

# STATE OF NEW YORK

3037--A

2025-2026 Regular Sessions

## IN SENATE

January 23, 2025

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT 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; and 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

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 article 8-B to  
2 read as follows:

### ARTICLE 8-B

#### PREVAILING WAGE REQUIREMENT FOR NOT-FOR-PROFIT THEATERS

##### Section 228. Definitions.

6 228-a. Prevailing wage requirement for not-for-profit theaters  
7 and payment of their employees on productions funded by  
8 the New York State council on the arts or arts agencies  
9 of localities; record keeping.

10 228-b. Powers of the fiscal officer.

11 228-c. Investigation and hearing.

12 228-d. Failure to protest underpayments.

13 228-e. Statements showing amounts due for wages.

14 228-f. Provisions in contracts prohibiting discrimination on  
15 account of race, creed, color, national origin, age,  
16 sex or disability.

17 228-g. Penalties.

18 228-h. Enforcement of article.

19 § 228. Definitions. As used in this article:

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

LBD06595-03-5

1 1. "Arts agency" means any public agency of New York state or of a  
2 locality of New York state that provides grants to productions at not-  
3 for-profit theaters.

4 2. "Contract" means any agreement between a production and an arts  
5 agency to grant funds to such production.

6 3. "Contractor" or "subcontractor" means a production that is a recip-  
7 ient of a grant from an arts agency.

8 4. "Employee" means an employee of a not-for-profit theater that  
9 receives a grant award from an arts agency including but not limited to  
10 actors, stage managers, production assistants, scenic artists, scenic  
11 designers, costume designers, lighting designers, sound designers,  
12 projection designers, graphic artists, art and costume department coor-  
13 dinators, ushers, ticket takers, line directors, press agents, company  
14 managers, theatre managers, engineers, musicians, singers, choreogra-  
15 phers, dancers, staging staff, ballet school faculty, directors, fight  
16 directors, intimacy directors, dressers, wardrobers, costumers, stitch-  
17 ers, tailors, drapers, shoppers, laundry workers, dyers, costume techni-  
18 cians, milliners, craftspeople, child actors, guardians, box office  
19 treasurers, first assistants, and ticket sellers employed on a  
20 production funded by an arts agency.

21 5. "Entity" means a partnership, association, joint venture, company,  
22 sole proprietorship, corporation or any other form of doing business.

23 6. "Fiscal officer" means the comptroller of the state of New York or  
24 other analogous officer of the governing body of an arts agency.

25 7. "Grant" means any capital and/or operational grant made to  
26 productions funded by an arts agency.

27 8. "Locality" means the state, or a town, city, village or other civil  
28 division or area of the state as determined by the fiscal officer. The  
29 fiscal officer may fix a different geographic area in determining the  
30 locality for the prevailing basic hourly cash rate of pay and the local-  
31 ity for prevailing supplements.

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

35 10. "Parent company" means an entity that directly controls the  
36 contractor or subcontractor.

37 11. "Prevailing practices in the locality" means the practice of  
38 providing supplements by virtue of collective bargaining agreements  
39 between bona fide labor organizations that represent employees of not-  
40 for-profit theaters including but not limited to actors, stage managers,  
41 production assistants, scenic artists, scenic designers, costume design-  
42 ers, lighting designers, sound designers, projection designers, graphic  
43 artists, art and costume department coordinators, ushers, ticket takers,  
44 line directors, press agents, company managers, theatre managers, engi-  
45 neers, musicians, singers, choreographers, dancers, staging staff,  
46 ballet school faculty, directors, fight directors, intimacy directors,  
47 dressers, wardrobers, costumers, stitchers, tailors, drapers, shoppers,  
48 laundry workers, dyers, costume technicians, milliners, craftspeople,  
49 child actors, guardians, box office treasurers, first assistants, and  
50 ticket sellers provided that said employers employ at least thirty per  
51 centum of such employees in the locality, as determined by the fiscal  
52 officer in accordance with the provisions herein. With respect to each  
53 supplement determined to be one of the prevailing practices in the  
54 locality, the amount of such supplement shall be determined in the same  
55 manner and at the same time as the prevailing rate of wage is determined  
56 pursuant to this section.

