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:

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

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

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

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

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

2. Appointment, compensation and removal. Notwithstanding any other provision of law, the governor shall appoint the inspector general. The board shall employ and the governor shall fix the compensation of the inspector general. The inspector general shall, and may do so without civil service examination, appoint and the board shall employ, such assistant inspector general and other persons as he or she deems necessary, determine their duties and fix their compensation. Such assistant inspector general shall assist the inspector general in carrying out the inspector general's duties and responsibilities as set forth in this section and shall have such powers as granted the inspector general 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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out civil service examination shall be placed in the noncompetitive class of the competitive service pursuant to subdivision two-a of section forty-two of the civil service law and shall serve at the pleasure of the governor.

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

(a) to conduct and supervise investigations, within or without this state, of possible fraud and other violations of laws, rules and regulations pertaining to prevailing wage provisions;

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. The state comptroller shall establish a public work enforcement fund. Each state agency or public benefit corporation entering into a contract for any construction, reconstruction, renovation,

repair, maintenance or other improvement, as defined in subdivision 2 of section 220 of the labor law, shall make a transfer of 0.10 of one percent of the total cost of the contract to such fund. All transfers shall be made available to the labor department for labor law enforcement. All moneys transferred to and accumulated in the public work enforcement fund shall be dedicated to enforcement of labor law articles 8 and 9 and all moneys appropriated from such fund shall be used for such purpose. Provided further that such dedicated funds shall be used for training, labor and related costs for investigators, hearing officers and administrative staff to ensure that staffing levels for such personnel are maintained at [~~an appropriate level~~] a level equal to or greater than the staffing level for such personnel for fiscal year 2019-2020.

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

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

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

§ 5. Section 231 of the labor law is amended by adding a new subdivision 8 to read as follows:

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

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

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

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

§ 7. Subdivision 1 of section 103 of the general municipal law, as amended by section 1 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 for 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 approved by the department of labor.** In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his or her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology 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**

approved by the department of labor. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section.

§ 9. Section 220 of the labor law is amended by adding a new subdivision 11 to read as follows:

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

§ 10. Section 233 of the labor law is amended by adding a new subdivision 5 to read as follows:

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

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

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

inspection and copying of such records, the names of, employee classifications of, rate of wages and supplements paid to, and number of hours worked by the employees of contractors performing work pursuant to articles eight and nine of the labor law. The social security numbers of such employees may be blocked out by the agency.

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

(a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available, provided however, nothing in this paragraph shall permit the denial of access to records or portions thereof pertaining to the payment of wages and supplements to, and number of hours worked by the employees of contractors subject to articles eight and nine of the labor law. All public entities subject to this article shall make available for public inspection and copying of such records, the names of, employee classifications of, rate of wages and supplements paid to, and number of hours worked by the employees of contractors performing work pursuant to articles eight and nine of the labor law. The social security numbers of such employees may be blocked out by the agency.

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

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

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

2-a. Nothing in this article shall permit disclosure which constitutes an unwarranted invasion of personal privacy as defined in subdivision two of this section if such disclosure is prohibited under section ninety-six of this chapter, provided however, that nothing in this article shall permit an agency to deny access to records or portions thereof pertaining to the payment of rate of wages and supplements to, and number of hours worked by, employees of contractors subject to articles eight and nine of the labor law. It shall not be an unwarranted invasion of personal privacy as defined in subdivision two of this section, nor a prohibited disclosure under section ninety-six of this chapter for all public entities subject to this article, to make available for public inspection and copying such records of all names of, employee classifications of, rate of wages and supplements paid to, and number of hours worked by the employees of contractors performing work pursuant to articles eight and nine of the labor law. The social security numbers of 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

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

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

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

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

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

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