

10136

I N A S S E M B L Y

May 12, 2016

Introduced by M. of A. CUSICK, COOK, QUART, SEPULVEDA -- Multi-Sponsored
by -- M. of A. BLAKE, MAGEE -- read once and referred to the Committee
on Governmental Operations

AN ACT to amend the public authorities law, the general municipal law,
the public service law and the state finance law, in relation to
notice provisions in public works contracts

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

1 Section 1. The public authorities law is amended by adding a new
2 section 2882 to read as follows:
3 S 2882. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES
4 OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 (A) "PUBLIC OWNER" SHALL MEAN ANY STATE OR LOCAL AUTHORITY, AS DEFINED
6 BY SECTION TWO OF THIS CHAPTER.
7 (B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC
8 OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR
9 OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.
10 (C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPO-
11 RATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A
12 CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF,
13 WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.
14 (D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE
15 ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED
16 THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL
17 PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED
18 NOTICE.
19 2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE
20 AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN,
21 OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT
22 IS EQUALLY FAVORABLE TO THE CONTRACTOR:
23 THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT
24 WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE
25 BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE
26 TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

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

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1 3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATE-
2 RIALY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE
3 BURDEN OF PROOF SHALL BE ON:

4 (A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE
5 NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED
6 UNDER THE CONTRACT; OR

7 (B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC
8 OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE
9 HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

10 S 2. The general municipal law is amended by adding a new section
11 109-c to read as follows:

12 S 109-C. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES
13 OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

14 (A) "PUBLIC OWNER" SHALL MEAN ANY POLITICAL SUBDIVISION, MUNICIPAL
15 CORPORATION, SCHOOL DISTRICT, DISTRICT CORPORATION OR BOARD OF COOPER-
16 ATIVE EDUCATIONAL SERVICES.

17 (B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC
18 OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR
19 OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

20 (C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPO-
21 RATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A
22 CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF,
23 WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

24 (D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE
25 ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED
26 THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL
27 PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED
28 NOTICE.

29 2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE
30 AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN,
31 OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT
32 IS EQUALLY FAVORABLE TO THE CONTRACTOR:

33 THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT
34 WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE
35 BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE
36 TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

37 3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATE-
38 RIALY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE
39 BURDEN OF PROOF SHALL BE ON:

40 (A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE
41 NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED
42 UNDER THE CONTRACT; OR

43 (B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC
44 OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE
45 HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

46 S 3. The public service law is amended by adding a new section 28 to
47 read as follows:

48 S 28. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES OF
49 THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

50 (A) "PUBLIC OWNER" SHALL MEAN THE STATE, OR ANY STATE AGENCY, PUBLIC
51 DEPARTMENT, PUBLIC CORPORATION, BOARD, BUREAU, OR SUBDIVISION THEREOF,
52 ANY PUBLIC BENEFIT CORPORATION, OR A COMMISSION APPOINTED PURSUANT TO
53 LAW.

54 (B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC
55 OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR
56 OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF, WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

(D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED NOTICE.

2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT IS EQUALLY FAVORABLE TO THE CONTRACTOR:

THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATERIALLY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE BURDEN OF PROOF SHALL BE ON:

(A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED UNDER THE CONTRACT; OR

(B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

S 4. The state finance law is amended by adding a new section 179-ff to read as follows:

S 179-FF. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PUBLIC OWNER" SHALL MEAN THE STATE, OR ANY STATE AGENCY, PUBLIC DEPARTMENT, PUBLIC CORPORATION, BOARD, BUREAU, OR SUBDIVISION THEREOF OR ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY, SCHOOL DISTRICT OR A COMMISSION APPOINTED PURSUANT TO LAW.

(B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF, WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

(D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED NOTICE.

2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT IS EQUALLY FAVORABLE TO THE CONTRACTOR:

THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

1 3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATE-
2 RIALY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE
3 BURDEN OF PROOF SHALL BE ON:

4 (A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE
5 NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED
6 UNDER THE CONTRACT; OR

7 (B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC
8 OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE
9 HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

10 S 5. This act shall take effect on the one hundred eightieth day after
11 it shall have become a law, and shall apply to all contracts entered
12 into on and after such date.