1 12. "Prevailing wage" means the rate of compensation paid by a  
2 production, by virtue of collective bargaining agreements between bona  
3 fade labor organizations that represent employees of not-for-profit  
4 theaters including but not limited to actors, stage managers, production  
5 assistants, scenic artists, scenic designers, costume designers, light-  
6 ing designers, sound designers, projection designers, graphic artists,  
7 art and costume department coordinators, ushers, ticket takers, line  
8 directors, press agents, company managers, theatre managers, and employ-  
9 ers of such employees performing work on a production funded by an arts  
10 agency where such labor organization represents at least thirty per  
11 centum of employees in the locality where such work is being performed.  
12 The prevailing rate of wage shall be annually determined in accordance  
13 herewith by the fiscal officer no later than thirty days prior to July  
14 first of each year, and the prevailing rate of wage for the period  
15 commencing July first of such year through June thirtieth, inclusive, of  
16 the following year shall be the rate of wage set forth in such collec-  
17 tive bargaining agreements for the period commencing July first through  
18 June thirtieth, including those increases for such period which are  
19 directly ascertainable from such collective bargaining agreements by the  
20 fiscal officer in such officer's annual determination. In the event  
21 that it is determined after a contest, as provided in section two  
22 hundred twenty-eight-c of this article, that less than thirty percent of  
23 the employees in the locality where the work is being performed receive  
24 a collectively bargained rate of wage, then the average wage paid to  
25 such employees in the locality for the twelve-month period preceding the  
26 fiscal officer's annual determination shall be the prevailing rate of  
27 wage. Employees for whom a prevailing rate of wage is to be determined  
28 shall not be considered in determining such prevailing wage.

29 13. "Production" means a corporation, partnership, limited partner-  
30 ship, or other entity or individual that provides compensation to an  
31 employee.

32 14. "Substantially-owned affiliated entity" means the parent company  
33 of the contractor or subcontractor, any subsidiary of the contractor or  
34 subcontractor, or any entity in which the parent of the contractor or  
35 subcontractor owns more than fifty percent of the voting stock, or an  
36 entity in which one or more of the top five shareholders of the contrac-  
37 tor or subcontractor individually or collectively also owns a control-  
38 ling share of the voting stock, or an entity which exhibits any other  
39 indicia of control over the contractor or subcontractor or over which  
40 the contractor or subcontractor exhibits control, regardless of whether  
41 or not the controlling party or parties have any identifiable or docu-  
42 mented ownership interest. Such indicia shall include power or responsi-  
43 bility over employment decisions, access to and/or use of the relevant  
44 entity's assets or equipment, power or responsibility over contracts of  
45 the entity, responsibility for maintenance or submission of certified  
46 payroll records, and influence over the business decisions of the rele-  
47 vant entity.

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

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

54 17. "Supplements" means all remuneration for employment paid in any  
55 medium other than cash, or reimbursement for expenses, or any payments  
56 which are not "wages" within the meaning of the law, including, but not

1 limited to, health, welfare, non-occupational disability, retirement and  
2 vacation benefits, holiday pay, life insurance, and apprenticeship  
3 training.

4 18. "Wage" includes: (a) basic hourly cash rate of pay; and (b) fringe  
5 benefits including medical or hospital care, pensions on retirement or  
6 death, compensation for injuries or illness resulting from occupational  
7 activity, or insurance to provide any of the foregoing, unemployment  
8 benefits, life insurance, disability and sickness insurance, accident  
9 insurance, vacation and holiday pay, costs of apprenticeship or other  
10 similar programs and other bona fide fringe benefits not otherwise  
11 required by federal, state or local law to be provided by the contractor  
12 or subcontractor.

13 § 228-a. Prevailing wage requirement for not-for-profit theaters and  
14 payment of their employees on productions funded by the New York state  
15 council on the arts or arts agencies of localities; record keeping. 1.  
16 In all cases where work is being performed pursuant to a collective  
17 bargaining agreement the contractor or subcontractor shall keep original  
18 payrolls or transcripts thereof, subscribed and confirmed by the  
19 contractor or subcontractor as true, under penalty of perjury, showing  
20 the hours and days worked by each employee, the craft, trade or occupa-  
21 tion at which the employee was employed, and the wages paid.

22 2. Where the wages paid include sums which are not paid directly to  
23 the employees weekly and which are expended for supplements, the records  
24 required to be maintained shall include a record of such hourly payment  
25 on behalf of such employees, the supplement for which such payment has  
26 been made, and the name and address of the person to whom such payment  
27 has been made. In all such cases, the contractor shall keep a true and  
28 inscribed copy of the agreement under which such payments are made, a  
29 record of all net payments made thereunder, and a list of all persons  
30 for whom such payments are made.

