

STATE OF NEW YORK

8418

2019-2020 Regular Sessions

IN ASSEMBLY

June 16, 2019

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the labor law, in relation to prevailing wage requirements, stop-work orders and annual reports by apprenticeship programs

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

1 Section 1. The labor law is amended by adding a new section 224-a to
2 read as follows:

3 § 224-a. Prevailing wage requirements applicable to construction
4 projects performed under private contract.

5 1. Subject to the provisions of this section, all "covered projects"
6 as defined in this section shall be subject to prevailing wage require-
7 ments in accordance with section two hundred twenty of this article. A
8 "covered project" shall mean any of the following:

9 a. Construction work performed under private contract on property, or
10 a portion of the property, when all of the following conditions exist:

11 (i) The construction contract is between private parties;

12 (ii) The property is privately owned, and the property, or portion of
13 the property is leased or will be leased to any public entity, and at
14 least one of the following conditions exist:

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

17 (2) The construction work is performed according to plans, specifica-
18 tions, or criteria furnished by the public entity, and the lease agree-
19 ment between the lessor and public entity, as lessee, is entered into
20 during, or upon completion of, the construction work;

21 b. Construction work performed on property owned by a public entity in
22 whole or in part or will be owned or maintained by a public entity in
23 whole or in part upon completion of the project;

24 c. Construction work performed under private contract which is paid
25 for in whole or in part out of public funds as defined in this section;
26 or

27 d. Construction work performed under private contract which is paid
28 for in whole or in part out of public funds, and which is deemed to not

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

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1 be a covered project pursuant to subdivision five of this section, but
2 the amount of all such public funds, when aggregated, is at least thirty
3 percent of the total project costs.

4 2. For purposes of this section, "paid for in whole or in part out of
5 public funds" shall mean any of the following:

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

10 b. Transfer by a public entity of an asset of value for less than fair
11 market value;

12 c. Fees, costs, rents, loans, insurance, tax credits, including tax
13 abatelements, tax exemptions, or any other financial obligation that would
14 normally be required in the execution of the project, that are paid,
15 charged at less than fair market value, reduced, waived, or forgiven by
16 the state or public entity;

17 d. Money loaned by the public entity that is to be repaid on a contin-
18 gent basis; or

19 e. Credits that are applied by the public entity against repayment
20 obligations to the public entity.

21 3. For purposes of this section, "paid for in whole or in part out of
22 public funds" shall not include:

23 a. Benefits under section four hundred twenty-one-a of the real prop-
24 erty tax law; or

25 b. Funds otherwise provided for in this section that are not directly
26 provided for in order to primarily promote, incentivize, or ensure that
27 construction work is performed.

28 4. For purposes of this section "covered project" shall not include
29 any of the following:

30 a. Construction work on one or two family dwellings where the property
31 is the owner's primary residence, construction work performed on proper-
32 ty where the owner of the property owns no more than four dwelling
33 units, or construction work performed in a city with a population of one
34 million or more that contains seven or fewer dwelling units;

35 b. Construction work performed under a contract with a not-for-profit
36 as defined in section one hundred two of the not-for-profit corporation
37 law where the not-for-profit has gross annual revenue less than five
38 million dollars;

39 c. Construction work performed on a multiple dwelling or multiple
40 residence that is wholly privately owned where no less than thirty
41 percent of the residential units are subject to a regulatory agreement
42 with a local, state, or federal governmental entity; provided, however,
43 that the period of affordability for a residential unit deemed affor-
44 dable under the provisions of this paragraph shall be for no less than
45 thirty years from the date of construction; or

46 d. Construction work performed under a pre-hire collective bargaining
47 agreement between an owner or contractor and a bona fide building and
48 construction trade labor organization which has established itself as
49 the collective bargaining representative for all persons who will
50 perform work on such a project, and which provides that only contractors
51 and subcontractors who sign a pre-negotiated agreement with the labor
52 organization can perform work on such a project.

53 5. For purposes of this section, a "covered project" shall also not
54 include any of the following:

55 a. Construction work performed pursuant to an agreement with an indus-
56 trial development agency, a local development corporation, or other

1 similar local entity where the net benefit of the public funds received
2 is less than the threshold set by the department as provided in subdivi-
3 sion thirteen of this section;

4 b. Construction work performed on a project certified under title
5 fourteen of article twenty-seven of the environmental conservation law,
6 where the total amount of such public funds over the life of the project
7 is less than seven million dollars in the counties of Bronx, Kings, New
8 York, Queens, and Richmond; less than three million dollars in the coun-
9 ties of Nassau, Suffolk and Westchester; or less than one million
10 dollars in the rest of the state;

