STATE OF NEW YORK

4630

2019-2020 Regular Sessions

IN SENATE

March 18, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to covered developers, covered employers, covered lessees or lessors, financial assistance provided to covered developers, covered leases, and covered development projects

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

Section 1. Subdivisions 1, 5, 8, 12 and 13 of section 230 of the labor law, subdivision 1 as amended by chapter 542 of the laws of 1984, subdivisions 5 and 8 as added by chapter 777 of the laws of 1971, and subdivisions 12 and 13 as added by chapter 547 of the laws of 1998, are amended and seven new subdivisions 15, 16, 17, 18, 19, 20 and 21 are added to read as follows:

1. "Building service employee" or "employee" means any person performing work in connection with the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees **or in connection with a covered development project or lease**.

"Building service employee" or "employee" includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

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

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"Building service employee" or "employee" also does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable.

5. "Wage" includes: (a) basic hourly cash rate of pay; and (b) supplements. The term "supplements" means fringe benefits including medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by federal, state or local law to be provided by the contractor**, covered developer, covered lessee or lessor, covered employer,** or subcontractor.

8. "Fiscal officer" means the industrial commissioner, except for building service work performed by or on behalf of a city, **or where the covered development project or real property subject to a covered lease is located within a city with a population of over one million,** in which case "fiscal officer" means the comptroller or other analogous officer of such city.

12. "Parent company" shall mean an entity that directly controls the contractor or subcontractor**, or covered developer, or covered lessee or lessor**.

13. "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor**, or covered developer, or covered lessee or lessor,** or the contractor's**, or covered developer's, or covered lessee's or lessor's** parent company.

15. "Covered developer" means any entity receiving financial assistance in relation to a covered development project, or any assignee or successor in interest of real property that qualifies as a covered development project.

16. "Covered employer" means any entity, other than a covered developer, or covered lessee or lessor, who employs building service workers at a covered development project or at any real property subject to a covered lease.

17. "Covered lessee" means any entity leasing real property from a public agency.

18. "Covered lessor" means any entity from whom a public agency is leasing commercial office space or commercial office facilities of ten thousand square feet or more, provided that the public agency, whether through a single agreement or multiple agreements, leases no less than fifty-one percent of the total square footage of the building to which the lease or leases apply.

19. "Financial assistance" means assistance that is provided to a covered developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is paid in whole or in part by a public agency or agencies, and having a cumulative anticipated total financial value of one million dollars. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation

costs, write-downs in the market value of building, land, or the cost of capital improvements related to real property that, under ordinary circumstances, the public agency would not pay for. Where assistance takes the form of loans or bond financing, the value of the assistance shall be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance.

20. "Covered lease" means any agreement by a public agency with a covered lessor or lessee.

21. "Covered development project" means a project that has received or is expected to receive financial assistance.

§ 2. The labor law is amended by adding a new section 231-a to read as follows:

§ 231-a. Prevailing wage for covered leases and covered development projects. 1. Covered developers and covered lessees or lessors shall endure that all building service employees performing building service work in connection with a covered development project or covered lease are paid no less than the prevailing wage.

2. The obligation to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the fiscal officer.

3. The public agency providing financial assistance or entering into a covered lease shall require, as a contractual condition of such financial assistance or covered lease, that any building service employee performing building service work in connection with a covered development project or covered lease, regardless of the employing entity, shall be paid no less than the prevailing wage; and any lease, contract for property management services, or contract for the provision of building services, entered into by the covered developer or covered lessee or lessor, and any subcontract thereof, shall contain the following provision: "All building service employees shall be paid no less than the prevailing wage as provided by the fiscal officer as described in section two hundred thirty-four of the Labor Law. Any covered employer, as defined in section two hundred thirty of the Labor Law, shall maintain all records relating to the employment of building service workers as described in section two hundred thirty-three of the Labor Law which are to be provided to the covered developer. Such covered employer shall also submit such statements as required under section two hundred thirty-seven of the Labor Law. This requirement shall apply to any covered development project or real property subject to a covered lease as provided by Article nine of the Labor Law."

