# Legislation Details (With Text)

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| **File #:** | Int 1169-2013 **Version:** * | **Name:** | Establishing training and transparency requirements for certain city development projects receiving city financial assistance. |
| **Type:** | Introduction | **Status:** | Filed |
| | | **In control:** | Committee on Economic Development |
| **On agenda:** | 10/9/2013 | | |
| **Enactment date:** | | **Enactment #:** | |
| **Title:** | A Local Law to amend the administrative code of the city of New York, in relation to establishing training and transparency requirements for certain city development projects receiving city financial assistance. | | |
| **Sponsors:** | | | |
| **Indexes:** | | | |
| **Attachments:** | 1. Committee Report 10/28/13, 2. Hearing Testimony 10/28/13, 3. Hearing Transcript 10/28/13 | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|
| 10/9/2013 | * | City Council | Introduced by Council | |
| 10/9/2013 | * | City Council | Referred to Comm by Council | |
| 10/28/2013 | * | Committee on Economic Development | Hearing Held by Committee | |
| 10/28/2013 | * | Committee on Economic Development | Laid Over by Committee | |
| 12/31/2013 | * | City Council | Filed (End of Session) | |

Int. No. 1169

By Council Members Reyna, Koslowitz, Palma, Brewer, Chin, Eugene, Jackson, James, Koo, Levin, Mark-Viverito, Rodriguez, Rose, Crowley, Dromm, Ferreras, Gentile, Lappin, Cabrera and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to establishing training and transparency requirements for certain city development projects receiving city financial assistance.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. The Council finds that the City, as a promoter of economic development, commits significant resources, including millions of dollars in subsidies and incentives, for development projects across the city. The Council is concerned that there is insufficient disclosure to the public of information concerning the development, including the identities of the recipients of the city financial assistance as well as the identity of contractors and subcontractors that will benefit from the

public assistance, the form and the amount of such assistance, the employment and performance history of those developers and contractors benefitting from the public assistance, and the quality of jobs that will be created on the development. Additionally, the Council is concerned about the health and safety of the population living in and around the many construction projects in New York City as well as the use of an unskilled and untrained workforce performing construction and building service work on these projects and developments. The Council takes notice of the difficulty of administratively enforcing health and safety requirements and acknowledges that because construction and building services are highly-skilled, highly labor -intensive businesses, the use of a skilled workforce in these industries minimizes risks and ensures quality control. The Council finds that developers receiving public assistance, and the contractors benefitting from such public assistance, should ensure the use of a well-trained and highly skilled workforce in order to promote the safe and quality construction and operation of projects developed and operated with public assistance.

The intention of the Council in enacting this section is to ensure that development funding provided in whole or part by the City is used responsibly and in a manner that creates safe, quality jobs and utilizes a skilled and trained workforce to construct developments in a way to minimize risks to the health and safety of the population living in and around such developments.

§2: Title six of the administrative code of the city of New York is amended by adding a new section 130.1 to read as follows:

§ 130.1. Responsibility Requirements for Financially Assisted Development Projects.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

"Building service employee" means any person, the majority of whose employment consists of performing building service work, including but not limited to a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

"City development project" means a project undertaken by a city agency or a city economic



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development entity for the purpose of improvement or development of real property, economic development, job retention or growth, or other similar purposes where the project: (a) (i) is expected to be larger than one-hundred thousand (100,000) square feet, (ii) in the case of a residential project, larger than fifty (50) units, or (iii) in the case of a hospitality operation, larger than fifty (50) units; and (b) has received or is expected to receive financial assistance.

"City economic development entity" means a not-for-profit organization, public benefit corporation, or other entity that provides or administers financial assistance on behalf of the City pursuant to paragraph b of subdivision one of section 1301 of the New York city charter.

"Comptroller" means the comptroller of the city of New York.

"Construction employee" means any person performing construction, reconstruction, alteration, maintenance, moving, rehabilitation, repair, renovation or demolition of any building, structure, or improvement. or in relation to the excavation of or other development or improvement to land, including laborers, workers, and mechanics.

