

5847

2009-2010 Regular Sessions

I N S E N A T E

June 11, 2009

Introduced by Sen. ONORATO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to enacting the "New York state construction industry fair play act"; and to amend the state finance law, in relation to creating the construction industry classification fund

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 25-B to
2 read as follows:

3 ARTICLE 25-B

4 THE NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT

5 SECTION 861. SHORT TITLE.

6 861-A. LEGISLATIVE FINDINGS AND INTENT.

7 861-B. DEFINITIONS.

8 861-C. PRESUMPTION OF EMPLOYMENT IN THE CONSTRUCTION INDUSTRY.

9 861-D. NOTICE TO PERSONS RECEIVING REMUNERATION FROM CONTRACTORS
10 AND SUBCONTRACTORS.

11 861-E. VIOLATIONS.

12 861-F. ENFORCEMENT AND PENALTIES.

13 861-G. ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION.

14 861-H. RETALIATION.

15 S 861. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
16 THE "NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT".

17 S 861-A. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS
18 AND DECLARES THAT NEW YORK STATE'S CONSTRUCTION INDUSTRY IS EXPERIENCING
19 DANGEROUS LEVELS OF EMPLOYEE MISCLASSIFICATION FRAUD. UNSCRUPULOUS
20 EMPLOYERS ARE INTENTIONALLY REPORTING EMPLOYEES AS INDEPENDENT CONTRAC-
21 TORS TO STATE AND FEDERAL AUTHORITIES OR WORKERS' COMPENSATION CARRIERS
22 IN RECORD NUMBERS. IN ADDITION, THERE HAS BEEN AN EXPLOSION OF EMPLOYERS

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

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1 WHO OPERATE IN THE UNDERGROUND ECONOMY AND FAIL TO REPORT ALL OR A SIZE-
2 BLE PORTION OF THEIR WORKERS.

3 THE LEGISLATURE HEREBY FINDS AND DECLARES THAT RECENT STUDIES OF NEW
4 YORK CITY'S CONSTRUCTION INDUSTRY ALONE SUGGESTS THAT AS MANY AS FIFTY
5 THOUSAND NEW YORK CITY CONSTRUCTION WORKERS -- NEARLY ONE IN FOUR -- ARE
6 EITHER MISCLASSIFIED AS INDEPENDENT CONTRACTORS OR ARE EMPLOYED BY
7 CONSTRUCTION CONTRACTORS COMPLETELY OFF THE BOOKS. CONSTRUCTION INDUSTRY
8 FRAUD REDUCES GOVERNMENT REVENUE, SHIFTS TAX AND WORKERS' COMPENSATION
9 INSURANCE COSTS TO LAW-ABIDING EMPLOYEES, LOWERS WORKING CONDITIONS AND
10 STEALS JOBS FROM LEGITIMATE EMPLOYERS AND THEIR EMPLOYEES.

11 IN TWO THOUSAND FIVE ALONE, IT WAS ESTIMATED THAT THE LOST PAYROLL
12 TAXES AND SOCIAL INSURANCE PREMIUM PAYMENTS IN NEW YORK CITY DUE TO
13 CLASSIFICATION FRAUD EXCEEDED TWO HUNDRED SEVENTY MILLION DOLLARS. IN
14 ADDITION THE GOVERNMENT AND PROVIDERS WERE FORCED TO PAY AN ADDITIONAL
15 ONE HUNDRED FORTY-EIGHT MILLION DOLLARS FOR HEALTH CARE COSTS FRAUDU-
16 LENTLY SHIFTED FROM EMPLOYERS. FINALLY, IT WAS ESTIMATED THAT THE
17 GOVERNMENT WAS CHEATED OUT OF ALMOST SEVENTY MILLION DOLLARS IN LOST
18 INCOME TAXES DUE. MISCLASSIFICATION FRAUD CREATES SIGNIFICANT PROBLEMS
19 FOR WORKERS. THESE WORKERS ARE NOT COVERED BY WORKERS' COMPENSATION,
20 UNEMPLOYMENT INSURANCE, OR TEMPORARY DISABILITY. THEY ARE LIABLE FOR
21 TAXES THEY DO NOT OWE AND LOSE OVERTIME AND HEALTH BENEFITS. FINALLY,
22 UNSCRUPULOUS CONTRACTORS WHO ENGAGE IN FRAUD ARE ABLE TO UNDERCUT LAW-A-
23 BIDDING CONTRACTORS BY AS MUCH AS THIRTY PERCENT IN THE PRICE OF
24 CONSTRUCTION SERVICES.

