

STATE OF NEW YORK

4036

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the arts and cultural affairs law, in relation to prevailing wages for certain employees of not-for-profit theaters

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 article 9-A to
2 read as follows:

ARTICLE 9-A

PREVAILING WAGE FOR NOT-FOR-PROFIT THEATER EMPLOYEES

Section 239-b. Definitions.

239-c. Record keeping.

239-d. Powers of the fiscal officer.

239-e. Investigation and hearing.

239-f. Failure to protest underpayments.

239-g. Statements showing amounts due for wages.

239-h. Penalties.

239-i. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age, gender identity, sexual orientation, sex or disability.

239-j. Enforcement of article.

239-k. Severability.

17 § 239-b. Definitions. For the purpose of this article the following
18 terms shall have the following meanings:

19 1. "Arts agency" shall mean any public agency of New York state or of
20 a locality within New York state that provides grants to productions at
21 not-for-profit theaters.

22 2. "Contract" shall mean any agreement between a production and an
23 arts agency to grant funds to such production.

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

LBD05274-01-5

1 3. "Employee" means an employee of a not-for-profit theater that
2 receives a grant award from an arts agency including but not limited to
3 actors, stage managers, production assistants, scenic artists, scenic
4 designers, costume designers, lighting designers, sound designers,
5 projection designers, graphic artists, art and costume department coor-
6 dinators, ushers, ticket takers, line directors, press agents, company
7 managers, theater managers, engineers, musicians, singers, choreogra-
8 phers, dancers, staging staff, ballet school faculty, directors, fight
9 directors, intimacy directors, dressers, wardrobers, costumers, stitch-
10 ers, tailors, drapers, shoppers, laundry workers, dyers, costume techni-
11 cians, milliners, craftspeople, child actors, guardians, box office
12 treasurers, first assistants, and ticket sellers employed on a
13 production funded by an arts agency.

14 4. "Grant" shall mean any capital and/or operational grants made to
15 productions funded by an arts agency.

16 5. "Production" shall mean a corporation, partnership, limited part-
17 nership, or other entity or individual that provides compensation to an
18 employee.

19 6. "Contractor" or "subcontractor" means a production that is a recip-
20 ient of a grant from an arts agency.

21 7. "Wage" means: (a) basic hourly cash rate of pay; and (b) any
22 supplements.

23 8. "Prevailing wage" means rate of compensation paid by a production,
24 by virtue of collective bargaining agreements between bona fide labor
25 organizations that represent employees performing work on a production
26 funded by an arts agency where such labor organization represents at
27 least thirty per centum of employees in the locality where such work is
28 being performed. The prevailing rate of wage shall be annually deter-
29 mined in accordance herewith by the fiscal officer no later than thirty
30 days prior to July first of each year, and the prevailing rate of wage
31 for the period commencing July first of such year through June thirti-
32 eth, inclusive, of the following year shall be the rate of wage set
33 forth in such collective bargaining agreements for the period commencing
34 July first through June thirtieth, including those increases for such
35 periods which are directly ascertainable from such collective bargaining
36 agreements by the fiscal officer in such fiscal officer's annual deter-
37 mination. In the event that it is determined that less than thirty
38 percent of the employees in the locality where the work is being
39 performed receive a collectively bargained rate of wage, then the aver-
40 age wage paid to such employees in the locality for the twelve-month
41 period preceding the fiscal officer's annual determination shall be the
42 prevailing rate of wage. Employees for whom a prevailing rate of wage is
43 to be determined shall not be considered in determining such prevailing
44 wage.

45 9. "Supplements" means all remuneration for employment paid in any
46 medium other than cash, or reimbursement for expenses, or any payments
47 which are not wages, including, but not limited to, health, welfare,
48 non-occupational disability, retirement, vacation benefits, holiday pay
49 life insurance, and apprenticeship training.

50 10. "Prevailing practices in the locality" means the practice of
51 providing supplements, as provided by virtue of collective bargaining
52 agreements between bona fide labor organizations and employees, provided
53 that such bona fide labor organizations employ at least thirty per
54 centum of such employees in the locality, as determined by the fiscal
55 officer in accordance with the provisions of this article. With respect
56 to each supplement determined to be one of the prevailing practices in

1 the locality, the amount of such supplement shall be determined in the
2 same manner and at the same times as the prevailing rate of wage is
3 determined pursuant to this article.

