

9868

I N A S S E M B L Y

April 20, 2016

Introduced by M. of A. CUSICK -- read once and referred to the Committee
on Governmental Operations

AN ACT to amend the state finance law and the general municipal law, in
relation to payment in construction contracts

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

1 Section 1. Subdivision 1 of section 139-f of the state finance law, as
2 added by chapter 769 of the laws of 1978, is amended to read as follows:
3 1. Payment by public owners to contractors. The contractor shall peri-
4 odically, in accordance with the terms of the contract, submit to the
5 public owner and/or his agent a requisition for a progress payment for
6 the work performed and/or materials furnished to the date of the requi-
7 sition, less any amount previously paid to the contractor. The public
8 owner shall in accordance with the terms of the contract approve and
9 promptly pay the requisition for the progress payment less an amount
10 necessary to satisfy any claims, liens or judgments against the contrac-
11 tor which have not been suitably discharged and less any retained amount
12 as hereafter described. The public owner shall retain not more than five
13 per centum of each progress payment to the contractor except that the
14 public owner may retain in excess of five per centum but not more than
15 ten per centum of each progress payment to the contractor provided that
16 there are no requirements by the public owner for the contractor to
17 provide a performance bond and a labor and material bond both in the
18 full amount of the contract. The public owner shall pay, upon requis-
19 ition from the contractor, for materials pertinent to the project which
20 have been delivered to the site or off-site by the contractor and/or
21 subcontractor and suitably stored and secured as required by the public
22 owner and the contractor provided, the public owner may limit such
23 payment to materials in short and/or critical supply and materials
24 specially fabricated for the project each as defined in the contract.
25 When the work or major portions thereof as contemplated by the terms of
26 the contract [are substantially completed] HAS REACHED SUBSTANTIAL
27 COMPLETION WHICH, FOR THE PURPOSES OF THIS SECTION, SHALL MEAN THE STATE
28 IN THE PROGRESS OF THE PROJECT WHEN THE WORK REQUIRED BY THE CONTRACT

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

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1 WITH THE PUBLIC OWNER IS SUFFICIENTLY COMPLETE IN ACCORDANCE WITH THE
2 CONTRACT SO THAT THE PUBLIC OWNER MAY OCCUPY OR UTILIZE THE WORK FOR ITS
3 INTENDED USE; PROVIDED FURTHER, THAT "SUBSTANTIAL COMPLETION" SHALL
4 APPLY TO THE ENTIRE PROJECT OR A PORTION OF THE ENTIRE PROJECT IF THE
5 CONTRACT WITH THE PUBLIC OWNER PROVIDES FOR OCCUPANCY OR USE OF A
6 PORTION OF THE PROJECT, the contractor shall submit to the public owner
7 and/or his agent a requisition for payment of the remaining amount of
8 the contract balance. Upon receipt of such requisition the public owner
9 shall approve and promptly pay the remaining amount of the contract
10 balance less two times the value of any remaining items to be completed
11 and an amount necessary to satisfy any claims, liens or judgments
12 against the contractor which have not been suitably discharged. As the
13 remaining items of work are satisfactorily completed or corrected, the
14 public owner shall promptly pay, upon receipt of a requisition, for
15 these remaining items less an amount necessary to satisfy any claims,
16 liens or judgments against the contractor which have not been suitably
17 discharged. Any claims, liens and judgments referred to in this section
18 shall pertain to the project and shall be filed in accordance with the
19 terms of the applicable contract and/or applicable laws.