25 THEREFORE, THE LEGISLATURE HEREBY FINDS AND DECLARES THAT GOVERNMENT
26 HAS AN OBLIGATION TO CURB THIS UNDERGROUND ECONOMY, ENFORCE LONG-STAND-
27 ING EMPLOYMENT LAWS, ENSURE COMPLIANCE WITH ESSENTIAL SOCIAL INSURANCE
28 PROTECTIONS AND ELIMINATE THE UNFAIR COMPETITIVE ADVANTAGE FROM CONTRAC-
29 TORS IN THE UNDERGROUND ECONOMY BY AND THROUGH THE ENACTMENT OF THE NEW
30 YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT.

31 S 861-B. DEFINITIONS. AS USED IN THIS ARTICLE:

32 1. "CONSTRUCTION" MEANS CONSTRUCTING, RECONSTRUCTING, ALTERING, MAIN-
33 TAINING, MOVING, REHABILITATING, REPAIRING, RENOVATING OR DEMOLITION OF
34 ANY BUILDING, STRUCTURE, OR IMPROVEMENT, OR RELATING TO THE EXCAVATION
35 OF OR OTHER DEVELOPMENT OR IMPROVEMENT TO LAND.

36 2. "CONTRACTOR" MEANS ANY SOLE PROPRIETOR, PARTNERSHIP, FIRM, CORPO-
37 RATION, LIMITED LIABILITY COMPANY, ASSOCIATION OR OTHER LEGAL ENTITY
38 PERMITTED BY LAW TO DO BUSINESS WITHIN THE STATE OF NEW YORK WHO ENGAGES
39 IN CONSTRUCTION AS DEFINED IN THIS ARTICLE.

40 3. "CONTRACTOR" INCLUDES A GENERAL CONTRACTOR AND A SUBCONTRACTOR.

41 4. "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR.

42 5. "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR.

43 S 861-C. PRESUMPTION OF EMPLOYMENT IN THE CONSTRUCTION INDUSTRY. 1.
44 ANY PERSON PERFORMING SERVICES FOR A CONTRACTOR SHALL BE CLASSIFIED AS
45 AN EMPLOYEE UNLESS ALL OF THE FOLLOWING CRITERIA ARE MET:

46 (A) THE INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN PERFORMING
47 THE JOB, BOTH UNDER HIS OR HER CONTRACT AND IN FACT;

48 (B) THE SERVICE MUST BE PERFORMED OUTSIDE THE CONTRACTOR'S USUAL
49 COURSE OF BUSINESS; AND

50 (C) THE INDIVIDUAL MUST BE CUSTOMARILY ENGAGED IN AN INDEPENDENTLY
51 ESTABLISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS THAT IS SIMILAR
52 TO THE SERVICE AT ISSUE.

53 2. THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR TO PAY
54 UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS' COMPENSATION PREMI-
55 UMS WITH RESPECT TO AN INDIVIDUAL'S WAGES SHALL NOT BE CONSIDERED IN
56 MAKING A DETERMINATION UNDER THIS SECTION.

1 3. AN INDIVIDUAL'S ACT OF SECURING WORKERS' COMPENSATION INSURANCE
2 WITH A CARRIER AS A SOLE PROPRIETOR OR PARTNERSHIP SHALL NOT BE CONSID-
3 ERED IN MAKING A DETERMINATION UNDER THIS SECTION.

