

STATE OF NEW YORK

4036--B

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. BRONSON, HEVESI, TAYLOR, ROZIC -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

3 ARTICLE 8-B

4 PREVAILING WAGE REQUIREMENT FOR NOT-FOR-PROFIT THEATERS

5 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.

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

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1 228-g. Penalties.

2 228-h. Enforcement of article.

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

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

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

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

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

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

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

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

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

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

38 10. "Parent company" means an entity that directly controls the
39 contractor or subcontractor.

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

1 tices in the locality, the amount of such supplement shall be determined
2 in the same manner and at the same time as the prevailing rate of wage
3 is determined pursuant to this section.

4 12. "Prevailing wage" means the rate of compensation paid by a
5 production, by virtue of collective bargaining agreements between bona
6 fade labor organizations that represent employees of not-for-profit
7 theaters including but not limited to actors, stage managers, production
8 assistants, scenic artists, scenic designers, costume designers, light-
9 ing designers, sound designers, projection designers, graphic artists,
10 art and costume department coordinators, ushers, ticket takers, line
11 directors, press agents, company managers, theatre managers, engineers,
12 musicians, singers, choreographers, dancers, staging staff, ballet
13 school faculty, directors, fight directors, intimacy directors, dres-
14 sers, wardrobers, costumers, stitchers, tailors, drapers, shoppers,
15 laundry workers, dyers, costume technicians, milliners, craftspeople,
16 child actors, guardians, stagehands, box office treasurers, first
17 assistants, ticket sellers, and employers of such employees performing
18 work on a production funded by an arts agency where such labor organiza-
19 tion represents at least thirty per centum of employees in the locality
20 where such work is being performed. The prevailing rate of wage shall be
21 annually determined in accordance herewith by the fiscal officer no
22 later than thirty days prior to July first of each year, and the
23 prevailing rate of wage for the period commencing July first of such
24 year through June thirtieth, inclusive, of the following year shall be
25 the rate of wage set forth in such collective bargaining agreements for
26 the period commencing July first through June thirtieth, including those
27 increases for such period which are directly ascertainable from such
28 collective bargaining agreements by the fiscal officer in such officer's
29 annual determination. In the event that it is determined after a
30 contest, as provided in section two hundred twenty-eight-c of this arti-
31 cle, that less than thirty percent of the employees in the locality
32 where the work is being performed receive a collectively bargained rate
33 of wage, then the average wage paid to such employees in the locality
34 for the twelve-month period preceding the fiscal officer's annual deter-
35 mination shall be the prevailing rate of wage. Employees for whom a
36 prevailing rate of wage is to be determined shall not be considered in
37 determining such prevailing wage.

38 13. "Production" means a corporation, partnership, limited partner-
39 ship, or other entity or individual that provides compensation to an
40 employee.

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

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

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

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

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

22 § 228-a. Prevailing wage requirement for not-for-profit theaters and
23 payment of their employees on productions funded by the New York state
24 council on the arts or arts agencies of localities; record keeping. 1.
25 In all cases where work is being performed pursuant to a collective
26 bargaining agreement the contractor or subcontractor shall keep original
27 payrolls or transcripts thereof, subscribed and confirmed by the
28 contractor or subcontractor as true, under penalty of perjury, showing
29 the hours and days worked by each employee, the craft, trade or occupa-
30 tion at which the employee was employed, and the wages paid.

31 2. Where the wages paid include sums which are not paid directly to
32 the employees weekly and which are expended for supplements, the records
33 required to be maintained shall include a record of such hourly payment
34 on behalf of such employees, the supplement for which such payment has
35 been made, and the name and address of the person to whom such payment
36 has been made. In all such cases, the contractor shall keep a true and
37 inscribed copy of the agreement under which such payments are made, a
38 record of all net payments made thereunder, and a list of all persons
39 for whom such payments are made.

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

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

45 § 228-b. Powers of the fiscal officer. 1. In addition to the powers
46 enumerated elsewhere in this article, the fiscal officer shall have the
47 power to:

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

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

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

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

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

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

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

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

20 (i) propose, and after public hearing held before the fiscal officer
21 or the fiscal officer's designee, promulgate such rules as the fiscal
22 officer shall consider necessary for the proper execution of the duties,
23 responsibilities and powers conferred upon the fiscal officer by the
24 provisions of this article. Such rules may allow such reasonable vari-
25 ations, tolerances and exemptions to and from any or all provisions of
26 this article as the fiscal officer may find necessary and proper in the
27 public interest, or to avoid serious impairment of the conduct of
28 government business.

29 2. For all work for which the commissioner is the fiscal officer, the
30 commissioner shall additionally have all the powers granted to the
31 commissioner elsewhere in this chapter.

