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I N   S E N A T E

March 11, 2010

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Introduced by Sens. SCHNEIDERMAN, KRUEGER, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to prevailing wages for service workers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The article heading of article 9 of the labor law, as added  
2     by chapter 777 of the laws of 1971, is amended to read as follows:

3            PREVAILING WAGE FOR [BUILDING] SERVICE EMPLOYEES

4     S 2. Subdivisions 1, 2, 3, 4, 6, 8, 9 and 10 of section 230 of the  
5     labor law, subdivision 1 as amended and subdivision 9 as added by chap-  
6     ter 542 of the laws of 1984, subdivisions 2, 3, 6 and 8 as added by  
7     chapter 777 of the laws of 1971, subdivision 4 as amended by chapter 678  
8     of the laws of 2007 and subdivision 10 as added by chapter 547 of the  
9     laws of 1998, are amended and a new subdivision 15 is added to read as  
10    follows:

11    1. "[Building service] SERVICE employee" or "employee" means any  
12    person performing JANITORIAL, FOOD OR SECURITY SERVICE WORK FOR A  
13    CONTRACTOR UNDER CONTRACT WITH A PUBLIC AGENCY WHICH IS IN EXCESS OF ONE  
14    THOUSAND FIVE HUNDRED DOLLARS AND THE PRINCIPAL PURPOSE OF WHICH IS TO  
15    FURNISH SERVICES THROUGH THE USE OF SERVICE EMPLOYEES, OR ANY OTHER  
16    PERSON PERFORMING work in connection with the care or maintenance of an  
17    existing building, or in connection with the transportation of office  
18    furniture or equipment to or from such building, or in connection with  
19    the transportation and delivery of fossil fuel to such building, for a  
20    contractor under a contract with a public agency which is in excess of  
21    one thousand five hundred dollars and the principal purpose of which is  
22    to furnish services through the use of [building] service employees.

23    "[Building service] SERVICE employee" or "employee" includes, but is  
24    not limited, to, watchman, guard, doorman, building cleaner, porter,  
25    handyman, janitor, gardener, groundskeeper, stationary fireman, elevator  
26    operator and starter, window cleaner, FOOD SERVICE WORKER, COOK, BAKER,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 DISHWASHER, MEAT CUTTER, WAITER, DRIVER and occupations relating to the  
2 collection of garbage or refuse, and to the transportation of office  
3 furniture and equipment, and to the transportation and delivery of  
4 fossil fuel but does not include clerical, sales, professional, techni-  
5 cian and related occupations.

6 "[Building service] SERVICE employee" or "employee" also does not  
7 include any employee to whom the provisions of articles eight and  
8 [eight-a] EIGHT-A of this chapter are applicable.

9 2. "[Building service] SERVICE work" [or "service work"] means work  
10 performed by a [building] service employee, but does not include work  
11 performed for a contractor under a contract for the furnishing of  
12 services by radio, telephone, telegraph or cable companies[; and any  
13 contract for public utility services, including electric light and  
14 power, water, steam and gas]. "SERVICE WORK" SHALL ALSO INCLUDE WORK  
15 PERFORMED UNDER A CONTRACT FOR THE BENEFIT OF A PUBLIC AGENCY WITH ANY  
16 THIRD PARTY PERSON OR ENTITY ACTING IN PLACE OF, ON BEHALF OF OR FOR THE  
17 BENEFIT OF SUCH PUBLIC AGENCY PURSUANT TO ANY LEASE, PERMIT OR OTHER  
18 AGREEMENT BETWEEN SUCH THIRD PARTY PERSON OR ENTITY AND THE PUBLIC AGEN-  
19 CY.