4 S 861-D. NOTICE TO PERSONS RECEIVING REMUNERATION FROM CONTRACTORS AND
5 SUBCONTRACTORS. 1. CONTRACTORS SHALL PROVIDE TO ALL INDIVIDUALS RECEIV-
6 ING REMUNERATION TO PERFORM CONSTRUCTION WORK A WRITTEN NOTICE, PROVIDED
7 BY THE COMMISSIONER, THAT DESCRIBES THE RESPONSIBILITY OF INDEPENDENT
8 CONTRACTORS TO PAY TAXES REQUIRED BY STATE AND FEDERAL LAW AND THE
9 RIGHTS OF EMPLOYEES TO WORKERS' COMPENSATION, UNEMPLOYMENT BENEFITS,
10 MINIMUM WAGE, OVERTIME AND OTHER FEDERAL AND STATE WORKPLACE
11 PROTECTIONS. SUCH INFORMATION SHALL ALSO CONTAIN CONTACT INFORMATION FOR
12 SUCH PERSONS TO FILE COMPLAINTS OR INQUIRE WITH THE COMMISSIONER ABOUT
13 EMPLOYMENT CLASSIFICATION STATUS. IN ADDITION, THE NOTICE SHALL CONTAIN
14 THE ADDRESS TO THE WEB SITE DESCRIBED IN SUBDIVISION THREE OF THIS
15 SECTION, THE PROTECTIONS IN THIS ARTICLE AGAINST RETALIATION AND THE
16 PENALTIES IN THIS ARTICLE IF THE CONTRACTOR HAS FAILED TO PROPERLY CLAS-
17 SIFY THE PERSON AS AN EMPLOYEE.

18 2. THE INFORMATION IN SUBDIVISION ONE OF THIS SECTION SHALL BE
19 PROVIDED IN SPANISH OR OTHER LANGUAGES REQUIRED BY THE COMMISSIONER.

20 3. WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ARTICLE, THE
21 COMMISSIONER SHALL CREATE THE NOTICE DESCRIBED IN SUBDIVISION ONE OF
22 THIS SECTION. IN ADDITION, WITHIN THE SAME TIME PERIOD, THE COMMISSIONER
23 SHALL CREATE A WEB SITE THAT CONTAINS THE SAME INFORMATION AND THE
24 NOTICE. SUCH NOTICE SHALL BE PROVIDED TO CONTRACTORS THROUGH DOWNLOADING
25 FROM THE WEB SITE.

26 4. CONTRACTORS IN THEIR AGREEMENTS WITH ALL SUBCONTRACTORS SHALL
27 REQUIRE THEM TO:

28 (A) PROVIDE THE NOTICE DESCRIBED IN THIS SECTION, AND

29 (B) PLACE THE NOTICE REQUIREMENT IN CONTRACTS WITH ANY LOWER TIER
30 SUBCONTRACTORS.

31 5. CONTRACTORS WHO VIOLATE THIS SECTION SHALL BE FINED:

32 (A) TWO THOUSAND DOLLARS PER INDIVIDUAL WHO IS NOT NOTIFIED; AND

33 (B) FIVE THOUSAND DOLLARS PER CONTRACT WITH A SUBCONTRACTOR OR LOWER
34 TIER SUBCONTRACTOR THAT DOES NOT CONTAIN THE NOTICE REQUIREMENT.

35 S 861-E. VIOLATIONS. A CONTRACTOR IS GUILTY OF VIOLATING THE
36 PROVISIONS OF SECTION EIGHT HUNDRED SIXTY-ONE-C OF THIS ARTICLE WHEN HE
37 OR SHE FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE.

38 S 861-F. ENFORCEMENT AND PENALTIES. 1. FOR THE PURPOSES OF THIS
39 SECTION THE TERM "WILFUL VIOLATION" SHALL MEAN A CONTRACTOR WHO KNEW OR
40 SHOULD HAVE KNOWN THAT HIS OR HER CONDUCT WAS PROHIBITED BY THIS
41 SECTION.

42 2. ANY PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS ARTICLE
43 SHALL BE SUBJECT TO A FINE OF UP TO TWENTY-FIVE HUNDRED DOLLARS FOR THE
44 FIRST VIOLATION PER EMPLOYEE, AND A FINE OF UP TO FIVE THOUSAND DOLLARS
45 FOR EACH SUBSEQUENT VIOLATION PER EMPLOYEE.

46 3. IF THE CONTRACTOR IS A CORPORATION, ANY OFFICER OF SUCH CORPORATION
47 OR SHAREHOLDER WHO OWNS OR CONTROLS AT LEAST TEN PERCENT OF THE
48 OUTSTANDING STOCK OF SUCH CORPORATION WHO KNOWINGLY PERMITS THE CORPO-
49 RATION TO WILLFULLY VIOLATE THE PROVISIONS OF THIS SECTION SHALL BE IN
50 VIOLATION OF THIS SECTION AND BE SUBJECT TO THE CIVIL PENALTIES HEREIN.

