

STATE OF NEW YORK

3796

2017-2018 Regular Sessions

IN SENATE

January 27, 2017

Introduced by Sens. BAILEY, AVELLA -- read twice and ordered printed,
and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, the general municipal law and the public officers law, in relation to the omnibus prevailing wage enforcement act and to amend chapter 511 of the laws of 1995, relating to establishing a public work enforcement fund and making an appropriation therefor, in relation to moneys accumulated in the public work enforcement fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "omnibus
2 prevailing wage enforcement act".

3 § 2. The labor law is amended by adding a new section 223-a to read as
4 follows:

5 § 223-a. Prevailing wage fraud inspector general. 1. Definitions.
6 For the purposes of this section, the following definitions shall apply:

7 (a) "Inspector general" means the prevailing wage fraud inspector
8 general created by this section.

9 (b) "Assistant inspector general" means a prevailing wage fraud
10 assistant inspector general created by this section.

11 2. Appointment, compensation and removal. Notwithstanding any other
12 provision of law, the governor shall appoint the inspector general. The
13 board shall employ and the governor shall fix the compensation of the
14 inspector general. The inspector general shall, and may do so without
15 civil service examination, appoint and the board shall employ, such
16 assistant inspector general and other persons as he or she deems neces-
17 sary, determine their duties and fix their compensation. Such assistant
18 inspector general shall assist the inspector general in carrying out the
19 inspector general's duties and responsibilities as set forth in this
20 section and shall have such powers as granted the inspector general
21 under this section. Employees appointed pursuant to this section with-

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

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1 out civil service examination shall be placed in the noncompetitive
2 class of the competitive service pursuant to subdivision two-a of
3 section forty-two of the civil service law and shall serve at the pleas-
4 ure of the governor.

5 3. Powers, duties and responsibilities. The inspector general shall
6 investigate violations of the laws and regulations pertaining to the
7 operation of prevailing wage provisions. The inspector general shall
8 have the following powers, duties and functions:

9 (a) to conduct and supervise investigations, within or without this
10 state, of possible fraud and other violations of laws, rules and regu-
11 lations pertaining to prevailing wage provisions;

12 (b) to subpoena witnesses, administer oaths or affirmations, take
13 testimony and compel the production of such books, papers, records and
14 documents as the inspector general may deem to be relevant to an inves-
15 tigation undertaken pursuant to this section;

16 (c) to report to the attorney general or other appropriate law
17 enforcement agency, violations found through investigations undertaken
18 pursuant to this section and to provide such materials and assistance as
19 may be necessary or appropriate for the successful investigation and
20 prosecution of violations of this chapter;

21 (d) to submit a written report, on an annual basis, to the governor
22 and to the chair of the board, listing all activities undertaken to the
23 extent such activities can be disclosed pursuant to subdivision five of
24 this section; and

25 (e) to recommend legislative and regulatory changes to the governor
26 and to the chair of the board.

27 4. Cooperation of agency officials and employees. (a) In addition to
28 the authority otherwise provided by this section, the inspector general,
29 in carrying out the provisions of this section, is authorized:

30 (i) to have full and unrestricted access to all records, reports,
31 audits, reviews, documents, papers, recommendations or other material
32 maintained by the board or any other state agency relating to prevailing
33 wage provisions, with respect to which the inspector general has respon-
34 sibilities under this section; and

35 (ii) to request such information, assistance and cooperation from any
36 federal, state or local government, department, board, bureau, commis-
37 sion, or other agency or unit thereof as may be necessary for carrying
38 out the duties and responsibilities enjoined upon the inspector general
39 by this section. State and local agencies or units thereof are hereby
40 authorized and directed to provide such information, assistance and
41 cooperation.

42 (b) No person shall prevent, seek to prevent, interfere with, obstruct
43 or otherwise hinder any investigation being conducted pursuant to this
44 section.

45 5. Disclosure of information. The inspector general shall not publicly
46 disclose information which is:

47 (a) a part of an ongoing investigation or prosecution; or

48 (b) specifically prohibited from disclosure by any other provision of
49 law.