32 § 228-c. Investigation and hearing. 1. Whenever the fiscal officer has
33 reason to believe that an employee has been paid less than the wages
34 stipulated in the contract, or if such contract has no wage schedule
35 attached thereto and the fiscal officer has reason to believe that an
36 employee has been paid less than the wages prevailing for the employee's
37 craft, trade or occupation, the fiscal officer may, and upon receipt of
38 a written complaint from an employee employed thereon, conduct a special
39 investigation to determine the facts relating thereto.

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

54 (b) If there are still insufficient moneys still due to be disbursed
55 to the contractor or subcontractor to safeguard the rights of the
56 employees and to cover the civil penalty that may be assessed as

1 provided herein, the financial officer shall immediately so notify the
2 fiscal officer, who may issue a notice of withholding to any of the
3 following: any substantially-owned affiliated entity or successor or
4 subsidiary of the contractor or subcontractor, an officer of the
5 contractor or subcontractor who knowingly participated in the violation
6 of this article, any of the partners, if the contractor or subcontractor
7 is a partnership, or any of the five largest shareholders of the
8 contractor or subcontractor, as determined by the fiscal officer.

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

32 (d) The financial officer shall immediately implement the notice of
33 withholding and confirm in writing to the fiscal officer the amount of
34 money withheld.

35 (e) If the notified party contests the withholding after a withholding
36 has been effected, and if the fiscal officer determines that the noti-
37 fied party is not a partner or one of the five largest shareholders, a
38 substantially-owned affiliated entity or successor, or an officer of the
39 contractor or subcontractor who knowingly participated in the violation
40 of this article, the fiscal officer shall immediately notify the finan-
41 cial officer to release all funds being withheld from the notified
42 party.

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

45 3. If, despite the requirements of law, the contract for the work has
46 been awarded without the annexation thereto of the schedule of wages
47 provided for in this article, the fiscal officer shall determine in the
48 proceeding before such fiscal officer the wages prevailing at the time
49 the work was performed for the crafts, trades or occupations of the
50 employees involved.

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

54 (a) the filing of the complaint; or

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

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

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

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

53 6. When a final determination has been made and such determination is
54 in favor of an employee, such employee may, in addition to any other
55 remedy provided by this article, institute an action in any court of
56 appropriate jurisdiction against the person or corporation found to have

1 violated this article, any substantially-owned affiliated entity or any
2 successor of the contractor or subcontractor, any officer of the
3 contractor or subcontractor who knowingly participated in the violation
4 of this article, and any of the partners if the contractor or subcon-
5 tractor is a partnership or any of the five largest shareholders of the
6 contractor or subcontractor, as determined by the fiscal officer, for
7 the recovery of the difference between the sum, if any, actually paid to
8 the employee by the aforesaid financial officer pursuant to said order
9 and the amount found to be due the employee as determined by said order.
10 Such action must be commenced within three years from the date of the
11 filing of said order, or if the said order is reviewed in a proceeding
12 pursuant to article seventy-eight of the civil practice law and rules,
13 within three years after the termination of such review proceeding.
14 Provided that no proceeding for judicial review as provided in this
15 section shall then be pending and the time for initiation of such
16 proceeding shall have expired, the fiscal officer may file with the
17 county clerk of the county where the employer resides or has a place of
18 business the order of the fiscal officer containing the amount found to
19 be due. The filing of such order shall have the full force and effect of
20 a judgment duly docketed in the office of such clerk. The order may be
21 enforced by and in the name of the fiscal officer in the same manner,
22 and with like effect, as that prescribed by the civil practice law and
23 rules for the enforcement of a money judgment.

24 7. When, pursuant to the provisions of this section, two final orders
25 have been entered against a contractor, subcontractor, successor, or any
26 substantially-owned affiliated entity of the contractor or subcontrac-
27 tor, any of the partners if the contractor or subcontractor is a part-
28 nership, any of the five largest shareholders of the contractor or
29 subcontractor, any officer of the contractor or subcontractor who know-
30 ingly participated in the violation of this article within any consec-
31 utive six-year period determining that such contractor or subcontractor
32 and/or its successor, substantially-owned affiliated entity of the
33 contractor or subcontractor, any of the partners or any of the five
34 largest shareholders of the contractor or subcontractor, any officer of
35 the contractor or subcontractor who knowingly participated in the
36 violation of this article has willfully failed to pay the prevailing
37 wages in accordance with the provisions of this article, whether such
38 failures were concurrent or consecutive and whether or not such final
39 determinations concerning separate public contracts are rendered simul-
40 taneously, such contractor, subcontractor, successor, and if the
41 contractor, subcontractor, successor, or any substantially-owned affil-
42 iated entity of the contractor or subcontractor, any of the partners if
43 the contractor or subcontractor is a partnership, or any of the five
44 largest shareholders of the contractor or subcontractor, any officer of
45 the contractor or subcontractor who knowingly participated in the
46 violation of this article, or any successor is a corporation, any offi-
47 cer of such corporation who knowingly participated in such failure,
48 shall be ineligible to submit a grant application or be awarded a grant
49 by an arts agency covered by this article for a period of five years
50 from the date of the second order, provided, however, that where any
51 such final order involves the falsification of payroll records or the
52 kickback of wages, the contractor, subcontractor, successor, substan-
53 tially-owned affiliated entity of the contractor or subcontractor, any
54 partner if the contractor or subcontractor is a partnership or any of
55 the five largest shareholders of the contractor or subcontractor, any
56 officer of the contractor or subcontractor who knowingly participated in

