

STATE OF NEW YORK

838

2023-2024 Regular Sessions

IN SENATE

January 6, 2023

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

AN ACT to amend the labor law, in relation to clarifying provisions related to a registration system for contractors and subcontractors engaged in public work and covered projects; and to amend a chapter of the laws of 2022 amending the labor law relating 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, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, in relation to the effectiveness thereof

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

Section 1. Subdivisions 1, 2, 3, 4, 5 and 6 of section 220-i of the labor law, as added by a chapter of the laws of 2022 amending the labor law relating 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, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, are amended to read as follows:

1. As used in this section:

a. "Contractor" means any [~~contractor or subcontractor~~] entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

b. [~~"Bureau" means the department's bureau of public works~~] "Subcontractor" means any entity subcontracting with a contractor to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

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

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

5 2. a. [~~Prior to submitting a bid on a contract for public work or~~
6 ~~commencing work on a covered project under private contract~~] In accord-
7 ance with subdivision six of this section, a contractor or subcontractor
8 shall register in writing with the [~~bureau~~] commissioner on a form
9 provided by the commissioner. The form shall require the following
10 information:

11 i. The name, principal business address and telephone number of the
12 contractor or subcontractor.

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

16 iii. The name and address of each person with [~~a financial~~] an owner-
17 ship interest in the contractor or subcontractor and the percentage
18 interest, except that if the contractor or subcontractor is a publicly-
19 traded corporation, the contractor or subcontractor shall supply the
20 names and addresses of the corporation's officers.

21 iv. The contractor's or subcontractor's tax identification number,
22 unemployment insurance registration number, and workers' compensation
23 board [~~employee~~] employer number.

24 v. Whether the contractor or subcontractor has any outstanding wage
25 assessments against it, pursuant to this article.

26 vi. Whether the contractor or subcontractor has been debarred under
27 New York or federal law within the last [~~ten~~] eight years.

28 vii. Whether the contractor or subcontractor has been debarred pursu-
29 ant to the laws of any other state within the last [~~ten~~] eight years.

30 viii. Whether the contractor or subcontractor has been finally deter-
31 mined by the appropriate authority to have violated any labor laws or
32 employment tax laws including, but not limited to, the requirement to
33 have workers' compensation coverage, payment of workers' compensation
34 premiums, deduction and payment of income taxes, payment of unemployment
35 insurance contributions or payment of prevailing wage.

36 ix. Whether the contractor or subcontractor has been finally deter-
37 mined by the appropriate authority to have violated any laws establish-
38 ing workplace safety standards including the federal Occupational Safety
39 and Health Act.

40 x. Whether or not the contractor or subcontractor is associated, or a
41 signatory to, an apprenticeship program under article twenty-three of
42 this chapter. If so, the apprenticeship program shall be provided by the
43 contractor or subcontractor.

44 xi. Whether or not the contractor or subcontractor is a minority or
45 women-owned business enterprise pursuant to the provisions of article
46 fifteen-A of the executive law.

47 b. At the time of registration, and upon request, the contractor or
48 subcontractor shall submit to the commissioner documentation demonstrat-
49 ing that the contractor or subcontractor has workers' compensation
50 insurance coverage for all workers as required by law, including any and
51 all declarations and information pages related to such policy which
52 shall be electronically accessible and searchable to the public,
53 provided however, that in no event shall a worker's name or other
54 personal identifying information be included in such database. This
55 information shall be made readily available to the public by the

1 [~~bureau~~] commissioner within forty-eight hours of the initial public
2 request.

3 3. The contractor or subcontractor shall pay a non-refundable regis-
4 tration fee of two hundred dollars to the commissioner which shall be
5 paid to the general fund. The commissioner, through regulations, shall
6 reduce the registration fee associated with minority or women-owned
7 business enterprises in order to promote the use of such businesses on
8 covered projects.

