S T A T E O F N E W Y O R K

3705

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. JOHN, NOLAN, SCHROEDER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to hours, wages and supplements for work on public work projects and the definition of public work

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

Section 1. Subdivision 2 of section 220 of the labor law, as amended by chapter 678 of the laws of 2007, is amended to read as follows:

2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT OR PERMIT to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party, INCLUDING ALL PROJECTS INVOLVING THE CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION OR ALTERATION OF A BUILDING, CHARTER SCHOOL OR IMPROVEMENT TO PROPERTY FINANCED, IN WHOLE OR IN PART, THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOPMENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, OR SIMILAR PUBLIC ENTITY, and any contract for public work entered into by a third party acting in place of, on behalf of and for the benefit of such public entity pursuant to any lease, permit or other agreement between such third party and the public entity, and which may involve the employment of laborers, workers or mechanics shall contain a stipulation that no laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations

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

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in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or days per week on such public project or in such areas the commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workers and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 2. Subdivision 2 of section 220 of the labor law, as amended by chapter 851 of the laws of 1947, is amended to read as follows:

2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT OR PERMIT to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party, INCLUDING ALL PROJECTS INVOLVING THE CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION OR ALTERATION OF A BUILDING, CHARTER SCHOOL OR IMPROVEMENT TO PROPERTY FINANCED, IN WHOLE OR IN PART, THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOPMENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, OR SIMILAR PUBLIC ENTITY, and which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week

except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workmen and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the [industrial] commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the [industrial] commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workmen and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the [industrial] commissioner determines that there are not sufficient workmen, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the [industrial] commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the [industrial] commissioner shall grant a dispensation permitting all laborers, workmen and mechanics, or any classification of such laborers, workmen and mechanics, to work such additional hours or days per week on such public project or in such areas the [industrial] commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the [industrial] commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 3. Subdivision 5 of section 220 of the labor law is amended by adding a new paragraph m to read as follows:

M. "PUBLIC WORK", FOR THE INTENTS AND PURPOSES OF THIS ARTICLE, INCLUDES ALL WORK PERFORMED UNDER EACH CONTRACT TO WHICH THE STATE OR A PUBLIC BENEFIT CORPORATION OR A MUNICIPAL CORPORATION OR A COMMISSION APPOINTED PURSUANT TO LAW IS A PARTY, INCLUDING ALL PROJECTS FINANCED, IN WHOLE OR IN PART, THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOPMENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, OR SIMILAR PUBLIC ENTITY, THE ISSUANCE OF BONDS, GRANTS, TAX EXEMPTIONS OR ABATEMENTS OR OTHER FINANCIAL SUBSIDIES, AND WHICH MAY INVOLVE THE EMPLOYMENT OF LABORERS, WORKMEN OR MECHANICS, AS SET FORTH IN SUBDIVISION TWO OF THIS SECTION. ADDITIONALLY, "PUBLIC WORK" INCLUDES ALL CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REPAIR, RENOVATION, OR REHABILITATION OF BUILDINGS OR PROPERTY BY A PRIVATE OWNER OR DEVELOPER OR NOT-FOR-PROFIT ENTITY OR CHARTER SCHOOL THAT IS PERFORMED IN CONJUNCTION WITH A STATE OR PUBLIC GRANT OR PURSUANT TO AN AGREEMENT

FOR THE PURCHASE OR LEASING OF SUCH BUILDINGS OR PROPERTY BY THE STATE OR A PUBLIC BENEFIT CORPORATION, OR A MUNICIPAL CORPORATION, OR A COMMISSION APPOINTED PURSUANT TO LAW, INCLUDING INDUSTRIAL DEVELOPMENT AGENCIES, JOB DEVELOPMENT AUTHORITIES, DORMITORY AUTHORITIES, CORRECTIONAL AUTHORITIES, OR SIMILAR ENTITIES.

S 4. This act shall take effect immediately; provided that the amendments to subdivision 2 of section 220 of the labor law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 5 of chapter 678 of the laws of 2007, as amended, when upon such date the provisions of section two of this act shall take effect.