S T A T E O F N E W Y O R K

10147--A

Cal. No. 762

I N A S S E M B L Y

March 5, 2010

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Corporations, Authorities and Commissions -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public authorities law, in relation to providing that subcontractors on New York city school construction projects who file mechanics' liens shall not be entitled to payment protection through the authority

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

Section 1. Subdivision 6 of section 1735 of the public authorities law, as added by chapter 738 of the laws of 1988, is amended to read as follows:

6. The authority shall provide in its construction, erection or alteration contracts which implement a five year educational facilities capital plan a provision that shall require each contractor to make prompt payment to its subcontractors performing each subdivision of work listed in subdivision three of this section. Within seven calendar days of the receipt of any payment from the authority, the contractor shall pay to each such subcontractor that portion of the proceeds of such payment representing the value of the work performed by such subcontractor, based upon the actual value of the subcontract, which has been approved and paid for by the authority, less an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged and less any amount retained by the contractor as provided herein. For such purpose, the subcontract may provide that the contractor may retain not more than five per centum of each payment to the subcontractor or not more than ten per centum of each such payment if prior to entering into the subcontract the subcontractor is unable or unwilling to provide, at the request of the contractor, a performance bond and a labor and material bond both in the amount of the subcontract.

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

LBD16288-03-0

At the time of making a payment to the contractor for work performed by the subcontractors set forth in subdivision three of this section, the authority shall file in its office for review a record of such payment. If any such subcontractor shall notify the authority and the contractor in writing that the contractor has failed to make a payment to it as provided herein and the contractor shall fail, within five calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the subcontractor is in dispute, the authority shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the authority and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as herein provided, an amount equal to ONE HUNDRED FIFTY PERCENT OF that portion of the authority's prior payment to the contractor which the subcontractor claims to be due it, shall remit the amount when and so withheld to the subcontractor and deduct such payment from the amounts then otherwise due and payable to the contractor, which payment shall, as between the contractor and the authority, be deemed a payment by the authority to the contractor. In the event the contractor shall notify the authority as above provided that the claim of the subcontractor is in dispute, the authority shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the authority and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as herein provided, an amount equal to ONE HUNDRED FIFTY PERCENT OF that portion of the authority's prior payment to the contractor which the subcontractor claims to be due it and deposit such amount when and so withheld in a separate interest-bearing account pending resolution of the dispute, and the amount so deposited together with the interest thereon shall be paid to the party or parties ultimately determined to be entitled thereto, or until the contractor and subcontractor shall otherwise agree as to the disposition thereof. In the event the authority shall be required to withhold amounts from a contractor for the benefit of more than one subcontractor, the amounts so withheld shall be applied to or for such subcontractors in the order in which the written notices of nonpayment have been received by the authority, and if more than one such notice was received on the same day, proportionately based upon the amount of the subcontractor claims received on such day. NOTWITHSTANDING THE FOREGOING, IN LIEU OF WITHHOLDING SUCH AMOUNT OR AMOUNTS IN DISPUTE, THE CONTRACTOR MAY POST A BOND OR OTHER FORM OF UNDERTAKING GUARANTEEING PAYMENT OF SUCH DISPUTED AMOUNTS. Nothing herein contained shall prevent the authority from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section one thousand six of the civil practice law and rules, or any successor provision thereto. IN THE EVENT THE AUTHORITY DOES NOT WITHHOLD THE REQUIRED AMOUNTS WITHIN SIXTY DAYS AFTER THE WRITTEN NOTIFICATION FROM THE SUBCONTRACTOR REGARDING FAILURE OF THE CONTRACTOR TO MAKE PAYMENT, THE SUBCONTRACTOR MAY FILE A LIEN UNDER ARTICLE TWO OF THE LIEN LAW AS THE SOLE REMEDY IN LIEU OF THE REMEDY PROVIDED UNDER THIS SUBDIVISION.

Payment to a subcontractor shall not relieve the contractor from responsibility for the work covered by the payment. Except as otherwise provided, nothing contained herein shall create any obligation on the part of the authority to pay any subcontractor, nor shall anything

provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and the authority.

The provisions of this subdivision shall not be applicable to the subcontractors of a contractor whose contract is limited to the performance of a single subdivision of work listed in subdivision three of this section.

S 2. This act shall take effect immediately, provided however that the amendments to section 1735 of the public authorities law made by section one of this act shall not affect the expiration and repeal of such section and shall be deemed repealed therewith.