

STATE OF NEW YORK

3037

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

AN ACT to amend the arts and cultural affairs law, in relation to requiring that an organization applying for grant funding shall provide to arts agencies a certification that it will enter into a labor peace agreement with at least one bona fide labor organization under certain circumstances; and to amend the labor law, in relation to prevailing wage requirement for not-for-profit theaters and payment of their employees on productions funded by the New York state council on the arts or arts agencies of localities

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

1 Section 1. Section 3.01 of the arts and cultural affairs law is
2 amended to read as follows:

3 § 3.01. Legislative findings and declaration of policy. It is hereby
4 found that many of our citizens lack the opportunity to view, enjoy or
5 participate in living theatrical performances, musical concerts, operas,
6 dance and ballet recitals, art exhibits, examples of fine architecture,
7 and the performing and fine arts generally. It is hereby further found
8 that, with increasing leisure time, the practice and enjoyment of the
9 arts are of increasing importance and that the general welfare of the
10 people of the state will be promoted by giving further recognition to
11 the arts as a vital aspect of our culture and heritage and as a valued
12 means of expanding the scope of our educational programs.

13 It is hereby declared to be the policy of the state to join with
14 private patrons and with institutions and professional organizations
15 concerned with the arts to insure that the role of the arts in the life
16 of our communities will continue to grow and will play an ever more
17 significant part in the welfare and educational experience of our citi-
18 zens and in maintaining the paramount position of this state in the
19 nation and in the world as a cultural center.

20 The legislature further finds that the investment of funds by arts
21 agencies as defined in article eight-B of the labor law can provide a

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

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1 vital economic engine to assist, nurture, develop, and promote regional
2 economic development, the state tourism industry and the growth of jobs
3 in the state. Indeed, attendees of arts programming generate economic
4 activity in New York state far beyond the cost of admission, from food
5 and drink, to parking, transportation, travel, and childcare revenues,
6 among others.

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

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

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

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

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

1 § 3. The labor law is amended by adding a new article 8-B to read as
2 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.

17 228-g. Penalties.

18 228-h. Enforcement of article.

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

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

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

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

27 4. "Employee" means an employee of a not-for-profit theater that
28 receives a grant award from an arts agency including but not limited to
29 actors, stage managers, production assistants, scenic artists, scenic
30 designers, costume designers, lighting designers, sound designers,
31 projection designers, graphic artists, art and costume department coor-
32 dinators, ushers, ticket takers, line directors, press agents, company
33 managers, theatre managers, engineers, musicians, singers, choreogra-
34 phers, dancers, staging staff, ballet school faculty, directors, fight
35 directors, intimacy directors, dressers, wardrobers, costumers, stitch-
36 ers, tailors, drapers, shoppers, laundry workers, dyers, costume techni-
37 cians, milliners, craftspeople, child actors, guardians, box office
38 treasurers, first assistants, and ticket sellers employed on a
39 production funded by an arts agency.

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

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

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

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

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

54 10. "Parent company" means an entity that directly controls the
55 contractor or subcontractor.

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

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

49 13. "Production" means a corporation, partnership, limited partner-
50 ship, or other entity or individual that provides compensation to an
51 employee.

52 14. "Substantially-owned affiliated entity" means the parent company
53 of the contractor or subcontractor, any subsidiary of the contractor or
54 subcontractor, or any entity in which the parent of the contractor or
55 subcontractor owns more than fifty percent of the voting stock, or an
56 entity in which one or more of the top five shareholders of the contrac-

1 tor or subcontractor individually or collectively also owns a control-
2 ling share of the voting stock, or an entity which exhibits any other
3 indicia of control over the contractor or subcontractor or over which
4 the contractor or subcontractor exhibits control, regardless of whether
5 or not the controlling party or parties have any identifiable or docu-
6 mented ownership interest. Such indicia shall include power or responsi-
7 bility over employment decisions, access to and/or use of the relevant
8 entity's assets or equipment, power or responsibility over contracts of
9 the entity, responsibility for maintenance or submission of certified
10 payroll records, and influence over the business decisions of the rele-
11 vant entity.