4 11. "Locality" means the state, a town, city, village or other civil
5 division or area of the state as determined by the fiscal officer. The
6 fiscal officer may fix a different geographic area in determining the
7 locality for the prevailing basic hourly cash rate of pay and the local-
8 ity for prevailing supplements.

9 12. "Fiscal officer" means the comptroller of the state of New York or
10 other analogous officer of the governing body of an arts agency.

11 13. "Substantially-owned affiliated entity" means the parent company
12 of a contractor or subcontractor, any subsidiary of such contractor or
13 subcontractor, or any entity in which such parent of such contractor or
14 subcontractor owns more than fifty percent of the voting stock, or an
15 entity in which one or more of the top five shareholders of such
16 contractor or subcontractor individually or collectively also owns a
17 controlling share of the voting stock, or an entity which exhibits any
18 other indicia of control over such contractor or subcontractor or over
19 which such contractor or subcontractor exhibits control, regardless of
20 whether or not the controlling party or parties have any identifiable or
21 documented ownership interest. Such indicia shall include power or
22 responsibility over employment decisions, access to and/or use of the
23 relevant entity's assets or equipment, power or responsibility over
24 contracts of the entity, responsibility for maintenance or submission of
25 certified payroll records, and influence over the business decisions of
26 the relevant entity.

27 14. "Entity" means a partnership, association, joint venture, company,
28 sole proprietorship, corporation, or any other form of doing business.

29 15 "Parent company" means an entity that directly controls a contrac-
30 tor or subcontractor.

31 16. "Subsidiary" means an entity that is controlled directly, or indi-
32 rectly through one or more intermediaries, by a contractor or subcon-
33 tractor or the contractor's parent company.

34 17. "Successor" means an entity engaged in work substantially similar
35 to that of its predecessor, where there is substantial continuity of
36 operation with that of such predecessor.

37 18. "Not-for-profit theater" shall mean a theater operating as a not-
38 for-profit entity pursuant to New York state law with a seating capacity
39 of at least one hundred.

40 § 239-c. Record keeping. 1. In all cases where work is being performed
41 pursuant to a collective bargaining agreement the contractor or subcon-
42 tractor shall keep original payrolls or transcripts thereof, subscribed
43 and confirmed by such contractor or subcontractor as true, under penal-
44 ties of perjury, showing the hours and days worked by each employee, the
45 craft, trade or occupation at which such employee was employed, and the
46 wages paid.

47 2. Where the wages paid include sums which are not paid directly to
48 the employees weekly and which are expended for supplements, the records
49 required to be maintained shall include a record of such hourly payment
50 on behalf of such employees, the supplement for which such payment has
51 been made, and the name and address of the person to whom such payment
52 has been made. In all such cases, the contractor shall keep a true and
53 inscribed copy of the agreement under which such payments are made, a
54 record of all net payments made thereunder, and a list of all persons
55 for whom such payments are made.

1 3. The records required to be maintained shall be kept on the site of
2 the work during all of the time that work under the contract is being
3 performed.

4 4. All records required to be maintained shall be preserved for a
5 period of three years after the completion of work.

6 § 239-d. Powers of the fiscal officer. 1. In addition to the powers
7 enumerated elsewhere in this article, the fiscal officer shall have the
8 power:

9 (a) to cause an investigation to be made to determine the prevailing
10 wages in any locality for work performed by employees covered by this
11 article, and in making such investigation, the fiscal officer may
12 utilize wage and fringe benefit data from various sources including, but
13 not limited to, data and determinations of federal, state or other
14 governmental agencies;

15 (b) to institute and conduct inspections at the site of the work or
16 elsewhere in aid of the effective administration and enforcement of the
17 provisions of this article;

18 (c) to examine the books, documents and records pertaining to the
19 wages paid to, and the hours of work performed by, employees;

20 (d) to hold the hearings provided for under this article, and in
21 connection therewith to issue subpoenas, administer oaths and examine
22 witnesses. The enforcement of a subpoena issued under this section shall
23 be regulated by the civil practice law and rules;

24 (e) to make a classification by craft, trade or other generally recog-
25 nized occupational category of the employees involved and to determine
26 whether such work has been performed by such employees in such classi-
27 fication;

28 (f) to require a contractor or subcontractor to file with the fiscal
29 officer a record of the wages actually paid by such contractor to its
30 employees and of their hours of work;

31 (g) to delegate any of the powers under this subdivision to such
32 fiscal officer's deputy or other authorized representative;

33 (h) to provide such reasonable limitations from any or all provisions
34 of this article as such fiscal officer may find necessary and proper in
35 the public interest or to avoid serious impairment of the conduct of
36 government business; and

37 (i) to propose, and after public hearing held before such fiscal offi-
38 cer or such fiscal officer's designee, to promulgate such rules or regu-
39 lations as such fiscal officer shall consider necessary for the proper
40 execution of the duties, responsibilities and powers conferred upon such
41 fiscal officer by the provisions of this article. Such rules may allow
42 such reasonable variations, tolerances and exemptions to and from any or
43 all provisions of this article as the fiscal officer may find necessary
44 and proper in the public interest, or to avoid serious impairment of the
45 conduct of government business.

