

# STATE OF NEW YORK

2158

2019-2020 Regular Sessions

## IN SENATE

January 23, 2019

Introduced by Sen. BAILEY -- 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 2019-2020.

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 subdivision  
47 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 permitted  
54 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-

tionary buying threshold amount. For purposes of this section, "sealed bids" and "sealed offers", as that term applies to purchase contracts, (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) shall include bids and offers submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers.

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

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

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

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

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

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

§ 17. Severability clause. If any clause, sentence, paragraph, subdivision, section or part contained in any part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part contained in any part thereof directly involved in the controversy in which such judgment shall have 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 subdivision (a)  
11 of section 41 of part X of chapter 62 of the laws of 2003, as amended,  
12 when upon such date the provisions of section eight of this act shall  
13 take effect; and

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