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

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

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

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

33 § 228-a. Prevailing wage requirement for not-for-profit theaters and
34 payment of their employees on productions funded by the New York state
35 council on the arts or arts agencies of localities; record keeping. 1.
36 In all cases where work is being performed pursuant to a collective
37 bargaining agreement the contractor or subcontractor shall keep original
38 payrolls or transcripts thereof, subscribed and confirmed by the
39 contractor or subcontractor as true, under penalty of perjury, showing
40 the hours and days worked by each employee, the craft, trade or occupa-
41 tion at which the employee was employed, and the wages paid.

42 2. Where the wages paid include sums which are not paid directly to
43 the employees weekly and which are expended for supplements, the records
44 required to be maintained shall include a record of such hourly payment
45 on behalf of such employees, the supplement for which such payment has
46 been made, and the name and address of the person to whom such payment
47 has been made. In all such cases, the contractor shall keep a true and
48 inscribed copy of the agreement under which such payments are made, a
49 record of all net payments made thereunder, and a list of all persons
50 for whom such payments are made.

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

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

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

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

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

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

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

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

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

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

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

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

41 2. For all work for which the commissioner is the fiscal officer, the
42 commissioner shall additionally have all the powers granted to the
43 commissioner elsewhere in this chapter.

44 § 228-c. Investigation and hearing. 1. Whenever the fiscal officer has
45 reason to believe that an employee has been paid less than the wages
46 stipulated in the contract, or if such contract has no wage schedule
47 attached thereto and the fiscal officer has reason to believe that an
48 employee has been paid less than the wages prevailing for the employee's
49 craft, trade or occupation, the fiscal officer may, and upon receipt of
50 a written complaint from an employee employed thereon, conduct a special
51 investigation to determine the facts relating thereto.

52 2. (a) At the start of such investigation the fiscal officer may noti-
53 fy the financial officer of the arts agency interested who shall, at the
54 direction of the fiscal officer, forthwith withhold from any payment due
55 to the contractor or subcontractor executing the contract sufficient
56 money to safeguard the rights of the employees and to cover the civil

1 penalty that may be assessed as provided herein, or, if there are insuf-
2 ficient moneys still due to be disbursed to the contractor or subcon-
3 tractor to safeguard the rights of the employees and to cover the civil
4 penalty that may be assessed as provided herein, the financial officer
5 of another arts agency which has entered or subsequently enters into a
6 contract with the contractor or subcontractor, shall withhold from any
7 such payment to the contractor or subcontractor executing any work,
8 sufficient moneys to safeguard the rights of the employees and to cover
9 the civil penalty that may be assessed as provided herein.

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

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

44 (d) The financial officer shall immediately implement the notice of
45 withholding and confirm in writing to the fiscal officer the amount of
46 money withheld.

47 (e) If the notified party contests the withholding after a withholding
48 has been effected, and if the fiscal officer determines that the noti-
49 fied party is not a partner or one of the five largest shareholders, a
50 substantially-owned affiliated entity or successor, or an officer of the
51 contractor or subcontractor who knowingly participated in the violation
52 of this article, the fiscal officer shall immediately notify the finan-
53 cial officer to release all funds being withheld from the notified
54 party.

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

1 3. If, despite the requirements of law, the contract for the work has
2 been awarded without the annexation thereto of the schedule of wages
3 provided for in this article, the fiscal officer shall determine in the
4 proceeding before such fiscal officer the wages prevailing at the time
5 the work was performed for the crafts, trades or occupations of the
6 employees involved.