46 2. For all work for which the industrial commissioner is the fiscal
47 officer, the industrial commissioner shall additionally have all the
48 powers otherwise granted under this chapter.

49 § 239-e. Investigation and hearing. 1. Whenever the fiscal officer has
50 reason to believe that an employee has been paid less than the wages
51 stipulated in a contract, or if such contract has no wage schedule
52 attached thereto and the fiscal officer has reason to believe that an
53 employee has been paid less than the wages prevailing for such employ-
54 ee's craft, trade or occupation, the fiscal officer may, and upon
55 receipt of a written complaint from such employee, shall conduct a
56 special investigation to determine the facts relating thereto.

1 2. (a) At the start of such investigation the fiscal officer may noti-
2 fy the financial officer of the public agency interested who shall, at
3 the direction of the fiscal officer, forthwith withhold from any payment
4 due to the contractor executing the contract sufficient money to safe-
5 guard the rights of the employees and to cover the civil penalty that
6 may be assessed as provided herein, or, if there are insufficient moneys
7 still due to be disbursed to the contractor or subcontractor to safe-
8 guard the rights of the employees and to cover the civil penalty that
9 may be assessed as provided herein, the financial officer of another
10 public agency which has entered or subsequently enters into a contract
11 with the contractor or subcontractor, shall withhold from any such
12 payment to the contractor or subcontractor executing any work, suffi-
13 cient moneys to safeguard the rights of the employees and to cover the
14 civil penalty that may be assessed as provided herein.

15 (b) If there are insufficient moneys due to be disbursed by the
16 contractor or subcontractor to safeguard the rights of the employees and
17 to cover the civil penalty that may be assessed as provided herein, the
18 financial officer shall immediately so notify the fiscal officer, who
19 may issue a notice of withholding to any of the following: (i) any
20 substantially-owned affiliated entity or successor or subsidiary of the
21 contractor or subcontractor; (ii) an officer of the contractor or
22 subcontractor who knowingly participated in the violation of this arti-
23 cle; (iii) any of the partners, if the contractor or subcontractor is a
24 partnership; or (iv) any of the five largest shareholders of the
25 contractor or subcontractor, as determined by the fiscal officer.

26 (c) The notice of withholding shall provide that the fiscal officer
27 intends to instruct the financial officer, not less than ten days
28 following of the notice by mail, to withhold sufficient moneys to safe-
29 guard the rights of the employees and to cover the civil penalty that
30 may be assessed as provided herein, from any payment due the notified
31 party under any contract pending final determination. The notice of
32 withholding shall provide that within thirty days following the date of
33 the notice of withholding the notified party may contest the withholding
34 on the basis that the notified party is not a partner or one of the five
35 largest shareholders of the subcontractor or contractor, an officer of
36 the contractor or subcontractor who knowingly participated in the
37 violation of this article, a substantially-owned affiliated entity or
38 successor. If the notified party fails to contest the notice of with-
39 holding, or if the fiscal officer, after reviewing the information
40 provided by the notified party in such contest, determines that the
41 notified party is a partner or one of the five largest shareholders, a
42 substantially-owned affiliated entity, an officer of the contractor or
43 subcontractor who knowingly participated in the violation of this arti-
44 cle, or a successor, the fiscal officer may instruct the financial offi-
45 cer to immediately withhold sufficient moneys to safeguard the rights of
46 the employees and to cover the civil penalty that may be assessed as
47 provided herein from funds still to be disbursed to the notified party
48 under any contract pending the final determination.

49 (d) The financial officer shall immediately implement the notice of
50 withholding and confirm in writing to the fiscal officer the amount of
51 money withheld.

52 (e) If the notified party contests the withholding after a withholding
53 has been effected, and if the fiscal officer determines that the noti-
54 fied party is not a partner or one of the five largest shareholders, a
55 substantially-owned affiliated entity or successor, or an officer of the
56 contractor or subcontractor who knowingly participated in the violation

1 of this article, the fiscal officer shall immediately notify the finan-
2 cial officer to release all funds being withheld from the notified
3 party.

