

8487--A

2015-2016 Regular Sessions

I N A S S E M B L Y

October 9, 2015

Introduced by M. of A. GLICK, BRENNAN, PEOPLES-STOKES, BLAKE, SIMOTAS, SCHIMEL, TITONE, LIFTON, CAHILL, ORTIZ, SEAWRIGHT -- Multi-Sponsored by -- M. of A. BRONSON, CUSICK, ENGLEBRIGHT, GOTTFRIED, MARKEY, MOSLEY, SIMON -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to equal pay disclosure with respect to state contracts

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

1 Section 1. The executive law is amended by adding a new article 15-D
2 to read as follows:

3 ARTICLE 15-D

4 EQUAL PAY DISCLOSURE WITH RESPECT TO STATE CONTRACTS

5 SECTION 328-B. DEFINITIONS.

6 328-C. EQUAL PAY DISCLOSURE; REPORTING.

7 328-D. PROHIBITIONS IN CONTRACTS; VIOLATIONS.

8 S 328-B. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
9 SHALL HAVE THE FOLLOWING MEANINGS:

10 1. "EQUAL PAY REPORT" SHALL MEAN A SUMMARY OF DATA, IN A FORM CONSIST-
11 ENT WITH REGULATIONS PROMULGATED BY THE COMPTROLLER PURSUANT TO SECTION
12 THREE HUNDRED TWENTY-EIGHT-C OF THIS ARTICLE, ON EMPLOYEE COMPENSATION
13 BY SEX, RACE, ETHNICITY, SPECIFIED JOB CATEGORIES, AND OTHER RELEVANT
14 DATA.

15 2. "CONTRACTING AGENCY" SHALL MEAN A STATE AGENCY WHICH IS A PARTY OR
16 A PROPOSED PARTY TO A STATE CONTRACT OR, IN THE CASE OF A STATE CONTRACT
17 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION EIGHT OF THIS SECTION, SHALL
18 MEAN THE NEW YORK STATE HOUSING FINANCE AGENCY, HOUSING TRUST FUND
19 CORPORATION OR AFFORDABLE HOUSING CORPORATION, WHICHEVER HAS MADE OR

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

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1 PROPOSES TO MAKE THE GRANT OR LOAN FOR THE STATE ASSISTED HOUSING
2 PROJECT.

3 3. "CONTRACTOR" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE,
4 INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A
5 NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A STATE CONTRACT, AS
6 DEFINED IN SUBDIVISION EIGHT OF THIS SECTION OR A BIDDER IN CONJUNCTION
7 WITH THE AWARD OF A STATE CONTRACT OR A PROPOSED PARTY TO A STATE
8 CONTRACT. FOR THE PURPOSES OF THIS ARTICLE, "CONTRACTOR" SHALL NOT
9 INCLUDE SMALL BUSINESSES, AS DEFINED IN SUBDIVISION NINE OF THIS
10 SECTION.

11 4. "LARGE COUNTY" SHALL MEAN A COUNTY HAVING A POPULATION IN EXCESS OF
12 TWO HUNDRED EIGHTY-FIVE THOUSAND ACCORDING TO THE MOST RECENT FEDERAL
13 DECENNIAL CENSUS, PROVIDED HOWEVER, THAT A COUNTY HAVING A POPULATION IN
14 EXCESS OF TWO HUNDRED EIGHTY-FIVE THOUSAND ACCORDING TO THE TWO THOUSAND
15 TEN FEDERAL DECENNIAL CENSUS SHALL CONTINUE TO BE A LARGE COUNTY THERE-
16 AFTER NOTWITHSTANDING A LATER CENSUS SHOWING A POPULATION OF LESS THAN
17 TWO HUNDRED EIGHTY-FIVE THOUSAND FOR SUCH COUNTY.

18 5. "METROPOLITAN AREA" SHALL MEAN A CITY WITH A POPULATION OF ONE
19 MILLION OR MORE AND A COUNTY HAVING A POPULATION IN EXCESS OF ONE
20 MILLION AND IMMEDIATELY CONTIGUOUS TO SUCH CITY.

21 6. "STATE AGENCY" SHALL MEAN:

22 (A)(I) ANY STATE DEPARTMENT, OR (II) ANY DIVISION, BOARD, COMMISSION
23 OR BUREAU OF ANY STATE DEPARTMENT, OR (III) THE STATE UNIVERSITY OF NEW
24 YORK AND THE CITY UNIVERSITY OF NEW YORK, INCLUDING ALL THEIR CONSTITU-
25 ENT UNITS EXCEPT COMMUNITY COLLEGES AND THE INDEPENDENT INSTITUTIONS
26 OPERATING STATUTORY OR CONTRACT COLLEGES ON BEHALF OF THE STATE, OR (IV)
27 A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR OR
28 WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS DEFINED IN
29 SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH OR PARAGRAPH (I) OF
30 SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW;

