§ 220-b. Amounts due for wages and supplements may be withheld for benefit of laborers. 1. In case any interested person shall have previously filed a protest in writing objecting to the payment to any contractor or subcontractor to the extent of the amount or amounts due or to become due to him for daily or weekly wages or supplements for labor performed on the public improvement for which such contract was entered into, or if for any other reason it may be deemed advisable, the comptroller of the state or the financial officer of the municipal corporation or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract for such public improvement may deduct from the whole amount of any payment on account thereof the sum or sums admitted by any contractor or subcontractor in such statement or statements so filed to be due and owing by him on account of labor performed on such public improvement before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the laborers, workmen or mechanics whose wages or supplements are unpaid or not provided, as the case may be, as shown by the verified statements filed by any contractor or subcontractor, and may pay directly to any person the amount or amounts shown to be due to him or his duly authorized collective bargaining labor organization, as the case may be, for such wages or supplements by the statements filed as hereinbefore required, thereby discharging the obligation of the contractor or subcontractor to the person or his duly authorized collective bargaining labor organization receiving such payment to the extent of the amount thereof, or

2. a. (1) When any interested person shall file a written complaint with the fiscal officer, as herein defined, alleging unpaid wages or supplements due for labor performed on a public improvement for which a contract has been entered into, and said labor is alleged to have been performed within the two-year period immediately preceding the date of the filing of said complaint, or if, on the fiscal officer's own initiative, unpaid wages or supplements appear to be due, the fiscal officer shall immediately so notify the financial officer of the civil division interested, or, if there are insufficient moneys still due to the contractor or subcontractor to satisfy said wages and supplements,

including interest and penalty, the financial officer of another civil division which has entered or subsequently enters into a public improvement contract with the contractor or subcontractor, who shall withhold from any payment due or earned the contractor or subcontractor executing any public improvements, sufficient moneys to satisfy said wages and supplements, including interest at the rate provided herein, and any civil penalty that may be assessed as provided herein, pending a final determination. The financial officer shall immediately confirm in writing to the fiscal officer the amount of money withheld.

(2) If there are still insufficient moneys due or earned to the contractor or subcontractor, as a result of work performed, to satisfy such wages and supplements, including interest and penalties, the financial officer shall immediately notify the fiscal officer, who may issue a notice of intent to withhold any of the following:

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

(ii) any of the partners, if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article.

(3) The notice of intent to withhold shall provide that the fiscal officer intends to instruct the financial officer, not less than ten days following service of the notice by mail, to withhold sufficient moneys to satisfy unpaid wages and supplements, including interest at the rate provided in this article, and any civil penalty that may be assessed as provided in this article, from any payment due or earned the notified party under any public improvement contract pending final determination. The notice of withholding shall provide that within thirty days following the date of the notice of withholding the notified party may contest the withholding on the basis that the notified party is not a partner or top five shareholder of the subcontractor or contractor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, a substantially-owned affiliated entity, or successor. If the notified party fails to contest the notice of withholding, or if the fiscal officer, after reviewing the information provided by the notified party in such contest, determines

that the notified party is a partner or top five shareholder, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a substantially-owned affiliated entity, or successor, the fiscal officer may instruct the financial officer to withhold sufficient moneys to satisfy said wages and supplements, including interest at the rate provided in this article, and any civil penalty that may be assessed as provided in this article from any payment due the notified party under any public improvement contract pending the final determination.

(4) The financial officer shall immediately implement the notice of withholding and confirm in writing to the fiscal officer the amount of money to be withheld. If the notified party contests the withholding after a withholding has been effected, and if the fiscal officer determines, that the notified party is not a partner or top five shareholder, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a substantially-owned affiliated entity or successor, the fiscal officer shall immediately notify the financial officer to release all payments being withheld from the notified party and the financial officer shall implement the notice.

b. Moneys withheld pursuant to this section shall be held by the financial officer for the sole and exclusive benefit of the workers employed on said public improvement and for payment of any civil penalty that may be assessed as provided herein and shall not be used for any other purpose except upon court order. Any person, partnership, association, corporation or governmental body who files a lien or commences a judicial proceeding with respect to any monies withheld pursuant to this section shall notify the fiscal officer in writing of the lien or claim on or before the date of filing of the lien or commencement of the judicial proceeding. In any proceeding to obtain moneys withheld pursuant to this section by any person, partnership, association, corporation or governmental body, the fiscal officer shall have the right to appear and be heard.

