

4521

2015-2016 Regular Sessions

I N A S S E M B L Y

February 3, 2015

Introduced by M. of A. CLARK, BROOK-KRASNY, SCARBOROUGH, ROBINSON,
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.