50 § 3. Sections 1 and 2 of chapter 511 of the laws of 1995, relating to
51 establishing a public work enforcement fund and making an appropriation
52 therefor, as amended by chapter 407 of the laws of 2005, are amended to
53 read as follows:

54 Section 1. The state comptroller shall establish a public work
55 enforcement fund. Each state agency or public benefit corporation enter-
56 ing into a contract for any construction, reconstruction, renovation,

1 repair, maintenance or other improvement, as defined in subdivision 2 of
2 section 220 of the labor law, shall make a transfer of 0.10 of one
3 percent of the total cost of the contract to such fund. All transfers
4 shall be made available to the labor department for labor law enforce-
5 ment. All moneys transferred to and accumulated in the public work
6 enforcement fund shall be dedicated to enforcement of labor law articles
7 8 and 9 and all moneys appropriated from such fund shall be used for
8 such purpose. Provided further that such dedicated funds shall be used
9 for training, labor and related costs for investigators, hearing offi-
10 cers and administrative staff to ensure that staffing levels for such
11 personnel are maintained at [~~an appropriate level~~] a level equal to or
12 greater than the staffing level for such personnel for fiscal year
13 2017-2018.

14 § 2. The sum of [~~two million four hundred thousand dollars~~
15 ~~(\$2,400,000), or so much thereof as may be~~] moneys so accumulated[7] is
16 hereby appropriated to the department of labor from any moneys credited
17 to the public work enforcement fund created pursuant to section one of
18 this act for the purposes of carrying out the provisions of this act.
19 Such sum shall be payable on the audit and warrant of the state comp-
20 troller on vouchers certified or approved by the commissioner of labor,
21 or his duly designated representative in the manner provided by law. No
22 expenditure shall be made from this appropriation until a certificate of
23 approval of availability shall have been issued by the director of the
24 budget and filed with the state comptroller and a copy filed with the
25 chair of the senate finance committee and the chair of the assembly ways
26 and means committee. Such certificate may be amended from time to time
27 by the director of the budget and a copy of each such amendment shall be
28 filed with the state comptroller, the chair of the senate finance
29 committee and the chair of the assembly ways and means committee.

30 § 4. Section 220 of the labor law is amended by adding a new subdivi-
31 sion 10 to read as follows:

32 10. In any instance where the variation between the low bid on any
33 public work contract or subcontract with the state, any municipal corpo-
34 ration or public body and the next lowest bid is ten percent or more, or
35 is ten percent lower than the contracting entity's estimate of the
36 project cost, the low bidder shall provide proof to the satisfaction of
37 the contracting entity that the prevailing wage shall be paid, or such
38 bid shall be rejected.

39 § 5. Section 231 of the labor law is amended by adding a new subdivi-
40 sion 8 to read as follows:

41 8. In any instance where the variation between the low bid on any
42 public work contract or subcontract with the state, any municipal corpo-
43 ration or public body and the next lowest bid is ten percent or more, or
44 is ten percent lower than the contracting entity's estimate of the
45 project cost, the low bidder shall provide proof to the satisfaction of
46 the contracting entity that the prevailing wage shall be paid, or such
47 bid shall be rejected.

48 § 6. Section 220 of the labor law is amended by adding a new subdivi-
49 sion 6-a to read as follows:

50 6-a. The fiscal officer shall require each engineer-in-charge or other
51 agent who has direct supervision of the execution of the contract
52 representing the contracting agency other than the contractor or his or
53 her employees on all contracts requiring prevailing wage rates to record
54 a daily headcount of all workers on a project site, separately enumer-
55 ated regarding each classification of worker including hours worked at
56 regular, overtime or holiday pay as classified in the prevailing wage

1 rate schedule. Such records shall be submitted to the fiscal officer and
2 shall be maintained by the fiscal officer for three years after the
3 final acceptance of the project. Knowingly providing the fiscal officer
4 with false records shall be a misdemeanor.

