

1023

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. PERALTA -- 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 prevailing wages for service workers

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

1     Section 1. The article heading of article 9 of the labor law, as added  
2 by chapter 777 of the laws of 1971, is amended to read as follows:

3            PREVAILING WAGE FOR [BUILDING] SERVICE EMPLOYEES

4     S 2. Subdivisions 1, 2, 3, 4, 6, 8, 9 and 10 of section 230 of the  
5 labor law, subdivision 1 as amended and subdivision 9 as added by chap-  
6 ter 542 of the laws of 1984, subdivisions 2, 3, 6 and 8 as added by  
7 chapter 777 of the laws of 1971, subdivision 4 as amended by chapter 678  
8 of the laws of 2007 and subdivision 10 as added by chapter 547 of the  
9 laws of 1998, are amended and a new subdivision 15 is added to read as  
10 follows:

11     1. "[Building service] SERVICE employee" or "employee" means any  
12 person performing JANITORIAL, OR SECURITY SERVICE WORK FOR A CONTRACTOR,  
13 OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, UNDER CONTRACT WITH A PUBLIC  
14 AGENCY WHICH IS IN EXCESS OF TEN THOUSAND DOLLARS AND THE PRINCIPAL  
15 PURPOSE OF WHICH IS TO FURNISH SERVICES THROUGH THE USE OF SERVICE  
16 EMPLOYEES, OR ANY OTHER PERSON PERFORMING work in connection with the  
17 care or maintenance of an existing building, or in connection with the  
18 transportation of office furniture or equipment to or from such build-  
19 ing, or in connection with the transportation and delivery of fossil  
20 fuel to such building, for a contractor under a contract with a public  
21 agency which is in excess of [one] TEN thousand [five hundred] dollars  
22 and the principal purpose of which is to furnish services through the  
23 use of [building] service employees.

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

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1 "[Building service] SERVICE employee" or "employee" includes, but is  
2 not limited, to, watchman, guard, doorman, building cleaner, porter,  
3 handyman, janitor, gardener, groundskeeper, stationary fireman, elevator  
4 operator and starter, window cleaner, and occupations relating to the  
5 collection of garbage or refuse, and to the transportation of office  
6 furniture and equipment, and to the transportation and delivery of  
7 fossil fuel but does not include clerical, sales, professional, techni-  
8 cian and related occupations.

9 "[Building service] SERVICE employee" or "employee" also does not  
10 include any employee to whom the provisions of articles eight and  
11 [eight-a] EIGHT-A of this chapter are applicable.

12 2. "[Building service] SERVICE work" [or "service work"] means work  
13 performed by a [building] service employee, but does not include work  
14 performed for a contractor under a contract for the furnishing of  
15 services by radio, telephone, telegraph or cable companies[; and any  
16 contract for public utility services, including electric light and  
17 power, water, steam and gas]. "SERVICE WORK" SHALL ALSO INCLUDE WORK  
18 PERFORMED UNDER A CONTRACT, WITH THE EXCEPTION OF A CONTRACT OR SUBCON-  
19 TRACT IN WHICH A BUSINESS IMPROVEMENT DISTRICT IS A PARTY, FOR THE BENE-  
20 FIT OF A PUBLIC AGENCY WITH ANY THIRD PARTY PERSON OR ENTITY ACTING IN  
21 PLACE OF, ON BEHALF OF OR FOR THE BENEFIT OF SUCH PUBLIC AGENCY IN THE  
22 PROVISION OF BUILDING OR PROPERTY MANAGEMENT SERVICES OR SIMILAR  
23 SERVICES PURSUANT TO ANY LEASE OR OTHER AGREEMENT BETWEEN SUCH THIRD  
24 PARTY PERSON OR ENTITY AND THE PUBLIC AGENCY PROVIDED, HOWEVER, THAT  
25 "SERVICE WORK" SHALL NOT INCLUDE WORK PERFORMED UNDER A LEASE OR SIMILAR  
26 AGREEMENT IN A PRIVATELY OWNED BUILDING WHERE THE SPACE OCCUPIED BY THE  
27 PUBLIC AGENCY REPRESENTS LESS THAN TEN THOUSAND SQUARE FEET.

