

New York State Prevailing Wage Statutes

New York State Consolidated Laws

Labor

ARTICLE 8

PUBLIC WORK

Section 220. Hours, wages and supplements.

- 220-a. Statements showing amounts due for wages and supplements to be filed--Verification.
- 220-b. Amounts due for wages and supplements may be withheld for benefit of laborers.
- 220-c. Contractor or subcontractor verifying false statement guilty of perjury.
- 220-d. Minimum rate of wage and supplement.
- 220-e. Provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works.
- 220-f. Labor policy of the state with regard to public work contracts; participation in an international boycott prohibited.
- 220-g. Additional enforcement of article.

221. Company stores.

- 221-a. Permits required.
- 221-b. Issue of permits.

222-a. Prevention of dust hazard in public works.

223. Enforcement of article.

S 220. Hours, wages and supplements. 1. Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

2. Each contract to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party and which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workmen and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the industrial commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the industrial commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workmen and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the industrial commissioner determines that there are not sufficient workmen, laborers and mechanics of any or all

classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the industrial commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the industrial commissioner shall grant a dispensation permitting all laborers, workmen and mechanics, or any classification of such laborers, workmen and mechanics, to work such additional hours or days per week on such public project or in such areas the industrial commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the industrial commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

2-a. Any person or corporation contracting with the state or a public benefit corporation, or a municipal corporation, or a commission appointed pursuant to law that shall require more than eight hours work for a day's labor, unless otherwise permitted by law, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars for each offense.

3. The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon such public works, shall be not less than the prevailing rate of wages as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less than the prevailing rate of wages as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually registered in an apprenticeship program which is duly registered with the commissioner of labor in conformity with the provisions of article twenty-three of this chapter. The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon any material to be used upon or in connection therewith, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided.

The supplements, as hereinafter defined, to be provided to laborers, workmen or mechanics upon such public works, shall be in accordance with the prevailing practices in the locality, as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be provided supplements in accordance with the prevailing practices as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually

registered in an apprenticeship program which is duly registered with the industrial commissioner in conformity with the provisions of article twenty-three of this chapter. The supplements, as hereinafter defined, to be provided to laborers, workmen or mechanics upon any material to be used upon or in connection therewith, shall be in accordance with the prevailing practices in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be provided the supplements as required in this article.

It shall be the duty of the fiscal officer, as defined in this section, to ascertain and determine the schedules of supplements to be provided and wages to be paid workmen, laborers and mechanics on such public work, prior to the time of the advertisement for bids, and such schedules shall be annexed to and form a part of the specifications for the work. Such fiscal officer shall file with the department having jurisdiction such schedules to the time of the commencement of the advertisement for bids on all public works proposed to be constructed. The term "contract" as used in this subdivision also shall include reconstruction and repair of any such public work.

Any person or corporation that wilfully pays or provides after entering into such contract, less than such stipulated wage scale or supplements as established by the fiscal officer shall be guilty of a misdemeanor and upon conviction shall be punished for such first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state, municipal corporation or commission or board appointed pursuant to law pay the same or authorize its payment from the funds under his charge or control to any person or corporation for work done upon any contract, on which the contractor has been convicted for second offense in violation of the provisions of this section.

The commissioner shall ensure that all supplements due under this article shall be paid to or on behalf of an employee. The commissioner shall require proof that the pension plan for which any supplement has been paid is qualified as a bona fide plan by the United States internal revenue service. Acceptable proof shall be shown by submission of a determination letter issued by the United States internal revenue service.

