition at N.J.S.A. 34:11-56.26 of the PWA for the term, "custom fabrication," to include not only the fabrication of plumbing, heating, cooling, ventilation, or exhaust duct systems, and mechanical insulation, but also, "any other fabrication which is either of components or structures pre-fabricated to specifications for a particular project of public work or of other materials finished into components without further modification for use in a project of public work or for use in a type or classification of a project of public work," and P.L. 2021, c. 253, amends the definition at N.J.S.A. 34:11-56.26 of the PWA for the term, "custom fabrication," further, so as to include "one or more signs in a project which cost a total of more than \$ 30,000 and are part of a project upon completion." The Department has no discretion through rulemaking to deviate

from these statutory mandates, regardless of whether doing so might lessen the burden of compliance on any particular class of employers, including small employers.

Housing Affordability Impact Analysis

The proposed amendments and new rules would not evoke a change in the average costs associated with housing or on the affordability of housing. The basis for this finding is that the proposed amendments and new rules pertain only to public works contractor registration. The proposed amendments and new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed amendments and new rules would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments and new rules pertain only to public works contractor registration. The proposed amendments and new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated with boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

12:62-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Apprenticeable occupation" means a skilled trade or technical occupation that is included on the United States Department of Labor's "List of Occupations Officially Recognized as Apprenticeable by the Office of Apprenticeship."

"Apprenticeship agreement" means a written agreement, complying with 29 CFR 29.7, between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for a program sponsor, which contains the terms and conditions of the employment and training of the apprentice.

"Apprenticeship cohort" means the group of individual apprentices registered to a specific individual program during a one-year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

"Apprenticeship committee" means those persons designated by the sponsor to administer the apprenticeship program. An apprenticeship committee may be either joint or non-joint, as follows:

1. A joint apprenticeship committee is composed of an equal number of representatives of the employer or employers and of the employees represented by a bona fide collective bargaining agent or agents.

2. A non-joint apprenticeship committee, which may also be known as a unilateral or group non-joint apprenticeship committee, has employer representatives, but does not have a bona fide collective bargaining agent as a participant. A non-joint apprenticeship committee may include employees.

"Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, as required pursuant to 29 CFR 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

...

"Completion rate" means the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within one year of the projected completion date.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity, or successor thereof, who enters into a contract [which] **that** is subject to the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, [c.150] c. 150, N.J.S.A. 34:11-56.25 et seq., **or who is required to pay its workers the prevailing wage by any other provision of law**, and includes any subcontractor or lower tier subcontractor of a contractor as defined in this section.

...

[page=1162] ["Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems and mechanical insulation.]

"Custom fabrication" means: (1) the fabrication of any of the following: plumbing, heating, cooling, ventilation or exhaust systems, mechanical insulation, or one or more signs in a project that cost a total of more than \$ 30,000 and are part of a project upon completion; or (2) any other fabrication that is either of components or structures pre-fabricated to specifications for a particular project of public work or of other material finished into components without further modification for use in a project of public work or for use in a type or classification of a project of public work.

...

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

...

"Registered apprenticeship program" or **"program"** means an apprenticeship program that is registered with, and approved by, the [USDOL] **United States Department of Labor**, that provides each trainee with combined classroom and on-the-job training in an occupation recognized as an apprenticeable occupation, and which [meets the program standards of enrollment and graduation under 29 CFR 29.6.] **involves the attainment of manual, mechanical, or technical skills and knowledge that, in accordance with the industry standard for the specific apprenticeable occupation, are outlined pursuant to 29 CFR 29.5.**

"Sponsor" means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is [(or is to be)] **or will be** registered or approved.

...

SUBCHAPTER 2. PUBLIC WORKS CONTRACTOR REGISTRATION

12:62-2.1 Registration required

(a) No contractor shall bid on any contract for public work, **or for which payment of the prevailing wage is required by any other provision of law**, unless the contractor is registered pursuant to the Act. In addition:

1.-2. (No change.)

(b) (No change.)

(c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration and certify to the truthfulness and accuracy of all statements made, and documents submitted, in connection with the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

1.-10. (No change.)

