



memo

TO: Government Affairs Council Members
FROM: Ken Pokalsky, Vice President
SUBJECT: Expanded Prevailing Wage Mandate
DATE: April 9, 2020

The final budget (S.7508-B / A.9508-B, Part FFF) includes a new mandate that public works' prevailing wages be paid for construction work on certain private sector projects receiving state or local economic development assistance. In general, this mandate applies to construction projects valued at \$5 million or more, when total state and local assistance represents 30 percent or more of the construction project costs. The law contains several of categorical exemptions, including – in general – brownfields, affordable housing, historic preservation, small renewable energy projects, and others. The mandate will apply to project agreements entered into on or after January 1, 2022, but applicability could be delayed based on regional economic conditions. These projects will also be subject to the state's MWBE program. The Department of Labor has authority to issue implementation regulations. A new public subsidy board is created to issue rulings on project-specific applicability, and to make recommendations on statutory changes. The act contains other provisions, including new Department of Labor "stop work order" authority applicable to these projects and to public works projects in general.

A detailed description of the bill is provided below. The bill text is attached.

Applicability

- These new mandates apply to "covered projects," defined as construction work with project costs of more than \$5 million, that receive state and/or local economic development assistance ("public funds") that, in aggregate, is at least thirty percent of the "total construction project costs."
- "Public funds" means:
 - The payment of money by a "public entity" (including but not limited to state and local governments; state, local and interstate authorities, including IDAs) directly or indirectly to the developer, owner, contractor or subcontractor;
 - Savings from fees, rents, interest rates or other loan costs, or insurance costs that are lower than market rate costs;
 - Savings from tax credits, tax abatements, tax exemptions or tax increment financing;
 - Savings from payments in lieu of taxes;
 - Any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity;
 - Loans by a public entity that is to be repaid on a contingent basis; and
 - Credits that are applied by the public entity against repayment of obligations to the public entity.

Exemptions

- Economic development assistance programs that are not included in this mandate include:
 - Real Property Tax Law Section 421-a;
 - Assistance that is "not provided primarily to promote, incentivize, or ensure that construction work is performed;"
 - Funding for sewer systems (but they may be otherwise considered public works projects subject to prevailing wage);
 - Tax benefits whose value is "not able to be calculated at the time the work is to be performed;"
 - Tax benefits related to brownfield remediation or brownfield redevelopment;
 - Funds for charter schools provided under §2853.3 of the Education Law; and
 - Other assistance programs "determined by the public subsidy board" as exempt.

- Categories of projects that are exempt from this mandate include:
 - One or two-family dwellings where the property is the owner's primary residence, and property where the owner of the property owns no more than four dwelling units;
 - Projects for a not-for-profit corporation, other than a not-for-profit corporation formed exclusively for the purpose of holding title to property, or any public entity as defined in this section, where the not-for-profit corporation has gross annual revenues less than \$5 million;
 - Privately owned multiple residences:
 - where no less than 25 percent of the units are affordable, or
 - where no less than 35 percent of the units involve supportive housing services for vulnerable populations, or
 - any newly created programs for affordable or subsidized housing as determined by the public subsidy board;
 - A manufactured home park where the park is subject to a regulatory agreement with a local, state, or federal government entity for no less than fifteen years;
 - Work done under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization;
 - Projects funded under the Urban Development Corporation's Restore New York's Communities Initiative (§16-n) and the downtown revitalization initiative;
 - Construction work and engineering and consulting services for the installation of a renewable energy system, renewable heating or cooling system, or energy storage system, with a capacity equal to or under five megawatts alternating current;
 - Supermarket projects with tax incentives under the food retail expansion to support health (FRESH) program through the New York City industrial development agency;
 - Construction work performed for interior fit-outs and improvements under 10,000 square feet through small business incubation programs operated by the New York City economic development corporation;
 - Construction work on space to be used as a school under 60,000 square feet, pursuant to a lease from a private owner to the New York city department of education and the school construction authority; and
 - Construction work performed on projects that received historic rehabilitation tax benefits.

