

7151

I N S E N A T E

March 31, 2016

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

AN ACT to amend the labor law, in relation to establishing a registration system for contractors and subcontractors engaged in public work projects in order to better enforce existing labor laws and regulations in the public works industry

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

1 Section 1. The labor law is amended by adding a new section 220-i to
2 read as follows:
3 S 220-I. REGISTRATION SYSTEM FOR CONTRACTORS AND SUBCONTRACTORS. 1.
4 DEFINITIONS AS USED IN THIS SECTION:
5 A. "CONTRACTOR" MEANS A PERSON, PARTNERSHIP, ASSOCIATION, JOINT STOCK
6 COMPANY, TRUST, CORPORATION, OR OTHER LEGAL BUSINESS ENTITY OR SUCCESSOR
7 THEREOF WHO ENTERS INTO A CONTRACT WHICH IS SUBJECT TO THE PROVISIONS OF
8 THIS ARTICLE, AND INCLUDES ANY SUBCONTRACTOR OR LOWER TIER SUBCONTRACTOR
9 OF A CONTRACTOR AS DEFINED HEREIN.
10 B. "BUREAU" MEANS THE DEPARTMENT OF LABOR'S BUREAU OF PUBLIC WORKS.
11 2. NO CONTRACTOR SHALL BID ON ANY CONTRACT FOR PUBLIC WORK AS DEFINED
12 IN THIS ARTICLE, UNLESS THE CONTRACTOR IS REGISTERED PURSUANT TO THIS
13 SECTION. NO CONTRACTOR SHALL LIST A SUBCONTRACTOR IN A BID PROPOSAL FOR
14 THE CONTRACT UNLESS THE SUBCONTRACTOR IS REGISTERED PURSUANT TO THIS
15 SECTION AT THE TIME THE BID IS MADE.
16 3. A. A CONTRACTOR SHALL REGISTER IN WRITING WITH THE DEPARTMENT ON A
17 FORM PROVIDED BY THE COMMISSIONER. THE FORM SHALL REQUIRE THE FOLLOWING
18 INFORMATION:
19 I. THE NAME, PRINCIPAL BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE
20 CONTRACTOR.
21 II. WHETHER THE CONTRACTOR IS A CORPORATION, PARTNERSHIP, SOLE
22 PROPRIETORSHIP, OR OTHER FORM OF BUSINESS ENTITY.
23 III. THE NAME AND ADDRESS OF EACH PERSON WITH A FINANCIAL INTEREST IN
24 THE CONTRACTOR AND THE PERCENTAGE INTEREST, EXCEPT THAT IF THE CONTRAC-
25 TOR IS A PUBLICLY-TRADED CORPORATION, THE CONTRACTOR SHALL SUPPLY THE
26 NAMES AND ADDRESSES OF THE CORPORATION'S OFFICERS.

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

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1 IV. THE CONTRACTOR'S TAX IDENTIFICATION NUMBER AND UNEMPLOYMENT INSUR-
2 ANCE REGISTRATION NUMBER.

3 V. ANY OTHER RELEVANT AND APPROPRIATE INFORMATION AS DETERMINED BY THE
4 COMMISSIONER.

5 B. AT THE TIME OF REGISTRATION, AND SUBSEQUENTLY UPON REQUEST, THE
6 CONTRACTOR SHALL SUBMIT TO THE COMMISSIONER DOCUMENTATION DEMONSTRATING
7 THAT THE CONTRACTOR HAS WORKER'S COMPENSATION INSURANCE COVERAGE FOR ALL
8 WORKERS AS REQUIRED BY LAW.

9 4. A. THE CONTRACTOR SHALL PAY AN INITIAL ANNUAL NON-REFUNDABLE REGIS-
10 TRATION FEE OF THREE HUNDRED DOLLARS TO THE COMMISSIONER. THE NON-RE-
11 FUNDABLE REGISTRATION FEE FOR THE SECOND ANNUAL REGISTRATION SHALL BE
12 THREE HUNDRED DOLLARS. UPON SUCCESSFUL COMPLETION OF TWO CONSECUTIVE
13 YEARS OF REGISTRATION, A CONTRACTOR MAY ELECT TO REGISTER FOR A TWO-YEAR
14 PERIOD AND PAY A NON-REFUNDABLE REGISTRATION FEE OF FIVE HUNDRED
15 DOLLARS.