5 § 7. Subdivision 1 of section 103 of the general municipal law, as
6 amended by section 1 of chapter 2 of the laws of 2012, is amended to
7 read as follows:

8 1. Except as otherwise expressly provided by an act of the legislature
9 or by a local law adopted prior to September first, nineteen hundred
10 fifty-three, all contracts for public work involving an expenditure of
11 more than thirty-five thousand dollars which are subject to the
12 provisions of article eight of the labor law, and all purchase contracts
13 involving an expenditure of more than twenty thousand dollars, shall be
14 awarded by the appropriate officer, board or agency of a political
15 subdivision or of any district therein including but not limited to a
16 soil conservation district to the lowest responsible bidder furnishing
17 the required security after advertisement for sealed bids in the manner
18 provided by this section, provided, however, that purchase contracts
19 (including contracts for service work, but excluding any purchase
20 contracts necessary for the completion of a public works contract pursu-
21 ant to article eight of the labor law) may be awarded on the basis of
22 best value, as defined in section one hundred sixty-three of the state
23 finance law, to a responsive and responsible bidder or offerer in the
24 manner provided by this section except that in a political subdivision
25 other than a city with a population of one million inhabitants or more
26 or any district, board or agency with jurisdiction exclusively therein
27 the use of best value for awarding a purchase contract or purchase
28 contracts must be authorized by local law or, in the case of a district
29 corporation, school district or board of cooperative educational
30 services, by rule, regulation or resolution adopted at a public meeting.
31 Such officer, board, or agency may require responsible bidders and their
32 subcontractors to participate in apprenticeship training programs
33 approved by the department of labor.

34 In any case where a responsible
35 bidder's or responsible offerer's gross price is reducible by an allow-
36 ance for the value of used machinery, equipment, apparatus or tools to
37 be traded in by a political subdivision, the gross price shall be
38 reduced by the amount of such allowance, for the purpose of determining
39 the best value. In cases where two or more responsible bidders furnishing
40 the required security submit identical bids as to price, such officer,
41 board or agency may award the contract to any of such bidders. Such
42 officer, board or agency may, in his or her or its discretion, reject
43 all bids or offers and readvertise for new bids or offers in the manner
44 provided by this section. In determining whether a purchase is an
45 expenditure within the discretionary threshold amounts established by
46 this subdivision, the officer, board or agency of a political subdivi-
47 sion or of any district therein shall consider the reasonably expected
48 aggregate amount of all purchases of the same commodities, services or
49 technology to be made within the twelve-month period commencing on the
50 date of purchase. Purchases of commodities, services or technology
51 shall not be artificially divided for the purpose of satisfying the
52 discretionary buying thresholds established by this subdivision. A
53 change to or a renewal of a discretionary purchase shall not be permit-
54 ted if the change or renewal would bring the reasonably expected aggregate
55 amount of all purchases of the same commodities, services or technology
56 from the same provider within the twelve-month period commencing
on the date of the first purchase to an amount greater than the discre-

1 tionary buying threshold amount. For purposes of this section, "sealed
2 bids" and "sealed offers", as that term applies to purchase contracts,
3 (including contracts for service work, but excluding any purchase
4 contracts necessary for the completion of a public works contract pursu-
5 ant to article eight of the labor law) shall include bids and offers
6 submitted in an electronic format including submission of the statement
7 of non-collusion required by section one hundred three-d of this arti-
8 cle, provided that the governing board of the political subdivision or
9 district, by resolution, has authorized the receipt of bids and offers
10 in such format. Submission in electronic format may, for technology
11 contracts only, be required as the sole method for the submission of
12 bids and offers. Bids and offers submitted in an electronic format shall
13 be transmitted by bidders and offerers to the receiving device desig-
14 nated by the political subdivision or district. Any method used to
15 receive electronic bids and offers shall comply with article three of
16 the state technology law, and any rules and regulations promulgated and
17 guidelines developed thereunder and, at a minimum, must (a) document the
18 time and date of receipt of each bid and offer received electronically;
19 (b) authenticate the identity of the sender; (c) ensure the security of
20 the information transmitted; and (d) ensure the confidentiality of the
21 bid or offer until the time and date established for the opening of bids
22 or offers. The timely submission of an electronic bid or offer in
23 compliance with instructions provided for such submission in the adver-
24 tisement for bids or offers and/or the specifications shall be the
25 responsibility solely of each bidder or offerer or prospective bidder or
26 offerer. No political subdivision or district therein shall incur any
27 liability from delays of or interruptions in the receiving device desig-
28 nated for the submission and receipt of electronic bids and offers.

