STATE OF NEW YORK

1648--A

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- recommitted to the Committee on Cultural Affairs, Tourism, Parks and Recreation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the arts and cultural affairs law, in relation to requiring that an organization applying for grant funding shall provide to arts agencies a certification that it will enter into a labor peace agreement with at least one bona fide labor organization under certain circumstances; and to amend the labor law, in relation to prevailing wage requirement for not-for-profit theaters and payment of their employees on productions funded by the New York state council on the arts or arts agencies of localities

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

Section 1. Section 3.01 of the arts and cultural affairs law is amended to read as follows:

§ 3.01. Legislative findings and declaration of policy. It is hereby found that many of our citizens lack the opportunity to view, enjoy or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture, and the performing and fine arts generally. It is hereby further found that, with increasing leisure time, the practice and enjoyment of the arts are of increasing importance and that the general welfare of the people of the state will be promoted by giving further recognition to the arts as a vital aspect of our culture and heritage and as a valued means of expanding the scope of our educational programs.

It is hereby declared to be the policy of the state to join with private patrons and with institutions and professional organizations concerned with the arts to insure that the role of the arts in the life

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

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of our communities will continue to grow and will play an ever more significant part in the welfare and educational experience of our citizens and in maintaining the paramount position of this state in the nation and in the world as a cultural center.

The legislature further finds that the investment of funds by arts agencies as defined in article eight-B of the labor law can provide a vital economic engine to assist, nurture, develop, and promote regional economic development, the state tourism industry and the growth of jobs in the state. Indeed, attendees of arts programming generate economic activity in New York state far beyond the cost of admission, from food and drink, to parking, transportation, travel, and childcare revenues, among others.

The professional performers and related or supporting professionals employed on projects and productions that create the performing and fine arts, and are the basis of the arts economy in New York state and must not be left behind. Therefore, the state legislature finds that arts agencies have a substantial and compelling proprietary interest in any funds awarded in the fine and performing arts. The legislature hereby declares that the mandate of a living wage for projects awarded grants by arts agencies is central to ensuring the continued availability of the fine and performing arts in New York state, and the concomitant economic benefits therewith, and further that the state's proprietary interest with regard to such funds could be adversely affected by labor-management conflict.

It is further declared that all activities undertaken by the state in carrying out this policy shall be directed toward encouraging and assisting rather than in any ways limiting the freedom of artistic expression that is essential for the well-being of the arts.

§ 2. Paragraph (d) of subdivision 1 of section 3.19 of the arts and cultural affairs law, as added by chapter 16 of the laws of 2017, is amended to read as follows:

(d) **Any organization applying for grant funding from an arts agency as defined by this chapter shall provide to the arts agency a certification that it will enter into a labor peace agreement with at least one bona fide labor organization that represents employees of such organization including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theatre managers, engineers, musicians, singers, choreographers, dancers, staging staff, ballet school faculty, directors, fight directors, intimacy directors, dressers, wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry workers, dyers, costume technicians, milliners, craftspeople, child actors, guardians, box office treasurers, first assistants, and ticket sellers either where such bona fide labor organization is actively representing employees providing services covered by the organization seeking such grant funding or upon notice by a bona fide labor organization that is attempting to represent employees who will provide services to the organization seeking such grant funding. The maintenance of such a labor peace agreement shall be an ongoing material condition for receipt of grant funding under this article. For purposes of this section, "labor peace agreement" means an agreement between an entity and labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from**

engaging in picketing, work stoppages, boycotts, and any other economic interference with the entity.

(e) Any applicant which fails to demonstrate that grant funds are to be used toward programs in the state shall be deemed ineligible to receive grant funding under this article. Any organization, when applying for grant funding, shall provide in its grant application materials documentation demonstrating compliance with this provision.

§ 3. The labor law is amended by adding a new article 8-B to read as follows:

ARTICLE 8-B

PREVAILING WAGE REQUIREMENT FOR NOT-FOR-PROFIT THEATERS

Section 228. Definitions.

228-a. Prevailing wage requirement for not-for-profit theaters and payment of their employees on productions funded by the New York State council on the arts or arts agencies of localities; record keeping.

228-b. Powers of the fiscal officer.

228-c. Investigation and hearing.

228-d. Failure to protest underpayments.

228-e. Statements showing amounts due for wages.

228-f. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age, sex or disability.

228-g. Penalties.

228-h. Enforcement of article.

§ 228. Definitions. As used in this article:

1. "Arts agency" means any public agency of New York state or of a locality of New York state that provides grants to productions at not-for-profit theaters.

