

5411--A

2009-2010 Regular Sessions

I N S E N A T E

April 30, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- 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 TATIVES.
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 AND MATERIAL IMPACT ON PROJECT
21 COSTS.

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

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1 (C) THE UNAVAILABILITY OF THE SITE CAUSED BY THE PUBLIC OWNER FOR SUCH
2 AN EXTENDED PERIOD OF TIME WHICH SIGNIFICANTLY AFFECTS THE SCHEDULED
3 COMPLETION OF THE CONTRACT.

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

7 (E) UNANTICIPATED AND UNDISCLOSED CHANGES IN THE NATURE OF THE PROJECT
8 WORK DUE TO DIFFERING SITE CONDITIONS WHICH SIGNIFICANTLY AFFECT THE
9 SCHEDULED COMPLETION OF THE CONTRACT.

10 2. ANY CONTRACTUAL PROVISION WAIVING, MODIFYING OR ABROGATING, IN
11 WHOLE OR IN PART, THE RIGHT OF CONTRACTORS TO A CLAIM UNDER SUBDIVISION
12 ONE OF THIS SECTION SHALL BE NULL, VOID AND UNENFORCEABLE.

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

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

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

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