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

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

36 § 228-b. Powers of the fiscal officer. 1. In addition to the powers  
37 enumerated elsewhere in this article, the fiscal officer shall have the  
38 power to:

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

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

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

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

54 (e) make a classification by craft, trade or other generally recog-  
55 nized occupational category of the employees involved and to determine

1 whether such work has been performed by the employees in such classi-  
2 fication;

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

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

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

12 (i) propose, and after public hearing held before the fiscal officer  
13 or the fiscal officer's designee, promulgate such rules as the fiscal  
14 officer shall consider necessary for the proper execution of the duties,  
15 responsibilities and powers conferred upon the fiscal officer by the  
16 provisions of this article. Such rules may allow such reasonable vari-  
17 ations, tolerances and exemptions to and from any or all provisions of  
18 this article as the fiscal officer may find necessary and proper in the  
19 public interest, or to avoid serious impairment of the conduct of  
20 government business.

21 2. For all work for which the commissioner is the fiscal officer, the  
22 commissioner shall additionally have all the powers granted to the  
23 commissioner elsewhere in this chapter.

24 § 228-c. Investigation and hearing. 1. Whenever the fiscal officer has  
25 reason to believe that an employee has been paid less than the wages  
26 stipulated in the contract, or if such contract has no wage schedule  
27 attached thereto and the fiscal officer has reason to believe that an  
28 employee has been paid less than the wages prevailing for the employee's  
29 craft, trade or occupation, the fiscal officer may, and upon receipt of  
30 a written complaint from an employee employed thereon, conduct a special  
31 investigation to determine the facts relating thereto.

32 2. (a) At the start of such investigation the fiscal officer may noti-  
33 fy the financial officer of the arts agency interested who shall, at the  
34 direction of the fiscal officer, forthwith withhold from any payment due  
35 to the contractor or subcontractor executing the contract sufficient  
36 money to safeguard the rights of the employees and to cover the civil  
37 penalty that may be assessed as provided herein, or, if there are insuf-  
38 ficient moneys still due to be disbursed to the contractor or subcon-  
39 tractor to safeguard the rights of the employees and to cover the civil  
40 penalty that may be assessed as provided herein, the financial officer  
41 of another arts agency which has entered or subsequently enters into a  
42 contract with the contractor or subcontractor, shall withhold from any  
43 such payment to the contractor or subcontractor executing any work,  
44 sufficient moneys to safeguard the rights of the employees and to cover  
45 the civil penalty that may be assessed as provided herein.

46 (b) If there are still insufficient moneys still due to be disbursed  
47 to the contractor or subcontractor to safeguard the rights of the  
48 employees and to cover the civil penalty that may be assessed as  
49 provided herein, the financial officer shall immediately so notify the  
50 fiscal officer, who may issue a notice of withholding to any of the  
51 following: any substantially-owned affiliated entity or successor or  
52 subsidiary of the contractor or subcontractor, an officer of the  
53 contractor or subcontractor who knowingly participated in the violation  
54 of this article, any of the partners, if the contractor or subcontractor  
55 is a partnership, or any of the five largest shareholders of the  
56 contractor or subcontractor, as determined by the fiscal officer.

1 (c) The notice of withholding shall provide that the fiscal officer  
2 intends to instruct the financial officer, not less than ten days  
3 following of the notice by mail, to withhold sufficient moneys to safe-  
4 guard the rights of the employees and to cover the civil penalty that  
5 may be assessed as provided herein, from any payment due the notified  
6 party under any contract pending final determination. The notice of  
7 withholding shall provide that within thirty days following the date of  
8 the notice of withholding the notified party may contest the withholding  
9 on the basis that the notified party is not a partner or one of the five  
10 largest shareholders of the subcontractor or contractor, an officer of  
11 the contractor or subcontractor who knowingly participated in the  
12 violation of this article, or a substantially-owned affiliated entity or  
13 successor. If the notified party fails to contest the notice of with-  
14 holding, or if the fiscal officer, after reviewing the information  
15 provided by the notified party in such contest, determines that the  
16 notified party is a partner or one of the five largest shareholders, a  
17 substantially-owned affiliated entity, an officer of the contractor or  
18 subcontractor who knowingly participated in the violation of this arti-  
19 cle, or a successor, the fiscal officer may instruct the financial offi-  
20 cer to immediately withhold sufficient moneys to safeguard the rights of  
21 the employees and to cover the civil penalty that may be assessed as  
22 provided herein from funds still to be disbursed to the notified party  
23 under any contract pending the final determination.

24 (d) The financial officer shall immediately implement the notice of  
25 withholding and confirm in writing to the fiscal officer the amount of  
26 money withheld.

