STATE OF NEW YORK

5475--A

2023-2024 Regular Sessions

IN SENATE

March 6, 2023

Introduced by Sens. JACKSON, HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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 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.

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

LBD01720-02-3

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 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. 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, 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 municipal corporation, a public benefit corporation or a commission appointed pursuant to law is a party.

(ii) The department of jurisdiction shall be required to report to the fiscal officer the intention to contract for custom, off-site fabrication of any materials on all contracts 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 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.

(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.