

# STATE OF NEW YORK

8114

2023-2024 Regular Sessions

## IN ASSEMBLY

October 13, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, the public authorities law and the general municipal law, in relation to requiring labor peace agreements in contracts for certain retail or distribution projects involving public agencies

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 222-b to  
2 read as follows:

3 § 222-b. Labor peace agreements; covered retail and distribution  
4 projects. 1. As used in this section:

5 (a) "Contractor" means any person, firm, partnership, corporation,  
6 association, company, organization or other similar entity, or any  
7 combination thereof, including any subcontractor thereof, that employs  
8 employees to perform work pursuant to an agreement with a public agency  
9 to undertake a covered retail or distribution project as defined in  
10 paragraph (b) of this subdivision, or to serve as the owner or operator  
11 of any facility, including but not limited to a retail establishment or  
12 distribution center that is part of a covered project, or to provide  
13 services integral to the operations of the covered project or the facil-  
14 ities.

15 (b) "Covered retail or distribution project" or "covered project"  
16 means any project in which a public agency enters into an agreement for  
17 development after the effective date of this section, where: (i) one or  
18 more retail establishments or distribution centers are part of the  
19 project; (ii) the state agency has a substantial proprietary interest in  
20 the project, or in the retail or distribution center; and (iii) the  
21 project includes at least one retail establishment which will have at  
22 least ten employees, or at least one distribution center which will have  
23 more than twenty employees.

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

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1 (c) "Distribution center" means a large-scale facility involving proc-  
2 essing, repackaging and/or movement of finished or semi-finished goods  
3 to be redistributed to retailers, wholesalers, or directly to customers,  
4 including but not limited to a warehouse, storage facility, sortation  
5 facility, fulfillment center, or any other similar facility.

6 (d) "Labor peace agreement" means an agreement between a contractor  
7 and one or more bona fide labor organizations representing workers in  
8 this state that, at a minimum, requires that the labor organization and  
9 its members refrain from engaging in labor activity that will disrupt  
10 the contractor's operations, including strikes, boycotts, work stop-  
11 pages, corporate campaigns, picketing or other economic action against  
12 the covered retail or distribution project for a period of not less than  
13 five years following the commencement of operations under the contract  
14 or agreement for the covered project.

15 (e) "Proprietary interest" means an economic and non-regulatory inter-  
16 est of a public agency in the economic or financial success of a covered  
17 retail or distribution project that could be adversely affected by  
18 labor-management conflict, including, but not limited to, the interest  
19 of the public agency as a financier, investor, lessee, lessor, operator,  
20 or owner of the project, facility, or property on which the project or  
21 facility is located, or as the provider or facilitator of financial  
22 assistance to or for the project, facility, or property, whether by  
23 direct loan or grant, or by a guarantee, subsidy, deposit, credit  
24 enhancement or similar method, and any interest of a public agency  
25 derived from the ongoing receipt of revenues from the project or facili-  
26 ties of the project.

27 (f) "Public agency" means the state, and any department, agency,  
28 board, bureau, commission, division, council or office of the state or  
29 any political subdivision thereof, as defined in section one hundred of  
30 the general municipal law, a municipal corporation as defined in section  
31 sixty-six of the general construction law and any district thereof, a  
32 public benefit corporation, or local or state authority as defined in  
33 section two of the public authorities law, and any other entity author-  
34 ized and empowered to enter into any contract or arrangement to conduct  
35 economic development activity on behalf of any such public agency.

36 (g) "Retail establishment" means any vendor that in the regular course  
37 of business sells products at retail directly to members of the general  
38 public.

39 2. (a) Except as provided in paragraph (c) of this subdivision, no  
40 public agency shall enter into any agreement or contract under which  
41 such agency has a proprietary interest in a covered project unless the  
42 agreement or contract requires as a material condition that the contrac-  
43 tor and any subcontractor thereof has entered into a labor peace agree-  
44 ment, as defined in paragraph (d) of subdivision one of this section,  
45 with a bona fide labor organization that is actively engaged in repres-  
46 enting or attempting to represent retail or distribution center employ-  
47 ees in the state.

48 (b) (i) Every contractor or subcontractor subject to the provisions of  
49 this section shall incorporate the terms of such labor peace agreement  
50 in any contract, subcontract, lease, sublease, operating agreement,  
51 concessionaire agreement, franchise agreement or other agreement or  
52 instrument giving a right to any person or entity to own or operate a  
53 retail establishment or distribution center in the covered project and  
54 shall require the maintenance of such labor peace agreement as an ongo-  
55 ing material condition of continued operation of such covered project.

