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I N   S E N A T E

May 11, 2016

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Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to payment on construction contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 5-322.2 of the general obligations law is amended  
2     by adding a new subdivision 2-a to read as follows:  
3     2-A. THE CONTRACTOR SHALL PERIODICALLY, IN ACCORDANCE WITH THE TERMS  
4     OF THE CONTRACT, SUBMIT TO THE OWNER OR OWNERS A REQUISITION FOR A  
5     PROGRESS PAYMENT FOR THE WORK PERFORMED AND/OR MATERIALS FURNISHED TO  
6     THE DATE OF THE REQUISITION, LESS ANY AMOUNT PREVIOUSLY PAID TO THE  
7     CONTRACTOR. THE CONTRACTOR SHALL INCLUDE IN EACH SUCH REQUISITION A  
8     REQUEST FOR PAYMENT FOR ALL WORK PERFORMED AND MATERIAL PROVIDED BY  
9     SUBCONTRACTORS AND/OR MATERIALMEN FOR WHICH THE CONTRACTOR HAS RECEIVED  
10    A REQUEST FOR PAYMENT AND WHICH THE CONTRACTOR HAS NOT REJECTED, IN  
11    WHOLE OR IN PART. EACH SUBCONTRACTOR'S AND/OR MATERIALMAN'S REQUEST FOR  
12    PAYMENT SHALL BE ACCEPTED OR REJECTED, IN WHOLE OR IN PART, BY THE  
13    CONTRACTOR NOT LESS THAN THIRTY BUT NOT MORE THAN FORTY-FIVE DAYS  
14    FOLLOWING THE DATE OF THE CONTRACTOR'S RECEIPT OF SAID SUBCONTRACTOR'S  
15    AND/OR MATERIALMAN'S REQUEST FOR PAYMENT. IN THE EVENT THE CONTRACTOR  
16    DETERMINES TO REJECT SUCH SUBCONTRACTOR'S AND/OR MATERIALMAN'S REQUEST  
17    FOR PAYMENT, IN WHOLE OR IN PART, IT SHALL PROVIDE WRITTEN NOTICE OF THE  
18    REJECTION TO THE APPLICABLE SUBCONTRACTOR AND/OR MATERIALMAN ACCOMPANIED  
19    BY A REASONED ELABORATION IN SUPPORT OF THE CONTRACTOR'S REJECTION, IN  
20    WHOLE OR IN PART, TOGETHER WITH A WRITTEN DESCRIPTION OF THE WORK, MATERIALS,  
21    SUPPORTING DOCUMENTATION OR OTHER INFORMATION REQUIRED IN ORDER  
22    FOR THE REQUEST FOR PAYMENT TO BE APPROVED; PROVIDED, HOWEVER, THE  
23    CONTRACTOR SHALL INCLUDE IN ITS NEXT REQUISITION ANY PORTION OF SUCH  
24    SUBCONTRACTOR'S OR MATERIALMAN'S REQUEST FOR PAYMENT WHICH IS NOT  
25    REJECTED BY THE CONTRACTOR; AND NO SUCH NOTICE OR ELABORATION SHALL BE  
26    REQUIRED FOR PURPOSES OF RETAINAGE AS AUTHORIZED BY THIS SECTION. THE  
27    CONTRACTOR'S ACCEPTANCE OR REJECTION OF A REQUEST FOR PAYMENT FOR WORK  
28    PERFORMED AND MATERIAL PROVIDED BY SUBCONTRACTORS AND/OR MATERIALMEN

