

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:

1 Section 1. Section 3.01 of the arts and cultural affairs law is
2 amended to read as follows:
3 § 3.01. Legislative findings and declaration of policy. It is hereby
4 found that many of our citizens lack the opportunity to view, enjoy or
5 participate in living theatrical performances, musical concerts, operas,
6 dance and ballet recitals, art exhibits, examples of fine architecture,
7 and the performing and fine arts generally. It is hereby further found
8 that, with increasing leisure time, the practice and enjoyment of the
9 arts are of increasing importance and that the general welfare of the
10 people of the state will be promoted by giving further recognition to
11 the arts as a vital aspect of our culture and heritage and as a valued
12 means of expanding the scope of our educational programs.
13 It is hereby declared to be the policy of the state to join with
14 private patrons and with institutions and professional organizations
15 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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1 of our communities will continue to grow and will play an ever more
2 significant part in the welfare and educational experience of our citi-
3 zens and in maintaining the paramount position of this state in the
4 nation and in the world as a cultural center.

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

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

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

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

32 (d) Any organization applying for grant funding from an arts agency as
33 defined by this chapter shall provide to the arts agency a certification
34 that it will enter into a labor peace agreement with at least one bona
35 fide labor organization that represents employees of such organization
36 including but not limited to actors, stage managers, production assist-
37 ants, scenic artists, scenic designers, costume designers, lighting
38 designers, sound designers, projection designers, graphic artists, art
39 and costume department coordinators, ushers, ticket takers, line direc-
40 tors, press agents, company managers, theatre managers, engineers, musi-
41 cians, singers, choreographers, dancers, staging staff, ballet school
42 faculty, directors, fight directors, intimacy directors, dressers,
43 wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry
44 workers, dyers, costume technicians, milliners, craftspeople, child
45 actors, guardians, box office treasurers, first assistants, and ticket
46 sellers either where such bona fide labor organization is actively
47 representing employees providing services covered by the organization
48 seeking such grant funding or upon notice by a bona fide labor organiza-
49 tion that is attempting to represent employees who will provide services
50 to the organization seeking such grant funding. The maintenance of such
51 a labor peace agreement shall be an ongoing material condition for
52 receipt of grant funding under this article. For purposes of this
53 section, "labor peace agreement" means an agreement between an entity
54 and labor organization that, at a minimum, protects the state's proprie-
55 tary 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

1 locality for the prevailing basic hourly cash rate of pay and the local-
2 ity for prevailing supplements.

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

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

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

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

1 13. "Production" means a corporation, partnership, limited partner-
2 ship, or other entity or individual that provides compensation to an
3 employee.

4 14. "Substantially-owned affiliated entity" means the parent company
5 of the contractor or subcontractor, any subsidiary of the contractor or
6 subcontractor, or any entity in which the parent of the contractor or
7 subcontractor owns more than fifty percent of the voting stock, or an
8 entity in which one or more of the top five shareholders of the contrac-
9 tor or subcontractor individually or collectively also owns a control-
10 ling share of the voting stock, or an entity which exhibits any other
11 indicia of control over the contractor or subcontractor or over which
12 the contractor or subcontractor exhibits control, regardless of whether
13 or not the controlling party or parties have any identifiable or docu-
14 mented ownership interest. Such indicia shall include power or responsi-
15 bility over employment decisions, access to and/or use of the relevant
16 entity's assets or equipment, power or responsibility over contracts of
17 the entity, responsibility for maintenance or submission of certified
18 payroll records, and influence over the business decisions of the rele-
19 vant entity.

20 15. "Subsidiary" means an entity that is controlled directly, or indi-
21 rectly through one or more intermediaries, by a contractor or subcon-
22 tractor or the contractor's parent company.

