

2025

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. JOHN -- read once and referred to the Committee on Consumer Affairs and Protection

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

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

1 Section 1. The general business law is amended by adding a new section  
2 756-f to read as follows:

3 S 756-F. PROMPT PAYMENT. 1. AS USED IN THIS SECTION:

4 (A) "BILLING" MEANS, IN ACCORDANCE WITH THE TERMS AND DEFINITIONS OF  
5 THE APPLICABLE CONTRACT, ANY PERIODIC PAYMENT, FINAL PAYMENT, WRITTEN  
6 APPROVED CHANGED ORDER OR REQUEST FOR RELEASE OF RETAINAGE.

7 (B) "PRIME CONTRACTOR" MEANS A PERSON WHO CONTRACTS WITH AN OWNER TO  
8 IMPROVE REAL PROPERTY.

9 (C) "IMPROVE" MEANS: TO BUILD, ALTER, REPAIR OR DEMOLISH ANY STRUCTURE  
10 UPON, CONNECTED WITH, ON OR BENEATH THE SURFACE OF ANY REAL PROPERTY; TO  
11 EXCAVATE, CLEAR, GRADE, FILL OR LANDSCAPE ANY REAL PROPERTY; TO  
12 CONSTRUCT DRIVEWAYS AND PRIVATE ROADWAYS ON REAL PROPERTY; TO FURNISH  
13 CONSTRUCTION RELATED MATERIALS, INCLUDING TREES AND SHRUBBERY, FOR ANY  
14 OF THE ABOVE PURPOSES; OR TO PERFORM ANY LABOR UPON A STRUCTURE, INCLUD-  
15 ING ANY DESIGN, PROFESSIONAL OR SKILLED SERVICES FURNISHED BY AN ARCHI-  
16 TECT, ENGINEER, LAND SURVEYOR OR LANDSCAPE ARCHITECT LICENSED OR REGIS-  
17 TERED PURSUANT TO THE LAWS OF THIS STATE.

18 (D) "STRUCTURE" MEANS ALL OR ANY PART OF A BUILDING AND OTHER IMPROVE-  
19 MENTS TO REAL PROPERTY.

20 (E) "OWNER" MEANS ANY PERSON, INCLUDING ANY PUBLIC OR GOVERNMENTAL  
21 ENTITY, WHO HAS AN INTEREST IN THE REAL PROPERTY TO BE IMPROVED AND WHO  
22 HAS CONTRACTED WITH A PRIME CONTRACTOR FOR SUCH IMPROVEMENT TO BE MADE.  
23 "OWNER" SHALL BE DEEMED TO INCLUDE ANY SUCCESSOR IN INTEREST OR AGENT  
24 ACTING ON BEHALF OF AN OWNER.

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

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1 (F) "PRIME RATE" MEANS THE BASE RATE ON CORPORATE LOANS AT LARGE  
2 UNITED STATES MONEY CENTER COMMERCIAL BANKS.

3 (G) "REAL PROPERTY" MEANS THE REAL ESTATE THAT IS IMPROVED UPON OR TO  
4 BE IMPROVED UPON.

5 (H) "SUBCONTRACTOR" MEANS ANY PERSON WHO HAS CONTRACTED TO FURNISH  
6 LABOR, MATERIALS OR OTHER SERVICES TO A PRIME CONTRACTOR IN CONNECTION  
7 WITH A CONTRACT TO IMPROVE REAL PROPERTY.

8 (I) "SUBSUBCONTRACTOR" MEANS ANY PERSON WHO HAS CONTRACTED TO FURNISH  
9 LABOR, MATERIALS OR OTHER SERVICES TO A SUBCONTRACTOR IN CONNECTION WITH  
10 A CONTRACT TO IMPROVE REAL PROPERTY.