16 B. A CONTRACTOR WHO IS PERFORMING PUBLIC WORK ON THE EFFECTIVE DATE OF
17 THIS ACT SHALL SUBMIT THE REGISTRATION APPLICATION FORM AND FEE TO THE
18 COMMISSIONER WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS ACT.

19 5. UPON RECEIPT OF THE FEE, FORM AND DOCUMENTATION REQUIRED BY THIS
20 SECTION, THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF REGISTRATION TO
21 THE CONTRACTOR. A REGISTRATION CERTIFICATE SHALL BE VALID FOR ONE CALEN-
22 DAR YEAR FROM THE DATE OF REGISTRATION. REGISTRATIONS SHALL BE RENEWED
23 NOT LESS THAN THIRTY DAYS BEFORE THE EXPIRATION DATE OF THE IMMEDIATELY
24 PRECEDING REGISTRATION.

25 6. EACH CONTRACTOR SHALL, AFTER THE BID IS MADE AND PRIOR TO THE
26 AWARDING OF THE CONTRACT, SUBMIT TO THE PUBLIC ENTITY THE CERTIFICATES
27 OF REGISTRATION FOR ALL SUBCONTRACTORS LISTED IN THE BID PROPOSAL.
28 APPLICATIONS FOR REGISTRATION SHALL NOT BE ACCEPTED AS A SUBSTITUTE FOR
29 A CERTIFICATE OF REGISTRATION FOR THE PURPOSES OF THIS SECTION.

30 7. A. A CONTRACTOR WHO:

31 I. WILLFULLY HINDERS OR DELAYS THE COMMISSIONER IN THE PERFORMANCE OF
32 HIS DUTIES IN THE ENFORCEMENT OF THIS ACT;

33 II. FAILS TO MAKE, KEEP, AND PRESERVE ANY RECORDS AS REQUIRED UNDER
34 THIS ARTICLE;

35 III. FALSIFIES ANY SUCH RECORD, OR REFUSES TO MAKE ANY SUCH RECORD
36 ACCESSIBLE TO THE COMMISSIONER UPON DEMAND;

37 IV. REFUSES TO FURNISH A SWORN STATEMENT OF SUCH RECORDS OR ANY OTHER
38 INFORMATION REQUIRED FOR THE ENFORCEMENT OF THIS ACT TO THE COMMISSIONER
39 UPON DEMAND;

40 V. PAYS OR AGREES TO PAY WAGES AT A RATE LESS THAN THE RATE PRESCRIBED
41 BY THIS ARTICLE; OR

42 VI. OTHERWISE VIOLATES ANY PROVISION OF THIS ACT, SHALL BE GUILTY OF A
43 DISORDERLY PERSONS OFFENSE.

44 B. AS AN ALTERNATIVE TO OR IN ADDITION TO SANCTIONS PROVIDED BY THIS
45 ARTICLE, THE COMMISSIONER MAY, AFTER PROVIDING THE CONTRACTOR WITH
46 NOTICE OF ANY ALLEGED VIOLATION OF THIS ACT, AND WITH AN OPPORTUNITY TO
47 REQUEST A HEARING BEFORE THE COMMISSIONER:

48 I. DENY RENEWAL, REVOKE OR SUSPEND THE REGISTRATION OF A CONTRACTOR
49 FOR A PERIOD OF NOT MORE THAN FIVE YEARS; OR

50 II. REQUIRE A CONTRACTOR, AS A CONDITION OF INITIAL OR CONTINUED
51 REGISTRATION, TO PROVIDE A SURETY BOND PAYABLE TO THE STATE. THE SURETY
52 BOND SHALL BE FOR THE BENEFIT OF WORKERS DAMAGED BY ANY FAILURE OF A
53 CONTRACTOR TO PAY WAGES OR BENEFITS PURSUANT TO OR OTHERWISE COMPLY WITH
54 THE PROVISIONS OF THIS ARTICLE. THE SURETY BOND SHALL BE IN THE AMOUNT
55 AND FORM THAT THE COMMISSIONER DEEMS NECESSARY FOR THE PROTECTION OF THE