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

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

32 18. "Wage" includes: (a) basic hourly cash rate of pay; and (b) fringe
33 benefits including medical or hospital care, pensions on retirement or
34 death, compensation for injuries or illness resulting from occupational
35 activity, or insurance to provide any of the foregoing, unemployment
36 benefits, life insurance, disability and sickness insurance, accident
37 insurance, vacation and holiday pay, costs of apprenticeship or other
38 similar programs and other bona fide fringe benefits not otherwise
39 required by federal, state or local law to be provided by the contractor
40 or subcontractor.

41 § 228-a. Prevailing wage requirement for not-for-profit theaters and
42 payment of their employees on productions funded by the New York state
43 council on the arts or arts agencies of localities; record keeping. 1.
44 In all cases where work is being performed pursuant to a collective
45 bargaining agreement the contractor or subcontractor shall keep original
46 payrolls or transcripts thereof, subscribed and confirmed by the
47 contractor or subcontractor as true, under penalty of perjury, showing
48 the hours and days worked by each employee, the craft, trade or occupa-
49 tion at which the employee was employed, and the wages paid.

50 2. Where the wages paid include sums which are not paid directly to
51 the employees weekly and which are expended for supplements, the records
52 required to be maintained shall include a record of such hourly payment
53 on behalf of such employees, the supplement for which such payment has
54 been made, and the name and address of the person to whom such payment
55 has been made. In all such cases, the contractor shall keep a true and
56 inscribed copy of the agreement under which such payments are made, a

1 record of all net payments made thereunder, and a list of all persons
2 for whom such payments are made.

3 3. The records required to be maintained shall be kept on the site of
4 the work during all of the time that work under the contract is being
5 performed.

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

8 § 228-b. Powers of the fiscal officer. 1. In addition to the powers
9 enumerated elsewhere in this article, the fiscal officer shall have the
10 power to:

11 (a) cause an investigation to be made to determine the wages prevail-
12 ing in any locality for work performed by employees covered by this
13 article and in making such investigation, the fiscal officer may utilize
14 wage and fringe benefit data from various sources including, but not
15 limited to, data and determinations of federal, state or other govern-
16 mental agencies;

17 (b) institute and conduct inspections at the site of the work or else-
18 where in aid of the effective administration and enforcement of the
19 provisions of this article;

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

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

26 (e) make a classification by craft, trade or other generally recog-
27 nized occupational category of the employees involved and to determine
28 whether such work has been performed by the employees in such classi-
29 fication;

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

33 (g) delegate any of the foregoing powers to the fiscal officer's depu-
34 ty or other authorized representative;

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

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

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

51 § 228-c. Investigation and hearing. 1. Whenever the fiscal officer has
52 reason to believe that an employee has been paid less than the wages
53 stipulated in the contract, or if such contract has no wage schedule
54 attached thereto and the fiscal officer has reason to believe that an
55 employee has been paid less than the wages prevailing for the employee's
56 craft, trade or occupation, the fiscal officer may, and upon receipt of

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

3 2. (a) At the start of such investigation the fiscal officer may noti-
4 fy the financial officer of the arts agency interested who shall, at the
5 direction of the fiscal officer, forthwith withhold from any payment due
6 to the contractor or subcontractor executing the contract sufficient
7 money to safeguard the rights of the employees and to cover the civil
8 penalty that may be assessed as provided herein, or, if there are insuf-
9 ficient moneys still due to be disbursed to the contractor or subcon-
10 tractor to safeguard the rights of the employees and to cover the civil
11 penalty that may be assessed as provided herein, the financial officer
12 of another arts agency which has entered or subsequently enters into a
13 contract with the contractor or subcontractor, shall withhold from any
14 such payment to the contractor or subcontractor executing any work,
15 sufficient moneys to safeguard the rights of the employees and to cover
16 the civil penalty that may be assessed as provided herein.