Other Provisions

- The project owner or developer is required to certify under penalty of perjury within five days of commencement of construction work whether the project is subject to this new prevailing wage mandate. The owner/developer "may seek guidance" from the public subsidy board, and the board is authorized to determine applicability; the board's determinations are not reviewable by the Labor Department.
- The owner and/or developer is responsible for retaining original payroll records for six years from the conclusion of the covered construction work. The owner/developer may authorize the prime contractor of the construction project to take responsibility for retaining and maintaining payroll records, but the owner/developer will be held jointly and severally liable for any violations of such contractor. All records obtained by the fiscal officer shall be subject to the Freedom of Information Law.
- The public entity providing public funds to a covered project is required to provide to owners, developers, contractors and subcontractors the type and amount of assistance being provided, and whether such funds are subject to the provisions of this mandate.
- The Commissioner of Labor is authorized to adopt implementing regulations.
- The Department of Labor is given new "stop work order" authority relative to all public works projects and private sector "covered projects," based on substantial and material, and/or intentional violations of prevailing wage requirements. The bill creates a notice and hearing process, as well as other procedural measures.

- Requires annual reports by all apprenticeship programs to the Labor Commissioner covering the total number of apprentices in such apprenticeship program; the demographic information of such apprentices to the extent such data is available, the rate of advancement and graduation of such apprentices; and the rate of placement of such apprentices onto job sites as well as the demographic information of such apprentices to the extent such data is available.

Minority/Women Owned Enterprise Mandate

- Owners/developers of covered projects “shall comply with the objectives and goals” of Executive Law Article 15-A.
- The Labor Department is required to make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered projects achieve and maintain compliance with prevailing wage requirements.
- The Labor Commissioner is required to submit an annual report to the Governor and state legislature on the participation of minority and women-owned business enterprises in “covered projects” and on public works, as well as the diversity practices of contractor and subcontractors.

Public Subsidy Board

- The bill creates a thirteen-member public subsidy board, all appointed by the Governor, with the Senate Majority Leader and Assembly Speaker able to nominate one member each. Other statutory members include: the labor commissioner, the president of ESDC, the budget director, two members representing unionized construction, two members representing construction industry employers. The other four members are not specified.
- The board is authorized to conduct public hearings and consult with employers and employees in the construction industry, and their respective representatives, among others.
- The board will also make recommendations regarding:
 - The law’s applicability thresholds related to project value and level of public assistance,
 - The categories of affordable housing projects exempt from the law,
 - the definition of construction, and
 - whether benefits should constitute public funds in specific instances.
- The board is required to hold a public hearing prior to making any broadly applicable recommendation.
- The board is empowered to issue binding determinations to any public entity or project owner/developer as to “any particular matter related to an existing or potential covered project.” Proceedings are confidential, but decisions will be published.
- If the board determines that there is likely to be significant negative economic impact of implementing these prevailing wage mandates, the board may temporarily delay the implementation of such requirements beyond January 1, 2022. This delay may be statewide or region-specific.

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PART FFF

13 Section 1. The labor law is amended by adding a new section 224-a to
14 read as follows:

15 § 224-a. Prevailing wage requirements applicable to construction
16 projects performed under private contract. 1. Subject to the provisions
17 of this section, each "covered project" as defined in this section shall
18 be subject to prevailing wage requirements in accordance with section
19 two hundred twenty and two hundred twenty-b of this article. A "covered
20 project" shall mean construction work done under contract which is paid
21 for in whole or in part out of public funds as such term is defined in
22 this section where the amount of all such public funds, when aggregated,
23 is at least thirty percent of the total construction project costs and
24 where such project costs are over five million dollars except as
25 provided for by section two hundred twenty-four-c of this article.

