

# STATE OF NEW YORK

2975--A

2017-2018 Regular Sessions

## IN SENATE

January 18, 2017

Introduced by Sens. MURPHY, ADDABBO, ALCANTARA, BOYLE, BRESLIN, CARLUCCI, COMRIE, HOYLMAN, KENNEDY, LANZA, PERALTA, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Finance -- 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:

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 pursuant~~  
5 ~~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

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

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

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

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

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

40 (ii) Construction work performed under private contract when all of  
41 the following conditions exist:

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

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

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

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

54 (iii) Construction work performed on property owned by a public entity  
55 in whole or in part or will be owned or maintained by a public entity in  
56 whole or in part upon completion of the project.

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

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

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

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

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

25 (i) The payment of money or the equivalent of money, including the  
26 issuance of bonds and grants, by the state or a public entity, or a  
27 third party acting on behalf of and for the benefit of the state or  
28 public entity, directly to or on behalf of the public works contractor,  
29 subcontractor, or developer.

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

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

34 (iv) Fees, costs, rents, insurance or bond premiums, loans, interest  
35 rates, taxes, or other obligations that would normally be required in  
36 the execution of the project, that are paid, reduced, charged at less  
37 than fair market value, waived, or forgiven by the state or public enti-  
38 ty.

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

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

43 o. "Public entity" includes, but is not limited to, the state, a  
44 local development corporation as defined in subdivision eight of section  
45 eighteen hundred one of the public authorities law or section fourteen  
46 hundred eleven of the not-for-profit corporation law, municipal corpo-  
47 ration as defined in section one hundred nineteen-n of the general  
48 municipal law, industrial development agencies formed pursuant to arti-  
49 cle eighteen-a of the general municipal law or industrial development  
50 authorities formed pursuant to article eight of the public authorities  
51 law, educational corporation established under article fifty-six of the  
52 education law, commission appointed pursuant to law, as well as state,  
53 local and interstate and international authorities as defined in section  
54 two of the public authorities law; and shall include any trust created  
55 by any such entities.

1 p. (i) "Construction" includes, but is not limited to, demolition,  
2 reconstruction, excavation, rehabilitation, repair, installation, reno-  
3 vation, alteration, and custom fabrication. "Construction" also includes  
4 work preformed during the design and preconstruction phases of  
5 construction, including but not limited to, inspection and land survey-  
6 ing work and work performed during the post-construction phases of  
7 construction, including, but not limited to, all cleanup work at the  
8 jobsite. "Construction" also includes the delivery to and hauling from  
9 the jobsite of aggregate supply construction materials, such as sand,  
10 gravel, stone, dirt, fill, as well as any necessary return hauls, wheth-  
11 er empty or loaded.

12 (ii) For the purposes of this article, "custom fabrication" means the  
13 fabrication and all drafting related to the fabrication of all masonry  
14 panels, woodwork, cases, cabinets, or counters, and the fabrication of  
15 plumbing, heating, cooling, ventilation, or exhaust duct systems, and  
16 mechanical insulation solely and specifically designed and engineered  
17 for installation in the construction, repair, or renovation of a build-  
18 ing, regardless of where the custom fabrication is performed. The appli-  
19 cable prevailing wage for any off-site custom fabrication work shall be  
20 the on-site prevailing wage for the public work site.

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

23 § 224-a. Stop-work orders. Where a complaint is received pursuant to  
24 this article, or where the fiscal officer upon his or her own investi-  
25 gation, finds cause to believe that any person, in connection with the  
26 performance of any contract for public work, has substantially and mate-  
27 rially failed to comply with or intentionally evaded the provisions of  
28 this article, the commissioner may notify such person in writing of his  
29 or her intention to issue a stop-work order. Such notice shall (i) be  
30 served in a manner consistent with section three hundred eight of the  
31 civil practice law and rules; (ii) notify such person of his or her  
32 right to a hearing; and (iii) state the factual basis upon which the  
33 commissioner has based his or her decision to issue a stop-work order.  
34 Any documents, reports, or information that form a basis for such deci-  
35 sion shall be provided to such person within a reasonable time before  
36 the hearing. Such hearing shall be expeditiously conducted.

37 Following the hearing, if the commissioner issues a stop-work order,  
38 it shall be served by regular mail, and a second copy may be served by  
39 telefacsimile or by electronic mail, with service effective upon receipt  
40 of any of such order. Such stop-work order shall also be served with  
41 regard to a worksite by posting a copy of such order in a conspicuous  
42 location at the worksite. The order shall remain in effect until the  
43 commissioner directs that the stop-work order be removed, upon a final  
44 determination on the complaint or where such failure to comply or evade  
45 has been deemed corrected. If the person against whom such order is  
46 issued shall within thirty days after issuance of the stop-work order  
47 makes an application in affidavit form for a redetermination review of  
48 such order the commissioner shall make a decision in writing on the  
49 issues raised in such application. The commissioner may direct a condi-  
50 tional release from a stop-work order upon a finding that such person  
51 has taken meaningful and good faith steps to comply with the provisions  
52 of this article.

53 § 4. This act shall take effect immediately.