11 c. Construction work performed on a project where the net benefit of
12 public funds over the life of the project is less than three million
13 dollars in the counties of Bronx, Kings, New York, Queens, and Richmond;
14 less than one million five hundred thousand dollars in the counties of
15 Nassau, Suffolk and Westchester; or less than five hundred thousand
16 dollars in the rest of the state;

17 d. Construction work performed for the purposes of installation, reno-
18 vation, or repair of a community distributed generation project. For the
19 purposes of this section a community distributed generation project
20 shall mean a project to construct, maintain, alter, or otherwise operate
21 a photovoltaic system with a rated capacity of not more than five mega-
22 watts alternating current that is connected to the electric system and
23 operated in conjunction with an electric corporation's transmission and
24 distribution facilities, for which participating electric customers
25 receive a bill credit for the electricity generated in proportion to the
26 size of their interest in the facility, with at least sixty percent of
27 the facility's production allocated to participating customers in incre-
28 ments of twenty-five kilowatts or less, provided that such a project
29 receives no more than seven million five hundred thousand dollars in
30 public funds;

31 e. Construction work performed pursuant to financing provided by tax
32 exempt bonds or notes issued by a public entity for the benefit of any
33 private, not-for-profit college chartered by the regents of the univer-
34 sity of the state of New York or a private, not-for-profit university
35 chartered by the regents of the university of the state of New York,
36 including bonds or notes issued by an industrial development agency,
37 local development corporation, or other similar local entity unless
38 otherwise provided by law. However, nothing in this paragraph shall be
39 deemed to exclude construction work that is paid for in whole or in part
40 out of public funds other than those excluded by this paragraph;

41 f. Construction work performed under private contract pursuant to
42 financing provided by tax exempt bonds or notes issued by a public enti-
43 ty for the benefit of a hospital, nursing home, or residential health
44 care facility as such terms are defined in article twenty-eight of the
45 public health law or for the benefit of a facility or institution certi-
46 fied under article thirty-one of the mental hygiene law, tax exempt
47 bonds or notes issued by a public entity for the benefit of a not-for-
48 profit corporation as defined in section one hundred two of the not-for-
49 profit corporation law for purposes of providing assisted living, home
50 care or hospice services licensed or certified under the public health
51 law or social services law or services that are licensed or certified
52 under the mental hygiene law, including bonds or notes issued by an
53 industrial development agency, local development corporation, or other
54 similar local entity unless otherwise provided by law. Nothing in this
55 paragraph shall be deemed to exclude construction work that is paid for

1 in whole or in part out of public funds other than those excluded by
2 this paragraph;

3 g. Construction work performed on: (i) an owner-occupied "qualified
4 historic home" pursuant to subsection (pp) of section six hundred six of
5 the tax law; or (ii) a certified historic structure pursuant to
6 subsection (oo) of section six hundred six of the tax law and the total
7 amount of such public funds over the life of the project are no greater
8 than five million dollars; or

9 h. Construction work performed on any portion of an existing or new
10 building in which property is leased by a public entity, or construction
11 work performed on an existing building held in a condominium form of
12 ownership or by a cooperative corporation in which the public entity
13 possesses shares or an ownership interest, provided that any portion of
14 the property that is not leased by a public entity or not held in a
15 condominium form of ownership or by a cooperative corporation in which a
16 public entity possesses shares or an ownership interest shall not be
17 captured under this subdivision unless otherwise subject to the
18 provisions to this section.

19 6. For purposes of this section, "public entity" shall include, but
20 shall not be limited to, the state, a local development corporation as
21 defined in subdivision eight of section eighteen hundred one of the
22 public authorities law or section fourteen hundred eleven of the not-
23 for-profit corporation law, or other similar local and regional economic
24 development organizations, a municipal corporation as defined in section
25 one hundred nineteen-n of the general municipal law, industrial develop-
26 ment agencies formed pursuant to article eighteen-A of the general
27 municipal law or industrial development authorities formed pursuant to
28 article eight of the public authorities law, an educational corporation
29 established under article fifty-six of the education law, a commission
30 appointed pursuant to law, as well as state, local and interstate and
31 international authorities as defined in section two of the public
32 authorities law; and shall include any trust created by any such enti-
33 ties.