20 3. "Public agency" means the state, any of its political subdivisions,  
21 a public benefit corporation, a public authority, INCLUDING A PUBLIC  
22 AUTHORITY PROVIDING PUBLIC UTILITY SERVICES, or commission or special  
23 purpose district board appointed pursuant to law, [and] a board of  
24 education, A BUSINESS IMPROVEMENT DISTRICT WITH MORE THAN ONE MILLION  
25 DOLLARS PER YEAR IN TOTAL REVENUE, AND ANY PUBLIC UTILITY THAT DISTRIB-  
26 UTES ELECTRIC LIGHT OR POWER, OR GAS OR STEAM SERVICES AT RETAIL RATES  
27 REGULATED BY THE PUBLIC SERVICE COMMISSION PURSUANT TO A FRANCHISE  
28 GRANTED UNDER THE PROVISIONS OF SECTION SIXTY-EIGHT OR EIGHTY-ONE OF THE  
29 PUBLIC SERVICE LAW, AND ANY SUBSTANTIALLY-OWNED AFFILIATED ENTITY OF  
30 SUCH PUBLIC UTILITY.

31 4. "Contractor" means any employer who employs employees to perform  
32 [building] service work under a contract with a public agency and shall  
33 include any of the contractor's subcontractors.

34 6. "Prevailing wage" means the wage determined by the fiscal officer  
35 to be prevailing for the various classes of [building] service employees  
36 in the locality. In no event shall the basic hourly cash rate of pay be  
37 less than the statutory minimum wage established by article nineteen of  
38 this chapter, or, in a city with a local law requiring a higher minimum  
39 wage on city contract work, less than the minimum wage specified in such  
40 local law.

41 8. "Fiscal officer" means the industrial commissioner, except for  
42 [building] service work performed by or on behalf of a city, in which  
43 case "fiscal officer" means the comptroller or other analogous officer  
44 of such city.

45 9. "Fossil fuel" shall mean coal, petroleum products and fuel gases.  
46 "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel  
47 gases" shall include but not be limited to methane, natural gas, lique-  
48 fied natural gas and manufactured fuel gases. "Petroleum products" shall  
49 include all products refined or rerefined from synthetic or crude oil or  
50 oil extracted from other sources, including natural gas liquids.  
51 [Provided that nothing in this subdivision shall affect the exclusion  
52 for public utility services set forth in subdivision two of this  
53 section.]

54 10. "Substantially-owned affiliated entity" shall mean the parent  
55 company of the PUBLIC UTILITY, contractor or subcontractor, any subsid-  
56 iary of the PUBLIC UTILITY, contractor or subcontractor, or any entity

1 in which the parent of the PUBLIC UTILITY, contractor or subcontractor  
2 owns more than fifty percent of the voting stock, or an entity in which  
3 one or more of the top five shareholders of the PUBLIC UTILITY, contrac-  
4 tor or subcontractor individually or collectively also owns a control-  
5 ling share of the voting stock, or an entity which exhibits any other  
6 indicia of control over the PUBLIC UTILITY, contractor or subcontractor  
7 or over which the PUBLIC UTILITY, contractor or subcontractor exhibits  
8 control, regardless of whether or not the controlling party or parties  
9 have any identifiable or documented ownership interest. Such indicia  
10 shall include: power or responsibility over employment decisions, access  
11 to and/or use of the relevant entity's assets or equipment, power or  
12 responsibility over contracts of the entity, responsibility for mainte-  
13 nance or submission of certified payroll records, and influence over the  
14 business decisions of the relevant entity.

15 15. "PERSON" SHALL MEAN A HUMAN BEING AND SHALL INCLUDE AN "ENTITY" AS  
16 DEFINED IN THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO A CONTRACTOR OR  
17 SUBCONTRACTOR.

18 S 3. Subdivisions 1, 3, 4 and 5 of section 231 of the labor law,  
19 subdivisions 1, 3 and 4 as added by chapter 777 of the laws of 1971 and  
20 subdivision 5 as amended by chapter 678 of the laws of 2007, are amended  
21 and a new subdivision 8 is added to read as follows:

22 1. Every contractor shall pay a service employee under a contract for  
23 [building] service work a wage of not less than the prevailing wage in  
24 the locality for the craft, trade or occupation of the service employee.