26 2. For purposes of this section, "paid for in whole or in part out of
27 public funds" shall mean any of the following:

28 a. The payment of money, by a public entity, or a third party acting
29 on behalf of and for the benefit of a public entity, directly to or on
30 behalf of the contractor, subcontractor, developer or owner that is not
31 subject to repayment;

32 b. The savings achieved from fees, rents, interest rates, or other
33 loan costs, or insurance costs that are lower than market rate costs;
34 savings from reduced taxes as a result of tax credits, tax abatements,
35 tax exemptions or tax increment financing; savings from payments in lieu
36 of taxes; and any other savings from reduced, waived, or forgiven costs
37 that would have otherwise been at a higher or market rate but for the
38 involvement of the public entity;

39 c. Money loaned by the public entity that is to be repaid on a contin-
40 gent basis; or

41 d. Credits that are applied by the public entity against repayment of
42 obligations to the public entity.

43 3. For purposes of this section, "paid for in whole or in part out of
44 public funds" shall not include:

45 a. Benefits under section four hundred twenty-one-a of the real prop-
46 erty tax law;

47 b. Funds that are not provided primarily to promote, incentivize, or
48 ensure that construction work is performed, which would otherwise be
49 captured in subdivision two of this section;

50 c. Funds used to incentivize or ensure the development of a comprehen-
51 sive sewage system, including connection to existing sewer lines or
52 creation of new sewage lines or sewer capacity, provided, however, that

1 such work shall be deemed to be a public work covered under the
2 provisions of this article;

3 d. tax benefits provided for projects the length or value of which are
4 not able to be calculated at the time the work is to be performed;

5 e. tax benefits related to brownfield remediation or brownfield rede-
6 velopment pursuant to section twenty-one, twenty-two, one hundred eight-
7 y-seven-g or one hundred eighty-seven-h of the tax law, subdivision
8 seventeen or eighteen of section two hundred ten-B of the tax law,
9 subsection (dd) or (ee) of section six hundred six of the tax law, or
10 subdivision (u) or (v) of section fifteen hundred eleven of the tax law;

11 f. funds provided pursuant to subdivision three of section twenty-
12 eight hundred fifty-three of the education law; and

13 g. any other public monies, credits, savings or loans, determined by
14 the public subsidy board created in section two hundred twenty-four-c of

15 this article as exempt from this definition.

16 4. For purposes of this section "covered project" shall not include
17 any of the following:

18 a. Construction work on one or two family dwellings where the property
19 is the owner's primary residence, or construction work performed on
20 property where the owner of the property owns no more than four dwelling
21 units;

22 b. Construction work performed under a contract with a not-for-profit
23 corporation as defined in section one hundred two of the not-for-profit
24 corporation law, other than a not-for-profit corporation formed exclu-
25 sively for the purpose of holding title to property and collecting
26 income thereof or any public entity as defined in this section where the
27 not-for-profit corporation has gross annual revenue and support less
28 than five million dollars;

29 c. Construction work performed on a multiple residence and/or ancil-
30 lary amenities or installations that is wholly privately owned in any of
31 the following circumstances except as provided for by section two
32 hundred twenty-four-c of this article:

33 (i) where no less than twenty-five percent of the residential units
34 are affordable and shall be retained subject to an anticipated regulato-
35 ry agreement with a local, state, or federal governmental entity, or a
36 not-for-profit entity with an anticipated formal agreement with a local,
37 state, or federal governmental entity for purposes of providing afforda-
38 ble housing in a given locality or region provided that the period of
39 affordability for a residential unit deemed affordable under the
40 provisions of this paragraph shall be for no less than fifteen years
41 from the date of construction; or

42 (ii) where no less than thirty-five percent of the residential units
43 involves the provision of supportive housing services for vulnerable
44 populations provided that such units are subject to an anticipated regu-
45 latory agreement with a local, state, or federal governmental entity; or

46 (iii) any newly created programs for affordable or subsidized housing
47 as determined by the public subsidy board established by section two
48 hundred twenty-four-c of this article.