27 (e) If the notified party contests the withholding after a withholding  
28 has been effected, and if the fiscal officer determines that the noti-  
29 fied party is not a partner or one of the five largest shareholders, a  
30 substantially-owned affiliated entity or successor, or an officer of the  
31 contractor or subcontractor who knowingly participated in the violation  
32 of this article, the fiscal officer shall immediately notify the finan-  
33 cial officer to release all funds being withheld from the notified  
34 party.

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

37 3. If, despite the requirements of law, the contract for the work has  
38 been awarded without the annexation thereto of the schedule of wages  
39 provided for in this article, the fiscal officer shall determine in the  
40 proceeding before such fiscal officer the wages prevailing at the time  
41 the work was performed for the crafts, trades or occupations of the  
42 employees involved.

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

46 (a) the filing of the complaint; or

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

49 5. (a) The investigation and hearing shall be expeditiously conducted  
50 and upon the completion thereof the fiscal officer shall determine the  
51 issues raised and shall make and file an order in the fiscal officer's  
52 office stating such determination and forthwith serve personally or by  
53 mail a copy of such order and determination together with a notice of  
54 filing upon all parties to the proceeding and upon the financial officer  
55 of the arts agency involved.

1 (b) In addition to directing payment of wages found to be due, such  
2 order of the fiscal officer may direct payment of a further sum as a  
3 civil penalty in an amount not exceeding twenty-five percent of the  
4 total amount found to be due. In assessing the amount of the penalty,  
5 due consideration shall be given to the size of the employer's business,  
6 the good faith of the employer, the gravity of the violation, the histo-  
7 ry of previous violations of the employer, successor or substantially-  
8 owned affiliated entity or any successor of the contractor or subcon-  
9 tractor, any officer of the contractor or subcontractor who knowingly  
10 participated in the violation of this article, and any of the partners  
11 if the contractor or subcontractor is a partnership or any of the five  
12 largest shareholders of the contractor or subcontractor, as determined  
13 by the fiscal officer, of such underpayment of wages or supplements, and  
14 any officer of the contractor or subcontractor who knowingly partic-  
15 ipated in the violation of this article, and the failure to comply with  
16 record keeping or other non-wage requirements. Where the fiscal officer  
17 is the commissioner, the penalty shall be paid to the commissioner for  
18 deposit in the state treasury. Where the fiscal officer is a city comp-  
19 troller or other analogous officer, the penalty shall be paid to said  
20 officer for deposit in the city treasury.

21 (c) If the order directs the payment to specified employees of wages  
22 found to be due and unpaid, including interest at a rate not less than  
23 six per centum per year and not more than the rate of interest then in  
24 effect as prescribed by the superintendent of financial services pursu-  
25 ant to section fourteen-a of the banking law per annum from the time  
26 such wages should have been paid, the financial officer of such arts  
27 agency shall, upon the service to the financial officer of such order,  
28 pay to such employees from the trust money withheld the amounts speci-  
29 fied in such order and shall pay the civil penalty as provided herein,  
30 provided no review proceeding pursuant to the provisions of article  
31 seventy-eight of the civil practice law and rules is commenced within  
32 thirty days of the date said order was filed in the office of the fiscal  
33 officer. If such review is timely commenced, the money withheld shall  
34 remain in trust pending final disposition of the review proceeding. In  
35 determining the rate of interest to be imposed the fiscal officer shall  
36 consider the size of the employer's business, the good faith of the  
37 employer, the gravity of the violation, the history of previous  
38 violations of the employer, successor or substantially-owned affiliated  
39 entity or any successor of the contractor or subcontractor, any officer  
40 of the contractor or subcontractor who knowingly participated in the  
41 violation of this article, and any of the partners if the contractor or  
42 subcontractor is a partnership or any of the five largest shareholders  
43 of the contractor or subcontractor, as determined by the fiscal officer,  
44 and the failure to comply with record keeping or other non-wage require-  
45 ments.

46 6. When a final determination has been made and such determination is  
47 in favor of an employee, such employee may, in addition to any other  
48 remedy provided by this article, institute an action in any court of  
49 appropriate jurisdiction against the person or corporation found to have  
50 violated this article, any substantially-owned affiliated entity or any  
51 successor of the contractor or subcontractor, any officer of the  
52 contractor or subcontractor who knowingly participated in the violation  
53 of this article, and any of the partners if the contractor or subcon-  
54 tractor is a partnership or any of the five largest shareholders of the  
55 contractor or subcontractor, as determined by the fiscal officer, for  
56 the recovery of the difference between the sum, if any, actually paid to

