

STATE OF NEW YORK

1338--B

2021-2022 Regular Sessions

IN ASSEMBLY

January 8, 2021

Introduced by M. of A. MAGNARELLI, STECK, COOK, BRONSON, BARNWELL, BURDICK, SEPTIMO, WALLACE, GRIFFIN, JEAN-PIERRE, DARLING, SOLAGES -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, GALEF, SIMON, WOERNER -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to establishing a registration system for contractors and subcontractors engaged in public work and covered projects in order to better enforce existing labor laws and regulations in the public works industry

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

1 Section 1. The labor law is amended by adding a new section 220-i to
2 read as follows:

3 § 220-i. Registration system for contractors and subcontractors. 1.
4 As used in this section:

5 a. "Contractor" means any contractor or subcontractor entering into a
6 contract to perform construction, demolition, reconstruction, exca-
7 vation, rehabilitation, repair, installation, renovation, alteration, or
8 custom fabrication, which is subject to the provisions of this article.

9 b. "Bureau" means the department's bureau of public works.

10 c. "Covered project" means any project subject to the provisions of
11 this article, including but not limited to, public work projects and
12 those subject to the provisions of sections two hundred twenty-four-a
13 and two hundred twenty-four-d of this article.

14 2. a. Prior to submitting a bid on a contract for public work or
15 commencing work on a covered project under private contract, a contrac-

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

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1 tor shall register in writing with the bureau on a form provided by the
2 commissioner. The form shall require the following information:

3 i. The name, principal business address and telephone number of the
4 contractor.

5 ii. Whether the contractor is a person, partnership, association,
6 joint stock company, trust, corporation, or other form of business enti-
7 ty.

8 iii. The name and address of each person with a financial interest in
9 the contractor and the percentage interest, except that if the contrac-
10 tor is a publicly-traded corporation, the contractor shall supply the
11 names and addresses of the corporation's officers.

12 iv. The contractor's tax identification number, unemployment insurance
13 registration number, and workers' compensation board employee number.

14 v. Whether the contractor has any outstanding wage assessments against
15 it, pursuant to this article.

16 vi. Whether the contractor has been debarred under New York or federal
17 law within the last ten years.

18 vii. Whether the contractor has been debarred pursuant to the laws of
19 any other state within the last ten years.

20 viii. Whether the contractor has been finally determined by the appro-
21 priate authority to have violated any labor laws or employment tax laws
22 including, but not limited to, the requirement to have workers' compen-
23 sation coverage, payment of workers' compensation premiums, deduction
24 and payment of income taxes, payment of unemployment insurance contrib-
25 utions or payment of prevailing wage.

26 ix. Whether the contractor has been finally determined by the appro-
27 priate authority to have violated any laws establishing workplace safety
28 standards including the federal Occupational Safety and Health Act.

29 x. Whether or not the contractor is associated, or a signatory to, an
30 apprenticeship program under article twenty-three of this chapter. If
31 so, the apprenticeship program shall be provided by the contractor.

32 xi. Whether or not the contractor is a minority or women-owned busi-
33 ness enterprise pursuant to the provisions of article fifteen-A of the
34 executive law.

35 b. At the time of registration, and upon request, the contractor shall
36 submit to the commissioner documentation demonstrating that the contrac-
37 tor has workers' compensation insurance coverage for all workers as
38 required by law, including any and all declarations and information
39 pages related to such policy which shall be electronically accessible
40 and searchable to the public, provided however, that in no event shall a
41 worker's name or other personal identifying information be included in
42 such database. This information shall be made readily available to the
43 public by the bureau within forty-eight hours of the initial public
44 request.

45 3. The contractor shall pay a non-refundable registration fee of two
46 hundred dollars to the commissioner which shall be paid to the general
47 fund. The commissioner, through regulations, shall reduce the registra-
48 tion fee associated with minority or women-owned business enterprises in
49 order to promote the use of such businesses on covered projects.

