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

5847

2009-2010 Regular Sessions

I N S E N A T E

June 11, 2009

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

AN ACT to amend the labor law, in relation to enacting the "New York state construction industry fair play act"; and to amend the state finance law, in relation to creating the construction industry classification fund

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

Section 1. The labor law is amended by adding a new article 25-B to read as follows:

ARTICLE 25-B

THE NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT

SECTION 861. SHORT TITLE.
861-A. LEGISLATIVE FINDINGS AND INTENT.
861-B. DEFINITIONS.
861-C. PRESUMPTION OF EMPLOYMENT IN THE CONSTRUCTION INDUSTRY.
861-D. NOTICE TO PERSONS RECEIVING REMUNERATION FROM CONTRACTORS AND SUBCONTRACTORS.
861-E. VIOLATIONS.
861-F. ENFORCEMENT AND PENALTIES.
861-G. ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION.
861-H. RETALIATION.

S 861. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT".

S 861-A. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT NEW YORK STATE'S CONSTRUCTION INDUSTRY IS EXPERIENCING DANGEROUS LEVELS OF EMPLOYEE MISCLASSIFICATION FRAUD. UNSCRUPULOUS EMPLOYERS ARE INTENTIONALLY REPORTING EMPLOYEES AS INDEPENDENT CONTRACTORS TO STATE AND FEDERAL AUTHORITIES OR WORKERS' COMPENSATION CARRIERS IN RECORD NUMBERS. IN ADDITION, THERE HAS BEEN AN EXPLOSION OF EMPLOYERS

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

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WHO OPERATE IN THE UNDERGROUND ECONOMY AND FAIL TO REPORT ALL OR A SIZABLE PORTION OF THEIR WORKERS.

THE LEGISLATURE HEREBY FINDS AND DECLARES THAT RECENT STUDIES OF NEW YORK CITY'S CONSTRUCTION INDUSTRY ALONE SUGGESTS THAT AS MANY AS FIFTY THOUSAND NEW YORK CITY CONSTRUCTION WORKERS -- NEARLY ONE IN FOUR -- ARE EITHER MISCLASSIFIED AS INDEPENDENT CONTRACTORS OR ARE EMPLOYED BY CONSTRUCTION CONTRACTORS COMPLETELY OFF THE BOOKS. CONSTRUCTION INDUSTRY FRAUD REDUCES GOVERNMENT REVENUE, SHIFTS TAX AND WORKERS' COMPENSATION INSURANCE COSTS TO LAW-ABIDING EMPLOYEES, LOWERS WORKING CONDITIONS AND STEALS JOBS FROM LEGITIMATE EMPLOYERS AND THEIR EMPLOYEES.

IN TWO THOUSAND FIVE ALONE, IT WAS ESTIMATED THAT THE LOST PAYROLL TAXES AND SOCIAL INSURANCE PREMIUM PAYMENTS IN NEW YORK CITY DUE TO CLASSIFICATION FRAUD EXCEEDED TWO HUNDRED SEVENTY MILLION DOLLARS. IN ADDITION THE GOVERNMENT AND PROVIDERS WERE FORCED TO PAY AN ADDITIONAL ONE HUNDRED FORTY-EIGHT MILLION DOLLARS FOR HEALTH CARE COSTS FRAUDULENTLY SHIFTED FROM EMPLOYERS. FINALLY, IT WAS ESTIMATED THAT THE GOVERNMENT WAS CHEATED OUT OF ALMOST SEVENTY MILLION DOLLARS IN LOST INCOME TAXES DUE. MISCLASSIFICATION FRAUD CREATES SIGNIFICANT PROBLEMS FOR WORKERS. THESE WORKERS ARE NOT COVERED BY WORKERS' COMPENSATION, UNEMPLOYMENT INSURANCE, OR TEMPORARY DISABILITY. THEY ARE LIABLE FOR TAXES THEY DO NOT OWE AND LOSE OVERTIME AND HEALTH BENEFITS. FINALLY, UNSCRUPULOUS CONTRACTORS WHO ENGAGE IN FRAUD ARE ABLE TO UNDERCUT LAW-ABIDING CONTRACTORS BY AS MUSH AS THIRTY PERCENT IN THE PRICE OF CONSTRUCTION SERVICES.

