S T A T E O F N E W Y O R K

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:

Section 1. The state finance law is amended by adding a new section 138-b to read as follows:

S 138-B. DAMAGES FOR DELAY IN PUBLIC CONTRACTS. 1. ALL CONTRACTS MADE AND AWARDED BY THE STATE, ANY STATE AGENCY, PUBLIC DEPARTMENT, MUNICIPAL CORPORATION, PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION, SCHOOL DISTRICT OR A COMMISSION APPOINTED PURSUANT TO LAW (HEREINAFTER REFERRED TO IN THIS SECTION AS A "PUBLIC OWNER") FOR DESIGN, CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR IMPROVEMENT OF ANY PUBLIC WORKS SHALL CONTAIN A CLAUSE WHICH ALLOWS A CONTRACTOR TO MAKE CLAIM FOR ALL ADDITIONAL COSTS FROM THE CAUSES LISTED BELOW, ATTRIBUTABLE TO DELAY IN THE PERFORMANCE OF THIS CONTRACT, OCCASIONED BY ANY ACT OR OMISSION TO ACT BY THE PUBLIC OWNER OR ANY OF ITS REPRESENTATIVES.

(A) THE FAILURE OF THE PUBLIC OWNER TO TAKE REASONABLE MEASURES TO COORDINATE AND PROGRESS THE PROJECT WORK.

(B) EXTENDED DELAYS ATTRIBUTABLE TO THE PUBLIC OWNER IN THE REVIEW OR ISSUANCE OF CHANGE ORDERS OR FIELD ORDERS, IN SHOP DRAWING REVIEWS OR APPROVALS OR AS A RESULT OF THE CUMULATIVE IMPACT OF INDIVIDUAL OR MULTIPLE CHANGE ORDERS, WHICH CONSTITUTE A QUALITATIVE CHANGE TO THE PROJECT WORK AND WHICH HAVE A VERIFIABLE AND MATERIAL IMPACT ON PROJECT COSTS.

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

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

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

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

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

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

(A) THAT THE SUPPORTING DATA IS ACCURATE AND COMPLETE TO THE CONTRACTOR'S BEST KNOWLEDGE OR BELIEF, AND THAT OF ANY CLAIMING SUBCONTRACTOR OR MATERIALMAN; AND

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

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