49 d. Construction work performed on a manufactured home park as defined
50 in paragraph three of subdivision a of section two hundred thirty-three
51 of the real property law where the manufactured home park is subject to
52 a regulatory agreement with a local, state, or federal governmental
53 entity for no less than fifteen years;

54 e. Construction work performed under a pre-hire collective bargaining
55 agreement between an owner or contractor and a bona fide building and
56 construction trade labor organization which has established itself as

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1 the collective bargaining representative for all persons who will
2 perform work on such a project, and which provides that only contractors
3 and subcontractors who sign a pre-negotiated agreement with the labor
4 organization can perform work on such a project, or construction work
5 performed under a labor peace agreement, project labor agreement, or any
6 other construction work performed under an enforceable agreement between
7 an owner or contractor and a bona fide building and construction trade
8 labor organization;

9 f. Construction work performed on projects funded by section sixteen-n
10 of the urban development corporation act or the downtown revitalization
11 initiative;

12 g. Construction work and engineering and consulting services performed
13 in connection with the installation of a renewable energy system, renew-
14 able heating or cooling system, or energy storage system, with a capaci-
15 ty equal to or under five megawatts alternating current;

16 h. Construction work performed on supermarket retail space built or
17 renovated with tax incentives provided under the food retail expansion

18 to support health (FRESH) program through the New York city industrial
19 development agency;

20 i. Construction work performed for interior fit-outs and improvements
21 under ten thousand square feet through small business incubation
22 programs operated by the New York city economic development corporation;

23 j. Construction work on space to be used as a school under sixty thou-
24 sand square feet, pursuant to a lease from a private owner to the New
25 York city department of education and the school construction authority;
26 or

27 k. Construction work performed on projects that received tax benefits
28 related to historic rehabilitation pursuant to subdivision twenty-six of
29 section two hundred ten-B of the tax law, subsection (oo) or (pp) of
30 section six hundred six of the tax law, or subdivision (y) of section
31 fifteen hundred eleven of the tax law.

32 5. For purposes of this section, "public entity" shall include, but
33 shall not be limited to, the state, a local development corporation as
34 defined in subdivision eight of section eighteen hundred one of the
35 public authorities law or section fourteen hundred eleven of the not-
36 for-profit corporation law, a municipal corporation as defined in
37 section one hundred nineteen-n of the general municipal law, an indus-
38 trial development agency formed pursuant to article eighteen-A of the
39 general municipal law or industrial development authorities formed
40 pursuant to article eight of the public authorities law, and any state,
41 local or interstate or international authorities as defined in section
42 two of the public authorities law; and shall include any trust created
43 by any such entities.

44 6. For purposes of this section, "construction" means work which shall
45 be as defined by the public subsidy board to require payment of prevail-
46 ing wage, and which may involve the employment of laborers, workers, or
47 mechanics.

48 7. For purposes of this section and section two hundred twenty-four-b
49 of this article, the "fiscal officer" shall be deemed to be the commis-
50 sioner.

51 8. The enforcement of any construction work deemed to be a covered
52 project pursuant to this section, and any additional requirements, shall
53 be subject, in addition to this section, only to the requirements of
54 sections two hundred twenty, two hundred twenty-four-b, two hundred
55 twenty-four-c, and two hundred twenty-b of this article and within the
56 jurisdiction of the fiscal officer; provided, however, nothing contained

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1 in this section shall be deemed to construe any covered project as
2 otherwise being considered public work pursuant to this article; and
3 further provided:

4 a. The owner or developer of such covered project shall certify under
5 penalty of perjury within five days of commencement of construction work
6 whether the project at issue is subject to the provisions of this
7 section through the use of a standard form developed by the fiscal offi-
8 cer.

9 b. The owners or developers of a property who are undertaking a
10 project under private contract, may seek guidance from the public subsi-
11 dy board contained in section two hundred twenty-four-c of this article,
12 and such board may render an opinion as to whether or not the project is
13 a covered project within the meaning of this article. Any such determi-
14 nation shall not be reviewable by the fiscal officer, nor shall it be
15 reviewable by the department pursuant to section two hundred twenty of
16 this article.

17 c. The owner or developer of a covered project shall be responsible
18 for retaining original payroll records in accordance with section two
19 hundred twenty of this article for a period of six years from the
20 conclusion of such work. All payroll records maintained by an owner or

21 developer pursuant to this section shall be subject to inspection on
22 request of the fiscal officer. Such owner or developer may authorize
23 the prime contractor of the construction project to take responsibility
24 for retaining and maintaining payroll records, but will be held jointly
25 and severally liable for any violations of such contractor. All records
26 obtained by the fiscal officer shall be subject to the Freedom of Infor-
27 mation Law.