THEREFORE, THE LEGISLATURE HEREBY FINDS AND DECLARES THAT GOVERNMENT HAS AN OBLIGATION TO CURB THIS UNDERGROUND ECONOMY, ENFORCE LONG-STANDING EMPLOYMENT LAWS, ENSURE COMPLIANCE WITH ESSENTIAL SOCIAL INSURANCE PROTECTIONS AND ELIMINATE THE UNFAIR COMPETITIVE ADVANTAGE FROM CONTRACTORS IN THE UNDERGROUND ECONOMY BY AND THROUGH THE ENACTMENT OF THE NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT.

S 861-B. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "CONSTRUCTION" MEANS CONSTRUCTING, RECONSTRUCTING, ALTERING, MAINTAINING, MOVING, REHABILITATING, REPAIRING, RENOVATING OR DEMOLITION OF ANY BUILDING, STRUCTURE, OR IMPROVEMENT, OR RELATING TO THE EXCAVATION OF OR OTHER DEVELOPMENT OR IMPROVEMENT TO LAND.

2. "CONTRACTOR" MEANS ANY SOLE PROPRIETOR, PARTNERSHIP, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION OR OTHER LEGAL ENTITY PERMITTED BY LAW TO DO BUSINESS WITHIN THE STATE OF NEW YORK WHO ENGAGES IN CONSTRUCTION AS DEFINED IN THIS ARTICLE.

3. "CONTRACTOR" INCLUDES A GENERAL CONTRACTOR AND A SUBCONTRACTOR.

4. "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR.

5. "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR.

S 861-C. PRESUMPTION OF EMPLOYMENT IN THE CONSTRUCTION INDUSTRY. 1. ANY PERSON PERFORMING SERVICES FOR A CONTRACTOR SHALL BE CLASSIFIED AS AN EMPLOYEE UNLESS ALL OF THE FOLLOWING CRITERIA ARE MET:

(A) THE INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN PERFORMING THE JOB, BOTH UNDER HIS OR HER CONTRACT AND IN FACT;

(B) THE SERVICE MUST BE PERFORMED OUTSIDE THE CONTRACTOR'S USUAL COURSE OF BUSINESS; AND

(C) THE INDIVIDUAL MUST BE CUSTOMARILY ENGAGED IN AN INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS THAT IS SIMILAR TO THE SERVICE AT ISSUE.

2. THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR TO PAY UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS' COMPENSATION PREMIUMS WITH RESPECT TO AN INDIVIDUAL'S WAGES SHALL NOT BE CONSIDERED IN MAKING A DETERMINATION UNDER THIS SECTION.

3. AN INDIVIDUAL'S ACT OF SECURING WORKERS' COMPENSATION INSURANCE WITH A CARRIER AS A SOLE PROPRIETOR OR PARTNERSHIP SHALL NOT BE CONSIDERED IN MAKING A DETERMINATION UNDER THIS SECTION.