3-a. a. It shall be the duty of the department of jurisdiction as defined in this section to ascertain from the plans and specifications the classification of workmen, mechanics and laborers to be employed on such project. Such department shall file with the fiscal officer, as defined in this section, the classification of workmen, mechanics and laborers to be employed upon such public works project, together with a statement of the work to be performed by each such classification. From such statement it shall be the duty of the fiscal officer to make a proper classification of such workmen, mechanics and laborers taking into account whether the work is heavy and highway, building, sewer and water, tunnel work or residential and to make a determination of the schedules of wages and supplements to be paid or provided, as the case may be, therefor. The contractor and every sub-contractor on public

works contracts shall post in a prominent and accessible place on the site where the work is performed a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workingmen, or laborers employed on the work. Such posted statement shall be written in plain English and titled, in lettering no smaller than two inches in height and two inches in width, with the phrase "Prevailing Rate of Wages". Such posted statement shall be constructed of materials capable of withstanding adverse weather conditions. The contractor and every sub-contractor shall keep original payrolls or transcripts thereof, subscribed and affirmed by him as true under the penalties of perjury, showing the hours and days worked by each workman, laborer or mechanic, the occupation at which he worked, the hourly wage rate paid and the supplements paid or provided, on the site of the work where the contractor or sub-contractor maintains no regular place of business in New York state and where the amount of the contract is in excess of twenty-five thousand dollars. All other contractors or sub-contractors shall produce within five days on the site of the work and upon formal order of the commissioner or his designated representative such original payrolls or transcripts thereof, subscribed and affirmed by him as true under the penalties of perjury, as may be deemed necessary to adequately enforce the provisions of this article. Every contractor, and sub-contractor, shall submit to the department of jurisdiction within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, as provided by this article, subscribed and affirmed as true under the penalties of perjury. The department of jurisdiction shall be required to receive and maintain such payroll records. The original payrolls or transcripts shall be preserved for three years from the date of completion of the work on the awarded contract. The department of jurisdiction as herein referred to shall be the department of the state, board or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to prepare or direct the preparation of the plans and specifications for a public work project.

b. All departments of jurisdiction in respect of public work as to which the industrial commissioner is fiscal officer, as defined in this section, shall furnish to the industrial commissioner the following information immediately upon signing of a contract for such public work: (a) the name and address of the contractor engaged by said department of jurisdiction; (b) the date when the contract was let; (c) the approximate consideration stipulated for in said contract.

c. The fiscal officer may require any person or corporation performing such public work to file with the fiscal officer within ten days of receipt of said request, payroll records, sworn to as to their validity and accuracy, requested by the fiscal officer, for said public work or for any public or private work performed by said person or corporation during the same period of time as said public work. In the event said person or corporation fails to provide the requested information within the allotted ten days, the fiscal officer shall, within fifteen days, order the department of jurisdiction to immediately withhold from payment to said person or corporation up to twenty-five percent of the amount, not to exceed one hundred thousand dollars, to be paid to said person or corporation under the terms of the contract pursuant to which said public work is being performed. Said amount withheld shall be immediately released upon receipt by the department of jurisdiction of a notice from the fiscal officer indicating that the request for records had been satisfied.

3-b. 1. Public work advisory board. There is hereby created in the department an advisory board on public work composed of six members to be appointed by the governor by and with the advice and consent of the senate. Two members of the advisory board shall be persons known to represent the interests of employers in the construction industry, two persons shall be known to represent the interest of employees therein, and two members shall be persons appointed to represent the public. The governor may remove any member when he or she ceases to represent the interests in whose behalf he or she was appointed. The commissioner of labor shall be an additional member of such board without any voting power and act as chairman thereof and shall designate an employee of the department to be secretary. The board shall meet at the call of the commissioner of labor and when engaged upon the work of the board each member, except the commissioner, shall not receive a salary or other compensation, but shall be reimbursed for reasonable traveling and other expenses to be audited by the state comptroller.

2. Terms of office. All members of the advisory board shall be appointed for a term of six years to begin at the expiration of the term of office of the member whom he is to succeed. Any member appointed to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed.

