STATE OF NEW YORK

5498--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 9, 2017

Introduced by M. of A. BRONSON, TITUS, MAYER, MOYA, LIFTON, BICHOTTE, PERRY, SANTABARBARA, BRINDISI, JENNE, GLICK, CARROLL, ROZIC, PICHARDO, BRAUNSTEIN, RODRIGUEZ, STECK, SEAWRIGHT, NOLAN, WALLACE, RYAN, KIM, ORTIZ, TITONE, GJONAJ, COLTON, SKOUFIS, HYNDMAN, ABBATE, BARNWELL, DenDEKKER, ABINANTI, CUSICK, WOERNER, ROSENTHAL, BRABENEC, PAULIN, SEPULVEDA, DE LA ROSA, MAGNARELLI, SIMANOWITZ, PHEFFER AMATO, M. G. MILLER, WALKER, JOYNER, HARRIS, BENEDETTO, QUART, SIMOTAS, VANEL, NIOU, BLAKE, D'URSO, JAFFEE, STIRPE, ERRIGO, PELLEGRINO, RAMOS, RICHARDSON -- Multi-Sponsored by -- M. of A. BYRNE, LENTOL, SIMON -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor 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 extraor-

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

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dinary 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 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.

§ 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 performed 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 work performed on property owned by a public entity in whole or in part or will be owned or maintained by a public entity in whole or in part upon completion of the project.

(iv) For the purposes of this article, "public work" shall not mean any of the following:

(A) Construction work on one or two family dwellings where the property is the owner's primary residence or construction work done on property where the owner of the property owns no more than four dwelling units;

(B) Construction work performed under a contract with a non-profit as defined in section one hundred two of the not-for-profit corporation law where the value of the public funds provided to the non-profit for the project is less than one hundred thousand dollars and the non-profit has gross annual revenue and support less than one million dollars; or

(C) Construction work performed on a multiple dwelling where no less than seventy-five percent of the residential units are affordable for households up to sixty percent of the area median income, adjusted for family size, as calculated by the United States department of housing and urban development, provided however, that any construction performed on non-residential space in connection with a multiple dwelling project shall be considered public work if it meets any of the criteria in this paragraph. Further, any construction work performed on a project eligible for benefits under section four hundred twenty-one-a of the real property tax law shall not be considered public work for the purposes of this article.

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 project, 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 local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, municipal corporation as defined in section one hundred nineteen-n of the general municipal law, industrial development agencies formed pursuant to arti-

cle eighteen-a of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, educational corporation established under article fifty-six of the education law, commission appointed pursuant to law, as well as state, local and interstate and international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.

p. (i) "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. "Construction" also includes the delivery to and hauling from the jobsite of aggregate supply construction materials, such as sand, gravel, stone, dirt, fill, as well as any necessary return hauls, whether empty or loaded.

(ii) For the purposes of this article, "custom fabrication" means the fabrication and all drafting related to the fabrication of all masonry panels, 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 performed. The applicable prevailing wage for any off-site custom fabrication work shall be the on-site prevailing wage for the public work site.

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

§ 224-a. Stop-work orders. Where a complaint is received pursuant to this article, or where the fiscal officer upon his or her own investigation, finds cause to believe that any person, in connection with the performance of any contract for public work, has substantially and materially failed to comply with or intentionally evaded the provisions of this article, the commissioner may notify such person in writing of his or her intention to issue a stop-work order. Such notice shall (i) be served in a manner consistent with section three hundred eight of the civil practice law and rules; (ii) notify such person of his or her right to a hearing; and (iii) state the factual basis upon which the commissioner has based his or her decision to issue a stop-work order. Any documents, reports, or information that form a basis for such decision shall be provided to such person within a reasonable time before the hearing. Such hearing shall be expeditiously conducted.

Following the hearing, if the commissioner issues a stop-work order, it 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 order. Such stop-work order shall also be served with regard to a worksite by posting a copy of such order in a conspicuous location at the worksite. 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. If the person against whom such order is issued shall within thirty days after issuance of the stop-work order makes an application in affidavit form for a redetermination review of such order the commissioner shall make a decision in writing on the issues raised in such application. The commissioner may direct a condi-

tional release from a stop-work order upon a finding that such person has taken meaningful and good faith steps to comply with the provisions of this article.

§ 4. This act shall take effect immediately.