25 3. Each contract for [building] service work shall contain as part of  
26 the specifications thereof a schedule of the wages required to be paid  
27 to the various classes of service employees on such work, and each such  
28 contract shall further contain a provision obligating the contractor to  
29 pay each employee on such work not less than the wage specified for his  
30 craft, trade or occupation in such schedule.

31 4. The public agency, or appropriate officer or agent thereof, whose  
32 responsibility it is to prepare or direct the preparation of the plans  
33 and specifications for a contract for [building] service work, shall  
34 ascertain from such plans and specifications the classifications of  
35 employees to be employed on such work and shall file a list of such  
36 classifications with the fiscal officer, together with a statement of  
37 the work to be performed. The fiscal officer shall determine the crafts,  
38 trades and occupations required for such work and shall make a determi-  
39 nation of the wages required to be paid in the locality for each such  
40 craft, trade or occupation. A schedule of such wages shall be annexed to  
41 and form a part of the specifications for the contract prior to the time  
42 of the advertisement for bids on such contract and shall constitute the  
43 schedule of wages referred to in subdivision three of this section.

44 5. Upon the award of a contract for [building] service work by a  
45 public agency other than a city, the contracting public agency shall  
46 immediately furnish to the commissioner: (a) the name and address of the  
47 contractor to whom the contract was awarded; (b) the date when the  
48 contract was awarded; and (c) the approximate consideration stipulated  
49 for in the contract.

50 8. THE REQUIREMENTS OF THIS SECTION SHALL APPLY TO ANY PERSON OR ENTI-  
51 TY THAT ENTERS INTO ANY LEASE, PERMIT OR OTHER AGREEMENT WITH A PUBLIC  
52 AGENCY THAT INCLUDES THE PROVISION OF SERVICE WORK BY EMPLOYEES WHO  
53 WOULD BE REQUIRED TO BE PAID SCHEDULED WAGES PURSUANT TO THIS SECTION IN  
54 THE ABSENCE OF SUCH AGREEMENT. ANY THIRD PARTY PERSON OR ENTITY THAT  
55 CONTRACTS FOR OR OTHERWISE ARRANGES FOR THE PAYMENT FOR OR PERFORMANCE  
56 OF SERVICE WORK FOR THE BENEFIT OF A PUBLIC AGENCY PURSUANT TO ANY SUCH

