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

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

Introduced by M. of A. HEASTIE, ZEBROWSKI -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring timely payments and interest owed to contractors

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

Section 1. The general business law is amended by adding a new article 37-B to read as follows:

ARTICLE 37-B

TIMELY PAYMENTS AND INTEREST OWED TO CONTRACTORS

SECTION 806. LEGISLATIVE INTENT.
807. DEFINITIONS.
808. PAYMENTS OWED TO CONTRACTORS.
809. DETERMINATION OF ELIGIBILITY FOR PAYMENT OF INTEREST ON AMOUNTS OWED TO CONTRACTORS.

S 806. LEGISLATIVE INTENT. FIRMS AND ORGANIZATIONS THAT DO BUSINESS WITHIN THE STATE OF NEW YORK EXPECT AND DESERVE TO BE PAID IN A PROMPT AND TIMELY MANNER. UNJUSTIFIED DELAYS IN PAYING VENDORS, CONSTRUCTION CONTRACTORS, AND PROVIDERS OF SERVICE MAY DISCOURAGE SUCH FIRMS AND ORGANIZATIONS FROM DOING BUSINESS WITHIN THE STATE OF NEW YORK AND MAY ULTIMATELY INCREASE THE COSTS TO CONSUMERS OF PURCHASING MATERIALS, EQUIPMENT, AND SUPPLIES; UNDERTAKING CONSTRUCTION AND RECONSTRUCTION PROJECTS; AND OBTAINING A WIDE VARIETY OF PROFESSIONAL AND OTHER SPECIALIZED SERVICES INCLUDING THOSE THAT ARE PROVIDED TO PERSONS IN NEED. CONSEQUENTLY, THIS LEGISLATION SETS STANDARDS FOR THE PAYMENT OF BILLS INCURRED BY CONSUMERS WITHIN SPECIFIED PERIODS OF TIME AND REQUIRES INTEREST PAYMENTS IN SITUATIONS WHERE CONTRACT PAYMENTS DO NOT CONFORM TO THESE STANDARDS. CONSISTENT WITH ACCEPTED BUSINESS PRACTICES AND WITH SOUND PRINCIPLES OF FISCAL MANAGEMENT, IT IS THE INTENT OF THIS LEGISLATION TO ENCOURAGE CONSUMERS TO MAKE PAYMENTS AT LEAST AS EXPEDITIOUSLY AS THEY CURRENTLY DO AND FURTHER TO REDUCE EXISTING PAYMENT

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

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PROCESSING TIMES WHENEVER FEASIBLE, WHILE AT THE SAME TIME ENSURING THAT THE CONSUMER RECEIVES THE QUALITY OF GOODS AND SERVICES TO WHICH IT IS ENTITLED TO.

S 807. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

1. "CONTRACT" MEANS AN ENFORCEABLE AGREEMENT ENTERED INTO BY A PRIME CONTRACTOR AND A CONSUMER.

2. "CONSUMER" MEANS AN INDIVIDUAL OR INDIVIDUALS ENTERING INTO A CONTRACT WITH A PRIME CONTRACTOR.

3. "BILLING" MEANS, IN ACCORDANCE WITH THE TERMS AND DEFINITIONS OF THE APPLICABLE CONTRACT, ANY PERIODIC PAYMENT, FINAL PAYMENT, WRITTEN APPROVED CHANGE ORDER OR REQUEST FOR RELEASE OF RETAINAGE.

4. "PRIME CONTRACTOR" MEANS A PERSON WHO CONTRACTS WITH A CONSUMER TO IMPROVE REAL PROPERTY.

5. "SUBCONTRACTOR" MEANS ANY PERSON WHO HAS CONTRACTED TO FURNISH LABOR, MATERIALS OR OTHER SERVICES TO A PRIME CONTRACTOR IN CONNECTION WITH A CONTRACT FOR IMPROVEMENT OF REAL PROPERTY.

6. "SUBSUBCONTRACTOR" MEANS ANY PERSON WHO HAS CONTRACTED TO FURNISH LABOR, MATERIALS OR OTHER SERVICES TO A SUBCONTRACTOR IN CONNECTION WITH A CONTRACT FOR IMPROVEMENT OF REAL PROPERTY.

7. "MATERIALMEN" MEANS ANY PERSON WHO HAS CONTRACTED TO FURNISH MATERIALS OR OTHER SERVICES TO A PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUBCONTRACTOR FOR IMPROVEMENT OF REAL PROPERTY.

8. "PAYMENT DATE" MEANS THE DATE ON WHICH A CHECK FOR PAYMENT PURSUANT TO A CONTRACT IS DATED.

