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I N A S S E M B L Y

March 12, 2010

Introduced by M. of A. GIANARIS, BRODSKY, JEFFRIES, ESPAILLAT, ABBATE, KAVANAGH, TOWNS, GOTTFRIED, BOYLAND, ROSENTHAL, GIBSON, LANCMAN, COLTON, CASTRO, D. WEPRIN, KELLNER, DenDEKKER, M. MILLER, SPANO, HEVE-SI, PERRY, DINOWITZ, BARRON, N. RIVERA, CYMBROWITZ, MAGNARELLI, STIRPE -- Multi-Sponsored by -- M. of A. ALESSI, CLARK, CRESPO, CUSICK, GLICK, HEASTIE, HOOPER, MAYERSOHN, McENENY, MILLMAN, ORTIZ, PHEFFER, SCARBOROUGH, WEISENBERG -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to prevailing wages for service workers

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

1 Section 1. The article heading of article 9 of the labor law, as added
2 by chapter 777 of the laws of 1971, is amended to read as follows:
3 PREVAILING WAGE FOR [BUILDING] SERVICE EMPLOYEES
4 S 2. Subdivisions 1, 2, 3, 4, 6, 8, 9 and 10 of section 230 of the
5 labor law, subdivision 1 as amended and subdivision 9 as added by chap-
6 ter 542 of the laws of 1984, subdivisions 2, 3, 6 and 8 as added by
7 chapter 777 of the laws of 1971, subdivision 4 as amended by chapter 678
8 of the laws of 2007 and subdivision 10 as added by chapter 547 of the
9 laws of 1998, are amended and a new subdivision 15 is added to read as
10 follows:
11 1. "[Building service] SERVICE employee" or "employee" means any
12 person performing JANITORIAL, FOOD OR SECURITY SERVICE WORK FOR A
13 CONTRACTOR, OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, UNDER CONTRACT
14 WITH A PUBLIC AGENCY WHICH IS IN EXCESS OF ONE THOUSAND FIVE HUNDRED
15 DOLLARS AND THE PRINCIPAL PURPOSE OF WHICH IS TO FURNISH SERVICES
16 THROUGH THE USE OF SERVICE EMPLOYEES, OR ANY OTHER PERSON PERFORMING
17 work in connection with the care or maintenance of an existing building,
18 or in connection with the transportation of office furniture or equip-
19 ment to or from such building, or in connection with the transportation

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

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1 and delivery of fossil fuel to such building, for a contractor under a
2 contract with a public agency which is in excess of one thousand five
3 hundred dollars and the principal purpose of which is to furnish
4 services through the use of [building] service employees.

5 "[Building service] SERVICE employee" or "employee" includes, but is
6 not limited, to, watchman, guard, doorman, building cleaner, porter,
7 handyman, janitor, gardener, groundskeeper, stationary fireman, elevator
8 operator and starter, window cleaner, FOOD SERVICE WORKER, COOK, BAKER,
9 DISHWASHER, MEAT CUTTER, WAITER, DRIVER and occupations relating to the
10 collection of garbage or refuse, and to the transportation of office
11 furniture and equipment, and to the transportation and delivery of
12 fossil fuel but does not include clerical, sales, professional, techni-
13 cian and related occupations.

14 "[Building service] SERVICE employee" or "employee" also does not
15 include any employee to whom the provisions of articles eight and
16 [eight-a] EIGHT-A of this chapter are applicable.

17 2. "[Building service] SERVICE work" [or "service work"] means work
18 performed by a [building] service employee, but does not include work
19 performed for a contractor under a contract for the furnishing of
20 services by radio, telephone, telegraph or cable companies[; and any
21 contract for public utility services, including electric light and
22 power, water, steam and gas]. "SERVICE WORK" SHALL ALSO INCLUDE WORK
23 PERFORMED UNDER A CONTRACT, WITH THE EXCEPTION OF A CONTRACT OR SUBCON-
24 TRACT IN WHICH A BUSINESS IMPROVEMENT DISTRICT IS A PARTY, FOR THE BENE-
25 FIT OF A PUBLIC AGENCY WITH ANY THIRD PARTY PERSON OR ENTITY ACTING IN
26 PLACE OF, ON BEHALF OF OR FOR THE BENEFIT OF SUCH PUBLIC AGENCY PURSUANT
27 TO ANY LEASE, PERMIT OR OTHER AGREEMENT BETWEEN SUCH THIRD PARTY PERSON
28 OR ENTITY AND THE PUBLIC AGENCY.

