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

7151--A

I N S E N A T E

March 31, 2016

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to establishing a registration system for contractors and subcontractors engaged in public work projects in order to better enforce existing labor laws and regulations in the public works industry

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

Section 1. The labor law is amended by adding a new section 220-i to read as follows:

S 220-I. REGISTRATION SYSTEM FOR CONTRACTORS AND SUBCONTRACTORS. 1. DEFINITIONS AS USED IN THIS SECTION:

A. "CONTRACTOR" MEANS A PERSON, PARTNERSHIP, ASSOCIATION, JOINT STOCK COMPANY, TRUST, CORPORATION, OR OTHER LEGAL BUSINESS ENTITY OR SUCCESSOR THEREOF WHO ENTERS INTO A CONTRACT WHICH IS SUBJECT TO THE PROVISIONS OF THIS ARTICLE, AND INCLUDES ANY SUBCONTRACTOR OR LOWER TIER SUBCONTRACTOR OF A CONTRACTOR AS DEFINED HEREIN.

B. "BUREAU" MEANS THE DEPARTMENT OF LABOR'S BUREAU OF PUBLIC WORKS.

2. NO CONTRACTOR SHALL BID ON ANY CONTRACT FOR PUBLIC WORK SUBJECT TO THE PROVISIONS OF THIS ARTICLE, UNLESS THE CONTRACTOR IS REGISTERED PURSUANT TO THIS SECTION. NO CONTRACTOR SHALL LIST A SUBCONTRACTOR IN A BID PROPOSAL FOR THE CONTRACT UNLESS THE SUBCONTRACTOR IS REGISTERED PURSUANT TO THIS SECTION AT THE TIME THE BID IS MADE.

3. A. A CONTRACTOR SHALL REGISTER IN WRITING WITH THE DEPARTMENT ON A FORM PROVIDED BY THE COMMISSIONER. THE FORM SHALL REQUIRE THE FOLLOWING INFORMATION:

I. THE NAME, PRINCIPAL BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE CONTRACTOR.

II. WHETHER THE CONTRACTOR IS A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, OR OTHER FORM OF BUSINESS ENTITY.

III. THE NAME AND ADDRESS OF EACH PERSON WITH A FINANCIAL INTEREST IN THE CONTRACTOR AND THE PERCENTAGE INTEREST, EXCEPT THAT IF THE CONTRAC-

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

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TOR IS A PUBLICLY-TRADED CORPORATION, THE CONTRACTOR SHALL SUPPLY THE NAMES AND ADDRESSES OF THE CORPORATION'S OFFICERS.

IV. THE CONTRACTOR'S TAX IDENTIFICATION NUMBER AND UNEMPLOYMENT INSURANCE REGISTRATION NUMBER.

V. WHETHER THE CONTRACTOR HAS ANY OUTSTANDING WAGE ASSESSMENTS AGAINST IT, PURSUANT TO THIS ARTICLE.

VI. WHETHER THE CONTRACTOR HAS BEEN DEBARRED UNDER NEW YORK OR FEDERAL LAW.

VII. WHETHER THE CONTRACTOR HAS BEEN DEBARRED PURSUANT TO THE LAWS OF ANY OTHER STATE.

VIII. ANY PAST VIOLATIONS OF LABOR LAWS FOUND BY ANY GOVERNMENTAL ENTITY.

IX. WHETHER OR NOT THE CONTRACTOR IS ASSOCIATED OR A SIGNATORY TO AN APPRENTICESHIP PROGRAM UNDER ARTICLE 23 OF THIS CHAPTER.

X. ANY OTHER RELEVANT AND APPROPRIATE INFORMATION AS DETERMINED BY THE COMMISSIONER.

B. AT THE TIME OF REGISTRATION, AND SUBSEQUENTLY UPON REQUEST, THE CONTRACTOR SHALL SUBMIT TO THE COMMISSIONER DOCUMENTATION DEMONSTRATING THAT THE CONTRACTOR HAS WORKER'S COMPENSATION INSURANCE COVERAGE FOR ALL WORKERS AS REQUIRED BY LAW.

4. A. THE CONTRACTOR SHALL PAY AN INITIAL ANNUAL NON-REFUNDABLE REGISTRATION FEE OF THREE HUNDRED DOLLARS TO THE COMMISSIONER. THE NON-REFUNDABLE REGISTRATION FEE FOR THE SECOND ANNUAL REGISTRATION SHALL BE THREE HUNDRED DOLLARS. UPON SUCCESSFUL COMPLETION OF TWO CONSECUTIVE YEARS OF REGISTRATION, A CONTRACTOR MAY ELECT TO REGISTER FOR A TWO-YEAR PERIOD AND PAY A NON-REFUNDABLE REGISTRATION FEE OF FIVE HUNDRED DOLLARS.

