

8073

2015-2016 Regular Sessions

I N A S S E M B L Y

June 5, 2015

Introduced by M. of A. KIM -- read once and referred to the Committee on
Judiciary

AN ACT to amend the general obligations law, in relation to damages to
contracts occasioned by delay

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

Section 1. Article 5 of the general obligations law is amended by
adding a new title 18 to read as follows:

TITLE 18

DAMAGES OCCASIONED BY DELAY

SECTION 5-1801. DEFINITIONS.

5-1802. DAMAGES FOR DELAY IN CONTRACTS.

5-1803. NOTICE OF CLAIM.

5-1804. FAILURE TO PROGRESS.

5-1805. CONTENT OF CLAIM.

5-1806. CERTIFICATION OF CLAIM.

S 5-1801. DEFINITIONS. FOR PURPOSES OF THIS TITLE THE FOLLOWING TERMS
SHALL HAVE THE FOLLOWING MEANINGS:

1. "CONTRACT" SHALL MEAN ANY CONTRACT AWARDED BY THE STATE, ANY STATE
AGENCY, DEPARTMENT, BOARD, BUREAU, MUNICIPAL CORPORATION, PUBLIC BENEFIT
CORPORATION, PUBLIC AUTHORITY OR ANY OTHER STATE ENTITY, ANY SCHOOL
DISTRICT OR ANY OTHER SPECIAL DISTRICT, OR ANY INSTRUMENTALITY OF THE
STATE OR A POLITICAL SUBDIVISION OF THE STATE, OR ANY OTHER PERSON,
PARTNERSHIP, CORPORATION OR ENTITY WHICH ENTERS INTO A PUBLIC OR PRIVATE
CONTRACT FOR DESIGN, CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTER-
ATION, REPAIR OR IMPROVEMENT TO THE PROPERTY OF ANOTHER.

2. "DELAY" SHALL MEAN ANY DELAY, DISRUPTION, INTERFERENCE, INEFFICIEN-
CIES, IMPEDANCE, HINDRANCE AND ACCELERATION IN THE PERFORMANCE OF THE
CONTRACT WHICH CAUSES DAMAGES TO BE INCURRED BY A CONTRACTOR, SUBCON-
TRACTOR OR MATERIALMAN TO A CONTRACT AND WHICH IS A DIRECT RESULT OF THE
NEGLIGENCE, MALFEASANCE, MISFEASANCE OF THE PERSON OR ENTITY FOR WHOM

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

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1 THE CONTRACTOR, SUBCONTRACTOR OR MATERIALMAN IS PROVIDING SERVICES AS
2 PROVIDED FOR IN THE CONTRACT, OR ANY DISRUPTION, INTERFERENCE, INEFFI-
3 CIENCIES, IMPEDANCE, HINDRANCE AND ACCELERATION CAUSING DAMAGES TO BE
4 SIMILARLY INCURRED BY SUCH PERSON OR ENTITY.

5 3. "CLAIM" SHALL MEAN A REQUEST FOR ADDITIONAL COSTS FROM THE FOLLOW-
6 ING CAUSES LISTED IN THIS SUBDIVISION ATTRIBUTABLE TO DELAY IN THE
7 PERFORMANCE OF A CONTRACT, OCCASIONED BY ANY ACT OR OMISSION TO ACT BY
8 THE PUBLIC OR PRIVATE PERSON OR ENTITY WITH WHOM A CONTRACTOR, SUBCON-
9 TRACTOR OF MATERIALMAN HAS CONTRACTED WITH, BUT SHALL NOT INCLUDE DELAY
10 FROM ANY OTHER CAUSE, WHICH DELAY SHALL BE COMPENSATED FOR SOLELY BY AN
11 EXTENSION OF TIME TO COMPLETE THE PERFORMANCE OF THE WORK:

