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

3415

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. SCHIMMINGER, ROBINSON, CLARK -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, HIKIND, KOLB, MAGEE, MARKEY, McENENY, PEOPLES-STOKES, PERRY, J. RIVERA, N. RIVERA -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to timely notice of allegations of prevailing wage violations

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

Section 1. Section 223 of the labor law, as amended by chapter 929 of the laws of 1935, is amended to read as follows:

S 223. Enforcement of article. 1. If the fiscal officer as defined herein finds that any person contracting with the state, a municipal corporation, or any commission appointed pursuant to law, for the performance of any public work fails to comply with or evades the provisions of this article, he shall present evidence of such non-compliance or evasion to the officer, department, board or commission having charge of such work for enforcement. Wherein such evidence indicates a non-compliance or evasion on the part of a sub-contractor, SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, the contractor shall be responsible for such non-compliance or evasion. It shall be the duty of any officer, department, board or commission in charge of the construction of such public work contracts to enforce the provisions of this article.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE NON-COMPLIANCE OR EVASION OF A SUB-CONTRACTOR UNDER THIS ARTICLE ONLY IF THE EMPLOYEE OF THE SUB-CONTRACTOR, OR THE EMPLOYEE'S COLLECTIVE BARGAINING REPRESENTATIVE, JOINTLY TRUSTEED FUND OR ANY OTHER INTERESTED PARTY HAS PROVIDED A VERIFIED NOTICE OF SUCH NON-COMPLIANCE OR EVASION TO THE CONTRACTOR WITHIN ONE YEAR OF THE DATE OF THE LAST ALLEGED UNDERPAYMENT. NOTHING CONTAINED IN THIS SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, THE FAILURE TO GIVE NOTICE AS PROVIDED IN

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

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THIS SUBDIVISION, SHALL BE DEEMED TO RELIEVE THE OBLIGATION OF A SUB-CONTRACTOR TO PAY, AS AN EMPLOYER, THE WAGES AND SUPPLEMENTS, INCLUDING ANY INTEREST OR PENALTIES, REQUIRED TO BE PAID PURSUANT TO THIS ARTICLE. IN THE EVENT A CONTRACTOR UNDER THIS SECTION OR SECTION TWO HUNDRED TWENTY-G OF THIS ARTICLE IS REQUIRED TO PAY ANY WAGES, SUPPLEMENTS, INTEREST OR PENALTIES AS A RESULT OF THE NONPAYMENT OF A SUB-CONTRACTOR, THE CONTRACTOR SHALL HAVE A RIGHT OF ACTION PERSONALLY AGAINST ANY OFFICER, OWNER OR PRINCIPAL OF SUCH SUB-CONTRACTOR TO RECOVER SUCH PAYMENTS.

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

(b) 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; [or]

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

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

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