

3273

2011-2012 Regular Sessions

I N S E N A T E

February 15, 2011

Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, the general municipal law and the public officers law, in relation to the omnibus prevailing wage enforcement act and to amend chapter 511 of the laws of 1995, relating to establishing a public work enforcement fund and making an appropriation therefor, in relation to moneys accumulated in the public work enforcement fund

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

1 Section 1. This act shall be known and may be cited as the "omnibus
2 prevailing wage enforcement act".
3 S 2. The labor law is amended by adding a new section 223-a to read as
4 follows:
5 S 223-A. PREVAILING WAGE FRAUD INSPECTOR GENERAL. 1. DEFINITIONS.
6 FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:
7 (A) "INSPECTOR GENERAL" MEANS THE PREVAILING WAGE FRAUD INSPECTOR
8 GENERAL CREATED BY THIS SECTION.
9 (B) "ASSISTANT INSPECTOR GENERAL" MEANS A PREVAILING WAGE FRAUD
10 ASSISTANT INSPECTOR GENERAL CREATED BY THIS SECTION.
11 2. APPOINTMENT, COMPENSATION AND REMOVAL. NOTWITHSTANDING ANY OTHER
12 PROVISION OF LAW, THE GOVERNOR SHALL APPOINT THE INSPECTOR GENERAL. THE
13 BOARD SHALL EMPLOY AND THE GOVERNOR SHALL FIX THE COMPENSATION OF THE
14 INSPECTOR GENERAL. THE INSPECTOR GENERAL SHALL, AND MAY DO SO WITHOUT
15 CIVIL SERVICE EXAMINATION, APPOINT AND THE BOARD SHALL EMPLOY, SUCH
16 ASSISTANT INSPECTOR GENERAL AND OTHER PERSONS AS HE OR SHE DEEMS NECES-
17 SARY, DETERMINE THEIR DUTIES AND FIX THEIR COMPENSATION. SUCH ASSISTANT
18 INSPECTOR GENERAL SHALL ASSIST THE INSPECTOR GENERAL IN CARRYING OUT THE
19 INSPECTOR GENERAL'S DUTIES AND RESPONSIBILITIES AS SET FORTH IN THIS
20 SECTION AND SHALL HAVE SUCH POWERS AS GRANTED THE INSPECTOR GENERAL
21 UNDER THIS SECTION. EMPLOYEES APPOINTED PURSUANT TO THIS SECTION WITH-

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

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OUT CIVIL SERVICE EXAMINATION SHALL BE PLACED IN THE NONCOMPETITIVE CLASS OF THE COMPETITIVE SERVICE PURSUANT TO SUBDIVISION TWO-A OF SECTION FORTY-TWO OF THE CIVIL SERVICE LAW AND SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

3. POWERS, DUTIES AND RESPONSIBILITIES. THE INSPECTOR GENERAL SHALL INVESTIGATE VIOLATIONS OF THE LAWS AND REGULATIONS PERTAINING TO THE OPERATION OF PREVAILING WAGE PROVISIONS. THE INSPECTOR GENERAL SHALL HAVE THE FOLLOWING POWERS, DUTIES AND FUNCTIONS:

(A) TO CONDUCT AND SUPERVISE INVESTIGATIONS, WITHIN OR WITHOUT THIS STATE, OF POSSIBLE FRAUD AND OTHER VIOLATIONS OF LAWS, RULES AND REGULATIONS PERTAINING TO PREVAILING WAGE PROVISIONS;

(B) TO SUBPOENA WITNESSES, ADMINISTER OATHS OR AFFIRMATIONS, TAKE TESTIMONY AND COMPEL THE PRODUCTION OF SUCH BOOKS, PAPERS, RECORDS AND DOCUMENTS AS THE INSPECTOR GENERAL MAY DEEM TO BE RELEVANT TO AN INVESTIGATION UNDERTAKEN PURSUANT TO THIS SECTION;

(C) TO REPORT TO THE ATTORNEY GENERAL OR OTHER APPROPRIATE LAW ENFORCEMENT AGENCY, VIOLATIONS FOUND THROUGH INVESTIGATIONS UNDERTAKEN PURSUANT TO THIS SECTION AND TO PROVIDE SUCH MATERIALS AND ASSISTANCE AS MAY BE NECESSARY OR APPROPRIATE FOR THE SUCCESSFUL INVESTIGATION AND PROSECUTION OF VIOLATIONS OF THIS CHAPTER;