28 d. Each public entity providing any of the public funds listed in
29 subdivision two of this section to an owner, developer, contractor or
30 subcontractor of a project shall identify the nature and dollar value of
31 such funds and whether any such funds are excluded under subdivision
32 three of this section and shall so notify the recipient of such funds of
33 such determination and of their obligations under paragraph a of this
34 subdivision.

35 e. The fiscal officer may issue rules and regulations governing the
36 provisions of this section. Violations of this section shall be grounds
37 for determinations and orders pursuant to section two hundred twenty-b
38 of this article.

39 9. Each owner and developer subject to the requirements of this
40 section shall comply with the objectives and goals of minority and
41 women-owned business enterprises pursuant to article fifteen-A of the
42 executive law and service-disabled veteran-owned businesses pursuant to
43 article seventeen-B of the executive law. The department in consulta-
44 tion with the directors of the division of minority and women's business
45 development and of the division of service-disabled veterans' business
46 development shall make training and resources available to assist minor-
47 ity and women-owned business enterprises and service-disabled veteran-
48 owned business enterprises on covered projects achieve and maintain
49 compliance with prevailing wage requirements. The department shall make
50 such training and resources available online and shall afford minority
51 and women-owned business enterprises and service-disabled veteran-owned
52 business enterprises an opportunity to submit comments on such training.

53 10. a. The fiscal officer shall report to the governor, the temporary
54 president of the senate, and the speaker of the assembly by July first,
55 two thousand twenty-two, and annually thereafter, on the participation
56 of minority and women-owned business enterprises in relation to covered

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1 projects and contracts for public work subject to the provisions of this
2 section and section two hundred twenty of this article respectively as
3 well as the diversity practices of contractors and subcontractors
4 employing laborers, workers, and mechanics on such projects.

5 b. Such reports shall include aggregated data on the utilization and
6 participation of minority and women-owned business enterprises, the
7 employment of minorities and women in construction-related jobs on such
8 projects, and the commitment of contractors and subcontractors on such
9 projects to adopting practices and policies that promote diversity with-
10 in the workforce. The reports shall also examine the compliance of
11 contractors and subcontractors with other equal employment opportunity
12 requirements and anti-discrimination laws, in addition to any other
13 employment practices deemed pertinent by the commissioner.

14 c. The fiscal officer may require any owner or developer to disclose
15 information on the participation of minority and women-owned business
16 enterprises and the diversity practices of contractors and subcontrac-
17 tors involved in the performance of any covered project. It shall be
18 the duty of the fiscal officer to consult and to share such information
19 in order to effectuate the requirements of this section.

20 11. If construction work is not deemed to be a covered project, wheth-
21 er by virtue of an exclusion of such project under subdivision four of
22 this section, or by virtue or not receiving sufficient public money to
23 be deemed "paid for in whole or in part out of public funds", such

24 project shall not be subject to the requirements of sections two hundred
25 twenty and two hundred twenty-b of this article.

26 § 2. The labor law is amended by adding a new section 224-b to read as
27 follows:

28 § 224-b. Stop-work orders. Where a complaint is received pursuant to
29 this article, or where the fiscal officer upon his or her own investi-
30 gation, finds cause to believe that any person, in connection with the
31 performance of any contract for public work pursuant to section two
32 hundred twenty of this article or any covered project pursuant to
33 section two hundred twenty-four-a of this article, has substantially and
34 materially failed to comply with or intentionally evaded the provisions
35 of this article, the fiscal officer may notify such person in writing of
36 his or her intention to issue a stop-work order. Such notice shall (i)
37 be served in a manner consistent with section three hundred eight of the
38 civil practice law and rules; (ii) notify such person of his or her
39 right to a hearing; and (iii) state the factual basis upon which the
40 fiscal officer has based his or her decision to issue a stop-work order.
41 Any documents, reports, or information that form a basis for such deci-
42 sion shall be provided to such person within a reasonable time before
43 the hearing. Such hearing shall be expeditiously conducted.