S 861-D. NOTICE TO PERSONS RECEIVING REMUNERATION FROM CONTRACTORS AND SUBCONTRACTORS. 1. CONTRACTORS SHALL PROVIDE TO ALL INDIVIDUALS RECEIVING REMUNERATION TO PERFORM CONSTRUCTION WORK A WRITTEN NOTICE, PROVIDED BY THE COMMISSIONER, THAT DESCRIBES THE RESPONSIBILITY OF INDEPENDENT CONTRACTORS TO PAY TAXES REQUIRED BY STATE AND FEDERAL LAW AND THE RIGHTS OF EMPLOYEES TO WORKERS' COMPENSATION, UNEMPLOYMENT BENEFITS, MINIMUM WAGE, OVERTIME AND OTHER FEDERAL AND STATE WORKPLACE PROTECTIONS. SUCH INFORMATION SHALL ALSO CONTAIN CONTACT INFORMATION FOR SUCH PERSONS TO FILE COMPLAINTS OR INQUIRE WITH THE COMMISSIONER ABOUT EMPLOYMENT CLASSIFICATION STATUS. IN ADDITION, THE NOTICE SHALL CONTAIN THE ADDRESS TO THE WEB SITE DESCRIBED IN SUBDIVISION THREE OF THIS SECTION, THE PROTECTIONS IN THIS ARTICLE AGAINST RETALIATION AND THE PENALTIES IN THIS ARTICLE IF THE CONTRACTOR HAS FAILED TO PROPERLY CLASSIFY THE PERSON AS AN EMPLOYEE.

2. THE INFORMATION IN SUBDIVISION ONE OF THIS SECTION SHALL BE PROVIDED IN SPANISH OR OTHER LANGUAGES REQUIRED BY THE COMMISSIONER.

3. WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ARTICLE, THE COMMISSIONER SHALL CREATE THE NOTICE DESCRIBED IN SUBDIVISION ONE OF THIS SECTION. IN ADDITION, WITHIN THE SAME TIME PERIOD, THE COMMISSIONER SHALL CREATE A WEB SITE THAT CONTAINS THE SAME INFORMATION AND THE NOTICE. SUCH NOTICE SHALL BE PROVIDED TO CONTRACTORS THROUGH DOWNLOADING FROM THE WEB SITE.

4. CONTRACTORS IN THEIR AGREEMENTS WITH ALL SUBCONTRACTORS SHALL REQUIRE THEM TO:

(A) PROVIDE THE NOTICE DESCRIBED IN THIS SECTION, AND

(B) PLACE THE NOTICE REQUIREMENT IN CONTRACTS WITH ANY LOWER TIER SUBCONTRACTORS.

5. CONTRACTORS WHO VIOLATE THIS SECTION SHALL BE FINED:

(A) TWO THOUSAND DOLLARS PER INDIVIDUAL WHO IS NOT NOTIFIED; AND

(B) FIVE THOUSAND DOLLARS PER CONTRACT WITH A SUBCONTRACTOR OR LOWER TIER SUBCONTRACTOR THAT DOES NOT CONTAIN THE NOTICE REQUIREMENT.

S 861-E. VIOLATIONS. A CONTRACTOR IS GUILTY OF VIOLATING THE PROVISIONS OF SECTION EIGHT HUNDRED SIXTY-ONE-C OF THIS ARTICLE WHEN HE OR SHE FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE.

S 861-F. ENFORCEMENT AND PENALTIES. 1. FOR THE PURPOSES OF THIS SECTION THE TERM "WILFUL VIOLATION" SHALL MEAN A CONTRACTOR WHO KNEW OR SHOULD HAVE KNOWN THAT HIS OR HER CONDUCT WAS PROHIBITED BY THIS SECTION.

2. ANY PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS ARTICLE SHALL BE SUBJECT TO A FINE OF UP TO TWENTY-FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION PER EMPLOYEE, AND A FINE OF UP TO FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION PER EMPLOYEE.

3. IF THE CONTRACTOR IS A CORPORATION, ANY OFFICER OF SUCH CORPORATION OR SHAREHOLDER WHO OWNS OR CONTROLS AT LEAST TEN PERCENT OF THE OUTSTANDING STOCK OF SUCH CORPORATION WHO KNOWINGLY PERMITS THE CORPORATION TO WILLFULLY VIOLATE THE PROVISIONS OF THIS SECTION SHALL BE IN VIOLATION OF THIS SECTION AND BE SUBJECT TO THE CIVIL PENALTIES HEREIN.