2. "Contract" means any agreement between a production and an arts agency to grant funds to such production.

3. "Contractor" or "subcontractor" means a production that is a recipient of a grant from an arts agency.

4. "Employee" means an employee of a not-for-profit theater that receives a grant award from an arts agency including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theatre managers, engineers, musicians, singers, choreographers, dancers, staging staff, ballet school faculty, directors, fight directors, intimacy directors, dressers, wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry workers, dyers, costume technicians, milliners, craftspeople, child actors, guardians, box office treasurers, first assistants, and ticket sellers employed on a production funded by an arts agency.

5. "Entity" means a partnership, association, joint venture, company, sole proprietorship, corporation or any other form of doing business.

6. "Fiscal officer" means the comptroller of the state of New York or other analogous officer of the governing body of an arts agency.

7. "Grant" means any capital and/or operational grant made to productions funded by an arts agency.

8. "Locality" means the state, or a town, city, village or other civil division or area of the state as determined by the fiscal officer. The fiscal officer may fix a different geographic area in determining the

locality for the prevailing basic hourly cash rate of pay and the locality for prevailing supplements.

9. "Not-for-profit theater" means a theater operating as a not-for-profit entity pursuant to New York state laws with a seating capacity of at least one hundred.

10. "Parent company" means an entity that directly controls the contractor or subcontractor.

11. "Prevailing practices in the locality" means the practice of providing supplements by virtue of collective bargaining agreements between bona fide labor organizations that represent employees of not-for-profit theaters including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theatre managers, engineers, musicians, singers, choreographers, dancers, staging staff, ballet school faculty, directors, fight directors, intimacy directors, dressers, wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry workers, dyers, costume technicians, milliners, craftspeople, child actors, guardians, box office treasurers, first assistants, and ticket sellers provided that said employers employ at least thirty per centum of such employees in the locality, as determined by the fiscal officer in accordance with the provisions herein. With respect to each supplement determined to be one of the prevailing practices in the locality, the amount of such supplement shall be determined in the same manner and at the same time as the prevailing rate of wage is determined pursuant to this section.

12. "Prevailing wage" means the rate of compensation paid by a production, by virtue of collective bargaining agreements between bona fide labor organizations that represent employees of not-for-profit theaters including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theatre managers, and employers of such employees performing work on a production funded by an arts agency where such labor organization represents at least thirty per centum of employees in the locality where such work is being performed. The prevailing rate of wage shall be annually determined in accordance herewith by the fiscal officer no later than thirty days prior to July first of each year, and the prevailing rate of wage for the period commencing July first of such year through June thirtieth, inclusive, of the following year shall be the rate of wage set forth in such collective bargaining agreements for the period commencing July first through June thirtieth, including those increases for such period which are directly ascertainable from such collective bargaining agreements by the fiscal officer in such officer's annual determination. In the event that it is determined after a contest, as provided in section two hundred twenty-eight-c of this article, that less than thirty percent of the employees in the locality where the work is being performed receive a collectively bargained rate of wage, then the average wage paid to such employees in the locality for the twelve-month period preceding the fiscal officer's annual determination shall be the prevailing rate of wage. Employees for whom a prevailing rate of wage is to be determined shall not be considered in determining such prevailing wage.

13. "Production" means a corporation, partnership, limited partnership, or other entity or individual that provides compensation to an employee.

14. "Substantially-owned affiliated entity" means the parent company of the contractor or subcontractor, any subsidiary of the contractor or subcontractor, or any entity in which the parent of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the contractor or subcontractor or over which the contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

15. "Subsidiary" means an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor or the contractor's parent company.

16. "Successor" means an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

17. "Supplements" means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not "wages" within the meaning of the law, including, but not limited to, health, welfare, non-occupational disability, retirement and vacation benefits, holiday pay, life insurance, and apprenticeship training.

18. "Wage" includes: (a) basic hourly cash rate of pay; and (b) 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 or subcontractor.

§ 228-a. Prevailing wage requirement for not-for-profit theaters and payment of their employees on productions funded by the New York state council on the arts or arts agencies of localities; record keeping. 1. In all cases where work is being performed pursuant to a collective bargaining agreement the contractor or subcontractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by the contractor or subcontractor as true, under penalty of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which the employee was employed, and the wages paid.

2. Where the wages paid include sums which are not paid directly to the employees 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 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.

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 is being performed.