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

28 (c) The notice of withholding shall provide that the fiscal officer
29 intends to instruct the financial officer, not less than ten days
30 following of the notice by mail, to withhold sufficient moneys to safe-
31 guard the rights of the employees and to cover the civil penalty that
32 may be assessed as provided herein, from any payment due the notified
33 party under any contract pending final determination. The notice of
34 withholding shall provide that within thirty days following the date of
35 the notice of withholding the notified party may contest the withholding
36 on the basis that the notified party is not a partner or one of the five
37 largest shareholders of the subcontractor or contractor, an officer of
38 the contractor or subcontractor who knowingly participated in the
39 violation of this article, or a substantially-owned affiliated entity or
40 successor. If the notified party fails to contest the notice of with-
41 holding, or if the fiscal officer, after reviewing the information
42 provided by the notified party in such contest, determines that the
43 notified party is a partner or one of the five largest shareholders, a
44 substantially-owned affiliated entity, an officer of the contractor or
45 subcontractor who knowingly participated in the violation of this arti-
46 cle, or a successor, the fiscal officer may instruct the financial offi-
47 cer to immediately withhold sufficient moneys to safeguard the rights of
48 the employees and to cover the civil penalty that may be assessed as
49 provided herein from funds still to be disbursed to the notified party
50 under any contract pending the final determination.

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

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

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

6 (f) The money shall be held in trust pending completion of the inves-
7 tigation.

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

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

17 (a) the filing of the complaint; or

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

20 5. (a) The investigation and hearing shall be expeditiously conducted
21 and upon the completion thereof the fiscal officer shall determine the
22 issues raised and shall make and file an order in the fiscal officer's
23 office stating such determination and forthwith serve personally or by
24 mail a copy of such order and determination together with a notice of
25 filing upon all parties to the proceeding and upon the financial officer
26 of the arts agency involved.

27 (b) In addition to directing payment of wages found to be due, such
28 order of the fiscal officer may direct payment of a further sum as a
29 civil penalty in an amount not exceeding twenty-five percent of the
30 total amount found to be due. In assessing the amount of the penalty,
31 due consideration shall be given to the size of the employer's business,
32 the good faith of the employer, the gravity of the violation, the histo-
33 ry of previous violations of the employer, successor or substantially-
34 owned affiliated entity or any successor of the contractor or subcon-
35 tractor, any officer of the contractor or subcontractor who knowingly
36 participated in the violation of this article, and any of the partners
37 if the contractor or subcontractor is a partnership or any of the five
38 largest shareholders of the contractor or subcontractor, as determined
39 by the fiscal officer, of such underpayment of wages or supplements, and
40 any officer of the contractor or subcontractor who knowingly partic-
41 ipated in the violation of this article, and the failure to comply with
42 record keeping or other non-wage requirements. Where the fiscal officer
43 is the commissioner, the penalty shall be paid to the commissioner for
44 deposit in the state treasury. Where the fiscal officer is a city comp-
45 troller or other analogous officer, the penalty shall be paid to said
46 officer for deposit in the city treasury.

47 (c) If the order directs the payment to specified employees of wages
48 found to be due and unpaid, including interest at a rate not less than
49 six per centum per year and not more than the rate of interest then in
50 effect as prescribed by the superintendent of financial services pursu-
51 ant to section fourteen-a of the banking law per annum from the time
52 such wages should have been paid, the financial officer of such arts
53 agency shall, upon the service to the financial officer of such order,
54 pay to such employees from the trust money withheld the amounts speci-
55 fied in such order and shall pay the civil penalty as provided herein,
56 provided no review proceeding pursuant to the provisions of article

1 seventy-eight of the civil practice law and rules is commenced within
2 thirty days of the date said order was filed in the office of the fiscal
3 officer. If such review is timely commenced, the money withheld shall
4 remain in trust pending final disposition of the review proceeding. In
5 determining the rate of interest to be imposed the fiscal officer shall
6 consider the size of the employer's business, the good faith of the
7 employer, the gravity of the violation, the history of previous
8 violations of the employer, successor or substantially-owned affiliated
9 entity or any successor of the contractor or subcontractor, any officer
10 of the contractor or subcontractor who knowingly participated in the
11 violation of this article, and any of the partners if the contractor or
12 subcontractor is a partnership or any of the five largest shareholders
13 of the contractor or subcontractor, as determined by the fiscal officer,
14 and the failure to comply with record keeping or other non-wage require-
15 ments.

