

S. 802

A. 2347

2009-2010 Regular Sessions

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

January 15, 2009

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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 Finance

IN ASSEMBLY -- Introduced by M. of A. CUSICK, GABRYSZAK -- 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 release of subcontractor's retainage

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

1     Section 1. Subdivision 2 of section 139-f of the state finance law, as  
2     amended by section 16 of part MM of chapter 57 of the laws of 2008, is  
3     amended to read as follows:  
4     2. Payment by contractors to subcontractors. Within seven calendar  
5     days of the receipt of any payment from the public owner, the contractor  
6     shall pay each of his subcontractors and materialmen the proceeds from  
7     the payment representing the value of the work performed and/or materi-  
8     als furnished by the subcontractor and/or materialman and reflecting the  
9     percentage of the subcontractor's work completed or the materialman's  
10    material supplied in the requisition approved by the owner and based  
11    upon the actual value of the subcontract or purchase order less an  
12    amount necessary to satisfy any claims, liens or judgments against the  
13    subcontractor or materialman which have not been suitably discharged and  
14    less any retained amount as hereafter described. Failure by the contrac-  
15    tor to pay any subcontractor or materialman within seven calendar days  
16    of the receipt of any payment from the public owner shall result in the  
17    commencement and accrual of interest on amounts due to such subcontract-  
18    or or materialman for the period beginning on the day immediately  
19    following the expiration of such seven calendar day period and ending on  
20    the date on which payment is made by the contractor to such subcontract-  
21    or or materialman. Such interest payment shall be the sole responsibil-

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

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ity of the contractor, and shall be paid at the rate of interest in effect on the date payment is made by the contractor. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate established in paragraph (b) of subdivision one of section seven hundred fifty-six-b of the general business law. The contractor shall retain not more than five per centum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five per centum but not more than ten per centum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material bond, both in the full amount of the subcontract, at the request of the contractor. However, the contractor shall retain nothing from those payments representing proceeds owed the subcontractor and/or materialman from the public owner's payments to the contractor for the remaining amounts of the contract balance as provided in subdivision one of this section. If the contractor has failed to submit a requisition for payment of the remaining amounts of the contract balance within ninety days of substantial completion as provided in subdivision one of this section, then any clause in the subcontract between the contractor and the subcontractor or materialman which states that payment by the contractor to such subcontractor or materialman is contingent upon payment by the owner to the contractor shall be deemed invalid. Within seven calendar days of the receipt of payment from the contractor, the subcontractor and/or materialman shall pay each of his subcontractors and materialmen in the same manner as the contractor has paid the subcontractor, including interest as herein provided above. Nothing provided herein shall create any obligation on the part of the public owner to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor or materialman and the public owner. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR ANY OTHER LAW, ANY RETAINAGE HELD BY A PUBLIC OWNER OR CONTRACTOR REPRESENTING RETAINAGE FOR A SUBCONTRACTOR'S WORK SHALL BE RELEASED NO LATER THAN SIXTY DAYS FROM THE SUBSTANTIAL COMPLETION OF THE SUBCONTRACTOR'S WORK.

S 2. Subdivision 2 of section 106-b of the general municipal law, as amended by section 15 of part MM of chapter 57 of the laws of 2008, is amended to read as follows:

2. Payment by contractors to subcontractors. Within seven calendar days of the receipt of any payment from the public owner, the contractor shall pay each of his subcontractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialman and reflecting the percentage of the subcontractor's work completed or the materialman's material supplied in the requisition approved by the owner and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or materialman which have not been suitably discharged and less any retained amount as hereafter described. Failure by the contractor to make any payment, including any remaining amounts of the contract balance as hereinafter described, to any subcontractor or materialman within seven calendar days of the receipt of any payment from the public owner shall result in the commencement and accrual of interest on amounts due to such subcontractor or materialman for the period beginning on the day immediately following the expiration of such seven

1 calendar day period and ending on the date on which payment is made by  
2 the contractor to such subcontractor or materialman. Such interest shall  
3 be the sole responsibility of the contractor, and shall be paid at the  
4 rate of interest in effect on the date payment is made by the contrac-  
5 tor. Notwithstanding any other provision of law to the contrary, inter-  
6 est shall be computed at the rate established in paragraph (b) of subdivi-  
7 sion one of section seven hundred fifty-six-b of the general business  
8 law. The contractor shall retain not more than five per centum of each  
9 payment to the subcontractor and/or materialman except that the contrac-  
10 tor may retain in excess of five per centum but not more than ten per  
11 centum of each payment to the subcontractor provided that prior to  
12 entering into a subcontract with the contractor, the subcontractor is  
13 unable or unwilling to provide a performance bond and a labor and mate-  
14 rial bond both in the full amount of the subcontract at the request of  
15 the contractor. However, the contractor shall retain nothing from those  
16 payments representing proceeds owed the subcontractor and/or materialman  
17 from the public owner's payments to the contractor for the remaining  
18 amounts of the contract balance as provided in subdivision one of this  
19 section. If the contractor has failed to submit a requisition for  
20 payment of the remaining amounts of the contract balance within ninety  
21 days of substantial completion as provided in subdivision one of this  
22 section, then any clause in the subcontract between the contractor and  
23 the subcontractor or materialman which states that payment by the  
24 contractor to such subcontractor or materialman is contingent upon  
25 payment by the owner to the contractor shall be deemed invalid. Within  
26 seven calendar days of the receipt of payment from the contractor, the  
27 subcontractor and/or materialman shall pay each of his subcontractors  
28 and materialmen in the same manner as the contractor has paid the  
29 subcontractor, including interest as herein provided above. Nothing  
30 provided herein shall create any obligation on the part of the public  
31 owner to pay or to see to the payment of any moneys to any subcontractor  
32 or materialman from any contractor nor shall anything provided herein  
33 serve to create any relationship in contract or otherwise, implied or  
34 expressed, between the subcontractor or materialman and the public  
35 owner. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR ANY OTHER  
36 LAW, ANY RETAINAGE HELD BY A PUBLIC OWNER OR CONTRACTOR REPRESENTING  
37 RETAINAGE FOR A SUBCONTRACTOR'S WORK SHALL BE RELEASED NO LATER THAN  
38 SIXTY DAYS FROM THE COMPLETION AND ACCEPTANCE BY THE PUBLIC OWNER OF THE  
39 SUBCONTRACTOR'S WORK.

40 S 3. This act shall take effect immediately and shall apply to all  
41 contracts entered into after its effective date.