3-c. The advisory board shall adopt rules and regulations to govern its own proceedings, and to expedite the making by it of the examinations and determinations required by this chapter. The members of the advisory board shall have power:

1. To issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents and other evidence;

2. To hear testimony and take or cause to be taken depositions of witnesses residing within or without this state in the manner prescribed by law for like depositions in civil actions in the supreme court. Subpoenas and commissions to take testimony shall be issued under the seal of the department.

3-d. The fiscal officer of any political subdivision of the state, wherein a public work project is proposed to be constructed, may request the industrial commissioner to make a classification by trades or occupations of laborers, workmen and mechanics required to perform the public work in its completed form. The board shall, when requested by the industrial commissioner, examine into proposed public work projects and determine the classification by trades or occupations of laborers, workmen and mechanics required to perform the public work in its completed form; and to determine which of same are skilled, semi-skilled or unskilled. The board shall file with the industrial commissioner its findings, determinations and recommendations.

3-e. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the New York State Department of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

4. This section shall not apply to:
 - a. Stationary firemen in state hospitals;
 - b. Other persons regularly employed in the state institutions, except mechanics;
 - c. Engineers, electricians and elevator men in the bureau of building management of the office of general services during the annual session of the legislature.

5. Definitions. a. The "prevailing rate of wage, " for the intents and purposes of this article, shall be the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed. The prevailing rate of wage shall be annually determined in accordance herewith by the fiscal officer no later than thirty days prior to July first of each year, and the prevailing rate of wage for the period commencing July first of such year through June thirtieth, inclusive, of the following year shall be the rate of wage set forth in such collective bargaining agreements for the period commencing July first through June thirtieth, including those increases for such period which are directly ascertainable from such collective bargaining agreements by the fiscal officer in his annual determination. In the event that it is determined after a contest, as provided in subdivision six of this section, that less than thirty percent of the workers, laborers or mechanics in a particular trade or occupation in the locality where the work is being performed receive a collectively bargained rate of wage, then the average wage paid to such workers, laborers or mechanics in the same trade or occupation in the locality for the twelve-month period preceding the fiscal officer's annual determination shall be the prevailing rate of wage. Laborers, workers or mechanics for whom a prevailing rate of wage is to be determined shall not be considered in determining such prevailing wage.

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

- c. "Prevailing practices in the locality," for the intents and purposes of this article, shall be the practice of providing supplements, as hereinbefore defined, as provided by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality, as determined by the fiscal officer in accordance with the provisions herein.

With respect to each supplement determined to be one of the prevailing practices in the locality, the amount of such supplement shall be determined in the same manner and at the same times as the prevailing rate of wage is determined pursuant to this section.

- d. "Locality" means such areas of the state described and defined for a trade or occupation in the current collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public and private work.

- e. The "fiscal officer," as used herein, shall be deemed to be, on

public work performed by or on behalf of the state or a public benefit corporation or a county or a village, or other civil division of the state, except a city, with a population in excess of one million, the commissioner of labor; and on public work performed by or on behalf of a city with a population in excess of one million, the comptroller or other analogous officer of such city.

f. The term "verified complaint," as applied to a claim against a municipality, shall include a verified demand or verified notice of claim heretofore, and since the first day of January, nineteen hundred thirty-five, filed with the fiscal officer of such municipality in accordance with the provisions of the local charter or local laws or ordinances relating generally to the filing of claims or demands against such municipality; and any person who has filed such a demand or notice shall be deemed to have filed a verified complaint as of the date, not earlier than the first day of January, nineteen hundred thirty-five, mentioned in such notice or demand as the commencement of the period in relation to which such claim or demand is made.

g. "Substantially owned-affiliated entity" shall mean the parent company of the contractor or subcontractor, any subsidiary of the contractor or subcontractor, or any entity in which the parent of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the contractor or subcontractor or over which the contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

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

i. "Parent company" shall mean an entity that directly controls the contractor or subcontractor.

j. "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor or by the contractor's parent company.

k. "Successor" shall mean an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