4. Upon the awarding of financial assistance or entering into a covered lease by a public agency, the awarding public agency shall immediately furnish to the fiscal officer:

(a) the name and address of the awardee;

(b) the date when the financial assistance was awarded or the covered lease was entered into;

(c) the specific building or facility address or addresses, or locality to which the covered lease or financial assistance pertains, if the financial assistance is targeted to a particular building or buildings, facility or facilities, or locality; and

(d) the anticipated total value of the financial assistance.

5. When the financial assistance to the covered development project applies to a particular building or buildings, facility or facilities, or locality, the prevailing wage shall apply only to such building or

buildings, facility or facilities, or locality; however, when the financial assistance is not so limited, the covered development project shall be deemed to include any building or facility in which the covered developer operates within the state, and the prevailing wage requirement set forth in this subdivision shall apply to any building or facility in which the covered developer operates within the state.

6. The fiscal officer shall maintain a list of covered developers, covered lessees or lessors, and covered development projects, including the addresses of each. Such list shall be updated and published as often as is necessary to keep current.

7. Within two weeks of receiving financial assistance or entering into a covered lease, a covered developer, covered lessee or lessor, or covered employer shall post, in the same location and manner that other statutorily required notices are posted, at every such covered development project or real property subject to the covered lease, and provide each building service employee a copy of a written notice which shall be prepared by the fiscal officer, detailing the wages, benefits, and other protections to which building service employees are entitled under this section. Such notice shall also provide the name, address and telephone number of the fiscal officer and a statement advising building service employees that if they have been paid less than the prevailing wage they may notify the fiscal officer and request an investigation or bring suit in a court of competent jurisdiction. Such notices shall be posted in English and in any other language which at least twenty percent of employees speak as a primary language. Such notice shall remain posted for the time that the requirements of this section shall apply and shall be adjusted periodically to reflect the current prevailing wage for building service employees. In addition to posting such notice, the covered developer, covered lessee or lessor, or covered employer shall provide each individual employee a copy of the notice in English or any other language spoken by the employee as a primary language, so long as the fiscal officer has made such notice available to employers in such language on its website. The fiscal officer shall make available on its website sample written notices explaining the rights of building service employees under this section and shall translate such sample written notices into such languages it deems appropriate.

8. The requirements of this section shall apply for the term of the financial assistance, ten years from the opening date of the financially assisted project, the duration of any written agreement between a public agency and the covered developer providing for financial assistance, or the duration of the covered lease, whichever is longer.

9. This section shall not preempt any public agency from establishing higher minimum wages for covered developers or covered lessees or lessors receiving financial assistance or leasing from or to a public agency. Nor shall any covered developer, covered lessee or lessor, or covered employer be preempted from paying a wage higher than the prevailing wage.

§ 3. Section 232 of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

§ 232. Overtime. An employee, employed by a contractor or employed at a covered development project, or at real property subject to a covered lease, who works more than eight hours in any one day or more than forty hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half times his prevailing basic cash hourly rate.

§ 4. Subdivisions 1, 2 and 3 of section 233 of the labor law, as added by chapter 777 of the laws of 1971, are amended and two new subdivisions 5 and 6 are added to read as follows:

1. In all cases where service work is being performed pursuant to a contract**, or covered lease, or covered development project** therefor, the contractor**, or covered developer, or covered lessee or lessor,** shall keep original payrolls or transcripts thereof, subscribed and confirmed by him as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he was employed, and the wages paid. **A covered developer or covered lessee or lessor may satisfy this requirement by obtaining copies of employment records from a covered employer.**

2. Where the wages paid include sums which are not paid directly to the workmen weekly and which are expended for supplements, the records required to be maintained shall include a record of such hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all such cases, the contractor**, or covered developer, or covered lessee or lessor,** shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made. **A covered developer, or covered lessee or lessor, may satisfy this requirement by obtaining copies of employment records from a covered employer.**

3. The records required to be maintained shall be kept on the site of the work during all of the time that work under the contract**, or otherwise subject to the requirements of this section,** is being performed.

