

8487

2015-2016 Regular Sessions

I N A S S E M B L Y

October 9, 2015

Introduced by M. of A. GLICK, BRENNAN, PEOPLES-STOKES, BLAKE, SIMOTAS, SCHIMEL, TITONE, LIFTON, CAHILL, ORTIZ, SEAWRIGHT -- Multi-Sponsored by -- M. of A. BRONSON, CUSICK, ENGLEBRIGHT, GOTTFRIED, MARKEY, MOSLEY, SIMON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to equal pay disclosure with respect to state contracts

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

1 Section 1. The executive law is amended by adding a new article 15-D
2 to read as follows:

3 ARTICLE 15-D

4 EQUAL PAY DISCLOSURE WITH RESPECT TO STATE CONTRACTS

5 SECTION 328-B. DEFINITIONS.

6 328-C. EQUAL PAY DISCLOSURE; REPORTING.

7 328-D. PROHIBITIONS IN CONTRACTS; VIOLATIONS.

8 S 328-B. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
9 SHALL HAVE THE FOLLOWING MEANINGS:

10 1. "EQUAL PAY REPORT" SHALL MEAN A SUMMARY OF DATA ON EMPLOYEE COMPEN-
11 SATION BY SEX, RACE, ETHNICITY, SPECIFIED JOB CATEGORIES, AND OTHER
12 RELEVANT DATA.

13 2. "CONTRACTING AGENCY" SHALL MEAN A STATE AGENCY WHICH IS A PARTY OR
14 A PROPOSED PARTY TO A STATE CONTRACT OR, IN THE CASE OF A STATE CONTRACT
15 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION EIGHT OF THIS SECTION, SHALL
16 MEAN THE NEW YORK STATE HOUSING FINANCE AGENCY, HOUSING TRUST FUND
17 CORPORATION OR AFFORDABLE HOUSING CORPORATION, WHICHEVER HAS MADE OR
18 PROPOSES TO MAKE THE GRANT OR LOAN FOR THE STATE ASSISTED HOUSING
19 PROJECT.

20 3. "CONTRACTOR" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE,
21 INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A
22 NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A STATE CONTRACT, OR A

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

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BIDDER IN CONJUNCTION WITH THE AWARD OF A STATE CONTRACT OR A PROPOSED PARTY TO A STATE CONTRACT. FOR THE PURPOSES OF THIS ARTICLE, "CONTRACTOR" SHALL NOT INCLUDE SMALL BUSINESSES, AS DEFINED IN SUBDIVISION NINE OF THIS SECTION.

4. "LARGE COUNTY" SHALL MEAN A COUNTY HAVING A POPULATION IN EXCESS OF TWO HUNDRED EIGHTY-FIVE THOUSAND ACCORDING TO THE MOST RECENT FEDERAL DECENNIAL CENSUS, PROVIDED HOWEVER, THAT A COUNTY HAVING A POPULATION IN EXCESS OF TWO HUNDRED EIGHTY-FIVE THOUSAND ACCORDING TO THE TWO THOUSAND TEN FEDERAL DECENNIAL CENSUS SHALL CONTINUE TO BE A LARGE COUNTY THEREAFTER NOTWITHSTANDING A LATER CENSUS SHOWING A POPULATION OF LESS THAN TWO HUNDRED EIGHTY-FIVE THOUSAND FOR SUCH COUNTY.

5. "METROPOLITAN AREA" SHALL MEAN A CITY WITH A POPULATION OF ONE MILLION OR MORE AND A COUNTY HAVING A POPULATION IN EXCESS OF ONE MILLION AND IMMEDIATELY CONTIGUOUS TO SUCH CITY.