34 7. For purposes of this section, "construction" means work which may
35 involve the employment of laborers, workers, or mechanics, and includes,
36 but is not limited to, demolition, reconstruction, excavation, rehabili-
37 tation, repair, installation, renovation, alteration, and custom fabri-
38 cation. "Construction" also includes work performed during the design
39 and preconstruction phases of construction, including but not limited
40 to, inspection and land surveying work and work performed during the
41 post-construction phases of construction, including, but not limited to,
42 all cleanup work at the jobsite. "Construction" also includes the deliv-
43 ery to and hauling from the jobsite of aggregate supply construction
44 materials, such as sand, gravel, stone, dirt, fill, as well as any
45 necessary return hauls, whether empty or loaded.

46 8. For purposes of this section, "custom fabrication" means the fabri-
47 cation and all drafting related to the fabrication of all masonry
48 panels, woodwork, cases, cabinets, or counters, and the fabrication of
49 plumbing, heating, cooling, ventilation, or exhaust duct systems, and
50 mechanical insulation solely and specifically designed and engineered
51 for installation in the construction, repair, or renovation of a build-
52 ing, regardless of where the custom fabrication is performed. The appli-
53 cable prevailing wage for any off-site custom fabrication work shall be
54 the on-site prevailing wage for the job site.

55 9. For purposes of this section, the "fiscal officer" shall be deemed
56 to be the commissioner; except for covered projects in a city with a

1 population in excess of one million, in which case the fiscal officer
2 shall be the comptroller or other analogous officer of such city.

3 10. The enforcement of any construction work deemed to be a covered
4 project pursuant to this section, and any additional requirements, shall
5 be subject to the requirements of section two hundred twenty of this
6 article and within the jurisdiction of the fiscal officer; provided,
7 however:

8 a. The owner or developer of such property subject to construction
9 shall certify under penalty of perjury within five days of commencement
10 of construction work whether the project at issue is subject to the
11 provisions of this section through the use of a standard form developed
12 by the fiscal officer;

13 b. The owner or developer of a covered project shall be responsible
14 for retaining original payroll records in accordance with section two
15 hundred twenty of this article for a period of six years from the
16 conclusion of such work. All payroll records maintained by an owner or
17 developer pursuant to this section shall be subject to inspection on
18 request of the fiscal officer. Such owner or developer may authorize
19 the prime contractor of the construction project to take responsibility
20 for retaining and maintaining payroll records, but will be held jointly
21 and severally liable for any violations of such contractor. All records
22 obtained by the fiscal officer shall be subject to the Freedom of Infor-
23 mation Law; and

24 c. The fiscal officer may issue rules and regulations governing the
25 provisions of this section. Violations of this section shall be grounds
26 for proceedings brought pursuant to section two hundred twenty-b of this
27 article.

28 11. Each owner and developer subject to the requirements of this
29 section shall comply with the objectives and goals of minority and
30 women-owned business enterprises pursuant to article fifteen-A of the
31 executive law. The department shall make training and resources avail-
32 able to assist minority and women-owned business enterprises on covered
33 projects achieve and maintain compliance with prevailing wage require-
34 ments. The department shall make such training and resources available
35 online and shall afford minority and women-owned business enterprises an
36 opportunity to submit comments on such training.

37 12. a. The commissioner shall report to the governor, the temporary
38 president of the senate, and the speaker of the assembly by July first,
39 two thousand twenty-one, and annually thereafter, on the participation
40 of minority and women-owned business enterprises in relation to covered
41 projects and contracts for public work subject to the provisions of this
42 section and section two hundred twenty of this article respectively as
43 well as the diversity practices of contractors and subcontractors
44 employing laborers, workers, and mechanics on such projects.

45 b. Such report shall include aggregated data on the utilization and
46 participation of minority and women-owned business enterprises, the
47 employment of minorities and women in construction-related jobs on such
48 projects, and the commitment of contractors and subcontractors on such
49 projects to adopting practices and policies that promote diversity with-
50 in the workforce. The report shall also examine the compliance of
51 contractors and subcontractors with other equal employment opportunity
52 requirements and anti-discrimination laws, in addition to any other
53 employment practices deemed pertinent by the commissioner.

54 c. The fiscal officer may require any owner, developer, or public
55 entity to disclose information on the participation of minority and
56 women-owned business enterprises and the diversity practices of contrac-

tors and subcontractors involved in the performance of any project under its jurisdiction. It shall be the duty of the fiscal officer to provide such information upon request of the commissioner in order to effectuate the requirements of this section.

