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

S. 754 A. 2279

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 15, 2009

IN SENATE -- Introduced by Sens. BRESLIN, HUNTLEY, SCHNEIDERMAN, STACHOWSKI, STAVISKY, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. CUSICK, HYER-SPENCER -- Multi-Sponsored by -- M. of A. GUNTHER, MAGEE, PHEFFER -- read once and referred to the Committee on Consumer Affairs and Protection

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

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

Section 1. Section 756-c of the general business law, as added by chapter 127 of the laws of 2002, is amended to read as follows:

S 756-c. Retention. By mutual agreement of the relevant parties an owner may retain a reasonable amount of the contract sum as retainage[. A] AND FOR ANY CONSTRUCTION CONTRACTS, EXCLUDING CONSTRUCTION CONTRACTS FINANCED BY A PUBLIC BENEFIT CORPORATION, SUCH RETAINAGE SHALL BE DEPOSITED IN A SEPARATE INTEREST BEARING ESCROW ACCOUNT WITH A THIRD PARTY ESCROW AGENT. AS OF THE TIME OF THE DEPOSIT OF THE RETAINAGE, THE RETAINED FUNDS SHALL BECOME THE SOLE AND SEPARATE PROPERTY OF THE CONTRACTOR. INTEREST ON THE RETAINED FUNDS SHALL ACCRUE AT AN INTEREST RATE AT LEAST EQUAL TO THE PREVAILING INTEREST RATE PAID ON DEPOSITS BY THE ESCROW AGENT. ALSO, A contractor or subcontractor may [also] retain a reasonable amount for retainage so long as the amount does not exceed the actual percentage [retained] DEPOSITED IN ESCROW by the owner. [Retainage] THE ESCROWED RETAINAGE shall be released by the [owner] OWNER'S WRITTEN DIRECTION TO THE ESCROW AGENT TO DELIVER THE ESCROWED RETAINAGE to the contractor no later than thirty days after the final approval of the work under a construction contract. In the event that an owner fails to release THE ESCROWED retainage as required by this article, or the contractor or subcontractor fails to release a proportionate

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

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amount of retainage to the relevant parties WITHIN FIVE DAYS after receipt of THE ESCROWED retainage from the owner, (I) the owner[, contractor, or subcontractor, as the case may be, shall be subject to the payment of interest at the rate of one percent per month on the date retention was due and owing] SHALL BE SUBJECT TO THE PAYMENT OF INTEREST, IN ADDITION TO THE ESCROW INTEREST, AT THE RATE OF ONE PERCENT PER MONTH COMMENCING ON THE DATE THE RETAINAGE WAS DUE TO BE RELEASED FROM ESCROW; AND (II) THE CONTRACTOR OR SUBCONTRACTOR, AS THE CASE MAY BE, SHALL BE SUBJECT TO THE PAYMENT OF INTEREST ON THE AMOUNT OF RETAINAGE IT HOLDS AT THE RATE OF ONE PERCENT PER MONTH COMMENCING ON THE DATE THE RETAINAGE WAS DUE TO BE RELEASED BY SUCH CONTRACTOR OR SUBCONTRACTOR.

S 2. This act shall take effect immediately and shall apply to all contracts entered into on or after such effective date.