6. "STATE AGENCY" SHALL MEAN:

(A)(I) ANY STATE DEPARTMENT, OR (II) ANY DIVISION, BOARD, COMMISSION OR BUREAU OF ANY STATE DEPARTMENT, OR (III) THE STATE UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW YORK, INCLUDING ALL THEIR CONSTITUENT UNITS EXCEPT COMMUNITY COLLEGES AND THE INDEPENDENT INSTITUTIONS OPERATING STATUTORY OR CONTRACT COLLEGES ON BEHALF OF THE STATE, OR (IV) A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR OR WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS DEFINED IN SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH OR PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW;

(B) A "STATE AUTHORITY," AS DEFINED IN SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW, AND THE FOLLOWING:

ALBANY COUNTY AIRPORT AUTHORITY;
ALBANY PORT DISTRICT COMMISSION;
ALFRED, ALMOND, HORNELLSVILLE SEWER AUTHORITY;
BATTERY PARK CITY AUTHORITY;
CAYUGA COUNTY WATER AND SEWER AUTHORITY;
(NELSON A. ROCKEFELLER) EMPIRE STATE PLAZA PERFORMING ARTS;
CENTER CORPORATION;
INDUSTRIAL EXHIBIT AUTHORITY;
LIVINGSTON COUNTY WATER AND SEWER AUTHORITY;
LONG ISLAND POWER AUTHORITY;
LONG ISLAND RAIL ROAD;
LONG ISLAND MARKET AUTHORITY;
MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY;
METRO-NORTH COMMUTER RAILROAD;
METROPOLITAN SUBURBAN BUS AUTHORITY;
METROPOLITAN TRANSPORTATION AUTHORITY;
NATURAL HERITAGE TRUST;
NEW YORK CITY TRANSIT AUTHORITY;
NEW YORK CONVENTION CENTER OPERATING CORPORATION;
NEW YORK STATE BRIDGE AUTHORITY;
NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY;
NEW YORK STATE THRUWAY AUTHORITY;
NIAGARA FALLS PUBLIC WATER AUTHORITY;
NIAGARA FALLS WATER BOARD;
PORT OF OSWEGO AUTHORITY;
POWER AUTHORITY OF THE STATE OF NEW YORK;
ROOSEVELT ISLAND OPERATING CORPORATION;
SCHENECTADY METROPLEX DEVELOPMENT AUTHORITY;
STATE INSURANCE FUND;
STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY;

1 STATE UNIVERSITY CONSTRUCTION FUND;
2 SYRACUSE REGIONAL AIRPORT AUTHORITY;
3 TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY;
4 UPPER MOHAWK VALLEY REGIONAL WATER BOARD;
5 UPPER MOHAWK VALLEY REGIONAL WATER FINANCE AUTHORITY;
6 UPPER MOHAWK VALLEY MEMORIAL AUDITORIUM AUTHORITY;
7 URBAN DEVELOPMENT CORPORATION AND ITS SUBSIDIARY CORPORATIONS; AND

8 (C) THE FOLLOWING ENTITIES, ONLY TO THE EXTENT OF STATE CONTRACTS
9 ENTERED INTO FOR ITS OWN ACCOUNT OR FOR THE BENEFIT OF A STATE AGENCY AS
10 DEFINED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION: DORMITORY AUTHORITY
11 OF THE STATE OF NEW YORK; FACILITIES DEVELOPMENT CORPORATION; NEW YORK
12 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; NEW YORK STATE SCIENCE
13 AND TECHNOLOGY FOUNDATION.

14 7. "STATE ASSISTED HOUSING PROJECT" SHALL MEAN, FOR SUCH PROJECTS
15 WHICH RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY, THE
16 AFFORDABLE HOUSING CORPORATION, THE HOUSING TRUST FUND CORPORATION OR
17 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A GRANT OR LOAN FOR ALL OR
18 PART OF THE TOTAL PROJECT COST:

19 (A) A "PERMANENT HOUSING PROJECT FOR HOMELESS FAMILIES" OR "PROJECT"
20 AS DEFINED IN SUBDIVISION FIVE OF SECTION SIXTY-FOUR OF THE PRIVATE
21 HOUSING FINANCE LAW;

22 (B) A "PROJECT" AS DEFINED IN SUBDIVISION TWELVE OF SECTION ONE THOU-
23 SAND ONE HUNDRED ONE OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID
24 PROJECT IS LOCATED IN A LARGE COUNTY AND CONSISTS OF MORE THAN TWELVE
25 RESIDENTIAL UNITS AT A SINGLE SITE;