(D) TO SUBMIT A WRITTEN REPORT, ON AN ANNUAL BASIS, TO THE GOVERNOR AND TO THE CHAIR OF THE BOARD, LISTING ALL ACTIVITIES UNDERTAKEN TO THE EXTENT SUCH ACTIVITIES CAN BE DISCLOSED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION; AND

(E) TO RECOMMEND LEGISLATIVE AND REGULATORY CHANGES TO THE GOVERNOR AND TO THE CHAIR OF THE BOARD.

4. COOPERATION OF AGENCY OFFICIALS AND EMPLOYEES. (A) IN ADDITION TO THE AUTHORITY OTHERWISE PROVIDED BY THIS SECTION, THE INSPECTOR GENERAL, IN CARRYING OUT THE PROVISIONS OF THIS SECTION, IS AUTHORIZED:

(I) TO HAVE FULL AND UNRESTRICTED ACCESS TO ALL RECORDS, REPORTS, AUDITS, REVIEWS, DOCUMENTS, PAPERS, RECOMMENDATIONS OR OTHER MATERIAL MAINTAINED BY THE BOARD OR ANY OTHER STATE AGENCY RELATING TO PREVAILING WAGE PROVISIONS, WITH RESPECT TO WHICH THE INSPECTOR GENERAL HAS RESPONSIBILITIES UNDER THIS SECTION; AND

(II) TO REQUEST SUCH INFORMATION, ASSISTANCE AND COOPERATION FROM ANY FEDERAL, STATE OR LOCAL GOVERNMENT, DEPARTMENT, BOARD, BUREAU, COMMISSION, OR OTHER AGENCY OR UNIT THEREOF AS MAY BE NECESSARY FOR CARRYING OUT THE DUTIES AND RESPONSIBILITIES ENJOINED UPON THE INSPECTOR GENERAL BY THIS SECTION. STATE AND LOCAL AGENCIES OR UNITS THEREOF ARE HEREBY AUTHORIZED AND DIRECTED TO PROVIDE SUCH INFORMATION, ASSISTANCE AND COOPERATION.

(B) NO PERSON SHALL PREVENT, SEEK TO PREVENT, INTERFERE WITH, OBSTRUCT OR OTHERWISE HINDER ANY INVESTIGATION BEING CONDUCTED PURSUANT TO THIS SECTION.

5. DISCLOSURE OF INFORMATION. THE INSPECTOR GENERAL SHALL NOT PUBLICLY DISCLOSE INFORMATION WHICH IS:

(A) A PART OF AN ONGOING INVESTIGATION OR PROSECUTION; OR

(B) SPECIFICALLY PROHIBITED FROM DISCLOSURE BY ANY OTHER PROVISION OF LAW.

S 3. Sections 1 and 2 of chapter 511 of the laws of 1995, relating to establishing a public work enforcement fund and making an appropriation therefor, as amended by chapter 407 of the laws of 2005, are amended to read as follows:

Section 1. The state comptroller shall establish a public work enforcement fund. Each state agency or public benefit corporation entering into a contract for any construction, reconstruction, renovation,

1 repair, maintenance or other improvement, as defined in subdivision 2 of
2 section 220 of the labor law, shall make a transfer of 0.10 of one
3 percent of the total cost of the contract to such fund. All transfers
4 shall be made available to the labor department for labor law enforce-
5 ment. All moneys transferred to and accumulated in the public work
6 enforcement fund shall be dedicated to enforcement of labor law articles
7 8 and 9 and all moneys appropriated from such fund shall be used for
8 such purpose. Provided further that such dedicated funds shall be used
9 for training, labor and related costs for investigators, hearing offi-
10 cers and administrative staff to ensure that staffing levels for such
11 personnel are maintained at [an appropriate level] A LEVEL EQUAL TO OR
12 GREATER THAN THE STAFFING LEVEL FOR SUCH PERSONNEL FOR FISCAL YEAR
13 2006-2007.

