

4671

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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

AN ACT to amend the state finance law, in relation to damages for delay  
clauses in public contracts

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

1     Section 1. The state finance law is amended by adding a new section  
2     138-b to read as follows:  
3     S 138-B. DAMAGES FOR DELAY IN PUBLIC CONTRACTS. 1. ALL CONTRACTS  
4     MADE AND AWARDED BY THE STATE, ANY STATE AGENCY, PUBLIC DEPARTMENT,  
5     MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION, SCHOOL DISTRICT OR A  
6     COMMISSION APPOINTED PURSUANT TO LAW (HEREINAFTER REFERRED TO IN THIS  
7     SECTION AS A "PUBLIC OWNER") FOR DESIGN, CONSTRUCTION, RECONSTRUCTION,  
8     DEMOLITION, ALTERATION, REPAIR OR IMPROVEMENT OF ANY PUBLIC WORKS SHALL  
9     CONTAIN A CLAUSE WHICH ALLOWS A CONTRACTOR TO MAKE CLAIM FOR ADDITIONAL  
10    COSTS FROM CAUSES LISTED BELOW, ATTRIBUTABLE TO DELAY IN THE PERFORMANCE  
11    OF THIS CONTRACT, OCCASIONED BY ANY ACT OR OMISSION TO ACT BY THE PUBLIC  
12    OWNER OR ANY OF ITS REPRESENTATIVES.  
13    (A) THE FAILURE OF THE PUBLIC OWNER TO TAKE REASONABLE MEASURES TO  
14    COORDINATE AND PROGRESS THE WORK.  
15    (B) EXTENDED DELAYS ATTRIBUTABLE TO THE PUBLIC OWNER IN THE REVIEW OR  
16    ISSUANCE OF ORDERS-ON-CONTRACT OR FIELD ORDERS, IN SHOP DRAWING REVIEWS  
17    OR APPROVALS OR AS A RESULT OF THE CUMULATIVE IMPACT OF MULTIPLE ORDERS  
18    ON CONTRACT, WHICH CONSTITUTE A QUALITATIVE CHANGE TO THE PROJECT WORK  
19    AND WHICH HAVE A VERIFIABLE IMPACT ON PROJECT COSTS.  
20    (C) THE UNAVAILABILITY OF THE SITE FOR SUCH AN EXTENDED PERIOD OF TIME  
21    WHICH SIGNIFICANTLY AFFECTS THE SCHEDULED COMPLETION OF THE CONTRACT.  
22    (D) THE ISSUANCE BY THE PUBLIC OWNER OF A STOP WORK ORDER RELATIVE TO  
23    A SUBSTANTIAL PORTION OF WORK FOR A PERIOD EXCEEDING THIRTY DAYS.

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

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1       2. WHEN SUBMITTING ANY SUCH CLAIM AGAINST THE PUBLIC OWNER, THE  
2 CONTRACTOR, FOR ITSELF AND/OR ON BEHALF OF ANY CLAIMING SUBCONTRACTOR OR  
3 MATERIALMAN, SHALL CERTIFY IN WRITING AND UNDER OATH:

4       (A) THAT THE SUPPORTING DATA IS ACCURATE AND COMPLETE TO THE CONTRAC-  
5 TOR'S BEST KNOWLEDGE OR BELIEF, AND THAT OF ANY CLAIMING SUBCONTRACTOR  
6 OR MATERIALMAN; AND

7       (B) THAT THE AMOUNT OF THE CLAIM ITSELF REFLECTS WHAT THE CONTRACTOR,  
8 SUBCONTRACTOR AND/OR MATERIALMAN IN GOOD FAITH BELIEVE TO BE THE PUBLIC  
9 OWNER'S LIABILITY.

10       S 2. This act shall take effect on the one hundred eightieth day after  
11 it shall have become a law.