9 4. Unless~~[, following notice and a hearing, the bureau]~~ the commis-
10 sioner determines a contractor or subcontractor unfit to be registered,
11 the commissioner shall issue a certificate of registration to the
12 contractor or subcontractor upon receipt of the fee, form and documenta-
13 tion required by this section. A registration certificate shall be valid
14 for two calendar years from the date of registration. Registrations may
15 be renewed not less than [~~thirty~~] ninety days before the expiration date
16 of the immediately preceding registration. The commissioner shall
17 promulgate regulations to determine under what circumstances a contrac-
18 tor or subcontractor would be unfit to be registered pursuant to this
19 section; provided that a contractor or subcontractor shall not be deter-
20 mined to be unfit solely because a contractor or subcontractor was
21 debarred within the last [~~ten~~] eight years, unless such contractor or
22 subcontractor is currently debarred or ineligible pursuant to subdivi-
23 sion three of section two hundred twenty-b of this article or section
24 one hundred forty-one-b of the workers' compensation law or such
25 contractor or subcontractor is subject to a final administrative or
26 court order for violation of state or federal prevailing wage law which
27 has not been fully satisfied, provided further that a contractor that
28 has made payment for unpaid wages on behalf of a subcontractor shall not
29 be determined unfit solely as a result of actions of a subcontractor.
30 ~~[The notice to a contractor initially determined by the commissioner to~~
31 ~~be unfit based upon the registration application shall be in writing,~~
32 ~~shall not be conclusory, and shall state the factual basis upon which~~
33 ~~the determination is based]~~ The commissioner shall, before making a
34 determination of unfitness, notify the contractor or subcontractor in
35 writing of the reasons for such proposed determination and afford the
36 contractor or subcontractor an opportunity to cure or be heard prior to
37 the determination. Such notice shall notify the contractor or subcon-
38 tractor that a request for a hearing must be made within thirty days
39 after issuance of such notification. If a hearing is requested, such
40 hearing shall be held at such time and place as the commissioner shall
41 prescribe. If the contractor or subcontractor fails to make a written
42 request for a hearing within thirty days after issuance of such notifi-
43 cation, then the notification of determination shall become the final
44 determination of the commissioner. Any documents, reports, or informa-
45 tion that form a basis for such determination shall be provided to the
46 contractor or subcontractor no less than ten days before the hearing.
47 For purposes of this subdivision, the term "unfit" shall mean a contrac-
48 tor or subcontractor who the commissioner determines to be unable to
49 lawfully adhere to contractual obligations of this article and responsi-
50 bilities including prevailing wage requirements pursuant to this arti-
51 cle. Such determination shall be based on a clearly documented history,
52 official record of past dealings, or a present demonstrable inability to
53 lawfully adhere to such obligations and responsibilities.

54 5. If the registration of a contractor or subcontractor lapses while
55 performing contracted work on a covered project, that contractor or
56 subcontractor shall not be prohibited from completing its contracted

1 work on such covered project. For a contractor or subcontractor who has
2 been determined unfit while performing contracted work on a covered
3 project at the time of such determination, then the continuation of its
4 contracted work shall only continue if a monitor is appointed to oversee
5 the work completed at the sole expense of such contractor or subcontractor.
6 Nothing herein shall prevent a contractor or subcontractor from
7 fulfilling contractual obligations solely based on receiving a notice of
8 proposed determination of unfitness. Such monitor must be approved by
9 the commissioner.

