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

5430

2011-2012 Regular Sessions

I N S E N A T E

May 20, 2011

Introduced by Sen. RANZENHOFER -- 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 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] SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, WHEREIN such evidence indicates a non-compliance or evasion on the part of a sub-contractor, 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 TO THE CONTRARY, A CONTRACTOR SHALL BE RESPONSIBLE FOR THE NON-COMPLIANCE OR EVASION OF A SUBCONTRACTOR UNDER THIS ARTICLE ONLY IF THE EMPLOYEE OF THE SUBCONTRACTOR, OR THE EMPLOYEE'S COLLECTIVE BARGAINING REPRESENTATIVE, JOINTLY TRUSTEED FUND OR ANY OTHER INTERESTED PARTY HAS PROVIDED VERIFIED WRITTEN NOTIFICATION TO THE CONTRACTOR OF SUCH NON-COMPLIANCE OR EVASION IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION. SUCH NOTICE MUST BE PROVIDED TO THE CONTRACTOR WITHIN ONE YEAR OF THE DATE OF THE LAST ALLEGED UNDERPAYMENT.

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

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3. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO RELIEVE THE OBLIGATION OF A SUBCONTRACTOR 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 SUBCONTRACTOR, THE CONTRACTOR SHALL HAVE A RIGHT OF ACTION PERSONALLY AGAINST ANY OFFICER, OWNER OR PRINCIPAL OF SUCH SUBCONTRACTOR 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.