31 (B) A "STATE AUTHORITY," AS DEFINED IN SUBDIVISION ONE OF SECTION
32 SEVENTY-THREE OF THE PUBLIC OFFICERS LAW, AND THE FOLLOWING:

33 ALBANY COUNTY AIRPORT AUTHORITY;
34 ALBANY PORT DISTRICT COMMISSION;
35 ALFRED, ALMOND, HORNELLSVILLE SEWER AUTHORITY;
36 BATTERY PARK CITY AUTHORITY;
37 CAYUGA COUNTY WATER AND SEWER AUTHORITY;
38 (NELSON A. ROCKEFELLER) EMPIRE STATE PLAZA PERFORMING ARTS;
39 CENTER CORPORATION;
40 INDUSTRIAL EXHIBIT AUTHORITY;
41 LIVINGSTON COUNTY WATER AND SEWER AUTHORITY;
42 LONG ISLAND POWER AUTHORITY;
43 LONG ISLAND RAIL ROAD;
44 LONG ISLAND MARKET AUTHORITY;
45 MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY;
46 METRO-NORTH COMMUTER RAILROAD;
47 METROPOLITAN SUBURBAN BUS AUTHORITY;
48 METROPOLITAN TRANSPORTATION AUTHORITY;
49 NATURAL HERITAGE TRUST;
50 NEW YORK CITY TRANSIT AUTHORITY;
51 NEW YORK CONVENTION CENTER OPERATING CORPORATION;
52 NEW YORK STATE BRIDGE AUTHORITY;
53 NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY;
54 NEW YORK STATE THRUWAY AUTHORITY;
55 NIAGARA FALLS PUBLIC WATER AUTHORITY;
56 NIAGARA FALLS WATER BOARD;

1 PORT OF OSWEGO AUTHORITY;
2 POWER AUTHORITY OF THE STATE OF NEW YORK;
3 ROOSEVELT ISLAND OPERATING CORPORATION;
4 SCHENECTADY METROPLEX DEVELOPMENT AUTHORITY;
5 STATE INSURANCE FUND;
6 STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY;
7 STATE UNIVERSITY CONSTRUCTION FUND;
8 SYRACUSE REGIONAL AIRPORT AUTHORITY;
9 TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY;
10 UPPER MOHAWK VALLEY REGIONAL WATER BOARD;
11 UPPER MOHAWK VALLEY REGIONAL WATER FINANCE AUTHORITY;
12 UPPER MOHAWK VALLEY MEMORIAL AUDITORIUM AUTHORITY;
13 URBAN DEVELOPMENT CORPORATION AND ITS SUBSIDIARY CORPORATIONS; AND

14 (C) THE FOLLOWING ENTITIES, ONLY TO THE EXTENT OF STATE CONTRACTS
15 ENTERED INTO FOR ITS OWN ACCOUNT OR FOR THE BENEFIT OF A STATE AGENCY AS
16 DEFINED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION: DORMITORY AUTHORITY
17 OF THE STATE OF NEW YORK; FACILITIES DEVELOPMENT CORPORATION; NEW YORK
18 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; NEW YORK STATE SCIENCE
19 AND TECHNOLOGY FOUNDATION.

20 7. "STATE ASSISTED HOUSING PROJECT" SHALL MEAN, FOR SUCH PROJECTS
21 WHICH RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY, THE
22 AFFORDABLE HOUSING CORPORATION, THE HOUSING TRUST FUND CORPORATION OR
23 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A GRANT OR LOAN FOR ALL OR
24 PART OF THE TOTAL PROJECT COST:

25 (A) A "PERMANENT HOUSING PROJECT FOR HOMELESS FAMILIES" OR "PROJECT"
26 AS DEFINED IN SUBDIVISION FIVE OF SECTION SIXTY-FOUR OF THE PRIVATE
27 HOUSING FINANCE LAW;

28 (B) A "PROJECT" AS DEFINED IN SUBDIVISION TWELVE OF SECTION ONE THOU-
29 SAND ONE HUNDRED ONE OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID
30 PROJECT IS LOCATED IN A LARGE COUNTY AND CONSISTS OF MORE THAN TWELVE
31 RESIDENTIAL UNITS AT A SINGLE SITE;

32 (C) "AFFORDABLE HOME OWNERSHIP DEVELOPMENT PROGRAMS" OR "PROJECT" AS
33 DEFINED IN SUBDIVISION EIGHT OF SECTION ONE THOUSAND ONE HUNDRED ELEVEN
34 OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A
35 METROPOLITAN AREA AS DEFINED IN SUBDIVISION FIVE OF THIS SECTION AND
36 CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