20 S 2. Subdivision 1-a of section 139-f of the state finance law is
21 renumbered 1-b and a new subdivision 1-a is added to read as follows:

22 1-A. NOT LATER THAN FOURTEEN CALENDAR DAYS AFTER THE DATE WHEN THE
23 PROJECT HAS REACHED SUBSTANTIAL COMPLETION, THE PUBLIC OWNER SHALL
24 SUBMIT TO THE CONTRACTOR A WRITTEN LIST DESCRIBING ALL REMAINING ITEMS
25 TO BE COMPLETED BY THE CONTRACTOR. NOT LATER THAN SEVEN CALENDAR DAYS
26 AFTER RECEIVING A WRITTEN LIST DESCRIBING ALL REMAINING ITEMS TO BE
27 COMPLETED BY THE CONTRACTOR, THE CONTRACTOR SHALL SUBMIT TO EACH SUBCON-
28 TRACTOR FROM WHOM THE CONTRACTOR IS WITHHOLDING RETAINAGE A WRITTEN LIST
29 OF ALL REMAINING ITEMS REQUIRED TO BE COMPLETED BY THE SUBCONTRACTOR.
30 SUCH LIST MAY INCLUDE ITEMS IN ADDITION TO THOSE ITEMS ON THE PUBLIC
31 OWNER'S LIST.

32 S 3. Subdivision 1 of section 106-b of the general municipal law, as
33 amended by chapter 661 of the laws of 1992, paragraphs (a) and (c) as
34 amended by chapter 98 of the laws of 1995, is amended to read as
35 follows:

36 1. Payment by public owners to contractors. (a) The contractor shall
37 periodically, in accordance with the terms of the contract, submit to
38 the public owner and/or his agent a requisition for a progress payment
39 for the work performed and/or materials furnished to the date of the
40 requisition less any amount previously paid to the contractor. The
41 public owner shall in accordance with the terms of the contract approve
42 and promptly pay the requisition for the progress payment less an amount
43 necessary to satisfy any claims, liens or judgments against the contrac-
44 tor which have not been suitably discharged and less any retained amount
45 as hereafter described. The public owner shall retain not more than five
46 per centum of each progress payment to the contractor except that the
47 public owner may retain in excess of five per centum but not more than
48 ten per centum of each progress payment to the contractor provided that
49 there are no requirements by the public owner for the contractor to
50 provide a performance bond and a labor and material bond both in the
51 full amount of the contract. The public owner shall pay, upon requisiti-
52 tion from the contractor, for materials pertinent to the project which
53 have been delivered to the site or off-site by the contractor and/or
54 subcontractor and suitably stored and secured as required by the public
55 owner and the contractor provided, the public owner may limit such
56 payment to materials in short and/or critical supply and materials

1 specially fabricated for the project each as defined in the contract.
2 When the work or major portions thereof as contemplated by the terms of
3 the contract [are substantially completed] HAS REACHED SUBSTANTIAL
4 COMPLETION WHICH, FOR THE PURPOSES OF THIS SECTION, SHALL MEAN THE STATE
5 IN THE PROGRESS OF THE PROJECT WHEN THE WORK REQUIRED BY THE CONTRACT
6 WITH THE PUBLIC OWNER IS SUFFICIENTLY COMPLETE IN ACCORDANCE WITH THE
7 CONTRACT SO THAT THE PUBLIC OWNER MAY OCCUPY OR UTILIZE THE WORK FOR ITS
8 INTENDED USE; PROVIDED FURTHER, THAT "SUBSTANTIAL COMPLETION" SHALL
9 APPLY TO THE ENTIRE PROJECT OR A PORTION OF THE ENTIRE PROJECT IF THE
10 CONTRACT WITH THE PUBLIC OWNER PROVIDES FOR OCCUPANCY OR USE OF A
11 PORTION OF THE PROJECT, the contractor shall submit to the public owner
12 and/or his agent a requisition for payment of the remaining amount of
13 the contract balance. Upon receipt of such requisition the public owner
14 shall approve and promptly pay the remaining amount of the contract
15 balance less two times the value of any remaining items to be completed
16 and an amount necessary to satisfy any claims, liens or judgments
17 against the contractor which have not been suitably discharged. As the
18 remaining items of work are satisfactorily completed or corrected, the
19 public owner shall promptly pay, upon receipt of a requisition, for
20 these items less an amount necessary to satisfy any claims, liens or
21 judgments against the contractor which have not been suitably
22 discharged. Any claims, liens and judgments referred to in this section
23 shall pertain to the project and shall be filed in accordance with the
24 terms of the applicable contract and/or applicable laws. Where the
25 public owner is other than the city of New York, the term "promptly pay"
26 shall mean payment within thirty days, excluding legal holidays, of
27 receipt of the requisition unless such requisition is not approvable in
28 accordance with the terms of the contract. Notwithstanding the forego-
29 ing, where the public owner is other than the city of New York and is a
30 municipal corporation which requires an elected official to approve
31 progress payments, "promptly pay" shall mean payment within forty-five
32 days, excluding legal holidays, of receipt of the requisition unless
33 such requisition is not approvable in accordance with the terms of the
34 contract.

