

4937

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and  
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to promoting fairness in competitive bidding by providing for enforcement of prevailing wage provisions applicable to public work construction projects

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

1     Section 1. The general business law is amended by adding a new section  
2     399-i to read as follows:

3     S 399-I. FAIRNESS IN COMPETITIVE BIDDING. 1. FOR THE PURPOSES OF THIS  
4     SECTION: (A) THE TERM "PERSON" SHALL INCLUDE ANY INDIVIDUAL, ORGANIZA-  
5     TION, ASSOCIATION, SCHOOL DISTRICT, LOCAL GOVERNMENT, CORPORATION, PART-  
6     NERSHIP, LIMITED LIABILITY COMPANY OR OTHER BUSINESS ENTITY; AND

7     (B) THE TERM "CONSTRUCTION PROJECT" SHALL INCLUDE ANY PROJECT WHICH IS  
8     SUBJECT TO THE PROVISIONS OF ARTICLE EIGHT OF THE LABOR LAW AND WHICH  
9     INVOLVES THE CONSTRUCTION, MODERNIZATION, IMPROVEMENT, REHABILITATION,  
10    REPAIR, MAINTENANCE, REPLACEMENT OR RENOVATION OF A BUILDING, ROAD OR  
11    STRUCTURE, OR ANY PORTION OF SUCH A PROJECT PERFORMED PURSUANT TO A  
12    SUBCONTRACTING ARRANGEMENT.

13    2. (A) ANY PERSON MAY BRING A CIVIL ACTION FOR THE RECOVERY OF DAMAGES  
14    AGAINST THE WINNING BIDDER IF THE WINNING BIDDER HAS VIOLATED THE LABOR  
15    LAW BY FAILING TO PAY THE PREVAILING WAGE ON A CONSTRUCTION PROJECT.  
16    SUCH AN ACTION MAY BE MAINTAINED SOLELY BY THE PERSON BRINGING THE  
17    ACTION, OR BY SUCH PERSON, TOGETHER WITH THE ATTORNEY GENERAL. IF THE  
18    WINNING BIDDER IS FOUND NOT TO BE PAYING THE PREVAILING WAGE, THE  
19    PRESUMPTIVE MEASURE OF DAMAGES IS THE VALUE OF THE CONTRACT FOR THE  
20    CONSTRUCTION PROJECT.

21    (B) A COPY OF THE COMPLAINT AND WRITTEN DISCLOSURE OF SUBSTANTIALLY  
22    ALL MATERIAL EVIDENCE AND INFORMATION THAT THE PERSON POSSESSES SHALL BE  
23    SERVED ON THE OFFICE OF THE ATTORNEY GENERAL PURSUANT TO THE CIVIL PRAC-  
24    TICE LAW AND RULES. THE COMPLAINT SHALL BE FILED IN CAMERA, SHALL REMAIN

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

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1 UNDER SEAL FOR AT LEAST SIXTY DAYS, AND SHALL NOT BE SERVED UPON THE  
2 DEFENDANT UNTIL THE COURT SO ORDERS. THE OFFICE OF THE ATTORNEY GENERAL  
3 MAY ELECT TO INTERVENE AND PROCEED WITH THE ACTION WITHIN SIXTY DAYS  
4 AFTER IT RECEIVES BOTH THE COMPLAINT AND THE MATERIAL EVIDENCE AND  
5 INFORMATION.

6 (C) BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD PROVIDED FOR IN THIS  
7 SECTION, THE OFFICE OF THE ATTORNEY GENERAL SHALL: (I) PROCEED WITH THE  
8 ACTION, IN WHICH CASE THE ACTION SHALL BE CONDUCTED BY THE OFFICE OF THE  
9 ATTORNEY GENERAL ON BEHALF OF THE STATE OF NEW YORK; OR

10 (II) NOTIFY THE COURT THAT IT DECLINES TO TAKE OVER THE ACTION, IN  
11 WHICH CASE THE PERSON BRINGING THE ACTION SHALL HAVE THE RIGHT TO  
12 CONDUCT THE ACTION.

13 3. WHENEVER A PERSON BRINGS AN ACTION UNDER THIS SECTION, NO PERSON  
14 OTHER THAN THE OFFICE OF THE ATTORNEY GENERAL MAY INTERVENE OR BRING A  
15 RELATED ACTION BASED ON THE FACTS UNDERLYING THE PENDING ACTION.

16 4. IF THE OFFICE OF THE ATTORNEY GENERAL PROCEEDS WITH THE ACTION, IT  
17 SHALL HAVE THE PRIMARY RESPONSIBILITY FOR PROSECUTING THE ACTION, AND  
18 SHALL NOT BE BOUND BY AN ACT OF THE PERSON BRINGING THE ACTION. SUCH  
19 PERSON SHALL HAVE THE RIGHT TO CONTINUE AS A PARTY TO THE ACTION,  
20 SUBJECT TO THE LIMITATIONS SET FORTH IN SUBDIVISION FIVE OF THIS  
21 SECTION.

22 5. (A) THE OFFICE OF THE ATTORNEY GENERAL MAY DISMISS THE ACTION  
23 NOTWITHSTANDING THE OBJECTIONS OF THE PERSON INITIATING THE ACTION IF  
24 THE PERSON HAS BEEN NOTIFIED BY THE OFFICE OF THE ATTORNEY GENERAL OF  
25 THE FILING OF THE MOTION AND THE COURT HAS PROVIDED THE PERSON WITH AN  
26 OPPORTUNITY FOR A HEARING ON THE MOTION.

