

STATE OF NEW YORK

3037--B

2025-2026 Regular Sessions

IN SENATE

January 23, 2025

Introduced by Sens. HOYLMAN-SIGAL, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. The labor law is amended by adding a new article 8-B to
2 read as follows:

ARTICLE 8-B

PREVAILING WAGE REQUIREMENT FOR NOT-FOR-PROFIT THEATERS

Section 228. Definitions.

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

10 228-b. Powers of the fiscal officer.

11 228-c. Investigation and hearing.

12 228-d. Failure to protest underpayments.

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

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

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

228-g. Penalties.

228-h. Enforcement of article.

§ 228. Definitions. As used in this article:

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

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

3. "Contractor" or "subcontractor" means a production that is a recipient of a grant from an arts agency.

4. "Employee" means an employee of a not-for-profit theater that receives a grant award from an arts agency including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theatre managers, engineers, musicians, singers, choreographers, dancers, staging staff, ballet school faculty, directors, fight directors, intimacy directors, dressers, wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry workers, dyers, costume technicians, milliners, craftspeople, child actors, guardians, stagehands, box office treasurers, first assistants, and ticket sellers employed on a production funded by an arts agency.

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

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

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

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

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

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

11. "Prevailing practices in the locality" means the practice of providing supplements by virtue of collective bargaining agreements between bona fide labor organizations that represent employees of not-for-profit theaters including but not limited to actors, stage managers, production assistants, scenic artists, scenic designers, costume designers, lighting designers, sound designers, projection designers, graphic artists, art and costume department coordinators, ushers, ticket takers, line directors, press agents, company managers, theatre managers, engineers, musicians, singers, choreographers, dancers, staging staff, ballet school faculty, directors, fight directors, intimacy directors, dressers, wardrobers, costumers, stitchers, tailors, drapers, shoppers, laundry workers, dyers, costume technicians, milliners, craftspeople, child actors, guardians, stagehands, box office treasurers, first assistants, and ticket sellers provided that said employers employ at

1 least thirty per centum of such employees in the locality, as determined
2 by the fiscal officer in accordance with the provisions herein. With
3 respect to each supplement determined to be one of the prevailing prac-
4 tices in the locality, the amount of such supplement shall be determined
5 in the same manner and at the same time as the prevailing rate of wage
6 is determined pursuant to this section.

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

41 13. "Production" means a corporation, partnership, limited partner-
42 ship, or other entity or individual that provides compensation to an
43 employee.

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

1 the entity, responsibility for maintenance or submission of certified
2 payroll records, and influence over the business decisions of the rele-
3 vant entity.

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

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

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

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

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

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

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

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

48 § 228-b. Powers of the fiscal officer. 1. In addition to the powers
49 enumerated elsewhere in this article, the fiscal officer shall have the
50 power to:

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

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

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

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

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

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

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

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

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

32 2. For all work for which the commissioner is the fiscal officer, the
33 commissioner shall additionally have all the powers granted to the
34 commissioner elsewhere in this chapter.

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

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

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

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

35 (d) The financial officer shall immediately implement the notice of
36 withholding and confirm in writing to the fiscal officer the amount of
37 money withheld.

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

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

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

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

1 (a) the filing of the complaint; or
2 (b) the commencement of the investigation upon the fiscal officer's
3 own volition, whichever is earlier in point of time.

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

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

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

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

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

1 tially-owned affiliated entity of the contractor or subcontractor, any
2 partner if the contractor or subcontractor is a partnership or any of
3 the five largest shareholders of the contractor or subcontractor, any
4 officer of the contractor or subcontractor who knowingly participated in
5 the violation of this article shall be ineligible to submit a grant
6 application or be awarded a grant, contract or subcontract with the
7 state, or any municipal corporation or public body for a period of five
8 years from the date of the first final order. Nothing in this subdivi-
9 sion shall be construed as affecting any provision of any other law or
10 regulation relating to the awarding of public contracts or grants.

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

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

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

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

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

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

1 § 228-d. Failure to protest underpayments. Notwithstanding any incon-
2 sistent provision of this chapter or of any other general, special or
3 local law, ordinance, charter or administrative code, an employee shall
4 not be barred from the right to recover the difference between the
5 amount actually paid to the employee and the amount which should have
6 been paid to the employee pursuant to an order entered under the
7 provisions of this article because of the prior receipt by the employee
8 without protest of wages paid or on account of the employee's failure to
9 state orally or in writing upon any payroll or receipt which the employ-
10 ee is required to sign that the wages received by the employee are
11 received under protest, or on account of the employee's failure to indi-
12 cate the employee's protest against the amount, or that the amount so
13 paid does not constitute payment in full of wages due the employee for
14 the period covered by such payment.

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

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

41 3. Before payment is made by or on behalf of an arts agency of any
42 sums due on account of a contract and representing the final portion of
43 twenty percent of the total amount payable under the contract, it shall
44 be the duty of the comptroller or the financial officer of such arts
45 agency or other officer or person charged with the custody and disburse-
46 ment of the grant funds applicable to the contract under and pursuant to
47 which payment is made to require the contractor to file every verified
48 statement required to be obtained by the contractor from its subcontrac-
49 tors pursuant to subdivision one of this section and to file a statement
50 in writing in form satisfactory to such officer setting forth the
51 amounts known by the contractor to be then due and owing from a subcon-
52 tractor, or from a subcontractor of such subcontractor, for such wages
53 and supplements, or certifying that the contractor has no knowledge of
54 such amounts owing to or on behalf of any employees of its subcontrac-
55 tors, and that in the event it is determined by the commissioner that
56 the wages or supplements or both of any employees of such subcontractors

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

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

35 § 228-f. Provisions in contracts prohibiting discrimination on account
36 of race, creed, color, national origin, age, sex or disability. Every
37 contract for work shall contain provisions by which the contractor
38 agrees:

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

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

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

55 4. that the contract may be cancelled or terminated by the arts agen-
56 cy, and all moneys otherwise to be disbursed pursuant to such contract

1 may be forfeited for a second or any subsequent violation of the terms
2 or conditions of this section of the contract.

3 § 228-g. Penalties. 1. Any contractor or subcontractor who shall upon
4 such entity's oath verify any statement required to be filed under this
5 article which is known by such entity to be false shall be guilty of
6 perjury and punishable as provided by the penal law.

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

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

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

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

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

53 The legislature further finds that the investment of funds by arts
54 agencies as defined in article eight-B of the labor law can provide a
55 vital economic engine to assist, nurture, develop, and promote regional
56 economic development, the state tourism industry and the growth of jobs

1 in the state. Indeed, attendees of arts programming generate economic
2 activity in New York state far beyond the cost of admission, from food
3 and drink, to parking, transportation, travel, and childcare revenues,
4 among others.

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

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

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

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

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

55 § 4. Severability. If any clause, sentence, paragraph, subdivision,
56 section or part of this act shall be adjudged by any court of competent

1 jurisdiction to be invalid, such judgment shall not affect, impair, or
2 invalidate the remainder thereof, but shall be confined in its operation
3 to the clause, sentence, paragraph, subdivision, section or part thereof
4 directly involved in the controversy in which such judgment shall have
5 been rendered. It is hereby declared to be the intent of the legislature
6 that this act would have been enacted even if such invalid provisions
7 had not been included herein.

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