

S. 1974

A. 1660

2013-2014 Regular Sessions

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

(PREFILED)

January 9, 2013

IN SENATE -- Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- Introduced by M. of A. CUSICK, GABRYSZAK -- Multi-Sponsored by -- M. of A. ROBINSON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the general municipal law, in relation to release of subcontractor's retainage

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, the contractor
6 shall pay each of his subcontractors and materialmen the proceeds from
7 the payment representing the value of the work performed and/or materi-
8 als furnished by the subcontractor and/or materialman and reflecting the
9 percentage of the subcontractor's work completed or the materialman's
10 material supplied in the requisition approved by the owner and based
11 upon the actual value of the subcontract or purchase order less an
12 amount necessary to satisfy any claims, liens or judgments against the
13 subcontractor or materialman which have not been suitably discharged and
14 less any retained amount as hereafter described. Failure by the contrac-
15 tor to pay any subcontractor or materialman within seven calendar days
16 of the receipt of any payment from the public owner shall result in the
17 commencement and accrual of interest on amounts due to such subcontract-
18 or or materialman for the period beginning on the day immediately
19 following the expiration of such seven calendar day period and ending on
20 the date on which payment is made by the contractor to such subcontract-

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

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1 tor or materialman. Such interest payment shall be the sole responsibil-
2 ity of the contractor, and shall be paid at the rate of interest in
3 effect on the date payment is made by the contractor. Notwithstanding
4 any other provision of law to the contrary, interest shall be computed
5 at the rate established in paragraph (b) of subdivision one of section
6 seven hundred fifty-six-b of the general business law. The contractor
7 shall retain not more than five per centum of each payment to the
8 subcontractor and/or materialman except that the contractor may retain
9 in excess of five per centum but not more than ten per centum of each
10 payment to the subcontractor provided that prior to entering into a
11 subcontract with the contractor, the subcontractor is unable or unwill-
12 ing to provide a performance bond and a labor and material bond, both in
13 the full amount of the subcontract, at the request of the contractor.
14 However, the contractor shall retain nothing from those payments repres-
15 enting proceeds owed the subcontractor and/or materialman from the
16 public owner's payments to the contractor for the remaining amounts of
17 the contract balance as provided in subdivision one of this section. If
18 the contractor has failed to submit a requisition for payment of the
19 remaining amounts of the contract balance within ninety days of substan-
20 tial completion as provided in subdivision one of this section, then any
21 clause in the subcontract between the contractor and the subcontractor
22 or materialman which states that payment by the contractor to such
23 subcontractor or materialman is contingent upon payment by the owner to
24 the contractor shall be deemed invalid. Within seven calendar days of
25 the receipt of payment from the contractor, the subcontractor and/or
26 materialman shall pay each of his subcontractors and materialmen in the
27 same manner as the contractor has paid the subcontractor, including
28 interest as herein provided above. Nothing provided herein shall create
29 any obligation on the part of the public owner to pay or to see to the
30 payment of any moneys to any subcontractor or materialman from any
31 contractor nor shall anything provided herein serve to create any
32 relationship in contract or otherwise, implied or expressed, between the
33 subcontractor or materialman and the public owner. NOTWITHSTANDING ANY
34 OTHER PROVISION OF THIS SECTION OR OTHER LAW, ANY RETAINAGE HELD BY A
35 PUBLIC OWNER OR CONTRACTOR REPRESENTING RETAINAGE FOR A SUBCONTRACTOR'S
36 WORK SHALL BE RELEASED, LESS AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS,
37 LIENS OR JUDGMENTS AGAINST THE SUBCONTRACTOR OR MATERIALMAN WHICH HAVE
38 NOT BEEN SUITABLY DISCHARGED AND LESS AN AMOUNT NECESSARY TO SATISFY ANY
39 CHARGES FOR UNFINISHED PUNCH LIST ITEMS, NO LATER THAN SIXTY DAYS FROM
40 THE COMPLETION AND ACCEPTANCE BY THE PUBLIC OWNER OF THE SUBCONTRACTOR'S
41 WORK.