16 6. When a final determination has been made and such determination is
17 in favor of an employee, such employee may, in addition to any other
18 remedy provided by this article, institute an action in any court of
19 appropriate jurisdiction against the person or corporation found to have
20 violated this article, any substantially-owned affiliated entity or any
21 successor of the contractor or subcontractor, any officer of the
22 contractor or subcontractor who knowingly participated in the violation
23 of this article, and any of the partners if the contractor or subcon-
24 tractor is a partnership or any of the five largest shareholders of the
25 contractor or subcontractor, as determined by the fiscal officer, for
26 the recovery of the difference between the sum, if any, actually paid to
27 the employee by the aforesaid financial officer pursuant to said order
28 and the amount found to be due the employee as determined by said order.
29 Such action must be commenced within three years from the date of the
30 filing of said order, or if the said order is reviewed in a proceeding
31 pursuant to article seventy-eight of the civil practice law and rules,
32 within three years after the termination of such review proceeding.
33 Provided that no proceeding for judicial review as provided in this
34 section shall then be pending and the time for initiation of such
35 proceeding shall have expired, the fiscal officer may file with the
36 county clerk of the county where the employer resides or has a place of
37 business the order of the fiscal officer containing the amount found to
38 be due. The filing of such order shall have the full force and effect of
39 a judgment duly docketed in the office of such clerk. The order may be
40 enforced by and in the name of the fiscal officer in the same manner,
41 and with like effect, as that prescribed by the civil practice law and
42 rules for the enforcement of a money judgment.

43 7. When, pursuant to the provisions of this section, two final orders
44 have been entered against a contractor, subcontractor, successor, or any
45 substantially-owned affiliated entity of the contractor or subcontractor,
46 any of the partners if the contractor or subcontractor is a part-
47 nership, any of the five largest shareholders of the contractor or
48 subcontractor, any officer of the contractor or subcontractor who know-
49 ingly participated in the violation of this article within any consec-
50 utive six-year period determining that such contractor or subcontractor
51 and/or its successor, substantially-owned affiliated entity of the
52 contractor or subcontractor, any of the partners or any of the five
53 largest shareholders of the contractor or subcontractor, any officer of
54 the contractor or subcontractor who knowingly participated in the
55 violation of this article has willfully failed to pay the prevailing
56 wages in accordance with the provisions of this article, whether such

1 failures were concurrent or consecutive and whether or not such final
2 determinations concerning separate public contracts are rendered simul-
3 taneously, such contractor, subcontractor, successor, and if the
4 contractor, subcontractor, successor, or any substantially-owned affil-
5 iated entity of the contractor or subcontractor, any of the partners if
6 the contractor or subcontractor is a partnership, or any of the five
7 largest shareholders of the contractor or subcontractor, any officer of
8 the contractor or subcontractor who knowingly participated in the
9 violation of this article, or any successor is a corporation, any offi-
10 cer of such corporation who knowingly participated in such failure,
11 shall be ineligible to submit a grant application or be awarded a grant
12 by an arts agency covered by this article for a period of five years
13 from the date of the second order, provided, however, that where any
14 such final order involves the falsification of payroll records or the
15 kickback of wages, the contractor, subcontractor, successor, substan-
16 tially-owned affiliated entity of the contractor or subcontractor, any
17 partner if the contractor or subcontractor is a partnership or any of
18 the five largest shareholders of the contractor or subcontractor, any
19 officer of the contractor or subcontractor who knowingly participated in
20 the violation of this article shall be ineligible to submit a grant
21 application or be awarded a grant, contract or subcontract with the
22 state, or any municipal corporation or public body for a period of five
23 years from the date of the first final order. Nothing in this subdivi-
24 sion shall be construed as affecting any provision of any other law or
25 regulation relating to the awarding of public contracts or grants.