51 4. ANY CONTRACTOR WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS
52 SECTION AND SUCH VIOLATIONS RESULT IN A FAILURE TO PAY ANY OTHER STATU-
53 TORY PAYMENT OR COVERAGE OBLIGATIONS, INCLUDING BUT NOT LIMITED TO,
54 UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION INSURANCE, OR CORPORATE OR
55 PERSONAL INCOME TAX SHALL BE SUBJECT, AT THE DISCRETION OF THE COMMIS-
56 SIONER, TO ADDITIONAL CIVIL PENALTIES AS FOLLOWS:

1 (A) FOR THE FAILURE TO PAY UNEMPLOYMENT INSURANCE, THE PENALTIES
2 IMPOSED BY SECTION FIVE HUNDRED SEVENTY OF THE LABOR LAW,

3 (B) FOR THE FAILURE TO PAY WORKERS' COMPENSATION INSURANCE, THE PENAL-
4 TIES IMPOSED BY SECTION TWENTY-FIVE AND TWO HUNDRED TWENTY OF THE WORK-
5 ERS' COMPENSATION LAW, AND

6 (C) FOR THE FAILURE TO PAY CORPORATE OR PERSONAL INCOME TAX, THE
7 PENALTIES IMPOSED BY SECTIONS SIX HUNDRED EIGHTY-FIVE AND TEN HUNDRED
8 EIGHTY-FIVE OF THE TAX LAW.

9 5. ANY CONTRACTOR OR ANY OFFICER OR SHAREHOLDER WHO OWNS OR CONTROLS
10 AT LEAST TEN PERCENT OF THE OUTSTANDING STOCK OF SUCH CORPORATION THAT
11 HAS BEEN CONVICTED OF A FELONY OFFENSE FOR CONDUCT RELATING TO THE
12 MISCLASSIFICATION OF AN EMPLOYEE SHALL BE SUBJECT TO DEBARMENT AND BE
13 INELIGIBLE TO SUBMIT A BID AND/OR BE AWARDED ANY PUBLIC WORKS CONTRACT
14 WITH THE STATE, ANY MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION OR
15 PUBLIC BODY FOR A PERIOD OF FIVE YEARS FROM THE DATE OF CONVICTION.

16 6. ANY EMPLOYEE MAY FILE CIVIL ACTIONS FOR THEMSELVES AND OTHERS SIMI-
17 LARLY SITUATED SEEKING LOST WAGES, TREBLE DAMAGES, ATTORNEY'S FEES AND
18 COSTS FOR UP TO THREE YEARS FROM THE DATE OF VIOLATION.

19 7. A PENALTY ISSUED UNDER THIS SECTION AGAINST A CONSTRUCTION INDUSTRY
20 EMPLOYER SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR BUSI-
21 NESS ENTITY THAT HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS
22 THE CONSTRUCTION INDUSTRY EMPLOYER AGAINST WHOM THE PENALTY WAS IMPOSED
23 AND THAT WAS ENGAGED IN CONSTRUCTION WORK.

24 8. NOTHING IN THIS SECTION SHALL LIMIT THE AVAILABILITY OF OTHER REME-
25 DIES AT LAW OR IN EQUITY.

26 S 861-G. ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION. 1. THERE IS
27 HEREBY ESTABLISHED THE ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION.
28 THE MISSION OF SUCH ADVISORY COMMITTEE IS TO DEVELOP RECOMMENDATIONS FOR
29 A COMPREHENSIVE AND STRATEGIC STATEWIDE APPROACH TO ADDRESSING THE PROB-
30 LEM OF EMPLOYEE MISCLASSIFICATION AND TO ENSURE CONTRACTOR COMPLIANCE
31 WITH THE "NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT".

