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

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I N A S S E M B L Y

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Introduced by M. of A. JOHN, NOLAN, ALFANO, SCHROEDER -- Multi-Sponsored by -- M. of A. ABBATE, CLARK, COLTON, HEASTIE, MARKEY, MAYERSOHN, MILLMAN, ORTIZ, PERALTA, PERRY, WRIGHT -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing the public works security and accountability act

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

Section 1. This act shall be known and may be cited as "the public works security and accountability act".

S 2. The labor law is amended by adding a new section 222-b to read as follows:

S 222-B. PUBLIC WORK SITE SECURITY. 1. CONTRACTORS AND SUB-CONTRACTORS SHALL ESTABLISH AN INCIDENT MANAGEMENT SYSTEM TO ENSURE THAT INFORMATION, MATERIALS, THE CONSTRUCTION SITE AND ALL EMPLOYEES ARE SECURE AND ACCOUNTED FOR IN THE CASE OF A TERRORIST ATTACK OR A MAJOR DISASTER. SUCH INCIDENT MANAGEMENT SYSTEM SHALL INCLUDE THE FOLLOWING PROVISIONS:

A. THE REQUIREMENT THAT DUPLICATE COPIES OF ALL ESSENTIAL INFORMATION BE MAINTAINED AT A SECURE OFF-SITE FACILITY; AND

B. THE ESTABLISHMENT OF PROTECTIONS COMMENSURATE WITH THE RISK AND MAGNITUDE OF THE HARM RESULTING FROM UNAUTHORIZED ACCESS, USE, DISCLOSURE, DISRUPTION, MODIFICATION, OR DESTRUCTION OF:

(I) INFORMATION COLLECTED OR MAINTAINED BY OR ON BEHALF OF THE CONTRACTING AGENCY; AND

(II) INFORMATION SYSTEMS USED OR OPERATED BY THE CONTRACTOR OR SUB-CONTRACTOR.

2. A. IN ANY PUBLIC WORKS CONTRACT, THE CONTRACTOR OR SUB-CONTRACTOR SHALL:

(I) INDICATE WHETHER THE JOB WILL INCLUDE EXPLOSIVES OR ANY OTHER INCENDIARY DEVICES;

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

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(II) PRIOR TO THE LEGAL USE OF ANY EXPLOSIVE MATERIALS, VERIFY THAT THE PROPER USER PERMITS HAVE BEEN OBTAINED AND COPIES OF SUCH PERMITS SHALL BE MAINTAINED ON THE WORK SITE WHERE SUCH EXPLOSIVES WILL BE USED;

(III) ATTACH COPIES OF ALL PERMITS OR CERTIFICATES INVOLVING THE USE OF SUCH EXPLOSIVES OR DEVICES, INCLUDING USER PERMITS FOR INDIVIDUALS EMPLOYED BY THE CONTRACTOR OR SUB-CONTRACTOR; AND

(IV) CERTIFY IN WRITING THAT HE OR SHE IS FAMILIAR WITH ALL PUBLISHED FEDERAL, STATE AND LOCAL LAWS RELATING TO EXPLOSIVES.

B. IN THOSE JOBS WHERE EXPLOSIVES MAY BE USED, THE CONTRACTOR SHALL DESIGNATE A PLACE OF STORAGE FOR EXPLOSIVE MATERIALS WHICH MEETS THE LEGAL STANDARDS FOR PUBLIC SAFETY AND SECURITY AGAINST THEFT PURSUANT TO APPLICABLE FEDERAL AND STATE LAWS.

C. CONTRACTORS AND SUB-CONTRACTORS SHALL REPORT ANY THEFT OF SUCH MATERIALS TO LOCAL AUTHORITIES NO LATER THAN TWENTY-FOUR HOURS AFTER DISCOVERY. THE FAILURE TO REPORT A THEFT OF SUCH MATERIALS IN A TIMELY MANNER SHALL BE PUNISHABLE BY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS.

3. EVERY CONTRACTOR OR SUB-CONTRACTOR SHALL MAINTAIN ON THE SITE OF THE WORK, OR ON THE SITE WHERE WORKERS REPORT TO WORK, ORIGINAL SIGN-IN AND SIGN-OUT LOGS REFLECTING THE NAME, SOCIAL SECURITY NUMBER, THE ACTUAL DATES AND TIMES OF WORK, INCLUDING ARRIVAL AND DEPARTURE TIMES, OF ALL LABORERS, WORKERS OR MECHANICS EMPLOYED ON THE PUBLIC WORK, AND THE CLASSIFICATION IN WHICH THEY WORKED DURING SUCH TIMES. SUCH RECORDS SHALL BE CERTIFIED BY AN OFFICER OF THE CONTRACTOR OR SUB-CONTRACTOR AND THE SITE MANAGER, AND SUCH RECORDS SHALL IMMEDIATELY BE PRODUCED ON THE SITE OF THE WORK, OR SUBMITTED WITHIN FIVE DAYS TO THE FISCAL OFFICER UPON RECEIPT OF A REQUEST BY THE FISCAL OFFICER TO PRODUCE SUCH RECORDS. SUCH RECORDS SHALL BE MAINTAINED BY THE CONTRACTOR OR SUB-CONTRACTOR FOR THREE YEARS AFTER THE FINAL ACCEPTANCE OF THE PROJECT. KNOWINGLY PROVIDING THE FISCAL OFFICER WITH FALSE RECORDS SHALL BE A CLASS A MISDEMEANOR.