6. The fiscal officer, may, and on the written request of any interested person shall, require any person or corporation performing such public work to file with such fiscal officer schedules of the supplements to be provided and wages to be paid to such laborers, workmen or mechanics. Any such person or corporation shall, within ten days after the receipt of written notice of such requirement, file with the fiscal officer such schedules of wages and supplements. An employer may contest a determination by the fiscal officer under paragraphs a and c of subdivision five of this section. The employer must allege and prove by competent evidence, that the actual percentage of workers, laborers or mechanics is below the required thirty per centum and during the pendency of any such contest and until final determination thereof, the work in question shall proceed under the rate established by the

fiscal officer.

7. Compliance investigations. The fiscal officer as herein defined shall on a verified complaint in writing of any person interested or of any employee organization pursuant to subdivision eight-d, and may on his own initiative cause a compliance investigation to be made to determine whether the contractor or a subcontractor has paid the prevailing rate of wages and prevailing practices for supplements in the same trade or occupation in the locality within the state where such public work is being performed, or the hours of labor performed by the workmen, laborers and mechanics employed on such public work, or both. The fiscal officer or his agents, examiners and inspectors may examine or cause to be examined the books and records pertaining to the rate of wages paid and supplements provided to the laborers, workmen and mechanics on said public work and the hours of labor performed by such laborers, workmen and mechanics on said public work. The fiscal officer in such investigation shall be deemed to be acting in a judicial capacity, and shall have the right 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 fiscal officer shall make either an order, determination or any other disposition, including but not limited to an agreed upon settlement and/or stipulation, within six months from the date of filing of such verified complaint, and where a compliance investigation is made without the filing of a verified complaint, within six months from the date a compliance investigation is initiated by such fiscal officer. Upon the making of said order or determination, or upon arriving at such agreed upon settlement and/or stipulation, a copy thereof shall be sent by certified mail, return receipt requested, by the fiscal officer: (i) to the person and employee organization, if any, who or which initiated the complaint, (ii) to the person or corporation, if any, against whom the complaint was brought, and (iii) where a compliance investigation is made without the filing of a complaint, to the person or corporation who or which was the subject of the compliance investigation.

7-a. The fiscal officer must make an inquiry as to the willfulness of the alleged violation which is the subject of a compliance investigation pursuant to subdivision seven of this section. In the event a formal hearing is held pursuant to subdivision eight of 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 said violation. No finding of willfulness 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 this section.

8. Hearings. Before issuing an order or determination as provided in subdivision seven, the fiscal officer 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 the purpose thereof, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on any person or corporation affected thereby; such person or corporation 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 the notice personally or by mail. The fiscal officer in such hearing shall be deemed to be acting in a judicial capacity, and shall have the right 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 hearing shall be

expeditiously conducted and upon such hearing the fiscal officer shall determine the issues raised thereon and shall make and file an order in the office of the fiscal officer stating such determination, and forthwith serve a copy of such order, with a notice of the filing thereof, upon the parties to such proceeding, personally or by mail. 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 banks pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment, provided, however, that such interest rate shall not apply to subdivision eight-c of this section.

In addition to directing payment of wages or supplements including interest found to be due, such order 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 and the failure to comply with recordkeeping or other non-wage requirements. 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.

Upon the entry of such order any party aggrieved thereby may commence a proceeding for the review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the fiscal officer. Said proceeding shall be commenced directly in the appellate division of the supreme court. If such order is not reviewed, or is so reviewed and the final decision is in favor of the complainant and the order involves or relates to the rate of wages paid or the supplements provided on such public work, the complainant or any other person affected may within six months after the service of notice of the filing of said order, or the notice of entry of said final decision on review, institute an action against the person or corporation found violating this act for the recovery of the difference between the sum actually paid or provided and the amount which should have been paid or provided, together with interest at the rate of interest provided herein, as determined by said order or decision, as the case may be, from and after the date of the filing of said verified complaint, with the fiscal officer or of the filing of the fiscal officer's report of investigation made on his own initiative. Provided that no proceeding for judicial review as provided herein shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer 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 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.