14 S 2. The sum of [two million four hundred thousand dollars
15 (\$2,400,000), or so much thereof as may be] MONEYS SO accumulated[,] is
16 hereby appropriated to the department of labor from any moneys credited
17 to the public work enforcement fund created pursuant to section one of
18 this act for the purposes of carrying out the provisions of this act.
19 Such sum shall be payable on the audit and warrant of the state comp-
20 troller on vouchers certified or approved by the commissioner of labor,
21 or his duly designated representative in the manner provided by law. No
22 expenditure shall be made from this appropriation until a certificate of
23 approval of availability shall have been issued by the director of the
24 budget and filed with the state comptroller and a copy filed with the
25 chair of the senate finance committee and the chair of the assembly ways
26 and means committee. Such certificate may be amended from time to time
27 by the director of the budget and a copy of each such amendment shall be
28 filed with the state comptroller, the chair of the senate finance
29 committee and the chair of the assembly ways and means committee.

30 S 4. Section 220 of the labor law is amended by adding a new subdivi-
31 sion 10 to read as follows:

32 10. IN ANY INSTANCE WHERE THE VARIATION BETWEEN THE LOW BID ON ANY
33 PUBLIC WORK CONTRACT OR SUBCONTRACT WITH THE STATE, ANY MUNICIPAL CORPO-
34 RATION OR PUBLIC BODY AND THE NEXT LOWEST BID IS TEN PERCENT OR MORE, OR
35 IS TEN PERCENT LOWER THAN THE CONTRACTING ENTITY'S ESTIMATE OF THE
36 PROJECT COST, THE LOW BIDDER SHALL PROVIDE PROOF TO THE SATISFACTION OF
37 THE CONTRACTING ENTITY THAT THE PREVAILING WAGE SHALL BE PAID, OR SUCH
38 BID SHALL BE REJECTED.

39 S 5. Section 231 of the labor law is amended by adding a new subdivi-
40 sion 8 to read as follows:

41 8. IN ANY INSTANCE WHERE THE VARIATION BETWEEN THE LOW BID ON ANY
42 PUBLIC WORK CONTRACT OR SUBCONTRACT WITH THE STATE, ANY MUNICIPAL CORPO-
43 RATION OR PUBLIC BODY AND THE NEXT LOWEST BID IS TEN PERCENT OR MORE, OR
44 IS TEN PERCENT LOWER THAN THE CONTRACTING ENTITY'S ESTIMATE OF THE
45 PROJECT COST, THE LOW BIDDER SHALL PROVIDE PROOF TO THE SATISFACTION OF
46 THE CONTRACTING ENTITY THAT THE PREVAILING WAGE SHALL BE PAID, OR SUCH
47 BID SHALL BE REJECTED.

48 S 6. Section 220 of the labor law is amended by adding a new subdivi-
49 sion 6-a to read as follows:

50 6-A. THE FISCAL OFFICER SHALL REQUIRE EACH ENGINEER-IN-CHARGE OR OTHER
51 AGENT WHO HAS DIRECT SUPERVISION OF THE EXECUTION OF THE CONTRACT
52 REPRESENTING THE CONTRACTING AGENCY OTHER THAN THE CONTRACTOR OR HIS OR
53 HER EMPLOYEES ON ALL CONTRACTS REQUIRING PREVAILING WAGE RATES TO RECORD
54 A DAILY HEADCOUNT OF ALL WORKERS ON A PROJECT SITE, SEPARATELY ENUMER-
55 ATED REGARDING EACH CLASSIFICATION OF WORKER INCLUDING HOURS WORKED AT
56 REGULAR, OVERTIME OR HOLIDAY PAY AS CLASSIFIED IN THE PREVAILING WAGE

1 RATE SCHEDULE. SUCH RECORDS SHALL BE SUBMITTED TO THE FISCAL OFFICER AND
2 SHALL BE MAINTAINED BY THE FISCAL OFFICER FOR THREE YEARS AFTER THE
3 FINAL ACCEPTANCE OF THE PROJECT. KNOWINGLY PROVIDING THE FISCAL OFFICER
4 WITH FALSE RECORDS SHALL BE A MISDEMEANOR.