4 (f) The money shall be held in trust pending completion of the inves-
5 tigation.

6 3. If, despite the requirements of law, the contract for the work has
7 been awarded without the annexation thereto of the schedule of wages
8 provided for in this article, the fiscal officer shall determine in the
9 proceeding before such fiscal officer the wages prevailing at the time
10 the work was performed for the crafts, trades or occupations of the
11 employees involved.

12 4. In an investigation conducted under the provisions of this section,
13 the inquiry of the fiscal officer shall not extend to work performed
14 more than two years prior to: (a) the filing of the complaint; or (b)
15 the commencement of the investigation upon the fiscal officer's own
16 volition, whichever occurs first.

17 5. (a) The investigation and hearing shall be expeditiously conducted
18 and upon the completion thereof the fiscal officer shall determine the
19 issues raised and shall make and file an order in such fiscal officer's
20 office stating such determination and forthwith serve personally or by
21 mail a copy of such order and determination together with a notice of
22 filing upon all parties to the proceeding and upon the financial officer
23 of the public agency involved.

24 (b) In addition to directing payment of wages found to be due, such
25 order of the fiscal officer may direct payment of a further sum as a
26 civil penalty in an amount not exceeding twenty-five percent of the
27 total amount found to be due. In assessing the amount of the penalty,
28 due consideration shall be given to the size of the employer's business,
29 the good faith of the employer, the gravity of the violation, the histo-
30 ry of previous violations of the employer, successor or substantially-
31 owned affiliated entity or any successor of the contractor or subcon-
32 tractor, any officer of the contractor or subcontractor who knowingly
33 participated in the violation of this article, and any of the partners
34 if the contractor or subcontractor is a partnership or any of the five
35 largest shareholders of the contractor or subcontractor, as determined
36 by the fiscal officer, of such underpayment of wages or supplements, and
37 any officer of the contractor or subcontractor who knowingly partic-
38 ipated in the violation of this article, and the failure to comply with
39 recordkeeping or other non-wage requirements. Where the fiscal officer
40 is the commissioner, the penalty shall be paid to the commissioner for
41 deposit in the state treasury. Where the fiscal officer is a city comp-
42 troller or other analogous officer, the penalty shall be paid to such
43 officer for deposit in the city treasury.

44 (c) If the order directs the payment to specified employees of wages
45 found to be due and unpaid, including interest at a rate not less than
46 six per centum per year and not more than the rate of interest then in
47 effect as prescribed by the superintendent of financial services pursu-
48 ant to section fourteen-a of the banking law per annum from the time
49 such wages should have been paid, the financial officer of such public
50 agency shall, upon receipt of such order, pay to such employees from the
51 trust money withheld the amounts specified in such order and shall pay
52 the civil penalty as provided herein, provided no review proceeding
53 pursuant to the provisions of article seventy-eight of the civil prac-
54 tice law and rules is commenced within thirty days of the date said
55 order was filed in the office of the fiscal officer. If such review is
56 timely commenced, the money withheld shall remain in trust pending final

1 disposition of the review proceeding. In determining the rate of inter-
2 est to be imposed the fiscal officer shall consider the size of the
3 employer's business, the good faith of the employer, the gravity of the
4 violation, the history of previous violations of the employer, successor
5 or substantially-owned affiliated entity or any successor of the
6 contractor or subcontractor, any officer of the contractor or subcon-
7 tractor who knowingly participated in the violation of this article, and
8 any of the partners if the contractor or subcontractor is a partnership
9 or any of the five largest shareholders of the contractor or subcontrac-
10 tor, as determined by the fiscal officer, and the failure to comply with
11 recordkeeping or other non-wage requirements.