11. A statement that the contractor is in possession of documentation that will be made available to the Department, upon request, establishing that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs; [and]

12. A statement that the registered apprenticeship program or programs in which the contractor participates meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3, 29.4, 29.5, 29.6, and 29.7;

13. A statement that the contractor is in possession of documentation that will be made available to the Department upon request, establishing that the registered apprenticeship program or programs in which the contractor participates meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3, 29.4, 29.5, 29.6, and 29.7; and

[12.] 14. (No change in text.)

(d) The contractor shall pay an initial, non-refundable, annual registration fee of [\$ 300.00] **\$ 500.00** to the Commissioner. The non-refundable fee for the second annual registration shall be [\$ 300.00] **\$ 500.00**. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of [\$ 500.00] **\$ 750.00**. However, a two-year registration will only be granted if the applicant has not violated the Act and/or the Prevailing Wage Act or these rules during the period of licensure preceding submission of the renewal application.

(e)-(j) (No change.)

12:62-2.2 Issuance and term of a certificate of registration

(a) Upon receipt of the fee, a fully completed form and all documentation required [under] **pursuant to N.J.A.C. 12:62-2.1, and upon a finding that the applicant for the certificate of registration has met all of the requirements set forth at N.J.S.A. 34:56.52 and N.J.A.C. 12:62-2.1**, the Commissioner shall issue a certificate of registration to the contractor within 30 days.

(b)-(c) (No change.)

(d) Each contractor shall, after the bid is made and prior to the awarding of the [public works] contract, submit to the public entity [for whom the work is to be performed], **including, but not limited to, any authority, board, or commission**, the certificates of registration for all subcontractors listed in the bid proposal.

(e)-(f) (No change.)

12:62-2.3 Disorderly persons offense

(a) A contractor who commits any of the following acts shall be guilty of a disorderly persons offense **and shall, upon conviction, be subject to punishment by a fine of not less than \$ 2,500, nor more than \$ 25,000, and disqualification from bidding on, or engaging in, public work for a period of up to three years:**

1.-4. (No change.)

5. Paying or agreeing to pay wages at a rate less than the rate prescribed by the ["]New Jersey Prevailing Wage Act,["] P.L. 1963, c. 150, N.J.S.A. 34:11-56.25 et seq.; [or]

6. Willfully making or causing to be made, a false, deceptive, or fraudulent statement on the contractor registration certificate application; or

[6.] 7. (No change in text.)

(b) Where the contractor has made, or has caused to be made, a false, deceptive, or fraudulent statement on the contractor registration certificate application in connection with the statutory and regulatory requirement that the contractor participate in a registered apprenticeship program for each craft that the contractor employs, and where the false, deceptive, or fraudulent statement was made by an officer or employee charged with the duty of completion of the contractor registration certificate application for a contractor, that officer or employee, upon conviction, shall be subject to punishment by the fine indicated in this section or by imprisonment not exceeding six months, or both.

12:62-2.4 Denial, suspension, or revocation of registration

(a)-(d) (No change.)

(e) If it is determined that a registered apprenticeship program in which the contractor participates does not meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3, 29.4, 29.5, 29.6, and 29.7, that determination shall, subject to the requirements at N.J.S.A. 34:11-56.56, including the contractor's right to request a hearing, result in initial registration application denial, registration renewal denial, revocation, or suspension of the certificate of registration to perform public work in New Jersey.

(f) A determination pursuant to (e) above that a registered apprenticeship program does not meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3, 29.4, 29.5, 29.6, and 29.7, shall only impact the contractor's ability to obtain or maintain its public works contractor registration certificate pursuant to the Act, and shall not affect the status of the registered apprenticeship program for the purpose of its continued operation in New Jersey.

(g) A determination pursuant to (e) above that a registered apprenticeship program in which a contractor participates does not meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3, 29.4, 29.5, 29.6, and 29.7, shall result not only in initial registration application denial, registration renewal denial, revocation, or suspension of that contractor's certificate of registration to perform public work in New Jersey, but also shall result in the initial registration application denial, registration renewal denial, [page=1163] revocation, or suspension of every contractor who is meeting the apprenticeship program participation requirement through participation in the non-compliant registered apprenticeship program; provided that any initial registration application denial, registration renewal denial, revocation, or suspension shall be subject to the requirements at N.J.S.A. 34:11-56.56, including the contractor's right to request a hearing.