5 S 7. Subdivision 1 of section 103 of the general municipal law, as
6 amended by section 1 of part FF of chapter 56 of the laws of 2010, is
7 amended to read as follows:

8 1. Except as otherwise expressly provided by an act of the legislature
9 or by a local law adopted prior to September first, nineteen hundred
10 fifty-three, all contracts for public work involving an expenditure of
11 more than thirty-five thousand dollars WHICH ARE SUBJECT TO THE
12 PROVISIONS OF ARTICLE EIGHT OF THE LABOR LAW, and all purchase contracts
13 involving an expenditure of more than twenty thousand dollars, shall be
14 awarded by the appropriate officer, board or agency of a political
15 subdivision or of any district therein including but not limited to a
16 soil conservation district, to the lowest responsible bidder furnishing
17 the required security after advertisement for sealed bids in the manner
18 provided by this section. SUCH OFFICER, BOARD, OR AGENCY MAY REQUIRE
19 RESPONSIBLE BIDDERS AND THEIR SUBCONTRACTORS TO PARTICIPATE IN APPREN-
20 TICESHIP TRAINING PROGRAMS APPROVED BY THE DEPARTMENT OF LABOR. In any
21 case where a responsible bidder's gross price is reducible by an allow-
22 ance for the value of used machinery, equipment, apparatus or tools to
23 be traded in by a political subdivision, the gross price shall be
24 reduced by the amount of such allowance, for the purpose of determining
25 the low bid. In cases where two or more responsible bidders furnishing
26 the required security submit identical bids as to price, such officer,
27 board or agency may award the contract to any of such bidders. Such
28 officer, board or agency may, in his or her or its discretion, reject
29 all bids and readvertise for new bids in the manner provided by this
30 section. In determining whether a purchase is an expenditure within the
31 discretionary threshold amounts established by this subdivision, the
32 officer, board or agency of a political subdivision or of any district
33 therein shall consider the reasonably expected aggregate amount of all
34 purchases of the same commodities, services or technology to be made
35 within the twelve-month period commencing on the date of purchase.
36 Purchases of commodities, services or technology shall not be arti-
37 ficially divided for the purpose of satisfying the discretionary buying
38 thresholds established by this subdivision. A change to or a renewal of
39 a discretionary purchase shall not be permitted if the change or renewal
40 would bring the reasonably expected aggregate amount of all purchases of
41 the same commodities, services or technology from the same provider
42 within the twelve-month period commencing on the date of the first
43 purchase to an amount greater than the discretionary buying threshold
44 amount. For purposes of this section, "sealed bids", as that term
45 applies to purchase contracts, shall include bids submitted in an elec-
46 tronic format including submission of the statement of non-collusion
47 required by section one hundred three-d of this article, provided that
48 the governing board of the political subdivision or district, by resol-
49 ution, has authorized the receipt of bids in such format. Submission in
50 electronic format may, for technology contracts only, be required as the
51 sole method for the submission of bids. Bids submitted in an electronic
52 format shall be transmitted by bidders to the receiving device desig-
53 nated by the political subdivision or district. Any method used to
54 receive electronic bids shall comply with article three of the state
55 technology law, and any rules and regulations promulgated and guidelines
56 developed thereunder and, at a minimum, must (a) document the time and

1 date of receipt of each bid received electronically; (b) authenticate
2 the identity of the sender; (c) ensure the security of the information
3 transmitted; and (d) ensure the confidentiality of the bid until the
4 time and date established for the opening of bids. The timely submission
5 of an electronic bid in compliance with instructions provided for such
6 submission in the advertisement for bids and/or the specifications shall
7 be the responsibility solely of each bidder or prospective bidder. No
8 political subdivision or district therein shall incur any liability from
9 delays of or interruptions in the receiving device designated for the
10 submission and receipt of electronic bids.