1 the employee by the aforesaid financial officer pursuant to said order  
2 and the amount found to be due the employee as determined by said order.  
3 Such action must be commenced within three years from the date of the  
4 filing of said order, or if the said order is reviewed in a proceeding  
5 pursuant to article seventy-eight of the civil practice law and rules,  
6 within three years after the termination of such review proceeding.  
7 Provided that no proceeding for judicial review as provided in this  
8 section shall then be pending and the time for initiation of such  
9 proceeding shall have expired, the fiscal officer may file with the  
10 county clerk of the county where the employer resides or has a place of  
11 business the order of the fiscal officer containing the amount found to  
12 be due. The filing of such order shall have the full force and effect of  
13 a judgment duly docketed in the office of such clerk. The order may be  
14 enforced by and in the name of the fiscal officer in the same manner,  
15 and with like effect, as that prescribed by the civil practice law and  
16 rules for the enforcement of a money judgment.

17 7. When, pursuant to the provisions of this section, two final orders  
18 have been entered against a contractor, subcontractor, successor, or any  
19 substantially-owned affiliated entity of the contractor or subcontractor,  
20 any of the partners if the contractor or subcontractor is a part-  
21 nership, any of the five largest shareholders of the contractor or  
22 subcontractor, any officer of the contractor or subcontractor who know-  
23 ingly participated in the violation of this article within any consec-  
24 utive six-year period determining that such contractor or subcontractor  
25 and/or its successor, substantially-owned affiliated entity of the  
26 contractor or subcontractor, any of the partners or any of the five  
27 largest shareholders of the contractor or subcontractor, any officer of  
28 the contractor or subcontractor who knowingly participated in the  
29 violation of this article has willfully failed to pay the prevailing  
30 wages in accordance with the provisions of this article, whether such  
31 failures were concurrent or consecutive and whether or not such final  
32 determinations concerning separate public contracts are rendered simul-  
33 taneously, such contractor, subcontractor, successor, and if the  
34 contractor, subcontractor, successor, or any substantially-owned affil-  
35 iated entity of the contractor or subcontractor, any of the partners if  
36 the contractor or subcontractor is a partnership, or any of the five  
37 largest shareholders of the contractor or subcontractor, any officer of  
38 the contractor or subcontractor who knowingly participated in the  
39 violation of this article, or any successor is a corporation, any offi-  
40 cer of such corporation who knowingly participated in such failure,  
41 shall be ineligible to submit a grant application or be awarded a grant  
42 by an arts agency covered by this article for a period of five years  
43 from the date of the second order, provided, however, that where any  
44 such final order involves the falsification of payroll records or the  
45 kickback of wages, the contractor, subcontractor, successor, substan-  
46 tially-owned affiliated entity of the contractor or subcontractor, any  
47 partner if the contractor or subcontractor is a partnership or any of  
48 the five largest shareholders of the contractor or subcontractor, any  
49 officer of the contractor or subcontractor who knowingly participated in  
50 the violation of this article shall be ineligible to submit a grant  
51 application or be awarded a grant, contract or subcontract with the  
52 state, or any municipal corporation or public body for a period of five  
53 years from the date of the first final order. Nothing in this subdivi-  
54 sion shall be construed as affecting any provision of any other law or  
55 regulation relating to the awarding of public contracts or grants.

1 8. (a) When a final determination has been made in favor of a  
2 complainant and the contractor or subcontractor found violating this  
3 article has failed to make payment as required by the order of the  
4 fiscal officer, and provided that no relevant proceeding for judicial  
5 review shall then be pending and the time for initiation of such  
6 proceeding shall have expired, the fiscal officer may file a copy of the  
7 order of the fiscal officer containing the amount found to be due with  
8 the county clerk of the county of residence or place of business of any  
9 of the following:

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

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

15 (iii) any officer of the contractor or subcontractor who knowingly  
16 participated in the violation of this article; provided, however, that  
17 the fiscal officer shall within five days of the filing of the order  
18 provide notice thereof to the partner or a top five shareholder or  
19 successor or substantially-owned affiliated entity. The notified party  
20 may contest the filing on the basis that it is not a partner or a top  
21 five shareholder, an officer of the contractor or subcontractor who  
22 knowingly participated in the violation of this article, successor or  
23 substantially-owned affiliated entity. If, after reviewing the informa-  
24 tion provided by the notified party in support of such contest, the  
25 fiscal officer determines that the notified party is not within the  
26 definitions described herein, the fiscal officer shall immediately with-  
27 draw the filing of the order.

28 (b) The filing of such order shall have the full force and effect of a  
29 judgment duly docketed in the office of such clerk. The order may be  
30 enforced by and in the name of the fiscal officer in the same manner,  
31 and with like effect, as that prescribed by the civil practice law and  
32 rules for the enforcement of a money judgment.

