

SENATE No. 00969

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to displaced workers..

PETITION OF:

NAME:

Steven A. Tolman

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

SENATE No. 00969

By Mr. Tolman, petition (accompanied by bill, Senate, No. 969) of Tolman for legislation relative to displaced workers [Joint Committee on Labor and Workforce Development].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 722 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to displaced workers..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Definitions.

2 (A) "Awarding authority" means any person that awards or otherwise contracts for
3 janitorial or building maintenance service performed within the Commonwealth including any
4 subcontracts for janitorial or building maintenance services.

5 (B) "Contractor" means any person that employs 10 or more individuals and that enters
6 into a service contract with the awarding authority for janitorial or building maintenance service.

7 (C) "Employee" means any person employed as a service employee of a subcontractor
8 who works at least 15 hours per week and whose primary place of employment is in the

9 Commonwealth under a contract to provide janitorial or building maintenance services.
10 "Employee" does not include a person who is a managerial, supervisory, or confidential
11 employee, including those employees who would be so defined under the federal Fair Labor
12 Standards Act.

13 (D) "Person" means any individual, proprietorship, partnership, joint venture,
14 corporation, limited liability company, trust, association, educational institution or other entity
15 that may employ individuals or enter into contracts.

16 (E) "Service contract" means any contract that has the principal purpose of providing
17 janitorial or building maintenance services through the use of service employees.

18 (F) "Subcontractor" means any person who is not an employee who enters into a
19 contract with a contractor at any tier or who assists the contractor or subcontractor in performing
20 a service contract.

21 (G) "Successor service contract" means a service contract for the performance of
22 essentially the same services as were previously performed pursuant to a different service
23 contract at the same facility that terminated within the previous 30 days. A service contract
24 entered into more than 30 days after the termination of predecessor service contract shall be
25 considered a "successor service contract" if its execution was delayed for the purpose of
26 avoiding application of this chapter.

27 SECTION 2. Notification.

28 (A) As soon as an awarding authority awards a service contract to a successor
29 contractor or successor subcontractor, the awarding authority shall notify the terminated

30 contractor or subcontractor that a successor service contract has been or will be awarded in place
31 of its contract. Such notice shall be in writing and shall identify the name and address of the
32 successor contractor. The terminated contractor shall, within three working days after receiving
33 that notification, provide to the successor contractor identified by the awarding authority, the
34 name, date of hire, and job classification of each employee employed at the site or sites covered
35 by the terminated service contract at the time of contract termination.

36 (B) If the terminated contractor has not learned the identity of the successor contractor,
37 if any, the terminated contractor or subcontractor shall provide that information to the awarding
38 authority, which shall be responsible for providing that information to the successor contractor as
39 soon as that contractor has been selected.

40 (C) The requirements of this selection shall be equally applicable to all subcontractors
41 of a terminated contractor.

42 SECTION 3. Retention of Displaced Workers

43 (A) A successor contractor or successor subcontractor shall retain for a 90-day
44 transition employment or until the employee has earned \$2,900, whichever is shorter, employees
45 who have been employed by the terminated contractor or its subcontractors, if any, for the
46 preceding four months or longer at the site or sites covered by the successor service contract.
47 This requirement shall be stated by awarding authorities in all initial bid packages that are
48 governed by this chapter.

49 (B) The successor contractor or successor subcontractor shall make a written offer of
50 employment to each employee, as required by this section, in the employee's primary language
51 or another language in which the employee is literate. That offer shall state the time within which

52 the employee must accept that offer, but in no case may the time be less than 10 days from the
53 date the notice is given nor later than 5 days prior to the commencement of the successor service
54 contract. Nothing in this section requires the successor contractor or successor subcontractor to
55 pay the same wages or offer the same benefits as were provided by the prior contractor or
56 subcontractor.

57 (C) If at any time the successor contractor or successor subcontractor, upon
58 commencing service under the subcontract determines that fewer employees are needed to
59 perform services under the successor service contract or successor subcontract than were
60 required by the terminated contractor under the terminated contract or terminated subcontract,
61 the successor contractor or successor subcontractor shall retain employees by seniority within
62 each job classification.

63 (D) The successor contractor or successor subcontractor, upon commencing service
64 under the successor service contract, shall provide a list of its employees and a list of employees
65 of its subcontractors providing services at the site or sites covered under that contract to the
66 awarding authority. These lists shall indicate which of these employees were employed at the site
67 or sites by the terminated contractor or terminated subcontractor. The successor contractor or
68 successor subcontractor shall also provide a list of any of the terminated contractor's employees
69 who were not retained either by the successor contractor or successor subcontractor, stating the
70 reason these employees were not retained.

71 (E) During the 90-day transition employment period, the successor contractor or
72 successor subcontractor shall maintain a preferential hiring list of eligible covered employees not
73 retained by the successor contractor or successor subcontractor from which the successor

74 contractor or subcontractor shall hire additional employees until such time as all of the
75 terminated contractor's or terminated subcontractor's employees have been offered employment
76 with the successor contractor or successor subcontractor.

77 (F) During the initial 90-day transition employment period, the successor contractor or
78 successor subcontractor shall not discharge without cause an employee retained pursuant to this
79 chapter. Cause shall be based only on the performance or conduct of the particular employee.

80 SECTION 4. Enforcement.

81 (A) An employee who was not offered employment or who has been discharged in
82 violation of this chapter by a successor contractor or successor subcontractor, or an agent of the
83 employee, may bring an action in any Superior Court of the Commonwealth having jurisdiction
84 over the party against:

85 (i) A successor contractor or successor subcontractor for any violation of any duty
86 imposed upon that successor contractor or successor subcontractor by this chapter, or

87 (ii) An awarding authority for any violation of any duty imposed upon that awarding
88 authority by this chapter.

89 (B) Upon finding a violation of this chapter, the court shall award backpay, including
90 the value of benefits, for each day during which the violation has occurred and continues to
91 occur. The amount of backpay shall be calculated as the greater of either of the following:

92 (i) The average regular rate of pay received by the employee during the last year of the
93 employee's employment in the same occupation classification multiplied by the average
94 hours worked during the last year of the employee's employment, or

95 (ii) The final regular rate of pay received by the employee at the time of termination of
96 the predecessor contract multiplied by the number of hours usually worked by the
97 employee.

98 (C) The court may order a preliminary or permanent injunction to stop the continued
99 violation of this chapter.

100 (D) If the employee or his or her agent is the prevailing party in the legal action, the
101 court shall award the employee or his or her agent reasonable attorney's fees and costs as part of
102 the costs recoverable.

103 (E) This section shall not be construed to limit an employee's right to bring a cause of
104 action for wrongful termination.

105 (E) Any contractor who violates this Chapter shall pay penalties per employee per day
106 of violation of \$50.00 to \$100.00. Each day a violation continues shall constitute a separate
107 violation.

108 SECTION 5. Severability.

109 If any provision or provisions of this chapter or any application thereof is held invalid
110 by any court of law, that invalidity shall not affect any other provisions or applications of this
111 chapter that can be given effect notwithstanding that invalidity.

112 SECTION 6. This chapter shall only apply to contracts entered into on or after January 1,
113 2007.