5. A covered developer, or covered lessee or lessor, shall include a requirement in all leases, management agreements, or service contracts, and any subcontracts thereof, that any covered employer shall comply with the recordkeeping requirements of this section. The covered developer, or covered lessee or lessor shall obtain such records from any covered employer and preserve such records for a period of six years after the completion of the employee's work.

6. Failure to maintain such records as required by this section shall create a rebuttable presumption that the building service employees were not paid the wages and supplements required under this article.

§ 5. Paragraph (f) of subdivision 1 of section 234 of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

(f) to require a contractor**, or covered developer, or covered lessee or lessor,** to file with the fiscal officer a record of the wages actually paid by such contractor**, or covered developer, or covered lessee or lessor,** to the employees and of their hours of work;

§ 6. The labor law is amended by adding a new section 235-a to read as follows:

§ 235-a. Investigations, hearings, and private right of action for covered leases and covered development projects. 1. Whenever the fiscal officer has reason to believe that a building service employee performing building service work in connection with a covered lease or covered development project has been paid less than the applicable prevailing wage and supplements, or upon receipt of a written complaint, the fiscal officer shall conduct a special investigation to determine the facts relating thereto.

2. If, despite the requirements of law, the fiscal officer has not determined the prevailing wage as required in this article, the fiscal

officer shall determine in the proceeding before him the wages prevailing at the time the work was performed for the crafts, trades, or occupations of the employees involved.

3. In an investigation conducted under the provisions of this section, the inquiry of the fiscal officer shall not extend to work performed more than three years prior to: (a) the filing of the complaint; or (b) the commencement of the investigation upon the fiscal officer's own violation, whichever occurs first.

4. (a) The investigation and hearing shall be expeditiously conducted, and upon the completion thereof, the fiscal officer shall determine the issues raised and shall make and file an order in his office stating such determination, and forthwith serve personally or by mail a copy of such order and determination together with a notice of filing upon all parties to the proceeding, and upon the financial officer of the public agency involved.

(b) In addition to directing payment of wages found to be due, such order of the fiscal officer shall direct payment of liquidated damages in an amount equal to the greater of two percent of the annual value of the financial assistance or covered lease, or two-tenths of a percent of the total value of the financial assistance or covered lease. Where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

(c) An order directing the payment to specified employees of wages found to be due and unpaid shall include interest at a rate not less than six per centum per year, and not more than the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the time such wages should have been paid. In determining the rate of interest to be imposed, the fiscal officer shall consider the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer, successor or substantially-owned affiliated entity, any officer of the covered developer, covered lessee or lessor, or covered employer who knowingly participated in the violation of this article, and any of the partners if the covered developer, covered lessee or lessor, or covered employer is a partnership, or any of the five largest shareholders of the covered developer, covered lessee or lessor, or the covered employer, as determined by the fiscal officer, and the failure to comply with recordkeeping or other non-wage requirements.

5. (a) Provided that no proceeding for judicial review as provided in this section shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer shall file with the county clerk of the county where the employer resides or has a place of business, the order of the fiscal officer containing the amount found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(b) When a final determination has been made in favor of a complainant, and the covered developer, covered lessee or lessor, or covered employer found in violation of this article has failed to make payment as required by the order of the fiscal officer, and provided that no relevant proceeding for judicial review shall then be pending and the

time for initiation of such proceeding shall have expired, the fiscal officer may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of any of the following:

(i) any substantially-owned affiliated entity or any successor of the covered developer, covered lessee or lessor, or covered employer;

(ii) any of the partners if the covered developer, covered lessee or lessor, or covered employer is a partnership or any of the five largest shareholders of the covered developer, covered lessee or lessor, or covered employer, as determined by the fiscal officer; or

(iii) any officer of the covered developer, covered lessee or lessor, or covered employer who knowingly participated in the violation of this article; provided, however, that the fiscal officer shall within five days of the filing of the order provide notice thereof to the partner or top five shareholders or successor or substantially-owned affiliated entity.