35 (b) NOT LATER THAN FOURTEEN CALENDAR DAYS AFTER THE DATE WHEN THE
36 PROJECT HAS REACHED SUBSTANTIAL COMPLETION, THE PUBLIC OWNER SHALL
37 SUBMIT TO THE CONTRACTOR A WRITTEN LIST DESCRIBING ALL REMAINING ITEMS
38 TO BE COMPLETED BY THE CONTRACTOR. NOT LATER THAN SEVEN CALENDAR DAYS
39 AFTER RECEIVING A WRITTEN LIST DESCRIBING ALL REMAINING ITEMS TO BE
40 COMPLETED BY THE CONTRACTOR, THE CONTRACTOR SHALL SUBMIT TO EACH SUBCON-
41 TRACTOR FROM WHOM THE CONTRACTOR IS WITHHOLDING RETAINAGE A WRITTEN LIST
42 OF ALL REMAINING ITEMS REQUIRED TO BE COMPLETED BY THE SUBCONTRACTOR.
43 SUCH LIST MAY INCLUDE ITEMS IN ADDITION TO THOSE ITEMS ON THE PUBLIC
44 OWNER'S LIST.

45 (C) Each public owner other than the city of New York which is
46 required to make a payment from public funds pursuant to a contract and
47 which does not make such contract payment by the required payment date
48 shall make an interest payment to the contractor on the amount of the
49 contract payment which is due unless failure to make such contract
50 payment is the result of a lien, attachment, or other legal process
51 against the money due said contractor, or unless the amount of the
52 interest payment as computed in accordance with the provisions set forth
53 hereinafter is less than ten dollars. Interest payments on amounts due
54 to a contractor pursuant to this paragraph shall be paid to the contrac-
55 tor for the period beginning on the day after the required payment date
56 and ending on the payment date for those payments required according to

1 this section and shall be paid at the rate of interest in effect on the
2 date when the interest payment is made. Notwithstanding any other
3 provision of law to the contrary, interest shall be computed at the rate
4 equal to the overpayment rate set by the commissioner of taxation and
5 finance pursuant to subsection (e) of section one thousand ninety-six of
6 the tax law. A pro rata share of such interest shall be paid by the
7 contractor or subcontractor, as the case may be, to subcontractors and
8 materialmen in a proportion equal to the percentage of their pro rata
9 share of the contract payment. Such pro rata share of interest shall be
10 due to such subcontractors and materialmen only for those payments which
11 are not paid to such subcontractors and materialmen prior to the date
12 upon which interest begins to accrue between the public owner and the
13 contractor. Such pro rata shares of interest shall be computed daily
14 until such payments are made to the subcontractors and materialmen.

15 [(c)] (D) For projects of a public owner other than the city of New
16 York, if state funds directly related to and which have been budgeted
17 for the construction of the project for which the payment is due have
18 not been received prior to the expiration of the thirty or forty-five
19 days specified in paragraph (a) of this subdivision, the interest
20 provided for in paragraph [(b)] (C) of this subdivision shall not begin
21 to accrue and payment shall not be due, until ten days after receipt of
22 the state funds. Nothing in this paragraph shall prevent the public
23 owner from approving the requisition, subject to receipt of the state
24 funds. State funds shall mean monies provided to the public owner by the
25 state, its officers, boards, departments, commissions, or a public
26 authority and public benefit corporation, a majority of the members of
27 which have been appointed by the governor or who serve as members by
28 virtue of holding a civil office of the state, or a combination thereof.

29 S 4. This act shall take effect immediately and shall apply to
30 contracts entered into on and after such effective date.