4. ANY CONTRACTOR WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS SECTION AND SUCH VIOLATIONS RESULT IN A FAILURE TO PAY ANY OTHER STATUTORY PAYMENT OR COVERAGE OBLIGATIONS, INCLUDING BUT NOT LIMITED TO, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION INSURANCE, OR CORPORATE OR PERSONAL INCOME TAX SHALL BE SUBJECT, AT THE DISCRETION OF THE COMMISSIONER, TO ADDITIONAL CIVIL PENALTIES AS FOLLOWS:

(A) FOR THE FAILURE TO PAY UNEMPLOYMENT INSURANCE, THE PENALTIES IMPOSED BY SECTION FIVE HUNDRED SEVENTY OF THE LABOR LAW,

(B) FOR THE FAILURE TO PAY WORKERS' COMPENSATION INSURANCE, THE PENALTIES IMPOSED BY SECTION TWENTY-FIVE AND TWO HUNDRED TWENTY OF THE WORKERS' COMPENSATION LAW, AND

(C) FOR THE FAILURE TO PAY CORPORATE OR PERSONAL INCOME TAX, THE PENALTIES IMPOSED BY SECTIONS SIX HUNDRED EIGHTY-FIVE AND TEN HUNDRED EIGHTY-FIVE OF THE TAX LAW.

5. ANY CONTRACTOR OR ANY OFFICER OR SHAREHOLDER WHO OWNS OR CONTROLS AT LEAST TEN PERCENT OF THE OUTSTANDING STOCK OF SUCH CORPORATION THAT HAS BEEN CONVICTED OF A FELONY OFFENSE FOR CONDUCT RELATING TO THE MISCLASSIFICATION OF AN EMPLOYEE SHALL BE SUBJECT TO DEBARMENT AND BE INELIGIBLE TO SUBMIT A BID AND/OR BE AWARDED ANY PUBLIC WORKS CONTRACT WITH THE STATE, ANY MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION OR PUBLIC BODY FOR A PERIOD OF FIVE YEARS FROM THE DATE OF CONVICTION.

6. ANY EMPLOYEE MAY FILE CIVIL ACTIONS FOR THEMSELVES AND OTHERS SIMILARLY SITUATED SEEKING LOST WAGES, TREBLE DAMAGES, ATTORNEY'S FEES AND COSTS FOR UP TO THREE YEARS FROM THE DATE OF VIOLATION.

7. A PENALTY ISSUED UNDER THIS SECTION AGAINST A CONSTRUCTION INDUSTRY EMPLOYER SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS AS THE CONSTRUCTION INDUSTRY EMPLOYER AGAINST WHOM THE PENALTY WAS IMPOSED AND THAT WAS ENGAGED IN CONSTRUCTION WORK.

8. NOTHING IN THIS SECTION SHALL LIMIT THE AVAILABILITY OF OTHER REMEDIES AT LAW OR IN EQUITY.

S 861-G. ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION. 1. THERE IS HEREBY ESTABLISHED THE ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION. THE MISSION OF SUCH ADVISORY COMMITTEE IS TO DEVELOP RECOMMENDATIONS FOR A COMPREHENSIVE AND STRATEGIC STATEWIDE APPROACH TO ADDRESSING THE PROBLEM OF EMPLOYEE MISCLASSIFICATION AND TO ENSURE CONTRACTOR COMPLIANCE WITH THE "NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT".

