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

5106

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. SAVINO -- 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 the payment of the prevailing wage by subcontractors on public works projects

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

Section 1. Section 220 of the labor law is amended by adding a new subdivision 10 to read as follows:

10. SURETY BOND PAYABLE BY SUBCONTRACTORS. ALL SUBCONTRACTORS ON A PUBLIC WORK PROJECT SHALL BE REQUIRED TO SUBMIT A SURETY BOND FOR THE UNDERPAYMENT OF THE PREVAILING WAGE AND SUPPLEMENTS. WHERE THE FISCAL OFFICER FOR THE PUBLIC WORK PROJECT IS THE COMMISSIONER, THE SURETY BOND SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN THE STATE TREASURY. WHERE THE FISCAL OFFICER IS A CITY COMPTROLLER OR OTHER ANALOGOUS OFFICER, THE SURETY BOND SHALL BE PAID TO SAID OFFICER FOR DEPOSIT IN THE CITY TREASURY. SUCH SURETY BOND SHALL BE IN THE SUM OF FIVE PER CENTUM OF THE TOTAL PAYROLL OF THE SUBCONTRACTOR ON A PUBLIC WORK PROJECT AND SHALL BE RETAINED BY THE FISCAL OFFICER FOR A PERIOD NOT TO EXCEED TWO YEARS FOLLOWING THE COMPLETION OF THE PUBLIC WORK PROJECT. INTEREST SHALL ACCRUE ON SUCH SURETY BOND AT A RATE OF FIVE PER CENTUM PER ANNUM BEGINNING ON THE DATE OF DEPOSIT WITH THE FISCAL OFFICER AND SHALL BE DISPERSED ONLY AS SPECIFIED IN THIS SUBDIVISION. PROCEEDS FROM THE SURETY BOND MAY ONLY BE DISPERSED FOR THE PURPOSE OF REFUNDING THE SURETY BOND TO A SUBCONTRACTOR TWO YEARS AFTER THE EXPIRATION OF THE PUBLIC WORK PROJECT OR FOR THE PAYMENT OF WAGES OR SUPPLEMENTS DETERMINED TO BE OWING TO WORKERS PURSUANT TO THIS SECTION. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO PRECLUDE SUBCONTRACTORS OR CONTRACTORS FROM ANY LIABILITY OR RESPONSIBILITY PURSUANT TO THIS ARTICLE.

S 2. Section 223 of the labor law, as amended by chapter 929 of the laws of 1935, is amended to read as follows:

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

LBD09660-01-9

S 223. Enforcement of article. If the fiscal officer as defined herein finds that any person contracting with the state, a municipal corporation, or any commission appointed pursuant to law, for the performance of any public work fails to comply with or evades the provisions of this article, he shall present evidence of such non-compliance or evasion to the officer, department, board or commission having charge of such work for enforcement. Wherein such evidence indicates a non-compliance or evasion on the part of a sub-contractor, the contractor shall be responsible for such non-compliance or evasion; PROVIDED, HOWEVER, THAT ANY UNDERPAYMENT OF PREVAILING WAGES OR SUPPLEMENTS ON THE PART OF A SUBCONTRACTOR SHALL BE PAID PURSUANT TO SUBDIVISION TEN OF SECTION TWO HUNDRED TWENTY OF THIS ARTICLE. ONLY AFTER THE PAYMENT OF SUCH WAGES OR SUPPLEMENTS IS EXHAUSTED PURSUANT TO SUBDIVISION TEN OF SECTION TWO HUNDRED TWENTY OF THIS ARTICLE MAY A CONTRACTOR BECOME LIABLE FOR THE PAYMENT OF SUCH WAGES OR SUPPLEMENTS ON BEHALF OF A SUBCONTRACTOR. It shall be the duty of any officer, department, board or commission in charge of the construction of such public work contracts to enforce the provisions of this article.

S 3. This act shall take effect immediately.