29 § 8. Subdivision 1 of section 103 of the general municipal law, as
30 amended by section 2 of chapter 2 of the laws of 2012, is amended to
31 read as follows:

32 1. Except as otherwise expressly provided by an act of the legislature
33 or by a local law adopted prior to September first, nineteen hundred
34 fifty-three, all contracts for public work involving an expenditure of
35 more than thirty-five thousand dollars which are subject to the
36 provisions of article eight of the labor law, and all purchase contracts
37 involving an expenditure of more than twenty thousand dollars, shall be
38 awarded by the appropriate officer, board or agency of a political
39 subdivision or of any district therein including but not limited to a
40 soil conservation district to the lowest responsible bidder furnishing
41 the required security after advertisement for sealed bids in the manner
42 provided by this section, provided, however, that purchase contracts
43 (including contracts for service work, but excluding any purchase
44 contracts necessary for the completion of a public works contract pursu-
45 ant to article eight of the labor law) may be awarded on the basis of
46 best value, as defined in section one hundred sixty-three of the state
47 finance law, to a responsive and responsible bidder or offerer in the
48 manner provided by this section except that in a political subdivision
49 other than a city with a population of one million inhabitants or more
50 or any district, board or agency with jurisdiction exclusively therein
51 the use of best value of awarding a purchase contract or purchase
52 contracts must be authorized by local law or, in the case of a district
53 corporation, school district or board of cooperative educational
54 services, by rule, regulation or resolution adopted at a public meeting.
55 Such officer, board, or agency may require responsible bidders and their
56 subcontractors to participate in apprenticeship training programs

1 approved by the department of labor. In determining whether a purchase
2 is an expenditure within the discretionary threshold amounts established
3 by this subdivision, the officer, board or agency of a political subdivi-
4 sion or of any district therein shall consider the reasonably expected
5 aggregate amount of all purchases of the same commodities, services or
6 technology to be made within the twelve-month period commencing on the
7 date of purchase. Purchases of commodities, services or technology shall
8 not be artificially divided for the purpose of satisfying the discre-
9 tionary buying thresholds established by this subdivision. A change to
10 or a renewal of a discretionary purchase shall not be permitted if the
11 change or renewal would bring the reasonably expected aggregate amount
12 of all purchases of the same commodities, services or technology from
13 the same provider within the twelve-month period commencing on the date
14 of the first purchase to an amount greater than the discretionary buying
15 threshold amount. In any case where a responsible bidder's or responsi-
16 ble offerer's gross price is reducible by an allowance for the value of
17 used machinery, equipment, apparatus or tools to be traded in by a poli-
18 tical subdivision, the gross price shall be reduced by the amount of
19 such allowance, for the purpose of determining the low bid or best
20 value. In cases where two or more responsible bidders furnishing the
21 required security submit identical bids as to price, such officer, board
22 or agency may award the contract to any of such bidders. Such officer,
23 board or agency may, in his, her or its discretion, reject all bids or
24 offers and readvertise for new bids or offers in the manner provided by
25 this section.

26 § 9. Section 220 of the labor law is amended by adding a new subdivi-
27 sion 11 to read as follows:

28 11. All public entities subject to this article shall make available
29 for public inspection and copying of the records or portions thereof
30 pertaining to the names of, employee classifications of, rate of wages
31 and supplements paid to, and number of hours worked by the employees of
32 contractors performing work pursuant to this article and article nine of
33 this chapter. The social security numbers of such employees may be
34 blocked out by the agency. An entity shall not be permitted to deny
35 access to records or portions thereof pertaining to the payment of wages
36 and supplements to, and number of hours worked by, the employees of
37 contractors subject to this article and article nine of this chapter.