9. "PROPER INVOICE" MEANS A WRITTEN REQUEST FOR A CONTRACT PAYMENT THAT IS SUBMITTED BY A CONTRACTOR SETTING FORTH THE DESCRIPTION, PRICE, AND QUANTITY OF GOODS, PROPERTY, OR SERVICES DELIVERED OR RENDERED, IN SUCH FORM AND SUPPORTED BY SUCH OTHER SUBSTANTIATING DOCUMENTATION AS MAY REASONABLY BE REQUIRED.

10. "RECEIPT OF AN INVOICE" MEANS (A) THE DATE ON WHICH A PROPER INVOICE IS ACTUALLY RECEIVED BY THE CONSUMER, OR (B) THE DATE ON WHICH THE CONSUMER RECEIVES THE PURCHASED GOODS, PROPERTY, OR SERVICES COVERED BY THE PROPER INVOICE, WHICHEVER IS LATER.

11. "REQUIRED PAYMENT DATE" MEANS THE DATE BY WHICH A CONTRACT PAYMENT MUST BE MADE IN ORDER FOR THE CONSUMER NOT TO BECOME LIABLE FOR INTEREST PAYMENTS, PURSUANT TO SUBDIVISION ONE OF SECTION EIGHT HUNDRED EIGHT OF THIS ARTICLE.

12. "PRIME RATE" MEANS THE BASIC RATE ON CORPORATE LOANS PUBLISHED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

S 808. PAYMENTS OWED TO CONTRACTORS. 1. IF A PRIME CONTRACTOR HAS PERFORMED IN ACCORDANCE WITH THE PROVISIONS OF A CONTRACT WITH THE CONSUMER AND THE BILLING FOR THE WORK HAS BEEN APPROVED AND CERTIFIED BY THE CONSUMER OR THE CONSUMER'S AUTHORIZED APPROVING AGENT, THE CONSUMER SHALL PAY THE AMOUNT DUE TO THE PRIME CONTRACTOR FOR EACH PERIODIC PAYMENT, FINAL PAYMENT OR RETAINAGE MONIES NOT MORE THAN THIRTY CALENDAR DAYS AFTER THE BILLING DATE, WHICH FOR PERIODIC BILLING, SHALL BE THE PERIODIC BILLING DATE SPECIFIED IN THE CONTRACT.

2. EACH CONSUMER SHALL HAVE FIFTEEN CALENDAR DAYS AFTER RECEIPT OF AN INVOICE TO NOTIFY THE CONTRACTOR OF (A) DEFECTS IN THE DELIVERED GOODS, PROPERTY, OR SERVICES, (B) DEFECTS IN THE INVOICE, OR (C) SUSPECTED IMPROPRIETIES OF ANY KIND; AND THE EXISTENCE OF SUCH DEFECTS OR IMPROPRIETIES SHALL PREVENT THE COMMENCEMENT OF THE TIME PERIOD SPECIFIED IN SUBDIVISION ONE OF THIS SECTION. WHEN A CONSUMER FAILS TO NOTIFY A CONTRACTOR OF SUCH DEFECTS OR SUSPECTED IMPROPRIETIES WITHIN FIFTEEN CALENDAR DAYS OF RECEIVING THE INVOICE, THE NUMBER OF DAYS ALLOWED FOR

PAYMENT OF THE CORRECTED PROPER INVOICE WILL BE REDUCED BY THE NUMBER OF DAYS BETWEEN THE FIFTEENTH DAY AND THE DAY THAT NOTIFICATION WAS TRANSMITTED TO THE CONTRACTOR. IF THE CONSUMER, IN SUCH SITUATIONS, FAILS TO PROVIDE REASONABLE GROUNDS FOR ITS CONTENTION THAT A DEFECT OR IMPROPRIETY EXISTS, THE REQUIRED PAYMENT DATE SHALL BE CALCULATED FROM THE DATE OF RECEIPT OF AN INVOICE.

3. A PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUBCONTRACTOR MAY, AFTER PROVIDING SEVEN CALENDAR DAYS WRITTEN NOTICE TO THE PARTY FAILING TO MAKE THE REQUIRED PAYMENTS, SUSPEND PERFORMANCE OF A CONSTRUCTION CONTRACT, WITHOUT PENALTY FOR BREACH OF CONTRACT, UNTIL THE REQUIRED PAYMENT PURSUANT TO THIS SECTION IS MADE; PROVIDED HOWEVER, THAT THE PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUBCONTRACTOR HAS NOT BEEN PAID AS REQUIRED BY THIS SECTION, HAS NOT BEEN PROVIDED WITH A WRITTEN STATEMENT BY THE CONSUMER OF THE AMOUNT WITHHELD AND THE REASON FOR WITHHOLDING, AND THE CONSUMER IS NOT ENGAGED IN A GOOD FAITH EFFORT TO RESOLVE THE REASON FOR WITHHOLDING.