1 the violation of this article shall be ineligible to submit a grant
2 application or be awarded a grant, contract or subcontract with the
3 state, or any municipal corporation or public body for a period of five
4 years from the date of the first final order. Nothing in this subdivi-
5 sion shall be construed as affecting any provision of any other law or
6 regulation relating to the awarding of public contracts or grants.

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

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

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

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

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

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

52 § 228-d. Failure to protest underpayments. Notwithstanding any incon-
53 sistent provision of this chapter or of any other general, special or
54 local law, ordinance, charter or administrative code, an employee shall
55 not be barred from the right to recover the difference between the
56 amount actually paid to the employee and the amount which should have

1 been paid to the employee pursuant to an order entered under the
2 provisions of this article because of the prior receipt by the employee
3 without protest of wages paid or on account of the employee's failure to
4 state orally or in writing upon any payroll or receipt which the employ-
5 ee is required to sign that the wages received by the employee are
6 received under protest, or on account of the employee's failure to indi-
7 cate the employee's protest against the amount, or that the amount so
8 paid does not constitute payment in full of wages due the employee for
9 the period covered by such payment.

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

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

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

1 required to file a supplemental statement setting forth any additional
2 amounts known by the contractor to be then due and owing by each subcon-
3 tractor for such wages or supplements, or that the contractor has no
4 knowledge of such amounts owing to or on behalf of any employee of its
5 subcontractors. Such statements so to be filed shall be verified by the
6 oath of the contractor that the contractor has read such statements
7 subscribed by the contractor and knows the contents thereof, and that
8 the same is true of the contractor's own knowledge, except with respect
9 to wages and supplements owing by subcontractors which may be certified
10 upon information and belief.

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

30 § 228-f. Provisions in contracts prohibiting discrimination on account
31 of race, creed, color, national origin, age, sex or disability. Every
32 contract for work shall contain provisions by which the contractor
33 agrees:

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

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

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

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

54 § 228-g. Penalties. 1. Any contractor or subcontractor who shall upon
55 such entity's oath verify any statement required to be filed under this

1 article which is known by such entity to be false shall be guilty of
2 perjury and punishable as provided by the penal law.

3 2. When a contract contains as part thereof a schedule of wages as
4 provided for in this article, any contractor who, after entering into
5 such contract, and any subcontractor of such contractor fails to pay to
6 any employee the wages stipulated in such wage schedule is guilty of a
7 misdemeanor and upon conviction shall be punished for a first offense by
8 a fine of five hundred dollars or by imprisonment for not more than
9 thirty days or by both such fine and imprisonment; for a second offense
10 by a fine of one thousand dollars, and in addition thereto the contract
11 on which the violation has occurred shall be forfeited; and no such
12 contractor shall be entitled to receive any sum, nor shall any officer,
13 agent or employee of the contracting arts agency pay any such sum or
14 authorize its payment from the funds under such entity's charge or
15 control to such contractor for work done upon the contract on which the
16 contractor has been convicted of a second offense. If the contractor or
17 subcontractor is a corporation, any officer of such corporation who
18 knowingly permits the corporation to fail to make such payment shall
19 also be guilty of a misdemeanor and the criminal and civil penalties
20 herein shall attach to such officer upon conviction.

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

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

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

42 It is hereby declared to be the policy of the state to join with
43 private patrons and with institutions and professional organizations
44 concerned with the arts to insure that the role of the arts in the life
45 of our communities will continue to grow and will play an ever more
46 significant part in the welfare and educational experience of our citi-
47 zens and in maintaining the paramount position of this state in the
48 nation and in the world as a cultural center.

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

1 The professional performers and related or supporting professionals
2 employed on projects and productions that create the performing and fine
3 arts, and are the basis of the arts economy in New York state and must
4 not be left behind. Therefore, the state legislature finds that arts
5 agencies have a substantial and compelling proprietary interest in any
6 funds awarded in the fine and performing arts. The legislature hereby
7 declares that the mandate of a living wage for projects awarded grants
8 by arts agencies is central to ensuring the continued availability of
9 the fine and performing arts in New York state, and the concomitant
10 economic benefits therewith, and further that the state's proprietary
11 interest with regard to such funds could be adversely affected by
12 labor-management conflict.

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

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

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

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

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

1 been rendered. It is hereby declared to be the intent of the legislature
2 that this act would have been enacted even if such invalid provisions
3 had not been included herein.

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