11 2. (A) IF A PRIME CONTRACTOR HAS PERFORMED IN ACCORDANCE WITH THE  
12 PROVISIONS OF A CONTRACT WITH THE OWNER AND THE BILLING FOR THE WORK HAS  
13 BEEN APPROVED AND CERTIFIED BY THE OWNER OR THE OWNER'S AUTHORIZED  
14 APPROVING AGENT, THE OWNER SHALL PAY THE AMOUNT DUE TO THE PRIME  
15 CONTRACTOR FOR EACH PERIODIC PAYMENT, FINAL PAYMENT OR RETAINAGE MONIES  
16 NOT MORE THAN THIRTY CALENDAR DAYS AFTER THE BILLING DATE, WHICH FOR A  
17 PERIODIC BILLING SHALL BE THE PERIODIC BILLING DATE SPECIFIED IN THE  
18 CONTRACT. THE BILLING SHALL BE DEEMED APPROVED AND CERTIFIED TWENTY DAYS  
19 AFTER THE OWNER RECEIVES IT UNLESS THE OWNER PROVIDES, BEFORE THE END OF  
20 THE TWENTY-DAY PERIOD, A WRITTEN STATEMENT OF THE AMOUNT WITHHELD AND  
21 THE REASON FOR WITHHOLDING PAYMENT, EXCEPT THAT IN THE CASE OF A PUBLIC  
22 OR GOVERNMENTAL ENTITY THAT REQUIRES THE ENTITY'S GOVERNING BODY TO VOTE  
23 ON AUTHORIZATIONS FOR EACH PERIODIC PAYMENT, FINAL PAYMENT OR RETAINAGE  
24 MONIES, THE AMOUNT DUE MAY BE APPROVED AND CERTIFIED AT THE NEXT SCHED-  
25 ULED PUBLIC MEETING OF THE ENTITY'S GOVERNING BODY, AND PAID DURING THE  
26 ENTITY'S SUBSEQUENT PAYMENT CYCLE, PROVIDED THIS EXCEPTION HAS BEEN  
27 DEFINED IN THE BID SPECIFICATIONS AND CONTRACT DOCUMENTS.

28 (B) IF A SUBCONTRACTOR OR SUBSUBCONTRACTOR HAS PERFORMED IN ACCORDANCE  
29 WITH THE PROVISIONS OF ITS CONTRACT WITH THE PRIME CONTRACTOR OR SUBCON-  
30 TRACTOR AND THE WORK HAS BEEN ACCEPTED BY THE OWNER, THE OWNER'S AUTHOR-  
31 IZED APPROVING AGENT, OR THE PRIME CONTRACTOR, AS APPLICABLE, AND THE  
32 PARTIES HAVE NOT OTHERWISE AGREED IN WRITING, THE PRIME CONTRACTOR SHALL  
33 PAY TO ITS SUBCONTRACTOR AND THE SUBCONTRACTOR SHALL PAY TO ITS SUBSUB-  
34 CONTRACTOR WITHIN TEN CALENDAR DAYS OF THE RECEIPT OF EACH PERIODIC  
35 PAYMENT, FINAL PAYMENT OR RECEIPT OF RETAINAGE MONIES, THE FULL AMOUNT  
36 RECEIVED FOR THE WORK OF THE SUBCONTRACTOR OR SUBSUBCONTRACTOR BASED ON  
37 THE WORK COMPLETED OR THE SERVICES RENDERED UNDER THE APPLICABLE  
38 CONTRACT. IN THE CASE OF ONGOING WORK ON THE SAME PROJECT FOR WHICH  
39 PARTIAL PAYMENTS ARE MADE, THE AMOUNT OF MONEY OWED FOR WORK ALREADY  
40 COMPLETED SHALL ONLY BE PAYABLE IF THE SUBCONTRACTOR OR SUBSUBCONTRACTOR  
41 IS PERFORMING TO THE SATISFACTION OF THE PRIME CONTRACTOR OR SUBCONTRAC-  
42 TOR, AS APPLICABLE.

43 (C) IF A PAYMENT DUE PURSUANT TO THE PROVISIONS OF THIS SECTION IS NOT  
44 MADE IN A TIMELY MANNER, THE DELINQUENT PARTY SHALL BE LIABLE FOR THE  
45 AMOUNT OF MONEY OWED UNDER THE CONTRACT, PLUS INTEREST AT A RATE EQUAL  
46 TO THE PRIME RATE PLUS ONE PERCENT, BUT IN NO EVENT SHALL INTEREST BE  
47 LESS THAN TWELVE PERCENT. INTEREST ON AMOUNTS DUE PURSUANT TO THIS  
48 SECTION SHALL BE PAID TO THE PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUB-  
49 CONTRACTOR FOR THE PERIOD BEGINNING ON THE DAY AFTER THE REQUIRED  
50 PAYMENT DATE AND ENDING ON THE DAY ON WHICH THE CHECK FOR PAYMENT HAS  
51 BEEN DRAWN. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO ANY  
52 TRANSPORTATION PROJECT IF THAT PROJECT RECEIVES FEDERAL FUNDING AND THE  
53 AWARDING AGENCY HAS BEEN NOTIFIED BY THE FEDERAL GOVERNMENT THAT IT WILL  
54 BE CLASSIFIED AS A HIGH RISK GRANTEE.

