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

7861

I N  S E N A T E

May 18, 2016

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the criminal procedure law, in relation to hours, wages and supplements in contracts for public work

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

Section 1. Subdivision 2 of section 220 of the labor law, as amended by chapter 678 of the laws of 2007, is amended to read as follows:

2. [Each] EVERY contract [to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party, and any contract for public work entered into by a third party acting in place of, on behalf of and for the benefit of such public entity pursuant to any lease, permit or other agreement between such third party and the public entity, and which may involve the employment of laborers, workers or mechanics] FOR PUBLIC WORK shall contain a stipulation that no laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or

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

LBD15374-01-6

all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or days per week on such public project or in such areas the commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workers and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

S 2. Subdivision 5 of section 220 of the labor law is amended by adding four new paragraphs m, n, o and p to read as follows:

M. FOR THE PURPOSES OF THIS ARTICLE, "PUBLIC WORK" MEANS ANY OF THE FOLLOWING:

(I) CONSTRUCTION PAID FOR IN WHOLE OR IN PART OUT OF PUBLIC FUNDS;

(II) CONSTRUCTION WORK DONE UNDER PRIVATE CONTRACT WHEN ALL OF THE FOLLOWING CONDITIONS EXIST:

(A) THE CONSTRUCTION CONTRACT IS BETWEEN PRIVATE PARTIES;

(B) THE PROPERTY SUBJECT TO THE CONSTRUCTION CONTRACT IS PRIVATELY OWNED, BUT UPON COMPLETION OF THE CONSTRUCTION WORK, ANY PORTION OF THE PROPERTY IS LEASED OR WILL BE LEASED TO THE STATE OR ANY PUBLIC ENTITY, AND ONE OF THE FOLLOWING CONDITIONS EXIST:

(1) THE PUBLIC ENTITY ENTERED INTO OR BARGAINED FOR THE LEASE AGREEMENT PRIOR TO THE CONSTRUCTION CONTRACT; OR

(2) THE CONSTRUCTION WORK IS PERFORMED ACCORDING TO PLANS, SPECIFICATIONS, OR CRITERIA FURNISHED BY THE PUBLIC ENTITY, AND THE LEASE AGREEMENT BETWEEN THE LESSOR AND PUBLIC ENTITY, AS LESSEE, IS ENTERED INTO DURING, OR UPON COMPLETION OF, THE CONSTRUCTION WORK, OR WITHIN SIX MONTHS FOLLOWING COMPLETION OF THE CONSTRUCTION WORK; OR

(III) CONSTRUCTION ON A PUBLIC WORK OF IMPROVEMENT WHICH IS INCIDENTALLY RELATED TO AN OTHERWISE PRIVATE DEVELOPMENT PROJECT BUT WHICH THE STATE OR PUBLIC ENTITY REQUIRES TO BE PERFORMED AS A CONDITION OF REGULATORY APPROVAL. ONLY THE PUBLIC IMPROVEMENT WORK SHALL BE SUBJECT TO THIS ARTICLE PROVIDED (A) THE STATE OR PUBLIC ENTITY CONTRIBUTES NO MONEY OR THE EQUIVALENT OF PUBLIC FUNDS AS DEFINED IN PARAGRAPH N OF THIS SUBDIVISION TO THE OVERALL PROJECT OTHER THAN IS REQUIRED TO PERFORM THIS PUBLIC IMPROVEMENT WORK, AND (B) THE STATE OR PUBLIC ENTITY MAINTAINS NO PROPRIETARY INTEREST IN THE OVERALL PROJECT.

N. "PAID FOR IN WHOLE OR IN PART OUT OF PUBLIC FUNDS" MEANS ALL OF THE FOLLOWING:

(I) THE PAYMENT OF MONEY OR THE EQUIVALENT OF MONEY, INCLUDING THE ISSUANCE OF BONDS AND GRANTS, BY THE STATE OR A PUBLIC ENTITY, OR A THIRD PARTY ACTING ON BEHALF OF AND FOR THE BENEFIT OF THE STATE OR PUBLIC ENTITY, DIRECTLY TO OR ON BEHALF OF THE PUBLIC WORKS CONTRACTOR, SUBCONTRACTOR, OR DEVELOPER.

(II) PERFORMANCE OF CONSTRUCTION WORK BY THE STATE OR ANY PUBLIC ENTITY IN THE EXECUTION OF THE PROJECT.

(III) TRANSFER BY THE STATE OR A PUBLIC ENTITY OF AN ASSET OF VALUE FOR LESS THAN FAIR MARKET VALUE.