4. All records required to be maintained shall be preserved for a period of three years after the completion of work.

§ 228-b. Powers of the fiscal officer. 1. In addition to the powers enumerated elsewhere in this article, the fiscal officer shall have the power to:

(a) cause an investigation to be made to determine the wages prevailing in any locality for work performed by employees covered by this article and in making such investigation, the fiscal officer may utilize wage and fringe benefit data from various sources including, but not limited to, data and determinations of federal, state or other governmental agencies;

(b) institute and conduct inspections at the site of the work or elsewhere in aid of the effective administration and enforcement of the provisions of this article;

(c) examine the books, documents and records pertaining to the wages paid to, and the hours of work performed by, such employees;

(d) hold the hearings provided for in this article, and in connection therewith, to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules;

(e) make a classification by craft, trade or other generally recognized occupational category of the employees involved and to determine whether such work has been performed by the employees in such classification;

(f) require a contractor or subcontractor to file with the fiscal officer a record of the wages actually paid by such contractor or subcontractor to the employees and of their hours of work;

(g) delegate any of the foregoing powers to the fiscal officer's deputy or other authorized representative;

(h) provide such reasonable limitations from any or all provisions of this article as the fiscal officer may find necessary and proper in the public interest or to avoid serious impairment of the conduct of government business; and

(i) propose, and after public hearing held before the fiscal officer or the fiscal officer's designee, promulgate such rules as the fiscal officer shall consider necessary for the proper execution of the duties, responsibilities and powers conferred upon the fiscal officer by the provisions of this article. Such rules may allow such reasonable variations, tolerances and exemptions to and from any or all provisions of this article as the fiscal officer may find necessary and proper in the public interest, or to avoid serious impairment of the conduct of government business.

2. For all work for which the commissioner is the fiscal officer, the commissioner shall additionally have all the powers granted to the commissioner elsewhere in this chapter.

§ 228-c. Investigation and hearing. 1. Whenever the fiscal officer has reason to believe that an employee has been paid less than the wages stipulated in the contract, or if such contract has no wage schedule attached thereto and the fiscal officer has reason to believe that an employee has been paid less than the wages prevailing for the employee's craft, trade or occupation, the fiscal officer may, and upon receipt of

a written complaint from an employee employed thereon, conduct a special investigation to determine the facts relating thereto.

2. (a) At the start of such investigation the fiscal officer may notify the financial officer of the arts agency interested who shall, at the direction of the fiscal officer, forthwith withhold from any payment due to the contractor or subcontractor executing the contract sufficient money to safeguard the rights of the employees and to cover the civil penalty that may be assessed as provided herein, or, if there are insufficient moneys still due to be disbursed to the contractor or subcontractor to safeguard the rights of the employees and to cover the civil penalty that may be assessed as provided herein, the financial officer of another arts agency which has entered or subsequently enters into a contract with the contractor or subcontractor, shall withhold from any such payment to the contractor or subcontractor executing any work, sufficient moneys to safeguard the rights of the employees and to cover the civil penalty that may be assessed as provided herein.

(b) If there are still insufficient moneys still due to be disbursed to the contractor or subcontractor to safeguard the rights of the employees and to cover the civil penalty that may be assessed as provided herein, the financial officer shall immediately so notify the fiscal officer, who may issue a notice of withholding to any of the following: any substantially-owned affiliated entity or successor or subsidiary of the contractor or subcontractor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the partners, if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer.

(c) The notice of withholding shall provide that the fiscal officer intends to instruct the financial officer, not less than ten days following of the notice by mail, to withhold sufficient moneys to safeguard the rights of the employees and to cover the civil penalty that may be assessed as provided herein, from any payment due the notified party under any contract pending final determination. The notice of withholding shall provide that within thirty days following the date of the notice of withholding the notified party may contest the withholding on the basis that the notified party is not a partner or one of the five largest shareholders of the subcontractor or contractor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a substantially-owned affiliated entity or successor. If the notified party fails to contest the notice of withholding, or if the fiscal officer, after reviewing the information provided by the notified party in such contest, determines that the notified party is a partner or one of the five largest shareholders, a substantially-owned affiliated entity, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a successor, the fiscal officer may instruct the financial officer to immediately withhold sufficient moneys to safeguard the rights of the employees and to cover the civil penalty that may be assessed as provided herein from funds still to be disbursed to the notified party under any contract pending the final determination.

(d) The financial officer shall immediately implement the notice of withholding and confirm in writing to the fiscal officer the amount of money withheld.

