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

394

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN, COLTON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to contractors who continually use subcontractors who fail to pay the prevailing wage

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

Section 1. Subparagraph 1 of paragraph b of subdivision 3 of section 220-b of the labor law, as amended by chapter 241 of the laws of 2002, is amended to read as follows:

(1) When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has [wilfully] WILLFULLY failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, OR HAS ENGAGED IN A PATTERN OR PRACTICE OF CONTRACTING WITH SUBCONTRACTORS WHO WILLFULLY FAIL TO PAY THE PREVAILING WAGE OR TO PROVIDE SUPPLEMENTS IN ACCORDANCE WITH THIS ARTICLE, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any

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

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substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the first final determination.

S 2. Paragraph c of subdivision 3-a of section 220 of the labor law, as added by chapter 137 of the laws of 1985, is amended to read as follows:

c. The fiscal officer may require any person or corporation performing such public work to file with the fiscal officer within ten days of receipt of said request, payroll records, INCLUDING THE SCHEDULES REQUIRED BY SUBDIVISION SIX OF THIS SECTION, sworn to as to their validity and accuracy, requested by the fiscal officer, for said public work or for any public or private work performed by said person or corporation during the same period of time as said public work. In the event said person or corporation fails to provide the requested information within the allotted ten days, the fiscal officer shall, within fifteen days, order the department of jurisdiction to immediately withhold from payment to said person or corporation up to twenty-five percent of the amount, not to exceed one [hundred thousand] MILLION dollars, to be paid to said person or corporation under the terms of the contract pursuant to which said public work is being performed. Said amount withheld shall be immediately released upon receipt by the department of jurisdiction of a notice from the fiscal officer indicating that the request for records had been satisfied.

S 3. Paragraph (c) of subdivision 1 of section 234 of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

(c) to examine the books, documents and records pertaining to the wages paid to, and the hours of work performed by, service employees AND TO REQUIRE THE IMMEDIATE PRODUCTION OF RECORDS REQUIRED TO BE MAINTAINED PURSUANT TO SUBDIVISION ONE OF SECTION TWO HUNDRED THIRTY-THREE OF THIS ARTICLE. IF A CONTRACTOR OR SUB-CONTRACTOR FAILS TO RESPOND WITHIN TEN DAYS TO SUCH A REQUEST, THE FISCAL OFFICER SHALL, WITHIN FIFTEEN DAYS, ORDER THE DEPARTMENT OF JURISDICTION TO IMMEDIATELY WITHHOLD FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF THE AMOUNT, NOT TO EXCEED ONE MILLION DOLLARS, TO BE PAID TO SAID CONTRACTOR UNDER THE TERMS OF THE SERVICE CONTRACT. SAID AMOUNT WITHHELD SHALL BE IMMEDIATELY RELEASED UPON RECEIPT BY THE DEPARTMENT OF JURISDICTION OF A NOTICE FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN SATISFIED;

S 4. Subdivision 7 of section 235 of the labor law, as amended by chapter 547 of the laws of 1998, is amended to read as follows:

7. When, pursuant to the provisions of this section, two final orders have been entered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article within any consecutive six-year period determining that such contractor or subcontractor and/or its successor, substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has willfully failed to pay the prevailing wages in accordance with the provisions of this article, OR HAS ENGAGED IN A PATTERN OR PRACTICE OF CONTRACTING WITH SUBCONTRACTORS WHO WILLFULLY FAIL TO PAY THE PREVAILING WAGE OR TO PROVIDE SUPPLEMENTS IN ACCORDANCE WITH THIS ARTICLE, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public building service contracts are rendered simultaneously, such contractor, subcontractor, successor, and if the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or any successor is a corporation, any officer of such corporation who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any public building service work for a period of five years from the date of the second order, provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the contractor, subcontractor, successor, substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public building service contract or subcontract with the state, any municipal corporation or public body for a period of five years from the date of the first final order. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.