12 (A) THE FAILURE OF THE PUBLIC OR PRIVATE PERSON OR ENTITY TO TAKE
13 REASONABLE MEASURES TO COORDINATE AND PROGRESS THE WORK;

14 (B) EXTENDED DELAYS ATTRIBUTABLE TO THE PUBLIC OR PRIVATE PERSON OR
15 ENTITY IN THE REVIEW OR ISSUANCE OF ORDERS-ON-CONTRACT OR FIELD ORDERS,
16 IN SHOP DRAWING REVIEWS AND APPROVALS OR AS A RESULT OF THE CUMULATIVE
17 IMPACT OF MULTIPLE ORDERS ON CONTRACT, WHICH CONSTITUTE A QUALITATIVE
18 CHANGE TO THE PROJECT WORK AND WHICH HAVE A VERIFIABLE IMPACT ON PROJECT
19 COSTS;

20 (C) THE UNAVAILABILITY OF THE SITE FOR SUCH AN EXTENDED PERIOD OF TIME
21 WHICH SIGNIFICANTLY AFFECT THE SCHEDULED COMPLETION OF THE CONTRACT; OR

22 (D) THE ISSUANCE OF A STOP WORK ORDER RELATIVE TO A SUBSTANTIAL
23 PORTION OF WORK FOR A PERIOD EXCEEDING THIRTY DAYS.

24 S 5-1802. DAMAGES FOR DELAY IN CONTRACTS. ALL CONTRACTS MADE AND
25 AWARDED SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, A CLAUSE WHICH ALLOWS
26 A CONTRACTOR, SUBCONTRACTOR OR MATERIALMAN TO MAKE A CLAIM FOR ADDI-
27 TIONAL COSTS ARISING FROM DELAY IF SUCH DELAY IN THE PERFORMANCE OF THE
28 CONTRACT IS CAUSED BY OR OCCASIONED BY ANY ACT OR OMISSION OF THE ENTITY
29 OR PERSON WITH WHOM THEY HAVE CONTRACTED IN THE CONTRACT, OR ANY OF SUCH
30 ENTITY'S OR PERSON'S REPRESENTATIVES OR AGENTS.

31 S 5-1803. NOTICE OF CLAIM. THE CONTRACTOR, SUBCONTRACTOR OR MATERIAL-
32 MAN SHALL PROVIDE A NOTICE OF CLAIM OF AN ANTICIPATED CLAIM FOR DELAY TO
33 A PUBLIC OR PRIVATE PERSON OR ENTITY BY PERSONAL SERVICE OR CERTIFIED
34 MAIL NO MORE THAN FIFTEEN DAYS AFTER SUCH CONTRACTOR KNEW OR OUGHT TO
35 HAVE KNOWN OF THE FACTS WHICH FORM THE BASIS OF THE CLAIM. THE PUBLIC OR
36 PRIVATE PERSON OR ENTITY SHALL ACKNOWLEDGE RECEIPT OF THE NOTICE, IN
37 WRITING, WITHIN FIVE DAYS. NO PUBLIC OR PRIVATE PERSON OR ENTITY SHALL
38 INCUR ANY LIABILITY FOR ANY DAMAGES WHICH ACCRUE MORE THAN FIFTEEN DAYS
39 PRIOR TO THE DELIVERY OR MAILING OF THE REQUIRED NOTICE. SUCH NOTICE
40 SHALL AT A MINIMUM PROVIDE A DESCRIPTION OF ANY OPERATIONS THAT WERE,
41 ARE BEING OR WILL BE DELAYED, AND THE DATE OR DATES AND REASONS FOR THE
42 DELAY. IN NO CASE SHALL ORAL NOTICE CONSTITUTE NOTICE PURSUANT TO THIS
43 SECTION OR BE DEEMED TO CONSTITUTE A WAIVER OF THE WRITTEN NOTICE
44 REQUIREMENT. FOR THE PURPOSES OF THIS TITLE, FAILURE TO PROVIDE SUCH
45 NOTICE SHALL BE CONSIDERED TO HAVE PREJUDICED THE PUBLIC OR PRIVATE
46 ENTITY.