11 S 8. Subdivision 1 of section 103 of the general municipal law, as
12 amended by section 2 of part FF of chapter 56 of the laws of 2010, is
13 amended to read as follows:

14 1. Except as otherwise expressly provided by an act of the legislature
15 or by a local law adopted prior to September first, nineteen hundred
16 fifty-three, all contracts for public work involving an expenditure of
17 more than thirty-five thousand dollars WHICH ARE SUBJECT TO THE
18 PROVISIONS OF ARTICLE EIGHT OF THE LABOR LAW, and all purchase contracts
19 involving an expenditure of more than twenty thousand dollars, shall be
20 awarded by the appropriate officer, board or agency of a political
21 subdivision or of any district therein including but not limited to a
22 soil conservation district, to the lowest responsible bidder furnishing
23 the required security after advertisement for sealed bids in the manner
24 provided by this section. SUCH OFFICER, BOARD, OR AGENCY MAY REQUIRE
25 RESPONSIBLE BIDDERS AND THEIR SUBCONTRACTORS TO PARTICIPATE IN APPREN-
26 TICESHIP TRAINING PROGRAMS APPROVED BY THE DEPARTMENT OF LABOR. In
27 determining whether a purchase is an expenditure within the discretion-
28 ary threshold amounts established by this subdivision, the officer,
29 board or agency of a political subdivision or of any district therein
30 shall consider the reasonably expected aggregate amount of all purchases
31 of the same commodities, services or technology to be made within the
32 twelve-month period commencing on the date of purchase. Purchases of
33 commodities, services or technology shall not be artificially divided
34 for the purpose of satisfying the discretionary buying thresholds estab-
35 lished by this subdivision. A change to or a renewal of a discretionary
36 purchase shall not be permitted if the change or renewal would bring the
37 reasonably expected aggregate amount of all purchases of the same
38 commodities, services or technology from the same provider within the
39 twelve-month period commencing on the date of the first purchase to an
40 amount greater than the discretionary buying threshold amount. In any
41 case where a responsible bidder's gross price is reducible by an allow-
42 ance for the value of used machinery, equipment, apparatus or tools to
43 be traded in by a political subdivision, the gross price shall be
44 reduced by the amount of such allowance, for the purpose of determining
45 the low bid. In cases where two or more responsible bidders furnishing
46 the required security submit identical bids as to price, such officer,
47 board or agency may award the contract to any of such bidders. Such
48 officer, board or agency may, in his, her or its discretion, reject all
49 bids and readvertise for new bids in the manner provided by this
50 section.

51 S 9. Section 220 of the labor law is amended by adding a new subdivi-
52 sion 11 to read as follows:

53 11. ALL PUBLIC ENTITIES SUBJECT TO THIS ARTICLE SHALL MAKE AVAILABLE
54 FOR PUBLIC INSPECTION AND COPYING OF THE RECORDS OR PORTIONS THEREOF
55 PERTAINING TO THE NAMES OF, EMPLOYEE CLASSIFICATIONS OF, RATE OF WAGES
56 AND SUPPLEMENTS PAID TO, AND NUMBER OF HOURS WORKED BY THE EMPLOYEES OF

1 CONTRACTORS PERFORMING WORK PURSUANT TO THIS ARTICLE AND ARTICLE NINE OF
2 THIS CHAPTER. THE SOCIAL SECURITY NUMBERS OF SUCH EMPLOYEES MAY BE
3 BLOCKED OUT BY THE AGENCY. AN ENTITY SHALL NOT BE PERMITTED TO DENY
4 ACCESS TO RECORDS OR PORTIONS THEREOF PERTAINING TO THE PAYMENT OF WAGES
5 AND SUPPLEMENTS TO, AND NUMBER OF HOURS WORKED BY, THE EMPLOYEES OF
6 CONTRACTORS SUBJECT TO THIS ARTICLE AND ARTICLE NINE OF THIS CHAPTER.