1 AGREEMENT SHALL DO SO AS AN AGENT OF THE PUBLIC AGENCY. NO PUBLIC AGEN-  
2 CY SHALL ENTER INTO ANY SUCH AGREEMENT WITH ANY PERSON OR ENTITY WITHOUT  
3 (A) PREPARATION OF AN AGREEMENT BETWEEN THE PUBLIC AGENCY AND THE THIRD  
4 PARTY PERSON OR ENTITY THAT CLEARLY DELINEATES THE RESPONSIBILITIES OF  
5 EACH WITH RESPECT TO REPORTING, FILING AND RETENTION OF PAYROLLS AND  
6 OTHER DOCUMENTS, AND ANY OTHER ACTIONS REQUIRED PURSUANT TO THIS ARTI-  
7 CLE, AND (B) RECEIPT BY THE PUBLIC AGENCY OF A WRITTEN ACKNOWLEDGEMENT  
8 FROM SUCH THIRD PARTY PERSON OR ENTITY THAT THE PERSON OR ENTITY AGREES  
9 TO UNDERTAKE THOSE RESPONSIBILITIES AS THE AGENT OF THE PUBLIC AGENCY,  
10 AND AFFIRMING SUCH PERSON OR ENTITY'S NONDELEGABLE OBLIGATION TO PAY NOT  
11 LESS THAN THE WAGES SPECIFIED IN EACH APPLICABLE SCHEDULE. SUCH DOCU-  
12 MENTS SHALL BE IN A FORM SATISFACTORY TO THE FISCAL OFFICER AND SHALL BE  
13 SUBSCRIBED AND CONFIRMED AS REQUIRED BY SUCH OFFICER. SUCH DOCUMENTS  
14 SHALL BE RETAINED AS PROVIDED IN SECTION TWO HUNDRED THIRTY-THREE OF  
15 THIS ARTICLE, AND A COPY OF EACH SUCH DOCUMENT SHALL BE FILED BY THE  
16 PUBLIC AGENCY WITH THE FISCAL OFFICER WITHIN TEN DAYS OF ITS EXECUTION.  
17 NOTWITHSTANDING ANY SUCH AGREEMENT, NOTHING IN THIS SUBDIVISION SHALL BE  
18 DEEMED TO RELIEVE THE PUBLIC AGENCY OF ITS RESPONSIBILITIES TO ENSURE  
19 COMPLIANCE WITH THIS ARTICLE. ANY LEASE, PERMIT OR AGREEMENT MADE IN  
20 CONTRAVENTION OF THIS SUBDIVISION SHALL BE VOID AS A MATTER OF PUBLIC  
21 POLICY. THE FISCAL OFFICER MAY TAKE ALL ACTIONS NECESSARY TO ENSURE  
22 COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE AGAINST THE PUBLIC AGEN-  
23 CY, ANY THIRD PARTY ACTING IN PLACE OF, ON BEHALF OF OR FOR THE BENEFIT  
24 OF SUCH PUBLIC AGENCY PURSUANT TO ANY LEASE, PERMIT OR OTHER AGREEMENT  
25 BETWEEN SUCH THIRD PARTY PERSON OR ENTITY AND THE PUBLIC AGENCY, OR BOTH  
26 THE PUBLIC AGENCY AND THIRD PARTY JOINTLY.

27 S 4. Subdivision 4 of section 230 of the labor law, as added by chap-  
28 ter 777 of the laws of 1971, is amended to read as follows:

29 4. "Contractor" means any employer who employs employees to perform  
30 [building] service work under a contract with a public agency, and shall  
31 include any of his subcontractors.

32 S 5. Subdivision 5 of section 231 of the labor law, as added by chap-  
33 ter 777 of the laws of 1971, is amended to read as follows:

34 5. Upon the award of a contract for [building] service work by a  
35 public agency other than a city, the contracting public agency shall  
36 immediately furnish to the industrial commissioner: (a) the name and  
37 address of the contractor to whom the contract was awarded; (b) the date  
38 when the contract was awarded; and (c) the approximate consideration  
39 stipulated for in the contract.

40 S 6. Paragraphs a and c of subdivision 2 and subdivision 7 of section  
41 235 of the labor law, paragraph a of subdivision 2 and subdivision 7 as  
42 amended and paragraph c of subdivision 2 as added by chapter 547 of the  
43 laws of 1998, are amended and subdivision 2 is amended by adding a new  
44 paragraph g to read as follows:

45 a. At the start of such investigation the fiscal officer may notify  
46 the financial officer of the public agency interested who shall, at the  
47 direction of the fiscal officer, forthwith withhold from any payment due  
48 to the contractor executing the contract sufficient money to safeguard  
49 the rights of the service employees and to cover the civil penalty that  
50 may be assessed as provided herein, or, if there are insufficient moneys  
51 still due or earned to the contractor or subcontractor to safeguard the  
52 rights of the service employees and to cover the civil penalty that may  
53 be assessed as provided herein, the financial officer of another civil  
54 division which has entered or subsequently enters into a [building]  
55 service work contract with the contractor or subcontractor, who shall  
56 withhold from any payment due the contractor or subcontractor executing

1 any [building] service work, sufficient moneys to safeguard the rights  
2 of the service employees and to cover the civil penalty that may be  
3 assessed as provided herein.