33 9. When a final determination has been made against a subcontractor in  
34 favor of a complainant and the contractor has made payment to the  
35 complainant of any wages and interest due the complainant and any civil  
36 penalty, and providing that no relevant proceeding for judicial review  
37 shall then be pending and the time for initiation of such proceeding  
38 shall have expired, the contractor may file a copy of the order of the  
39 fiscal officer containing the amount found to be due with the county  
40 clerk of the county of residence or place of business of the subcontrac-  
41 tor. The filing of such order shall have the full force and effect of a  
42 judgment duly docketed in the office of such clerk. The judgment may be  
43 docketed in favor of the contractor who may proceed as a judgment credi-  
44 tor against the subcontractor for the recovery of all monies paid by the  
45 contractor under such order.

46 § 228-d. Failure to protest underpayments. Notwithstanding any incon-  
47 sistent provision of this chapter or of any other general, special or  
48 local law, ordinance, charter or administrative code, an employee shall  
49 not be barred from the right to recover the difference between the  
50 amount actually paid to the employee and the amount which should have  
51 been paid to the employee pursuant to an order entered under the  
52 provisions of this article because of the prior receipt by the employee  
53 without protest of wages paid or on account of the employee's failure to  
54 state orally or in writing upon any payroll or receipt which the employ-  
55 ee is required to sign that the wages received by the employee are  
56 received under protest, or on account of the employee's failure to indi-

1 cate the employee's protest against the amount, or that the amount so  
2 paid does not constitute payment in full of wages due the employee for  
3 the period covered by such payment.

4 § 228-e. Statements showing amounts due for wages. 1. Subcontractors  
5 engaged for work by a contractor or its subcontractor shall, upon  
6 receipt from the contractor or its subcontractor of the schedule of  
7 wages and supplements specified in the contract, provide to the contrac-  
8 tor or its subcontractor a verified statement attesting that the subcon-  
9 tractor has received and reviewed such schedule of wages and supple-  
10 ments, and agrees that it will pay the applicable prevailing wages and  
11 will pay or provide the supplements specified therein. Such verified  
12 statement shall be filed in the manner described in subdivision three of  
13 this section. It shall be a violation of this article for any contractor  
14 or its subcontractor to fail to provide for its subcontractor a copy of  
15 the schedule of wages and supplements specified in the contract.

16 2. Before grant funds are released by an arts agency it shall be the  
17 duty of the comptroller or the financial officer of such arts agency or  
18 other officer or person charged with the custody and disbursement of the  
19 grant funds pursuant to the contract and under which payment is made, to  
20 require the contractor to file a statement in writing in form satisfac-  
21 tory to such officer certifying to the amounts then due and owing from  
22 such contractor filing such statement to or on behalf of any and all  
23 employees for daily or weekly wages on account of labor performed upon  
24 the work under the contract, setting forth therein the names of the  
25 persons whose wages are unpaid and the amount due to or on behalf of  
26 each respectively, which statement so to be filed shall be verified by  
27 the oath of the contractor that the contractor has read such statement  
28 subscribed by the contractor and knows the contents thereof, and that  
29 the same is true of the contractor's own knowledge.

30 3. Before payment is made by or on behalf of an arts agency of any  
31 sums due on account of a contract and representing the final portion of  
32 twenty percent of the total amount payable under the contract, it shall  
33 be the duty of the comptroller or the financial officer of such arts  
34 agency or other officer or person charged with the custody and disburse-  
35 ment of the grant funds applicable to the contract under and pursuant to  
36 which payment is made to require the contractor to file every verified  
37 statement required to be obtained by the contractor from its subcontrac-  
38 tors pursuant to subdivision one of this section and to file a statement  
39 in writing in form satisfactory to such officer setting forth the  
40 amounts known by the contractor to be then due and owing from a subcon-  
41 tractor, or from a subcontractor of such subcontractor, for such wages  
42 and supplements, or certifying that the contractor has no knowledge of  
43 such amounts owing to or on behalf of any employees of its subcontrac-  
44 tors, and that in the event it is determined by the commissioner that  
45 the wages or supplements or both of any employees of such subcontractors  
46 have not been paid or provided pursuant to the appropriate schedule of  
47 wages and supplements, the contractor shall be responsible for payment  
48 of such wages or supplements pursuant to the provisions of section two  
49 hundred twenty-eight-a of this article. Before final payment is made of  
50 any sums due on account of such contract, the contractor shall be  
51 required to file a supplemental statement setting forth any additional  
52 amounts known by the contractor to be then due and owing by each subcon-  
53 tractor for such wages or supplements, or that the contractor has no  
54 knowledge of such amounts owing to or on behalf of any employee of its  
55 subcontractors. Such statements so to be filed shall be verified by the  
56 oath of the contractor that the contractor has read such statements

1 subscribed by the contractor and knows the contents thereof, and that  
2 the same is true of the contractor's own knowledge, except with respect  
3 to wages and supplements owing by subcontractors which may be certified  
4 upon information and belief.