28 3. "Public agency" means the state, any of its political subdivisions,  
29 a public benefit corporation, a public authority, INCLUDING A PUBLIC  
30 AUTHORITY PROVIDING PUBLIC UTILITY SERVICES, or commission or special  
31 purpose district board appointed pursuant to law, [and] a board of  
32 education, AND ANY PUBLIC UTILITY THAT DISTRIBUTES ELECTRIC LIGHT OR  
33 POWER, OR GAS OR STEAM SERVICES AT RETAIL RATES REGULATED BY THE PUBLIC  
34 SERVICE COMMISSION PURSUANT TO A FRANCHISE GRANTED UNDER THE PROVISIONS  
35 OF SECTION SIXTY-EIGHT OR EIGHTY-ONE OF THE PUBLIC SERVICE LAW, AND ANY  
36 SUBSTANTIALLY-OWNED AFFILIATED ENTITY OF SUCH PUBLIC UTILITY.

37 4. "Contractor" means any employer who employs employees to perform  
38 [building] service work under a contract with a public agency and shall  
39 include any of the contractor's subcontractors.

40 6. "Prevailing wage" means the wage determined by the fiscal officer  
41 to be prevailing for the various classes of [building] service employees  
42 in the locality. In no event shall the basic hourly cash rate of pay be  
43 less than the statutory minimum wage established by article nineteen of  
44 this chapter, or, in a city with a local law requiring a higher minimum  
45 wage on city contract work, less than the minimum wage specified in such  
46 local law.

47 8. "Fiscal officer" means the [industrial] commissioner, except for  
48 [building] service work performed by or on behalf of a city, in which  
49 case "fiscal officer" means the comptroller or other analogous officer  
50 of such city.

51 9. "Fossil fuel" shall mean coal, petroleum products and fuel gases.  
52 "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel  
53 gases" shall include but not be limited to methane, natural gas, lique-  
54 fied natural gas and manufactured fuel gases. "Petroleum products" shall  
55 include all products refined or rerefined from synthetic or crude oil or  
56 oil extracted from other sources, including natural gas liquids.

1 [Provided that nothing in this subdivision shall affect the exclusion  
2 for public utility services set forth in subdivision two of this  
3 section.]

4 10. "Substantially-owned affiliated entity" shall mean the parent  
5 company of the PUBLIC UTILITY, contractor or subcontractor, any subsid-  
6 iary of the PUBLIC UTILITY, contractor or subcontractor, or any entity  
7 in which the parent of the PUBLIC UTILITY, contractor or subcontractor  
8 owns more than fifty percent of the voting stock, or an entity in which  
9 one or more of the top five shareholders of the PUBLIC UTILITY, contrac-  
10 tor or subcontractor individually or collectively also owns a control-  
11 ling share of the voting stock, or an entity which exhibits any other  
12 indicia of control over the PUBLIC UTILITY, contractor or subcontractor  
13 or over which the PUBLIC UTILITY, contractor or subcontractor exhibits  
14 control, regardless of whether or not the controlling party or parties  
15 have any identifiable or documented ownership interest. Such indicia  
16 shall include: power or responsibility over employment decisions, access  
17 to and/or use of the relevant entity's assets or equipment, power or  
18 responsibility over contracts of the entity, responsibility for mainte-  
19 nance or submission of certified payroll records, and influence over the  
20 business decisions of the relevant entity.

21 15. "PERSON" SHALL MEAN A HUMAN BEING AND SHALL INCLUDE AN "ENTITY" AS  
22 DEFINED IN THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO A CONTRACTOR OR  
23 SUBCONTRACTOR.

24 S 3. Subdivisions 1, 3, 4 and 5 of section 231 of the labor law,  
25 subdivisions 1, 3 and 4 as added by chapter 777 of the laws of 1971 and  
26 subdivision 5 as amended by chapter 678 of the laws of 2007, are amended  
27 and a new subdivision 8 is added to read as follows:

28 1. Every contractor shall pay a service employee under a contract for  
29 [building] service work a wage of not less than the prevailing wage in  
30 the locality for the craft, trade or occupation of the service employee.