12 6. When a final determination has been made and such determination is
13 in favor of an employee, such employee may, in addition to any other
14 remedy provided by this article, institute an action in any court of
15 appropriate jurisdiction against the person or corporation found to have
16 violated this article, any substantially-owned affiliated entity or any
17 successor of the contractor or subcontractor, any officer of the
18 contractor or subcontractor who knowingly participated in the violation
19 of this article, and any of the partners if the contractor or subcon-
20 tractor is a partnership or any of the five largest shareholders of the
21 contractor or subcontractor, as determined by the fiscal officer, for
22 the recovery of the difference between the sum, if any, actually paid to
23 such fiscal officer by the aforesaid financial officer pursuant to such
24 order and the amount found to be due such fiscal officer as determined
25 by such order. Such action shall be commenced within three years from
26 the date of the filing of such order, or if such order is reviewed in a
27 proceeding pursuant to article seventy-eight of the civil practice law
28 and rules, within three years after the termination of such review
29 proceeding. Provided that if no proceeding for judicial review as
30 provided in this section shall then be pending and the time for initi-
31 ation of such proceeding shall have expired, the fiscal officer may file
32 with the county clerk of the county where the employer resides or has a
33 place of business the order of the fiscal officer containing the amount
34 found to be due. The filing of such order shall have the full force and
35 effect of a judgment duly docketed in the office of such clerk. The
36 order may be enforced by and in the name of the fiscal officer in the
37 same manner, and with like effect, as that prescribed by the civil prac-
38 tice law and rules for the enforcement of a money judgment.

39 7. When, pursuant to the provisions of this section, two final orders
40 have been entered against a contractor, subcontractor, successor, or any
41 substantially-owned affiliated entity of the contractor or subcontrac-
42 tor, any of the partners if the contractor or subcontractor is a part-
43 nership, any of the five largest shareholders of the contractor or
44 subcontractor, any officer of the contractor or subcontractor who know-
45 ingly participated in the violation of this article within any consec-
46 utive six-year period determining that such contractor or subcontractor
47 and/or its successor, substantially-owned affiliated entity of the
48 contractor or subcontractor, any of the partners or any of the five
49 largest shareholders of the contractor or subcontractor, any officer of
50 the contractor or subcontractor who knowingly participated in the
51 violation of this article has willfully failed to pay the prevailing
52 wages in accordance with the provisions of this article, whether such
53 failures were concurrent or consecutive and whether or not such final
54 determinations concerning separate public contracts are rendered simul-
55 taneously, such contractor, subcontractor, successor, and if the
56 contractor, subcontractor, successor, or any substantially-owned affil-

1 iated entity of the contractor or subcontractor, any of the partners if
2 the contractor or subcontractor is a partnership, or any of the five
3 largest shareholders of the contractor or subcontractor, any officer of
4 the contractor or subcontractor who knowingly participated in the
5 violation of this article, or any successor is a corporation, or any
6 officer of such corporation who knowingly participated in such failure,
7 shall be ineligible to submit a grant application or be awarded a grant
8 by a public agency covered by this article for a period of five years
9 from the date of the second order, provided, however, that where any
10 such final order involves the falsification of payroll records or the
11 kickback of wages, the contractor, subcontractor, successor, substan-
12 tially-owned affiliated entity of the contractor or subcontractor, any
13 partner if the contractor or subcontractor is a partnership or any of
14 the five largest shareholders of the contractor or subcontractor, or any
15 officer of the contractor or subcontractor who knowingly participated in
16 the violation of this article shall be ineligible to submit a grant
17 application or be awarded a grant, contract or subcontract with the
18 state, any municipal corporation or public body for a period of five
19 years from the date of the first final order. Nothing in this subdivi-
20 sion shall be construed as affecting any provision of any other law or
21 regulation relating to the awarding of public contracts or grants.

22 8. (a) When a final determination has been made in favor of a
23 complainant and the contractor or subcontractor found violating this
24 article has failed to make payment as required by the order of the
25 fiscal officer, and provided that no relevant proceeding for judicial
26 review shall then be pending and the time for initiation of such
27 proceeding shall have expired, the fiscal officer may file a copy of the
28 order of the fiscal officer containing the amount found to be due with
29 the county clerk of the county of residence or place of business of any
30 of the following:

31 (i) any substantially-owned affiliated entity or any successor of the
32 contractor or subcontractor;

33 (ii) any of the partners if the contractor or subcontractor is a part-
34 nership or any of the five largest shareholders of the contractor or
35 subcontractor, as determined by the fiscal officer; or

36 (iii) any officer of the contractor or subcontractor who knowingly
37 participated in the violation of this article; provided, however, that
38 the fiscal officer shall within five days of the filing of the order
39 provide notice thereof to the partner or five largest shareholders or
40 successor or substantially-owned affiliated entity. The notified party
41 may contest the filing on the basis that it is not a partner or five
42 largest shareholders, an officer of the contractor or subcontractor who
43 knowingly participated in the violation of this article, successor or
44 substantially-owned affiliated entity. If, after reviewing the informa-
45 tion provided by the notified party in support of such contest, the
46 fiscal officer determines that the notified party is not within the
47 definitions described herein, the fiscal officer shall immediately with-
48 draw such fiscal officer's filing of the order.