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

10 (a) the filing of the complaint; or

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

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

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

40 (c) If the order directs the payment to specified employees of wages
41 found to be due and unpaid, including interest at a rate not less than
42 six per centum per year and not more than the rate of interest then in
43 effect as prescribed by the superintendent of financial services pursu-
44 ant to section fourteen-a of the banking law per annum from the time
45 such wages should have been paid, the financial officer of such arts
46 agency shall, upon the service to the financial officer of such order,
47 pay to such employees from the trust money withheld the amounts speci-
48 fied in such order and shall pay the civil penalty as provided herein,
49 provided no review proceeding pursuant to the provisions of article
50 seventy-eight of the civil practice law and rules is commenced within
51 thirty days of the date said order was filed in the office of the fiscal
52 officer. If such review is timely commenced, the money withheld shall
53 remain in trust pending final disposition of the review proceeding. In
54 determining the rate of interest to be imposed the fiscal officer shall
55 consider the size of the employer's business, the good faith of the
56 employer, the gravity of the violation, the history of previous

1 violations of the employer, successor or substantially-owned affiliated
2 entity or any successor of the contractor or subcontractor, any officer
3 of the contractor or subcontractor who knowingly participated in the
4 violation of this article, and any of the partners if the contractor or
5 subcontractor is a partnership or any of the five largest shareholders
6 of the contractor or subcontractor, as determined by the fiscal officer,
7 and the failure to comply with record keeping or other non-wage require-
8 ments.

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

36 7. When, pursuant to the provisions of this section, two final orders
37 have been entered against a contractor, subcontractor, successor, or any
38 substantially-owned affiliated entity of the contractor or subcontrac-
39 tor, any of the partners if the contractor or subcontractor is a part-
40 nership, any of the five largest shareholders of the contractor or
41 subcontractor, any officer of the contractor or subcontractor who know-
42 ingly participated in the violation of this article within any consec-
43 utive six-year period determining that such contractor or subcontractor
44 and/or its successor, substantially-owned affiliated entity of the
45 contractor or subcontractor, any of the partners or any of the five
46 largest shareholders of the contractor or subcontractor, any officer of
47 the contractor or subcontractor who knowingly participated in the
48 violation of this article has willfully failed to pay the prevailing
49 wages in accordance with the provisions of this article, whether such
50 failures were concurrent or consecutive and whether or not such final
51 determinations concerning separate public contracts are rendered simul-
52 taneously, such contractor, subcontractor, successor, and if the
53 contractor, subcontractor, successor, or any substantially-owned affil-
54 iated entity of the contractor or subcontractor, any of the partners if
55 the contractor or subcontractor is a partnership, or any of the five
56 largest shareholders of the contractor or subcontractor, any officer of

1 the contractor or subcontractor who knowingly participated in the
2 violation of this article, or any successor is a corporation, any offi-
3 cer of such corporation who knowingly participated in such failure,
4 shall be ineligible to submit a grant application or be awarded a grant
5 by an arts agency covered by this article for a period of five years
6 from the date of the second order, provided, however, that where any
7 such final order involves the falsification of payroll records or the
8 kickback of wages, the contractor, subcontractor, successor, substan-
9 tially-owned affiliated entity of the contractor or subcontractor, any
10 partner if the contractor or subcontractor is a partnership or any of
11 the five largest shareholders of the contractor or subcontractor, any
12 officer of the contractor or subcontractor who knowingly participated in
13 the violation of this article shall be ineligible to submit a grant
14 application or be awarded a grant, contract or subcontract with the
15 state, or any municipal corporation or public body for a period of five
16 years from the date of the first final order. Nothing in this subdivi-
17 sion shall be construed as affecting any provision of any other law or
18 regulation relating to the awarding of public contracts or grants.

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

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

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

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

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

51 9. When a final determination has been made against a subcontractor in
52 favor of a complainant and the contractor has made payment to the
53 complainant of any wages and interest due the complainant and any civil
54 penalty, and providing that no relevant proceeding for judicial review
55 shall then be pending and the time for initiation of such proceeding
56 shall have expired, the contractor may file a copy of the order of the

1 fiscal officer containing the amount found to be due with the county
2 clerk of the county of residence or place of business of the subcontractor.
3 The filing of such order shall have the full force and effect of a
4 judgment duly docketed in the office of such clerk. The judgment may be
5 docketed in favor of the contractor who may proceed as a judgment credi-
6 tor against the subcontractor for the recovery of all monies paid by the
7 contractor under such order.