31 3. Each contract for [building] service work shall contain as part of  
32 the specifications thereof a schedule of the wages required to be paid  
33 to the various classes of service employees on such work, and each such  
34 contract shall further contain a provision obligating the contractor to  
35 pay each employee on such work not less than the wage specified for his  
36 craft, trade or occupation in such schedule.

37 4. The public agency, or appropriate officer or agent thereof, whose  
38 responsibility it is to prepare or direct the preparation of the plans  
39 and specifications for a contract for [building] service work, shall  
40 ascertain from such plans and specifications the classifications of  
41 employees to be employed on such work and shall file a list of such  
42 classifications with the fiscal officer, together with a statement of  
43 the work to be performed. The fiscal officer shall determine the crafts,  
44 trades and occupations required for such work and shall make a determi-  
45 nation of the wages required to be paid in the locality for each such  
46 craft, trade or occupation. A schedule of such wages shall be annexed to  
47 and form a part of the specifications for the contract prior to the time  
48 of the advertisement for bids on such contract and shall constitute the  
49 schedule of wages referred to in subdivision three of this section.

50 5. Upon the award of a contract for [building] service work by a  
51 public agency other than a city, the contracting public agency shall  
52 immediately furnish to the commissioner: (a) the name and address of the  
53 contractor to whom the contract was awarded; (b) the date when the  
54 contract was awarded; and (c) the approximate consideration stipulated  
55 for in the contract.

1 8. THE REQUIREMENTS OF THIS SECTION SHALL APPLY TO ANY PERSON OR ENTI-  
2 TY, OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, THAT ENTERS INTO ANY  
3 LEASE OR OTHER AGREEMENT WITH A PUBLIC AGENCY THAT INCLUDES THE  
4 PROVISION OF SERVICE WORK BY EMPLOYEES WHO WOULD BE REQUIRED TO BE PAID  
5 SCHEDULED WAGES PURSUANT TO THIS SECTION IN THE ABSENCE OF SUCH AGREE-  
6 MENT. ANY THIRD PARTY PERSON OR ENTITY THAT CONTRACTS FOR OR OTHERWISE  
7 ARRANGES FOR THE PAYMENT FOR OR PERFORMANCE OF SERVICE WORK FOR THE  
8 BENEFIT OF A PUBLIC AGENCY IN THE PROVISION OF BUILDING OR PROPERTY  
9 MANAGEMENT SERVICES OR SIMILAR SERVICES PURSUANT TO ANY SUCH AGREEMENT  
10 SHALL DO SO AS AN AGENT OF THE PUBLIC AGENCY. NO PUBLIC AGENCY SHALL  
11 ENTER INTO ANY SUCH AGREEMENT WITH ANY PERSON OR ENTITY WITHOUT (A)  
12 PREPARATION OF AN AGREEMENT BETWEEN THE PUBLIC AGENCY AND THE THIRD  
13 PARTY PERSON OR ENTITY THAT CLEARLY DELINEATES THE RESPONSIBILITIES OF  
14 EACH WITH RESPECT TO REPORTING, FILING AND RETENTION OF PAYROLLS AND  
15 OTHER DOCUMENTS, AND ANY OTHER ACTIONS REQUIRED PURSUANT TO THIS ARTI-  
16 CLE, AND (B) RECEIPT BY THE PUBLIC AGENCY OF A WRITTEN ACKNOWLEDGEMENT  
17 FROM SUCH THIRD PARTY PERSON OR ENTITY THAT THE PERSON OR ENTITY AGREES  
18 TO UNDERTAKE THOSE RESPONSIBILITIES AS THE AGENT OF THE PUBLIC AGENCY,  
19 AND AFFIRMING SUCH PERSON OR ENTITY'S NONDELEGABLE OBLIGATION TO PAY NOT  
20 LESS THAN THE WAGES SPECIFIED IN EACH APPLICABLE SCHEDULE. SUCH DOCU-  
21 MENTS SHALL BE IN A FORM SATISFACTORY TO THE FISCAL OFFICER AND SHALL BE  
22 SUBSCRIBED AND CONFIRMED AS REQUIRED BY SUCH OFFICER. SUCH DOCUMENTS  
23 SHALL BE RETAINED AS PROVIDED IN SECTION TWO HUNDRED THIRTY-THREE OF  
24 THIS ARTICLE, AND A COPY OF EACH SUCH DOCUMENT SHALL BE FILED BY THE  
25 PUBLIC AGENCY WITH THE FISCAL OFFICER WITHIN TEN DAYS OF ITS EXECUTION.  
26 NOTWITHSTANDING ANY SUCH AGREEMENT, NOTHING IN THIS SUBDIVISION SHALL BE  
27 DEEMED TO RELIEVE THE PUBLIC AGENCY OF ITS RESPONSIBILITIES TO ENSURE  
28 COMPLIANCE WITH THIS ARTICLE. ANY LEASE OR AGREEMENT MADE IN CONTRAVEN-  
29 TION OF THIS SUBDIVISION SHALL BE VOID AS A MATTER OF PUBLIC POLICY.  
30 THE FISCAL OFFICER MAY TAKE ALL ACTIONS NECESSARY TO ENSURE COMPLIANCE  
31 WITH THE PROVISIONS OF THIS ARTICLE AGAINST THE PUBLIC AGENCY, ANY THIRD  
32 PARTY ACTING IN PLACE OF, ON BEHALF OF OR FOR THE BENEFIT OF SUCH PUBLIC  
33 AGENCY PURSUANT TO ANY LEASE OR OTHER AGREEMENT BETWEEN SUCH THIRD PARTY  
34 PERSON OR ENTITY AND THE PUBLIC AGENCY, OR BOTH THE PUBLIC AGENCY AND  
35 THIRD PARTY JOINTLY.