49 (b) The filing of such order shall have the full force and effect of a
50 judgment duly docketed in the office of such clerk. The order may be
51 enforced by and in the name of the fiscal officer in the same manner,
52 and with like effect, as that prescribed by the civil practice law and
53 rules for the enforcement of a money judgment.

54 9. When a final determination has been made against a subcontractor in
55 favor of a complainant and the contractor has made payment to the
56 complainant of any wages and interest due the complainant and any civil

1 penalty, and providing that no relevant proceeding for judicial review
2 shall then be pending and the time for initiation of such proceeding
3 shall have expired, the contractor may file a copy of the order of the
4 fiscal officer containing the amount found to be due with the county
5 clerk of the county of residence or place of business of the subcontractor.
6 The filing of such order shall have the full force and effect of a
7 judgment duly docketed in the office of such clerk. The judgment may be
8 docketed in favor of the contractor who may proceed as a judgment creditor
9 against the subcontractor for the recovery of all monies paid by the
10 contractor under such order.

11 § 239-f. Failure to protest underpayments. Notwithstanding any incon-
12 sistent provision of this chapter or of any other general, special or
13 local law, ordinance, charter or administrative code, an employee shall
14 not be barred from such employee's right to recover the difference
15 between the amount actually paid to such employee and the amount which
16 should have been paid to such employee pursuant to an order entered
17 under the provisions of this article because of the prior receipt by
18 such employee without protest of wages paid or on account of such
19 employee's failure to state orally or in writing upon any payroll or
20 receipt which such employee is required to sign that the wages received
21 by such employee are received under protest, or on account of such
22 employee's failure to indicate such employee's protest against the
23 amount, or that the amount so paid does not constitute payment in full
24 of wages due to such employee for the period covered by such payment.

25 § 239-g. Statements showing amounts due for wages. 1. Subcontractors
26 engaged for work by a contractor or its subcontractor shall, upon
27 receipt from the contractor or its subcontractor of the schedule of
28 wages and supplements specified in the contract, provide to the contrac-
29 tor or its subcontractor a verified statement attesting that the subcontractor
30 has received and reviewed such schedule of wages and supplements,
31 and agrees that it will pay the applicable prevailing wages and
32 will pay or provide the supplements specified therein. Such verified
33 statement shall be filed in the manner described in subdivision three of
34 this section. It shall be a violation of this article for any contractor
35 or its subcontractor to fail to provide for its subcontractor a copy of
36 the schedule of wages and supplements specified in the contract.

37 2. Before grant funds are released by a public agency it shall be the
38 duty of the comptroller of the state or the financial officer of such
39 public agency or other officer or person charged with the custody and
40 disbursement of the grant funds pursuant to the contract and under which
41 payment is made, to require the contractor to file a statement in writ-
42 ing in form satisfactory to such officer certifying to the amounts then
43 due and owing from such contractor filing such statement to or on behalf
44 of any and all employees for daily or weekly wages on account of labor
45 performed upon the work under the contract, setting forth therein the
46 names of the persons whose wages are unpaid and the amount due to or on
47 behalf of each respectively, which statement so to be filed shall be
48 verified by the oath of the contractor that such contractor has read
49 such statement subscribed by such contractor and knows the contents
50 thereof, and that the same is true of such contractor's own knowledge.

51 3. Before payment is made by or on behalf of a public agency of any
52 sums due on account of a contract and representing the final portion of
53 twenty percent of the total amount payable under the contract, it shall
54 be the duty of the comptroller of the state or the financial officer of
55 such public agency or other officer or person charged with the custody
56 and disbursement of the grant funds applicable to the contract under and

1 pursuant to which payment is made to require the contractor to file
2 every verified statement required to be obtained by the contractor from
3 its subcontractors pursuant to subdivision one of this section and to
4 file a statement in writing in form satisfactory to such officer setting
5 forth the amounts known by the contractor to be then due and owing from
6 a subcontractor, or from a subcontractor of such contractor, for such
7 wages and supplements, or certifying that the contractor has no knowl-
8 edge of such amounts owing to or on behalf of any employees of its
9 subcontractors, and that in the event it is determined by the commis-
10 sioner that the wages or supplements or both of any employees of such
11 subcontractors have not been paid or provided pursuant to the appropri-
12 ate schedule of wages and supplements, the contractor shall be responsi-
13 ble for payment of such wages or supplements pursuant to the provisions
14 of section two hundred thirty-nine-j of this article. Before final
15 payment is made of any sums due on account of such contract, the
16 contractor shall be required to file a supplemental statement setting
17 forth any additional amounts known by the contractor to be then due and
18 owing by each subcontractor for such wages or supplements, or that the
19 contractor has no knowledge of such amounts owing to or on behalf of any
20 employee of its subcontractors. Such statements so to be filed shall be
21 verified by the oath of the contractor that such contractor has read
22 such statements subscribed by such contractor and knows the contents
23 thereof, and that the same is true of such contractor's own knowledge,
24 except with respect to wages and supplements owing by subcontractors
25 which may be certified upon information and belief.