29 3. "Public agency" means the state, any of its political subdivisions,
30 a public benefit corporation, a public authority, INCLUDING A PUBLIC
31 AUTHORITY PROVIDING PUBLIC UTILITY SERVICES, or commission or special
32 purpose district board appointed pursuant to law, [and] a board of
33 education, AND ANY PUBLIC UTILITY THAT DISTRIBUTES ELECTRIC LIGHT OR
34 POWER, OR GAS OR STEAM SERVICES AT RETAIL RATES REGULATED BY THE PUBLIC
35 SERVICE COMMISSION PURSUANT TO A FRANCHISE GRANTED UNDER THE PROVISIONS
36 OF SECTION SIXTY-EIGHT OR EIGHTY-ONE OF THE PUBLIC SERVICE LAW, AND ANY
37 SUBSTANTIALLY-OWNED AFFILIATED ENTITY OF SUCH PUBLIC UTILITY.

38 4. "Contractor" means any employer who employs employees to perform
39 [building] service work under a contract with a public agency and shall
40 include any of the contractor's subcontractors.

41 6. "Prevailing wage" means the wage determined by the fiscal officer
42 to be prevailing for the various classes of [building] service employees
43 in the locality. In no event shall the basic hourly cash rate of pay be
44 less than the statutory minimum wage established by article nineteen of
45 this chapter, or, in a city with a local law requiring a higher minimum
46 wage on city contract work, less than the minimum wage specified in such
47 local law.

48 8. "Fiscal officer" means the industrial commissioner, except for
49 [building] service work performed by or on behalf of a city, in which
50 case "fiscal officer" means the comptroller or other analogous officer
51 of such city.

52 9. "Fossil fuel" shall mean coal, petroleum products and fuel gases.
53 "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel
54 gases" shall include but not be limited to methane, natural gas, lique-
55 fied natural gas and manufactured fuel gases. "Petroleum products" shall
56 include all products refined or rerefined from synthetic or crude oil or

1 oil extracted from other sources, including natural gas liquids.
2 [Provided that nothing in this subdivision shall affect the exclusion
3 for public utility services set forth in subdivision two of this
4 section.]

5 10. "Substantially-owned affiliated entity" shall mean the parent
6 company of the PUBLIC UTILITY, contractor or subcontractor, any subsid-
7 iary of the PUBLIC UTILITY, contractor or subcontractor, or any entity
8 in which the parent of the PUBLIC UTILITY, contractor or subcontractor
9 owns more than fifty percent of the voting stock, or an entity in which
10 one or more of the top five shareholders of the PUBLIC UTILITY, contrac-
11 tor or subcontractor individually or collectively also owns a control-
12 ling share of the voting stock, or an entity which exhibits any other
13 indicia of control over the PUBLIC UTILITY, contractor or subcontractor
14 or over which the PUBLIC UTILITY, contractor or subcontractor exhibits
15 control, regardless of whether or not the controlling party or parties
16 have any identifiable or documented ownership interest. Such indicia
17 shall include: power or responsibility over employment decisions, access
18 to and/or use of the relevant entity's assets or equipment, power or
19 responsibility over contracts of the entity, responsibility for mainte-
20 nance or submission of certified payroll records, and influence over the
21 business decisions of the relevant entity.

22 15. "PERSON" SHALL MEAN A HUMAN BEING AND SHALL INCLUDE AN "ENTITY" AS
23 DEFINED IN THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO A CONTRACTOR OR
24 SUBCONTRACTOR.