(e) If the notified party contests the withholding after a withholding has been effected, and if the fiscal officer determines that the notified party is not a partner or one of the five largest shareholders, a

substantially-owned affiliated entity or successor, or an officer of the contractor or subcontractor who knowingly participated in the violation of this article, the fiscal officer shall immediately notify the financial officer to release all funds being withheld from the notified party.

(f) The money shall be held in trust pending completion of the investigation.

3. If, despite the requirements of law, the contract for the work has been awarded without the annexation thereto of the schedule of wages provided for in this article, the fiscal officer shall determine in the proceeding before such fiscal officer the wages prevailing at the time the work was performed for the crafts, trades or occupations of the employees involved.

4. In an investigation conducted under the provisions of this section, the inquiry of the fiscal officer shall not extend to work performed more than two years prior to:

(a) the filing of the complaint; or

(b) the commencement of the investigation upon the fiscal officer's own volition, whichever is earlier in point of time.

5. (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 the fiscal officer's 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 arts agency involved.

(b) In addition to directing payment of wages found to be due, such order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to 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 or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, of such underpayment of wages or supplements, and any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and the failure to comply with record keeping or other non-wage requirements. 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) If the order directs the payment to specified employees of wages found to be due and unpaid, including 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, the financial officer of such arts agency shall, upon the service to the financial officer of such order, pay to such employees from the trust money withheld the amounts specified in such order and shall pay the civil penalty as provided herein, provided no review proceeding pursuant to the provisions of article

seventy-eight of the civil practice law and rules is commenced within thirty days of the date said order was filed in the office of the fiscal officer. If such review is timely commenced, the money withheld shall remain in trust pending final disposition of the review proceeding. 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 or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, and the failure to comply with record keeping or other non-wage requirements.

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 person or corporation found to have violated this article, any substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to the employee by the aforesaid financial officer pursuant to said order and the amount found to be due the employee as determined by said order. Such action must be commenced within three years from the date of the filing of said order, or if the 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. 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 may 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.

7. When, pursuant to the provisions of this section, two final orders have been entered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article within any consecutive six-year period determining that such contractor or subcontractor and/or its successor, substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor 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 public contracts are rendered simultaneously, such contractor, subcontractor, successor, and if the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor 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 submit a grant application or be awarded a grant by an arts agency covered by this article 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 contractor, subcontractor, successor, substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a grant application or be awarded a grant, contract or subcontract with the state, or any municipal corporation or public body 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 public contracts or grants.

8. (a) When a final determination has been made in favor of a complainant and the contractor or subcontractor found violating 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 contractor or subcontractor;

(ii) any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor 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 a top five shareholder or successor or substantially-owned affiliated entity. The notified party may contest the filing on the basis that it is not a partner or a top five shareholder, an officer of the contractor or subcontractor 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 the filing of the order.

(b) 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.

9. When a final determination has been made against a subcontractor in favor of a complainant and the contractor 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 contractor 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 subcontractor. 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 contractor who may proceed as a judgment creditor against the subcontractor for the recovery of all monies paid by the contractor under such order.

§ 228-d. Failure to protest underpayments. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, an employee shall not be barred from the right to recover the difference between the amount actually paid to the employee and the amount which should have been paid to the employee pursuant to an order entered under the provisions of this article because of the prior receipt by the employee without protest of wages paid or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages received by the employee are received under protest, or on account of the employee's failure to indicate the employee's protest against the amount, or that the amount so paid does not constitute payment in full of wages due the employee for the period covered by such payment.

§ 228-e. Statements showing amounts due for wages. 1. Subcontractors engaged for work by a contractor or its subcontractor shall, upon receipt from the contractor or its subcontractor of the schedule of wages and supplements specified in the contract, provide to the contractor or its subcontractor a verified statement attesting that the 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. It shall be a violation of this article for any contractor or its subcontractor to fail to provide for its subcontractor a copy of the schedule of wages and supplements specified in the contract.

2. Before grant funds are released by an arts agency it shall be the duty of the comptroller or the financial officer of such arts agency or other officer or person charged with the custody and disbursement of the grant funds pursuant to the contract and under which payment is made, to require the contractor to file a statement in writing in form satisfactory to such officer certifying to the amounts then due and owing from such contractor filing such statement to or on behalf of any and all employees for daily or weekly wages on account of labor performed upon the work under the contract, setting forth therein the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively, which statement so to be filed shall be verified by the oath of the contractor that the contractor has read such statement subscribed by the contractor and knows the contents thereof, and that the same is true of the contractor's own knowledge.

