

7108

2009-2010 Regular Sessions

I N A S S E M B L Y

March 20, 2009

Introduced by M. of A. JOHN, NOLAN, SCHROEDER -- Multi-Sponsored by --
M. of A. COLTON, PHEFFER -- 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 including charter schools and to amend the education law, in relation to contracts for charter school construction and collective bargaining representation of employees in certain charter schools

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

1 Section 1. Subdivision 2 of section 220 of the labor law, as amended
2 by chapter 678 of the laws of 2007, is amended to read as follows:
3 2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT OR
4 PERMIT to which the state or a public benefit corporation or a municipal
5 corporation or a commission appointed pursuant to law OR AN EDUCATION
6 CORPORATION ORGANIZED TO OPERATE A CHARTER SCHOOL is a party, and any
7 contract for public work entered into by a third party acting in place
8 of, on behalf of and for the benefit of such public entity pursuant to
9 any lease, permit or other agreement between such third party and the
10 public entity, and which may involve the employment of laborers, workers
11 or mechanics shall contain a stipulation that no laborer, worker or
12 mechanic in the employ of the contractor, subcontractor or other person
13 doing or contracting to do the whole or a part of the work contemplated
14 by the contract shall be permitted or required to work more than eight
15 hours in any one calendar day or more than five days in any one week
16 except in cases of extraordinary emergency including fire, flood or
17 danger to life or property. No such person shall be so employed more
18 than eight hours in any day or more than five days in any one week
19 except in such emergency. Extraordinary emergency within the meaning of
20 this section shall be deemed to include situations in which sufficient
21 laborers, workers and mechanics cannot be employed to carry on public

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

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1 work expeditiously as a result of such restrictions upon the number of
2 hours and days of labor and the immediate commencement or prosecution or
3 completion without undue delay of the public work is necessary in the
4 judgment of the commissioner for the preservation of the contract site
5 and for the protection of the life and limb of the persons using the
6 same. Upon the application of any person interested, the commissioner
7 shall make a determination as to whether or not on any public project or
8 on all public projects in any area of this state, sufficient laborers,
9 workers and mechanics of any or all classifications can be employed to
10 carry on work expeditiously if their labor is restricted to eight hours
11 per day and five days per week, and in the event that the commissioner
12 determines that there are not sufficient workers, laborers and mechanics
13 of any or all classifications which may be employed to carry on such
14 work expeditiously if their labor is restricted to eight hours per day
15 and five days per week, and the immediate commencement or prosecution or
16 completion without undue delay of the public work is necessary in the
17 judgment of the commissioner for the preservation of the contract site
18 and for the protection of the life and limb of the persons using the
19 same, the commissioner shall grant a dispensation permitting all labor-
20 ers, workers and mechanics, or any classification of such laborers,
21 workers and mechanics, to work such additional hours or days per week on
22 such public project or in such areas the commissioner shall determine.
23 Whenever such a dispensation is granted, all work in excess of eight
24 hours per day and five days per week shall be considered overtime work,
25 and the laborers, workers and mechanics performing such work shall be
26 paid a premium wage commensurate with the premium wages prevailing in
27 the area in which the work is performed. No such dispensation shall be
28 effective with respect to any public work unless and until the depart-
29 ment of jurisdiction, as defined in this section, certifies to the
30 commissioner that such public work is of an important nature and that a
31 delay in carrying it to completion would result in serious disadvantage
32 to the public. Time lost in any week because of inclement weather by
33 employees engaged in the construction, reconstruction and maintenance of
34 highways outside of the limits of cities and villages may be made up
35 during that week and/or the succeeding three weeks.

36 S 2. Paragraph (a) of subdivision 3 of section 2853 of the education
37 law, as amended by section 4 of part D-2 of chapter 57 of the laws of
38 2007, is amended to read as follows:

39 (a) A charter school may be located in part of an existing public
40 school building, in space provided on a private work site, in a public
41 building or in any other suitable location. Provided, however, before a
42 charter school may be located in part of an existing public school
43 building, the charter entity shall provide notice to the parents or
44 guardians of the students then enrolled in the existing school building
45 and shall hold a public hearing for purposes of discussing the location
46 of the charter school. ALL CONTRACTS ENTERED INTO BY SUCH CHARTER
47 SCHOOL, OR ANY EDUCATION CORPORATION ORGANIZED TO OPERATE A CHARTER
48 SCHOOL, OR ANY OTHER PUBLIC ENTITY, INCLUDING THE STATE, A PUBLIC BENE-
49 FIT CORPORATION, MUNICIPAL CORPORATION, OR ANY PRIVATE ENTITY ACTING ON
50 BEHALF OF ANY OF THESE ENTITIES, INVOLVING THE CONSTRUCTION, RECON-
51 STRUCTION, DEMOLITION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION,
52 OR ALTERATION OF ANY CHARTER SCHOOL FACILITY SHALL BE SUBJECT TO THE
53 REQUIREMENTS OF SECTION ONE HUNDRED THREE OF THE GENERAL MUNICIPAL LAW
54 AND ARTICLES EIGHT AND NINE OF THE LABOR LAW. A charter school may own,
55 lease or rent its space. For purposes of local zoning, land use regu-

lation and building code compliance, a charter school shall be deemed a nonpublic school.

S 3. Paragraph (b-1) of subdivision 3 of section 2854 of the education law, as amended by section 6 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

(b-1) The employees of a charter school that is not a conversion from an existing public school shall not be deemed members of any existing collective bargaining unit representing employees of the school district in which the charter school is located, and the charter school and its employees shall not be subject to any existing collective bargaining agreement between the school district and its employees. Provided, however, that (i) if the student enrollment of the charter school on the first day on which the charter school commences student instruction exceeds two hundred fifty or if the average daily student enrollment of such school exceeds two hundred fifty students at any point during the first two years after the charter school commences student instruction, all employees of the school who are eligible for representation under article fourteen of the civil service law shall be deemed to be represented in a separate negotiating unit at the charter school by the same employee organization, if any, that represents like employees in the school district in which such charter school is located; (ii) the provisions of subparagraph (i) of this paragraph may be waived in up to ten charters issued on the recommendation of the charter entity set forth in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article; [(iii) the provisions of subparagraph (i) of this paragraph shall not be applicable to the renewal or extension of a charter;] and [(iv)] (III) nothing in this sentence shall be construed to subject a charter school subject to the provisions of this paragraph or its employees to any collective bargaining agreement between any public school district and its employees or to make the employees of such charter school part of any negotiating unit at such school district. [The charter school may, in its sole discretion, choose whether or not to offer the terms of any existing collective bargaining to school employees.]

S 4. This act shall take effect immediately, provided, however, that the amendments to subdivision two of section 220 of the labor law made by section one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.