5 4. If any interested person shall have previously filed a protest in  
6 writing objecting to the release of grant funds to any contractor or  
7 subcontractor to the extent of the amount or amounts due or to become  
8 due to such person for daily or weekly wages for labor performed on the  
9 work which was funded by such grant, or if for any other reason it may  
10 be deemed advisable, the comptroller or the financial officer of the  
11 arts agency or other officer or person charged with the custody and  
12 disbursement of the grant funds applicable to the contract for such  
13 work, may deduct from the whole amount of any payment on account thereof  
14 the sum or sums admitted by any contractor or subcontractor in such  
15 statement or statements as filed to be due and owing by the contractor  
16 or subcontractor on account of labor performed on such work before  
17 disbursing such grant funds, and may withhold the amount so deducted for  
18 the benefit of the employees whose wages are unpaid as shown by the  
19 verified statements filed by any contractor or subcontractor, and may  
20 pay directly to any person the amount or amounts shown by the statements  
21 filed as hereinbefore required to be due to such person or such person's  
22 duly authorized collective bargaining labor organization receiving such  
23 payment to the extent of the amount thereof.

24 § 228-f. Provisions in contracts prohibiting discrimination on account  
25 of race, creed, color, national origin, age, sex or disability. Every  
26 contract for work shall contain provisions by which the contractor  
27 agrees:

28 1. that in the hiring of employees for the performance of work under  
29 the contract or any subcontract thereunder within the territorial limits  
30 of this state, no contractor or subcontractor, nor any person acting on  
31 behalf of such contractor or subcontractor, shall by reason of race,  
32 creed, color, national origin, age, sex or disability, discriminate  
33 against any citizen of the state of New York who is qualified and avail-  
34 able to perform the work to which the employment relates;

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

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

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

48 § 228-g. Penalties. 1. Any contractor or subcontractor who shall upon  
49 such entity's oath verify any statement required to be filed under this  
50 article which is known by such entity to be false shall be guilty of  
51 perjury and punishable as provided by the penal law.

52 2. When a contract contains as part thereof a schedule of wages as  
53 provided for in this article, any contractor who, after entering into  
54 such contract, and any subcontractor of such contractor fails to pay to  
55 any employee the wages stipulated in such wage schedule is guilty of a  
56 misdemeanor and upon conviction shall be punished for a first offense by

1 a fine of five hundred dollars or by imprisonment for not more than  
2 thirty days or by both such fine and imprisonment; for a second offense  
3 by a fine of one thousand dollars, and in addition thereto the contract  
4 on which the violation has occurred shall be forfeited; and no such  
5 contractor shall be entitled to receive any sum, nor shall any officer,  
6 agent or employee of the contracting arts agency pay any such sum or  
7 authorize its payment from the funds under such entity's charge or  
8 control to such contractor for work done upon the contract on which the  
9 contractor has been convicted of a second offense. If the contractor or  
10 subcontractor is a corporation, any officer of such corporation who  
11 knowingly permits the corporation to fail to make such payment shall  
12 also be guilty of a misdemeanor and the criminal and civil penalties  
13 herein shall attach to such officer upon conviction.

14 § 228-h. Enforcement of article. If the fiscal officer, as defined  
15 herein, finds that any contractor fails to comply with or evades the  
16 provisions of this article, the fiscal officer shall present evidence of  
17 such noncompliance or evasion to the arts agency having charge of such  
18 contract for enforcement. Where such evidence indicates noncompliance or  
19 evasion on the part of a subcontractor, the contractor shall be respon-  
20 sible for such noncompliance or evasion. It shall be the duty of the  
21 arts agency in charge of such contract to enforce the provisions of this  
22 article.