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 SHALL IN NO WAY AFFECT THE OWNER'S OR OWNERS' LEGAL RIGHTS TO APPROVE OR  
2 REJECT, IN WHOLE OR IN PART, THE CONTRACTOR'S REQUEST FOR PAYMENT. THE  
3 OWNER OR OWNERS SHALL, IN ACCORDANCE WITH THE TERMS OF THE CONTRACT,  
4 APPROVE AND PROMPTLY PAY THE REQUISITION FOR THE PROGRESS PAYMENT LESS  
5 AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST  
6 THE CONTRACTOR WHICH HAVE NOT BEEN SUITABLY DISCHARGED AND LESS ANY  
7 RETAINED AMOUNT AS HEREAFTER DESCRIBED. THE OWNER OR OWNERS SHALL RETAIN  
8 NOT MORE THAN FIVE PER CENTUM OF EACH PROGRESS PAYMENT TO THE CONTRACTOR  
9 EXCEPT THAT THE OWNER OR OWNERS MAY RETAIN IN EXCESS OF FIVE PER CENTUM  
10 BUT NOT MORE THAN TEN PER CENTUM OF EACH PROGRESS PAYMENT TO THE  
11 CONTRACTOR PROVIDED THAT THERE ARE NO REQUIREMENTS BY THE OWNER OR  
12 OWNERS FOR THE CONTRACTOR TO PROVIDE A PERFORMANCE BOND AND A LABOR AND  
13 MATERIAL BOND BOTH IN THE FULL AMOUNT OF THE CONTRACT. THE OWNER OR  
14 OWNERS SHALL PAY, UPON REQUISITION FROM THE CONTRACTOR, FOR MATERIALS  
15 PERTINENT TO THE PROJECT WHICH HAVE BEEN DELIVERED TO THE SITE OR  
16 OFF-SITE BY THE CONTRACTOR AND/OR SUBCONTRACTOR AND SUITABLY STORED AND  
17 SECURED AS REQUIRED BY THE OWNER OR OWNERS AND THE CONTRACTOR PROVIDED,  
18 THE OWNER OR OWNERS MAY LIMIT SUCH PAYMENT TO MATERIALS IN SHORT AND/OR  
19 CRITICAL SUPPLY AND MATERIALS SPECIALLY FABRICATED FOR THE PROJECT EACH  
20 AS DEFINED IN THE CONTRACT. WHEN THE WORK OR MAJOR PORTIONS THEREOF AS  
21 CONTEMPLATED BY THE TERMS OF THE CONTRACT ARE SUBSTANTIALLY COMPLETED,  
22 THE CONTRACTOR SHALL SUBMIT TO THE OWNER OR OWNERS A REQUISITION FOR  
23 PAYMENT OF THE REMAINING AMOUNT OF THE CONTRACT BALANCE. UPON RECEIPT OF  
24 SUCH REQUISITION THE OWNER OR OWNERS SHALL APPROVE AND PROMPTLY PAY THE  
25 REMAINING AMOUNT OF THE CONTRACT BALANCE LESS TWO TIMES THE VALUE OF ANY  
26 REMAINING ITEMS TO BE COMPLETED AND AN AMOUNT NECESSARY TO SATISFY ANY  
27 CLAIMS, LIENS OR JUDGMENTS AGAINST THE CONTRACTOR WHICH HAVE NOT BEEN  
28 SUITABLY DISCHARGED. AS THE REMAINING ITEMS OF WORK ARE SATISFACTORILY  
29 COMPLETED OR CORRECTED, THE OWNER OR OWNERS SHALL PAY, IN ACCORDANCE  
30 WITH THE TERMS OF THE CONTRACT, UPON RECEIPT OF A REQUISITION, FOR THESE  
31 REMAINING ITEMS LESS AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR  
32 JUDGMENTS AGAINST THE CONTRACTOR WHICH HAVE NOT BEEN SUITABLY  
33 DISCHARGED. ANY CLAIMS, LIENS AND JUDGMENTS REFERRED TO IN THIS SECTION  
34 SHALL PERTAIN TO THE PROJECT AND SHALL BE FILED IN ACCORDANCE WITH THE  
35 TERMS OF THE APPLICABLE CONTRACT AND/OR APPLICABLE LAWS.

36 S 2. This act shall take effect on the ninetieth day after it shall  
37 have become a law.