

3969

2011-2012 Regular Sessions

I N S E N A T E

March 11, 2011

Introduced by Sen. ADAMS -- 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 providing notification of
prevailing wage violation allegations

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

1 Section 1. Section 223 of the labor law, as amended by chapter 929 of
2 the laws of 1935, is amended to read as follows:
3 S 223. Enforcement of article. 1. If the fiscal officer as defined
4 herein finds that any person contracting with the state, a municipal
5 corporation, or any commission appointed pursuant to law, for the
6 performance of any public work fails to comply with or evades the
7 provisions of this article, he shall present evidence of such non-com-
8 pliance or evasion to the officer, department, board or commission
9 having charge of such work for enforcement. [Wherein] SUBJECT TO THE
10 PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, WHEREIN such evidence
11 indicates a non-compliance or evasion on the part of a sub-contractor,
12 the contractor shall be responsible for such non-compliance or evasion.
13 It shall be the duty of any officer, department, board or commission in
14 charge of the construction of such public work contracts to enforce the
15 provisions of this article.
16 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A
17 CONTRACTOR SHALL BE RESPONSIBLE FOR THE NON-COMPLIANCE OR EVASION OF A
18 SUBCONTRACTOR UNDER THIS ARTICLE ONLY IF THE EMPLOYEE OF THE SUBCONTRAC-
19 TOR, OR THE EMPLOYEE'S COLLECTIVE BARGAINING REPRESENTATIVE, JOINTLY
20 TRUSTEED FUND OR ANY OTHER INTERESTED PARTY HAS NOTIFIED THE CONTRACTOR
21 OF SUCH NON-COMPLIANCE OR EVASION IN ACCORDANCE WITH THE PROVISIONS OF
22 THIS SUBDIVISION. SUCH NOTICE SHALL BE VERIFIED, IN WRITING, AND MUST BE
23 PROVIDED TO THE CONTRACTOR WITHIN ONE YEAR OF THE DATE OF THE LAST
24 ALLEGED UNDERPAYMENT.

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

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1 3. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO RELIEVE THE
2 OBLIGATION OF A SUBCONTRACTOR TO PAY, AS AN EMPLOYER, THE WAGES AND
3 SUPPLEMENTS, INCLUDING ANY INTEREST OR PENALTIES, REQUIRED TO BE PAID
4 PURSUANT TO THIS ARTICLE. IN THE EVENT A CONTRACTOR UNDER THIS SECTION
5 OR SECTION TWO HUNDRED TWENTY-G OF THIS ARTICLE IS REQUIRED TO PAY ANY
6 WAGES, SUPPLEMENTS, INTEREST OR PENALTIES AS A RESULT OF THE NONPAYMENT
7 OF A SUBCONTRACTOR, THE CONTRACTOR SHALL HAVE A RIGHT OF ACTION
8 PERSONALLY AGAINST ANY OFFICER, OWNER OR PRINCIPAL OF SUCH SUBCONTRACTOR
9 TO RECOVER SUCH PAYMENTS.

10 S 2. Paragraphs (b) and (c) of subdivision 2 of section 740 of the
11 labor law, as added by chapter 660 of the laws of 1984, are amended and
12 a new paragraph (d) is added to read as follows:

13 (b) provides information to, or testifies before, any public body
14 conducting an investigation, hearing or inquiry into any such violation
15 of a law, rule or regulation by such employer; [or]

16 (c) objects to, or refuses to participate in any such activity, policy
17 or practice in violation of a law, rule or regulation[.]; OR

18 (D) PROVIDES NOTICE, OR HAS NOTICE PROVIDED ON HIS OR HER BEHALF
19 PURSUANT TO THE PROVISIONS OF SUBDIVISION TWO OF SECTION TWO HUNDRED
20 TWENTY-THREE OF THIS CHAPTER.

21 S 3. This act shall take effect on the sixtieth day after it shall
22 have become a law and shall be applicable to complaints of sub-contrac-
23 tor non-compliance filed on and after such effective date.