26 4. If any interested person shall have previously filed a protest in
27 writing objecting to the release of grant funds to any contractor or
28 subcontractor to the extent of the amount or amounts due or to become
29 due to such contractor or subcontractor for daily or weekly wages for
30 labor performed on the work which was funded by such grant, or if for
31 any other reason it may be deemed advisable, the comptroller of the
32 state or the financial officer of the public agency or other officer or
33 person charged with the custody and disbursement of the grant funds
34 applicable to the contract for such work, may deduct from the whole
35 amount of any payment on account thereof the sum or sums admitted by any
36 contractor or subcontractor in such statement or statements as filed to
37 be due and owing by such contractor or subcontractor on account of labor
38 performed on such work before disbursing such grant funds, and may with-
39 hold the amount so deducted for the benefit of the employees whose wages
40 are unpaid as shown by the verified statements filed by any contractor
41 or subcontractor, and may pay directly to any person the amount or
42 amounts shown by the statements filed as hereinbefore required to be due
43 to such person or such person's duly authorized collective bargaining
44 labor organization receiving such payment to the extent of the amount
45 thereof.

46 § 239-h. Penalties. 1. Any contractor or subcontractor who shall upon
47 such contractor or subcontractor's oath verify any statement required to
48 be filed under this article which is known by such contractor or subcon-
49 tractor to be false shall be guilty of perjury and punishable as
50 provided by the penal law.

51 2. When a contract contains as part thereof a schedule of wages as
52 provided for in this article, any contractor who, after entering into
53 such contract, and any subcontractor of such contractor who fails to pay
54 to any employee the wages stipulated in such wage schedule is guilty of
55 a misdemeanor and upon conviction shall be punished for a first offense
56 by a fine of five hundred dollars or by imprisonment for not more than

1 thirty days or by both fine and imprisonment; for a second offense by a
2 fine of one thousand dollars, and in addition thereto the contract on
3 which the violation has occurred shall be forfeited; and no such
4 contractor shall be entitled to receive any sum, nor shall any officer,
5 agent or employee of the contracting public agency pay any such sum or
6 authorize its payment from the funds under such contractor's charge or
7 control to such contractor for work done upon the contract on which the
8 contractor has been convicted of a second offense. If the contractor or
9 subcontractor is a corporation, any officer of such corporation who
10 knowingly permits the corporation to fail to make such payment shall
11 also be guilty of a misdemeanor and the criminal and civil penalties
12 herein shall attach to such officer upon conviction.

13 § 239-i. Provisions in contracts prohibiting discrimination on account
14 of race, creed, color, national origin, age, gender identity, sexual
15 orientation, sex or disability. Every contract for work shall contain
16 provisions by which the contractor agrees:

17 1. that in the hiring of employees for the performance of work under
18 the contract or any subcontract thereunder within the territorial limits
19 of this state, no contractor, subcontractor, nor any person acting on
20 behalf of such contractor or subcontractor, shall by reason of race,
21 creed, color, national origin, age, gender identity, sexual orientation,
22 sex or disability, discriminate against any citizen of the state of New
23 York who is qualified and available to perform the work to which the
24 employment relates;

25 2. that no contractor, subcontractor, nor any person on such contrac-
26 tor or subcontractor's behalf shall, in any manner, discriminate against
27 or intimidate any employee hired for the performance of work under the
28 contract on account of race, creed, color, national origin, age, gender
29 identity, sexual orientation, sex or disability;

30 3. that there may be deducted from the amount payable to the contrac-
31 tor by the public agency under the contract a penalty of fifty dollars
32 for each person for each day during which such person was discriminated
33 against or intimidated in violation of the provisions of the contract;
34 and

35 4. that the contract may be cancelled or terminated by the public
36 agency, and all moneys otherwise to be disbursed pursuant to such
37 contract may be forfeited for a second or any subsequent violation of
38 the terms or conditions of this section of the contract.