25 S 3. Subdivisions 1, 3, 4 and 5 of section 231 of the labor law,
26 subdivisions 1, 3 and 4 as added by chapter 777 of the laws of 1971 and
27 subdivision 5 as amended by chapter 678 of the laws of 2007, are amended
28 and a new subdivision 8 is added to read as follows:

29 1. Every contractor shall pay a service employee under a contract for
30 [building] service work a wage of not less than the prevailing wage in
31 the locality for the craft, trade or occupation of the service employee.

32 3. Each contract for [building] service work shall contain as part of
33 the specifications thereof a schedule of the wages required to be paid
34 to the various classes of service employees on such work, and each such
35 contract shall further contain a provision obligating the contractor to
36 pay each employee on such work not less than the wage specified for his
37 craft, trade or occupation in such schedule.

38 4. The public agency, or appropriate officer or agent thereof, whose
39 responsibility it is to prepare or direct the preparation of the plans
40 and specifications for a contract for [building] service work, shall
41 ascertain from such plans and specifications the classifications of
42 employees to be employed on such work and shall file a list of such
43 classifications with the fiscal officer, together with a statement of
44 the work to be performed. The fiscal officer shall determine the crafts,
45 trades and occupations required for such work and shall make a determi-
46 nation of the wages required to be paid in the locality for each such
47 craft, trade or occupation. A schedule of such wages shall be annexed to
48 and form a part of the specifications for the contract prior to the time
49 of the advertisement for bids on such contract and shall constitute the
50 schedule of wages referred to in subdivision three of this section.

51 5. Upon the award of a contract for [building] service work by a
52 public agency other than a city, the contracting public agency shall
53 immediately furnish to the commissioner: (a) the name and address of the
54 contractor to whom the contract was awarded; (b) the date when the
55 contract was awarded; and (c) the approximate consideration stipulated
56 for in the contract.

1 8. THE REQUIREMENTS OF THIS SECTION SHALL APPLY TO ANY PERSON OR ENTI-
2 TY, OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, THAT ENTERS INTO ANY
3 LEASE, PERMIT OR OTHER AGREEMENT WITH A PUBLIC AGENCY THAT INCLUDES THE
4 PROVISION OF SERVICE WORK BY EMPLOYEES WHO WOULD BE REQUIRED TO BE PAID
5 SCHEDULED WAGES PURSUANT TO THIS SECTION IN THE ABSENCE OF SUCH AGREE-
6 MENT. ANY THIRD PARTY PERSON OR ENTITY THAT CONTRACTS FOR OR OTHERWISE
7 ARRANGES FOR THE PAYMENT FOR OR PERFORMANCE OF SERVICE WORK FOR THE
8 BENEFIT OF A PUBLIC AGENCY PURSUANT TO ANY SUCH AGREEMENT SHALL DO SO AS
9 AN AGENT OF THE PUBLIC AGENCY. NO PUBLIC AGENCY SHALL ENTER INTO ANY
10 SUCH AGREEMENT WITH ANY PERSON OR ENTITY WITHOUT (A) PREPARATION OF AN
11 AGREEMENT BETWEEN THE PUBLIC AGENCY AND THE THIRD PARTY PERSON OR ENTITY
12 THAT CLEARLY DELINEATES THE RESPONSIBILITIES OF EACH WITH RESPECT TO
13 REPORTING, FILING AND RETENTION OF PAYROLLS AND OTHER DOCUMENTS, AND ANY
14 OTHER ACTIONS REQUIRED PURSUANT TO THIS ARTICLE, AND (B) RECEIPT BY THE
15 PUBLIC AGENCY OF A WRITTEN ACKNOWLEDGEMENT FROM SUCH THIRD PARTY PERSON
16 OR ENTITY THAT THE PERSON OR ENTITY AGREES TO UNDERTAKE THOSE RESPONSI-
17 BILITIES AS THE AGENT OF THE PUBLIC AGENCY, AND AFFIRMING SUCH PERSON OR
18 ENTITY'S NONDELEGABLE OBLIGATION TO PAY NOT LESS THAN THE WAGES SPECI-
19 FIED IN EACH APPLICABLE SCHEDULE. SUCH DOCUMENTS SHALL BE IN A FORM
20 SATISFACTORY TO THE FISCAL OFFICER AND SHALL BE SUBSCRIBED AND CONFIRMED
21 AS REQUIRED BY SUCH OFFICER. SUCH DOCUMENTS SHALL BE RETAINED AS
22 PROVIDED IN SECTION TWO HUNDRED THIRTY-THREE OF THIS ARTICLE, AND A COPY
23 OF EACH SUCH DOCUMENT SHALL BE FILED BY THE PUBLIC AGENCY WITH THE
24 FISCAL OFFICER WITHIN TEN DAYS OF ITS EXECUTION. NOTWITHSTANDING ANY
25 SUCH AGREEMENT, NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO RELIEVE
26 THE PUBLIC AGENCY OF ITS RESPONSIBILITIES TO ENSURE COMPLIANCE WITH THIS
27 ARTICLE. ANY LEASE, PERMIT OR AGREEMENT MADE IN CONTRAVENTION OF THIS
28 SUBDIVISION SHALL BE VOID AS A MATTER OF PUBLIC POLICY. THE FISCAL
29 OFFICER MAY TAKE ALL ACTIONS NECESSARY TO ENSURE COMPLIANCE WITH THE
30 PROVISIONS OF THIS ARTICLE AGAINST THE PUBLIC AGENCY, ANY THIRD PARTY
31 ACTING IN PLACE OF, ON BEHALF OF OR FOR THE BENEFIT OF SUCH PUBLIC AGEN-
32 CY PURSUANT TO ANY LEASE, PERMIT OR OTHER AGREEMENT BETWEEN SUCH THIRD
33 PARTY PERSON OR ENTITY AND THE PUBLIC AGENCY, OR BOTH THE PUBLIC AGENCY
34 AND THIRD PARTY JOINTLY.

