# STATE OF NEW YORK

373--B

2023-2024 Regular Sessions

# IN ASSEMBLY

January 6, 2023

Introduced by M. of A. BRONSON, TAYLOR, DARLING, ROZIC, CRUZ, GLICK, L. ROSENTHAL, SIMONE, LAVINE, BORES, GONZALEZ-ROJAS, SEAWRIGHT, BENEDETTO, REYES, WEPRIN, BRABENEC, SILLITTI, RAGA, SLATER, BRAUNSTEIN, DINOWITZ, DURSO, ZEBROWSKI, ARDILA, STECK, RA, BURGOS, EPSTEIN, RAJKUMAR, GIBBS, TAPIA, HYNDMAN, BERGER, LEE, BURDICK, JACOBSON, K. BROWN, BENDETT, REILLY, McDONOUGH, PHEFFER AMATO, MIKULIN -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the labor law, in relation to inclusion of certain off-site custom fabrication as public work for the purposes of payment of prevailing wage; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Legislative findings and intent. The legislature finds and declares that the prevailing wage law was established to provide fair and equitable working conditions, wages and supplementary benefits for persons employed on public works construction projects.

The legislature further finds and declares that there are growing number of instances where custom fabricated materials are fabricated off the public work job site either to meet the unique specifications of the project subject to a public work contract or for the contractor's convenience or to evade the wage requirements imposed by the prevailing wage law.

The legislature further finds and declares that in many instances the prevailing wage is not paid to persons involved in off-site fabrication

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

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of materials which are used specifically for public works projects to the detriment of the workers at the site and the local economy where the public work is situated.

The legislature further finds and declares that, in effect, various custom fabricated materials on local public works construction projects are being entirely outsourced to workers at a location or locations away from the project site or in foreign jurisdictions, thereby intentionally evading the payment of the prevailing wage and benefit package by eliminating the employment of workers at the site of the project to the detriment of those workers and the local economy.

It is the intent of the legislature that construction and fabrication done off the public work site for specific use only in public work projects be compensated at the prevailing wage rate.

§ 2. Subdivision 3 of section 220 of the labor law is amended by adding a new paragraph (f) to read as follows:

**(f) (i) For the purposes of this subdivision contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers. For the purposes of this subdivision, a legal day's work for which the prevailing rate of wages for the New York county in which the public works project is situated shall be paid to laborers, workers and mechanics shall include custom fabrication regardless of whether the custom fabrication occurs on-site, off-site or in another jurisdiction outside the state. It shall be a condition of the contract concerning all such custom fabrication work that the contractor or employer awarded the public work contract, except where the project includes federal funding that triggers federal rules for wage requirements, and any subcontractor thereto shall covenant to pay the on-site prevailing wage required for workers at the site of the public work project to those workers performing the custom fabrication where a contract for custom fabrication exceeds two hundred fifty thousand dollars or for contracts where the cumulative annual total of contracts performed by the custom fabricator has exceeded five hundred thousand dollars. In addition, custom fabricators who choose to perform a public works contract exceeding two hundred fifty thousand dollars or who exceed five hundred thousand dollars in public works contracts in total in a single year shall be required to pay the on-site prevailing wage to those workers performing custom fabrication for subsequent public works contracts, regardless of the amount, thereafter for at least one year and shall register with the department under section two hundred twenty-i of this article and remain registered for at least one year in order to qualify to perform future custom fabrication with regard to public works projects. Each contractor or subcontractor who employs workers off-site for the custom fabrication work related to a public work project shall maintain certified payrolls for those workers and provide such payrolls, with original certifications, to the department at least once every thirty days. For the purposes of this subdivision the term "custom fabrication" shall include, but not be limited to, the fabrication of exterior or interior wall panel systems, the fabrication of woodwork, cases, cabinets or counters and the fabrication of electrical, plumbing, heating, cooling, ventilation or exhaust duct systems including the drafting of technical drawings and plans, and mechanical insulation solely and specifically designed and engineered for installation in the construction, repair or renovation of a building which is the subject of a contract to which the state, a department of the state, a board or officer in the state, a municipal corporation, a public benefit corporation or a commission appointed pursuant to law is a party.**

(ii) The department of jurisdiction, as defined in subdivision three-a of this section and including any entity to whom such department of jurisdiction delegates their authority, shall be required to report to the fiscal officer the intention to contract for custom, off-site fabrication of any materials on all contracts, regardless of the amount, which may include the employment of laborers, workers or mechanics in the application to the fiscal officer for the approval of such contract. The department of jurisdiction's report shall state the name and address of the off-site, custom fabricator, identify the custom materials that are being fabricated off-site and the quantity thereof, the estimated and actual cost of the off-site fabrication, including the transportation of the materials to the site of the work and the estimated number of workers employed to complete the custom fabrication at the off-site location. Upon receipt of the department of jurisdiction's report, the fiscal officer shall make available said report to the public through its website and, similarly, maintain and publish on its website all data specified herein for each custom fabricator.

(iii) The fiscal officer shall produce an annual report on the economic impact to the state businesses and residents due to off-site fabrication.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law and shall apply only to those contracts put out to bid on or after such effective date; provided, however, that subparagraph (i) of paragraph (f) of subdivision 3 of section 220 of the labor law, as added by section two of this act, shall expire and be deemed repealed upon the ruling of a court of competent jurisdiction that the requirements of such subparagraph are unenforceable on fabricators located outside the state; provided, further, that the commissioner of labor shall notify the legislative bill drafting commission upon the occurrence of such a court ruling in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.