32 2. THE ADVISORY COMMITTEE SHALL BE COMPOSED OF THE COMMISSIONER OR A
33 DESIGNEE, SERVING EX OFFICIO; THE ATTORNEY GENERAL OR A DESIGNEE, SERV-
34 ING EX OFFICIO; THE COMMISSIONER OF TAXATION AND FINANCE, SERVING EX
35 OFFICIO; THE CHAIR OF THE WORKERS' COMPENSATION BOARD; THIRTEEN MEMBERS
36 SHALL BE APPOINTED BY THE GOVERNOR AND SHALL SERVE AT HIS PLEASURE AS
37 FOLLOWS: THREE REPRESENTATIVES FROM THREE DIFFERENT BUILDING TRADES
38 UNIONS; THREE REPRESENTATIVES OF THE NEW YORK AFL-CIO; THREE REPRESENT-
39 TATIVES OF THE BUSINESS COMMUNITY; ONE REPRESENTATIVE OF RESIDENTIAL
40 DEVELOPERS; ONE REPRESENTATIVE OF RESIDENTIAL CONSTRUCTION CONTRACTORS;
41 ONE REPRESENTATIVE OF COMMERCIAL DEVELOPERS; AND ONE REPRESENTATIVE OF
42 COMMERCIAL CONSTRUCTION CONTRACTORS.

43 3. THE COMMISSIONER SHALL SERVE AS THE CHAIR OF THE ADVISORY COMMIT-
44 TEE. ALL PUBLIC MEMBERS OF THE ADVISORY COMMITTEE SHALL SERVE WITHOUT
45 COMPENSATION. VACANCIES ON THE ADVISORY COMMITTEE SHALL BE FILLED IN THE
46 SAME MANNER AS THE ORIGINAL APPOINTMENT.

47 4. IN FURTHERANCE OF ITS MISSION STATED IN SUBDIVISION ONE, ABOVE, THE
48 ADVISORY COMMITTEE SHALL BE AUTHORIZED TO:

49 (A) MAKE RECOMMENDATIONS TO THE DEPARTMENT, THE ATTORNEY GENERAL, THE
50 DEPARTMENT OF TAXATION AND FINANCE AND THE WORKERS' COMPENSATION BOARD
51 WITH RESPECT TO SYNCHRONIZING EACH RESPECTIVE DEPARTMENT'S REGULATIONS
52 AND POLICIES REGARDING EMPLOYEE MISCLASSIFICATION;

53 (B) MAKE RECOMMENDATIONS TO ENHANCE MECHANISMS FOR IDENTIFYING EMPLOY-
54 EE MISCLASSIFICATION WHERE IT DOES OCCUR;

1 (C) WORK WITH BUSINESS, LABOR AND COMMUNITY GROUPS TO DEVELOP EDUCA-
2 TIONAL MATERIALS THAT DISTINGUISH THE DIFFERENCE BETWEEN AN INDEPENDENT
3 CONTRACTOR AND AN EMPLOYEE.

4 5. THE ADVISORY COMMITTEE SHALL ISSUE A REPORT ANNUALLY TO THE GOVER-
5 NOR ON THE STATUS OF IMPLEMENTATION OF THE NEW YORK STATE CONSTRUCTION
6 INDUSTRY FAIR PLAY ACT, TO INCLUDE PUBLICLY AVAILABLE INFORMATION
7 REGARDING: CASES BROUGHT, WAGES AND TAXES RECOVERED ON BEHALF OF THE
8 STATE, OUTCOMES OF CASES, LEGAL OR ADMINISTRATIVE BARRIERS TO SUCCESSFUL
9 IMPLEMENTATION, A REVIEW OF THE PROCESS USED TO ADJUDICATE MISCLASSI-
10 FICATION CASES, AND PROPOSALS FOR ANY ADDITIONAL LEGISLATIVE ACTION THAT
11 MAY BE NEEDED TO ENHANCE THE STATE'S EFFORTS TO ADDRESS EMPLOYEE
12 MISCLASSIFICATION IN THE CONSTRUCTION INDUSTRY AND ANY OTHER INDUSTRY IN
13 THE STATE.

14 6. THE ADVISORY COMMITTEE IS AUTHORIZED TO CALL UPON ANY DEPARTMENT,
15 OFFICE, DIVISION OR AGENCY OF THIS STATE TO SUPPLY IT WITH DATA AND
16 OTHER INFORMATION, PERSONNEL OR ASSISTANCE AVAILABLE TO SUCH AGENCY AS
17 THE ADVISORY COMMITTEE DEEMS NECESSARY TO DISCHARGE ITS DUTIES UNDER
18 THIS ARTICLE SUBJECT TO CONFIDENTIALITY PROVISIONS UNDER LAW. EACH
19 DEPARTMENT, OFFICE, DIVISION OR AGENCY OF THIS STATE IS HEREBY REQUIRED,
20 TO THE EXTENT NOT INCONSISTENT WITH LAW, TO COOPERATE FULLY WITH THE
21 ADVISORY COMMITTEE AND TO FURNISH THE ADVISORY COMMITTEE SUCH ASSISTANCE
22 ON AS TIMELY A BASIS AS IS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS
23 ARTICLE. THE ADVISORY COMMITTEE MAY CONSULT WITH EXPERTS OR OTHER KNOW-
24 LEDGEABLE INDIVIDUALS IN THE PUBLIC OR PRIVATE SECTOR ON ANY ASPECT OF
25 ITS MISSION.