13. No later than one hundred eighty days after the effective date of this section, the department shall make a determination, utilizing data from the New York state office of the comptroller and the public authorities reporting information system (PARIS), as to the amount of public funds or benefits which must be received from or through an industrial development agency, local development corporation, or other similar local entity, which are necessary to deem a project subject to the provisions of this section. Any project receiving a net benefit from public funds which is less than respective regional threshold set by the department shall not be deemed to be a covered project.

a. Such recommendation shall be determined on a regional basis using the following regions: (i) Bronx, Kings, New York, Queens, and Richmond counties; (ii) Nassau, Suffolk and Westchester counties; and (iii) the rest of the state;

b. The net benefit shall be calculated based on the total value of financial assistance provided through a sales tax exemption, mortgage recording tax exemption, payment in lieu of taxes agreement and any other tax subsidy provided during the term of the agreement with the industrial development agency, local development corporation, or other similar local entity;

c. In making such determination, the department shall ensure no less than the top thirty percent of projects in each region are deemed covered projects. The department may determine that the thresholds applicable pursuant to this section be total dollar thresholds or thresholds triggered on the basis of total percent of project cost incentivized; and

d. Any project receiving a net benefit from public funds which is less than the respective regional threshold set by the department shall be deemed to not be a covered project.

14. Prior to the effective date of this section, a memorandum of understanding may be executed between one, or more, representatives of a regional organization representing building owners and developers, either for profit or not-for-profit, in a region, and the largest trade labor association representing building and construction workers, in the same respective region, which has established itself as a regional affiliate of the statewide building and construction trades council. Such memorandum of understanding shall exempt the owners and developers of such regional organization from complying with the provisions of this section for all construction, as defined in this section, performed in the applicable region on any project that would otherwise be covered by this section, except for the provisions in subdivisions eleven and twelve of this section. Such exemption shall only apply for the duration of such memorandum of understanding and must be filed with the department upon execution.

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

§ 224-b. 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 pursuant to section two hundred twenty of this article or any covered project pursuant to section two hundred twenty-four-a of this article, has substantially and

1 materially failed to comply with or intentionally evaded the provisions
2 of this article, the fiscal officer may notify such person in writing of
3 his or her intention to issue a stop-work order. Such notice shall (i)
4 be served in a manner consistent with section three hundred eight of the
5 civil practice law and rules; (ii) notify such person of his or her
6 right to a hearing; and (iii) state the factual basis upon which the
7 fiscal officer has based his or her decision to issue a stop-work order.
8 Any documents, reports, or information that form a basis for such deci-
9 sion shall be provided to such person within a reasonable time before
10 the hearing. Such hearing shall be expeditiously conducted.

11 Following the hearing, if the fiscal officer issues a stop-work order,
12 it shall be served by regular mail, and a second copy may be served by
13 telefacsimile or by electronic mail, with service effective upon receipt
14 of any such order. Such stop-work order shall also be served with regard
15 to a worksite by posting a copy of such order in a conspicuous location
16 at the worksite. The order shall remain in effect until the fiscal offi-
17 cer directs that the stop-work order be removed, upon a final determi-
18 nation on the complaint or where such failure to comply or evade has
19 been deemed corrected. If the person against whom such order is issued
20 shall within thirty days after issuance of the stop-work order makes an
21 application in affidavit form for a redetermination review of such order
22 the fiscal officer shall make a decision in writing on the issues raised
23 in such application. The fiscal officer may direct a conditional release
24 from a stop-work order upon a finding that such person has taken mean-
25 ingful and good faith steps to comply with the provisions of this arti-
26 cle.

27 § 3. The labor law is amended by adding a new section 813-a to read as
28 follows:

29 § 813-a. Annual reports by apprenticeship programs. 1. On an annual
30 basis, all apprenticeship programs covered under the provisions of this
31 article shall report to the department on the participation of appren-
32 tices currently enrolled in such apprenticeship program. The data to be
33 included in such report shall include, at a minimum: (a) the total
34 number of apprentices in such apprenticeship program; (b) the demograph-
35 ic information of such apprentices to the extent such data is available,
36 including, but not limited to, the age, gender, race, ethnicity, and
37 national origin of such apprentices; (c) the rate of advancement and
38 graduation of such apprentices; and (d) the rate of placement of such
39 apprentices onto job sites as well as the demographic information of
40 such apprentices to the extent such data is available, including, but
41 not limited to the age, gender, race, ethnicity, and national origin of
42 such apprentices.

43 2. The department shall make such data publicly available on its
44 website by July first, two thousand twenty-one and on an annual basis,
45 but no later than December thirty-first of each following year.

46 § 4. This act shall take effect on July 1, 2020; provided, however
47 that this act shall not apply to an agreement entered into with an
48 industrial development agency, local development corporation, or other
49 similar local entity entered into prior to the day on which this act
50 shall have become a law, or to any appropriations of public funds made
51 prior to the day on which this act shall have become a law, or to re-ap-
52 propriations of such funds first appropriated prior to the day on which
53 this act shall have become a law.