36 S 4. Subdivision 4 of section 230 of the labor law, as added by chap-  
37 ter 777 of the laws of 1971, is amended to read as follows:

38 4. "Contractor" means any employer who employs employees to perform  
39 [building] service work under a contract with a public agency, and shall  
40 include any of his subcontractors.

41 S 5. Subdivision 5 of section 231 of the labor law, as added by chap-  
42 ter 777 of the laws of 1971, is amended to read as follows:

43 5. Upon the award of a contract for [building] service work by a  
44 public agency other than a city, the contracting public agency shall  
45 immediately furnish to the [industrial] commissioner: (a) the name and  
46 address of the contractor to whom the contract was awarded; (b) the date  
47 when the contract was awarded; and (c) the approximate consideration  
48 stipulated for in the contract.

49 S 6. Paragraphs a and c of subdivision 2 and subdivision 7 of section  
50 235 of the labor law, paragraph a of subdivision 2 and subdivision 7 as  
51 amended and paragraph c of subdivision 2 as added by chapter 547 of the  
52 laws of 1998, are amended and subdivision 2 is amended by adding a new  
53 paragraph g to read as follows:

54 a. At the start of such investigation the fiscal officer may notify  
55 the financial officer of the public agency interested who shall, at the  
56 direction of the fiscal officer, forthwith withhold from any payment due

1 to the contractor executing the contract sufficient money to safeguard  
2 the rights of the service employees and to cover the civil penalty that  
3 may be assessed as provided herein, or, if there are insufficient moneys  
4 still due or earned to the contractor or subcontractor to safeguard the  
5 rights of the service employees and to cover the civil penalty that may  
6 be assessed as provided herein, the financial officer of another civil  
7 division which has entered or subsequently enters into a [building]  
8 service work contract with the contractor or subcontractor, who shall  
9 withhold from any payment due the contractor or subcontractor executing  
10 any [building] service work, sufficient moneys to safeguard the rights  
11 of the service employees and to cover the civil penalty that may be  
12 assessed as provided herein.