26 (C) "AFFORDABLE HOME OWNERSHIP DEVELOPMENT PROGRAMS" OR "PROJECT" AS
27 DEFINED IN SUBDIVISION EIGHT OF SECTION ONE THOUSAND ONE HUNDRED ELEVEN
28 OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A
29 METROPOLITAN AREA AS DEFINED IN SUBDIVISION FIVE OF THIS SECTION AND
30 CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

31 (D) A "TURNKEY/ENHANCED RENTAL PROJECT" OR "PROJECT" AS DEFINED IN
32 SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED SIX-A OF THE PRIVATE
33 HOUSING FINANCE LAW;

34 (E) "INFRASTRUCTURE IMPROVEMENTS" AS DEFINED IN SUBDIVISION TWO OF
35 SECTION ONE THOUSAND ONE HUNDRED THIRTY-ONE OF THE PRIVATE HOUSING
36 FINANCE LAW, TO THE EXTENT THAT SUCH "INFRASTRUCTURE IMPROVEMENTS" ARE
37 APPLIED FOR IN CONNECTION WITH A STATE ASSISTED HOUSING PROJECT AS
38 DEFINED IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION AND PROVIDED
39 FURTHER THAN THE APPLICANT FOR SUCH INFRASTRUCTURE IMPROVEMENTS AND FOR
40 SUCH STATE ASSISTED HOUSING PROJECT ARE IDENTICAL.

41 8. "STATE CONTRACT" SHALL MEAN:

42 (A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A
43 TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS, WHEREBY A
44 CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN
45 FOR LABOR, SERVICES INCLUDING, BUT NOT LIMITED TO, LEGAL, FINANCIAL AND
46 OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY
47 COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR RENDERED OR
48 FURNISHED TO THE CONTRACTING AGENCY;

49 (B) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS
50 WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS
51 FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR
52 OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON; AND

53 (C) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS
54 WHEREBY THE OWNER OF A STATE ASSISTED HOUSING PROJECT IS COMMITTED TO
55 EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLI-

1 TION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND
2 IMPROVEMENTS THEREON FOR SUCH PROJECT.

3 9. "SMALL BUSINESS" AS USED IN THIS SECTION, SHALL MEAN A BUSINESS
4 WHICH IS RESIDENT IN THIS STATE, INDEPENDENTLY OWNED AND OPERATED, NOT
5 DOMINANT IN ITS FIELD, AND EMPLOYING NOT MORE THAN ONE HUNDRED INDIVID-
6 UALS.

7 S 328-C. EQUAL PAY DISCLOSURE; REPORTING. 1. ALL CONTRACTORS, AS A
8 CONDITION UPON ENTERING INTO A CONTRACT WITH THE STATE, SHALL BE
9 REQUIRED TO SUBMIT SUMMARY DATA, IN SUCH FORM AS THE COMPTROLLER MAY
10 PRESCRIBE BY REGULATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION,
11 ON EMPLOYEE COMPENSATION BY SEX, RACE, ETHNICITY, SPECIFIED JOB CATEGO-
12 RIES, AND OTHER RELEVANT DATA INCLUDING BUT NOT LIMITED TO HOURS WORKED,
13 AND THE NUMBER OF EMPLOYEES.

14 2. THE STATE COMPTROLLER SHALL SUBMIT A REPORT TO THE GOVERNOR, THE
15 ATTORNEY GENERAL, THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES,
16 THE COMMISSIONER OF THE DEPARTMENT OF LABOR, THE COMMISSIONER OF THE
17 DIVISION OF HUMAN RIGHTS, AND THE LEGISLATIVE FISCAL COMMITTEES CONTAIN-
18 ING DATA RELATED TO THE EQUAL PAY REPORTS SUBMITTED BY CONTRACTORS. SUCH
19 REPORT SHALL BE MADE ANNUALLY, ON A FISCAL YEAR BASIS BY THE FIRST OF
20 JULY OF THE NEXT SUCCEEDING YEAR.

21 (A) THE REPORT SHALL INCLUDE A LIST OF CONTRACTORS THAT THE STATE
22 COMPTROLLER HAS IDENTIFIED AS BEING IN COMPLIANCE WITH SOUND EQUAL PAY
23 PRACTICES.

