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

7072

2009-2010 Regular Sessions

I N A S S E M B L Y

March 19, 2009

Introduced by M. of A. JOHN, NOLAN -- Multi-Sponsored by -- M. of A. SCHROEDER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to hours, wages and supplements for public work and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Subdivision 2 of section 220 of the labor law, as amended by chapter 678 of the laws of 2007, is amended to read as follows:

2. Each contract to which the state [or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law] is a party, INCLUDING BUT NOT LIMITED TO, ANY CONTRACT, LEASE, GRANT, BOND, COVENANT OR OTHER DEBT AGREEMENT ENTERED INTO DIRECTLY OR INDIRECTLY BY THE STATE, AN INDUSTRIAL DEVELOPMENT AGENCY, ANY OTHER PUBLIC CORPORATION AS DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, A PUBLIC AUTHORITY, OR A SIMILAR PUBLIC ENTITY, FINANCING IN WHOLE OR IN PART, THE CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION OR ALTERATION OF A BUILDING OR AN IMPROVEMENT TO PROPERTY, and any contract for public work entered into by a third party acting in place of, on behalf of and for the benefit of such public entity pursuant to any lease, permit or other agreement between such third party and the public entity, and which may involve the employment of laborers, workers or mechanics shall contain a stipulation that no laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency

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

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within the meaning of this section shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or days per week on such public project or in such areas the commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workers and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 2. Subdivision 2 of section 220 of the labor law, as amended by chapter 851 of the laws of 1947, is amended to read as follows:

2. Each contract to which the state [or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law] is a party, INCLUDING BUT NOT LIMITED TO, ANY CONTRACT, LEASE, GRANT, BOND, COVENANT OR OTHER DEBT AGREEMENT ENTERED INTO DIRECTLY OR INDIRECTLY BY THE STATE, AN INDUSTRIAL DEVELOPMENT AGENCY, ANY OTHER PUBLIC CORPORATION AS DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, A PUBLIC AUTHORITY, OR A SIMILAR PUBLIC ENTITY, FINANCING IN WHOLE OR IN PART, THE CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION OR ALTERATION OF A BUILDING OR AN IMPROVEMENT TO PROPERTY, and which may involve the employment of laborers, [workmen] WORKERS or mechanics shall contain a stipulation that no laborer, [workman] WORKER or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergen-

cy including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, [workmen] WORKERS and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the [industrial] commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the [industrial] commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, [workmen] WORKERS and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the [industrial] commissioner determines that there are not sufficient [workmen] WORKERS, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the [industrial] commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the [industrial] commissioner shall grant a dispensation permitting all laborers, [workmen] WORKERS and mechanics, or any classification of such laborers, [workmen] WORKERS and mechanics, to work such additional hours or days per week on such public project or in such areas the [industrial] commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, [workmen] WORKERS and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the [industrial] commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 3. Section 220 of the labor law is amended by adding a new subdivision 4-a to read as follows:

4-A. A. FOR THE PURPOSES OF THIS ARTICLE ONLY, AND SUBJECT TO THE PROVISIONS OF PARAGRAPHS B AND C OF THIS SUBDIVISION, PUBLIC WORK OR PUBLIC WORKS SHALL INCLUDE ALL CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIRS, RENOVATION OR ALTERATION OF A BUILDING OR IMPROVEMENT TO PROPERTY PERFORMED PURSUANT TO A CONTRACT OR OTHER AGREEMENT ENTERED INTO DIRECTLY OR INDIRECTLY BY THE STATE OR OTHER PUBLIC ENTITY OR PUBLIC CORPORATION GOVERNED BY SUBDIVISION TWO OF THIS SECTION INVOLVING THE EMPLOYMENT OF LABORERS, WORKERS OR MECHANICS WHERE THE STATE OR ANOTHER SUCH PUBLIC ENTITY OR PUBLIC CORPORATION ISSUES BONDS OR PROVIDES GRANTS OR OTHER FINANCIAL SUBSIDIES TO FINANCE SUCH PROJECTS IN WHOLE OR IN PART, OR ENTERS INTO AN AGREEMENT FOR THE

OWNERSHIP OR USE OF SUCH BUILDINGS OR PROPERTY WITH A PRIVATE OWNER OR DEVELOPER. FOR PURPOSES OF THIS ARTICLE, PUBLIC WORK OR PUBLIC WORKS SHALL BE LIMITED TO ALL CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIRS, RENOVATION OR ALTERATION OF A BUILDING OR IMPROVEMENT TO PROPERTY PERFORMED PURSUANT TO THE AFORESAID CONTRACT OR OTHER AGREEMENT AND SHALL NOT INCLUDE WORK PERFORMED SUBSEQUENT THERETO.

B. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO PRIVATELY OWNED PROJECTS WHOSE NET PRESENT VALUE IS LESS THAN TWO HUNDRED THOUSAND DOLLARS. WHERE THE VALUE OF DIRECTLY PROVIDED PUBLIC FUNDS AND THE NET PRESENT VALUE OVER THE FIRST TEN YEARS OF A PROJECT UNDERTAKEN PURSUANT TO SUCH CONTRACT OF ANY INDIRECT PUBLIC SUBSIDIES, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO INTEREST RATE RELIEF AND TAX EXEMPTIONS OR ABATEMENTS, BUT WHICH SHALL NOT INCLUDE THIRD-PARTY PAYMENTS, IS ONE-THIRD OR LESS OF THE TOTAL VALUE OF SUCH PROJECT, THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY UNLESS THE PROJECT IS SUBSTANTIALLY OF A PUBLIC NATURE AS DETERMINED BY CONSIDERATION OF THE FOLLOWING FACTORS:

(1) THE PROJECT IS OWNED, LEASED AND/OR OPERATED BY A PUBLIC ENTITY;

(2) THE PROJECT IS NOT FUNDED NOR THE DEBT AMORTIZED, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, BY PRIVATE FUNDS, AND THE FINANCIAL RISKS OF THE PROJECT ARE WITH A PUBLIC ENTITY;

(3) THE PROJECT IS CONSTRUCTED PURSUANT TO A CONTRACT REQUIRED TO BE PUBLICLY BID PURSUANT TO LAW, AND THE DESIGN AND CONSTRUCTION OF THE PROJECT IS SUBSTANTIALLY CONTROLLED BY A PUBLIC ENTITY;

(4) THE PROJECT IS SUBSTANTIALLY FOR A PUBLIC PURPOSE, BENEFIT, ENJOYMENT OR USE.

C. THE PUBLIC ENTITY OR PUBLIC CORPORATION WHICH IS INVOLVED IN A PROJECT COVERED BY THIS ARTICLE SHALL DETERMINE, IN THE FIRST INSTANCE, WHETHER THE PROVISIONS OF THIS ARTICLE APPLY. ON ANY PROJECT OF TOTAL VALUE OF TWO HUNDRED FIFTY THOUSAND DOLLARS OR MORE, OR ON A PROJECT NOT REQUIRED TO BE PUBLICLY ADVERTISED AND COMPETITIVELY BID PURSUANT TO ANY APPLICABLE STATUTE, THE PUBLIC ENTITY OR PUBLIC CORPORATION SHALL PROVIDE NOTICE TO THE COMMISSIONER AND THE COMMISSIONER OF ECONOMIC DEVELOPMENT OF THE APPLICABILITY OF THIS ARTICLE. WITHIN THIRTY DAYS OF RECEIVING SUCH NOTICE, THE COMMISSIONER SHALL AFFIRM OR OVERRULE SUCH DETERMINATION, NOTIFY THE PUBLIC ENTITY OR PUBLIC CORPORATION, AND PUBLISH THE DECISION IN THE STATE REGISTER. WITHIN FIFTEEN DAYS OF SUCH PUBLICATION, ANY PARTY WITH A DIRECT INTEREST IN THE APPLICATION OF THIS ARTICLE, INCLUDING THE PUBLIC ENTITY OR PUBLIC CORPORATION INVOLVED, MAY APPEAL THE DECISION OF THE COMMISSIONER TO AN IMPARTIAL ARBITRATION PROCESS ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION. SUCH ARBITRATION PROCESS SHALL BE ADMINISTERED IN AN EXPEDITED FASHION AND COMPLETED WITHIN THIRTY DAYS AFTER THE RECEIPT OF A NOTICE OF APPEAL UNDER THE RULES ESTABLISHED BY THE AMERICAN ARBITRATION ASSOCIATION. THE THIRTY-DAY TIME PERIOD FOR COMPLETION OF THE ARBITRATION MAY BE EXTENDED BY THE ARBITRATOR FOR GOOD CAUSE. THE DETERMINATION OF THE ARBITRATOR SHALL BE FINAL, SUBJECT TO REVIEW IN ACCORDANCE WITH ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES. ALL DETERMINATIONS MADE PURSUANT TO THIS PARAGRAPH SHALL BE COMPLETED PRIOR TO ADVERTISING FOR COMPETITIVE BIDS OR, WHERE A CONTRACT IS NOT REQUIRED TO BE PUBLICLY BID, PRIOR TO AWARD OF ANY CONTRACT. THE COMMISSIONER SHALL MAINTAIN AN INDEX OF ALL SUCH DETERMINATIONS. IN THE EVENT THAT THE PRIVATE OWNER OR THE DEVELOPER AGREES WITH THE PUBLIC ENTITY OR PUBLIC CORPORATION TO PAY PREVAILING WAGES, THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY.

