

**SENATE . . . . . No. 722**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand 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  
4 janitorial or building maintenance service performed within the Commonwealth including any  
5 subcontracts for janitorial or building maintenance services.

6 (B) "Contractor" means any person that employs 10 or more individuals and that enters  
7 into a service 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  
9 who works at least 15 hours per week and whose primary place of employment is in the  
10 Commonwealth under a contract to provide janitorial or building maintenance services.  
11 "Employee" does not include a person who is a managerial, supervisory, or confidential  
12 employee, including those employees who would be so defined under the federal Fair Labor  
13 Standards Act.

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

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

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

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

## 28 SECTION 2. Notification.

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

35 date of hire, and job classification of each employee employed at the site or sites covered by the  
36 terminated service contract at the time of contract termination.

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

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

### 43 SECTION 3. Retention of Displaced Workers

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

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

56 pay the same wages or offer the same benefits as were provided by the prior contractor or  
57 subcontractor.

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

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

72 (E) During the 90-day transition employment period, the successor contractor or  
73 successor subcontractor shall maintain a preferential hiring list of eligible covered employees not  
74 retained by the successor contractor or successor subcontractor from which the successor  
75 contractor or subcontractor shall hire additional employees until such time as all of the  
76 terminated contractor's or terminated subcontractor's employees have been offered employment  
77 with the successor contractor or successor subcontractor.

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

81 SECTION 4. Enforcement.

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

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

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

90 (B) Upon finding a violation of this chapter, the court shall award backpay, including the  
91 value of benefits, for each day during which the violation has occurred and continues to occur.

92 The amount of backpay shall be calculated as the greater of either of the following:

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

96 (ii) The final regular rate of pay received by the employee at the time of termination of  
97 the predecessor contract multiplied by the number of hours usually worked by the 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 court  
101 shall award the employee or his or her agent reasonable attorney's fees and costs as part of the  
102 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 of  
106 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  
110 invalid by any court of law, that invalidity shall not affect any other provisions or applications of  
111 this 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.