24 (B) THE INFORMATION REQUIRED BY THIS SUBDIVISION SHALL BE PROVIDED IN
25 ELECTRONIC FORMAT IN SUCH FORM AS PRESCRIBED BY THE STATE COMPTROLLER
26 SUCH THAT THE DATA CAN BE SEARCHED AND SORTED.

27 (C) ALL REPORTS REQUIRED UNDER THIS SUBDIVISION SHALL BE AVAILABLE FOR
28 PUBLIC INSPECTION AND COPYING PURSUANT TO SECTION EIGHTY-SEVEN OF THE
29 PUBLIC OFFICERS LAW PROVIDED THAT IN DISCLOSING SUCH REPORTS PURSUANT TO
30 THE PUBLIC OFFICERS LAW, THE STATE COMPTROLLER SHALL REDACT THE NAME OR
31 SOCIAL SECURITY NUMBER OF ANY INDIVIDUAL EMPLOYEE THAT IS INCLUDED IN
32 SUCH DOCUMENT.

33 3. THE STATE COMPTROLLER, IN CONSULTATION WITH THE COMMISSIONER OF THE
34 OFFICE OF GENERAL SERVICES, SHALL PROMULGATE REGULATIONS:

35 (A) REGARDING THE CONTENT AND THE TIMELY AND PROPER FILING OF EQUAL
36 PAY REPORTS BY CONTRACTORS; AND

37 (B) SETTING FORTH MEASURES AND PROCEDURES TO REQUIRE ALL CONTRACTING
38 AGENCIES, WHERE PRACTICABLE, FEASIBLE AND APPROPRIATE, TO ASSESS THE
39 EQUAL PAY PRACTICES OF CONTRACTORS SUBMITTING BIDS OR PROPOSALS IN
40 CONNECTION WITH THE AWARD OF A STATE CONTRACT. SUCH RULES AND REGU-
41 LATIONS SHALL TAKE INTO ACCOUNT: THE NATURE OF THE LABOR, SERVICES,
42 SUPPLIES, EQUIPMENT OR MATERIALS BEING PROCURED BY THE STATE AGENCY; THE
43 METHOD OF PROCUREMENT REQUIRED TO BE USED BY A STATE AGENCY TO AWARD THE
44 CONTRACT; THE EQUAL PAY REPORTS REQUIRED TO BE SUBMITTED PURSUANT TO
45 SUBDIVISION ONE OF THIS SECTION; AND SUCH OTHER FACTORS AS THE COMP-
46 TROLLER DEEMS APPROPRIATE OR NECESSARY TO PROMOTE THE AWARD OF STATE
47 CONTRACTS TO CONTRACTORS HAVING SOUND EQUAL PAY PRACTICES. SUCH ASSESS-
48 MENT SHALL NOT PERMIT THE AUTOMATIC REJECTION OF A BID OR PROCUREMENT
49 PROPOSAL BASED ON THE LACK OF ADHERENCE TO EQUAL PAY PRACTICES. EACH BID
50 OR PROPOSAL SHALL BE ANALYZED ON AN INDIVIDUAL PER BID OR PER PROPOSAL
51 BASIS WITH THE CONTRACTOR'S EQUAL PAY PRACTICES CONSIDERED AS ONLY A
52 PART OF A WIDER CONSIDERATION OF SEVERAL FACTORS WHEN DECIDING TO AWARD
53 OR DECLINE TO AWARD A BID OR PROPOSAL.

54 S 328-D. PROHIBITIONS IN CONTRACTS; VIOLATIONS. EVERY CONTRACTING
55 AGENCY SHALL INCLUDE A PROVISION IN ITS STATE CONTRACTS EXPRESSLY
56 PROVIDING THAT ANY CONTRACTOR WHO WILLFULLY AND INTENTIONALLY FAILS TO

1 COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE AS SET FORTH IN SUCH STATE
2 CONTRACT SHALL BE LIABLE TO THE CONTRACTING AGENCY FOR LIQUIDATED OR
3 OTHER APPROPRIATE DAMAGES AND SHALL PROVIDE FOR OTHER APPROPRIATE REME-
4 DIES ON ACCOUNT OF SUCH BREACH.

5 S 2. This act shall take effect on the first of January next succeed-
6 ing the date upon which it shall have become a law and shall apply to
7 all contracts with the state entered into on or after such effective
8 date.