4. A PROPER INVOICE SUBMITTED BY THE CONTRACTOR SHALL BE REQUIRED TO INITIATE ANY PAYMENT, EXCEPT WHERE THE CONTRACT PROVIDES THAT THE CONTRACTOR WILL BE PAID AT PREDETERMINED INTERVALS WITHOUT HAVING TO SUBMIT AN INVOICE FOR EACH SUCH SCHEDULED PAYMENT, IN WHICH CASE THE CONSUMER SHALL SUBMIT TO THE REQUIRED PAYMENT DATE WHICH SHALL BE THE PAYMENT DUE DATE SPECIFIED IN ACCORDANCE WITH THE CONTRACT.

5. (A) THE RIGHTS, REMEDIES OR PROTECTIONS PROVIDED BY THIS SECTION FOR PRIME CONTRACTORS, SUBCONTRACTORS AND SUBSUBCONTRACTORS SHALL BE IN ADDITION TO OTHER REMEDIES PROVIDED PURSUANT TO ANY OTHER PROVISION OF STATE LAW.

(B) NO PROVISION OF THIS SECTION SHALL BE CONSTRUED AS RESTRICTING IN ANY WAY THE RIGHTS OR REMEDIES PROVIDED BY ANY OTHER APPLICABLE STATE LAW.

S 809. DETERMINATION OF ELIGIBILITY FOR PAYMENT OF INTEREST ON AMOUNTS OWED TO CONTRACTORS. 1. IF A PAYMENT DUE PURSUANT TO THE PROVISIONS OF SECTION EIGHT HUNDRED EIGHT OF THIS ARTICLE IS NOT MADE IN A TIMELY MANNER, THE DELINQUENT PARTY SHALL BE LIABLE FOR THE AMOUNT OF MONEY OWED UNDER THE CONTRACT, PLUS INTEREST AT A RATE EQUAL TO PRIME RATE PLUS ONE PERCENT. INTEREST ON AMOUNTS DUE PURSUANT TO THIS SECTION SHALL BE PAID TO THE PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUBCONTRACTOR FOR THE PERIOD BEGINNING ON THE DAY AFTER THE REQUIRED PAYMENT DATE AND ENDING ON THE DAY ON WHICH THE CHECK FOR PAYMENT HAS BEEN DRAWN.

2. ANY CONSUMER WHO IS REQUIRED TO MAKE A PAYMENT PURSUANT TO A CONTRACT AND WHICH DOES NOT MAKE SUCH CONTRACT PAYMENT BY THE REQUIRED PAYMENT DATE SHALL MAKE AN INTEREST PAYMENT TO THE PRIME CONTRACTOR IN ACCORDANCE WITH THIS SECTION ON THE AMOUNT OF THE CONTRACT PAYMENT WHICH IS DUE, UNLESS FAILURE TO MAKE SUCH CONTRACT PAYMENT IS THE RESULT OF A LIEN, ATTACHMENT, OR OTHER LEGAL PROCESS AGAINST THE MONEY DUE SAID PRIME CONTRACTOR. A PRO RATA SHARE OF SUCH INTEREST SHALL BE PAID BY THE PRIME CONTRACTOR, SUBCONTRACTOR OR SUBSUBCONTRACTOR, AS THE CASE MAY BE, TO SUBCONTRACTORS AND MATERIALMEN IN A PROPORTION EQUAL TO THE PERCENTAGE OF THEIR PRO RATA SHARE OF THE CONTRACT PAYMENT. SUCH PRO RATA SHARE OF INTEREST SHALL BE DUE TO SUCH SUBCONTRACTORS AND MATERIALMEN ONLY FOR THOSE PAYMENTS WHICH ARE NOT PAID TO SUCH SUBCONTRACTORS AND MATERIALMEN PRIOR TO THE DATE UPON WHICH INTEREST BEGINS TO ACCRUE BETWEEN THE CONSUMER AND THE CONTRACTOR. SUCH PRO RATA SHARE OF INTEREST SHALL BE COMPUTED DAILY UNTIL SUCH PAYMENTS ARE MADE TO THE SUBCONTRACTORS AND MATERIALMEN.

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