

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Tolman, Steven (SEN)**

*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:

Tolman, Steven (SEN)

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01107 OF 2007-2008.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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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.

2 Definitions.

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

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

8 (C) "Employee" means any person employed as a service employee of a subcontractor who works at  
9 least 15 hours per week and whose primary place of employment is in the Commonwealth under a  
10 contract to provide janitorial or building maintenance services. "Employee" does not include a person

11 who is a managerial, supervisory, or confidential employee, including those employees who would be so  
12 defined under the federal Fair Labor Standards Act.

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

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

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

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

## 25 Section 2. Notification.

26 (A) As soon as an awarding authority awards a service contract to a successor contractor or successor  
27 subcontractor, the awarding authority shall notify the terminated contractor or subcontractor that a  
28 successor service contract has been or will be awarded in place of its contract. Such notice shall be in  
29 writing and shall identify the name and address of the successor contractor. The terminated contractor  
30 shall, within three working days after receiving that notification, provide to the successor contractor  
31 identified by the awarding authority, the name, date of hire, and job classification of each employee

32 employed at the site or sites covered by the terminated service contract at the time of contract  
33 termination.

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

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

#### 40 Section 3. Retention of Displaced Workers

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

46 (B) The successor contractor or successor subcontractor shall make a written offer of employment to  
47 each employee, as required by this section, in the employee's primary language or another language in  
48 which the employee is literate. That offer shall state the time within which the employee must accept  
49 that offer, but in no case may the time be less than 10 days from the date the notice is given nor later  
50 than 5 days prior to the commencement of the successor service contract. Nothing in this section  
51 requires the successor contractor or successor subcontractor to pay the same wages or offer the same  
52 benefits as were provided by the prior contractor or subcontractor.

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

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

65 (E) During the 90-day transition employment period, the successor contractor or successor  
66 subcontractor shall maintain a preferential hiring list of eligible covered employees not retained by the  
67 successor contractor or successor subcontractor from which the successor contractor or subcontractor  
68 shall hire additional employees until such time as all of the terminated contractor's or terminated  
69 subcontractor's employees have been offered employment with the successor contractor or successor  
70 subcontractor.

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

74 Section 4. Enforcement.

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

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

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

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

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

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

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

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

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

96 (E) Any contractor who violates this Chapter shall pay penalties per employee per day of violation of  
97 \$50.00 to \$100.00. Each day a violation continues shall constitute a separate violation.

98 Section 5. Severability.

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

102 Section 6. This chapter shall only apply to contracts entered into on or after January 1, 2007.