10 6. No contractor shall bid on a contract for public work unless [~~they~~
11 ~~and all subcontractors listed in the bid, in addition to any subcontractors~~
12 ~~associated with wage and/or fringe benefit payments to employees on~~
13 ~~the public work project, are]~~ such contractor is registered pursuant to
14 this section. In the case of a covered project subject to section two
15 hundred twenty-four-a or two hundred twenty-four-d of this article, or
16 other projects that are privately owned and subject to provisions of
17 this article, contractors must register prior to commencing any work on
18 a covered project. Subcontractors must be registered prior to commencing
19 any work on a covered project. Further, each contractor must submit
20 their certificate of registration [~~as well as all certificates of registration~~
21 ~~for any and all subcontractors for such contract]~~ at the time
22 the bid is made. Applications for registration shall not be accepted as
23 a substitute for a certificate of registration for the purposes of this
24 section. [~~For covered projects performed under private contract, the~~
25 ~~owner or developer of such project must ensure that any contractor which~~
26 ~~it hires, or subcontractor that is hired, to perform work on such~~
27 ~~project is registered pursuant to this section.~~

28 6.] 7. For covered projects as defined in section two hundred twenty-
29 four-a or two hundred twenty-four-d of this article or other projects
30 that are privately owned and subject to provisions of this article, the
31 owner or developer of such covered project must ensure that any contrac-
32 tor that is hired, or subcontractor that is hired, to perform work on
33 such project is registered pursuant to this section prior to that
34 contractor or subcontractor commencing work on the covered project for
35 which it was contracted.

36 8. a. A contractor who bids on a contract for public work knowing that
37 it is not registered, or [~~submits a bid with~~] allows a subcontractor to
38 commence work on a covered project that it knows or should have known is
39 not registered pursuant to subdivision [~~five~~] six of this section shall,
40 after notice and a hearing, be subject to a civil penalty of up to one
41 thousand dollars. For covered projects performed under private
42 contract, as defined in section two hundred twenty-four-a or two hundred
43 twenty-four-d of this article, or for other projects that are privately
44 owned and subject to the provisions of this article, an owner or devel-
45 oper who commences work with a contractor or subcontractor that it knows
46 or should have known is not registered pursuant to subdivision [~~five~~]
47 six of this section shall, after notice and hearing, be subject to a
48 civil penalty of up to one thousand dollars. A contractor or subcontrac-
49 tor who commences work on a covered project knowing that it is not
50 registered or contracts with a subcontractor that it knows or should
51 have known is not registered for work on a covered project shall, after
52 notice and hearing be subject to a civil penalty of up to one thousand
53 dollars. [~~Any subcontractor who commences work on any covered project~~
54 ~~knowing that it is not registered shall, after notice and hearing, be~~
55 ~~subject to a civil penalty of up to one thousand dollars.~~]

b. The commissioner may revoke or suspend a registration if a contractor or subcontractor has been finally determined to be in violation of the prevailing wage requirements of this article, provided however that such contractor or subcontractor shall be afforded a hearing prior to any revocation or suspension.

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

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

§ 2. Subdivisions 7 and 8 of section 220-i of the labor law, as added by a chapter of the laws of 2022 amending the labor law relating 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, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, are amended to read as follows:

~~[7.]~~ 9. The ~~[department]~~ commissioner shall establish and maintain an online system to make available all registrations and disclosures required by this section, except for any personally identifiable information, including home address and percentages of ownership interest in privately held entities.

~~[8.]~~ 10. The ~~[department]~~ commissioner shall prescribe regulations necessary to carry out the provisions of this section ~~[within one hundred eighty days after its effective date].~~

§ 3. Section 2 of a chapter of the laws of 2022 amending the labor law relating 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, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, is amended to read as follows:

§ 2. (a) This act shall take effect immediately, provided however, (b) subdivisions one through six of section 220-i of the labor law as added by section one of this act shall take effect ~~[one year]~~ two years after such date.

§ 4. This act shall take effect immediately; provided however that the provisions of section two of this act shall take effect on the same date and in the same manner as subdivision (a) of section 2 of a chapter of the laws of 2022 amending the labor law relating 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, as proposed in legislative bills numbers S. 5994-C and A. 1338-C, takes effect; provided further that the provisions of section one of this act shall take effect on the

1 same date and in the same manner as subdivision (b) of section 2 of such
2 chapter of the laws of 2022, takes effect.