(IV) FEES, COSTS, RENTS, INSURANCE OR BOND PREMIUMS, LOANS, INTEREST RATES, TAXES, OR OTHER OBLIGATIONS THAT WOULD NORMALLY BE REQUIRED IN THE EXECUTION OF THE CONTRACT, THAT ARE PAID, REDUCED, CHARGED AT LESS THAN FAIR MARKET VALUE, WAIVED, OR FORGIVEN BY THE STATE OR PUBLIC ENTITY.

(V) MONEY LOANED BY THE STATE OR PUBLIC ENTITY THAT IS TO BE REPAID ON A CONTINGENT BASIS.

(VI) CREDITS THAT ARE APPLIED BY THE STATE OR PUBLIC ENTITY AGAINST REPAYMENT OBLIGATIONS TO THE STATE OR PUBLIC ENTITY.

O. "PUBLIC ENTITY" INCLUDES, BUT IS NOT LIMITED TO, THE STATE, A PUBLIC BENEFIT CORPORATION, INDUSTRIAL DEVELOPMENT AGENCY, LOCAL DEVELOPMENT CORPORATION, MUNICIPAL CORPORATION, SCHOOL DISTRICT, LOCAL GOVERNMENT, JOB DEVELOPMENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, EDUCATIONAL CORPORATION ESTABLISHED UNDER ARTICLE FIFTY-SIX OF THE EDUCATION LAW, COMMISSION APPOINTED PURSUANT TO LAW, ENTITIES TASKED WITH MAINTAINING PUBLIC PROPERTY, AND SIMILAR ENTITIES.

P. "CONSTRUCTION" INCLUDES, BUT IS NOT LIMITED TO, DEMOLITION, RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIR, INSTALLATION, RENOVATION, ALTERATION, AND CUSTOM FABRICATION. "CONSTRUCTION" ALSO INCLUDES WORK PREFORMED DURING THE DESIGN AND PRECONSTRUCTION PHASES OF CONSTRUCTION, INCLUDING BUT NOT LIMITED TO, INSPECTION AND LAND SURVEYING WORK AND WORK PERFORMED DURING THE POST-CONSTRUCTION PHASES OF CONSTRUCTION, INCLUDING, BUT NOT LIMITED TO, ALL CLEANUP WORK AT THE JOBSITE. FOR PURPOSES OF THIS PARAGRAPH, "INSTALLATION" INCLUDES, BUT IS NOT LIMITED TO, THE ASSEMBLY AND DISASSEMBLY OF FREESTANDING AND AFFIXED MODULAR OFFICE SYSTEMS. "CUSTOM FABRICATION" MEANS THE FABRICATION AND ALL DRAFTING RELATED TO THE FABRICATION OF WOODWORK, CASES, CABINETS, OR COUNTERS, AND THE FABRICATION OF PLUMBING, HEATING, COOLING, VENTILATION, OR EXHAUST DUCT SYSTEMS, AND MECHANICAL INSULATION SOLELY AND SPECIFICALLY DESIGNED AND ENGINEERED FOR INSTALLATION IN THE CONSTRUCTION, REPAIR, OR RENOVATION OF A BUILDING, REGARDLESS OF WHERE THE CUSTOM FABRICATION IS PREFORMED.

S 3. The labor law is amended by adding a new section 224-a to read as follows:

S 224-A. STOP-WORK ORDERS. WHERE A COMPLAINT IS RECEIVED PURSUANT TO THIS ARTICLE OR WHERE THE FISCAL OFFICER FINDS THAT ANY PERSON, IN CONNECTION WITH THE PERFORMANCE OF ANY CONTRACT FOR PUBLIC WORK, FAILS TO COMPLY WITH OR EVADES THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY ISSUE A STOP-WORK ORDER. SUCH STOP-WORK ORDER SHALL BE SERVED BY REGULAR MAIL, AND A SECOND COPY MAY BE SERVED BY TELEFACSIMILE OR BY ELECTRONIC MAIL, WITH SERVICE EFFECTIVE UPON RECEIPT OF ANY OF SUCH NOTICES. THE ORDER SHALL REMAIN IN EFFECT UNTIL THE COMMISSIONER DIRECTS THAT THE STOP-WORK ORDER BE REMOVED, UPON A FINAL DETERMINATION ON THE COMPLAINT OR WHERE SUCH FAILURE TO COMPLY OR EVADE HAS BEEN DEEMED CORRECTED.

S 4. Section 2.10 of the criminal procedure law is amended by adding a new subdivision 84 to read as follows:

84. EMPLOYEES OF THE DEPARTMENT OF LABOR DESIGNATED BY THE COMMISSIONER OF LABOR AS PEACE OFFICERS AND ASSIGNED BY THE COMMISSIONER OF LABOR TO THE ENFORCEMENT OF ANY PROVISIONS UNDER ARTICLE EIGHT OR ARTICLE TWENTY-FIVE-B OF THE LABOR LAW.

S 5. This act shall take effect immediately.