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I N S E N A T E

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Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

TITLE 18

DAMAGES OCCASIONED BY DELAY

5 SECTION 5-1801. DEFINITIONS.

6 5-1802. DAMAGES FOR DELAY IN CONTRACTS.

7 5-1803. NOTICE OF CLAIM.

8 5-1804. FAILURE TO PROGRESS.

9 5-1805. CONTENT OF CLAIM.

10 5-1806. CERTIFICATION OF CLAIM.

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

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

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

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1 2. "DELAY" SHALL MEAN ANY DELAY, DISRUPTION, INTERFERENCE, INEFFICIEN-
2 CIES, IMPEDANCE, HINDRANCE AND ACCELERATION IN THE PERFORMANCE OF THE
3 CONTRACT WHICH CAUSES DAMAGES TO BE INCURRED BY A CONTRACTOR, SUBCON-
4 TRACTOR OR MATERIALMAN TO A CONTRACT AND WHICH IS A DIRECT RESULT OF THE
5 NEGLIGENCE, MALFEASANCE, MISFEASANCE OF THE PERSON OR ENTITY FOR WHOM
6 THE CONTRACTOR, SUBCONTRACTOR OR MATERIALMAN IS PROVIDING SERVICES AS
7 PROVIDED FOR IN THE CONTRACT, OR ANY DISRUPTION, INTERFERENCE, INEFFI-
8 CIENCIES, IMPEDANCE, HINDRANCE AND ACCELERATION CAUSING DAMAGES TO BE
9 SIMILARLY INCURRED BY SUCH PERSON OR ENTITY.

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

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

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

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

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

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

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

52 S 5-1804. FAILURE TO PROGRESS. FAILURE BY A CONTRACTOR TO ADEQUATELY
53 PROGRESS THE COMPLETION OF WORK SHALL BE CONSIDERED IN DETERMINING THE
54 CAUSES OF DELAY. FOR ANY CLAIM ASSERTED PURSUANT TO THIS TITLE, THE
55 CONTRACTOR, SUBCONTRACTOR OR MATERIALMAN SHALL KEEP DETAILED WRITTEN
56 RECORDS OF THE COSTS AND SHALL MAKE THEM AVAILABLE FOR THE PURPOSES OF

1 AUDIT AND REVIEW. FAILURE TO PROVIDE THE REQUIRED WRITTEN NOTICE OR TO
2 MAINTAIN AND FURNISH RECORDS OF THE COSTS OF SUCH CLAIMS SHALL CONSTI-
3 TUTE A WAIVER OF THE CLAIM.

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

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

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

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

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

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

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

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

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

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