

S. 754

A. 2279

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 15, 2009

IN SENATE -- Introduced by Sens. BRESLIN, HUNTLEY, SCHNEIDERMAN, STACHOWSKI, STAVISKY, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. CUSICK, HYER-SPENCER -- Multi-Sponsored by -- M. of A. GUNTHER, MAGEE, PHEFFER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to retention of construction contracts

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

1 Section 1. Section 756-c of the general business law, as added by
2 chapter 127 of the laws of 2002, is amended to read as follows:
3 S 756-c. Retention. By mutual agreement of the relevant parties an
4 owner may retain a reasonable amount of the contract sum as retainage[.
5 A] AND FOR ANY CONSTRUCTION CONTRACTS, EXCLUDING CONSTRUCTION CONTRACTS
6 FINANCED BY A PUBLIC BENEFIT CORPORATION, SUCH RETAINAGE SHALL BE DEPOS-
7 ITED IN A SEPARATE INTEREST BEARING ESCROW ACCOUNT WITH A THIRD PARTY
8 ESCROW AGENT. AS OF THE TIME OF THE DEPOSIT OF THE RETAINAGE, THE
9 RETAINED FUNDS SHALL BECOME THE SOLE AND SEPARATE PROPERTY OF THE
10 CONTRACTOR. INTEREST ON THE RETAINED FUNDS SHALL ACCRUE AT AN INTEREST
11 RATE AT LEAST EQUAL TO THE PREVAILING INTEREST RATE PAID ON DEPOSITS BY
12 THE ESCROW AGENT. ALSO, A contractor or subcontractor may [also] retain
13 a reasonable amount for retainage so long as the amount does not exceed
14 the actual percentage [retained] DEPOSITED IN ESCROW by the owner.
15 [Retainage] THE ESCROWED RETAINAGE shall be released by the [owner]
16 OWNER'S WRITTEN DIRECTION TO THE ESCROW AGENT TO DELIVER THE ESCROWED
17 RETAINAGE to the contractor no later than thirty days after the final
18 approval of the work under a construction contract. In the event that an
19 owner fails to release THE ESCROWED retainage as required by this arti-
20 cle, or the contractor or subcontractor fails to release a proportionate

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

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1 amount of retainage to the relevant parties WITHIN FIVE DAYS after
2 receipt of THE ESCROWED retainage from the owner, (I) the owner[,
3 contractor, or subcontractor, as the case may be, shall be subject to
4 the payment of interest at the rate of one percent per month on the date
5 retention was due and owing] SHALL BE SUBJECT TO THE PAYMENT OF INTER-
6 EST, IN ADDITION TO THE ESCROW INTEREST, AT THE RATE OF ONE PERCENT PER
7 MONTH COMMENCING ON THE DATE THE RETAINAGE WAS DUE TO BE RELEASED FROM
8 ESCROW; AND (II) THE CONTRACTOR OR SUBCONTRACTOR, AS THE CASE MAY BE,
9 SHALL BE SUBJECT TO THE PAYMENT OF INTEREST ON THE AMOUNT OF RETAINAGE
10 IT HOLDS AT THE RATE OF ONE PERCENT PER MONTH COMMENCING ON THE DATE THE
11 RETAINAGE WAS DUE TO BE RELEASED BY SUCH CONTRACTOR OR SUBCONTRACTOR.

12 S 2. This act shall take effect immediately and shall apply to all
13 contracts entered into on or after such effective date.