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

4000

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

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

AN ACT to amend the labor law, in relation to compliance investigations on public works projects

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

Section 1. Section 220 of the labor law is amended by adding a new subdivision 7-b to read as follows:

7-B. LOCAL INVESTIGATIONS. A. UPON APPLICATION OF THE COUNTY EXECUTIVE OF ANY COUNTY, THE STATE COMPTROLLER OR ATTORNEY GENERAL OF THE STATE SHALL GRANT THE APPLICANT THE AUTHORITY TO CONDUCT COMPLIANCE INVESTIGATIONS ON PUBLIC WORKS PROJECTS BEING CONDUCTED WITHIN THE JURISDICTION HE OR SHE REPRESENTS.

B. UPON RECEIPT OF AN APPLICATION FOR LOCAL INVESTIGATION, THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL MAKE INQUIRY TO ENSURE THAT THE EXAMINERS AND INSPECTORS WHO WILL BE APPOINTED BY THE APPLICANT TO CONDUCT SUCH INVESTIGATIONS WILL INVESTIGATE COMPLIANCE WITH THIS CHAPTER IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THE DEPARTMENT. THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL REQUIRE THAT ANY SUCH INSPECTORS BE TRAINED IN A LIKE MANNER TO THE EMPLOYEES OF THE DEPARTMENT WHO PRESENTLY INVESTIGATE COMPLIANCE WITH THIS ARTICLE. THE CHOICE OF INSPECTORS AND THE DECISION WHETHER THEY SHALL BE REMUNERATED OR NOT SHALL BE SOLELY WITHIN THE DISCRETION OF THE APPLICANT.

C. THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL GRANT THE APPLICATION ONLY IF HE OR SHE DETERMINES THAT INVESTIGATIONS BY THE LOCAL AUTHORITY WILL AID THE DEPARTMENT IN ITS ENFORCEMENT OF THIS ARTICLE. THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL ACT UPON AN APPLICATION WITHIN FOUR MONTHS OF RECEIPT OF THAT APPLICATION.

D. IF THE APPLICATION IS GRANTED, THE LOCAL INSPECTORS SHALL HAVE THE SAME RIGHTS AS INSPECTORS AND EXAMINERS OF THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO ACCESS TO WORKSITES AND TO PAYROLL RECORDS AND ALL OTHER

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

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BOOKS AND RECORDS PERTAINING TO THE RATE OF WAGES PAID AND SUPPLEMENTS PROVIDED TO THE LABORERS, WORKERS AND MECHANICS AND THE HOURS OF LABOR PERFORMED. AFTER COMPLETING AN INVESTIGATION THE LOCAL INSPECTORS SHALL RECOMMEND TO THE STATE COMPTROLLER OR ATTORNEY GENERAL WHETHER OR NOT TO ISSUE AN ORDER OR DETERMINATION OF VIOLATION OF THIS ARTICLE. THE RECOMMENDATION OF THE LOCAL AUTHORITY SHALL INCLUDE DOCUMENTATION REQUIRED BY THE STATE COMPTROLLER OR ATTORNEY GENERAL TO SUPPORT THE CONCLUSION. IF THE STATE COMPTROLLER OR ATTORNEY GENERAL REJECTS A RECOMMENDATION BY A LOCAL INVESTIGATOR TO ISSUE AN ORDER OR DETERMINATION, THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL, WITHIN FIFTEEN DAYS OF SUCH DETERMINATION, PROVIDE THE LOCAL INVESTIGATOR WITH A WRITTEN EXPLANATION OF THE REASONS FOR THE REJECTION OF THE RECOMMENDATION OF THE LOCAL INVESTIGATOR. THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL RETAIN RESPONSIBILITY FOR ENFORCEMENT OF THIS ARTICLE. LOCAL INSPECTORS MUST BE SUBJECT TO THE AUTHORITY OF THE STATE COMPTROLLER OR ATTORNEY GENERAL AND MUST FOLLOW ANY DIRECTIONS FROM THE STATE COMPTROLLER OR ATTORNEY GENERAL AS TO PARTICULAR INVESTIGATIONS OR THE FORM OF INVESTIGATIONS IN GENERAL.

E. THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL ISSUE RULES AND REGULATIONS SETTING FORTH, AMONG OTHER THINGS, THE FORM OF THE APPLICATION FOR LOCAL INVESTIGATION, THE TRAINING OF THE LOCAL INSPECTORS, THE FORM IN WHICH INSPECTORS MUST FORWARD THE RESULTS OF THEIR INVESTIGATIONS AND THEIR RECOMMENDATIONS TO THE STATE COMPTROLLER OR ATTORNEY GENERAL, AND THE FORMAL MECHANISM FOR COMMUNICATION BETWEEN THE LOCAL ENFORCEMENT BODY AND THE DEPARTMENT.

F. THE STATE COMPTROLLER OR ATTORNEY GENERAL SHALL BE RESPONSIBLE FOR INVESTIGATING ANY COMPLAINTS ABOUT THE ACTIVITIES OF THE LOCAL INSPECTORS AND SHALL HAVE THE POWER TO REVOKE THE AUTHORIZATION FOR LOCAL INVESTIGATION FOR CAUSE, WHICH CAUSE SHALL INCLUDE, BUT NOT BE LIMITED TO, FAILURE TO PRESENT THE RESULTS OF AN INVESTIGATION IN A MANNER WHICH WILL ALLOW THE STATE COMPTROLLER OR ATTORNEY GENERAL TO DETERMINE WHETHER AN ORDER OR DETERMINATION OF VIOLATION OF THIS ARTICLE SHALL BE ISSUED.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.