"Covered developer" means any person or entity receiving financial assistance in relation to a city development project, or any assignee, or successor in interest of real property that qualifies as a city development project, or any person or entity who is party to a long-term lease with the City for land or property in connection with a city development project.

"Covered employees" shall mean, collectively, building service employees and construction employees.

"Financial assistance" means assistance that is provided to a covered developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (a) directly by the city, or (b) indirectly by a city economic development entity and that is paid in whole or in part by the city, and that at the time the covered developer enters into a written agreement with the city or city economic development entity is expected to have a total present financial value of one million dollars ($1,000,000) or more. Financial assistance includes, but is not limited to, cash payments or


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grants, bond financing. tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording. sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements related to real property that, under ordinary circumstances, the city would not pay for, and includes both discretionary and as of right assistance. Where assistance takes the form of leasing city property at below-market lease rates, the value of the assistance shall be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance shall be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance from a city economic development entity. "Financial assistance" shall not include assistance available under New York state programs or with New York state funds where the city does not have the authority to impose additional eligibility requirements on such assistance.

b. Training Requirement. To the extent permitted by law, and as a condition to receiving financial assistance, covered developers shall ensure that all employers on the city development project, including any contractors and subcontractors, have apprenticeship agreements appropriate for the type and scope of work to be performed on the project, which have been registered with and approved by the New York state commissioner of labor in accordance with article 23 of the New York state labor law. Developers shall require that any entity performing building services shall offer to its employees, at no cost to the employees, professional development training in the area of building services, including classroom instruction by professional trainers, homework and attendance requirements,

c. Disclosure Requirement.

(1) The city shall publish on its web site a list of city development projects, and for each such project:



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(i) the name, address, officers, shareholders, including any persons who are shareholders, investors who have or will invest at least two hundred and fifty thousand dollars ($250,000) in the project, and any parent or subsidiary, of each developer applying for financial assistance in connection with a city development project; (ii) the type and amount of financial assistance devoted to the city development project; (iii) the type and amount of any federal or state financial assistance devoted to the city development project; (v) leases for any proposed hospitality operation on the development project; and (v) the name and address of each contractor that will provide services on the development project. Such list shall be updated and published as often as is necessary to keep it current.

(2) Each developer applying for financial assistance in connection with a city development project shall provide to the city, and the city shall publish on the city's web site, the following: (i) the number and types of full-time and part-time jobs by job title and industry expected to be created on the city development project; (ii) a description of any finding that the developer and any contractor that will provide services on the development project have violated any wage, discrimination, unemployment, workers compensation, health and safety, or any other local, state of federal employment law within the past ten (10) years; (iii) a listing of any pending bankruptcy proceedings and any bankruptcy proceedings initiated in the last ten (10) years by the developer and any contractor that will provide services on the development project; (iv) a description of any finding that the developer and any contractor that will provide services on the development project have been convicted of a crime in the past ten (10) years; (v) a description of any local, state, or federal tax delinquencies of the developer and any contractor that will provide services on the contract, and any finding that the developer and any contractor that will provide services on the development project have violated a local, state, or federal tax law within the past ten (10) years; and (vi) any names under which the developer and any contractor that will provide services on the development project have conducted business in the last ten (10) years,

(3) Each covered developer of a city development project shall require all employers of covered employees performing work on the city development project to provide proof of valid workers compensation


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insurance coverage and unemployment insurance coverage. Such proof of coverage shall be provided to the city and the city shall publish such proof of workers compensation insurance coverage and unemployment insurance coverage on its web site.

d. Enforcement.

(1) In addition to failure to comply with subdivisions b through c of this section, it shall be a violation of this section for any covered developer to discriminate or retaliate against any covered employee who seeks information regarding, or enforcement of, this section.

(2) The comptroller shall monitor compliance with the requirements of this section. Whenever the comptroller has reason to believe there has been a violation of this section, or upon a verified complaint in writing from a covered employee, or a covered employee's representative claiming a violation of this section, the comptroller shall conduct an investigation to determine the facts relating thereto.