37 (D) A "TURNKEY/ENHANCED RENTAL PROJECT" OR "PROJECT" AS DEFINED IN
38 SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED SIX-A OF THE PRIVATE
39 HOUSING FINANCE LAW;

40 (E) "INFRASTRUCTURE IMPROVEMENTS" AS DEFINED IN SUBDIVISION TWO OF
41 SECTION ONE THOUSAND ONE HUNDRED THIRTY-ONE OF THE PRIVATE HOUSING
42 FINANCE LAW, TO THE EXTENT THAT SUCH "INFRASTRUCTURE IMPROVEMENTS" ARE
43 APPLIED FOR IN CONNECTION WITH A STATE ASSISTED HOUSING PROJECT AS
44 DEFINED IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION AND PROVIDED
45 FURTHER THAN THE APPLICANT FOR SUCH INFRASTRUCTURE IMPROVEMENTS AND FOR
46 SUCH STATE ASSISTED HOUSING PROJECT ARE IDENTICAL.

47 8. "STATE CONTRACT" SHALL MEAN:

48 (A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A
49 TOTAL EXPENDITURE IN EXCESS OF FIFTY THOUSAND DOLLARS, WHICH IS SUBJECT
50 TO APPROVAL BY THE COMPTROLLER PURSUANT TO SECTION ONE HUNDRED TWELVE OF
51 THE STATE FINANCE LAW, WHEREBY: (I) A CONTRACTING AGENCY, EXCEPT THE
52 OFFICE OF GENERAL SERVICES IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS
53 IN RETURN FOR LABOR, SERVICES INCLUDING, BUT NOT LIMITED TO, LEGAL,
54 FINANCIAL AND OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERI-
55 ALS OR ANY COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR
56 RENDERED OR FURNISHED TO THE CONTRACTING AGENCY; (II) A CONTRACTING

1 AGENCY, EXCEPT THE OFFICE OF GENERAL SERVICES IS COMMITTED TO EXPEND OR
2 DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION,
3 REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVE-
4 MENTS THEREON; OR (III) THE OWNER OF A STATE ASSISTED HOUSING PROJECT IS
5 COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION,
6 CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF
7 REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

8 (B) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A
9 TOTAL EXPENDITURE IN EXCESS OF EIGHTY-FIVE THOUSAND DOLLARS, WHICH IS
10 SUBJECT TO APPROVAL BY THE COMPTROLLER PURSUANT TO SECTION ONE HUNDRED
11 TWELVE OF THE STATE FINANCE LAW, WHEREBY THE OFFICE OF GENERAL SERVICES
12 IS COMMITTED TO OR DOES EXPEND FUNDS IN RETURN FOR LABOR, SERVICES
13 INCLUDING, BUT NOT LIMITED TO, LEGAL, FINANCIAL AND OTHER PROFESSIONAL
14 SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY COMBINATION OF THE FORE-
15 GOING, TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE OFFICE OF
16 GENERAL SERVICES.

17 9. "SMALL BUSINESS" AS USED IN THIS SECTION, SHALL MEAN A BUSINESS
18 WHICH IS RESIDENT IN THIS STATE, INDEPENDENTLY OWNED AND OPERATED, NOT
19 DOMINANT IN ITS FIELD, AND EMPLOYING NOT MORE THAN ONE HUNDRED INDIVID-
20 UALS.

21 S 328-C. EQUAL PAY DISCLOSURE; REPORTING. 1. ALL CONTRACTORS, AS A
22 CONDITION UPON ENTERING INTO A CONTRACT WITH THE STATE, SHALL BE
23 REQUIRED TO SUBMIT EQUAL PAY REPORTS, IN SUCH FORM AS THE COMPTROLLER
24 MAY PRESCRIBE BY REGULATION PURSUANT TO SUBDIVISION THREE OF THIS
25 SECTION. SUCH REPORTS SHALL INCLUDE, BUT NOT BE LIMITED TO, A SUMMARY OF
26 THE CONTRACTOR'S WORKFORCE PAY AVERAGES, CALCULATED BY JOB CATEGORY,
27 GENDER, RACE, AND ETHNICITY, AND THE DIFFERENCE BETWEEN PAY AVERAGES IN
28 EACH CATEGORY, EXPRESSED AS AN ABSOLUTE PERCENTAGE.

29 2. THE STATE COMPTROLLER SHALL SUBMIT A REPORT TO THE GOVERNOR, THE
30 ATTORNEY GENERAL, THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES,
31 THE COMMISSIONER OF THE DEPARTMENT OF LABOR, THE COMMISSIONER OF THE
32 DIVISION OF HUMAN RIGHTS, AND THE LEGISLATIVE FISCAL COMMITTEES SUMMA-
33 RIZING DATA RELATED TO THE EQUAL PAY REPORTS SUBMITTED BY CONTRACTORS.
34 SUCH REPORT SHALL BE MADE ANNUALLY, ON A FISCAL YEAR BASIS BY THE FIRST
35 OF JULY OF THE NEXT SUCCEEDING YEAR.

