STATE OF NEW YORK

5868--B

2023-2024 Regular Sessions

IN SENATE

March 20, 2023

Introduced by Sens. HARCKHAM, BAILEY, BROUK, CHU, COMRIE, COONEY, FERNANDEZ, GONZALEZ, GOUNARDES, HINCHEY, HOYLMAN-SIGAL, JACKSON, LIU, MATTERA, MAY, MAYER, PALUMBO, RAMOS, RIVERA, RYAN, SANDERS, SCARCELLA-SPANTON, SEPULVEDA, SKOUFIS, STAVISKY, WEBB, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the labor law, in relation to prevailing wage requirements applicable to brownfield remediation work performed under private contract

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

Section 1. The closing paragraph of subdivision 1-a of section 27-1407 of the environmental conservation law, as added by section 3 of part BB of chapter 56 of the laws of 2015, is amended to read as follows:

Sites are not eligible for tangible property tax credits if: (a) the contamination from ground water or soil vapor is solely emanating from property other than the site subject to the present application; or (b) the department has determined that the property has previously been remediated pursuant to titles nine, thirteen and fourteen of this article, title five of article fifty-six of this chapter and article twelve of the navigation law such that it may be developed for its then intended use**; or (c) not in compliance with section two hundred twenty-four-g of the labor law**.

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

LBD10107-10-4

§ 2. Paragraphs (c) and (d) of subdivision 8 of section 27-1407 of the environmental conservation law, as amended by section 3 of part A of chapter 577 of the laws of 2004, are amended and a new paragraph (e) is added to read as follows:

(c) there is an order providing for the investigation, removal, or remediation of contamination relating to the brownfield site against the person who is requesting participation; [~~or~~]

(d) [~~The~~] the person requesting participation is subject to an outstanding claim as provided in subdivision four of this section[~~.~~]; or

(e) the person requesting participation does not demonstrate compliance with section two hundred twenty-four-g of the labor law.

§ 3. Subdivision 5 of section 27-1409 of the environmental conservation law, as amended by section 4 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

5. One authorizing the department to terminate a brownfield site cleanup agreement at any time during the implementation of such agreement if the applicant implementing such agreement fails to substantially comply with such agreement's terms and conditions, including the prevailing wage requirements of section two hundred twenty-four-g of the labor law;

§ 4. The labor law is amended by adding a new section 224-g to read as follows:

§ 224-g. Prevailing wage requirements applicable to brownfield remediation work performed under private contract. 1. Subject to the provisions of this section, covered brownfield remediation work shall be subject to prevailing wage requirements in accordance with sections two hundred twenty and two hundred twenty-b of this article as it relates to the following remediation activities: (a) all construction activities including without limitation grading, contouring, trenching, grouting, capping, excavating, incinerating, thermally treating, chemically treating, biologically treating, constructing leachate collection and treatment systems or application of innovative technologies approved by the department; (b) interim remedial measures; and (c) restoration of the environment. Remediation activities which are as defined in paragraph (a), (b), (e), (g), or (h) of subdivision five of section 27-1405 of the environmental conservation law shall not be subject to prevailing wage requirements in accordance with this section.

2. A project shall be deemed a "covered brownfield remediation work" where: (a) the site is seeking or has received a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law; and (b) where the work is paid for in whole or in part by public funds, where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars.

3. (a) For purposes of this section, "paid for in whole or in part out of public funds" shall mean any of the following:

(i) The payment of money, by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;

(ii) The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu

of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate except for the involvement of the public entity;

(iii) Money loaned by the public entity that is to be repaid on a contingent basis;

(iv) Credits that are applied by the public entity against repayment of obligations to the public entity; or

(v) Benefits under section four hundred sixty-seven-m of the real property tax law.

(b) For purposes of this section, "public entity" shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.

4. For purposes of this section "covered brownfield remediation work" shall not include the following: (a) Construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization; or

(b) an affordable housing project as defined in subdivision twenty-nine of section 27-1405 of the environmental conservation law.

5. Upon request of the commissioner, the department of environmental conservation shall provide site information, including total construction project costs and project costs, to the commissioner.

6. For purposes of this section, the "fiscal officer" shall be deemed to be the commissioner. The enforcement of any covered brownfield remediation work pursuant to this section shall be subject to the requirements of sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-i, two hundred twenty-three, two hundred twenty-four-b, and two hundred twenty-seven of this chapter and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered brownfield remediation work as otherwise being considered public work pursuant to this article.

7. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.

8. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of certified minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and certified service-disabled veteran-owned busi-

nesses pursuant to article three of the veterans' services law. The department in consultation with the commissioner of the division of minority and women's business development and the director of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered brownfield remediation work to achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

9. (a) The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-five, and annually thereafter, on the participation of minority and women-owned business enterprises in relation to covered brownfield remediation work subject to the provisions of this section as well as the diversity practices of contractors and subcontractors employing laborers, workers, and mechanics on such projects.

(b) Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.

(c) The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered brownfield remediation work. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

§ 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all requests for participation received pursuant to section 27-1407 of the environmental conservation law received on or after such date.