2. THE ADVISORY COMMITTEE SHALL BE COMPOSED OF THE COMMISSIONER OR A DESIGNEE, SERVING EX OFFICIO; THE ATTORNEY GENERAL OR A DESIGNEE, SERVING EX OFFICIO; THE COMMISSIONER OF TAXATION AND FINANCE, SERVING EX OFFICIO; THE CHAIR OF THE WORKERS' COMPENSATION BOARD; THIRTEEN MEMBERS SHALL BE APPOINTED BY THE GOVERNOR AND SHALL SERVE AT HIS PLEASURE AS FOLLOWS: THREE REPRESENTATIVES FROM THREE DIFFERENT BUILDING TRADES UNIONS; THREE REPRESENTATIVES OF THE NEW YORK AFL-CIO; THREE REPRESENTATIVES OF THE BUSINESS COMMUNITY; ONE REPRESENTATIVE OF RESIDENTIAL DEVELOPERS; ONE REPRESENTATIVE OF RESIDENTIAL CONSTRUCTION CONTRACTORS; ONE REPRESENTATIVE OF COMMERCIAL DEVELOPERS; AND ONE REPRESENTATIVE OF COMMERCIAL CONSTRUCTION CONTRACTORS.

3. THE COMMISSIONER SHALL SERVE AS THE CHAIR OF THE ADVISORY COMMITTEE. ALL PUBLIC MEMBERS OF THE ADVISORY COMMITTEE SHALL SERVE WITHOUT COMPENSATION. VACANCIES ON THE ADVISORY COMMITTEE SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

4. IN FURTHERANCE OF ITS MISSION STATED IN SUBDIVISION ONE, ABOVE, THE ADVISORY COMMITTEE SHALL BE AUTHORIZED TO:

(A) MAKE RECOMMENDATIONS TO THE DEPARTMENT, THE ATTORNEY GENERAL, THE DEPARTMENT OF TAXATION AND FINANCE AND THE WORKERS' COMPENSATION BOARD WITH RESPECT TO SYNCHRONIZING EACH RESPECTIVE DEPARTMENT'S REGULATIONS AND POLICIES REGARDING EMPLOYEE MISCLASSIFICATION;

(B) MAKE RECOMMENDATIONS TO ENHANCE MECHANISMS FOR IDENTIFYING EMPLOYEE MISCLASSIFICATION WHERE IT DOES OCCUR;

(C) WORK WITH BUSINESS, LABOR AND COMMUNITY GROUPS TO DEVELOP EDUCATIONAL MATERIALS THAT DISTINGUISH THE DIFFERENCE BETWEEN AN INDEPENDENT CONTRACTOR AND AN EMPLOYEE.

5. THE ADVISORY COMMITTEE SHALL ISSUE A REPORT ANNUALLY TO THE GOVERNOR ON THE STATUS OF IMPLEMENTATION OF THE NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT, TO INCLUDE PUBLICLY AVAILABLE INFORMATION REGARDING: CASES BROUGHT, WAGES AND TAXES RECOVERED ON BEHALF OF THE STATE, OUTCOMES OF CASES, LEGAL OR ADMINISTRATIVE BARRIERS TO SUCCESSFUL IMPLEMENTATION, A REVIEW OF THE PROCESS USED TO ADJUDICATE MISCLASSIFICATION CASES, AND PROPOSALS FOR ANY ADDITIONAL LEGISLATIVE ACTION THAT MAY BE NEEDED TO ENHANCE THE STATE'S EFFORTS TO ADDRESS EMPLOYEE MISCLASSIFICATION IN THE CONSTRUCTION INDUSTRY AND ANY OTHER INDUSTRY IN THE STATE.

6. THE ADVISORY COMMITTEE IS AUTHORIZED TO CALL UPON ANY DEPARTMENT, OFFICE, DIVISION OR AGENCY OF THIS STATE TO SUPPLY IT WITH DATA AND OTHER INFORMATION, PERSONNEL OR ASSISTANCE AVAILABLE TO SUCH AGENCY AS THE ADVISORY COMMITTEE DEEMS NECESSARY TO DISCHARGE ITS DUTIES UNDER THIS ARTICLE SUBJECT TO CONFIDENTIALITY PROVISIONS UNDER LAW. EACH DEPARTMENT, OFFICE, DIVISION OR AGENCY OF THIS STATE IS HEREBY REQUIRED, TO THE EXTENT NOT INCONSISTENT WITH LAW, TO COOPERATE FULLY WITH THE ADVISORY COMMITTEE AND TO FURNISH THE ADVISORY COMMITTEE SUCH ASSISTANCE ON AS TIMELY A BASIS AS IS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE. THE ADVISORY COMMITTEE MAY CONSULT WITH EXPERTS OR OTHER KNOWLEDGEABLE INDIVIDUALS IN THE PUBLIC OR PRIVATE SECTOR ON ANY ASPECT OF ITS MISSION.