1 CONTRACTOR'S WORKERS, BUT SHALL NOT EXCEED TEN THOUSAND DOLLARS PER
2 WORKER.

3 C. THE BUREAU MAY ORDER THE IMMEDIATE SUSPENSION OF A CONTRACTOR'S
4 REGISTRATION, PRIOR TO A FORMAL HEARING ON THE REVOCATION OF THE
5 CONTRACTOR'S REGISTRATION PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION,
6 IF THE BUREAU DETERMINES THAT ORDERING AN IMMEDIATE SUSPENSION IS IN THE
7 PUBLIC INTEREST AND PROVIDED THAT THE CONTRACTOR IS AFFORDED AN OPPORTU-
8 NITY TO CONTEST THE IMMEDIATE SUSPENSION IN THE FOLLOWING MANNER:

9 I. THE BUREAU SHALL NOTIFY THE CONTRACTOR IN WRITING OF THE IMMEDIATE
10 REVOCATION AND THE CONTRACTOR'S RIGHTS UNDER THIS PARAGRAPH.

11 II. THE CONTRACTOR MAY NOTIFY THE BUREAU OF ITS REQUEST FOR AN OPPOR-
12 TUNITY TO BE HEARD AND CONTEST THE IMMEDIATE SUSPENSION IN WRITING WITH-
13 IN SEVENTY-TWO HOURS OF ITS RECEIPT OF IMMEDIATE SUSPENSION NOTIFICA-
14 TION.

15 III. WITHIN SEVEN BUSINESS DAYS OF RECEIPT OF THE NOTIFICATION FROM
16 THE CONTRACTOR PURSUANT TO SUBPARAGRAPH II OF THIS PARAGRAPH, THE BUREAU
17 SHALL GRANT THE CONTRACTOR A HEARING TO CONTEST THE IMMEDIATE SUSPEN-
18 SION. THE BUREAU SHALL PERMIT THE CONTRACTOR TO PRESENT EVIDENCE AT THE
19 HEARING.

20 IV. THE BUREAU SHALL ISSUE A WRITTEN DECISION WITHIN FIVE BUSINESS
21 DAYS OF THE HEARING EITHER UPHOLDING OR REVERSING THE CONTRACTOR'S IMME-
22 DIATE SUSPENSION. THE DECISION SHALL INCLUDE THE GROUNDS FOR UPHOLDING
23 OR REVERSING THE CONTRACTOR'S IMMEDIATE SUSPENSION.

24 V. IF THE CONTRACTOR DISAGREES WITH THE WRITTEN DECISION, THE CONTRAC-
25 TOR MAY APPEAL THE DECISION TO THE COMMISSIONER.

26 D. IF THE BUREAU INTENDS TO IMPOSE AN IMMEDIATE SUSPENSION AS SET
27 FORTH IN PARAGRAPH C OF THIS SUBDIVISION, THE BUREAU SHALL PROVIDE THE
28 CONTRACTOR WITH A NOTICE OF INTENT TO SUSPEND AND THE CONTRACTOR MAY
29 REQUEST AN ADMINISTRATIVE HEARING BEFORE THE COMMISSION WITHIN SEVENTY-
30 TWO HOURS OF THE RECEIPT OF THE NOTICE OF INTENT TO SUSPEND IN ORDER TO
31 PRESENT EVIDENCE EXPEDITIOUSLY IN SUPPORT OF THE POSITION THAT THE
32 SUSPENSION SHOULD NOT BE IMPOSED. THE SUSPENSION SHALL NOT TAKE EFFECT
33 PRIOR TO THE EXPIRATION OF THE SEVENTY-TWO HOUR OPPORTUNITY TO REQUEST A
34 HEARING. IF SUCH A REQUEST IS NOT MADE, THE SUSPENSION SHALL TAKE EFFECT
35 AT THE END OF THE SEVENTY-TWO HOUR PERIOD. IF SUCH A REQUEST IS MADE,
36 THE SUSPENSION SHALL TAKE EFFECT ONLY AFTER THE COMMISSIONER CONDUCTS
37 THE HEARING.

38 E. IF THE BUREAU ORDERS THE IMMEDIATE SUSPENSION OF A CONTRACTOR'S
39 REGISTRATION PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION, THE VIOLATION
40 SHALL HAVE NO EFFECT ON THE REGISTRATION OF ANY CONTRACTOR OR SUBCON-
41 TRACTOR, REGARDLESS OF TIER, IN THE CONTRACTUAL CHAIN WITH THE SUSPENDED
42 CONTRACTOR.

43 S 2. This act shall take effect on the ninetieth day after it shall
44 have become a law. Effective immediately, the commissioner of labor
45 shall promulgate rules and regulations necessary or appropriate to carry
46 out the provisions of this act.