13 c. The notice of withholding shall provide that the fiscal officer  
14 intends to instruct the financial officer, not less than ten days  
15 following service of the notice by mail, to withhold sufficient moneys  
16 to safeguard the rights of the service employees and to cover the civil  
17 penalty that may be assessed as provided herein, from any payment due  
18 the notified party under any [building] service work contract pending  
19 final determination. The notice of withholding shall provide that within  
20 thirty days following the date of the notice of withholding the notified  
21 party may, contest the withholding on the basis that the notified party  
22 is not a partner or one of the five largest shareholders of the subcon-  
23 tractor or contractor, an officer of the contractor or subcontractor who  
24 knowingly participated in the violation of this article, a substantial-  
25 ly-owned affiliated entity or successor. If the notified party fails to  
26 contest the notice of withholding, or if the fiscal officer, after  
27 reviewing the information provided by the notified party in such  
28 contest, determines that the notified party is a partner or one of the  
29 five largest shareholders, a substantially-owned affiliated entity, an  
30 officer of the contractor or subcontractor who knowingly participated in  
31 the violation of this article, or a successor, the fiscal officer may  
32 instruct the financial officer to immediately withhold sufficient moneys  
33 to safeguard the rights of the service employees and to cover the civil  
34 penalty that may be assessed as provided herein from any payment due the  
35 notified party under any [building] service work contract pending the  
36 final determination.

37 G. THE FISCAL OFFICER MAY REQUIRE ANY PERSON OR CORPORATION PERFORMING  
38 SUCH PUBLIC WORK TO FILE WITH THE FISCAL OFFICER WITHIN TEN DAYS OF  
39 RECEIPT OF SAID REQUEST, PAYROLL RECORDS, SWORN TO AS TO THEIR VALIDITY  
40 AND ACCURACY, REQUESTED BY THE FISCAL OFFICER, FOR SAID SERVICE WORK OR  
41 FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION  
42 DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID  
43 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN  
44 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER MAY, WITHIN FIFTEEN DAYS,  
45 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD  
46 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF  
47 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO  
48 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO  
49 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL  
50 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE  
51 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN  
52 SATISFIED.

53 7. When, pursuant to the provisions of this section, two final orders  
54 have been entered against a contractor, subcontractor, successor, or any  
55 substantially-owned affiliated entity of the contractor or subcontrac-  
56 tor, any of the partners if the contractor or subcontractor is a part-

1 nership, any of the five largest shareholders of the contractor or  
2 subcontractor, any officer of the contractor or subcontractor who know-  
3 ingly participated in the violation of this article within any consec-  
4 utive six-year period determining that such contractor or subcontractor  
5 and/or its successor, substantially-owned affiliated entity of the  
6 contractor or subcontractor, any of the partners or any of the five  
7 largest shareholders of the contractor or subcontractor, any officer of  
8 the contractor or subcontractor who knowingly participated in the  
9 violation of this article has willfully failed to pay the prevailing  
10 wages in accordance with the provisions of this article, whether such  
11 failures were concurrent or consecutive and whether or not such final  
12 determinations concerning separate public [building] service WORK  
13 contracts are rendered simultaneously, such contractor, subcontractor,  
14 successor, and if the contractor, subcontractor, successor, or any  
15 substantially-owned affiliated entity of the contractor or subcontrac-  
16 tor, any of the partners if the contractor or subcontractor is a part-  
17 nership, or any of the five largest shareholders of the contractor or  
18 subcontractor, any officer of the contractor or subcontractor who know-  
19 ingly participated in the violation of this article, or any successor is  
20 a corporation, any officer of such corporation who knowingly partic-  
21 ipated in such failure, shall be ineligible to submit a bid on or be  
22 awarded any public [building] service work for a period of five years  
23 from the date of the second order, provided, however, that where any  
24 such final order involves the falsification of payroll records or the  
25 kickback of wages, the contractor, subcontractor, successor, substan-  
26 tially-owned affiliated entity of the contractor or subcontractor, any  
27 partner if the contractor or subcontractor is a partnership or any of  
28 the five largest shareholders of the contractor or subcontractor, any  
29 officer of the contractor or subcontractor who knowingly participated in  
30 the violation of this article shall be ineligible to submit a bid on or  
31 be awarded any public [building] service WORK contract or subcontract  
32 with the state, any municipal corporation or public body for a period of  
33 five years from the date of the first final order. Nothing in this  
34 subdivision shall be construed as affecting any provision of any other  
35 law or regulation relating to the awarding of public contracts.

