

10501

I N   A S S E M B L Y

May 29, 2012

---

Introduced by M. of A. CLARK -- read once and referred to the Committee  
on Governmental Operations

AN ACT to amend the state finance law, in relation to requiring contractors on public works projects to pay their subcontractors upon completion of work

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

1     Section 1. Subdivision 2 of section 139-f of the state finance law, as  
2     amended by section 16 of part MM of chapter 57 of the laws of 2008, is  
3     amended to read as follows:  
4     2. Payment by contractors to subcontractors. [Within seven calendar  
5     days of the receipt of any payment from the public owner] PAYMENT BY THE  
6     CONTRACTOR TO A SUBCONTRACTOR OR MATERIALMAN SHALL NOT BE CONTINGENT  
7     UPON PAYMENT BY AN OWNER TO THE CONTRACTOR. UPON COMPLETION OF THE  
8     PERFORMANCE OF WORK OR MATERIALS SUPPLIED, the contractor shall pay each  
9     of his subcontractors and materialmen the [proceeds from the] payment  
10    representing the value of the work performed and/or materials furnished  
11    by the subcontractor and/or materialman and reflecting the percentage of  
12    the subcontractor's work completed or the materialman's material  
13    supplied in the requisition approved by the owner and based upon the  
14    actual value of the subcontract or purchase order less an amount necessary  
15    to satisfy any claims, liens or judgments against the subcontractor  
16    or materialman which have not been suitably discharged and less any  
17    retained amount as hereafter described. Failure by the contractor to pay  
18    any subcontractor or materialman [within seven calendar days of the  
19    receipt of any payment from the public owner] UPON COMPLETION OF THE  
20    PERFORMANCE OF WORK OR MATERIALS SUPPLIED shall result in the commencement  
21    and accrual of interest on amounts due to such subcontractor or  
22    materialman for the period beginning on the day immediately following  
23    the [expiration of such seven calendar day period] COMPLETION OF THE  
24    PERFORMANCE OF WORK OR MATERIALS SUPPLIED and ending on the date on  
25    which payment is made by the contractor to such subcontractor or materialman.  
26    Such interest payment shall be the sole responsibility of the

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

LBD16055-01-2

1 contractor, and shall be paid at the rate of interest in effect on the  
2 date payment is made by the contractor.

3 Notwithstanding any other provision of law to the contrary, interest  
4 shall be computed at the rate established in paragraph (b) of subdivi-  
5 sion one of section seven hundred fifty-six-b of the general business  
6 law. [The contractor shall retain not more than five per centum of each  
7 payment to the subcontractor and/or materialman except that the contrac-  
8 tor may retain in excess of five per centum but not more than ten per  
9 centum of each payment to the subcontractor provided that prior to  
10 entering into a subcontract with the contractor, the subcontractor is  
11 unable or unwilling to provide a performance bond and a labor and mate-  
12 rial bond, both in the full amount of the subcontract, at the request of  
13 the contractor. However, the contractor shall retain nothing from those  
14 payments representing proceeds owed the subcontractor and/or materialman  
15 from the public owner's payments to the contractor for the remaining  
16 amounts of the contract balance as provided in subdivision one of this  
17 section. If the contractor has failed to submit a requisition for  
18 payment of the remaining amounts of the contract balance within ninety  
19 days of substantial completion as provided in subdivision one of this  
20 section, then any clause in the subcontract between the contractor and  
21 the subcontractor or materialman which states that payment by the  
22 contractor to such subcontractor or materialman is contingent upon  
23 payment by the owner to the contractor shall be deemed invalid. Within  
24 seven calendar days of the receipt of payment from the contractor, the  
25 subcontractor and/or materialman shall pay each of his subcontractors  
26 and materialmen in the same manner as the contractor has paid the  
27 subcontractor, including interest as herein provided above. Nothing  
28 provided herein shall create any obligation on the part of the public  
29 owner to pay or to see to the payment of any moneys to any subcontractor  
30 or materialman from any contractor nor shall anything provided herein  
31 serve to create any relationship in contract or otherwise, implied or  
32 expressed, between the subcontractor or materialman and the public  
33 owner.]

34 S 2. This act shall take effect immediately.