

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)
of Erie

FILED
STATE RECORDS

MAY 22 2018

DEPARTMENT OF STATE

Local Law No. 3 of the year 20 18

A local law in relation to a requirement for New York State Certified Worker Training Programs by contractors and subcontractors under construction contracts, as defined herein, with the County of Erie

Be It enacted by the _____ of the
(Name of Legislative Body)

County City Town Village
(Select one.)
of Erie as follows:

Section 1. Legislative Intent.

The Erie County Legislature hereby finds, declares and determines that:

A. New York Labor Law Section 816-b specifically authorizes this Local Law.

B. There has been a long and productive history of partnership between labor and management in the training of workers in New York State.

C. New York State Certified Worker Training Programs are valuable educational and training tools for the local workforce by reducing reliance on out-of-area labor for construction projects.

D. New York State Certified Worker Training Programs provide opportunities to residents in this area through training and education for skilled jobs.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

E. These skilled jobs allow us to reinvest our taxpayer dollars spent on local construction projects so that local workers and local tax dollars remain within the local community.

F. It would be valuable to encourage labor and business/industry to participate in New York State Certified Worker Training Programs to meet the increased need for trade persons while providing residents the means to earn a better living and fostering the local and regional economies.

G. It is valuable for local government to encourage broad participation in such New York State Certified Worker Training Programs by the residents of Erie County and to foster the equal opportunity of men and women of all races and backgrounds to participate in order to enhance workforce development and diversification, and to prevent exclusionary practices which have historically excluded women and minorities.

H. The New York State Department of Labor sets objective standards and provides oversight for New York State Certified Worker Training Programs. These Programs are important because they require on-the-job training and classroom training, and provide objective industry standards. In effect these programs lead to a standardized, cost effective and skilled local workforce.

I. Nothing in this Local Law should be read to abrogate the duty of Erie County with respect to its MBE/WBE requirements.

Section 2. Short Title.

This Local Law shall be known as "The Erie County Workforce Development and Diversification New York State Certified Worker Training Program."

Section 3. Definitions.

A. "New York State Certified Worker Training Program" shall mean: a state registered and regulated apprenticeship program through the New York State Department of Labor that has been approved by the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law, that includes the following standards:

(i) An organized, written plan in place that embodies the terms and conditions of employment, and the training and supervision of one or more workers;

(ii) A schedule of wages to be paid to the worker consistent with the skills required and approved by the New York State Department of Labor;

(iii) Equal opportunity and affirmative action plans;

(iv) Workforce development and diversification goals to ensure that the contractor will diligently work toward a minority workforce goal of 30% minority and female participation combined in project personnel including trades people, trainees, journeymen, apprentices, and supervisory staff;

(v) A minimum of ten (10%) percent of the total construction workers, trades people, trainees, journeymen, and apprentices employed at any given time on a particular project by any

and all contractors or subcontractors must consist of persons participating in a New York State Certified Worker Training Program; and

(vi) In all cases, such Certified Worker Training Program (apprenticeship program) must be specific to the type and scope of work which is being performed and must have a graduation rate of at least thirty percent (30%) as determined by the New York State Department of Labor.

B. "Commissioner" shall mean the Commissioner of the Erie County Department of Public Works.

C. "Construction contract" shall mean projects with a value in excess of \$250,000 where Erie County is a direct or indirect party to the contract which includes more than an incidental amount of construction type activity intended to benefit the public, including all work which is necessary, incidental or connected with the execution of the contract which is performed by construction workers. A public entity need not be party to the construction contract. A construction contract includes: projects that Erie County funds directly, projects that Erie County funds indirectly by providing funds to a separate entity to perform the construction type activity; privately financed construction projects specifically built with the intent of leasing them to any Department of Erie County government; and construction projects built under Erie County's direction and later paid for with Erie County funds.

D. "Construction subcontract" shall mean any subcontract between a contractor who has a construction contract as defined in Section 3, subdivision C above.

E. "Contractor" or "subcontractor" shall mean a contractor or subcontractor that directly employs construction workers, as defined below, under a construction contract or construction subcontract, as defined herein, for which a New York State Certified Worker Training Program is required.

F. "Construction worker" shall mean an individual directly involved in the construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition or otherwise providing for any building, facility, roads, highways, bridges, or physical structure of any kind, but does not include professional services employees or those construction workers for which a New York State Certified Worker Training Program does not exist.

Section 4. Requirements.

A. Any contractor, prior to entering into a construction contract as set forth in section 3 (C) above, or any subcontractor entering into a construction subcontract with a contractor who has a construction contract with the County of Erie is required to have in place and provide written proof of same at the time of bid a New York State Certified Worker Training Program, either internally to the contractor or subcontractor and/or through an organization servicing several contractors or subcontractors, appropriate for the type and scope of work to be performed.