7 S 10. Section 233 of the labor law is amended by adding a new subdivi-
8 sion 5 to read as follows:

9 5. ALL PUBLIC ENTITIES SUBJECT TO THIS ARTICLE SHALL MAKE AVAILABLE
10 FOR PUBLIC INSPECTION AND COPYING OF THE RECORDS OR PORTIONS THEREOF
11 PERTAINING TO THE NAMES OF, EMPLOYEE CLASSIFICATIONS OF, RATE OF WAGES
12 AND SUPPLEMENTS PAID TO, AND NUMBER OF HOURS WORKED BY THE EMPLOYEES OF
13 CONTRACTORS PERFORMING WORK PURSUANT TO THIS ARTICLE AND ARTICLE EIGHT
14 OF THIS CHAPTER. THE SOCIAL SECURITY NUMBERS OF SUCH EMPLOYEES MAY BE
15 BLOCKED OUT BY THE AGENCY. AN ENTITY SHALL NOT BE PERMITTED TO DENY
16 ACCESS TO RECORDS OR PORTIONS THEREOF PERTAINING TO THE PAYMENT OF WAGES
17 AND SUPPLEMENTS TO, AND NUMBER OF HOURS WORKED BY, THE EMPLOYEES OF
18 CONTRACTORS SUBJECT TO THIS ARTICLE AND ARTICLE EIGHT OF THIS CHAPTER.

19 S 11. Subdivision 2 of section 87 of the public officers law is
20 amended by adding a new paragraph (m) to read as follows:

21 (M) PROVIDED THAT, NOTHING IN THIS SUBDIVISION SHALL PERMIT AN AGENCY
22 TO DENY ACCESS TO RECORDS OR PORTIONS THEREOF PERTAINING TO THE PAYMENT
23 OF WAGES AND SUPPLEMENTS TO, AND NUMBER OF HOURS WORKED BY THE EMPLOYEES
24 OF CONTRACTORS SUBJECT TO ARTICLES EIGHT AND NINE OF THE LABOR LAW. ALL
25 PUBLIC ENTITIES SUBJECT TO THIS ARTICLE SHALL MAKE AVAILABLE FOR PUBLIC
26 INSPECTION AND COPYING OF SUCH RECORDS, THE NAMES OF, EMPLOYEE CLASSI-
27 FICATIONS OF, RATE OF WAGES AND SUPPLEMENTS PAID TO, AND NUMBER OF HOURS
28 WORKED BY THE EMPLOYEES OF CONTRACTORS PERFORMING WORK PURSUANT TO ARTI-
29 CLES EIGHT AND NINE OF THE LABOR LAW. THE SOCIAL SECURITY NUMBERS OF
30 SUCH EMPLOYEES MAY BE BLOCKED OUT BY THE AGENCY.

31 S 12. Paragraph (a) of subdivision 2 of section 89 of the public offi-
32 cers law, as added by chapter 933 of the laws of 1977, is amended to
33 read as follows:

34 (a) The committee on public access to records may promulgate guide-
35 lines regarding deletion of identifying details or withholding of
36 records otherwise available under this article to prevent unwarranted
37 invasions of personal privacy. In the absence of such guidelines, an
38 agency may delete identifying details when it makes records available,
39 PROVIDED HOWEVER, NOTHING IN THIS PARAGRAPH SHALL PERMIT THE DENIAL OF
40 ACCESS TO RECORDS OR PORTIONS THEREOF PERTAINING TO THE PAYMENT OF WAGES
41 AND SUPPLEMENTS TO, AND NUMBER OF HOURS WORKED BY THE EMPLOYEES OF
42 CONTRACTORS SUBJECT TO ARTICLES EIGHT AND NINE OF THE LABOR LAW. ALL
43 PUBLIC ENTITIES SUBJECT TO THIS ARTICLE SHALL MAKE AVAILABLE FOR PUBLIC
44 INSPECTION AND COPYING OF SUCH RECORDS, THE NAMES OF, EMPLOYEE CLASSI-
45 FICATIONS OF, RATE OF WAGES AND SUPPLEMENTS PAID TO, AND NUMBER OF HOURS
46 WORKED BY THE EMPLOYEES OF CONTRACTORS PERFORMING WORK PURSUANT TO ARTI-
47 CLES EIGHT AND NINE OF THE LABOR LAW. THE SOCIAL SECURITY NUMBERS OF
48 SUCH EMPLOYEES MAY BE BLOCKED OUT BY THE AGENCY.