36 S 7. Subdivision 2 of section 237 of the labor law, as amended by  
37 chapter 698 of the laws of 1988, is amended to read as follows:

38 2. A. Before payment is made by or on behalf of a public agency of any  
39 sums due on account of a contract for service work, it shall be the duty  
40 of the comptroller of the state or the financial officer of such public  
41 agency or other officer or person charged with the custody and disburse-  
42 ment of the state or corporate funds applicable to the contract under  
43 and pursuant to which payment is made, to require the contractor to file  
44 a statement in writing in form satisfactory to such officer certifying  
45 to the amounts then due and owing from such contractor filing such  
46 statement to or on behalf of any and all service employees for daily or  
47 weekly wages on account of labor performed upon the work under the  
48 contract, setting forth therein the names of the persons whose wages are  
49 unpaid and the amount due to or on behalf of each respectively, which  
50 statement so to be filed shall be verified by the oath of the contractor  
51 that he or she has read such statement subscribed by him or her and  
52 knows the contents thereof, and that the same is true of his or her own  
53 knowledge. THE CONTRACTOR SHALL FILE THESE PAYROLL RECORDS VERIFIED  
54 UNDER OATH WITHIN NINETY DAYS AFTER ANY LABOR IS PERFORMED UPON THE WORK  
55 UNDER CONTRACT, OR SUCH OTHER TIME AS THE FISCAL OFFICER MAY AUTHORIZE.

1 ANY PERSON WHO WILLFULLY FAILS TO FILE SUCH PAYROLL RECORDS WITH THE  
2 PUBLIC AGENCY SHALL BE GUILTY OF A CLASS E FELONY.

3 B. EACH PUBLIC AGENCY SHALL DESIGNATE IN WRITING AN INDIVIDUAL  
4 EMPLOYED BY SUCH DEPARTMENT RESPONSIBLE FOR THE RECEIPT, COLLECTION AND  
5 REVIEW FOR FACIAL VALIDITY OF A CONTRACTOR'S CERTIFIED PAYROLL STATE-  
6 MENT, AS SET FORTH IN THIS SUBDIVISION, BEFORE PAYMENT IS MADE. SAID  
7 DESIGNATION SHALL BE FILED WITH THE FISCAL OFFICER AND POSTED IN A  
8 CONSPICUOUS LOCATION AT THE WORK SITE. IF THE DESIGNATED INDIVIDUAL  
9 CANNOT PERFORM THE RECEIPT, COLLECTION AND REVIEW OF CERTIFIED PAYROLL  
10 DUTIES AS INDICATED ABOVE, FOR ANY REASON, INCLUDING BUT NOT LIMITED TO  
11 REASSIGNMENT, PROMOTION OR SEPARATION FROM EMPLOYMENT, THE PUBLIC AGENCY  
12 MUST IMMEDIATELY DESIGNATE ANOTHER INDIVIDUAL EMPLOYED BY SUCH AGENCY TO  
13 FULFILL SUCH RESPONSIBILITIES. IN THE EVENT THAT A PUBLIC AGENCY FAILS  
14 TO NAME AN INDIVIDUAL RESPONSIBLE FOR THE RECEIPT, COLLECTION AND REVIEW  
15 FOR FACIAL VALIDITY OF CONTRACTORS' CERTIFIED PAYROLLS, THEN THE INDI-  
16 VIDUAL SO RESPONSIBLE SHALL BE THE INDIVIDUAL WHO IS THE CHIEF  
17 POLICY-MAKING OFFICER OF SUCH PUBLIC AGENCY.