(c) The notified party may contest the filing on the basis that it is not a partner or one of the five largest shareholders, an officer of the covered developer, covered lessee or lessor, or covered employer who knowingly participated in the violation of this article, successor or substantially-owned affiliated entity. If, after reviewing the information provided by the notified party in support of such contest, the fiscal officer determines that the notified party is not within the definitions described herein, the fiscal officer shall immediately withdraw his filing of the order.

(d) The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6. When a final determination has been made and such determination is in favor of an employee, such employee may, in addition to any other remedy provided by this article, institute an action in any court of appropriate jurisdiction against the entity found to have violated this article, any substantially-owned affiliated entity, any officer of the covered developer, covered lessee or lessor, or covered employer who knowingly participated in the violation of this article, and any of the partners if the covered developer, covered lessee or lessor, or covered employer is a partnership or any of the five largest shareholders of the covered developer, covered lessee or lessor, or covered employer, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to him or her by the aforesaid financial officer pursuant to said order and the amount found to be due to him or her as determined by said order. Such action must be commenced within three years from the date of the filing of said order, or if said order is reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules, within three years after the termination of such review proceeding.

7. (a) Any person claimed to be aggrieved by a violation of this article shall have a cause of action in any court of competent jurisdiction against the entity alleged to have violated this article, any substantially-owned affiliated entity, any officer of the covered developer, covered lessee or lessor, or covered employer who knowingly participated in the violation of this article, and any of the partners if the covered developer, covered lessee or lessor, or covered employer is a partnership or any of the five largest shareholders of the covered developer,

covered lessee or lessor, or covered employer, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to him or her by the aforesaid financial officer pursuant to said order and the amount found to be due to him or her as determined by said order. The aggrieved party may seek damages including punitive damages, injunctive relief, and such other remedies as may be appropriate, unless such person has filed a complaint with the fiscal officer with respect to such claim. In an action brought by a building service employee, if the court finds in favor of the employee, it shall award the employee, in addition to other relief, his or her reasonable attorneys' fees and costs.

(b) Investigation by the fiscal officer shall not be a prerequisite to, nor a bar against, a person bringing a civil action under this section. Notwithstanding any inconsistent provision of subdivisions one through six of this section, where a complaint filed with the fiscal officer is dismissed, an aggrieved person shall maintain all rights to commence a civil action pursuant to this action as if no complaint had been filed.

(c) No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(d) Any judgement or court order awarding remedies under this section shall provide that if any amount remains unpaid upon the expiration of ninety days following issuance of judgement, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgement shall automatically increase by fifteen percent.

(e) In any action instituted upon a wage claim by a building service employee in which the employee prevails, the court may allow such employee, in addition to ordinary costs, a reasonable sum not exceeding one hundred dollars for expenses, which may be taxed as costs. No assignee of a wage claim shall be benefitted by this provision.

(f) Notwithstanding any other provision of law, an action to recover upon liability imposed by this article must be commenced within the greater of six years from the date the cause of action accrued, or two years from the time the plaintiff or the person whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it. The statute of limitations shall be tolled from the date an employee files a complaint with the fiscal officer or the date the fiscal officer commences an investigation, whichever if earlier, until an order to comply issued by the fiscal officer becomes final, or where the fiscal officer does not issue an order, until the date on which the fiscal officer notifies the complainant that the investigation has concluded.

8. (a) No person shall take any adverse action against an employee which penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise such employee's rights under this article or interfere with such employee's exercise of rights under this article.