42 S 2. Subdivision 2 of section 106-b of the general municipal law, as
43 amended by section 15 of part MM of chapter 57 of the laws of 2008, is
44 amended to read as follows:

45 2. Payment by contractors to subcontractors. Within seven calendar
46 days of the receipt of any payment from the public owner, the contractor
47 shall pay each of his subcontractors and materialmen the proceeds from
48 the payment representing the value of the work performed and/or materi-
49 als furnished by the subcontractor and/or materialman and reflecting the
50 percentage of the subcontractor's work completed or the materialman's
51 material supplied in the requisition approved by the owner and based
52 upon the actual value of the subcontract or purchase order less an
53 amount necessary to satisfy any claims, liens or judgments against the
54 subcontractor or materialman which have not been suitably discharged and
55 less any retained amount as hereafter described. Failure by the contrac-
56 tor to make any payment, including any remaining amounts of the contract

1 balance as hereinafter described, to any subcontractor or materialman
2 within seven calendar days of the receipt of any payment from the public
3 owner shall result in the commencement and accrual of interest on
4 amounts due to such subcontractor or materialman for the period begin-
5 ning on the day immediately following the expiration of such seven
6 calendar day period and ending on the date on which payment is made by
7 the contractor to such subcontractor or materialman. Such interest shall
8 be the sole responsibility of the contractor, and shall be paid at the
9 rate of interest in effect on the date payment is made by the contrac-
10 tor. Notwithstanding any other provision of law to the contrary, inter-
11 est shall be computed at the rate established in paragraph (b) of subdi-
12 vision one of section seven hundred fifty-six-b of the general business
13 law. The contractor shall retain not more than five per centum of each
14 payment to the subcontractor and/or materialman except that the contrac-
15 tor may retain in excess of five per centum but not more than ten per
16 centum of each payment to the subcontractor provided that prior to
17 entering into a subcontract with the contractor, the subcontractor is
18 unable or unwilling to provide a performance bond and a labor and mate-
19 rial bond both in the full amount of the subcontract at the request of
20 the contractor. However, the contractor shall retain nothing from those
21 payments representing proceeds owed the subcontractor and/or materialman
22 from the public owner's payments to the contractor for the remaining
23 amounts of the contract balance as provided in subdivision one of this
24 section. If the contractor has failed to submit a requisition for
25 payment of the remaining amounts of the contract balance within ninety
26 days of substantial completion as provided in subdivision one of this
27 section, then any clause in the subcontract between the contractor and
28 the subcontractor or materialman which states that payment by the
29 contractor to such subcontractor or materialman is contingent upon
30 payment by the owner to the contractor shall be deemed invalid. Within
31 seven calendar days of the receipt of payment from the contractor, the
32 subcontractor and/or materialman shall pay each of his subcontractors
33 and materialmen in the same manner as the contractor has paid the
34 subcontractor, including interest as herein provided above. Nothing
35 provided herein shall create any obligation on the part of the public
36 owner to pay or to see to the payment of any moneys to any subcontractor
37 or materialman from any contractor nor shall anything provided herein
38 serve to create any relationship in contract or otherwise, implied or
39 expressed, between the subcontractor or materialman and the public
40 owner. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR OTHER
41 LAW, ANY RETAINAGE HELD BY A PUBLIC OWNER OR CONTRACTOR REPRESENTING
42 RETAINAGE FOR A SUBCONTRACTOR'S WORK SHALL BE RELEASED, LESS AN AMOUNT
43 NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE SUBCON-
44 TRACTOR OR MATERIALMAN WHICH HAVE NOT BEEN SUITABLY DISCHARGED AND LESS
45 AN AMOUNT NECESSARY TO SATISFY ANY CHARGES FOR UNFINISHED PUNCH LIST
46 ITEMS, NO LATER THAN SIXTY DAYS FROM THE COMPLETION AND ACCEPTANCE BY
47 THE PUBLIC OWNER OF THE SUBCONTRACTOR'S WORK.

48 S 3. This act shall take effect immediately and shall apply to all
49 contracts entered into on or after such effective date.