B. Any contractor or subcontractor, as defined herein, shall strive to meet the minimum workforce development and diversification goals set forth in section 3(A) (iv) above. Such contractors and/or subcontractors shall provide the Commissioner or designated compliance officer with the following:

(i) A monthly workforce census and such other employment and/or payroll records necessary to verify an attempt to achieve the workforce development and diversification goals set forth in Section 3(A)(iv) above.

(ii) Access to and cooperation with the project compliance officer to review records on-site and/or at worksite premises to validate attempts to achieve the workforce development and diversification goals set forth in Section 3(A)(iv) above.

(iii) With bid submission, a statement committing to providing apprenticeship training opportunities to workers, as well as details of workforce diversification recruiting program directed at attracting candidates to fill positions to meet the minimum workforce development and diversification goals set forth in Section 3(A)(iv) above.

Section 5. Rules & Regulations.

As of the date this Local Law becomes effective, the Commissioner of the Erie County Department of Public Works shall promulgate such rules and regulations that are lawful, necessary and appropriate to implement, enforce or otherwise carry out the purposes of this Local Law, provided that the Legislature, by simple majority, has not voted to disapprove such rule or regulation within sixty (60) days from the Commissioner's written notice to the Legislature that such rule or regulation has been promulgated.

Section 6. Equal Employment Monitoring.

There shall be an Independent Monitor to report on the compliance of each County contractor and subcontractor with this Local Law's workforce development and diversification goals. The Commissioner of DPW shall develop regulations that provide for the compensation of the Independent Monitor.

The Monitor shall monitor and review every facet of construction to report what percentage of the goals that are established for minority and female participation are met or exceeded. The Monitor shall report to the Equal Employment Opportunity Office on the compliance of each contractor and subcontractor with the workforce development and diversification goals.

The Monitor shall file monthly reports with the Equal Employment Opportunity Office regarding the actual workforce development and diversification goals, including reporting all instances of non-compliance; make appropriate recommendations to the Equal Employment Opportunity Office when non-compliance is evident with supportive documentation; develop a database of the workforce of each contractor and subcontractor to provide a visual format of each contractor's workforce, both monthly and year-to-date cumulative totals on each construction contract.

Section 7. Compliance.

The Director of Erie County Division of Equal Employment shall ensure that all contractors and subcontractors entering into a construction contract as it is defined herein, maintain records which prove that each construction worker as it is defined herein, signs in and out at the beginning and end of each day, listing next to his or her name his or her craft, and status as journeyman or apprentice, if applicable.

Section 8. Penalties.

Violation of any provision of this Local Law shall constitute cause, grounds or other legal justification for termination of any contractual agreement with any contractor or subcontractor engaged in a construction contract or construction subcontract with the County, in accordance with County and state laws, rules and regulations governing the termination of such contractual agreements.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this Local 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 of 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 Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

Section 10. Applicability.

This Local Law shall apply to construction contracts advertised for bids on or after the effective date with the following condition:

Apprenticeship agreements currently in place as of the effective date of this Local Law which are still in probationary status or apprenticeship agreements which were in probationary status during the period preceding the specific trade's program length as set forth in the New York State Prevailing Wage Schedule, shall be exempt from the 30% apprenticeship graduation requirement specified in Section 3 (A) (vi) for the period measured from the date the apprenticeship program is registered with the New York State Department of Labor plus the specific trade's program length plus two years.

Section 11. Effective Dates.

This Local Law shall take effect 30 days after the filing with the Secretary of State, in accordance with Section 27 of the New York State Municipal Home Rule Law.

**SPONSORS: PATRICK BURKE
APRIL N.M. BASKIN
JOHN BRUSO**

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 20 18 of the (County) _____ of Erie _____ was duly passed by the Erie County Legislature on April 26 20 18, and was (approved)(not approved) ~~(repassed after disapproval)~~ by the Erie County Executive _____ and was deemed duly adopted on May 18 20 18, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) ~~(repassed after disapproval)~~ by the _____ on _____ 20____.
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) ~~(repassed after disapproval)~~ by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 5/18/18

(Seal)

A Public Hearing was held on the foregoing **Local Law Intro. No. 4-2 (2018)** on **May 7, 2018** due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, **MARK C. POLONCARZ**, County Executive of Erie County, do hereby **APPROVE** and **SIGN** said Local Law this 18 day of MAY, 2018.



Mark C. Poloncarz

A Public Hearing was held on the foregoing **Local Law Intro. No. 4-2 (2018)** on **May 7, 2018** due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, **MARK C. POLONCARZ**, County Executive of Erie County, do hereby **DISAPPROVE** and **VETO** said Local Law this _____ day of _____, 2018.

Mark C. Poloncarz