(h) When, between registration certificate renewal cycles, it is determined by the Department that a contractor has failed to comply with the requirements at N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1, provided it is also determined by the Department that the failure to comply with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1 existed at the time of the contractor's most recent certificate of registration application, whether that application was for contractor registration renewal or initial approval, the Department shall consider the resulting failure of the contractor to accurately complete its registration application to have been the making, or causing to be made, of a false, deceptive, or fraudulent statement on the public works contractor registration form, which constitutes grounds for revocation of the contractor's certificate of registration.

(i) When, between registration certificate renewal cycles, it is determined by the Department that a contractor has failed to comply with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1, but where it is determined by the Department that the failure to comply with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1 did not exist at the time of the contractor's most recent certificate of registration application, whether that application was for contractor registration renewal or initial approval, the Department shall suspend the contractor's

certificate of registration either until the contractor establishes compliance with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1 or until the beginning of the next registration certificate renewal cycle, whichever occurs first.

(j) When a contractor has had its registration certificate either revoked or suspended pursuant to (h) or (i) above, for failure between registration certificate renewal cycles to comply with N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1, that registration certificate revocation or suspension shall be taken into consideration by the Department as a prior offense when determining whether to approve any subsequent certificate of registration application.

(k) The Director may order the immediate suspension of a contractor's registration certificate prior to a formal hearing on the revocation of the contractor's registration certificate if the Director determines that ordering an immediate suspension is in the public interest. For the purpose of this subsection, the determination of the Director as to whether the immediate suspension of a contractor's registration certificate would be in the "public interest," shall require consideration of among the following factors:

1. Whether the contractor has a history of a previous violation or violations of the New Jersey Prevailing Wage Act, New Jersey Public Works Contractor Registration Act, or the rules promulgated by the Department, in accordance with those laws, namely, N.J.A.C. 12:60 and this chapter;

2. The seriousness of the alleged violation or violations that form the basis for the underlying revocation action;

3. Whether an immediate suspension pending revocation is necessary in order to ensure that workers will not be harmed by the contractor's conduct on a public works project or projects during the pendency of the contractor's hearing on the merits of the underlying registration certificate revocation; and

4. Other aggravating factors, including, but not limited to, the following:

i. Falsified testimony or statements;

ii. Attempts to evade investigations conducted by the Department;

iii. Attempts to intimidate or coerce workers from cooperating with the Department and its representatives in the investigation of the contractor;

iv. A history of not adhering to prior settlement agreements regarding the payment of wages, fees, and/or penalties; and

v. A history of hiring subcontractors who have been found to be in violation of the New Jersey Prevailing Wage Act or the New Jersey Contractor Registration Act, or the rules promulgated by the Department to implement those laws, namely, N.J.A.C. 12:60 and this chapter.

(l) When the Director orders the immediate suspension of a contractor's registration certificate, the contractor suspended shall be furnished with a written notice, which may be included in the notification of registration certificate revocation, stating:

1. That immediate suspension of the contractor's registration certificate pending revocation has been imposed, the date on which it becomes effective and the reason therefor; and

2. That if the contractor chooses to contest the immediate suspension pending revocation, the contractor shall notify the Department, in writing, of that decision within 72 hours of receipt of the notification of immediate suspension pending revocation.

(m) The immediate suspension of the contractor's registration certificate shall not take effect prior to the expiration of the 72-hour period during which the contractor has an opportunity to request a Department-

level hearing. If the contractor does not request a Department-level hearing within the 72-hour period, the immediate suspension shall take effect at the end of the 72-hour period. If the contractor requests a Department-level hearing within the 72-hour period, the immediate suspension shall take effect only after the Director has conducted the Department-level hearing and has issued a written decision.

(n) A Department-level hearing on the immediate suspension pending revocation will be held before the Director, or his or her designee, within seven business days of receipt by the Department of the contractor's notification that it wishes to contest the immediate suspension pending revocation. The Director shall permit the contractor to present evidence at the Department-level hearing.

(o) Within five business days of the Department-level hearing on the immediate suspension pending revocation, the Director shall issue a written decision either upholding or reversing the immediate suspension of the contractor's registration certificate pending revocation.

(p) If the contractor disagrees with the written decision of the Director regarding the immediate suspension of the contractor's registration certificate pending revocation, the contractor may appeal the decision to the Commissioner, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(q) If the Director orders the immediate suspension of a contractor's registration certificate pending revocation, the violation shall have no effect on the registration of any other contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor, unless the registration form for the contractual chain of contractors and subcontractors was filed by a sponsor, in which case all of the contractors of whatever tier who participated in the sponsor's apprenticeship program shall be suspended and their registrations shall be revoked, subject to the appeal rights set forth in this chapter.