49 S 13. Paragraph (b) of subdivision 2 of section 89 of the public offi-
50 cers law is amended by adding a new subparagraph vii to read as follows:

51 VII. PROVIDED THAT, NOTHING IN THIS PARAGRAPH SHALL PERMIT AN AGENCY
52 TO DENY ACCESS TO RECORDS OR PORTIONS THEREOF PERTAINING TO THE PAYMENT
53 OF WAGES AND SUPPLEMENTS TO, AND NUMBER OF HOURS WORKED BY EMPLOYEES OF
54 CONTRACTORS SUBJECT TO ARTICLES EIGHT AND NINE OF THE LABOR LAW. IT
55 SHALL NOT BE AN UNWARRANTED INVASION OF PERSONAL PRIVACY FOR ALL PUBLIC
56 ENTITIES SUBJECT TO THIS ARTICLE, TO MAKE AVAILABLE FOR PUBLIC

1 INSPECTION AND COPYING, THE RECORDS OF ALL NAMES OF, EMPLOYEE CLASSI-
2 FICATIONS OF, RATE OF WAGES AND SUPPLEMENTS PAID TO, AND NUMBER OF HOURS
3 WORKED BY THE EMPLOYEES OF CONTRACTORS PERFORMING WORK PURSUANT TO ARTI-
4 CLES EIGHT AND NINE OF THE LABOR LAW. THE SOCIAL SECURITY NUMBERS OF
5 SUCH EMPLOYEES MAY BE BLOCKED OUT BY THE AGENCY.

6 S 14. Subdivision 2-a of section 89 of the public officers law, as
7 added by chapter 652 of the laws of 1983, is amended to read as follows:

8 2-a. Nothing in this article shall permit disclosure which constitutes
9 an unwarranted invasion of personal privacy as defined in subdivision
10 two of this section if such disclosure is prohibited under section nine-
11 ty-six of this chapter, PROVIDED HOWEVER, THAT NOTHING IN THIS ARTICLE
12 SHALL PERMIT AN AGENCY TO DENY ACCESS TO RECORDS OR PORTIONS THEREOF
13 PERTAINING TO THE PAYMENT OF RATE OF WAGES AND SUPPLEMENTS TO, AND
14 NUMBER OF HOURS WORKED BY, EMPLOYEES OF CONTRACTORS SUBJECT TO ARTICLES
15 EIGHT AND NINE OF THE LABOR LAW. IT SHALL NOT BE AN UNWARRANTED INVASION
16 OF PERSONAL PRIVACY AS DEFINED IN SUBDIVISION TWO OF THIS SECTION, NOR A
17 PROHIBITED DISCLOSURE UNDER SECTION NINETY-SIX OF THIS CHAPTER FOR ALL
18 PUBLIC ENTITIES SUBJECT TO THIS ARTICLE, TO MAKE AVAILABLE FOR PUBLIC
19 INSPECTION AND COPYING SUCH RECORDS OF ALL NAMES OF, EMPLOYEE CLASSI-
20 FICATIONS OF, RATE OF WAGES AND SUPPLEMENTS PAID TO, AND NUMBER OF HOURS
21 WORKED BY THE EMPLOYEES OF CONTRACTORS PERFORMING WORK PURSUANT TO ARTI-
22 CLES EIGHT AND NINE OF THE LABOR LAW. THE SOCIAL SECURITY NUMBERS OF
23 SUCH EMPLOYEES MAY BE BLOCKED OUT BY THE AGENCY.

24 S 15. Subparagraph (iii) of paragraph a of subdivision 3-a of section
25 220 of the labor law, as amended by chapter 8 of the laws of 2008, is
26 amended to read as follows:

