

COUNTY OF ERIE
LOCAL LAW INTRO NO. ____ - 2006
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A **LOCAL LAW** requiring businesses to verify that their employees are legally eligible to employed in the United States of America and in Erie County.

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ERIE,
as follows:

Section 1. Legislative Intent

A. This Legislature hereby finds that there has been an ongoing national debate regarding the unfairness and inequities between employers that comply with all federal, state, and local laws and regulations in connection with the hiring of their employees and employers that fail to comply with such laws and regulations.

B. This Legislature further finds and determines that these inequities provide a financial disadvantage to those employers who comply with federal, State, and local laws and regulations in connection with the hiring of their employees while, in turn, providing an unfair financial advantage to those employers who do not comply with the law.

C. The Legislature further finds and determines that, since there has been a lack of enforcement of a twenty (20) year old federal law (Simpson-Mazzoli) that requires businesses to verify that their employees are legally eligible to be employed in the United States, Erie County has an opportunity to lead by example in an effort to prod the federal government to undertake such enforcement action.

D. This Legislature also finds and determines that employer non-compliance with federal, state, and local laws and regulations that regulate the hiring of employees results in diminished protections of employees from unfair labor practices and fosters the circumvention of prevailing wage and health insurance coverage requirements.

E. This Legislature further finds and determines that Erie County at present has no jurisdiction to enforce Simpson-Mazzoli, even against businesses that are one hundred (100%) funded by the County of Erie.

F. This Legislature also finds and determines that the County of Erie has a finite amount of scarce taxpayer resources to expend, which resources shall be spent wisely and prudently.

G. This Legislature further finds that the County of Erie provides grants, loans, contracts, license agreements, leases, and other forms of financial assistance to businesses that result in the creation and maintenance of a wide variety of employment opportunities in Erie County, thereby affording the County the opportunity to utilize its economic and financial leverage to compel local businesses to comply with the federal law requiring

businesses to verify that their employees are legally eligible to be employed in the United States.

H. Therefore, the purpose of this law is to provide a means of assisting the enforcement of the federal law requiring businesses to verify that their employees are legally eligible to be employed in the United States, by providing an enforcement mechanism at the County level against non-compliant businesses that are one hundred percent (100%) funded by the County of Erie, thereby:

- (i) helping to promote the federal policy of requiring employers to verify the employment status of potential employees;
- (ii) helping to eliminate unfair competitive advantages between businesses;
- (iii) helping to eliminate unfair labor practices and worker exploitation; and
- (iv) helping to assure taxpayers that employers and employees are paying their fair share of taxes by complying with tax laws.

Section 2. Definitions

As used in this law, the following terms shall have the meaning indicated:

- A.) ALIEN – Any person who is not a citizen or national of the United States.
- B.) AWARDING AGENCY – That subordinate or component entity or person of the County of Erie that is responsible for solicitation of proposals or bids and responsible for the award and administration of contracts, license agreements, leases and other financial compensation agreements.
- C.) COMPENSATION-
 - 1.) Any grant, loan, tax incentive funding, appropriation, payment, subsidy or other form of financial assistance which is realized by or provided to a covered employer or the owners thereof, by or through the authority or approval of the County of Erie including, but not limited to, Community Development Block Grant (CDBG) loans, Industrial Development Agency (IDA) loans, and Enterprise-Zone related incentives.
 - 2.) Any contract, subcontract, license agreement, lease or other financial compensation agreement let to a person with or by the County of Erie for the furnishing of services, goods, equipment, supplies, materials, public works, or other property to or for the County of Erie.
- D.) COUNTY – The County of Erie, any agency, office, position, administration, department, division, bureau, board, commission, corporation, public authority or

unit of government, the expenses of which are paid in whole or in part by the County of Erie or over which majority control is exercised by officers of the County of Erie or of a County-affiliated agency or their appointees.