36 (A) THE REPORT SHALL INCLUDE A LIST OF CONTRACTORS THAT THE STATE
37 COMPTROLLER HAS IDENTIFIED AS BEING IN COMPLIANCE WITH SOUND EQUAL PAY
38 PRACTICES.

39 (B) THE INFORMATION REQUIRED BY THIS SUBDIVISION SHALL BE PROVIDED IN
40 ELECTRONIC FORMAT IN SUCH FORM AS PRESCRIBED BY THE STATE COMPTROLLER
41 SUCH THAT THE DATA CAN BE SEARCHED AND SORTED.

42 (C) ALL REPORTS REQUIRED UNDER THIS SUBDIVISION SHALL BE AVAILABLE FOR
43 PUBLIC INSPECTION AND COPYING PURSUANT TO SECTION EIGHTY-SEVEN OF THE
44 PUBLIC OFFICERS LAW PROVIDED THAT IN DISCLOSING SUCH REPORTS PURSUANT TO
45 THE PUBLIC OFFICERS LAW, THE STATE COMPTROLLER SHALL REDACT THE NAME OR
46 SOCIAL SECURITY NUMBER OF ANY INDIVIDUAL EMPLOYEE THAT IS INCLUDED IN
47 SUCH DOCUMENT.

48 3. THE STATE COMPTROLLER, IN CONSULTATION WITH THE COMMISSIONER OF THE
49 OFFICE OF GENERAL SERVICES, SHALL PROMULGATE REGULATIONS:

50 (A) REGARDING THE CONTENT AND THE TIMELY AND PROPER FILING OF EQUAL
51 PAY REPORTS BY CONTRACTORS; AND

52 (B) SETTING FORTH MEASURES AND PROCEDURES TO REQUIRE ALL CONTRACTING
53 AGENCIES, WHERE PRACTICABLE, FEASIBLE AND APPROPRIATE, TO ASSESS THE
54 EQUAL PAY PRACTICES OF CONTRACTORS SUBMITTING BIDS OR PROPOSALS IN
55 CONNECTION WITH THE AWARD OF A STATE CONTRACT. SUCH RULES AND REGU-
56 LATIONS SHALL TAKE INTO ACCOUNT: THE NATURE OF THE LABOR, SERVICES,

1 SUPPLIES, EQUIPMENT OR MATERIALS BEING PROCURED BY THE STATE AGENCY; THE
2 METHOD OF PROCUREMENT REQUIRED TO BE USED BY A STATE AGENCY TO AWARD THE
3 CONTRACT; THE EQUAL PAY REPORTS REQUIRED TO BE SUBMITTED PURSUANT TO
4 SUBDIVISION ONE OF THIS SECTION; AND SUCH OTHER FACTORS AS THE COMP-
5 TROLLER DEEMS APPROPRIATE OR NECESSARY TO PROMOTE THE AWARD OF STATE
6 CONTRACTS TO CONTRACTORS HAVING SOUND EQUAL PAY PRACTICES. SUCH ASSESS-
7 MENT SHALL NOT PERMIT THE AUTOMATIC REJECTION OF A BID OR PROCUREMENT
8 PROPOSAL BASED ON THE LACK OF ADHERENCE TO EQUAL PAY PRACTICES. EACH BID
9 OR PROPOSAL SHALL BE ANALYZED ON AN INDIVIDUAL PER BID OR PER PROPOSAL
10 BASIS WITH THE CONTRACTOR'S EQUAL PAY PRACTICES CONSIDERED AS ONLY A
11 PART OF A WIDER CONSIDERATION OF SEVERAL FACTORS WHEN DECIDING TO AWARD
12 OR DECLINE TO AWARD A BID OR PROPOSAL.

13 S 328-D. PROHIBITIONS IN CONTRACTS; VIOLATIONS. EVERY CONTRACTING
14 AGENCY SHALL INCLUDE A PROVISION IN ITS STATE CONTRACTS EXPRESSLY
15 PROVIDING THAT ANY CONTRACTOR WHO WILLFULLY AND INTENTIONALLY FAILS TO
16 COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE AS SET FORTH IN SUCH STATE
17 CONTRACT SHALL BE LIABLE TO THE CONTRACTING AGENCY FOR LIQUIDATED OR
18 OTHER APPROPRIATE DAMAGES AND SHALL PROVIDE FOR OTHER APPROPRIATE REME-
19 DIES ON ACCOUNT OF SUCH BREACH.

20 S 2. This act shall take effect on the first of January next succeed-
21 ing the date upon which it shall have become a law and shall apply to
22 all contracts with the state entered into on or after such effective
23 date.