35 S 4. Subdivision 4 of section 230 of the labor law, as added by chap-
36 ter 777 of the laws of 1971, is amended to read as follows:

37 4. "Contractor" means any employer who employs employees to perform
38 [building] service work under a contract with a public agency, and shall
39 include any of his subcontractors.

40 S 5. Subdivision 5 of section 231 of the labor law, as added by chap-
41 ter 777 of the laws of 1971, is amended to read as follows:

42 5. Upon the award of a contract for [building] service work by a
43 public agency other than a city, the contracting public agency shall
44 immediately furnish to the industrial commissioner: (a) the name and
45 address of the contractor to whom the contract was awarded; (b) the date
46 when the contract was awarded; and (c) the approximate consideration
47 stipulated for in the contract.

48 S 6. Paragraphs a and c of subdivision 2 and subdivision 7 of section
49 235 of the labor law, paragraph a of subdivision 2 and subdivision 7 as
50 amended and paragraph c of subdivision 2 as added by chapter 547 of the
51 laws of 1998, are amended and subdivision 2 is amended by adding a new
52 paragraph g to read as follows:

53 a. At the start of such investigation the fiscal officer may notify
54 the financial officer of the public agency interested who shall, at the
55 direction of the fiscal officer, forthwith withhold from any payment due
56 to the contractor executing the contract sufficient money to safeguard

1 the rights of the service employees and to cover the civil penalty that
2 may be assessed as provided herein, or, if there are insufficient moneys
3 still due or earned to the contractor or subcontractor to safeguard the
4 rights of the service employees and to cover the civil penalty that may
5 be assessed as provided herein, the financial officer of another civil
6 division which has entered or subsequently enters into a [building]
7 service work contract with the contractor or subcontractor, who shall
8 withhold from any payment due the contractor or subcontractor executing
9 any [building] service work, sufficient moneys to safeguard the rights
10 of the service employees and to cover the civil penalty that may be
11 assessed as provided herein.