39 § 239-j. Enforcement of article. If the fiscal officer finds that any
40 contractor fails to comply with or evades the provisions of this arti-
41 cle, the fiscal officer shall present evidence of such noncompliance or
42 evasion to the public agency having charge of such contract for enforce-
43 ment. Where such evidence indicates a noncompliance or evasion on the
44 part of a subcontractor, the contractor shall be responsible for such
45 noncompliance or evasion. It shall be the duty of the public agency in
46 charge of such contract to enforce the provisions of this article.

47 § 239-k. Severability. If any clause, sentence, paragraph, subdivi-
48 sion, section or part of this article shall be adjudged by any court of
49 competent jurisdiction to be invalid, such judgment shall not affect,
50 impair, or invalidate the remainder thereof, but shall be confined in
51 its operation to the clause, sentence, paragraph, subdivision, section
52 or part thereof directly involved in the controversy in which such judg-
53 ment shall have been rendered. It is hereby declared to be the intent of
54 the legislature that this article would have been enacted even if such
55 invalid provisions had not been included herein.

§ 2. Section 3.01 of the arts and cultural affairs law is amended to read as follows:

§ 3.01. Legislative findings and declaration of policy. 1. It is hereby found that many of our citizens lack the opportunity to view, enjoy or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture, and the performing and fine arts generally. It is hereby further found that, with increasing leisure time, the practice and enjoyment of the arts are of increasing importance and that the general welfare of the people of the state will be promoted by giving further recognition to the arts as a vital aspect of our culture and heritage and as a valued means of expanding the scope of our educational programs.

2. It is hereby declared to be the policy of the state to join with private patrons and with institutions and professional organizations concerned with the arts to [~~insure~~] **ensure** that the role of the arts in the life of our communities will continue to grow and will play an ever more significant part in the welfare and educational experience of our citizens and in maintaining the paramount position of this state in the nation and in the world as a cultural center.

3. The legislature further finds that the investment of funds by arts agencies can provide a vital economic engine to assist, nurture, develop, and promote regional economic development, the state tourism industry and the growth of jobs in the state. Indeed, attendees of arts programming generate economic activity in New York state far beyond the cost of admission, from food and drink, to parking, transportation, travel, and childcare revenues, among others. The professional performers and related or supporting professionals employed on projects and productions that create the performing and fine arts are the basis of the arts economy in New York state and must not be left behind. Therefore, the state legislature finds that arts agencies have a substantial and compelling proprietary interest in any funds awarded in the fine and performing arts. The legislature hereby declares that the mandate of a living wage for projects awarded grants by arts agencies is central to ensuring the continued availability of the fine and performing arts in New York state, and the concomitant economic benefits therewith, and further that the state's proprietary interest with regard to such funds could be adversely affected by labor-management conflict.

4. It is further declared that all activities undertaken by the state in carrying out this policy shall be directed toward encouraging and assisting rather than in any ways limiting the freedom of artistic expression that is essential for the well-being of the arts.

§ 3. Paragraph (d) of subdivision 1 of section 3.19 of the arts and cultural affairs law is relettered paragraph (e) and a new paragraph (d) is added to read as follows:

(d) Any organization applying for grant funding from an arts agency shall provide a certification that it will enter into a labor peace agreement with at least one bona fide labor organization that represents employees of such organization including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theater managers, engineers, musicians, singers, choreographers, dancers, staging staff, ballet school faculty, directors, fight directors, intimacy directors, dressers, wardrobers, costumers, stitchers, tailors,

1 drapers, shoppers, laundry workers, dyers, costume technicians, millin-
2 ers, craftspeople, child actors, guardians, box office treasurers, first
3 assistants, and ticket sellers either where such bona fide labor organ-
4 ization is actively representing employees providing services covered by
5 the organization seeking such grant funding or upon notice by a bona
6 fide labor organization that is attempting to represent employees who
7 will provide services to the organization seeking such grant funding.
8 The maintenance of such a labor peace agreement shall be an ongoing
9 material condition for receipt of grant funding under this article. For
10 purposes of this paragraph, the term "labor peace agreement" shall mean
11 an agreement between an entity and labor organization that, at a mini-
12 mum, protects the state's proprietary interests by prohibiting labor
13 organizations and members from engaging in picketing, work stoppages,
14 boycotts, and any other economic interference with the entity.

15 § 4. This act shall take effect on the ninetieth day after it shall
16 have become a law and shall apply to any grant award made after such
17 effective date.