4 c. The notice of withholding shall provide that the fiscal officer  
5 intends to instruct the financial officer, not less than ten days  
6 following service of the notice by mail, to withhold sufficient moneys  
7 to safeguard the rights of the service employees and to cover the civil  
8 penalty that may be assessed as provided herein, from any payment due  
9 the notified party under any [building] service work contract pending  
10 final determination. The notice of withholding shall provide that within  
11 thirty days following the date of the notice of withholding the notified  
12 party may, contest the withholding on the basis that the notified party  
13 is not a partner or one of the five largest shareholders of the subcon-  
14 tractor or contractor, an officer of the contractor or subcontractor who  
15 knowingly participated in the violation of this article, a substantial-  
16 ly-owned affiliated entity or successor. If the notified party fails to  
17 contest the notice of withholding, or if the fiscal officer, after  
18 reviewing the information provided by the notified party in such  
19 contest, determines that the notified party is a partner or one of the  
20 five largest shareholders, a substantially-owned affiliated entity, an  
21 officer of the contractor or subcontractor who knowingly participated in  
22 the violation of this article, or a successor, the fiscal officer may  
23 instruct the financial officer to immediately withhold sufficient moneys  
24 to safeguard the rights of the service employees and to cover the civil  
25 penalty that may be assessed as provided herein from any payment due the  
26 notified party under any [building] service work contract pending the  
27 final determination.

28 G. THE FISCAL OFFICER MAY REQUIRE ANY PERSON OR CORPORATION PERFORMING  
29 SUCH PUBLIC WORK TO FILE WITH THE FISCAL OFFICER WITHIN TEN DAYS OF  
30 RECEIPT OF SAID REQUEST, PAYROLL RECORDS, SWORN TO AS TO THEIR VALIDITY  
31 AND ACCURACY, REQUESTED BY THE FISCAL OFFICER, FOR SAID SERVICE WORK OR  
32 FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION  
33 DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID  
34 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN  
35 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER SHALL, WITHIN FIFTEEN DAYS,  
36 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD  
37 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF  
38 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO  
39 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO  
40 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL  
41 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE  
42 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN  
43 SATISFIED.

44 7. When, pursuant to the provisions of this section, two final orders  
45 have been entered against a contractor, subcontractor, successor, or any  
46 substantially-owned affiliated entity of the contractor or subcontrac-  
47 tor, any of the partners if the contractor or subcontractor is a part-  
48 nership, any of the five largest shareholders of the contractor or  
49 subcontractor, any officer of the contractor or subcontractor who know-  
50 ingly participated in the violation of this article within any consec-  
51 utive six-year period determining that such contractor or subcontractor  
52 and/or its successor, substantially-owned affiliated entity of the  
53 contractor or subcontractor, any of the partners or any of the five  
54 largest shareholders of the contractor or subcontractor, any officer of  
55 the contractor or subcontractor who knowingly participated in the  
56 violation of this article has willfully failed to pay the prevailing

1 wages in accordance with the provisions of this article, whether such  
2 failures were concurrent or consecutive and whether or not such final  
3 determinations concerning separate public [building] service WORK  
4 contracts are rendered simultaneously, such contractor, subcontractor,  
5 successor, and if the contractor, subcontractor, successor, or any  
6 substantially-owned affiliated entity of the contractor or subcontractor,  
7 any of the partners if the contractor or subcontractor is a partnership,  
8 or any of the five largest shareholders of the contractor or subcontractor,  
9 any officer of the contractor or subcontractor who knowingly participated  
10 in the violation of this article, or any successor is a corporation, any officer of such corporation who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any public [building] service work for a period of five years from the date of the second order, provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the contractor, subcontractor, successor, substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public [building] service WORK contract or subcontract with the state, any municipal corporation or public body for a period of five years from the date of the first final order. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