12 c. The notice of withholding shall provide that the fiscal officer
13 intends to instruct the financial officer, not less than ten days
14 following service of the notice by mail, to withhold sufficient moneys
15 to safeguard the rights of the service employees and to cover the civil
16 penalty that may be assessed as provided herein, from any payment due
17 the notified party under any [building] service work contract pending
18 final determination. The notice of withholding shall provide that within
19 thirty days following the date of the notice of withholding the notified
20 party may, contest the withholding on the basis that the notified party
21 is not a partner or one of the five largest shareholders of the subcon-
22 tractor or contractor, an officer of the contractor or subcontractor who
23 knowingly participated in the violation of this article, a substantial-
24 ly-owned affiliated entity or successor. If the notified party fails to
25 contest the notice of withholding, or if the fiscal officer, after
26 reviewing the information provided by the notified party in such
27 contest, determines that the notified party is a partner or one of the
28 five largest shareholders, a substantially-owned affiliated entity, an
29 officer of the contractor or subcontractor who knowingly participated in
30 the violation of this article, or a successor, the fiscal officer may
31 instruct the financial officer to immediately withhold sufficient moneys
32 to safeguard the rights of the service employees and to cover the civil
33 penalty that may be assessed as provided herein from any payment due the
34 notified party under any [building] service work contract pending the
35 final determination.

36 G. THE FISCAL OFFICER MAY REQUIRE ANY PERSON OR CORPORATION PERFORMING
37 SUCH PUBLIC WORK TO FILE WITH THE FISCAL OFFICER WITHIN TEN DAYS OF
38 RECEIPT OF SAID REQUEST, PAYROLL RECORDS, SWORN TO AS TO THEIR VALIDITY
39 AND ACCURACY, REQUESTED BY THE FISCAL OFFICER, FOR SAID SERVICE WORK OR
40 FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION
41 DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID
42 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN
43 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER SHALL, WITHIN FIFTEEN DAYS,
44 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD
45 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF
46 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO
47 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO
48 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL
49 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE
50 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN
51 SATISFIED.

52 7. When, pursuant to the provisions of this section, two final orders
53 have been entered against a contractor, subcontractor, successor, or any
54 substantially-owned affiliated entity of the contractor or subcontrac-
55 tor, any of the partners if the contractor or subcontractor is a part-
56 nership, any of the five largest shareholders of the contractor or

1 subcontractor, any officer of the contractor or subcontractor who know-
2 ingly participated in the violation of this article within any consec-
3 utive six-year period determining that such contractor or subcontractor
4 and/or its successor, substantially-owned affiliated entity of the
5 contractor or subcontractor, any of the partners or any of the five
6 largest shareholders of the contractor or subcontractor, any officer of
7 the contractor or subcontractor who knowingly participated in the
8 violation of this article has willfully failed to pay the prevailing
9 wages in accordance with the provisions of this article, whether such
10 failures were concurrent or consecutive and whether or not such final
11 determinations concerning separate public [building] service WORK
12 contracts are rendered simultaneously, such contractor, subcontractor,
13 successor, and if the contractor, subcontractor, successor, or any
14 substantially-owned affiliated entity of the contractor or subcontrac-
15 tor, any of the partners if the contractor or subcontractor is a part-
16 nership, or any of the five largest shareholders of the contractor or
17 subcontractor, any officer of the contractor or subcontractor who know-
18 ingly participated in the violation of this article, or any successor is
19 a corporation, any officer of such corporation who knowingly partic-
20 ipated in such failure, shall be ineligible to submit a bid on or be
21 awarded any public [building] service work for a period of five years
22 from the date of the second order, provided, however, that where any
23 such final order involves the falsification of payroll records or the
24 kickback of wages, the contractor, subcontractor, successor, substan-
25 tially-owned affiliated entity of the contractor or subcontractor, any
26 partner if the contractor or subcontractor is a partnership or any of
27 the five largest shareholders of the contractor or subcontractor, any
28 officer of the contractor or subcontractor who knowingly participated in
29 the violation of this article shall be ineligible to submit a bid on or
30 be awarded any public [building] service WORK contract or subcontract
31 with the state, any municipal corporation or public body for a period of
32 five years from the date of the first final order. Nothing in this
33 subdivision shall be construed as affecting any provision of any other
34 law or regulation relating to the awarding of public contracts.