8-a. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, the prior receipt without protest of the wages, salary or supplements paid or provided, as the case may be, to the complainant or any other person affected by such final order, or his failure to state orally or in writing upon any payroll or receipt which

he is required to sign that the wages, salary or supplements received by him is received under protest, or to indicate in any other way his protest against the amount thereof, or that the amount so paid does not constitute payment in full of the wages or salary due him for the period covered by such payment, or that the supplements provided do not constitute the full supplements due him, shall not be a bar to his right to recover, in accordance with the provisions of subdivision eight, the difference between the sum actually paid or provided, as the case may be, and the amount which should have been paid or provided, as the case may be, as determined by such final order.

8-b. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, an employee of a municipal corporation, irrespective of the title of his position or employment, whose salary or wage or supplement is fixed by reference to a prevailing rate of wage determined or to a prevailing practice for supplements determination and established by a final order in a proceeding instituted under this section, shall not be barred from his right to recover, in accordance with the terms of such fixation, the difference between the amount actually paid to him and the amount which should have been paid to him or provided, as the case may be, pursuant to such fixation, because of the prior receipt by him without protest of the salary, wages or supplements paid or provided to him, as the case may be; or because he did not previously protest his prior failure to be provided with any supplement whatsoever; or on account of his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the salary or wages or supplements received by him is received under protest, or on account of his failure to indicate his protest against the amount or non-provision thereof or that the amount so paid or provided does not constitute payment or provision, as the case may be, in full of the salary, wages or supplement due him for the period covered by such payment.

8-c. Interest at six percentum per annum shall begin to accrue sixty days after a final determination made by a fiscal officer on the difference between the prevailing wages so determined, and which should have been paid to an employee of a municipal corporation, and the amount actually received by him. Said accumulated interest shall be paid to the employee when back pay based on the determination is paid to him.

8-d. Notwithstanding any inconsistent provision of this chapter or of any other law, in a city of one million or more, where a majority of laborers, workmen or mechanics in a particular civil service title are members of an employee organization which has been certified or recognized to represent them pursuant to the provisions of article fourteen of the civil service law or a local law enacted thereunder, the public employer and such employee organization shall in good faith negotiate and enter into a written agreement with respect to the wages and supplements of the laborers, workmen or mechanics in the title. If the parties fail to achieve an agreement, only the employee organization shall be authorized to file a single verified complaint pursuant to subdivision seven herein, on behalf of the laborers, workmen or mechanics so represented. Such employee organization shall be the sole and exclusive representative of such laborers, workmen or mechanics at any hearing pursuant to subdivision eight herein, and shall be the sole complainant in the proceeding for all purposes therein, including review pursuant to article seventy-eight of the civil practice law and rules. Service by the fiscal officer on the employee organization shall be sufficient notice to the laborers, workmen or mechanics so represented

for all purposes of subdivision eight herein, except that the issuance and enforcement of subpoenas shall be regulated by the civil practice law and rules. Any order, compromise, or settlement determining the issues raised upon such a proceeding, which has not been taken up for review by the employee organization, shall be binding upon the laborers, workmen or mechanics represented by the employee organization. Nothing herein shall be construed to limit the rights of any laborer, workman or mechanic who has on file a verified complaint prior to the effective date of this subdivision.

9. When a final determination has been rendered, any person, or corporation that wilfully refuses thereafter to pay the rate of wages or to provide the supplements determined to be prevailing, or wilfully employs on such public work, laborers, workmen or mechanics more than the hours per day determined by said order until modified by order of the fiscal officer or court and thereby violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract, on which the contractor has been convicted of second offense in violation of the provisions of this section.