27 S 7. Subdivision 2 of section 237 of the labor law, as amended by  
28 chapter 698 of the laws of 1988, is amended to read as follows:

29 2. A. Before payment is made by or on behalf of a public agency of any  
30 sums due on account of a contract for service work, it shall be the duty  
31 of the comptroller of the state or the financial officer of such public  
32 agency or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract under  
33 and pursuant to which payment is made, to require the contractor to file  
34 a statement in writing in form satisfactory to such officer certifying  
35 to the amounts then due and owing from such contractor filing such  
36 statement to or on behalf of any and all service employees for daily or  
37 weekly wages on account of labor performed upon the work under the  
38 contract, setting forth therein the names of the persons whose wages are  
39 unpaid and the amount due to or on behalf of each respectively, which  
40 statement so to be filed shall be verified by the oath of the contractor  
41 that he or she has read such statement subscribed by him or her and  
42 knows the contents thereof, and that the same is true of his or her own  
43 knowledge. THE CONTRACTOR SHALL FILE THESE PAYROLL RECORDS VERIFIED  
44 UNDER OATH WITHIN NINETY DAYS AFTER ANY LABOR IS PERFORMED UPON THE WORK  
45 UNDER CONTRACT, OR SUCH OTHER TIME AS THE FISCAL OFFICER MAY AUTHORIZE.  
46 ANY PERSON WHO WILLFULLY FAILS TO FILE SUCH PAYROLL RECORDS WITH THE  
47 PUBLIC AGENCY SHALL BE GUILTY OF A CLASS E FELONY.

49 B. EACH PUBLIC AGENCY SHALL DESIGNATE IN WRITING AN INDIVIDUAL  
50 EMPLOYED BY SUCH DEPARTMENT RESPONSIBLE FOR THE RECEIPT, COLLECTION AND  
51 REVIEW FOR FACIAL VALIDITY OF A CONTRACTOR'S CERTIFIED PAYROLL STATEMENT, AS SET FORTH IN THIS SUBDIVISION, BEFORE PAYMENT IS MADE. SAID  
52 DESIGNATION SHALL BE FILED WITH THE FISCAL OFFICER AND POSTED IN A  
53 CONSPICUOUS LOCATION AT THE WORK SITE. IF THE DESIGNATED INDIVIDUAL  
54 CANNOT PERFORM THE RECEIPT, COLLECTION AND REVIEW OF CERTIFIED PAYROLLS  
55 DUTIES AS INDICATED ABOVE, FOR ANY REASON, INCLUDING BUT NOT LIMITED TO  
56

1 REASSIGNMENT, PROMOTION OR SEPARATION FROM EMPLOYMENT, THE PUBLIC AGENCY  
2 MUST IMMEDIATELY DESIGNATE ANOTHER INDIVIDUAL EMPLOYED BY SUCH AGENCY TO  
3 FULFILL SUCH RESPONSIBILITIES. IN THE EVENT THAT A PUBLIC AGENCY FAILS  
4 TO NAME AN INDIVIDUAL RESPONSIBLE FOR THE RECEIPT, COLLECTION AND REVIEW  
5 FOR FACIAL VALIDITY OF CONTRACTORS' CERTIFIED PAYROLLS, THEN THE INDI-  
6 VIDUAL SO RESPONSIBLE SHALL BE THE INDIVIDUAL WHO IS THE CHIEF  
7 POLICY-MAKING OFFICER OF SUCH PUBLIC AGENCY.