38 § 10. Section 233 of the labor law is amended by adding a new subdivi-
39 sion 5 to read as follows:

40 5. All public entities subject to this article shall make available
41 for public inspection and copying of the records or portions thereof
42 pertaining to the names of, employee classifications of, rate of wages
43 and supplements paid to, and number of hours worked by the employees of
44 contractors performing work pursuant to this article and article eight
45 of this chapter. The social security numbers of such employees may be
46 blocked out by the agency. An entity shall not be permitted to deny
47 access to records or portions thereof pertaining to the payment of wages
48 and supplements to, and number of hours worked by, the employees of
49 contractors subject to this article and article eight of this chapter.

50 § 11. Subdivision 2 of section 87 of the public officers law is
51 amended by adding a new paragraph (p) to read as follows:

52 (p) Provided that, nothing in this subdivision shall permit an agency
53 to deny access to records or portions thereof pertaining to the payment
54 of wages and supplements to, and number of hours worked by the employees
55 of contractors subject to articles eight and nine of the labor law. All
56 public entities subject to this article shall make available for public

1 inspection and copying of such records, the names of, employee classi-
2 fications of, rate of wages and supplements paid to, and number of hours
3 worked by the employees of contractors performing work pursuant to arti-
4 cles eight and nine of the labor law. The social security numbers of
5 such employees may be blocked out by the agency.

6 § 12. Paragraph (a) of subdivision 2 of section 89 of the public offi-
7 cers law, as amended by section 11 of part U of chapter 61 of the laws
8 of 2011, is amended to read as follows:

9 (a) The committee on public access to records may promulgate guide-
10 lines regarding deletion of identifying details or withholding of
11 records otherwise available under this article to prevent unwarranted
12 invasions of personal privacy. In the absence of such guidelines, an
13 agency may delete identifying details when it makes records available,
14 provided however, nothing in this paragraph shall permit the denial of
15 access to records or portions thereof pertaining to the payment of wages
16 and supplements to, and number of hours worked by the employees of
17 contractors subject to articles eight and nine of the labor law. All
18 public entities subject to this article shall make available for public
19 inspection and copying of such records, the names of, employee classi-
20 fications of, rate of wages and supplements paid to, and number of hours
21 worked by the employees of contractors performing work pursuant to arti-
22 cles eight and nine of the labor law. The social security numbers of
23 such employees may be blocked out by the agency.

24 § 13. Paragraph (b) of subdivision 2 of section 89 of the public offi-
25 cers law is amended by adding a new undesignated paragraph to read as
26 follows:

27 Provided that, nothing in this paragraph shall permit an agency to
28 deny access to records or portions thereof pertaining to the payment of
29 wages and supplements to, and number of hours worked by employees of
30 contractors subject to articles eight and nine of the labor law. It
31 shall not be an unwarranted invasion of personal privacy for all public
32 entities subject to this article, to make available for public
33 inspection and copying, the records of all names of, employee classi-
34 fications of, rate of wages and supplements paid to, and number of hours
35 worked by the employees of contractors performing work pursuant to arti-
36 cles eight and nine of the labor law. The social security numbers of
37 such employees may be blocked out by the agency.

38 § 14. Subdivision 2-a of section 89 of the public officers law, as
39 added by chapter 652 of the laws of 1983, is amended to read as follows:

40 2-a. Nothing in this article shall permit disclosure which constitutes
41 an unwarranted invasion of personal privacy as defined in subdivision
42 two of this section if such disclosure is prohibited under section nine-
43 ty-six of this chapter, provided however, that nothing in this article
44 shall permit an agency to deny access to records or portions thereof
45 pertaining to the payment of rate of wages and supplements to, and
46 number of hours worked by, employees of contractors subject to articles
47 eight and nine of the labor law. It shall not be an unwarranted invasion
48 of personal privacy as defined in subdivision two of this section, nor a
49 prohibited disclosure under section ninety-six of this chapter for all
50 public entities subject to this article, to make available for public
51 inspection and copying such records of all names of, employee classi-
52 fications of, rate of wages and supplements paid to, and number of hours
53 worked by the employees of contractors performing work pursuant to arti-
54 cles eight and nine of the labor law. The social security numbers of
55 such employees may be blocked out by the agency.