c. The fiscal officer shall cause an investigation to be made to determine whether any amounts are due to the laborers, workmen or mechanics, or on their respective behalves, on such public improvement,

for labor performed after the commencement of the three-year period immediately preceding the filing of the complaint or the commencement of the investigation on his own initiative, as the case may be, and shall order a hearing thereon at a time and place to be specified and shall give notice thereof, together with a copy of such complaint, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on all interested persons, including the person complained against and upon the financial officer of the civil division interested; such person complained against shall have an opportunity to be heard in respect to the matters complained of, at the time and place specified in such notice, which time shall be not less than five days from the service of said notice. The fiscal officer in such an investigation shall be deemed to be acting in a judicial capacity and shall have the rights to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such investigation and hearing shall be expeditiously conducted, and upon such hearing and investigation, the fiscal officer shall determine the issues raised thereon and shall make and file an order in his office stating such determination and forthwith serve a copy of such order, either personally or by mail, together with notice of filing, upon the financial officer of the civil division interested, and the parties to such proceedings and, if the fiscal officer be the comptroller or other analogous officer of a city, upon the commissioner. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.

d. In addition to directing payment of wages or supplements including interest found to be due, the order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer or

any successor or substantially-owned affiliated entity or any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, and any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and the failure to comply with recordkeeping or other non-wage requirements. Upon the fiscal officer's determination of the penalty, where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

e. Upon the entry and service of such order, the financial officer of the civil division interested shall pay to the claimant, from the moneys due to the contractor or subcontractor, the amount of the claim as determined by the fiscal officer and the amount of the civil penalty, if any, shall be paid as provided herein, provided that no proceeding pursuant to article seventy-eight of the civil practice law and rules for review of said order is commenced by any party aggrieved thereby within thirty days from the date said order was filed in the office of the fiscal officer. Said proceeding shall be commenced directly in the appellate division of the supreme court. Where the fiscal officer is the commissioner, the civil penalty shall be paid to the commissioner for deposit in the state treasury; where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury. In the event that such a proceeding for review is instituted, moneys sufficient to satisfy the claim and civil penalty shall be set aside by the financial officer interested as provided in paragraph b of this subdivision, subject to the order of the court.

f. If the financial officer of the civil division interested fails to pay to the claimant the amount of the claim as determined by the fiscal officer within ten days after the expiration of the contractor's time to commence a proceeding for review of the fiscal officer's order or, if such a proceeding has been commenced, within ten days after entry and service of a court order confirming the fiscal officer's order, the

civil division interested shall pay to the claimant interest on the claim at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law from the date the financial officer was required to pay the claim as provided herein to the date of payment; provided, however, this paragraph shall not apply if the failure of the financial officer of the civil division interested to pay the amount of the claim is pursuant to court order.

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

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

(ii) any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article; provided, however, that the fiscal officer shall within five days of the filing of the order provide notice thereof to the partner or top five shareholders or successor or substantially-owned affiliated entity or other entity determined to have violated any provision of subdivision five of section two hundred twenty of this article or this subdivision; the notified party may contest the filing on the basis that it is not a partner or top five shareholder, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or successor or substantially-owned affiliated entity. If, after reviewing the information provided by the notified party in support of such contest, the fiscal officer determines that the notified party is not subject to the provision of this paragraph, the fiscal officer shall immediately withdraw his filing of the order.

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

h. When a final determination has been made against a subcontractor in favor of a complainant and the contractor has made payment to the complainant of any wages and interest due the complainant and any civil penalty that has been assessed, and providing that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the contractor may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of the subcontractor. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The judgment may be docketed in favor of the contractor who may proceed as a judgment creditor against the subcontractor for the recovery of all monies paid by the contractor under such order.

Provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the fiscal officer containing the amount found to be due. The filing of such an order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

2-a. The fiscal officer shall make an inquiry as to the willfulness of the alleged violation which is the subject of an investigation pursuant to subdivision two of this section. In the event a formal hearing is held pursuant to this section, the fiscal officer, upon a review of the entire record and a finding of credible evidence, must make a

determination, as to the willfulness of such violation. No finding of willfullness made pursuant to the provisions of this subdivision shall be dispositive for the purposes of section one hundred ninety-eight-a of this chapter or of the last undesignated paragraph of subdivision three of section two hundred twenty of this article.

3. a. When a final determination has been made and such determination is in favor of the complainant, said complainant may in addition to any other remedy provided by this article, institute an action in any court of appropriate jurisdiction against the person or corporation found violating this article, any substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to him by the aforesaid financial officer pursuant to said order and the amount found to be due him as determined by said order. Such action must be commenced within three years from the date of the filing of said order, or if the said order is reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules, within three years after the termination of such review proceeding.

b. (1) When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the

contractor or subcontractor who knowingly participated in the violation of this article has wilfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the first final determination.