B. A CONTRACTOR WHO IS PERFORMING PUBLIC WORK ON THE EFFECTIVE DATE OF THIS ACT SHALL SUBMIT THE REGISTRATION APPLICATION FORM AND FEE TO THE COMMISSIONER WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS ACT.

C. THE BUREAU MAY, IN ITS DISCRETION, DETERMINE A CONTRACTOR IS UNFIT TO BE REGISTERED PURSUANT TO THIS SECTION. A CONTRACTOR DEEMED UNFIT PURSUANT TO THIS SECTION SHALL BE PROVIDED WITH WRITTEN NOTICE FROM THE DEPARTMENT AND SHALL BE AFFORDED THE OPPORTUNITY TO APPEAL SUCH DETERMINATION.

5. UPON RECEIPT OF THE FEE, FORM AND DOCUMENTATION REQUIRED BY THIS SECTION, THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF REGISTRATION TO THE CONTRACTOR. A REGISTRATION CERTIFICATE SHALL BE VALID FOR ONE CALENDAR YEAR FROM THE DATE OF REGISTRATION. REGISTRATIONS SHALL BE RENEWED NOT LESS THAN THIRTY DAYS BEFORE THE EXPIRATION DATE OF THE IMMEDIATELY PRECEDING REGISTRATION.

6. EACH CONTRACTOR SHALL, AFTER THE BID IS MADE AND PRIOR TO THE AWARDING OF THE CONTRACT, SUBMIT TO THE PUBLIC ENTITY THE CERTIFICATES OF REGISTRATION FOR ALL SUBCONTRACTORS LISTED IN THE BID PROPOSAL. APPLICATIONS FOR REGISTRATION SHALL NOT BE ACCEPTED AS A SUBSTITUTE FOR A CERTIFICATE OF REGISTRATION FOR THE PURPOSES OF THIS SECTION.

7. A. A CONTRACTOR WHO:

I. WILLFULLY HINDERS OR DELAYS THE COMMISSIONER IN THE PERFORMANCE OF HIS DUTIES IN THE ENFORCEMENT OF THIS ACT;

II. FAILS TO MAKE, KEEP, AND PRESERVE ANY RECORDS AS REQUIRED UNDER THIS ARTICLE;

III. FALSIFIES ANY SUCH RECORD, OR REFUSES TO MAKE ANY SUCH RECORD ACCESSIBLE TO THE COMMISSIONER UPON DEMAND;

IV. REFUSES TO FURNISH A SWORN STATEMENT OF SUCH RECORDS OR ANY OTHER INFORMATION REQUIRED FOR THE ENFORCEMENT OF THIS ACT TO THE COMMISSIONER UPON DEMAND;

V. PAYS OR AGREES TO PAY WAGES AT A RATE LESS THAN THE RATE PRESCRIBED BY THIS ARTICLE; OR

VI. OTHERWISE VIOLATES ANY PROVISION OF THIS SECTION, SHALL BE GUILTY OF A CLASS A MISDEMEANOR AND MAY BE ASSESSED A CIVIL PENALTY OF UP TO FIFTY THOUSAND DOLLARS.

B. AS AN ALTERNATIVE TO OR IN ADDITION TO SANCTIONS PROVIDED BY THIS ARTICLE, THE COMMISSIONER MAY, AFTER PROVIDING THE CONTRACTOR WITH NOTICE OF ANY ALLEGED VIOLATION OF THIS ACT, AND WITH AN OPPORTUNITY TO REQUEST A HEARING BEFORE THE COMMISSIONER:

I. DENY RENEWAL, REVOKE OR SUSPEND THE REGISTRATION OF A CONTRACTOR FOR A PERIOD OF NOT MORE THAN FIVE YEARS; OR

II. REQUIRE A CONTRACTOR, AS A CONDITION OF INITIAL OR CONTINUED REGISTRATION, TO PROVIDE A SURETY BOND PAYABLE TO THE STATE. THE SURETY BOND SHALL BE FOR THE BENEFIT OF WORKERS DAMAGED BY ANY FAILURE OF A CONTRACTOR TO PAY WAGES OR BENEFITS PURSUANT TO OR OTHERWISE COMPLY WITH THE PROVISIONS OF THIS ARTICLE. THE SURETY BOND SHALL BE IN THE AMOUNT AND FORM THAT THE COMMISSIONER DEEMS NECESSARY FOR THE PROTECTION OF THE CONTRACTOR'S WORKERS, BUT SHALL NOT EXCEED TEN THOUSAND DOLLARS PER WORKER.