27 (iii) The contractor and every sub-contractor shall keep original
28 payrolls or transcripts thereof, subscribed and sworn to or affirmed by
29 him or her as true under the penalties of perjury, setting forth the
30 names and addresses and showing for each worker, laborer, or mechanic
31 the hours and days worked, the occupations worked, the hourly wage rates
32 paid and the supplements paid or provided. Where the contractor or sub-
33 contractor maintains no regular place of business in New York state and
34 where the amount of the contract is in excess of twenty-five thousand
35 dollars such payrolls shall be kept on the site of the work. All other
36 contractors or sub-contractors shall produce within five days on the
37 site of the work and upon formal order of the commissioner or his or her
38 designated representative such original payrolls or transcripts thereof,
39 subscribed and sworn to or affirmed by him or her as true under the
40 penalties of perjury, as may be deemed necessary to adequately enforce
41 the provisions of this article. Every contractor, and sub-contractor,
42 shall submit to the department of jurisdiction within thirty days after
43 issuance of its first payroll, and every thirty days thereafter, a tran-
44 script of the original payroll record, as provided by this article, AND
45 AT THE COMPLETION OF THE PROJECT A SUMMARY TRANSCRIPT SPECIFYING THE
46 HOURS AND DAYS WORKED BY EACH WORKMAN, LABORER OR MECHANIC, THE TRADE OR
47 OCCUPATION AT WHICH HE OR SHE WORKED, THE HOURLY WAGE RATE PAID, THE
48 SUPPLEMENTS PAID OR PROVIDED TO SUCH EMPLOYEE AND THE NAMES, TAX IDEN-
49 TIFICATION NUMBER AND JOB TITLE OF EACH INDIVIDUAL CLASSIFIED BY THE
50 CONTRACTOR OR SUBCONTRACTOR AS INDEPENDENT CONTRACTORS WHO WERE HIRED
51 AND EMPLOYED BY SUCH CONTRACTOR TO PERFORM WORK SUBJECT TO THE
52 PROVISIONS OF THIS ARTICLE. SUCH SUMMARY TRANSCRIPT SHALL BE subscribed
53 and sworn to or affirmed as true under the penalties of perjury. Any
54 person who wilfully fails to file such payroll records with the depart-
55 ment of jurisdiction shall be guilty of a class E felony. In addition,
56 any person who wilfully fails to file such payroll records within the

1 time specified in this subparagraph shall be subject to a civil penalty
2 of up to one thousand dollars per day. EACH INDEPENDENT CONTRACTOR
3 SHALL HAVE OBTAINED A TAX IDENTIFICATION NUMBER PRIOR TO EMPLOYMENT ON A
4 PROJECT AND SHALL SUBMIT SUCH NUMBER TO THE CONTRACTOR AS REQUIRED BY
5 THE COMMISSIONER.

6 S 16. Subdivision 3-a of section 220 of the labor law is amended by
7 adding a new paragraph f to read as follows:

8 F. WHERE THE CAPITAL CONSTRUCTION COST OF A PUBLIC WORK SUBJECT TO THE
9 PROVISIONS OF THIS SECTION EXCEEDS ONE MILLION DOLLARS, THE DEPARTMENT
10 OF JURISDICTION SHALL CERTIFY THAT THE PROJECT WILL BE AUDITED FROM TIME
11 TO TIME BY THE DEPARTMENT OF LABOR TO ENSURE COMPLIANCE WITH THE
12 PROVISIONS OF THIS ARTICLE. THE DEPARTMENT OF JURISDICTION SHALL INFORM
13 THE DEPARTMENT OF LABOR OF THE PROJECT'S COST AND SHALL ESTABLISH A
14 TIMETABLE FOR AUDIT BY THE DEPARTMENT OF LABOR.

15 S 17. Severability clause. If any clause, sentence, paragraph, subdi-
16 vision, section or part contained in any part of this act shall be
17 adjudged by any court of competent jurisdiction to be invalid, such
18 judgment shall not affect, impair, or invalidate the remainder thereof,
19 but shall be confined in its operation to the clause, sentence, para-
20 graph, subdivision, section or part contained in any part thereof
21 directly involved in the controversy in which such judgment shall have
22 been rendered. It is hereby declared to be the intent of the legislature
23 that this act would have been enacted even if such invalid provisions
24 had not been included herein.

25 S 18. This act shall take effect immediately; provided, however, that:

26 1. Sections four, five, six and fifteen of this act shall take effect
27 on the sixtieth day after they shall have become a law;

28 2. Sections seven and eight of this act shall apply to contracts let
29 on or after such effective date of each section respectively;

30 3. The amendments to subdivision 1 of section 103 of the general
31 municipal law made by section seven of this act shall be subject to the
32 expiration and reversion of such subdivision pursuant to section 41 of
33 chapter 62 of the laws of 2003, as amended, when upon such date the
34 provisions of section eight of this act shall take effect; and

35 4. Sections nine through fourteen of this act shall take effect on the
36 thirtieth day after they shall have become a law.