1 (ii) (A) The duration of every labor peace agreement entered into  
2 pursuant to this subdivision shall be included within the duration of  
3 such agreement, provided, however, that no such labor peace agreement  
4 shall be deemed to comply with the requirements of this section unless  
5 such agreement shall be enforceable and binding between all parties  
6 thereto for not less than five years from the date the covered project  
7 becomes operational; provided further, that nothing in this subparagraph  
8 shall be construed so as to prohibit the parties from entering into a  
9 labor peace agreement that exceeds the minimum five year period other-  
10 wise required herein.

11 (B) The provisions of this subdivision requiring a labor peace agree-  
12 ment shall apply to any successor contractor, and any subcontractor  
13 thereof, that takes the place of any initial contractor or subcontrac-  
14 tor, provided such replacement occurs while the project remains a  
15 covered project as defined in paragraph (b) of subdivision one of this  
16 section. The duration of a labor peace agreement entered into by a  
17 successor contractor or subcontractor pursuant to this clause shall be  
18 for a period of not less than five years commencing on the later of the  
19 date of such replacement or the date on which the project becomes opera-  
20 tional.

21 (iii) Every public agency shall, prior to entering into an agreement  
22 or contract for a covered project, provide written disclosure to the  
23 contractor and any subcontractors of the labor peace agreement required  
24 pursuant to this section and any other provisions applicable to such  
25 agreement or contract. Where competitive bidding is required by statute,  
26 rule, regulation or local law, for work or services to be performed in  
27 connection with a covered project under this section, the public agency  
28 shall provide such written disclosure to each prospective bidder or  
29 contractor as part of any specifications or other conditions required  
30 under this chapter or pursuant to any other general, special, or local  
31 law or administrative code.

32 (iv) Any contractor or subcontractor that fails or refuses to include  
33 any of the provisions required by this paragraph in the terms of any  
34 contract, agreement or other instrument subject to the requirements of  
35 this section shall not be considered a responsible bidder for the  
36 purposes of any bid or proposal submitted in connection with such  
37 covered project.

38 (c) (i) Notwithstanding any contrary provision of this section, a  
39 public agency may enter into an agreement or contract wherein the public  
40 agency has a substantial proprietary interest in a covered project with-  
41 out a contractor entering into a labor peace agreement, if the agency  
42 determines that the project would not be able to go forward if a labor  
43 peace agreement was required, or the costs of the project to the public  
44 agency would be substantially increased by such requirement, provided,  
45 however, that no such determination shall be made without first solicit-  
46 ing input from any labor organization that would otherwise be a party to  
47 such labor peace agreement. Such a determination shall be supported by  
48 a written finding setting forth the specific basis for such determi-  
49 nation, which may include, but shall not be limited to experience with  
50 similar projects, earlier requests for proposal for the same project, or  
51 a detailed evaluation of potential bidders. Each such written determi-  
52 nation, together with any supporting materials shall be submitted to the  
53 commissioner in accordance with the provisions of subparagraph (ii) of  
54 this paragraph in a manner consistent with rules and regulations promul-  
55 gated by the commissioner for such purpose.

1 (ii) The commissioner shall review each such written determination  
2 submitted pursuant to subparagraph (i) of this paragraph and shall issue  
3 a public finding on such determination no later than fifteen business  
4 days after receipt of such determination. In the event the commissioner  
5 approves such determination, such determination, together with the  
6 commissioner's statement of approval and findings thereon shall be  
7 provided to the public agency and all other interested parties and shall  
8 be included in any public materials in connection with the project and  
9 shall be maintained by such agency in accordance with all applicable  
10 provisions of the public officers law, the public authorities law, and  
11 any other applicable law, rule or regulation.

12 (iii) If, after review of such determination pursuant to subparagraph  
13 (ii) of this paragraph, the commissioner shall not approve such determi-  
14 nation, the contract and agreement shall be subject to the mandatory  
15 labor peace agreement pursuant to paragraphs (a) and (b) of this subdivi-  
16 sion and subdivision three of this section.

17 3. (a) Beginning on the effective date of this section and thereafter,  
18 no agreement or contract to undertake a covered retail or distribution  
19 project shall be valid or enforceable unless it complies with the  
20 requirements set forth in this section.

21 (b) The commissioner shall require every public agency that is subject  
22 to the provisions of this section that has not entered into a labor  
23 peace agreement on or before the effective date of this section to  
24 produce an affidavit stating it shall enter into a labor peace agreement  
25 with labor organizations that are actively engaged in representing or  
26 attempting to represent retail and distribution center employees in this  
27 state.