(2) When any person or corporation, or any officer or shareholder who owns or controls at least ten per centum of the outstanding stock of such corporation, has been convicted of a felony offense for conduct relating to obtaining or attempting to obtain, or performing or attempting to perform a public work contract with the state, any municipal corporation, public benefit corporation or public body, and such felony offense is a violation of:

(i) this chapter; or

(ii) coercion in the first degree as defined in section 135.65 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in

section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, insurance fraud in the fourth degree as defined in section 176.15 of the penal law, insurance fraud in the third degree as defined in section 176.20 of the penal law, insurance fraud in the second degree as defined in section 176.25 of the penal law, insurance fraud in the first degree as defined in section 176.30 of the penal law, aggravated insurance fraud as defined in section 176.35 of the penal law, commercial bribing in the first degree as defined in section 180.03 of the penal law, commercial bribe receiving in the first degree as defined in section 180.08 of the penal law, bribing a labor official as defined in section 180.15 of the penal law, bribe receiving by a labor official as defined in section 180.25 of the penal law, criminal impersonation in the second degree as defined in section 190.25 of the penal law, criminal impersonation in the first degree as defined in section 190.26 of the penal law, criminal usury in the second degree as defined in section 190.40 of the penal law, criminal usury in the first degree as defined in section 190.42 of the penal law, scheme to defraud in the first degree as defined in section 190.65 of the penal law, bribery in the third degree as defined in section 200.00 of the penal law, bribery in the second degree as defined in section 200.03 of the penal law, bribery in the first degree as defined in section 200.04 of the penal law, bribe receiving in the third degree as defined in section 200.10 of the penal law, bribe receiving in the second degree as defined in section 200.11 of the penal law, bribe

receiving in the first degree as defined in section 200.12 of the penal law, rewarding official misconduct in the second degree as defined in section 200.20 of the penal law, rewarding official misconduct in the first degree as defined in section 200.22 of the penal law, bribe giving for public office as defined in section 200.45 of the penal law, or the attempted commission of any of the offenses set forth in this paragraph, provided that such offense constitutes a felony; or

(iii) criminal solicitation in the second degree as defined in section 100.10 of the penal law, conspiracy in the fourth degree as defined in section 105.10 of the penal law, conspiracy in the second degree as defined in section 105.15 of the penal law, or criminal facilitation in the second degree as defined in section 115.05 of the penal law, provided that such offense is a felony and was committed in connection with one or more of the crimes listed in clause (ii) of this subparagraph; or

(iv) article twenty-two of the general business law; or

(v) assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law and murder in the second degree as defined in section 125.25 of the penal law, provided that the victim was an employee of such person or corporation and further provided that such offense arose from actions or matters related to the protection of the health or safety of employees at a work site;

such person shall be ineligible to submit a bid on or be awarded any public works contract with the state, any municipal corporation, public benefit corporation or public body for a period of five years from the date of conviction.

* (3)(i) When any contractor, subcontractor, or person is listed by the federal government as excluded from receiving federal contracts and certain subcontracts, assistance or benefits, pursuant to 48 C.F.R. Subpart 9-4, such contractor, subcontractor, or person shall be ineligible to submit a bid on or be awarded any public work contract

with the state, any municipal corporation, public benefit corporation or public body during such period of exclusion, unless the department having jurisdiction determines, after public notice and comment, that there is a compelling reason, consistent with 48 C.F.R. § 9.405, to allow such contractor, subcontractor, or person to submit a bid or to be awarded a particular public work contract. Public notice shall include notice provided to the department, which shall post such notice on its website.

(ii) When the fiscal officer determines that a contractor, subcontractor or person is a "substantially owned-affiliated entity," as defined by paragraph g of subdivision five of section two hundred twenty of this article, in relation to a contractor, subcontractor, or person ineligible to submit a bid or be awarded a public work contract under clause (i) of this subparagraph, such substantially owned-affiliated entity shall be ineligible to submit a bid or be awarded any public work contract with the state, any municipal corporation, public benefit corporation for the duration of the remaining period of exclusion of the contractor, subcontractor, or person under clause (i) of this subparagraph. In order for a substantially owned-affiliated entity to be debarred pursuant to this clause, such substantially owned-affiliated entity must have had substantial involvement in the day to day management of the contractor, subcontractor or person debarred under clause (i) of this subparagraph. Such substantially owned-affiliated entity shall be provided with written notice from the fiscal officer of the proposed determination and shall be afforded an opportunity to be heard regarding the ineligible determination by the fiscal officer within thirty calendar days of the written notice. In addition, the department having jurisdiction may determine, after public notice and comment, that there is a compelling reason, consistent with 48 C.F.R. § 9.405, to allow such substantially owned-affiliated entity to submit a bid or to be awarded a particular public work contract. Public notice shall include notice provided to the department, which shall post such notice on its website.

(iii) Any determinations made pursuant to this subparagraph shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

* NB Repealed March 18, 2027

c. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts except that the ineligibility for submission of any bid or receipt of any award of public work set forth in this chapter shall not be subject to any mitigation or judicial abatement, including, but not limited to, the provisions of article twenty-three of the correction law, and such ineligibility shall continue in full force and effect for the entire period set forth above.