S 3. Subdivision 3 of section 220 of the labor law is amended by adding a new paragraph (f) to read as follows:

(F) ALL WAGES PAYABLE UNDER THIS ARTICLE SHALL BE ACCOMPANIED BY A WRITTEN RECEIPT OR STATEMENT, SUCH AS A PAY STUB, DETAILING, AT A MINIMUM, THE HOURS AND DAYS WORKED BY SUCH EMPLOYEE, THE JOB CLASSIFICATION AT WHICH THE EMPLOYEE WAS EMPLOYED, AND THE PREVAILING WAGE RATE AND THE SUPPLEMENT PAID TO SUCH EMPLOYEE, INCLUDING SUMS WHICH ARE NOT PAID DIRECTLY TO THE EMPLOYEE AND WHICH ARE EXPENDED FOR SUPPLEMENTS.

S 4. Subparagraph (ii) of paragraph a of subdivision 3-a of section 220 of the labor law, as separately amended by chapters 7 and 63 of the laws of 2008, is amended to read as follows:

(ii) The contractor and every sub-contractor on public works contracts shall post in a prominent and accessible place on the site where the work is performed a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workers, or laborers employed on the work. Such posted statement shall be written in plain English and titled, in lettering no smaller than two inches in height and two inches in width, with the phrase "Prevailing Rate of Wages". EACH CONTRACTOR OR SUB-CONTRACTOR SHALL ENSURE THAT SUCH STATEMENT IS PROVIDED IN ENGLISH, SPANISH AND ANY OTHER LANGUAGES SPOKEN BY TEN PERCENT OR MORE OF THE WORKERS EMPLOYED BY THE CONTRACTOR OR SUB-CONTRACTORS. Such posted statement shall be constructed of materials capable of withstanding adverse weather conditions. The contractor and every sub-contractor shall notify all laborers, workers or mechanics in their employ in writ-

ing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every laborer, worker or mechanic on their first pay stub and with every pay stub thereafter. At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the contractor and every sub-contractor shall notify all laborers, workers, and mechanics in their employ in writing, in accordance with such form as is prescribed by the fiscal officer, of the telephone number and address for the fiscal officer. The notice shall also inform each laborer, worker, or mechanic of his or her right to contact the fiscal officer or some other representative if, at any time while working for the public works contractor or sub-contractor, he or she does not receive the proper prevailing rate of wages or supplements for his or her particular job classification that he or she is entitled to receive under the contract. If after investigation the fiscal officer finds that a contractor or sub-contractor has (1) failed to post any notice required under this subdivision, (2) failed to set forth the prevailing wage on the pay stub, (3) wilfully posted the incorrect prevailing wage, or (4) wilfully set forth the incorrect prevailing wage on the pay stub, the fiscal officer, shall by an order which shall describe particularly the nature of the alleged violation, assess the contractor or sub-contractor a civil penalty of not more than fifty dollars upon the first finding of a violation, two hundred fifty dollars upon the second finding of a violation, and five hundred dollars for each subsequent violation. In assessing the amount of the penalty, the fiscal officer shall give due consideration to the size of the employer's business, the good faith of the employer, and the gravity of the violation.

S 5. 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 REPORTS REQUIRED IN SECTION TWO HUNDRED TWENTY-TWO-B OF THIS ARTICLE, 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 6. 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 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 7. Section 220 of the labor law is amended by adding a new subdivision 4-a to read as follows:

4-A. 1. NO CONTRACTOR OR SUB-CONTRACTOR CAN ENGAGE A SUB-CONTRACTOR OR ANY PERSON TO PERFORM THE WHOLE OR ANY PART OF A PUBLIC WORKS OR IMPROVEMENT SUB-CONTRACT EXCEPT PURSUANT TO A WRITTEN AGREEMENT.

2. THE TERMS AND CONDITIONS OF SUCH AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO:

A. THE NAMES OF THE PARTIES;

B. THE OFFICE ADDRESSES OF THE PARTIES, WHICH SHALL NOT BE A POST OFFICE BOX;

C. IF THE SUB-CONTRACTOR IS NOT A CORPORATION, THE NAMES OF THE INDIVIDUAL OWNERS OR PARTNERS AND THEIR HOME ADDRESSES;

D. THE TAX IDENTIFICATION NUMBER OF THE SUB-CONTRACTOR;

E. A DESCRIPTION OF THE GOODS, WORK OR SERVICES TO BE PROVIDED;

F. THE WORK LOCATION OR SITE WHERE THE GOODS, WORK OR SERVICES ARE TO BE PROVIDED;

G. THE PROJECTED SCHEDULE FOR DELIVERY OF GOODS OR COMPLETION OF SUCH WORK OR SERVICES;

H. THE VALUE OF THE SUB-CONTRACT;

I. THE PROJECTED NUMBER OF EMPLOYEES AND THEIR WORK CLASSIFICATIONS; AND

J. AN AGREEMENT TO ABIDE BY AND COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LABOR LAWS, INCLUDING PREVAILING WAGE LAWS, POSTING REQUIREMENTS AND THE REQUIREMENTS OF SECTION TWO HUNDRED TWENTY-TWO-B OF THIS ARTICLE, WHERE APPLICABLE.