26 S 861-H. RETALIATION. 1. IT IS AN INTENTIONAL VIOLATION OF THIS ARTI-
27 CLE FOR AN EMPLOYER OR ENTITY, OR ANY AGENT OF AN EMPLOYER, TO RETALIATE
28 THROUGH DISCHARGE OR IN ANY OTHER MANNER AGAINST ANY PERSON FOR EXERCIS-
29 ING ANY RIGHTS GRANTED UNDER THIS ARTICLE. SUCH RETALIATION SHALL
30 SUBJECT AN EMPLOYER OR ENTITY TO CIVIL PENALTIES PURSUANT TO THIS ARTI-
31 CLE OR A PRIVATE CAUSE OF ACTION, OR BOTH.

32 2. IT IS AN INTENTIONAL VIOLATION OF THIS ARTICLE FOR AN EMPLOYER OR
33 ENTITY TO RETALIATE AGAINST A PERSON FOR:

34 (A) MAKING A COMPLAINT TO AN EMPLOYER, CO-WORKER OR TO A PUBLIC BODY
35 THAT RIGHTS GUARANTEED UNDER THIS ARTICLE HAVE BEEN VIOLATED;

36 (B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS
37 ARTICLE; OR

38 (C) PROVIDES INFORMATION TO, OR TESTIFIES BEFORE, ANY PUBLIC BODY
39 CONDUCTING AN INVESTIGATION, HEARING OR INQUIRY INTO ANY SUCH VIOLATION
40 OF A LAW, RULE OR REGULATION BY SUCH EMPLOYER.

41 S 2. The state finance law is amended by adding a new section 99-t to
42 read as follows:

43 S 99-T. CONSTRUCTION INDUSTRY CLASSIFICATION FUND. 1. THERE IS HEREBY
44 ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE
45 COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT IN THE MISCELLANEOUS
46 SPECIAL REVENUE FUND TO BE KNOWN AS THE "CONSTRUCTION INDUSTRY CLASSI-
47 FICATION FUND".

48 2. THE CONSTRUCTION INDUSTRY CLASSIFICATION FUND SHALL CONSIST OF ALL
49 MONEYS RECEIVED BY THE STATE AS FEES AND CIVIL PENALTIES PURSUANT TO
50 ARTICLE TWENTY-FIVE-B OF THE LABOR LAW.

51 3. SUCH FUND SHALL BE SUBJECT TO APPROPRIATION BY THE DEPARTMENT OF
52 LABOR FOR ADMINISTRATION, INVESTIGATION AND OTHER EXPENSES INCURRED IN
53 CARRYING OUT ITS POWERS AND DUTIES PURSUANT TO ARTICLE TWENTY-FIVE-B OF
54 THE LABOR LAW. THE DEPARTMENT OF LABOR MAY HIRE AS MANY INVESTIGATORS
55 AND OTHER PERSONNEL AS MAY BE NECESSARY. ANY MONEYS IN THE FUND AT THE
56 END OF THE FISCAL YEAR IN EXCESS OF ANY MONEYS NECESSARY FOR THE DEPART-

1 MENT OF LABOR TO CARRY OUT ITS POWERS AND DUTIES UNDER ARTICLE
2 TWENTY-FIVE-B SHALL BE AVAILABLE TO THE DEPARTMENT OF LABOR FOR THE NEXT
3 FISCAL YEAR FOR ANY OF THE DEPARTMENT OF LABOR'S DUTIES.

4 S 3. Notwithstanding any other provision of the law to the contrary,
5 the provisions of section 861-c of the labor law shall apply to and be
6 utilized for all determinations of a construction industry individual's
7 employment status under the labor law, the workers' compensation law,
8 the tax law or any other chapter of law.

9 S 4. This act shall take effect on the sixtieth day after it shall
10 have become a law.