35 S 7. Subdivision 2 of section 237 of the labor law, as amended by
36 chapter 698 of the laws of 1988, is amended to read as follows:

37 2. A. Before payment is made by or on behalf of a public agency of any
38 sums due on account of a contract for service work, it shall be the duty
39 of the comptroller of the state or the financial officer of such public
40 agency or other officer or person charged with the custody and disburse-
41 ment of the state or corporate funds applicable to the contract under
42 and pursuant to which payment is made, to require the contractor to file
43 a statement in writing in form satisfactory to such officer certifying
44 to the amounts then due and owing from such contractor filing such
45 statement to or on behalf of any and all service employees for daily or
46 weekly wages on account of labor performed upon the work under the
47 contract, setting forth therein the names of the persons whose wages are
48 unpaid and the amount due to or on behalf of each respectively, which
49 statement so to be filed shall be verified by the oath of the contractor
50 that he or she has read such statement subscribed by him or her and
51 knows the contents thereof, and that the same is true of his or her own
52 knowledge. THE CONTRACTOR SHALL FILE THESE PAYROLL RECORDS VERIFIED
53 UNDER OATH WITHIN NINETY DAYS AFTER ANY LABOR IS PERFORMED UPON THE WORK
54 UNDER CONTRACT, OR SUCH OTHER TIME AS THE FISCAL OFFICER MAY AUTHORIZE.
55 ANY PERSON WHO WILLFULLY FAILS TO FILE SUCH PAYROLL RECORDS WITH THE
56 PUBLIC AGENCY SHALL BE GUILTY OF A CLASS E FELONY.

1 B. EACH PUBLIC AGENCY SHALL DESIGNATE IN WRITING AN INDIVIDUAL
2 EMPLOYED BY SUCH DEPARTMENT RESPONSIBLE FOR THE RECEIPT, COLLECTION AND
3 REVIEW FOR FACIAL VALIDITY OF A CONTRACTOR'S CERTIFIED PAYROLL STATE-
4 MENT, AS SET FORTH IN THIS SUBDIVISION, BEFORE PAYMENT IS MADE. SAID
5 DESIGNATION SHALL BE FILED WITH THE FISCAL OFFICER AND POSTED IN A
6 CONSPICUOUS LOCATION AT THE WORK SITE. IF THE DESIGNATED INDIVIDUAL
7 CANNOT PERFORM THE RECEIPT, COLLECTION AND REVIEW OF CERTIFIED PAYROLLS
8 DUTIES AS INDICATED ABOVE, FOR ANY REASON, INCLUDING BUT NOT LIMITED TO
9 REASSIGNMENT, PROMOTION OR SEPARATION FROM EMPLOYMENT, THE PUBLIC AGENCY
10 MUST IMMEDIATELY DESIGNATE ANOTHER INDIVIDUAL EMPLOYED BY SUCH AGENCY TO
11 FULFILL SUCH RESPONSIBILITIES. IN THE EVENT THAT A PUBLIC AGENCY FAILS
12 TO NAME AN INDIVIDUAL RESPONSIBLE FOR THE RECEIPT, COLLECTION AND REVIEW
13 FOR FACIAL VALIDITY OF CONTRACTORS' CERTIFIED PAYROLLS, THEN THE INDI-
14 VIDUAL SO RESPONSIBLE SHALL BE THE INDIVIDUAL WHO IS THE CHIEF
15 POLICY-MAKING OFFICER OF SUCH PUBLIC AGENCY.

