

7255--A

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 26, 2009

---

Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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 AUTHORITY, PUBLIC BENEFIT CORPORATION,  
6     SCHOOL DISTRICT OR A COMMISSION APPOINTED PURSUANT TO LAW (HEREINAFTER  
7     REFERRED TO IN THIS SECTION AS A "PUBLIC OWNER") FOR DESIGN,  
8     CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR IMPROVE-  
9     MENT OF ANY PUBLIC WORKS SHALL CONTAIN A CLAUSE WHICH ALLOWS A CONTRAC-  
10    TOR TO MAKE CLAIM FOR ALL ADDITIONAL COSTS FROM THE CAUSES LISTED BELOW,  
11    ATTRIBUTABLE TO DELAY IN THE PERFORMANCE OF THIS CONTRACT, OCCASIONED BY  
12    ANY ACT OR OMISSION TO ACT BY THE PUBLIC OWNER OR ANY OF ITS REPRESENT-  
13    ATIVES.  
14    (A) THE FAILURE OF THE PUBLIC OWNER TO TAKE REASONABLE MEASURES TO  
15    COORDINATE AND PROGRESS THE PROJECT WORK.  
16    (B) EXTENDED DELAYS ATTRIBUTABLE TO THE PUBLIC OWNER IN THE REVIEW OR  
17    ISSUANCE OF CHANGE ORDERS OR FIELD ORDERS, IN SHOP DRAWING REVIEWS OR  
18    APPROVALS OR AS A RESULT OF THE CUMULATIVE IMPACT OF INDIVIDUAL OR  
19    MULTIPLE CHANGE ORDERS, WHICH CONSTITUTE A QUALITATIVE CHANGE TO THE  
20    PROJECT WORK AND WHICH HAVE A VERIFIABLE IMPACT ON PROJECT COSTS.  
21    (C) THE UNAVAILABILITY OF THE SITE FOR SUCH AN EXTENDED PERIOD OF TIME  
22    WHICH SIGNIFICANTLY AFFECTS THE SCHEDULED COMPLETION OF THE CONTRACT.

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

LBD10394-02-9

1 (D) THE ISSUANCE BY THE PUBLIC OWNER OF A STOP WORK ORDER RELATIVE TO  
2 A SUBSTANTIAL PORTION OF THE PROJECT WORK FOR A PERIOD EXCEEDING THIRTY  
3 DAYS.

4 (E) CHANGES IN THE NATURE OF THE PROJECT WORK DUE TO DIFFERING SITE  
5 CONDITIONS WHICH SIGNIFICANTLY AFFECT THE SCHEDULED COMPLETION OF THE  
6 CONTRACT.

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

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

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

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