(b) Taking an adverse action includes, but is not limited to, threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an employee, reducing the hours of pay of an employee, informing another employer that an employee has engaged in activities protected by this article, discriminating against the employee, includ-

ing actions related to perceived immigration status or work authorization, and maintenance or application of an absence control policy that counts protected leave as an absence that may lead to or result in an adverse action.

(c) An employee need not explicitly refer to a provision of this article to be protected from an adverse action.

(d) A casual connection may be established between the exercise, attempted exercise, or anticipated exercise of rights protected by this article and an employer's adverse action against an employee or a group of employees by indirect or direct evidence.

(e) Retaliation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

9. (a) When a final determination has been made against a covered employer in favor of a complainant and the covered developer, or covered lessee or lessor, has made payment to the complainant of any wages and interest due the complainant and any civil penalty, and providing that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the covered developer, or covered lessee or lessor, may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of the covered employer. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The judgment may be docketed in favor of the covered developer, or covered lessee or lessor, who may proceed as a judgment creditor against the covered employer for the recovery of all monies paid by the covered developer, or covered lessee or lessor, under such order.

(b) When a covered developer, or covered lessee or lessor, has made payment to a complainant of any wages and interest due to him or her because of a covered employer's violation of this article, the covered developer, or covered lessee or lessor, may bring suit to recover all monies paid by the covered developer, or covered lessee or lessor, from the covered employer.

10. (a) When two judgments or final orders pursuant to the provisions of this section have been entered against a body, as defined by paragraph (b) of this subdivision, who knowingly participated in the violation of this article within any consecutive six-year period determining that such body who knowingly participated in the violation of this article has willfully failed to pay the prevailing wages in accordance with the provisions of this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate covered leases or awards of financial assistance are rendered simultaneously, such entity who knowingly participated in the violation of this article, or any successor is a corporation, any officer of such corporation who knowingly participated in such failure, shall be ineligible to enter into covered leases with a public agency or receive financial assistance for a period of five years from the date of the second order, provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the body who knowingly participated in the violation of this article shall be ineligible to enter into covered leases or to receive financial assistance for a period of five years from the date of the first final order. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of financial assistance or entering into a covered lease with a public

agency. The industrial commissioner shall maintain a list of covered developers, covered lessees or lessors, or covered employers, who are ineligible, including their names, address, date, and duration of their ineligibility. Such list shall be updated and published as often as is necessary to keep it current.

(b) For the purposes of paragraph (a) of this subdivision, the term "body" shall mean a covered developer, covered lessee or lessor, covered employer, successor, or any substantially-owned affiliated entity of the covered developer, covered lessee or lessor, or covered employer, any of the partners if the covered developer, covered lessee or lessor, or covered employer is a partnership, any of the five largest shareholders of the covered developer, covered lessee or lessor, or covered employer, any officer of the covered developer, covered lessee or lessor, or covered employer.

§ 7. Subdivision 1 of section 237 of the labor law, as amended by chapter 698 of the laws of 1988, is amended and a new subdivision 5 is added to read as follows:

1. Subcontractors engaged for service work by a contractor or its subcontractor and covered employers shall, upon receipt from the covered developer, or covered lessee or lessor, contractor or its subcontractor of the schedule of wages and supplements specified in the contract or the prevailing wage schedule pursuant to this article, provide to the covered developer, covered lessee or lessor, contractor or its subcontractor a verified statement attesting that the covered employer or subcontractor has received and reviewed such schedule of wages and supplements, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed in the manner described in subdivision three of this section for subcontractors of a contractor or its subcontractor, and in the manner described in subdivision five of this section for covered employers. It shall be a violation of this article for any covered developer, covered lessee or lessor, contractor or its subcontractor to fail to provide for its subcontractor a copy of the schedule of wages and supplements specified in the contract or the prevailing wage schedule pursuant to this article.