18 S 8. Subdivision 2 of section 238 of the labor law, as added by chap-  
19 ter 777 of the laws of 1971, is amended to read as follows:

20 2. When a contract for service work contains as part thereof a sched-  
21 ule of wages as provided for in this article, any [contractor] PERSON  
22 who, after entering into such contract[, and any subcontractor of such  
23 contractor who] WILLFULLY fails to pay to any service employee the wages  
24 stipulated in such wage schedule [is guilty of a misdemeanor and upon  
25 conviction shall be punished for a first offense by a fine of five  
26 hundred dollars or by imprisonment for not more than thirty days or by  
27 both fine and imprisonment; for a second offense by a fine of one thou-  
28 sand dollars, and in] SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST  
29 OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED TWO THOUSAND FIVE  
30 HUNDRED DOLLARS OR TWICE THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREAT-  
31 ER OR IMPRISONED FOR NOT MORE THAN ONE YEAR, OR BOTH. IF A PERSON STANDS  
32 CONVICTED OF A VIOLATION OF THIS SECTION AND WITHIN THE PREVIOUS SIX  
33 YEARS HAS BEEN CONVICTED ONE OR MORE TIMES OF A VIOLATION OF THIS  
34 SECTION IN SEPARATE TRANSACTIONS, THEN SUCH PERSON SHALL BE GUILTY OF A  
35 CLASS E FELONY UPON CONVICTION FOR SUCH SUBSEQUENT OFFENSE, AND SHALL BE  
36 FINED FIVE THOUSAND DOLLARS OR TRIPLE THE AMOUNT OF UNDERPAYMENT, WHICH-  
37 EVER IS GREATER OR IMPRISONED AS AUTHORIZED BY SECTION 70.00 OF THE  
38 PENAL LAW OR PUNISHED BY BOTH SUCH FINE AND IMPRISONMENT, FOR EACH SUCH  
39 OFFENSE. IN addition [thereto] TO ANY OTHER FINE OR PENALTY THAT MAY BE  
40 IMPOSED FOR SUCH FELONY OFFENSE, the contract on which the violation has  
41 occurred shall be forfeited; and no such contractor shall be entitled to  
42 receive any sum, nor shall any officer, agent or employee of the  
43 contracting public agency pay any such sum or authorize its payment from  
44 the funds under his OR HER charge or control to such contractor for work  
45 done upon the contract on which the contractor has been convicted of a  
46 second offense. If the contractor or subcontractor is a corporation, any  
47 officer of such corporation who knowingly permits the corporation to  
48 fail to make such payment shall also be guilty of [a misdemeanor] THE  
49 OFFENSE DEFINED IN THIS SUBDIVISION and the criminal and civil penalties  
50 [herein] OF THIS SUBDIVISION shall attach to such officer upon  
51 conviction.

52 S 9. Severability. If any clause, sentence, paragraph, section or part  
53 of this act be adjudged by any court of competent jurisdiction to be  
54 invalid and after exhaustion of all further judicial review, the judg-  
55 ment shall not affect, impair or invalidate the remainder thereof, but  
56 shall be confined in its operation to the clause, sentence, paragraph,

1 section or part of this act directly involved in the controversy in  
2 which the judgment shall have been rendered.

3 S 10. This act shall take effect on the ninetieth day after it shall  
4 have become a law, and shall apply to all contracts or other agreements  
5 entered into, renewed, or extended on or after such date; provided,  
6 however:

7 (a) the amendments to subdivision 4 of section 230 of the labor law  
8 made by section two of this act shall be subject to the expiration and  
9 reversion of such subdivision pursuant to section 5 of chapter 678 of  
10 the laws of 2007, as amended, when upon such date the provisions of  
11 section four of this act shall take effect; and

12 (b) the amendments to subdivision 5 of section 231 of the labor law  
13 made by section three of this act shall be subject to the expiration and  
14 reversion of such subdivision pursuant to section 5 of chapter 678 of  
15 the laws of 2007, as amended, when upon such date the provisions of  
16 section five of this act shall take effect.