8 § 228-d. Failure to protest underpayments. Notwithstanding any inconsis-
9 tent provision of this chapter or of any other general, special or
10 local law, ordinance, charter or administrative code, an employee shall
11 not be barred from the right to recover the difference between the
12 amount actually paid to the employee and the amount which should have
13 been paid to the employee pursuant to an order entered under the
14 provisions of this article because of the prior receipt by the employee
15 without protest of wages paid or on account of the employee's failure to
16 state orally or in writing upon any payroll or receipt which the employ-
17 ee is required to sign that the wages received by the employee are
18 received under protest, or on account of the employee's failure to indi-
19 cate the employee's protest against the amount, or that the amount so
20 paid does not constitute payment in full of wages due the employee for
21 the period covered by such payment.

22 § 228-e. Statements showing amounts due for wages. 1. Subcontractors
23 engaged for work by a contractor or its subcontractor shall, upon
24 receipt from the contractor or its subcontractor of the schedule of
25 wages and supplements specified in the contract, provide to the contrac-
26 tor or its subcontractor a verified statement attesting that the subcon-
27 tractor has received and reviewed such schedule of wages and supple-
28 ments, and agrees that it will pay the applicable prevailing wages and
29 will pay or provide the supplements specified therein. Such verified
30 statement shall be filed in the manner described in subdivision three of
31 this section. It shall be a violation of this article for any contractor
32 or its subcontractor to fail to provide for its subcontractor a copy of
33 the schedule of wages and supplements specified in the contract.

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

48 3. Before payment is made by or on behalf of an arts agency of any
49 sums due on account of a contract and representing the final portion of
50 twenty percent of the total amount payable under the contract, it shall
51 be the duty of the comptroller or the financial officer of such arts
52 agency or other officer or person charged with the custody and disburse-
53 ment of the grant funds applicable to the contract under and pursuant to
54 which payment is made to require the contractor to file every verified
55 statement required to be obtained by the contractor from its subcontractors
56 pursuant to subdivision one of this section and to file a statement

1 in writing in form satisfactory to such officer setting forth the
2 amounts known by the contractor to be then due and owing from a subcon-
3 tractor, or from a subcontractor of such subcontractor, for such wages
4 and supplements, or certifying that the contractor has no knowledge of
5 such amounts owing to or on behalf of any employees of its subcontract-
6 ors, and that in the event it is determined by the commissioner that
7 the wages or supplements or both of any employees of such subcontractors
8 have not been paid or provided pursuant to the appropriate schedule of
9 wages and supplements, the contractor shall be responsible for payment
10 of such wages or supplements pursuant to the provisions of section two
11 hundred twenty-eight-a of this article. Before final payment is made of
12 any sums due on account of such contract, the contractor shall be
13 required to file a supplemental statement setting forth any additional
14 amounts known by the contractor to be then due and owing by each subcon-
15 tractor for such wages or supplements, or that the contractor has no
16 knowledge of such amounts owing to or on behalf of any employee of its
17 subcontractors. Such statements so to be filed shall be verified by the
18 oath of the contractor that the contractor has read such statements
19 subscribed by the contractor and knows the contents thereof, and that
20 the same is true of the contractor's own knowledge, except with respect
21 to wages and supplements owing by subcontractors which may be certified
22 upon information and belief.

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

42 § 228-f. Provisions in contracts prohibiting discrimination on account
43 of race, creed, color, national origin, age, sex or disability. Every
44 contract for work shall contain provisions by which the contractor
45 agrees:

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

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

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

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

10 § 228-g. Penalties. 1. Any contractor or subcontractor who shall upon
11 such entity's oath verify any statement required to be filed under this
12 article which is known by such entity to be false shall be guilty of
13 perjury and punishable as provided by the penal law.

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

32 § 228-h. Enforcement of article. If the fiscal officer, as defined
33 herein, finds that any contractor fails to comply with or evades the
34 provisions of this article, the fiscal officer shall present evidence of
35 such noncompliance or evasion to the arts agency having charge of such
36 contract for enforcement. Where such evidence indicates noncompliance or
37 evasion on the part of a subcontractor, the contractor shall be respon-
38 sible for such noncompliance or evasion. It shall be the duty of the
39 arts agency in charge of such contract to enforce the provisions of this
40 article.

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

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