5. Prior to receiving financial assistance or entering into a covered lease, or an extension, renewal, amendment, or modification of a covered lease, and annually thereafter, every covered developer, covered lessee or lessor, or covered employer shall provide to the public agency leasing or providing financial assistance and to the fiscal officer an annual verified statement that all building service employees employed at a covered development project or at real property subject to a covered lease by the covered developer, covered lessee or lessor, or by a covered employer to perform building service work will be and/or have been paid the prevailing wage. Such verified statement shall include a record of the days and hours worked and the wages paid to each building service employee employed at the covered development project, or at real property subject to a covered lease. Where the wages paid include sums which are not paid directly to the workmen weekly and which are expended for supplements, the statement shall include a record of such hourly payments on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom the payment has been made. Such statement shall be verified by the oath of the chief executive or chief financial officer of the covered developer, or covered lessee or lessor, or the designee of any such person that he or she has read such statements subscribed by him or her and

knows the contents thereof, and that the same is true of his or her own knowledge, except with respect to wages and supplements owing by contract which may be certified upon information and belief. A violation of any provision of the statement, or failure to provide such statement, shall constitute a violation of this section. The fiscal officer or a public agency leasing or providing financial assistance may inspect the records maintained pursuant to section two hundred thirty-three of this article to verify these statements.

§ 8. Subdivision 1 of section 238 of the labor law, as added by chapter 777 of the laws of 1971, is amended and a new subdivision 3 is added to read as follows:

1. Any contractor, covered developer, covered lessee or lessor, covered employer, or subcontractor who shall upon his oath verify any statement required to be filed under this article which is known by him to be false shall be guilty of perjury and punishable as provided by the penal law.

3. In the event of a failure by a covered developer, covered lessee or lessor, or covered employer to comply with the provisions of this article, the covered developer, covered lessee or lessor, or covered employer shall be provided with a written notice of failure to comply by the fiscal officer allowing ten days to cure the failure to comply. If the covered developer, covered lessee or lessor, or covered employer fails to timely cure in addition to any other remedies available at law or in equity, the fiscal officer shall be permitted to seek the following remedies:

(a) Suspend the payments of any financial assistance to the covered developer until the date of cure.

(b) Failure to provide a required record or statement or to allow work place access may result in liquidated damages to an amount equal to the greater of two percent of the annual value of the financial assistance or covered lease, or two-tenths of a percent of the total value of the financial assistance or covered lease.

(c) A material breach of this article that continues for a period of six months or more shall allow the public agency to terminate the financial assistance or covered lease.

(d) Late filing of any report required under this article: a payment of one thousand dollars per day for each day the report is late, for up to fourteen days. After fourteen days, the remedy in paragraph (b) of this subdivision shall apply.

(e) Where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

§ 9. The opening paragraph and subdivision 4 of section 239 of the labor law, as added by chapter 777 of the laws of 1971, are amended to read as follows:

[~~Every~~] Covered developers and covered lessees or lessors shall comply with the following provisions, and every contract for service work shall contain provisions by which the contractor agrees:

(4) that the contract, covered lease, or grant of financial assistance may be cancelled or terminated by the public agency, and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.

§ 10. Section 239-a of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

§ 239-a. Enforcement of article. If the fiscal officer, as defined herein, finds that any **covered developer, covered lessee or lessor, or** contractor on service work fails to comply with or evades the provisions of this article, he shall present evidence of such noncompliance or evasion to the public agency having charge of such work**, or having entered into a covered lease or provided financial assistance for the covered development project,** for enforcement. Where such evidence indicates a noncompliance or evasion on the part of a subcontractor **or covered employer**, the contractor **or covered developer, or covered lessee or lessor,** shall be responsible for such noncompliance or evasion. It shall be the duty of the public agency in charge of such service work**, or who has entered into a covered lease or provided financial assistance for the covered development project,** to enforce the provisions of this article.

§ 11. This act shall take effect immediately.