(3) The comptroller shall report the results of such investigation to the mayor or his or her designee, who shall, in accordance with the provisions of paragraph six of this subdivision and after providing the covered developer an opportunity to cure any violations, where appropriate issue an order, determination, or other disposition, including, but not limited to, a stipulation of settlement. Such order, determination, or disposition may at the discretion of the mayor, or his or her designee, impose the following on the covered developer committing the applicable violations: (i) direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount of the financial assistance received by the covered developer; (ii) direct the maintenance or disclosure of any records that were not maintained or disclosed as required by this section; (iii) direct the reinstatement of, or other appropriate relief for, any person aggrieved pursuant section d (1); (iv) order any covered developer to rebid and award any work performed by a contractor or subcontractor that is not in compliance with paragraph c above, in a manner to ensure compliance with the provisions of paragraph c; (v) issue a stop work order of construction. In assessing an appropriate remedy, due consideration shall be given to the gravity of the violation, the history of previous violations, the


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good faith of the covered developer, and the failure to comply with record-keeping, notice, reporting, or disclosure. Any civil penalty shall be deposited in the general fund.

(4) In addition to the provisions provided in subparagraph three of this paragraph, in the case of a covered developer, based upon the investigation provided in this paragraph, the comptroller shall also report the results of such investigation to the city economic development entity, which may impose a remedy as such entity deems appropriate as within its statutorily prescribed authority, including rescindment of the award of financial assistance.

(5) Before issuing an order, determination, or any other disposition, the mayor, or his or her designee, as applicable, shall give notice thereof, together with a copy of the complaint, which notice shall be served personally or by mail on any person affected thereby. The mayor, or his or her designee, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings, or other appropriate agency or tribunal, for a hearing and disposition. Such person or covered employer shall be notified of a hearing date by the office of administrative trials and hearings, or other appropriate agency or tribunal, and shall have the opportunity to be heard in respect to such matters.

(6) When a final disposition has been made finding a violation of this section and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the mayor, or his or her designee, as applicable, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding has expired, the mayor, or his or her designee, as applicable, shall file a copy of such order containing the amount found to be due with the clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof who knowingly participated in the violation of this section. 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 mayor, or his or her designee, as applicable, in the same manner and with like effect as that prescribed by the state civil practice law and rules for the


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enforcement of a money judgment.

(7) In an investigation conducted under the provisions of this section, the inquiry of the comptroller or mayor, or his or her designee, as applicable, shall not extend to violations committed more than three years prior to the filing of the complaint, or the commencement of such investigation, whichever is earlier.

e. Civil Action.

(1) Except as otherwise provided by law, any person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the comptroller or the mayor with respect to such claim. In an action brought by a covered employee, if the court finds in favor of the employee, it shall award the employee, in addition to other relief, his/her reasonable attorneys' fees and costs.

(2) Notwithstanding any inconsistent provision of paragraph one of this subdivision where a complaint filed with the comptroller or the mayor is dismissed an aggrieved person shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed.

(3) A civil action commenced under this section shall be commenced in accordance with subdivision two of section 214 of New York civil practice law and rules.

(4) No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

f. Application to existing city development projects. The provisions of this section shall not apply to any written agreement between a city agency or city economic development entity and a covered developer providing for financial assistance executed prior to the enactment of the local law that added this section, except that extension, renewal, amendment or modification of such written agreement, occurring on or after the enactment of the local law that added this section that results in the grant of any additional financial



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assistance to the financial assistance recipient shall make the covered developer subject to the conditions specified in this section.

g. Severability. In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by an court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held unenforceable to any other person or circumstance.

h. Competing laws. This section shall be liberally construed in favor of its purposes. Nothing in this section shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement, that mandates the provision of training or protections to covered employees. No requirement or provision of this section shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those specific applications or provisions of this section for which coverage would be preempted shall be construed as not applying.

§ 3. This local law shall take effect in upon enactment.

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