



Sen. James A. DeLeo

**Filed: 5/11/2004**

09300HB4241sam005

LRB093 20358 RXD 50816 a

1 AMENDMENT TO HOUSE BILL 4241

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4241, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 1. Short title. This Act may be cited as the  
6 Displaced Building Service Workers Protection Act.

7 Section 5. Definitions. In this Act:

8 "Building service" means work performed in connection with  
9 the care or maintenance of an existing building and includes,  
10 but is not limited to, work performed by a watchman, security  
11 officer, door staff, building cleaner, maintenance technician,  
12 handyman, janitor, elevator operator, window cleaner, building  
13 engineer and groundskeeper.

14 "Building service contract" means a contract let to any  
15 covered employer for the furnishing of building services and  
16 includes any subcontract for such services.

17 "Building service contractor" means any person who enters  
18 into a building service contract.

19 "Building service employee" means any person employed as a  
20 building service employee by a covered employer who has been  
21 regularly assigned to a building on a full or part-time basis  
22 for at least 25 working days immediately preceding any  
23 transition in employment subject to this Section except for (i)  
24 persons who are managerial, supervisory, or confidential

1 employees, provided that this exemption shall not apply to  
2 building engineers for existing properties, (ii) persons  
3 earning in excess of \$25 per hour from a covered employer, and  
4 (iii) persons regularly scheduled to work fewer than 6 hours  
5 per week at a building.

6 "State of Illinois" means any city, township,  
7 administration, department, division, bureau, board or  
8 commission, or a corporation, institution, or agency of  
9 government, the expenses of which are paid in whole or in part  
10 from the State treasury.

11 "Covered employer" means any person who owns or manages  
12 real property, either on its own behalf or for another person,  
13 or any person who contracts or subcontracts with an owner or  
14 manager of real property within the State of Illinois for real  
15 estate, including, but not limited to, housing cooperatives,  
16 condominium associations, building managing agents, and any  
17 building service contractor provided, however, that the  
18 requirements of this Act shall not apply to (i) residential  
19 buildings under 50 units, (ii) commercial office,  
20 institutional, or retail buildings of less than 75,000 square  
21 feet or retail stores or distribution centers, or manufacturing  
22 and assembly or warehousing and logistic facilities, or  
23 churches, synagogues, mosques, or places of worship, or  
24 elementary or secondary schools, (iii) any building in which  
25 the State of Illinois or any governmental entity, the head or  
26 majority of members of which are appointed by one or more  
27 officers of the State of Illinois, occupies 50% or more of the  
28 rentable square footage, (iv) any building that is owned or  
29 operated by a hospital or hospital affiliate as defined in the  
30 Hospital Licensing Act, (v) any building that is owned or  
31 operated by a public utility, public utility affiliate,  
32 telecommunications carrier, or its affiliate as defined in the  
33 Public Utilities Act or independent electric generators, or  
34 (vi) any administrative building owned and operated by a

1 manufacturer.

2 "Person" means any individual, proprietorship,  
3 partnership, joint venture, corporation, limited liability  
4 company, trust, association, or other entity that may employ  
5 persons or enter into service contracts, but shall not include  
6 the City of Chicago, the State of Illinois, and the federal  
7 government or any other entity, or any individual or entity  
8 managing real property for a governmental entity.

9 "Successor employer" means a covered employer that (i) has  
10 been awarded a building service contract to provide, in whole  
11 or in part, building services that are substantially similar to  
12 those provided under a service contract that has recently been  
13 terminated, or (ii) has purchased or acquired control of  
14 property in which building service employees were employed.

15 Section 10. Protection for building service employees.

16 (a) No less than 15 calendar days before terminating any  
17 building service contract, any covered employer shall request  
18 the terminated contractor to provide the successor employer and  
19 any collective bargaining representative of any of the affected  
20 employees a full and accurate list containing the name,  
21 address, date of hire, and employment occupation  
22 classification of each building service employee employed on  
23 the notice date at the site or sites covered by the terminated  
24 contract.

25 (b) No less than 15 calendar days before transferring a  
26 controlling interest in any covered building in which building  
27 service employees are employed, any covered employer shall  
28 provide to the successor employer and any collective bargaining  
29 representative of any of the affected employees a full and  
30 accurate list containing the name, address, date of hire, and  
31 employment occupation classification of each building service  
32 employee currently employed at the site or sites covered by the  
33 transfer of controlling interest.

1 (c) Any covered employer shall provide to the successor  
2 employer and any collective bargaining representative of any of  
3 the affected employees a full and accurate list containing the  
4 name, address, date of hire, and employment occupation  
5 classification of each building service employee currently  
6 employed at the site or sites covered by the terminated  
7 building service contract no more than 7 calendar days after  
8 notice that its building service contract has been terminated.