8 S 8. Subdivision 2 of section 238 of the labor law, as added by chap-  
9 ter 777 of the laws of 1971, is amended to read as follows:

10 2. A. When a contract for service work contains as part thereof a  
11 schedule of wages as provided for in this article, any [contractor]  
12 PERSON who, after entering into such contract[, and any subcontractor of  
13 such contractor who] WILLFULLY fails to pay to any service employee the  
14 wages stipulated in such wage schedule [is guilty of a misdemeanor and  
15 upon conviction shall be punished for a first offense by a fine of five  
16 hundred dollars or by imprisonment for not more than thirty days or by  
17 both fine and imprisonment; for a second offense by a fine of one thou-  
18 sand dollars], and [in]:

19 (I) SUCH FAILURE RESULTS IN UNDERPAYMENTS WHICH IN THE AGGREGATE  
20 AMOUNT TO ALL WORKERS EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTOR  
21 RESULTS IN AN AMOUNT LESS THAN TWENTY-FIVE THOUSAND DOLLARS, THE  
22 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS A MISDEMEANOR;

23 (II) SUCH FAILURE RESULTS IN UNDERPAYMENTS, WHICH IN THE AGGREGATE  
24 AMOUNT TO ALL WORKERS EMPLOYED BY SUCH CONTRACTOR OR SUBCONTRACTOR,  
25 RESULTS IN AN AMOUNT GREATER THAN TWENTY-FIVE THOUSAND DOLLARS, THE  
26 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS E FELONY;

27 (III) SUCH FAILURE RESULTS IN UNDERPAYMENTS, WHICH IN THE AGGREGATE  
28 AMOUNT TO ALL WORKERS EMPLOYED BY SUCH CONTRACTOR OR SUBCONTRACTOR,  
29 RESULTS IN AN AMOUNT GREATER THAN ONE HUNDRED THOUSAND DOLLARS, THE  
30 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS D FELONY; OR

31 (IV) SUCH FAILURE RESULTS IN UNDERPAYMENTS, WHICH IN THE AGGREGATE  
32 AMOUNT TO ALL WORKERS EMPLOYED BY SUCH CONTRACTOR OR SUBCONTRACTOR,  
33 RESULTS IN AN AMOUNT GREATER THAN FIVE HUNDRED THOUSAND DOLLARS, THE  
34 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS C FELONY.

35 B. IN addition thereto the contract on which the violation has  
36 occurred shall be forfeited; and no such contractor shall be entitled to  
37 receive any sum, nor shall any officer, agent or employee of the  
38 contracting public agency pay any such sum or authorize its payment from  
39 the funds under his charge or control to such contractor for work done  
40 upon the contract on which the contractor has been convicted of a second  
41 offense. If the contractor or subcontractor is a corporation, any offi-  
42 cer of such corporation who knowingly permits the corporation to fail to  
43 make such payment shall also be guilty of [a misdemeanor] THE OFFENSE  
44 DEFINED IN PARAGRAPH A OF THIS SUBDIVISION and the criminal and civil  
45 penalties [herein] OF THIS SUBDIVISION shall attach to such officer upon  
46 conviction.

47 S 9. Severability. If any clause, sentence, paragraph, section or part  
48 of this act be adjudged by any court of competent jurisdiction to be  
49 invalid and after exhaustion of all further judicial review, the judg-  
50 ment shall not affect, impair or invalidate the remainder thereof, but  
51 shall be confined in its operation to the clause, sentence, paragraph,  
52 section or part of this act directly involved in the controversy in  
53 which the judgment shall have been rendered.

54 S 10. This act shall take effect on the ninetieth day after it shall  
55 have become a law, and shall apply to all contracts or other agreements  
56 entered into, renewed, or extended on or after such date; provided,

1 however: (a) the amendments to subdivision 4 of section 230 of the  
2 labor law made by section two of this act shall be subject to the expi-  
3 ration and reversion of such subdivision pursuant to section 5 of chap-  
4 ter 678 of the laws of 2007, as amended, when upon such date the  
5 provisions of section four of this act shall take effect; and  
6 (b) the amendments to subdivision 5 of section 231 of the labor law  
7 made by section three of this act shall be subject to the expiration and  
8 reversion of such subdivision pursuant to section 5 of chapter 678 of  
9 the laws of 2007, as amended, when upon such date the provisions of  
10 section five of this act shall take effect.