C. THE BUREAU MAY ORDER THE IMMEDIATE SUSPENSION OF A CONTRACTOR'S REGISTRATION, PRIOR TO A FORMAL HEARING ON THE REVOCATION OF THE CONTRACTOR'S REGISTRATION PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION, IF THE BUREAU DETERMINES THAT ORDERING AN IMMEDIATE SUSPENSION IS IN THE PUBLIC INTEREST AND PROVIDED THAT THE CONTRACTOR IS AFFORDED AN OPPORTUNITY TO CONTEST THE IMMEDIATE SUSPENSION IN THE FOLLOWING MANNER:

I. THE BUREAU SHALL NOTIFY THE CONTRACTOR IN WRITING OF THE IMMEDIATE REVOCATION AND THE CONTRACTOR'S RIGHTS UNDER THIS PARAGRAPH.

II. THE CONTRACTOR MAY NOTIFY THE BUREAU OF ITS REQUEST FOR AN OPPORTUNITY TO BE HEARD AND CONTEST THE IMMEDIATE SUSPENSION IN WRITING WITHIN SEVENTY-TWO HOURS OF ITS RECEIPT OF IMMEDIATE SUSPENSION NOTIFICATION.

III. WITHIN SEVEN BUSINESS DAYS OF RECEIPT OF THE NOTIFICATION FROM THE CONTRACTOR PURSUANT TO SUBPARAGRAPH II OF THIS PARAGRAPH, THE BUREAU SHALL GRANT THE CONTRACTOR A HEARING TO CONTEST THE IMMEDIATE SUSPENSION. THE BUREAU SHALL PERMIT THE CONTRACTOR TO PRESENT EVIDENCE AT THE HEARING.

IV. THE BUREAU SHALL ISSUE A WRITTEN DECISION WITHIN FIVE BUSINESS DAYS OF THE HEARING EITHER UPHOLDING OR REVERSING THE CONTRACTOR'S IMMEDIATE SUSPENSION. THE DECISION SHALL INCLUDE THE GROUNDS FOR UPHOLDING OR REVERSING THE CONTRACTOR'S IMMEDIATE SUSPENSION.

V. IF THE CONTRACTOR DISAGREES WITH THE WRITTEN DECISION, THE CONTRACTOR MAY APPEAL THE DECISION TO THE COMMISSIONER.

D. IF THE BUREAU INTENDS TO IMPOSE AN IMMEDIATE SUSPENSION AS SET FORTH IN PARAGRAPH C OF THIS SUBDIVISION, THE BUREAU SHALL PROVIDE THE CONTRACTOR WITH A NOTICE OF INTENT TO SUSPEND AND THE CONTRACTOR MAY REQUEST AN ADMINISTRATIVE HEARING BEFORE THE COMMISSION WITHIN SEVENTY-TWO HOURS OF THE RECEIPT OF THE NOTICE OF INTENT TO SUSPEND IN ORDER TO PRESENT EVIDENCE EXPEDITIOUSLY IN SUPPORT OF THE POSITION THAT THE SUSPENSION SHOULD NOT BE IMPOSED. THE SUSPENSION SHALL NOT TAKE EFFECT PRIOR TO THE EXPIRATION OF THE SEVENTY-TWO HOUR OPPORTUNITY TO REQUEST A HEARING. IF SUCH A REQUEST IS NOT MADE, THE SUSPENSION SHALL TAKE EFFECT AT THE END OF THE SEVENTY-TWO HOUR PERIOD. IF SUCH A REQUEST IS MADE, THE SUSPENSION SHALL TAKE EFFECT ONLY AFTER THE COMMISSIONER CONDUCTS THE HEARING.

E. IF THE BUREAU ORDERS THE IMMEDIATE SUSPENSION OF A CONTRACTOR'S REGISTRATION PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION, THE VIOLATION

SHALL HAVE NO EFFECT ON THE REGISTRATION OF ANY CONTRACTOR OR SUBCONTRACTOR, REGARDLESS OF TIER, IN THE CONTRACTUAL CHAIN WITH THE SUSPENDED CONTRACTOR.

S 2. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the commissioner of labor shall promulgate rules and regulations necessary or appropriate to carry out the provisions of this act.