

2857

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 18, 2013

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Introduced by M. of A. CLARK, BROOK-KRASNY, SCARBOROUGH, CASTRO, ROBIN-  
SON, WEPRIN -- Multi-Sponsored by -- M. of A. ARROYO, KEARNS -- read  
once and referred to the Committee on Governmental Operations

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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 neces-  
15    sary 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 commence-  
21    ment 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

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

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1 PERFORMANCE OF WORK OR MATERIALS SUPPLIED and ending on the date on  
2 which payment is made by the contractor to such subcontractor or materi-  
3 alman. Such interest payment shall be the sole responsibility of the  
4 contractor, and shall be paid at the rate of interest in effect on the  
5 date payment is made by the contractor.

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

37 S 2. This act shall take effect immediately.