D. APPRENTICES SHALL BE USED ON ANY PUBLIC WORK PROJECT THAT WILL REQUIRE THE USE OF WORKERS FROM APPRENTICEABLE CRAFTS OR TRADES. SUCH

APPRENTICES SHALL BE PARTICIPANTS IN APPRENTICESHIP PROGRAMS CERTIFIED BY THE DEPARTMENT IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMISSIONER PURSUANT TO ARTICLE TWENTY-THREE OF THIS CHAPTER. IN ACCORDANCE WITH THE FEDERAL FITZGERALD ACT, 29 U.S.C. S 50, SPONSORS OF SUCH APPRENTICESHIP PROGRAMS SHALL ESTABLISH AFFIRMATIVE ACTION PLANS, INCLUDING GOALS AND TIMETABLES, FOR THE ADMISSION OF MINORITY AND/OR FEMALE APPLICANTS INTO THEIR APPRENTICE ELIGIBILITY POOLS. WHERE A SPONSOR FAILS TO SUBMIT SUCH GOALS AND TIMETABLES OR SUBMITS GOALS AND TIMETABLES WHICH THE COMMISSIONER FINDS UNACCEPTABLE, THE COMMISSIONER SHALL ESTABLISH GOALS AND TIMETABLES APPLICABLE TO SUCH SPONSOR FOR THE ADMISSION OF MINORITY AND/OR FEMALE APPLICANTS INTO ITS ELIGIBILITY POOL OR SELECTION OF APPRENTICES, AS APPROPRIATE. SUCH SPONSORS SHALL MAKE GOOD FAITH EFFORTS TO ATTAIN GOALS AND TIMETABLES IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PARAGRAPH, INCLUDING CONTRACTING WITH APPROPRIATE LOCAL COMMUNITY-BASED ORGANIZATIONS, FOR ESTABLISHMENT AND SPONSORSHIP OF PRE-EMPLOYMENT/PRE-APPRENTICESHIP SCREENING AND TRAINING PROGRAMS IN ORDER TO IDENTIFY QUALIFIED PERSONS FOR WORK OPPORTUNITIES IN THE CONSTRUCTION INDUSTRY. THE COMMISSIONER SHALL ON AN ANNUAL BASIS REPORT TO THE GOVERNOR AND THE LEGISLATURE CONCERNING AFFIRMATIVE ACTION PLANS OF SUCH SPONSORS AND WHETHER THE GOALS AND TIMETABLES THEREIN HAVE BEEN ATTAINED.

S 4. Section 220 of the labor law is amended by adding a new subdivision 4-b to read as follows:

4-B. THIS ARTICLE SHALL NOT APPLY TO CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIRS, RENOVATION OR ALTERATION OF A PRIVATELY OWNED RESIDENTIAL BUILDING OR IMPROVEMENT INCLUDING ANCILLARY FACILITIES EXCEPT WHEN A DIRECT CAPITAL GRANT OF PUBLIC FUNDS WHICH EXCEEDS FIFTY-ONE PERCENT OF THE TOTAL VALUE OF THE PROJECT IS PROVIDED FOR NEW CONSTRUCTION AND EITHER THE TOTAL NUMBER OF UNITS IN A GIVEN BUILDING EXCEEDS ONE HUNDRED OR THE BUILDING EXCEEDS SEVEN STORIES IN HEIGHT. A DIRECT CAPITAL GRANT OF PUBLIC FUNDS SHALL NOT BE INTERPRETED TO INCLUDE LOANS THAT ARE TO BE REPAID OR TAX INCENTIVES.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all applicable contracts or other agreements entered into after such effective date; provided that the amendments to subdivision 2 of section 220 of the labor law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 5 of chapter 678 of the laws of 2007, as amended, when upon such date the provisions of section two of this act shall take effect; provided, further that the amendments made to sections two, three and four of this act shall remain in full force and effect until June 30, 2014, when upon such date the provisions of such sections shall expire and be deemed repealed.