47 S 5-1804. FAILURE TO PROGRESS. FAILURE BY A CONTRACTOR TO ADEQUATELY
48 PROGRESS THE COMPLETION OF WORK SHALL BE CONSIDERED IN DETERMINING THE
49 CAUSES OF DELAY. FOR ANY CLAIM ASSERTED PURSUANT TO THIS TITLE, THE
50 CONTRACTOR, SUBCONTRACTOR OR MATERIALMAN SHALL KEEP DETAILED WRITTEN
51 RECORDS OF THE COSTS AND SHALL MAKE THEM AVAILABLE FOR THE PURPOSES OF
52 AUDIT AND REVIEW. FAILURE TO PROVIDE THE REQUIRED WRITTEN NOTICE OR TO
53 MAINTAIN AND FURNISH RECORDS OF THE COSTS OF SUCH CLAIMS SHALL CONSTI-
54 TUTE A WAIVER OF THE CLAIM.

1 S 5-1805. CONTENT OF CLAIM. THE FOLLOWING INFORMATION SHALL BE
2 PROVIDED BY THE CONTRACTOR UPON REQUEST OF A PUBLIC OR PRIVATE PERSON OR
3 ENTITY IF NOT PREVIOUSLY SUPPLIED:

4 (A) A DESCRIPTION OF THE OPERATIONS THAT WERE DELAYED, THE REASONS FOR
5 THE DELAY AND AN EXPLANATION OF HOW THEY WERE DELAYED;

6 (B) A DETAILED FACTUAL STATEMENT OF THE CLAIM PROVIDING ALL NECESSARY
7 DATES, LOCATIONS AND ITEMS OF WORK AFFECTED BY THE CLAIM;

8 (C) THE DATE ON WHICH ACTIONS RESULTING IN THE CLAIM OCCURRED OR
9 CONDITIONS RESULTING IN THE CLAIM BECAME EVIDENT;

10 (D) THE NAMES, FUNCTIONS AND ACTIVITIES OF EACH CONTRACTOR, SUBCON-
11 TRACTOR AND MATERIALMAN INVOLVED IN, OR KNOWLEDGEABLE ABOUT FACTS THAT
12 GAVE RISE TO SUCH CLAIM;

13 (E) THE IDENTIFICATION OF ANY PERTINENT DOCUMENTS, AND THE SUBSTANCE
14 OF ANY MATERIAL ORAL COMMUNICATION RELATING TO SUCH CLAIM;

15 (F) THE AMOUNT OF ADDITIONAL COMPENSATION SOUGHT; AND

16 (G) IF AN EXTENSION OF TIME IS ALSO REQUESTED, THE SPECIFIC NUMBER OF
17 DAYS FOR WHICH IT IS SOUGHT AND THE BASIS FOR SUCH REQUEST AS DETERMINED
18 BY AN ANALYSIS OF THE CONSTRUCTION PROGRESS SCHEDULE.

19 S 5-1806. CERTIFICATION OF CLAIM. WHEN SUBMITTING ANY CLAIM, THE
20 CONTRACTOR, SUBCONTRACTOR OR MATERIALMAN SHALL CERTIFY IN WRITING AND
21 UNDER OATH THAT THE SUPPORTING DATA IS ACCURATE AND COMPLETE TO HIS OR
22 HER BEST KNOWLEDGE OR BELIEF, AND THAT ANY AMOUNT DEMANDED REFLECTS, IN
23 GOOD FAITH, WHAT HE OR SHE BELIEVES TO BE THE PUBLIC OR PRIVATE PERSON'S
24 OR ENTITY'S LIABILITY.

25 S 2. This act shall take effect on the one hundred eightieth day after
26 it shall have become a law and shall apply to all contracts entered into
27 on and after such date.