44 Following the hearing, if the fiscal officer issues a stop-work order,
45 it shall be served by regular mail, and a second copy may be served by
46 telefacsimile or by electronic mail, with service effective upon receipt
47 of any such order. Such stop-work order shall also be served with regard
48 to a worksite by posting a copy of such order in a conspicuous location
49 at the worksite. The order shall remain in effect until the fiscal offi-
50 cer directs that the stop-work order be removed, upon a final determi-
51 nation on the complaint or where such failure to comply or evade has
52 been deemed corrected. If the person against whom such order is issued
53 shall within thirty days after issuance of the stop-work order makes an
54 application in affidavit form for a redetermination review of such order
55 the fiscal officer shall make a decision in writing on the issues raised
56 in such application. The fiscal officer may direct a conditional release

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1 from a stop-work order upon a finding that such person has taken mean-
2 ingful and good faith steps to comply with the provisions of this arti-
3 cle.

4 § 3. The labor law is amended by adding a new section 224-c to read as
5 follows:

6 § 224-c. Public subsidy board. 1. A board on public subsidies, herein-
7 after "the board", is hereby created, to consist of thirteen members.
8 The thirteen members shall be appointed by the governor as follows: one
9 member upon the recommendation of the temporary president of the senate,
10 one member upon the recommendation of the speaker of the assembly, the
11 commissioner, the president of the empire state development corporation,
12 the director of the division of the budget, two members representing
13 employees in the construction industry, of whom one shall be a represen-
14 tative of the largest statewide trade labor association representing
15 building and construction workers, and one shall be a representative of
16 the largest trade labor association representing building and
17 construction workers with membership in New York City, and two members
18 representing employers in the construction industry, of whom one shall
19 be a representative of the largest statewide organization representing
20 building owners and developers, either for-profit or not-for-profit, and
21 one shall be a representative of a statewide organization representing
22 building owners and developers, either for-profit or not-for-profit,
23 representing a region different than the region primarily represented by
24 the initial employer representative. The commissioner shall act as the
25 chair. The members shall serve at the pleasure of the authority recom-
26 mending, designating, or otherwise appointing such member and shall

27 serve without salary or compensation but shall be reimbursed for neces-
28 sary expenses incurred in the performance of their duties.

29 2. The board shall meet on an as needed basis and shall have the power
30 to conduct public hearings. The board may also consult with employers
31 and employees, and their respective representatives, in the construction
32 industry and with such other persons, including the commissioner, as it
33 shall determine. No public officer or employee appointed to the board
34 shall forfeit any position or office by virtue of appointment to such
35 board. Any proceedings of the board which relate to a particular indi-
36 vidual or project shall be confidential.

37 3. The board may examine and make recommendations regarding the
38 following:

39 (a) the minimum threshold percentage of public funds set forth in
40 subdivision one of section two hundred twenty-four-a of this article,
41 but no lower than that which is set forth in such subdivision;

42 (b) the minimum dollar threshold of projects set forth in subdivision
43 one of section two hundred twenty-four-a of this article, but no lower
44 than that which is set forth in such subdivision;

45 (c) construction work excluded as a covered project, as set forth in
46 subparagraphs (i), (ii) and (iii) of paragraph c of subdivision four of
47 section two hundred twenty-four-a of this article;

48 (d) the definition of construction for purposes of section two hundred
49 twenty-four-a of this article; or

50 (e) particular instances of benefits, monies or credits as to whether
51 or not they should constitute public funds.

52 4. Prior to making any recommendation intended to apply to all
53 projects, the board shall hold a public hearing. The board shall
54 announce each public hearing at least fifteen days in advance. The
55 announcement shall contain an agenda of the topics the board will
56 discuss. At each hearing, the board may hear testimony and/or review

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1 written documents from any interested stakeholders related to the
2 planned agenda of the meeting. The board shall make any such recommen-
3 dations in writing. In making its recommendations, the board shall exam-
4 ine the impact of such thresholds and circumstances on private develop-
5 ment in light of available public subsidies, existing labor market
6 conditions, prevailing wage and supplement practices, and shall consider
7 the extent to which adjustments to such thresholds and circumstances
8 could ameliorate adverse impacts, if any, or expand opportunities for
9 prevailing wage and supplement standards on publicly subsidized private
10 construction projects in any region or regions of the state.