55 (D) A PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUBCONTRACTOR MAY, AFTER  
56 PROVIDING SEVEN CALENDAR DAYS' WRITTEN NOTICE TO THE PARTY FAILING TO

1 MAKE THE REQUIRED PAYMENTS, SUSPEND PERFORMANCE OF A CONSTRUCTION  
2 CONTRACT WITHOUT PENALTY FOR BREACH OF CONTRACT, UNTIL THE PAYMENT  
3 REQUIRED PURSUANT TO THIS SECTION IS MADE, IF THE CONTRACTOR, SUBCON-  
4 TRACTOR OR SUBSUBCONTRACTOR: IS NOT PAID AS REQUIRED BY THIS SECTION; IS  
5 NOT PROVIDED A WRITTEN STATEMENT OF THE AMOUNT WITHHELD AND THE REASON  
6 FOR THE WITHHOLDING; AND THE PAYOR IS NOT ENGAGED IN A GOOD FAITH EFFORT  
7 TO RESOLVE THE REASON FOR THE WITHHOLDING. THE PROVISIONS OF THIS PARA-  
8 GRAPH SHALL NOT APPLY TO ANY TRANSPORTATION PROJECT IF THAT PROJECT  
9 RECEIVES FEDERAL FUNDING AND THE APPLICATION OF THIS PROVISION WOULD  
10 JEOPARDIZE THE FUNDING BECAUSE THE OWNER COULD NOT MEET THE FEDERAL  
11 STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS.

12 (E)(1) THE RIGHTS, REMEDIES OR PROTECTIONS PROVIDED BY THIS SECTION  
13 FOR PRIME CONTRACTORS, SUBCONTRACTORS AND SUBSUBCONTRACTORS SHALL BE IN  
14 ADDITION TO OTHER REMEDIES PROVIDED PURSUANT TO ANY OTHER PROVISION OF  
15 LAW. TO THE EXTENT THAT THE PROVISIONS OF THIS SECTION PROVIDE GREATER  
16 RIGHTS, REMEDIES OR PROTECTIONS FOR PRIME CONTRACTORS, SUBCONTRACTORS  
17 AND SUBSUBCONTRACTORS THAN OTHER PROVISIONS OF LAW, THE PROVISIONS OF  
18 THIS SECTION SHALL SUPERSEDE THOSE OTHER PROVISIONS.

19 (2) NO PROVISION OF THIS SECTION SHALL BE CONSTRUED AS RESTRICTING IN  
20 ANY WAY THE RIGHTS OR REMEDIES PROVIDED BY ANY OTHER APPLICABLE STATE OR  
21 FEDERAL LAW TO AN OWNER WHO IS A RESIDENT HOMEOWNER OR PURCHASER WITH  
22 RESPECT TO THE REAL PROPERTY BEING IMPROVED.

23 (F) ALL CONTRACTS FOR THE IMPROVEMENT OF STRUCTURES ENTERED INTO AFTER  
24 THE EFFECTIVE DATE OF THIS SECTION BETWEEN OWNERS, PRIME CONTRACTORS,  
25 SUBCONTRACTORS OR SUBSUBCONTRACTORS SHALL PROVIDE THAT DISPUTES REGARD-  
26 ING WHETHER A PARTY HAS FAILED TO MAKE PAYMENTS REQUIRED PURSUANT TO  
27 THIS SECTION MAY BE SUBMITTED TO A PROCESS OF ALTERNATIVE DISPUTE RESOL-  
28 UTION. ALTERNATIVE DISPUTE RESOLUTION PERMITTED BY THIS SECTION SHALL  
29 NOT APPLY TO DISPUTES CONCERNING THE BID SOLICITATION OR AWARD PROCESS,  
30 OR TO THE FORMATION OF CONTRACTS OR SUBCONTRACTS. IN ANY CIVIL ACTION  
31 BROUGHT TO COLLECT PAYMENTS PURSUANT TO THIS SECTION, THE ACTION SHALL  
32 BE CONDUCTED WITHIN THIS STATE AND THE PREVAILING PARTY SHALL BE AWARDED  
33 REASONABLE COSTS AND ATTORNEY FEES.

34 S 2. This act shall take effect immediately, but shall not apply to  
35 contracts for the improvement of structures entered into before such  
36 effective date.