3. Before payment is made by or on behalf of an arts agency of any sums due on account of a contract and representing the final portion of twenty percent of the total amount payable under the contract, it shall be the duty of the comptroller or the financial officer of such arts agency or other officer or person charged with the custody and disbursement of the grant funds applicable to the contract under and pursuant to which payment is made to require the contractor to file every verified statement required to be obtained by the contractor from its subcontractors pursuant to subdivision one of this section and to file a statement in writing in form satisfactory to such officer setting forth the amounts known by the contractor to be then due and owing from a subcontractor, or from a subcontractor of such subcontractor, for such wages and supplements, or certifying that the contractor has no knowledge of such amounts owing to or on behalf of any employees of its subcontractors, and that in the event it is determined by the commissioner that the wages or supplements or both of any employees of such subcontractors have not been paid or provided pursuant to the appropriate schedule of wages and supplements, the contractor shall be responsible for payment of such wages or supplements pursuant to the provisions of section two hundred twenty-eight-a of this article. Before final payment is made of any sums due on account of such contract, the contractor shall be required to file a supplemental statement setting forth any additional amounts known by the contractor to be then due and owing by each subcontractor for such wages or supplements, or that the contractor has no knowledge of such amounts owing to or on behalf of any employee of its subcontractors. Such statements so to be filed shall be verified by the oath of the contractor that the contractor has read such statements subscribed by the contractor and knows the contents thereof, and that the same is true of the contractor's own knowledge, except with respect to wages and supplements owing by subcontractors which may be certified upon information and belief.

4. If any interested person shall have previously filed a protest in writing objecting to the release of grant funds to any contractor or subcontractor to the extent of the amount or amounts due or to become due to such person for daily or weekly wages for labor performed on the work which was funded by such grant, or if for any other reason it may be deemed advisable, the comptroller or the financial officer of the arts agency or other officer or person charged with the custody and disbursement of the grant funds applicable to the contract for such work, may deduct from the whole amount of any payment on account thereof the sum or sums admitted by any contractor or subcontractor in such statement or statements as filed to be due and owing by the contractor or subcontractor on account of labor performed on such work before disbursing such grant funds, and may withhold the amount so deducted for the benefit of the employees whose wages are unpaid as shown by the verified statements filed by any contractor or subcontractor, and may pay directly to any person the amount or amounts shown by the statements filed as hereinbefore required to be due to such person or such person's duly authorized collective bargaining labor organization receiving such payment to the extent of the amount thereof.

§ 228-f. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age, sex or disability. Every contract for work shall contain provisions by which the contractor agrees:

1. that in the hiring of employees for the performance of work under the contract or any subcontract thereunder within the territorial limits

of this state, no contractor or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, age, sex or disability, discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

2. that no contractor or subcontractor, nor any person acting on such entity's behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, national origin, age, sex or disability;

3. that there may be deducted from the amount payable to the contractor by the arts agency under the contract a penalty of fifty dollars for each person for each day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and

4. that the contract may be cancelled or terminated by the arts agency, and all moneys otherwise to be disbursed pursuant to such contract may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.

§ 228-g. Penalties. 1. Any contractor or subcontractor who shall upon such entity's oath verify any statement required to be filed under this article which is known by such entity to be false shall be guilty of perjury and punishable as provided by the penal law.

2. When a contract contains as part thereof a schedule of wages as provided for in this article, any contractor who, after entering into such contract, and any subcontractor of such contractor fails to pay to any employee the wages stipulated in such wage schedule is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such contractor shall be entitled to receive any sum, nor shall any officer, agent or employee of the contracting arts agency pay any such sum or authorize its payment from the funds under such entity's charge or control to such contractor for work done upon the contract on which the contractor has been convicted of a second offense. If the contractor or subcontractor is a corporation, any officer of such corporation who knowingly permits the corporation to fail to make such payment shall also be guilty of a misdemeanor and the criminal and civil penalties herein shall attach to such officer upon conviction.

§ 228-h. Enforcement of article. If the fiscal officer, as defined herein, finds that any contractor fails to comply with or evades the provisions of this article, the fiscal officer shall present evidence of such noncompliance or evasion to the arts agency having charge of such contract for enforcement. Where such evidence indicates noncompliance or evasion on the part of a subcontractor, the contractor shall be responsible for such noncompliance or evasion. It shall be the duty of the arts agency in charge of such contract to enforce the provisions of this article.

§ 4. Severability. If any clause, sentence, paragraph, subdivision, section or 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 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.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to any grant award made subsequent to such effective date.