

# STATE OF NEW YORK

2975

2017-2018 Regular Sessions

## IN SENATE

January 18, 2017

Introduced by Sens. MURPHY, BOYLE -- 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:

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

3 2. [~~Each~~ Every contract [~~to which the state or a public benefit~~  
4 ~~corporation or a municipal corporation or a commission appointed pursu-~~  
5 ~~ant to law is a party, and any contract for public work entered into by~~  
6 ~~a third party acting in place of, on behalf of and for the benefit of~~  
7 ~~such public entity pursuant to any lease, permit or other agreement~~  
8 ~~between such third party and the public entity, and which may involve~~  
9 ~~the employment of laborers, workers or mechanics~~] for public work shall

10 contain a stipulation that no laborer, worker or mechanic in the employ  
11 of the contractor, subcontractor or other person doing or contracting to  
12 do the whole or a part of the work contemplated by the contract shall be  
13 permitted or required to work more than eight hours in any one calendar  
14 day or more than five days in any one week except in cases of extraor-  
15 dinary emergency including fire, flood or danger to life or property. No  
16 such person shall be so employed more than eight hours in any day or  
17 more than five days in any one week except in such emergency. Extraor-  
18 dinary emergency within the meaning of this section shall be deemed to  
19 include situations in which sufficient laborers, workers and mechanics  
20 cannot be employed to carry on public work expeditiously as a result of  
21 such restrictions upon the number of hours and days of labor and the  
22 immediate commencement or prosecution or completion without undue delay  
23 of the public work is necessary in the judgment of the commissioner for  
24 the preservation of the contract site and for the protection of the life  
25 and limb of the persons using the same. Upon the application of any

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

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1 person interested, the commissioner shall make a determination as to  
2 whether or not on any public project or on all public projects in any  
3 area of this state, sufficient laborers, workers and mechanics of any or  
4 all classifications can be employed to carry on work expeditiously if  
5 their labor is restricted to eight hours per day and five days per week,  
6 and in the event that the commissioner determines that there are not  
7 sufficient workers, laborers and mechanics of any or all classifications  
8 which may be employed to carry on such work expeditiously if their labor  
9 is restricted to eight hours per day and five days per week, and the  
10 immediate commencement or prosecution or completion without undue delay  
11 of the public work is necessary in the judgment of the commissioner for  
12 the preservation of the contract site and for the protection of the life  
13 and limb of the persons using the same, the commissioner shall grant a  
14 dispensation permitting all laborers, workers and mechanics, or any  
15 classification of such laborers, workers and mechanics, to work such  
16 additional hours or days per week on such public project or in such  
17 areas the commissioner shall determine. Whenever such a dispensation is  
18 granted, all work in excess of eight hours per day and five days per  
19 week shall be considered overtime work, and the laborers, workers and  
20 mechanics performing such work shall be paid a premium wage commensurate  
21 with the premium wages prevailing in the area in which the work is  
22 performed. No such dispensation shall be effective with respect to any  
23 public work unless and until the department of jurisdiction, as defined  
24 in this section, certifies to the commissioner that such public work is  
25 of an important nature and that a delay in carrying it to completion  
26 would result in serious disadvantage to the public. Time lost in any  
27 week because of inclement weather by employees engaged in the  
28 construction, reconstruction and maintenance of highways outside of the  
29 limits of cities and villages may be made up during that week and/or the  
30 succeeding three weeks.

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

33 m. For the purposes of this article, "public work" means any of the  
34 following:

35 (i) Construction paid for in whole or in part out of public funds;

36 (ii) Construction work done under private contract when all of the  
37 following conditions exist:

38 (A) The construction contract is between private parties;

39 (B) The property subject to the construction contract is privately  
40 owned, but upon completion of the construction work, any portion of the  
41 property is leased or will be leased to the state or any public entity,  
42 and one of the following conditions exist:

43 (1) The public entity entered into or bargained for the lease agree-  
44 ment prior to the construction contract; or