50 4. Unless, following notice and a hearing, the bureau determines a
51 contractor unfit to be registered, the commissioner shall issue a
52 certificate of registration to the contractor upon receipt of the fee,
53 form and documentation required by this section. A registration certif-
54 icate shall be valid for two calendar years from the date of registra-
55 tion. Registrations may be renewed not less than thirty days before the
56 expiration date of the immediately preceding registration. The commis-

1 sioner shall promulgate regulations to determine under what circum-
2 stances a contractor would be unfit to be registered pursuant to this
3 section; provided that a contractor shall not be determined to be unfit
4 solely because a contractor was debarred within the last ten years,
5 unless such contractor is currently debarred or ineligible pursuant to
6 subdivision three of section two hundred twenty-b of this article or
7 section one hundred forty-one-b of the workers' compensation law. The
8 notice to a contractor initially determined by the commissioner to be
9 unfit based upon the registration application shall be in writing, shall
10 not be conclusory, and shall state the factual basis upon which the
11 determination is based. Any documents, reports, or information that form
12 a basis for such determination shall be provided to the contractor no
13 less than ten days before the hearing. For purposes of this subdivision,
14 the term "unfit" shall mean a contractor who the commissioner determines
15 to be unable to lawfully adhere to contractual obligations of this arti-
16 cle and responsibilities including prevailing wage requirements pursuant
17 to this article. Such determination shall be based on a clearly docu-
18 mented history, official record of past dealings, or a present demon-
19 strable inability to lawfully adhere to such obligations and responsi-
20 bilities.

21 5. No contractor shall bid on a contract for public work unless they
22 and all subcontractors listed in the bid, in addition to any subcontrac-
23 tors associated with wage and/or fringe benefit payments to employees on
24 the public work project, are registered pursuant to this section.
25 Further, each contractor must submit their certificate of registration
26 as well as all certificates of registration for any and all subcontrac-
27 tors for such contract at the time the bid is made. Applications for
28 registration shall not be accepted as a substitute for a certificate of
29 registration for the purposes of this section. For covered projects
30 performed under private contract, the owner or developer of such project
31 must ensure that any contractor which it hires, or subcontractor that is
32 hired, to perform work on such project is registered pursuant to this
33 section.

34 6. a. A contractor who knowingly bids on a contract for public work
35 without registering, or knowingly submits a bid with subcontractors that
36 are not registered pursuant to subdivision five of this section shall,
37 after notice and a hearing, be subject to a civil penalty of up to one
38 thousand dollars. For covered projects performed under private
39 contract, an owner or developer who knowingly commences work with a
40 contractor or subcontractor that is not registered pursuant to subdivi-
41 sion five of this section shall, after notice and hearing, be subject to
42 a civil penalty of up to one thousand dollars. A contractor who knowin-
43 gly commences work on a covered project without registering or knowingly
44 contracts with an unregistered subcontractor for work on a covered
45 project shall, after notice and hearing be subject to a civil penalty of
46 up to one thousand dollars. Any subcontractor who knowingly commences
47 work on any covered project without registering shall, after notice and
48 hearing, be subject to a civil penalty of up to one thousand dollars.

49 b. The commissioner may revoke or suspend a registration if a contrac-
50 tor or subcontractor has been finally determined to be in violation of
51 the prevailing wage requirements of this article.

52 c. Nothing in this section shall be construed to limit or supersede
53 the authority of any state or municipal entity to enforce existing labor
54 laws, safety standards, regulations, codes or any other existing laws
55 relative to public work.

1 d. A registration pursuant to this section is not necessary for a bid
2 or work on a contract for public work and penalties pursuant to this
3 section shall not apply when a state of emergency is declared pursuant
4 to section twenty-four of the executive law, when the governor declares
5 a disaster emergency pursuant to section twenty-eight of the executive
6 law, or when the President issues a major disaster or emergency declara-
7 tion and such work arises from or is in connection with the actual or
8 impending declared emergency or disaster or pursuant to an emergency
9 construction contract, or other contract entered into due to an urgent
10 and unexpected event where public safety or the conservation of public
11 resources is at risk, as authorized by law, including but not limited to
12 the public buildings law, the state finance law, the general municipal
13 law, or the public authorities law.

14 7. The department shall establish and maintain an online system to
15 make available all registrations and disclosures required by this
16 section.

17 8. The department shall prescribe regulations necessary to carry out
18 the provisions of this section within one hundred eighty days after its
19 effective date.

20 § 2. This act shall take effect immediately, provided however, subdi-
21 visions one through six of section 220-i of the labor law as added by
22 section one of this act shall take effect one year after such date.