

5231

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 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
22 work expeditiously as a result of such restrictions upon the number of

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

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

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

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

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

4 (b-1) The employees of a charter school that is not a conversion from
5 an existing public school shall not be deemed members of any existing
6 collective bargaining unit representing employees of the school district
7 in which the charter school is located, and the charter school and its
8 employees shall not be subject to any existing collective bargaining
9 agreement between the school district and its employees. Provided,
10 however, that (i) if the student enrollment of the charter school on the
11 first day on which the charter school commences student instruction
12 exceeds two hundred fifty or if the average daily student enrollment of
13 such school exceeds two hundred fifty students at any point during the
14 first two years after the charter school commences student instruction,
15 all employees of the school who are eligible for representation under
16 article fourteen of the civil service law shall be deemed to be repres-
17 ented in a separate negotiating unit at the charter school by the same
18 employee organization, if any, that represents like employees in the
19 school district in which such charter school is located; (ii) the
20 provisions of subparagraph (i) of this paragraph may be waived in up to
21 ten charters issued on the recommendation of the charter entity set
22 forth in paragraph (b) of subdivision three of section twenty-eight
23 hundred fifty-one of this article; [(iii) the provisions of subparagraph
24 (i) of this paragraph shall not be applicable to the renewal or exten-
25 sion of a charter;] and [(iv)] (III) nothing in this sentence shall be
26 construed to subject a charter school subject to the provisions of this
27 paragraph or its employees to any collective bargaining agreement
28 between any public school district and its employees or to make the
29 employees of such charter school part of any negotiating unit at such
30 school district. [The charter school may, in its sole discretion, choose
31 whether or not to offer the terms of any existing collective bargaining
32 to school employees.]

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