S 220-a. Statements showing amounts due for wages and supplements to be filed--Verification. 1. Subcontractors engaged by a public improvement contractor or its subcontractor shall upon receipt from the public improvement contractor or its subcontractor of a copy of the schedule of wages and supplements specified in the public improvement contract, or of a subsequently issued schedule, provide to such contractor or its subcontractor a verified statement attesting that the subcontractor has received and reviewed such schedule of wages and supplements, or subsequently issued schedule, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed in the manner described in subdivisions two and four of this section. It shall be a violation of this article for any contractor or its subcontractor to fail to provide to its subcontractor a copy of the schedule of wages and supplements specified in the contract as well as any annually determined rate issued subsequent to the schedule specified in the contract.

2. Before final payment is made by or on behalf of the state, county, city, town, village or other civil division of the state for any sum or sums due on account of a contract for a public improvement, it shall be the duty of 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 corporate funds applicable to the contract under and pursuant to which payment is made to require the contractor to file every verified statement required to be obtained by the contractor from its subcontractors pursuant to subdivision one of this section and to file a statement in writing in form satisfactory to such officer certifying to the amounts then due and owing from such contractor filing such statement to or on behalf of any and all laborers

for daily or weekly wages or supplements on account of labor performed upon the work under the contract, setting forth therein the names of the persons whose wages or supplements are unpaid and the amount due to each or on behalf of each respectively. Such statement shall also set forth the amounts known by the contractor to be then due and owing from each subcontractor, or from a subcontractor of such subcontractor, for wages or supplements, or shall certify that the contractor has no knowledge of such amounts owing to or on behalf of any laborers of its subcontractors, and that in the event it is determined by the commissioner that the wages or supplements or both of any employees of such subcontractors have not been paid or provided pursuant to the appropriate schedule of wages and supplements, the contractor shall be responsible for payment of such wages or supplements pursuant to the provisions of section two hundred twenty-three of this article. Such statement so to be filed shall be verified by the oath of the contractor that he or she has read such statement subscribed by him or her and knows the contents thereof, and that the same is true of his or her own knowledge except with respect to wages and supplements owing by subcontractors which may be certified upon information and belief.

S 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 banks 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 banks 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 willfulness 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 directly 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 article or article six of this chapter;
(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;

(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;

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

(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 or corporation 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.

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.

S 220-c. Contractor or subcontractor verifying false statement guilty of perjury.

Any contractor or subcontractor who shall upon his oath verify any statement required to be filed under this act which is known by him to be false shall be guilty of perjury and punishable as provided by the penal law.

S 220-d. Minimum rate of wage and supplement. The advertised specifications for every contract for the construction, reconstruction, maintenance and/or repair of public work to which the state, county, town and/or village is a party shall contain a provision stating the minimum hourly rate of wage which can be paid and the minimum supplement that can be provided, as shall be designated by the industrial commissioner, to the laborers, workingmen or mechanics employed in the performance of the contract, either by the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workingmen or mechanics shall be paid not less than such hourly minimum rate of wage and provided supplements not less than the prevailing supplements.

Any person or corporation that wilfully pays after entering into such contract, less than such stipulated minimums regarding wages and supplements shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state pay the same or authorize its payment from the funds under his charge or control to any person or corporation for work done upon any contract, on which the contractor has been convicted of second offense in violation of the provisions of this section.

S 220-e. Provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works. Every contract for or on behalf of the state or a municipality for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies shall contain provisions by which the contractor with the state or municipality agrees:

(a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor,

subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(b) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, sex or national origin;

(c) That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(d) That this contract may be cancelled or terminated by the state or municipality, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and

(e) The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the state of New York.

S 220-f. Labor policy of the state with regard to public work contracts; participation in an international boycott prohibited. It shall be the labor policy of the state that contracts for the construction, reconstruction, maintenance and/or repair of public work or for services performed or to be performed or for goods sold or to be sold in an amount exceeding five thousand dollars to which the state or any public department, agency or official thereof intends to be a party shall not be executed with any person, firm, partnership or corporation which is participating or has participated at any time in an international boycott in violation of the provisions of the United States export administration act of nineteen hundred sixty-nine, as amended, or the export administration act of nineteen hundred seventy-nine, as amended, or the regulations of the United States department of commerce promulgated thereunder.