23 § 2. Section 3.01 of the arts and cultural affairs law is amended to  
24 read as follows:

25 § 3.01. Legislative findings and declaration of policy. It is hereby  
26 found that many of our citizens lack the opportunity to view, enjoy or  
27 participate in living theatrical performances, musical concerts, operas,  
28 dance and ballet recitals, art exhibits, examples of fine architecture,  
29 and the performing and fine arts generally. It is hereby further found  
30 that, with increasing leisure time, the practice and enjoyment of the  
31 arts are of increasing importance and that the general welfare of the  
32 people of the state will be promoted by giving further recognition to  
33 the arts as a vital aspect of our culture and heritage and as a valued  
34 means of expanding the scope of our educational programs.

35 It is hereby declared to be the policy of the state to join with  
36 private patrons and with institutions and professional organizations  
37 concerned with the arts to insure that the role of the arts in the life  
38 of our communities will continue to grow and will play an ever more  
39 significant part in the welfare and educational experience of our citi-  
40 zens and in maintaining the paramount position of this state in the  
41 nation and in the world as a cultural center.

42 The legislature further finds that the investment of funds by arts  
43 agencies as defined in article eight-B of the labor law can provide a  
44 vital economic engine to assist, nurture, develop, and promote regional  
45 economic development, the state tourism industry and the growth of jobs  
46 in the state. Indeed, attendees of arts programming generate economic  
47 activity in New York state far beyond the cost of admission, from food  
48 and drink, to parking, transportation, travel, and childcare revenues,  
49 among others.

50 The professional performers and related or supporting professionals  
51 employed on projects and productions that create the performing and fine  
52 arts, and are the basis of the arts economy in New York state and must  
53 not be left behind. Therefore, the state legislature finds that arts  
54 agencies have a substantial and compelling proprietary interest in any  
55 funds awarded in the fine and performing arts. The legislature hereby  
56 declares that the mandate of a living wage for projects awarded grants

1 by arts agencies is central to ensuring the continued availability of  
2 the fine and performing arts in New York state, and the concomitant  
3 economic benefits therewith, and further that the state's proprietary  
4 interest with regard to such funds could be adversely affected by  
5 labor-management conflict.

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

10 § 3. Paragraph (d) of subdivision 1 of section 3.19 of the arts and  
11 cultural affairs law, as added by chapter 16 of the laws of 2017, is  
12 amended to read as follows:

13 (d) Any organization applying for grant funding from an arts agency as  
14 defined by this chapter shall provide to the arts agency a certification  
15 that it will enter into a labor peace agreement with at least one bona  
16 fide labor organization that represents employees of such organization  
17 including but not limited to actors, stage managers, production assist-  
18 ants, scenic artists, scenic designers, costume designers, lighting  
19 designers, sound designers, projection designers, graphic artists, art  
20 and costume department coordinators, ushers, ticket takers, line direc-  
21 tors, press agents, company managers, theatre managers, engineers, musi-  
22 cians, singers, choreographers, dancers, staging staff, ballet school  
23 faculty, directors, fight directors, intimacy directors, dressers,  
24 wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry  
25 workers, dyers, costume technicians, milliners, craftspeople, child  
26 actors, guardians, box office treasurers, first assistants, and ticket  
27 sellers either where such bona fide labor organization is actively  
28 representing employees providing services covered by the organization  
29 seeking such grant funding or upon notice by a bona fide labor organiza-  
30 tion that is attempting to represent employees who will provide services  
31 to the organization seeking such grant funding. The maintenance of such  
32 a labor peace agreement shall be an ongoing material condition for  
33 receipt of grant funding under this article. For purposes of this  
34 section, "labor peace agreement" means an agreement between an entity  
35 and labor organization that, at a minimum, protects the state's proprie-  
36 tary interests by prohibiting labor organizations and members from  
37 engaging in picketing, work stoppages, boycotts, and any other economic  
38 interference with the entity.

39 (e) Any applicant which fails to demonstrate that grant funds are to  
40 be used toward programs in the state shall be deemed ineligible to  
41 receive grant funding under this article. Any organization, when apply-  
42 ing for grant funding, shall provide in its grant application materials  
43 documentation demonstrating compliance with this provision.

44 § 4. Severability. If any clause, sentence, paragraph, subdivision,  
45 section or part of this act shall be adjudged by any court of competent  
46 jurisdiction to be invalid, such judgment shall not affect, impair, or  
47 invalidate the remainder thereof, but shall be confined in its operation  
48 to the clause, sentence, paragraph, subdivision, section or part thereof  
49 directly involved in the controversy in which such judgment shall have  
50 been rendered. It is hereby declared to be the intent of the legislature  
51 that this act would have been enacted even if such invalid provisions  
52 had not been included herein.

53 § 5. This act shall take effect on the ninetieth day after it shall  
54 have become a law and shall apply to any grant award made subsequent to  
55 such effective date.