26 8. (a) When a final determination has been made in favor of a
27 complainant and the contractor or subcontractor found violating this
28 article has failed to make payment as required by the order of the
29 fiscal officer, and provided that no relevant proceeding for judicial
30 review shall then be pending and the time for initiation of such
31 proceeding shall have expired, the fiscal officer may file a copy of the
32 order of the fiscal officer containing the amount found to be due with
33 the county clerk of the county of residence or place of business of any
34 of the following:

35 (i) any substantially-owned affiliated entity or any successor of the
36 contractor or subcontractor;

37 (ii) any of the partners if the contractor or subcontractor is a part-
38 nership or any of the five largest shareholders of the contractor or
39 subcontractor, as determined by the fiscal officer; or

40 (iii) any officer of the contractor or subcontractor who knowingly
41 participated in the violation of this article; provided, however, that
42 the fiscal officer shall within five days of the filing of the order
43 provide notice thereof to the partner or a top five shareholder or
44 successor or substantially-owned affiliated entity. The notified party
45 may contest the filing on the basis that it is not a partner or a top
46 five shareholder, an officer of the contractor or subcontractor who
47 knowingly participated in the violation of this article, successor or
48 substantially-owned affiliated entity. If, after reviewing the informa-
49 tion provided by the notified party in support of such contest, the
50 fiscal officer determines that the notified party is not within the
51 definitions described herein, the fiscal officer shall immediately with-
52 draw the filing of the order.

53 (b) The filing of such order shall have the full force and effect of a
54 judgment duly docketed in the office of such clerk. The order may be
55 enforced by and in the name of the fiscal officer in the same manner,

1 and with like effect, as that prescribed by the civil practice law and
2 rules for the enforcement of a money judgment.

3 9. When a final determination has been made against a subcontractor in
4 favor of a complainant and the contractor has made payment to the
5 complainant of any wages and interest due the complainant and any civil
6 penalty, and providing that no relevant proceeding for judicial review
7 shall then be pending and the time for initiation of such proceeding
8 shall have expired, the contractor may file a copy of the order of the
9 fiscal officer containing the amount found to be due with the county
10 clerk of the county of residence or place of business of the subcontractor.
11 The filing of such order shall have the full force and effect of a
12 judgment duly docketed in the office of such clerk. The judgment may be
13 docketed in favor of the contractor who may proceed as a judgment creditor
14 against the subcontractor for the recovery of all monies paid by the
15 contractor under such order.

16 § 228-d. Failure to protest underpayments. Notwithstanding any incon-
17 sistent provision of this chapter or of any other general, special or
18 local law, ordinance, charter or administrative code, an employee shall
19 not be barred from the right to recover the difference between the
20 amount actually paid to the employee and the amount which should have
21 been paid to the employee pursuant to an order entered under the
22 provisions of this article because of the prior receipt by the employee
23 without protest of wages paid or on account of the employee's failure to
24 state orally or in writing upon any payroll or receipt which the employ-
25 ee is required to sign that the wages received by the employee are
26 received under protest, or on account of the employee's failure to indi-
27 cate the employee's protest against the amount, or that the amount so
28 paid does not constitute payment in full of wages due the employee for
29 the period covered by such payment.