- E.) COVERED EMPLOYEE – An individual employed on either full-time, part-time, temporary or seasonal basis, by a covered employer to perform work on or for the project or matter for which the recipient has received compensation.
- F.) COVERED EMPLOYER – A recipient of, or an applicant for, compensation that is not exempt from this law, and who has at least one (1) covered employee working within the County of Erie, or at least one 50% or more owner living within the County of Erie.
- G.) PERSON – One of more of the following or their agents, employees, representatives, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, all trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other entities recognized at law by this County.
- H.) RECIPIENT – Any person or entity that is a recipient of compensation, as defined in this law, and any contractor or subcontractor of a recipient producing or providing goods, materials, supplies, public works, or services to a recipient that are used by that recipient in the project or matter for which the recipient has received compensation.
- I.) SEASONAL – A period of time not to exceed ninety (90) consecutive days at any given time within a six-month period.

Section 3. Requirements

- A.) All covered employers, and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which shall be established by the County Department of Labor, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality) with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

- B.) All contractors and subcontractors of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which shall be established by the Department of Labor, certifying that they have complied, in good faith, with the requirements of Title 8 U.S.C. Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.
- C.) Covered employers and owner sworn affidavits shall be submitted to the awarding agency at the following times:
- 1.) upon application made to the County for any grant, loan, subsidy, tax incentive funding, appropriation, payment, or other form of financial assistance.
 - 2.) upon submission to the County of any response to a County bid, request for proposals (RFP), request for qualifications (RFQ), request for expressions of interest (RFEI), or similar contract letting process, including but limited to letting for license agreements, leases and other financial compensation agreements;
 - 3.) on January 1st of each year for the duration of the County contract, subcontract, license agreement, lease or other financial compensation agreement; and
 - 4.) upon renewal and amendment of any County contract, subcontract, license agreement, lease or other financial compensation agreement.
- D.) Contractor and subcontractor word affidavits shall be submitted by the covered employer to the awarding agency at the following times:
- 1.) within one (1) week after the contractor or subcontractor is hired by the covered employer to perform the work in connection with the County contract, subcontract, license agreement, lease or other financial compensation agreement.
 - 2.) in the event of a County contract, subcontract, license agreement, lease or other financial compensation agreement that is being renewed or amended

where a contractor or subcontractor was previously hired by a covered employer to perform work in connection with such contract, subcontract, license agreement, lease or other financial compensation agreement, upon such renewal or amendment; and

- 3.) on January 1st of each year for the duration of the County contract, subcontract, license agreement, lease or other financial compensation agreement, provided that the contractor or subcontractor was previously hired by the covered employer to perform work in connection with such contract, subcontract, license agreement, lease or other financial compensation agreement and is continuing to perform such work.

Section 4. Maintenance of Records

A.) All covered employers and the owners thereof, as the case may be, shall verify that they have complied with the requirements of Section 3 of this law based upon the categories of records, set forth below, copies of which shall be maintained by the covered employer to evidence compliance with this law.

- (i) United States passport; or
- (ii) resident alien card or alien registration card; or
- (iii) (a) driver's license, if it contains a photograph of the individual; and
(b) a social security account number card (other than such a card which specifies on its face that the issuance of the card does not authorize employment in the United States); or
- (iv) employment authorization documents, such as an H-1B visa, H-2HB visa, and L-1 visa, or such other work visa as may be authorized by the United States Government at the time the County contract is awarded for all covered employees; or
- (v) birth certificate indicating that person was born in the United States;

B.) The documents reviewed and relied upon by the covered employer, or the owners thereof, as the case may be, must appear in their face to be genuine. Copies of such documents relied upon by the covered employer, or the owners thereof, as the case may be, shall be maintained by the covered employer for all covered employees for the periods set forth below.

C.) Such records shall be maintained by the covered employer, or owners thereof, for the following minimum periods of time.

- 1.) one (1) year for a tax incentive;
- 2.) two (2) years for a County grant, subsidy of other financial assistance;
- 3.) until such time the County loan is paid back in full; and
- 4.) six (6) years after the County contract, subcontract, license agreement, lease, or other financial compensation agreement either expires or is terminated.

D.) Authorized County employees shall be entitled to review such records on a periodic basis as requested by the County or awarding agency.

Section 5. County Contracts; Subcontractor Contracts.