28 (c) Beginning on the effective date of this section and thereafter,  
29 each public agency that enters into a contract or agreement for a  
30 covered project subject to a labor peace agreement required by this  
31 section shall submit to the commissioner proof of such executed labor  
32 peace agreement, or a written determination pursuant to paragraph (c) of  
33 subdivision two of this section, together with such other information  
34 and documents as the commissioner may require in a manner prescribed by  
35 the commissioner for such purpose.

36 (d) The commissioner shall adopt any rules and regulations necessary  
37 to accomplish the purposes of this section in accordance with the state  
38 administrative procedure act. Such rules and regulations shall include,  
39 but not be limited to: a model labor peace agreement that complies with  
40 the requirements of this section; remedies and procedures for public  
41 authorities to enforce compliance with this section, including  
42 provisions for the reimbursement of any costs or damages incurred by a  
43 public authority in connection with any noncompliance with the  
44 provisions of this section or with any contract or agreement subject to  
45 the provisions of this section; and any internal controls necessary to  
46 ensure compliance with such rules and regulations.

47 4. This section shall not apply to any construction contract entered  
48 into in connection with a covered project; provided, however, that noth-  
49 ing in this section shall prohibit or restrict the parties to any such  
50 construction contract from executing a labor peace agreement where  
51 otherwise permitted by applicable law. For the purposes of this section,  
52 a "construction contract" means a contract for building, addition, demo-  
53 lition, and other alterations and improvements to a covered project.

54 § 2. The public authorities law is amended by adding a new section  
55 2879-d to read as follows:

1 § 2879-d. Labor peace; covered retail or distribution projects. 1.  
2 Notwithstanding any contrary provision of any law, rule or regulation,  
3 beginning on the effective date of this section and thereafter, all  
4 contracts entered into by a public authority for a covered retail or  
5 distribution project as defined in paragraph (b) of subdivision one of  
6 section two hundred twenty-two-b of the labor law, shall include as a  
7 material condition that the contractor or any subcontractor thereof  
8 shall enter into a labor peace agreement with a labor organization that  
9 represents retail or distribution center employees in the state, in  
10 conformity with the provisions of section two hundred twenty-two-b of  
11 the labor law, and the provisions of such section shall be deemed terms  
12 of all such contracts.

13 2. Except as provided in paragraph (c) of subdivision two of section  
14 two hundred twenty-two-b of the labor law, no public authority shall  
15 enter into any agreement or contract for a covered retail or distrib-  
16 ution project as defined in paragraph (b) of subdivision one of section  
17 two hundred twenty-two-b of the labor law unless the agreement or  
18 contract requires as a material condition that the contractor and any  
19 subcontractor thereof has entered into a labor peace agreement with a  
20 labor organization that is actively engaged in representing or attempt-  
21 ing to represent retail or distribution center employees in the state in  
22 conformity with section two hundred twenty-two-b of the labor law, and  
23 the provisions of such section shall be deemed terms of all such  
24 contracts.

25 § 3. The general municipal law is amended by adding a new section  
26 109-e to read as follows:

27 § 109-e. Labor peace agreements; covered retail and distribution  
28 projects. 1. Notwithstanding any contrary provision of any law, rule or  
29 regulation, beginning on the effective date of this section and there-  
30 after, all contracts entered into by an officer, board or agency of a  
31 political subdivision, or of any district therein involving a covered  
32 retail or distribution project as defined in paragraph (b) of subdivi-  
33 sion one of section two hundred twenty-two-b of the labor law, shall  
34 include as a material condition that the contractor or a subcontractor  
35 thereof shall enter into a labor peace agreement with a labor organiza-  
36 tion that represents retail or distribution center employees in the  
37 state in conformity with the provisions of section two hundred twenty-  
38 two-b of the labor law, and the provisions of such section shall be  
39 deemed terms of all such contracts.

40 2. Except as provided in paragraph (c) of subdivision two of section  
41 two hundred twenty-two-b of the labor law, no officer, board or agency  
42 of a political subdivision, or of any district therein shall enter into  
43 any agreement or contract for a covered retail or distribution project  
44 as defined in paragraph (b) of subdivision one of section two hundred  
45 twenty-two-b of the labor law unless the agreement or contract requires  
46 as a material condition that the contractor and any subcontractor there-  
47 of has entered into a labor peace agreement with a labor organization  
48 that is actively engaged in representing or attempting to represent  
49 retail or distribution center employees in the state in conformity with  
50 section two hundred twenty-two-b of the labor law, and the provisions of  
51 such section shall be deemed terms of all such contracts.

52 § 4. This act shall take effect on the ninetieth day after it shall  
53 have become a law. Effective immediately, the addition, amendment and/or  
54 repeal of any rule or regulation necessary for the implementation of  
55 this act on its effective date are authorized to be made and completed  
56 on or before such effective date.