16 S 8. Subdivision 2 of section 238 of the labor law, as added by chap-
17 ter 777 of the laws of 1971, is amended to read as follows:

18 2. A. When a contract for service work contains as part thereof a
19 schedule of wages as provided for in this article, any [contractor]
20 PERSON who, after entering into such contract[, and any subcontractor of
21 such contractor who] WILLFULLY fails to pay to any service employee the
22 wages stipulated in such wage schedule [is guilty of a misdemeanor and
23 upon conviction shall be punished for a first offense by a fine of five
24 hundred dollars or by imprisonment for not more than thirty days or by
25 both fine and imprisonment; for a second offense by a fine of one thou-
26 sand dollars], and [in]:

27 (I) SUCH FAILURE RESULTS IN UNDERPAYMENTS WHICH IN THE AGGREGATE
28 AMOUNT TO ALL WORKERS EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTOR
29 RESULTS IN AN AMOUNT LESS THAN TWENTY-FIVE THOUSAND DOLLARS, THE
30 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS A MISDEMEANOR;

31 (II) SUCH FAILURE RESULTS IN UNDERPAYMENTS, WHICH IN THE AGGREGATE
32 AMOUNT TO ALL WORKERS EMPLOYED BY SUCH CONTRACTOR OR SUBCONTRACTOR,
33 RESULTS IN AN AMOUNT GREATER THAN TWENTY-FIVE THOUSAND DOLLARS, THE
34 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS E FELONY;

35 (III) SUCH FAILURE RESULTS IN UNDERPAYMENTS, WHICH IN THE AGGREGATE
36 AMOUNT TO ALL WORKERS EMPLOYED BY SUCH CONTRACTOR OR SUBCONTRACTOR,
37 RESULTS IN AN AMOUNT GREATER THAN ONE HUNDRED THOUSAND DOLLARS, THE
38 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS D FELONY; OR

39 (IV) SUCH FAILURE RESULTS IN UNDERPAYMENTS, WHICH IN THE AGGREGATE
40 AMOUNT TO ALL WORKERS EMPLOYED BY SUCH CONTRACTOR OR SUBCONTRACTOR,
41 RESULTS IN AN AMOUNT GREATER THAN FIVE HUNDRED THOUSAND DOLLARS, THE
42 CONTRACTOR OR SUBCONTRACTOR SHALL BE GUILTY OF A CLASS C FELONY.

43 B. IN addition thereto the contract on which the violation has
44 occurred shall be forfeited; and no such contractor shall be entitled to
45 receive any sum, nor shall any officer, agent or employee of the
46 contracting public agency pay any such sum or authorize its payment from
47 the funds under his charge or control to such contractor for work done
48 upon the contract on which the contractor has been convicted of a second
49 offense. If the contractor or subcontractor is a corporation, any offi-
50 cer of such corporation who knowingly permits the corporation to fail to
51 make such payment shall also be guilty of [a misdemeanor] THE OFFENSE
52 DEFINED IN PARAGRAPH A OF THIS SUBDIVISION and the criminal and civil
53 penalties [herein] OF THIS SUBDIVISION shall attach to such officer upon
54 conviction.

55 S 9. Severability. If any clause, sentence, paragraph, section or part
56 of this act be adjudged by any court of competent jurisdiction to be

1 invalid and after exhaustion of all further judicial review, the judg-
2 ment shall not affect, impair or invalidate the remainder thereof, but
3 shall be confined in its operation to the clause, sentence, paragraph,
4 section or part of this act directly involved in the controversy in
5 which the judgment shall have been rendered.

6 S 10. This act shall take effect on the ninetieth day after it shall
7 have become a law, and shall apply to all contracts or other agreements
8 entered into, renewed, or extended on or after such date; provided,
9 however: (a) the amendments to subdivision 4 of section 230 of the
10 labor law made by section two of this act shall be subject to the expi-
11 ration and reversion of such subdivision pursuant to section 5 of chap-
12 ter 678 of the laws of 2007, as amended, when upon such date the
13 provisions of section four of this act shall take effect; and

14 (b) the amendments to subdivision 5 of section 231 of the labor law
15 made by section three of this act shall be subject to the expiration and
16 reversion of such subdivision pursuant to section 5 of chapter 678 of
17 the laws of 2007, as amended, when upon such date the provisions of
18 section five of this act shall take effect.