

**SENATE . . . . . No. 969**

---

**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 adoption of the accompanying bill:

An Act relative to displaced workers.

\_\_\_\_\_  
PETITION OF:

NAME:

*Steven A. Tolman*

DISTRICT/ADDRESS:

**SENATE . . . . . No. 969**

---

By Mr. Tolman, a petition (accompanied by bill, Senate, No. 969) of Steven A. Tolman for legislation relative to displaced workers. 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  
3 for janitorial or building maintenance service performed within the Commonwealth including  
4 any subcontracts for janitorial or building maintenance services.

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

8 (C) "Employee" means any person employed as a service employee of a  
9 subcontractor who works at least 15 hours per week and whose primary place of employment is  
10 in the 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  
18 providing 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  
20 a contract with a contractor at any tier or who assists the contractor or subcontractor in  
21 performing a service contract.

22 (G) "Successor service contract" means a service contract for the performance  
23 of 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 its 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  
30 contractor or successor subcontractor, the awarding authority shall notify the terminated  
31 contractor or subcontractor that a successor service contract has been or will be awarded in place

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

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

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

### 43 SECTION 3. Retention of Displaced Workers

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

50 (B) The successor contractor or successor subcontractor shall make a written  
51 offer of employment to each employee, as required by this section, in the employee's primary  
52 language or another language in which the employee is literate. That offer shall state the time  
53 within which the employee must accept that offer, but in no case may the time be less than 10

54 days from the date the notice is given nor later than 5 days prior to the commencement of the  
55 successor service contract. Nothing in this section requires the successor contractor or successor  
56 subcontractor to pay the same wages or offer the same benefits as were provided by the prior  
57 contractor or subcontractor.

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

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

72 (E) During the 90-day transition employment period, the successor contractor  
73 or successor subcontractor shall maintain a preferential hiring list of eligible covered employees  
74 not 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  
79 contractor or successor subcontractor shall not discharge without cause an employee retained  
80 pursuant to this chapter. Cause shall be based only on the performance or conduct of the  
81 particular employee.

82 SECTION 4. Enforcement.

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

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

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

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

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

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

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

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

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

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

111 SECTION 5. Severability.

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

115 SECTION 6. This chapter shall only apply to contracts entered into on or after January 1,  
116 2007.