9 (d) When providing the notice required under this Section,  
10 each covered employer shall ensure that a notice to building  
11 service employees is posted setting forth the rights provided  
12 under this Section and which includes a copy of the list  
13 provided under the proceeding Sections, and that such notice is  
14 also provided to the employees' collective bargaining  
15 representative, if any. The notice and list shall be posted in  
16 the same location and manner that other statutorily required  
17 notices to employees are posted at the affected site or sites.

18 (e) A successor employer shall retain for a transition  
19 employment period of 25 working days at the affected site or  
20 sites those building service employees of the terminated  
21 building service contractor and its subcontractors, or other  
22 covered employer, employed at the site or sites covered by the  
23 terminated building service contract or owned or operated by  
24 the former covered employer.

25 (f) If at any time the successor employer determines that  
26 fewer building service employees are required to perform  
27 building services at the affected building than had been  
28 performing such services under the former employer, the  
29 successor employer shall retain the predecessor building  
30 service employees by seniority within job classification;  
31 provided that during a transition period of 25 working days,  
32 the successor employer shall maintain a preferential hiring  
33 list of those building service employees not retained at the  
34 building who shall be given a right of first refusal to any

1 jobs within their classification that becomes available during  
2 that period.

3 (g) Except as provided in subsection (f), during such  
4 period of 25 working days, the successor contractor's  
5 management of the business and the direction of its personnel,  
6 including the right to hire, discipline and discharge employees  
7 for just cause is vested exclusively in the contractor. The  
8 contractor may require employees to submit to a criminal  
9 background check by the Illinois State Police and the Federal  
10 Bureau of Investigation.

11 (h) At the end of the transition period of 25 working days,  
12 the successor employer shall use his or her own existing  
13 practices and forms to perform a written performance evaluation  
14 for each employee retained pursuant to this Section. If the  
15 employee's performance during such period of 25 working days is  
16 satisfactory, the successor contractor shall offer the  
17 employee continued employment under the terms and conditions  
18 established by the successor employer or as required by law.

19 Section 15. Violation.

20 (a) A building service employee who has been discharged or  
21 not retained in violation of this Act may bring an action in  
22 court against a successor contractor and covered employer for  
23 violation of any obligation imposed pursuant to this Act.

24 (b) The court shall have the authority to order injunctive  
25 relief to prevent or remedy a violation of any obligation  
26 imposed pursuant to this Act.

27 (c) If the court finds that by reason of a violation of any  
28 obligation imposed pursuant to subsection (b), a building  
29 service employee has been discharged in violation of this  
30 Section, it shall award:

31 (1) Back pay for each day during which the violation  
32 continues, which shall be calculated at a rate of  
33 compensation not less than the higher of (i) the average

1 regular rate of pay received by the employee during the  
2 last 3 years of the employee's employment in the same  
3 occupation classification; or (ii) the final regular rate  
4 received by the employee.

5 (2) Costs of benefits the successor employer would have  
6 incurred for the employee under the successor contractor's  
7 or employer's benefit plans.

8 (3) The building service employee's reasonable  
9 attorney's fees and costs.

10 (d) In any such action, the court shall have the authority  
11 to order the terminated contractor or former employer to  
12 provide the successor employer with the information required  
13 pursuant to Section 10(c) of this Act.

14 Section 20. Exemptions. The provisions of this Act do not  
15 apply:

16 (1) To any successor employer that, on or before, the  
17 effective date of the transfer of control from a  
18 predecessor covered employer to the successor employer to  
19 the commencement of services by a successor building  
20 service contractor, agrees to assume, or to be bound by,  
21 the collective bargaining agreement of the predecessor  
22 covered building service employees, provided that the  
23 collective bargaining agreement provides terms and  
24 conditions for the discharge or laying off of employees.

25 (2) Where there is no existing collective bargaining  
26 agreement as described in subdivision (1), to any successor  
27 employer that agrees, on or before the effective date of  
28 the transfer of control from a predecessor covered employer  
29 to the successor employer or the commencement of services  
30 by a successor building service contractor, to enter into a  
31 new collective bargaining agreement covering its building  
32 service employees, provided that the collective bargaining  
33 agreement provides terms and conditions for the discharged

1 or laying off of employees.

2 (3) To any successor employer whose building service  
3 employees will be accredited to a bargaining unit with a  
4 pre-existing collective bargaining agreement, provided  
5 that the collective bargaining agreement provides terms  
6 and conditions for the discharged or laying off of  
7 employees.

8 (4) To any covered employer that obtains a written  
9 commitment from a successor employer that the successor  
10 employer's building service employees will be covered by a  
11 collective bargaining agreement falling within subdivision  
12 (1), (2), or (3).

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.".