1 § 15. Subparagraph (iii) of paragraph a of subdivision 3-a of section
2 220 of the labor law, as amended by chapter 8 of the laws of 2008, is
3 amended to read as follows:

4 (iii) The contractor and every sub-contractor shall keep original
5 payrolls or transcripts thereof, subscribed and sworn to or affirmed by
6 him or her as true under the penalties of perjury, setting forth the
7 names and addresses and showing for each worker, laborer, or mechanic
8 the hours and days worked, the occupations worked, the hourly wage rates
9 paid and the supplements paid or provided. Where the contractor or sub-
10 contractor maintains no regular place of business in New York state and
11 where the amount of the contract is in excess of twenty-five thousand
12 dollars such payrolls shall be kept on the site of the work. All other
13 contractors or sub-contractors shall produce within five days on the
14 site of the work and upon formal order of the commissioner or his or her
15 designated representative such original payrolls or transcripts thereof,
16 subscribed and sworn to or affirmed by him or her as true under the
17 penalties of perjury, as may be deemed necessary to adequately enforce
18 the provisions of this article. Every contractor, and sub-contractor,
19 shall submit to the department of jurisdiction within thirty days after
20 issuance of its first payroll, and every thirty days thereafter, a tran-
21 script of the original payroll record, as provided by this article, and
22 at the completion of the project a summary transcript specifying the
23 hours and days worked by each workman, laborer or mechanic, the trade or
24 occupation at which he or she worked, the hourly wage rate paid, the
25 supplements paid or provided to such employee and the names, tax iden-
26 tification number and job title of each individual classified by the
27 contractor or subcontractor as independent contractors who were hired
28 and employed by such contractor to perform work subject to the
29 provisions of this article. Such summary transcript shall be subscribed
30 and sworn to or affirmed as true under the penalties of perjury. Any
31 person who wilfully fails to file such payroll records with the depart-
32 ment of jurisdiction shall be guilty of a class E felony. In addition,
33 any person who wilfully fails to file such payroll records within the
34 time specified in this subparagraph shall be subject to a civil penalty
35 of up to one thousand dollars per day. Each independent contractor
36 shall have obtained a tax identification number prior to employment on a
37 project and shall submit such number to the contractor as required by
38 the commissioner.

39 § 16. Subdivision 3-a of section 220 of the labor law is amended by
40 adding a new paragraph f to read as follows:

41 f. Where the capital construction cost of a public work subject to the
42 provisions of this section exceeds one million dollars, the department
43 of jurisdiction shall certify that the project will be audited from time
44 to time by the department of labor to ensure compliance with the
45 provisions of this article. The department of jurisdiction shall inform
46 the department of labor of the project's cost and shall establish a
47 timetable for audit by the department of labor.

48 § 17. Severability clause. If any clause, sentence, paragraph, subdi-
49 vision, section or part contained in any part of this act shall be
50 adjudged by any court of competent jurisdiction to be invalid, such
51 judgment shall not affect, impair, or invalidate the remainder thereof,
52 but shall be confined in its operation to the clause, sentence, para-
53 graph, subdivision, section or part contained in any part thereof
54 directly involved in the controversy in which such judgment shall have
55 been rendered. It is hereby declared to be the intent of the legislature

1 that this act would have been enacted even if such invalid provisions
2 had not been included herein.

3 § 18. This act shall take effect immediately; provided, however, that:

4 1. Sections four, five, six and fifteen of this act shall take effect
5 on the sixtieth day after they shall have become a law;

6 2. Sections seven and eight of this act shall apply to contracts let
7 on or after such effective date of each section respectively;

8 3. The amendments to subdivision 1 of section 103 of the general
9 municipal law made by section seven of this act shall be subject to the
10 expiration and reversion of such subdivision pursuant to section 41 of
11 chapter 62 of the laws of 2003, as amended, when upon such date the
12 provisions of section eight of this act shall take effect; and

13 4. Sections nine through fourteen of this act shall take effect on the
14 thirtieth day after they shall have become a law.