30 § 228-e. Statements showing amounts due for wages. 1. Subcontractors
31 engaged for work by a contractor or its subcontractor shall, upon
32 receipt from the contractor or its subcontractor of the schedule of
33 wages and supplements specified in the contract, provide to the contrac-
34 tor or its subcontractor a verified statement attesting that the subcon-
35 tractor has received and reviewed such schedule of wages and supple-
36 ments, and agrees that it will pay the applicable prevailing wages and
37 will pay or provide the supplements specified therein. Such verified
38 statement shall be filed in the manner described in subdivision three of
39 this section. It shall be a violation of this article for any contractor
40 or its subcontractor to fail to provide for its subcontractor a copy of
41 the schedule of wages and supplements specified in the contract.

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

1 3. Before payment is made by or on behalf of an arts agency of any
2 sums due on account of a contract and representing the final portion of
3 twenty percent of the total amount payable under the contract, it shall
4 be the duty of the comptroller or the financial officer of such arts
5 agency or other officer or person charged with the custody and disburse-
6 ment of the grant funds applicable to the contract under and pursuant to
7 which payment is made to require the contractor to file every verified
8 statement required to be obtained by the contractor from its subcontrac-
9 tors pursuant to subdivision one of this section and to file a statement
10 in writing in form satisfactory to such officer setting forth the
11 amounts known by the contractor to be then due and owing from a subcon-
12 tractor, or from a subcontractor of such subcontractor, for such wages
13 and supplements, or certifying that the contractor has no knowledge of
14 such amounts owing to or on behalf of any employees of its subcontrac-
15 tors, and that in the event it is determined by the commissioner that
16 the wages or supplements or both of any employees of such subcontractors
17 have not been paid or provided pursuant to the appropriate schedule of
18 wages and supplements, the contractor shall be responsible for payment
19 of such wages or supplements pursuant to the provisions of section two
20 hundred twenty-eight-a of this article. Before final payment is made of
21 any sums due on account of such contract, the contractor shall be
22 required to file a supplemental statement setting forth any additional
23 amounts known by the contractor to be then due and owing by each subcon-
24 tractor for such wages or supplements, or that the contractor has no
25 knowledge of such amounts owing to or on behalf of any employee of its
26 subcontractors. Such statements so to be filed shall be verified by the
27 oath of the contractor that the contractor has read such statements
28 subscribed by the contractor and knows the contents thereof, and that
29 the same is true of the contractor's own knowledge, except with respect
30 to wages and supplements owing by subcontractors which may be certified
31 upon information and belief.

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

51 § 228-f. Provisions in contracts prohibiting discrimination on account
52 of race, creed, color, national origin, age, sex or disability. Every
53 contract for work shall contain provisions by which the contractor
54 agrees:

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

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

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

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

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

19 § 228-g. Penalties. 1. Any contractor or subcontractor who shall upon
20 such entity's oath verify any statement required to be filed under this
21 article which is known by such entity to be false shall be guilty of
22 perjury and punishable as provided by the penal law.

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

41 § 228-h. Enforcement of article. If the fiscal officer, as defined
42 herein, finds that any contractor fails to comply with or evades the
43 provisions of this article, the fiscal officer shall present evidence of
44 such noncompliance or evasion to the arts agency having charge of such
45 contract for enforcement. Where such evidence indicates noncompliance or
46 evasion on the part of a subcontractor, the contractor shall be respon-
47 sible for such noncompliance or evasion. It shall be the duty of the
48 arts agency in charge of such contract to enforce the provisions of this
49 article.

50 § 4. Severability. If any clause, sentence, paragraph, subdivision,
51 section or part of this act shall be adjudged by any court of competent
52 jurisdiction to be invalid, such judgment shall not affect, impair, or
53 invalidate the remainder thereof, but shall be confined in its operation
54 to the clause, sentence, paragraph, subdivision, section or part thereof
55 directly involved in the controversy in which such judgment shall have
56 been rendered. It is hereby declared to be the intent of the legislature

1 that this act would have been enacted even if such invalid provisions
2 had not been included herein.
3 § 5. This act shall take effect on the ninetieth day after it shall
4 have become a law and shall apply to any grant award made subsequent to
5 such effective date.