45 (2) The construction work is performed according to plans, specifica-  
46 tions, or criteria furnished by the public entity, and the lease agree-  
47 ment between the lessor and public entity, as lessee, is entered into  
48 during, or upon completion of, the construction work, or within six  
49 months following completion of the construction work; or

50 (iii) Construction on a public work of improvement which is inci-  
51 dentally related to an otherwise private development project but which  
52 the state or public entity requires to be performed as a condition of  
53 regulatory approval. Only the public improvement work shall be subject  
54 to this article provided (A) the state or public entity contributes no  
55 money or the equivalent of public funds as defined in paragraph n of  
56 this subdivision to the overall project other than is required to

1 perform this public improvement work, and (B) the state or public entity  
2 maintains no proprietary interest in the overall project.

3 n. "Paid for in whole or in part out of public funds" means all of the  
4 following:

5 (i) The payment of money or the equivalent of money, including the  
6 issuance of bonds and grants, by the state or a public entity, or a  
7 third party acting on behalf of and for the benefit of the state or  
8 public entity, directly to or on behalf of the public works contractor,  
9 subcontractor, or developer.

10 (ii) Performance of construction work by the state or any public enti-  
11 ty in the execution of the project.

12 (iii) Transfer by the state or a public entity of an asset of value  
13 for less than fair market value.

14 (iv) Fees, costs, rents, insurance or bond premiums, loans, interest  
15 rates, taxes, or other obligations that would normally be required in  
16 the execution of the contract, that are paid, reduced, charged at less  
17 than fair market value, waived, or forgiven by the state or public enti-  
18 ty.

19 (v) Money loaned by the state or public entity that is to be repaid on  
20 a contingent basis.

21 (vi) Credits that are applied by the state or public entity against  
22 repayment obligations to the state or public entity.

23 o. "Public entity" includes, but is not limited to, the state, a  
24 public benefit corporation, industrial development agency, local devel-  
25 opment corporation, municipal corporation, school district, local  
26 government, job development authority, dormitory authority, correctional  
27 authority, educational corporation established under article fifty-six  
28 of the education law, commission appointed pursuant to law, entities  
29 tasked with maintaining public property, and similar entities.

30 p. "Construction" includes, but is not limited to, demolition, recon-  
31 struction, excavation, rehabilitation, repair, installation, renovation,  
32 alteration, and custom fabrication. "Construction" also includes work  
33 performed during the design and preconstruction phases of construction,  
34 including but not limited to, inspection and land surveying work and  
35 work performed during the post-construction phases of construction,  
36 including, but not limited to, all cleanup work at the jobsite. For  
37 purposes of this paragraph, "installation" includes, but is not limited  
38 to, the assembly and disassembly of freestanding and affixed modular  
39 office systems. "Custom fabrication" means the fabrication and all  
40 drafting related to the fabrication of woodwork, cases, cabinets, or  
41 counters, and the fabrication of plumbing, heating, cooling, venti-  
42 lation, or exhaust duct systems, and mechanical insulation solely and  
43 specifically designed and engineered for installation in the  
44 construction, repair, or renovation of a building, regardless of where  
45 the custom fabrication is preformed.

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

48 § 224-a. Stop-work orders. Where a complaint is received pursuant to  
49 this article or where the fiscal officer finds that any person, in  
50 connection with the performance of any contract for public work, fails  
51 to comply with or evades the provisions of this article, the commission-  
52 er may issue a stop-work order. Such stop-work order shall be served by  
53 regular mail, and a second copy may be served by telefacsimile or by  
54 electronic mail, with service effective upon receipt of any of such  
55 notices. The order shall remain in effect until the commissioner directs  
56 that the stop-work order be removed, upon a final determination on the

1 complaint or where such failure to comply or evade has been deemed  
2 corrected.

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

5 84. Employees of the department of labor designated by the commission-  
6 er of labor as peace officers and assigned by the commissioner of labor  
7 to the enforcement of any provisions under article eight or article  
8 twenty-five-B of the labor law.

9 § 5. This act shall take effect immediately.