27 (B) THE OFFICE OF THE ATTORNEY GENERAL MAY SETTLE THE ACTION WITH THE  
28 DEFENDANT NOTWITHSTANDING THE OBJECTIONS OF THE PERSON INITIATING THE  
29 ACTION IF THE COURT DETERMINES, AFTER A HEARING, THAT THE PROPOSED  
30 SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE UNDER ALL THE CIRCUM-  
31 STANCES. UPON A SHOWING OF GOOD CAUSE, SUCH HEARING MAY BE HELD IN  
32 CAMERA.

33 6. IF THE OFFICE OF THE ATTORNEY GENERAL ELECTS NOT TO PROCEED WITH  
34 THE ACTION, THE PERSON WHO INITIATED THE ACTION SHALL HAVE THE RIGHT TO  
35 CONDUCT THE ACTION. IF THE OFFICE OF THE ATTORNEY GENERAL SO REQUEST, IT  
36 SHALL BE SERVED WITH COPIES OF ALL PLEADINGS FILED IN THE ACTION AND  
37 SHALL BE SUPPLIED WITH COPIES OF ALL DEPOSITION TRANSCRIPTS (AT THE  
38 OFFICE OF THE ATTORNEY GENERAL'S EXPENSE). WHEN A PERSON PROCEEDS WITH  
39 THE ACTION, THE COURT, WITHOUT LIMITING THE STATUS AND RIGHTS OF THE  
40 PERSON INITIATING THE ACTION, MAY NEVERTHELESS PERMIT THE OFFICE OF THE  
41 ATTORNEY GENERAL TO INTERVENE AT A LATER DATE UPON A SHOWING OF GOOD  
42 CAUSE.

43 7. THE OFFICE OF THE ATTORNEY GENERAL MAY ELECT TO PURSUE ITS CLAIM  
44 THROUGH ANY ALTERNATE REMEDY AVAILABLE TO THE OFFICE OF THE ATTORNEY  
45 GENERAL, INCLUDING ANY ADMINISTRATIVE PROCEEDING TO DETERMINE A CIVIL  
46 MONEY PENALTY. IF ANY SUCH ALTERNATE REMEDY IS PURSUED IN ANOTHER  
47 PROCEEDING, THE PERSON INITIATING THE ACTION SHALL HAVE THE SAME RIGHTS  
48 IN SUCH PROCEEDING AS SUCH PERSON WOULD HAVE HAD IF THE ACTION HAD  
49 CONTINUED UNDER THIS SECTION. ANY FINDING OF FACT OR CONCLUSION OF LAW  
50 MADE IN SUCH OTHER PROCEEDING THAT HAS BECOME FINAL SHALL BE CONCLUSIVE  
51 ON ALL PARTIES TO AN ACTION UNDER THIS SECTION. FOR PURPOSES OF THE  
52 PRECEDING SENTENCE, A FINDING OR CONCLUSION IS FINAL IF IT HAS BEEN  
53 FINALLY DETERMINED ON APPEAL TO THE APPROPRIATE COURT OF THE STATE OF  
54 NEW YORK, IF ALL TIME FOR FILING SUCH AN APPEAL WITH RESPECT TO THE  
55 FINDING OR CONCLUSION HAS EXPIRED, OR IF THE FINDING OR CONCLUSION IS  
56 NOT SUBJECT TO JUDICIAL REVIEW.

1 8. IF A WINNING BIDDER IS FOUND NOT TO BE PAYING THE PREVAILING WAGE  
2 ON A CONSTRUCTION PROJECT, THE PRESUMPTIVE MEASURE OF DAMAGES IS THE  
3 VALUE OF THE CONTRACT FOR THE CONSTRUCTION PROJECT. (A) IF THE OFFICE  
4 OF THE ATTORNEY GENERAL PROCEEDS WITH AN ACTION BROUGHT BY A PERSON,  
5 SUCH PERSON SHALL, SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH, RECEIVE  
6 AT LEAST FIFTEEN PERCENT BUT NOT MORE THAN TWENTY-FIVE PERCENT OF THE  
7 PROCEEDS OF THE ACTION OR SETTLEMENT OF THE CLAIM, DEPENDING UPON THE  
8 EXTENT TO WHICH THE PERSON SUBSTANTIALLY CONTRIBUTED TO THE PROSECUTION  
9 OF THE ACTION. ANY SUCH PERSON SHALL ALSO RECEIVE AN AMOUNT FOR REASON-  
10 ABLE EXPENSES THAT THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED,  
11 PLUS REASONABLE ATTORNEYS' FEES AND COSTS. ALL SUCH EXPENSES, FEES, AND  
12 COSTS SHALL BE AWARDED AGAINST THE DEFENDANT.

13 (B) IF THE OFFICE OF THE ATTORNEY GENERAL DOES NOT PROCEED WITH AN  
14 ACTION UNDER THIS SECTION, THE PERSON BRINGING THE ACTION OR SETTLING  
15 THE CLAIM SHALL RECEIVE AN AMOUNT WHICH THE COURT DECIDES IS REASONABLE  
16 FOR COLLECTING THE CIVIL PENALTY AND DAMAGES. THE AMOUNT SHALL BE NOT  
17 LESS THAN FIFTY PERCENT AND NOT MORE THAN SEVENTY-FIVE PERCENT OF THE  
18 PROCEEDS OF THE ACTION OR SETTLEMENT AND SHALL BE PAID OUT OF SUCH  
19 PROCEEDS. SUCH PERSON SHALL ALSO RECEIVE AN AMOUNT FOR REASONABLE  
20 EXPENSES THAT THE COURT FINDS TO HAVE BEEN NECESSARILY INCURRED, PLUS  
21 REASONABLE ATTORNEYS' FEES AND COSTS. ALL SUCH EXPENSES, FEES, AND COSTS  
22 SHALL BE AWARDED AGAINST THE DEFENDANT.

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