12:62-2.6 Appeals

(a) (No change.)

(b) All requests for hearing shall be filed within 10 business days from the date of receipt of the notice. The Commissioner, or his or her designee, shall issue the final decision, in accordance with the applicable provisions of the Administrative Procedures Act and the Uniform Administrative Procedure Rules.

1. All requests for hearing shall be, in writing, and shall be directed to the following address:

NJ Department of Labor and Workforce Development
Division of Wage and Hour Compliance
PO Box 389
3rd Floor
Trenton, NJ 08625-0389

or email: WHPublicContracts@dol.nj.gov

(c)-(g) (No change.)

[page=1164] 12:62-2.7 Continuing compliance obligation

(a) Each contractor that is registered pursuant to the Act to bid on and perform public work shall be under a continuing obligation between registration certificate renewal cycles to ensure compliance with the requirements at N.J.S.A. 34:11-56.52 and N.J.A.C. 12:62-2.1.

(b) Each contractor who is registered pursuant to the Act to bid on and perform public work shall between registration certificate renewal cycles provide written notification to the Division of any change to the

information submitted to or certified to the Department by the contractor on the public works contractor registration application within five calendar days of the change having occurred.

(c) The changes that the contractor must provide written notification to the Department, between registration certificate renewal cycles, pursuant to (b) above shall include, but not be limited to, the following:

1. Change in ownership of the contractor;
2. Change in principle business address or telephone number of the contractor;
3. Change in business structure of the contractor (that is, sole proprietorship, partnership, corporation, or other form of business entity);
4. Except if the contractor is a publicly traded corporation, a change in the name and address of each person with an ownership interest in the contractor and the percentage interest.
 - i. If the contractor is a publicly traded corporation, a change in the names and addresses of the corporation's officers;
5. A change in the contractor's tax identification number or unemployment insurance registration number;
6. A change in the licenses, registrations, or certificates held by the contractor that are required by State law, including registrations or certificates required to do business in the State of New Jersey;
7. A change in the workers' compensation coverage held by the contractor;
8. A change in the craft or crafts employed by the contractor in the performance of public work;
9. A change in the registered apprenticeship program or programs in which the contractor participates for each craft that the contractor employs in the performance of public work, including, but not limited to, a change in the sponsor of the registered apprenticeship program, a change in status of the registered apprenticeship program with the United States Department of Labor, or a change, if applicable, to the ERISA-covered apprenticeship training program trust fund; and
10. A change to any of the "other relevant and appropriate information" required by the Department to be included on the contractor registration certificate application.

(d) All written notifications pursuant to (a) above shall be directed to the address listed at N.J.A.C. 12:62-2.6(b)1.

(e) Failure by a contractor to provide the written notification required pursuant to this section shall be grounds for suspension or revocation of the contractor's registration certificate pursuant to N.J.A.C. 12:62-2.4.

12:62-2.8 Requirements for registered apprenticeship program

(a) A registered apprenticeship program shall require the completion of the on-the-job training hours that conform to the industry standards for learning the skills of a specific craft or trade, as well as on-the-job organized, related instruction in technical subjects related to the specific apprenticeable occupation in conformance with industry standards. The industry standards for program completion shall be based upon the training requirements, as registered and certified by the United States Department of Labor for each individual occupation and craft title published by the United States Department of Labor Employment and Training Administration.

(b) The length of a program shall depend upon the complexity of the occupation. Program duration shall be not less than one year and not more than six years. During the program, the apprentice shall receive both structured on-the-job-training and related classroom instruction. For each year of the program, the apprentice shall receive at least 2,000 hours of on-the-job-training and at least 144 hours of related classroom instruction.

(c) The program shall include all other recommended minimum requirements as set forth at 29 CFR 29.5 including, but not limited to, a successful demonstration of competency, the registration of program standards, the submission and publication of program completion rates that meet the program performance standards of enrollment and completion rates as set forth at 29 CFR 29.6, and meet the training recommendations, the terms, and conditions of the employment and training agreement between the employer and the apprentice, and the publication of the graduated wages scales to be paid to the apprentice as set forth at 29 CFR 29.7.

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