



LEXSTAT 43 NJR 270(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WAGE AND HOUR COMPLIANCE**

43 N.J.R. 270(a)

Proposed Amendment: *N.J.A.C. 12:60-2.1*

[Click here to view Interested Persons Statement](#)

Definitions of "Maintenance Work" and "Maintenance-Related Project"

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20*.

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

Proposal Number: PRN 2011-040.

A **public hearing** on the proposed amendments will be held on the following date at the following location:

Wednesday, March 2, 2011
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by April 8, 2011 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing to amend *N.J.A.C. 12:60-2.1* in order to implement P.L. 2009, c. 249, which modified the statutory definition of the term "maintenance work," as that term is used within the New Jersey Prevailing Wage Act (PWA), *N.J.S.A. 34:11-56.25* et seq. Specifically, P.L. 2009, c. 249, added to the existing definition of "maintenance work," the following sentence: "Maintenance work' also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids, and has an aggregate value exceeding \$ 50,000." *N.J.A.C. 12:60-2.1* does not currently contain a definition for the term "maintenance work." Consequently, the Department is proposing to add to *N.J.A.C. 12:60-2.1*, the statutory definition of the term "maintenance work," which would include the latter sentence, recently added to the statutory definition by P.L. 2009, c. 249. The Department is also proposing to add a definition for the term "maintenance-related project." Specifically, the term "maintenance-related project" would be defined to mean, "a project related to 'maintenance work' as that term is defined in this section."

As was explained in a January 19, 2010 notice of adoption regarding new rules at *N.J.A.C. 12:66*, the terms "maintenance work" and "maintenance" have two different meanings. (See *42 N.J.R. 492(a)*). That is, the term "maintenance work" is defined within the PWA to mean "the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased" (plus the sentence added by P.L. 2009, c. 249, which is quoted above), whereas the term "maintenance" is not defined within the PWA, but has come to be used colloquially to mean routine work that is not part of a larger job, but rather, is required to keep the facility operational. The former is covered under the PWA, whereas the latter is not. Consequently, if one were to read the term "maintenance-related project" to mean a project related to "maintenance," rather than to mean a project related to "maintenance work," the result would be that a certain type of work - "maintenance" - is not covered under the PWA, whereas work related to that uncovered work is covered under the PWA. This is illogical. Therefore, the Department must deduce that the Legislature meant for the term "maintenance-related project" to mean a project related to "maintenance work," a term which is defined in and covered under the PWA.

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

Social Impact

The proposed amendments would have a positive social impact in that they would eliminate any possible confusion among public works contractors as to the appropriate use of the term "maintenance work" in determining the scope of PWA coverage. The proposed amendments would also benefit the Department in that they would make clear to public works contractors the scope of the post-P.L. 2009, c. 249, PWA and thereby assist in a more effective enforcement by the Department of the law.

Economic Impact

The proposed amendments would have a positive economic impact upon public works contractors who, but for the proposed amendments, might misunderstand the requirements of the PWA and *N.J.A.C. 12:60* and, thereby, run the risk of incurring unnecessary expenses related to fines and penalties levied by the Department for violations of *N.J.A.C. 12:60*. As indicated above, the proposed amendments would eliminate any possible confusion among public works contractors with regard to the appropriate use of the term "maintenance work" in determining the scope of PWA coverage. This would presumably result in fewer violations and, consequently, the levying of fewer fines and penalties by the Department.

Federal Standards Statement

The proposed amendments are governed by the PWA and are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments would impose no reporting or recordkeeping requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. With regard to compliance requirements, the proposed amendments would require that prevailing wages be paid for "maintenance work," as that term is now defined under the PWA and as it would be defined under this chapter. The PWA does not differentiate between large and small businesses. Therefore, the Department must enforce the requirements of *N.J.A.C. 12:60* uniformly against all covered businesses, regardless of size. The Department does not anticipate that professional services will be required in order to comply with the proposed amendments.

Smart Growth Impact

The proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments pertain to enforcement of the PWA and have nothing whatsoever to do with housing.

Smart Growth Development Impact

The proposed amendments 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 pertain to enforcement of the [page=271] PWA and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the proposal follows (additions indicated in boldface **thus**):

SUBCHAPTER 2. DEFINITIONS

12:60-2.1 Definitions

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

...

"Maintenance-related project" means a project related to "maintenance work" as that term is defined within this section.

"Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. "Maintenance work" also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids and has an aggregate value exceeding \$ 50,000.

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