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

8487--B

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 -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

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

ARTICLE 15-D

EQUAL PAY DISCLOSURE WITH RESPECT TO STATE CONTRACTS

SECTION 328-B. DEFINITIONS.

328-C. EQUAL PAY DISCLOSURE; REPORTING.

328-D. PROHIBITIONS IN CONTRACTS; VIOLATIONS.

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

1. "EQUAL PAY REPORT" SHALL MEAN A SUMMARY OF DATA, IN A FORM CONSISTENT WITH REGULATIONS PROMULGATED BY THE COMPTROLLER PURSUANT TO SECTION THREE HUNDRED TWENTY-EIGHT-C OF THIS ARTICLE, ON EMPLOYEE COMPENSATION BY GENDER, RACE, ETHNICITY, SPECIFIED JOB CATEGORIES, AND OTHER RELEVANT DATA.

2. "CONTRACTING AGENCY" SHALL MEAN A STATE AGENCY WHICH IS A PARTY OR A PROPOSED PARTY TO A STATE CONTRACT.

3. "CONTRACTOR" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A LIMITED

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

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LIABILITY COMPANY, A NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A STATE CONTRACT, AS DEFINED IN SUBDIVISION EIGHT OF THIS SECTION OR A 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 A SMALL BUSINESS, 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;
STATE UNIVERSITY CONSTRUCTION FUND;
SYRACUSE REGIONAL AIRPORT AUTHORITY;
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY;
UPPER MOHAWK VALLEY REGIONAL WATER BOARD;
UPPER MOHAWK VALLEY REGIONAL WATER FINANCE AUTHORITY;
UPPER MOHAWK VALLEY MEMORIAL AUDITORIUM AUTHORITY;
URBAN DEVELOPMENT CORPORATION AND ITS SUBSIDIARY CORPORATIONS; AND

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

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

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

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

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

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

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

8. "STATE CONTRACT" SHALL MEAN:

(A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF FIFTY THOUSAND DOLLARS, WHICH IS SUBJECT TO APPROVAL BY THE COMPTROLLER PURSUANT TO SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE LAW, WHEREBY: (I) A CONTRACTING AGENCY, EXCEPT THE OFFICE OF GENERAL SERVICES IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN FOR LABOR, SERVICES INCLUDING, BUT NOT LIMITED TO, LEGAL, FINANCIAL AND OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE CONTRACTING AGENCY; (II) A CONTRACTING AGENCY, EXCEPT THE OFFICE OF GENERAL SERVICES IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON; OR (III) THE OWNER OF A STATE ASSISTED HOUSING PROJECT IS

COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

(B) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF EIGHTY-FIVE THOUSAND DOLLARS, WHICH IS SUBJECT TO APPROVAL BY THE COMPTROLLER PURSUANT TO SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE LAW, WHEREBY THE OFFICE OF GENERAL SERVICES IS COMMITTED TO OR DOES EXPEND FUNDS IN RETURN FOR LABOR, SERVICES INCLUDING, BUT NOT LIMITED TO, LEGAL, FINANCIAL AND OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE OFFICE OF GENERAL SERVICES.

9. "SMALL BUSINESS" AS USED IN THIS SECTION, SHALL MEAN A BUSINESS INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS FIELD, AND EMPLOYING NOT MORE THAN ONE HUNDRED INDIVIDUALS.

S 328-C. EQUAL PAY DISCLOSURE; REPORTING. 1. ALL CONTRACTORS, AS A CONDITION UPON ENTERING INTO A CONTRACT WITH THE STATE, SHALL BE REQUIRED TO SUBMIT EQUAL PAY REPORTS, IN SUCH FORM AS THE COMPTROLLER MAY PRESCRIBE BY REGULATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION. SUCH REPORTS SHALL INCLUDE, BUT NOT BE LIMITED TO, A SUMMARY OF THE CONTRACTOR'S WORKFORCE PAY AVERAGES, CALCULATED BY JOB CATEGORY, GENDER, RACE, AND ETHNICITY, AND THE DIFFERENCE BETWEEN PAY AVERAGES IN EACH CATEGORY, EXPRESSED AS AN ABSOLUTE PERCENTAGE.

2. THE STATE COMPTROLLER SHALL SUBMIT A REPORT TO THE GOVERNOR, THE ATTORNEY GENERAL, THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES, THE COMMISSIONER OF THE DEPARTMENT OF LABOR, THE COMMISSIONER OF THE DIVISION OF HUMAN RIGHTS, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE AND THE LEGISLATIVE FISCAL COMMITTEES SUMMARIZING DATA RELATED TO THE EQUAL PAY REPORTS SUBMITTED BY CONTRACTORS. SUCH REPORT SHALL BE MADE ANNUALLY, ON A FISCAL YEAR BASIS BY THE FIRST OF JULY OF THE NEXT SUCCEEDING YEAR FOLLOWING ENACTMENT OF THIS SECTION.

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

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

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

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

(B) SETTING FORTH MEASURES AND PROCEDURES TO REQUIRE ALL CONTRACTING AGENCIES, WHERE PRACTICABLE, FEASIBLE AND APPROPRIATE, TO ASSESS THE EQUAL PAY PRACTICES OF CONTRACTORS SUBMITTING BIDS OR PROPOSALS IN CONNECTION WITH THE AWARD OF A STATE CONTRACT. SUCH RULES AND REGULATIONS SHALL TAKE INTO ACCOUNT: THE NATURE OF THE LABOR, SERVICES, SUPPLIES, EQUIPMENT OR MATERIALS BEING PROCURED BY THE STATE AGENCY; THE METHOD OF PROCUREMENT REQUIRED TO BE USED BY A STATE AGENCY TO AWARD THE CONTRACT; THE EQUAL PAY REPORTS REQUIRED TO BE SUBMITTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION; AND SUCH OTHER FACTORS AS THE COMPTROLLER DEEMS APPROPRIATE OR NECESSARY TO PROMOTE THE AWARD OF STATE CONTRACTS TO CONTRACTORS HAVING SOUND EQUAL PAY PRACTICES. SUCH ASSESSMENT SHALL NOT PERMIT THE AUTOMATIC REJECTION OF A BID OR PROCUREMENT

PROPOSAL BASED ON THE LACK OF ADHERENCE TO EQUAL PAY PRACTICES. EACH BID OR PROPOSAL SHALL BE ANALYZED ON AN INDIVIDUAL PER BID OR PER PROPOSAL BASIS WITH THE CONTRACTOR'S EQUAL PAY PRACTICES CONSIDERED AS ONLY A PART OF A WIDER CONSIDERATION OF SEVERAL FACTORS WHEN DECIDING TO AWARD OR DECLINE TO AWARD A BID OR PROPOSAL.

S 328-D. PROHIBITIONS IN CONTRACTS; VIOLATIONS. EVERY CONTRACTING AGENCY SHALL INCLUDE A PROVISION IN ITS STATE CONTRACTS EXPRESSLY PROVIDING THAT ANY CONTRACTOR WHO WILLFULLY AND INTENTIONALLY FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE AS SET FORTH IN SUCH STATE CONTRACT SHALL BE LIABLE TO THE CONTRACTING AGENCY FOR LIQUIDATED OR OTHER APPROPRIATE DAMAGES AND SHALL PROVIDE FOR OTHER APPROPRIATE REMEDIES ON ACCOUNT OF SUCH BREACH.

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