- A.) No grant, loan, subsidy, tax incentive, funding, appropriation, payment, other financial assistance, contract, subcontract, license agreement, lease or other financial compensation agreement shall be awarded to a covered employer, or the owners thereof, as the case may be, that does not certify that it has complied with Title 8 U.S.C. Section 1324a and Sections 3 and 4 of this law, with respect to its covered employees or with respect to the alien and nationality status of the owners thereof, as the case may be. All County contracts, subcontracts, license agreements, leases and other financial compensation agreements awarded shall set forth the obligations of the covered employer and owners as enumerated in this law.
- B.) All covered employers, or the owners thereof, as the case may be, shall inform their contractors and subcontractors to comply with the provisions of this law for as long as the covered employer or owner, as the case may be, is in receipt of compensation. Language indicating the contractor's and subcontractor's requirement to comply shall be included in any contract or agreement between a covered employer and its contractors and subcontractors. A copy of such subcontracts or other agreements shall be submitted to the County and made available to the public upon request.

Section 6. Applicability.

- A.) This law shall apply to all actions occurring on or after January 1, 2007, and shall apply to:
 - (i) All County contracts, subcontracts, license agreements, leases and other financial compensation agreements entered into or renewed after that applicability date of this law;

- (ii) Amendments to all County contracts, subcontracts, license agreements, leases and other financial compensation agreements entered into after the applicability date of this law.
- (iii) All loans, subsidies, tax incentives funding, appropriations, payments, and other financial assistance provided by the County after the applicability date of this law; and
- (iv) to a covered employer, or the owners thereof, as the case may be, who is constructing public works for the County of Erie under a loan agreement and pursuant to County plans and specifications, even though the project may not be 100 percent County funded due to federal and/or State aid that may be available.

B.) This law shall not apply as follows:

- (i) Section 3(B) of this law shall not apply to the subcontractors of not-for-profit corporations or the subcontractors of the owners thereof, as the case may be, as that term is defined in the NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW.

Section 7. Enforcement; penalties for offenses.

- A.) Notwithstanding any provision of law to the contrary, any covered employer, or the owners thereof, as the case may be, who submits a false, fictitious or fraudulent affidavit to the County or awarding agency in connection with Sections 3 or 5 of this law shall, upon conviction, be guilty of a Class A misdemeanor, punishable by a fine of not less than \$250.00 nor more than \$2000.00, or up to six (6) months imprisonment, or both. Each such violation shall constitute a separate and distinct offense.
- B.) Notwithstanding any provision of law to the contrary, any covered employer, or the owners thereof, as the case may be, who violates the provisions of Sections 3 or 5 of this law, upon a first violation shall be subject to a civil penalty, in an amount not less than \$250.00 nor more than \$1000.00, for each day such covered employee remains employed by the covered employer, or for each day the owners thereof shall remain an owner, as the case may be. Any covered employer, or the owners thereof, as the case may be, who violates the provisions of Sections 3 or 5 of this law as set forth herein within the period of one (1) year immediately subsequent to the first violation, shall result in a second violation, the civil penalty of which shall be in an amount not less than \$2000.00 nor more than \$5000.00 for each day such covered employee remains employed by the covered employer, or for each day the owners thereof shall remain an owner, as the case may be. Each such violation shall constitute a separate and distinct offense.

- C.) Notwithstanding any provision of law to the contrary, and covered employer, or the owners thereof, as the case may be, who violates the provisions of Section 4 of this law shall be subject to a civil penalty, in an amount not less than \$250.00 nor more than \$2000.00.
- D.) Any covered employer, or the owners thereof, as the case may be, who violates the provisions of Sections 3, 4, or 5 of this law, more than two (2) times, shall have its contract, subcontract, license agreement, lease or other financial compensation agreement terminated immediately; and, in the case of a County loan, subsidy or other form of financial assistance, same shall be declared in default for purposes of the County collecting on the full amount of the loan, subsidy or other form of financial assistance. In addition, such covered employers shall be barred from bidding on future County contracts and shall be ineligible to receive any future loans, subsidies or other financial assistance from the County.

Section 8. Promulgation of rules and regulations.

The Erie County Department of Labor shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provisions of this chapter.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c) (20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Erie County Department of Environment and Planning is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect immediately upon filing in the Office of the Secretary of State.

DATED:

SPONSORED BY:

MICHAEL H. RANZENHOFER

BARRY A. WEINSTEIN, MD

JOHN J. MILLS