

STATE OF NEW YORK

1915

2019-2020 Regular Sessions

IN ASSEMBLY

January 17, 2019

Introduced by M. of A. CRESPO -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring certain financially assisted development projects in a city with a population of one million or more to be subject to certain prevailing wage requirements

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

Section 1. Section 220 of the labor law is amended by adding a new subdivision 10 to read as follows:

10. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter, administrative code, or judicial decision to the contrary, construction work performed by a covered developer on a financially assisted development project shall be subject to this section with respect to laborers, workers and mechanics covered under this section performing work on a covered development project.

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(i) "City" means a city with a population of one million or more.

(ii) "Financially assisted development project" means a project in a city with a population of one million or more, undertaken, planned, overseen, or financed by a public benefit corporation or 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, or other economic development entity that provides or administers economic development benefits, or a third party on behalf of such economic development entity, for the purpose of improvement or development and/or redevelopment of real property, economic development, job retention or growth, or other similar

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

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1 purposes, and where the development project is not covered by a project
2 labor agreement and:

3 (1) is expected to be larger than one million square feet, or larger
4 than a total of three hundred residential units aggregated for the
5 entire development project; or

6 (2) has received or is expected to receive financial assistance from a
7 public entity valued at fifteen million dollars or more, aggregated from
8 all public sources; or

9 (3) is developed on, or will be situated, built, erected, or used on
10 property, owned, maintained, or leased by or to a public entity; or is
11 subject to a public entity's sale of air rights, or subject to public
12 entity planning and approval of construction contracts.

13 Provided however, financially assisted development projects shall not
14 include projects approved or managed under the urban development corpo-
15 ration act.

16 (iii) "Covered developer" means any person or entity receiving finan-
17 cial assistance in relation to a financially assisted development
18 project, or any person or entity that contracts or subcontracts with a
19 person or entity receiving financial assistance in relation to a finan-
20 cially assisted development project to perform construction work on the
21 financially assisted development project, or any assignee or successor
22 in interest of real property that qualifies as a financially assisted
23 development project. Covered developer excludes public entities. Covered
24 developer shall also not include any private not-for-profit corporation
25 for which bonds or notes are issued pursuant to titles four and/or
26 four-B of article eight of the public authorities law, or pursuant to
27 the New York state medical care facilities finance agency act.

28 (iv) "Financial assistance" is defined as:

29 (1) the payment of money, including the issuance of bonds, (excluding
30 such bonds or notes issued for the benefit of any private not-for-profit
31 corporation pursuant to titles four and/or four-B of article eight of
32 the public authorities law or bonds and notes issued pursuant to the New
33 York state medical care facilities finance agency act) and grants by a
34 public entity or a third party acting in place of, on behalf of and for
35 the benefit of such public entity, directly or indirectly to the devel-
36 oper of the development project, or on behalf of or for the benefit of
37 the developer; and/or

38 (2) performance or financing of construction work by any public entity
39 in furtherance of the development project, or for infrastructure
40 enhancements for the benefit of the development project, in any case for
41 which the state or city is primarily responsible for payment or repay-
42 ment; and/or

43 (3) fees, costs, rents, lease, insurance or bond premiums, loans,
44 interest rates on financings for which the state or city is primarily
45 responsible for repayment, taxes, or other obligations that would
46 normally be required in the execution of the project, attributable to
47 the development project and constituting a capital work or purpose as
48 defined in subparagraph four of section sixty-seven-a of the state
49 finance law, to the extent that such fees are paid, reduced, charged at
50 less than fair market value, waived, or forgiven by a public entity;
51 and/or

52 (4) money loaned by a public entity that is to be repaid on a contin-
53 gent basis.

54 (v) "Project labor agreement" means a pre-hire collective bargaining
55 agreement between a covered developer and a labor organization that
56 represents the interests of all classifications of laborers, workers and

1 mechanics as set forth in this section that establishes the terms and
2 conditions of employment for the development project.

3 (vi) "Public entity" means the state or a municipal corporation or
4 political subdivision or agency of either, a public benefit corporation,
5 public authority, economic development corporation, local development
6 corporation or commission, established pursuant to law.

7 (b) Prevailing wage in financially assisted development projects
8 required. (i) Covered developers shall be required to comply with this
9 section in all respects for all financially assisted development
10 projects, including, but not limited to:

11 (1) ensuring that all workers performing construction work on the
12 development project are paid no less than the prevailing wage; and

13 (2) ensuring that all contractors and subcontractors performing work
14 on the development project shall comply with this section; and

15 (3) each covered developer shall maintain original payroll records for
16 each covered worker reflecting the days and hours worked, and the wages
17 paid and benefits provided for such hours worked, and shall retain such
18 records for at least six years after the construction work is performed.
19 The covered developer may satisfy this requirement by obtaining copies
20 of records from the employer or employers of such covered workers. Fail-
21 ure to maintain such records as required shall create a rebuttable
22 presumption that the covered workers were not paid the wages and bene-
23 fits required under this section. Upon the request of the fiscal offi-
24 cer, the covered developer shall provide a certified original payroll
25 record.

26 (ii) A covered developer on a financially assisted project receiving
27 or expecting to receive financial assistance valued at less than fifteen
28 million dollars aggregated from all public sources, and a total of all
29 residential units of three hundred units or less, including affordable
30 and non-affordable units, may apply to the director of the division of
31 budget for an exemption from the requirements of this subdivision.
32 Covered development projects with a total of residential units over
33 three hundred are not eligible for an exemption. The director of the
34 division of budget may, upon consultation with the commissioner of
35 labor, take into consideration the nature and type of development, the
36 funding estimated for the project, the complexity of the work to be
37 performed, the existence of apprenticeship and/or safety training
38 programs in the area and their relation to the project, the size and
39 composition of the labor pool and unemployment rate in the area, and
40 other factors deemed relevant by the commissioner in determining the
41 application for an exemption. In the event the financial assistance
42 awarded the development project ultimately exceeds thirty million
43 dollars, the director of the division of budget may withdraw the
44 exemption for the remainder of the development project.

45 (iii) Any person claiming to be aggrieved by a violation of this
46 section shall have a cause of action against the covered developer in
47 any court of competent jurisdiction for damages, including punitive
48 damages, and for injunctive relief and such other remedies as may be
49 appropriate. In an action brought by a covered worker, if the court
50 finds in favor of the covered worker, it shall award the covered worker,
51 in addition to other relief, his/her reasonable attorneys' fees and
52 costs.

53 (1) A civil action commenced under this section shall be commenced in
54 accordance with the civil practice law and rules.

1 (2) No procedure or remedy set forth in this section is intended to be
2 exclusive or a prerequisite for asserting a claim for relief to enforce
3 any rights in a court of law.

4 (3) In the event that any requirement or provision of this section, or
5 its application to any person or circumstance, should be held invalid or
6 unenforceable by any court of competent jurisdiction, such holding shall
7 not invalidate or render unenforceable any other requirements or
8 provisions of this section, or the application of the requirement or
9 provision held unenforceable to any other person or circumstance.

10 § 2. This act shall take effect immediately and shall apply to finan-
11 cially assisted development projects funded on or after the effective
12 date of this act; and shall exclude such financially assisted projects
13 with contracts that have been previously awarded as of the effective
14 date of this act; and shall apply to the construction activities that
15 commence thirty days after the effective date of this act on existing
16 financially assisted development projects.