S 220-g. Additional enforcement of article. For the purpose of enforcing this article, the affected employee may bring an action to recover from the bond which is required by section one hundred thirty-seven of the state finance law, of the contractor, the subcontractor or both, unpaid wages and supplements, including interest as provided for in subdivision eight of section two hundred twenty of this article, due to persons furnishing labor to either the contractor or subcontractor. Said action may be brought against the contractor, the subcontractor, or the issuer of such bond, without prior notice, within one year of the date of the last alleged underpayment, or within one year of the date of the filing of an order by the commissioner or other fiscal officer determining a wage or supplement underpayment. The employee may permit an employee organization or the commissioner or other fiscal officer to commence such action on his behalf.

S 221. Company stores. No person engaged in construction of public work under contract with the state or with any municipal corporation either as a contractor or subcontractor shall, directly or indirectly,

conduct what is commonly known as a company store if there is any store selling supplies within two miles of the place where such contract is being executed. Charges for groceries, provisions, board, lodging or clothing shall not be a valid off-set in behalf of the employer against wages.

S 221-a. Permits required. No person or persons shall conduct what is commonly known as a company store or a labor camp for the purpose of selling provisions or clothing or for providing board and/or lodging to workmen in the employ of a contractor, subcontractor or other person doing the whole or a part of the work contemplated by a contract awarded by the state or a municipal corporation without a permit from the industrial commissioner.

S 221-b. Issue of permits. 1. An application for a permit shall be made to the commissioner upon blanks furnished by him, and shall state under oath:

- a. Name of owner or lessee of the property.
- b. A list of the provisions and clothing it is intended to sell.
- c. The maximum number of boarders or lodgers it is intended to accommodate.

2. With the application there shall be presented to the commissioner proof of the applicant's citizenship and moral character, and if a corporation, similar proof concerning its officers.

3. The applicant shall pay to the commissioner a permit fee of fifty dollars.

4. On approval of the application, the commissioner shall issue a permit only for the place designated in the application, and shall not be transferable. The commissioner may revoke the permit on notice and for cause shown.

5. Every operator of such a store or camp shall keep prominently posted in a conspicuous place on the premises a statement printed in the English language and in the language understood by the majority of the patrons, specifying the rate of charges by the day and week for lodging, meals, clothing and provisions supplied, and a copy thereof shall be filed with the commissioner.

S 222-a. Prevention of dust hazard in public works. In the construction of public works by the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law wherein a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the board of standards and appeals, a provision shall be inserted in each contract for the construction of such work requiring the installation, maintenance and effective operation of such appliances and methods, and a further provision shall be inserted in such contract that if this section is not complied with, the contract shall be void. In the construction of public works performed directly by the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law wherein a harmful dust hazard is created for which appliances or methods for the elimination of silica dust or other harmful dust have been approved by the board of standards and appeals, the department, board or officer in the state, public benefit corporation, or municipal corporation or commission or board appointed pursuant to law, having jurisdiction over the construction of such work shall provide for the effective use of such approved appliances or methods in connection therewith. A violation of this section shall

constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both fine and imprisonment.

S 223. Enforcement of article. If the fiscal officer as defined herein finds that any person contracting with the state, a municipal corporation, or any commission appointed pursuant to law, for the performance of any public work fails to comply with or evades the provisions of this article, he shall present evidence of such non-compliance or evasion to the officer, department, board or commission having charge of such work for enforcement. Wherein such evidence indicates a non-compliance or evasion on the part of a sub-contractor, the contractor shall be responsible for such non-compliance or evasion. It shall be the duty of any officer, department, board or commission in charge of the construction of such public work contracts to enforce the provisions of this article.