S 8. Subdivisions 1, 2 and 6 of section 231 of the labor law, as added by chapter 777 of the laws of 1971, are amended to read as follows:

1. Every contractor shall pay a service employee under a contract for building service work a wage of not less than the prevailing wage in the locality for the craft, trade or occupation of the service employee. SUCH WAGES SHALL BE ACCOMPANIED BY A WRITTEN RECEIPT OR STATEMENT, SUCH AS A PAY STUB, DETAILING, AT A MINIMUM, THE HOURS AND DAYS WORKED BY SUCH EMPLOYEE, THE JOB CLASSIFICATION AT WHICH THE EMPLOYEE IS EMPLOYED, AND THE PREVAILING WAGE RATE AND THE SUPPLEMENT PAID TO SUCH EMPLOYEE, INCLUDING SUMS WHICH ARE NOT PAID DIRECTLY TO THE EMPLOYEE AND WHICH ARE EXPENDED FOR SUPPLEMENTS.

2. The obligation of a contractor to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash PROVIDED SUCH BENEFIT IS DISCLOSED ON AN ACCOMPANIED WRITTEN RECEIPT OR STATEMENT AND under rules and regulations established by the fiscal officer.

6. (A) No later than the first day upon which work on said contract is performed by any employee, the contractor shall post in a prominent and accessible place on the site of the work a legible statement of the wages to be paid to the [workmen] WORKERS employed thereon. EACH CONTRACTOR OR SUB-CONTRACTOR SHALL ENSURE THAT SUCH STATEMENT IS PROVIDED IN ENGLISH, SPANISH AND ANY OTHER LANGUAGES SPOKEN BY TEN PERCENT OR MORE OF THE WORKERS EMPLOYED BY THE CONTRACTOR OR SUB-CONTRACTORS. EVERY CONTRACTOR OR SUB-CONTRACTOR WHO FAILS TO POST SUCH STATEMENT SHALL, FOR THE FIRST DAY OF A VIOLATION THEREOF, BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN ONE HUNDRED DOLLARS; AND FOR THE SECOND DAY OF SUCH VIOLATION AND EACH SUBSEQUENT DAY THEREAFTER UNTIL SUCH POSTING IS DISPLAYED, BE LIABLE FOR A CIVIL PENALTY THAT IS TWO TIMES THE AMOUNT OF THE PENALTY OF THE PREVIOUS DAY, NOT TO EXCEED TEN THOUSAND DOLLARS PER DAY. WHERE THE FISCAL OFFICER IS THE COMMISSIONER, THE FINE SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN THE STATE TREASURY. WHERE THE FISCAL OFFICER IS THE CITY COMPTROLLER OF A CITY WITH A POPULATION IN EXCESS OF ONE MILLION, THE PENALTY SHALL BE PAID TO SAID OFFICER FOR DEPOSIT IN THE CITY TREASURY.

(B) EVERY CONTRACTOR OR SUB-CONTRACTOR SHALL MAINTAIN ON THE SITE OF THE WORK, OR ON THE SITE WHERE WORKERS REPORT TO WORK, ORIGINAL SIGN-IN AND SIGN-OUT LOGS REFLECTING THE NAME, SOCIAL SECURITY NUMBER, THE ACTUAL DATES AND TIMES OF WORK, INCLUDING ARRIVAL AND DEPARTURE TIMES, OF ALL WORKERS EMPLOYED UNDER THE SERVICE CONTRACT, AND THE CLASSIFICATION IN WHICH THEY WORKED DURING SUCH TIMES. SUCH RECORDS SHALL BE CERTIFIED BY AN OFFICER OF THE CONTRACTOR OR SUB-CONTRACTOR AND SHALL IMMEDIATELY BE PRODUCED ON THE SITE OF THE WORK, OR SUBMITTED WITHIN FIVE DAYS TO THE FISCAL OFFICER UPON RECEIPT OF A REQUEST BY THE FISCAL OFFICER TO PRODUCE SUCH RECORDS. SUCH RECORDS SHALL BE MAINTAINED BY THE CONTRACTOR OR SUB-CONTRACTOR FOR THREE YEARS AFTER THE FINAL ACCEPTANCE OF THE PROJECT. KNOWINGLY PROVIDING THE FISCAL OFFICER WITH FALSE RECORDS SHALL BE A CLASS A MISDEMEANOR.

S 9. 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 10. 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 11. This act shall take effect on the one hundred eightieth day after it shall have become a law.