11 5. The board shall be empowered to issue binding determinations to any
12 public entity, or any private or not-for-profit owner or developer as to
13 any particular matter related to an existing or potential covered
14 project. In such instances the board shall make a determination based
15 upon documents, or testimony, or both in its sole discretion. Any such
16 proceedings shall be confidential, except that publication of such deci-
17 sions shall be made available on the department's website, subject to
18 redaction or confidentiality as the board shall deem warranted in
19 accordance with any applicable federal or state statutory or regulatory
20 requirement governing confidentiality and personal privacy.

21 6. Any recommendation rendered by the board pursuant to this section
22 shall be subject to the provisions of article seventy-eight of the civil
23 practice law and rules.

24 7. In the event that the board finds that there is or likely would be
25 a significant negative economic impact of implementing the prevailing
26 wage requirements provided for in section two hundred twenty-four-a of
27 this article, the board may temporarily delay the implementation of such
28 requirements beyond January first, two thousand twenty-two. Such a delay
29 may be effective statewide or effective only in a region of the state as

30 defined by the regional economic development councils. In making such a
31 determination to delay, the board shall consult the department, the
32 department's division of research and statistics, the United States
33 department of labor, the federal reserve bank of New York and other
34 economic experts. The board will reference well-established economic
35 indexes and accepted economic factors tied to the construction industry,
36 including but not limited to construction industry employment, wages,
37 and overall construction activity.

38 § 4. The labor law is amended by adding a new section 813-a to read as
39 follows:

40 § 813-a. Annual reports by apprenticeship programs. 1. On an annual
41 basis, all apprenticeship programs covered under the provisions of this
42 article shall report to the department on the participation of appren-
43 tices currently enrolled in such apprenticeship program. The data to be
44 included in such report shall include, at a minimum: (a) the total
45 number of apprentices in such apprenticeship program; (b) the demograph-
46 ic information of such apprentices to the extent such data is available,
47 including, but not limited to, the age, gender, race, ethnicity, and
48 national origin of such apprentices; (c) the rate of advancement and
49 graduation of such apprentices; and (d) the rate of placement of such
50 apprentices onto job sites as well as the demographic information of
51 such apprentices to the extent such data is available, including, but
52 not limited to the age, gender, race, ethnicity, and national origin of
53 such apprentices.

54 2. The department shall make such data publicly available on its
55 website by July first, two thousand twenty-two and on an annual basis,
56 but no later than December thirty-first of each following year.

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1 3. The commissioner may promulgate rules and regulations necessary for
2 the implementation of this section.

3 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-
4 sion, or section of this act shall be adjudged by any court of competent
5 jurisdiction to be invalid, such judgment shall not affect, impair, or
6 invalidate the remainder thereof, but shall be confined in its operation
7 to the clause, sentence, paragraph, subdivision, or section thereof
8 directly involved in the controversy in which such judgment shall have
9 been rendered. It is hereby declared to be the intent of the legislature
10 that this act would have been enacted even if such invalid provisions
11 had not been included herein.

12 § 6. This act shall take effect on January 1, 2022 and shall apply to
13 contracts for construction executed, incentive agreements executed,
14 procurements or solicitations issued, or applications for building
15 permits on or after such date; provided however that section three of
16 this act shall take effect on April 1, 2021, and provided further that
17 this act shall not pre-exempt any existing contracts, nor apply to any
18 appropriations of public funds made prior to the day on which this act
19 shall have become a law, or to re-appropriations of such funds first
20 appropriated prior to the day on which this act shall have become a law.
21 Effective immediately, the addition, amendment and/or repeal of any rule
22 or regulation necessary for the implementation of this act on its effec-
23 tive date are authorized to be made and completed on or before such
24 effective date.