S 861-H. RETALIATION. 1. IT IS AN INTENTIONAL VIOLATION OF THIS ARTICLE FOR AN EMPLOYER OR ENTITY, OR ANY AGENT OF AN EMPLOYER, TO RETALIATE THROUGH DISCHARGE OR IN ANY OTHER MANNER AGAINST ANY PERSON FOR EXERCISING ANY RIGHTS GRANTED UNDER THIS ARTICLE. SUCH RETALIATION SHALL SUBJECT AN EMPLOYER OR ENTITY TO CIVIL PENALTIES PURSUANT TO THIS ARTICLE OR A PRIVATE CAUSE OF ACTION, OR BOTH.

2. IT IS AN INTENTIONAL VIOLATION OF THIS ARTICLE FOR AN EMPLOYER OR ENTITY TO RETALIATE AGAINST A PERSON FOR:

(A) MAKING A COMPLAINT TO AN EMPLOYER, CO-WORKER OR TO A PUBLIC BODY THAT RIGHTS GUARANTEED UNDER THIS ARTICLE HAVE BEEN VIOLATED;

(B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS ARTICLE; OR

(C) PROVIDES INFORMATION TO, OR TESTIFIES BEFORE, ANY PUBLIC BODY CONDUCTING AN INVESTIGATION, HEARING OR INQUIRY INTO ANY SUCH VIOLATION OF A LAW, RULE OR REGULATION BY SUCH EMPLOYER.

S 2. The state finance law is amended by adding a new section 99-t to read as follows:

S 99-T. CONSTRUCTION INDUSTRY CLASSIFICATION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT IN THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE "CONSTRUCTION INDUSTRY CLASSIFICATION FUND".

2. THE CONSTRUCTION INDUSTRY CLASSIFICATION FUND SHALL CONSIST OF ALL MONEYS RECEIVED BY THE STATE AS FEES AND CIVIL PENALTIES PURSUANT TO ARTICLE TWENTY-FIVE-B OF THE LABOR LAW.

3. SUCH FUND SHALL BE SUBJECT TO APPROPRIATION BY THE DEPARTMENT OF LABOR FOR ADMINISTRATION, INVESTIGATION AND OTHER EXPENSES INCURRED IN CARRYING OUT ITS POWERS AND DUTIES PURSUANT TO ARTICLE TWENTY-FIVE-B OF THE LABOR LAW. THE DEPARTMENT OF LABOR MAY HIRE AS MANY INVESTIGATORS AND OTHER PERSONNEL AS MAY BE NECESSARY. ANY MONEYS IN THE FUND AT THE END OF THE FISCAL YEAR IN EXCESS OF ANY MONEYS NECESSARY FOR THE DEPART-

MENT OF LABOR TO CARRY OUT ITS POWERS AND DUTIES UNDER ARTICLE TWENTY-FIVE-B SHALL BE AVAILABLE TO THE DEPARTMENT OF LABOR FOR THE NEXT FISCAL YEAR FOR ANY OF THE DEPARTMENT OF LABOR'S DUTIES.

S 3. Notwithstanding any other provision of the law to the contrary, the provisions of section 861-c of the labor law shall apply to and be utilized for all determinations of a construction industry individual's employment status under the labor law, the workers' compensation law, the tax law or any other chapter of law.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.