

SPONSORS MEMO:

1. NEW YORK STATE SENATE INTRODUCER'S MEMORANDUM IN SUPPORT submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S6356

SPONSOR: MAZIARZ

TITLE OF BILL: An act to amend the labor law, in relation to contracts for public work and building service work; and providing for the repeal of such provisions upon expiration thereof

PURPOSE: Clarify the authority of the Department of Labor to enforce the prevailing wage law on public work projects where contractual relationship with the contractor exists.

SUMMARY OF PROVISIONS: This bill provides that the Department of Labor shall enforce Article 8 of the labor law on public work projects where the involvement of a third party obviates the existence of a direct contractual relationship between the public owner and the contractor performing the work, by providing that such an arrangement constitutes a "contract" for purposes of the Article.

JUSTIFICATION: In Pyramid Company v. NYS Department of Labor, 23 AD 2d 285,645 NYS 2d 633 (Third Department, 1996) the Third Department of the Appellate Division of the State Supreme Court found that the DOL was blocked from enforcing the prevailing wage law against a contractor performing public work under a permit issued by the DOT to the private developer who had retained the contractor.

While the Court found the project to be public work within the meaning of the law, and found that employees on the project were entitled to receive the prevailing rate of wages for their work (which the contractor refused to pay), it nonetheless declared that DOL was prevented from enforcing the law on behalf of the contractor's employees because the private developer, not DOT was the relevant party to the construction contract. Since this decision was issued, a number of private developers and nonprofit entities, carrying out public work projects on behalf of public owners under the terms of (eases, permits or other arrangements) are citing it as grounds to block the efforts of the labor Department's Bureau of Public Work to enforce the prevailing wage law on these projects. While they may not contest that the law applies to these jobs, they do contend that the Pyramid decision entitles them to refuse to cooperate with DOL investigations. By closing this loophole, this bill restores the intent of the legislature that all employees on public work be afforded the protection of the prevailing wage law and the DOL.

LEGISLATIVE HISTORY: Similar to S.7592/A.10979 of 2004 S.6769/A.10383 of 2005; Vetoed #298

FISCAL IMPLICATIONS: none

LOCAL FISCAL IMPLICATIONS: none

EFFECTIVE DATE: This act shall take effect immediately; and shall expire and be deemed repealed five years after such effective date.