S T A T E O F N E W Y O R K

7613

I N S E N A T E

May 11, 2016

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to payment on construction contracts

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

Section 1. Section 5-322.2 of the general obligations law is amended by adding a new subdivision 2-a to read as follows:

2-A. THE CONTRACTOR SHALL PERIODICALLY, IN ACCORDANCE WITH THE TERMS OF THE CONTRACT, SUBMIT TO THE OWNER OR OWNERS A REQUISITION FOR A PROGRESS PAYMENT FOR THE WORK PERFORMED AND/OR MATERIALS FURNISHED TO THE DATE OF THE REQUISITION, LESS ANY AMOUNT PREVIOUSLY PAID TO THE CONTRACTOR. THE CONTRACTOR SHALL INCLUDE IN EACH SUCH REQUISITION A REQUEST FOR PAYMENT FOR ALL WORK PERFORMED AND MATERIAL PROVIDED BY SUBCONTRACTORS AND/OR MATERIALMEN FOR WHICH THE CONTRACTOR HAS RECEIVED A REQUEST FOR PAYMENT AND WHICH THE CONTRACTOR HAS NOT REJECTED, IN WHOLE OR IN PART. EACH SUBCONTRACTOR'S AND/OR MATERIALMAN'S REQUEST FOR PAYMENT SHALL BE ACCEPTED OR REJECTED, IN WHOLE OR IN PART, BY THE CONTRACTOR NOT LESS THAN THIRTY BUT NOT MORE THAN FORTY-FIVE DAYS FOLLOWING THE DATE OF THE CONTRACTOR'S RECEIPT OF SAID SUBCONTRACTOR'S AND/OR MATERIALMAN'S REQUEST FOR PAYMENT. IN THE EVENT THE CONTRACTOR DETERMINES TO REJECT SUCH SUBCONTRACTOR'S AND/OR MATERIALMAN'S REQUEST FOR PAYMENT, IN WHOLE OR IN PART, IT SHALL PROVIDE WRITTEN NOTICE OF THE REJECTION TO THE APPLICABLE SUBCONTRACTOR AND/OR MATERIALMAN ACCOMPANIED BY A REASONED ELABORATION IN SUPPORT OF THE CONTRACTOR'S REJECTION, IN WHOLE OR IN PART, TOGETHER WITH A WRITTEN DESCRIPTION OF THE WORK, MATERIALS, SUPPORTING DOCUMENTATION OR OTHER INFORMATION REQUIRED IN ORDER FOR THE REQUEST FOR PAYMENT TO BE APPROVED; PROVIDED, HOWEVER, THE CONTRACTOR SHALL INCLUDE IN ITS NEXT REQUISITION ANY PORTION OF SUCH SUBCONTRACTOR'S OR MATERIALMAN'S REQUEST FOR PAYMENT WHICH IS NOT REJECTED BY THE CONTRACTOR; AND NO SUCH NOTICE OR ELABORATION SHALL BE REQUIRED FOR PURPOSES OF RETAINAGE AS AUTHORIZED BY THIS SECTION. THE CONTRACTOR'S ACCEPTANCE OR REJECTION OF A REQUEST FOR PAYMENT FOR WORK PERFORMED AND MATERIAL PROVIDED BY SUBCONTRACTORS AND/OR MATERIALMEN

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

LBD15187-01-6

SHALL IN NO WAY AFFECT THE OWNER'S OR OWNERS' LEGAL RIGHTS TO APPROVE OR REJECT, IN WHOLE OR IN PART, THE CONTRACTOR'S REQUEST FOR PAYMENT. THE OWNER OR OWNERS SHALL, IN ACCORDANCE WITH THE TERMS OF THE CONTRACT, APPROVE AND PROMPTLY PAY THE REQUISITION FOR THE PROGRESS PAYMENT LESS AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE CONTRACTOR WHICH HAVE NOT BEEN SUITABLY DISCHARGED AND LESS ANY RETAINED AMOUNT AS HEREAFTER DESCRIBED. THE OWNER OR OWNERS SHALL RETAIN NOT MORE THAN FIVE PER CENTUM OF EACH PROGRESS PAYMENT TO THE CONTRACTOR EXCEPT THAT THE OWNER OR OWNERS MAY RETAIN IN EXCESS OF FIVE PER CENTUM BUT NOT MORE THAN TEN PER CENTUM OF EACH PROGRESS PAYMENT TO THE CONTRACTOR PROVIDED THAT THERE ARE NO REQUIREMENTS BY THE OWNER OR OWNERS FOR THE CONTRACTOR TO PROVIDE A PERFORMANCE BOND AND A LABOR AND MATERIAL BOND BOTH IN THE FULL AMOUNT OF THE CONTRACT. THE OWNER OR OWNERS SHALL PAY, UPON REQUISITION FROM THE CONTRACTOR, FOR MATERIALS PERTINENT TO THE PROJECT WHICH HAVE BEEN DELIVERED TO THE SITE OR OFF-SITE BY THE CONTRACTOR AND/OR SUBCONTRACTOR AND SUITABLY STORED AND SECURED AS REQUIRED BY THE OWNER OR OWNERS AND THE CONTRACTOR PROVIDED, THE OWNER OR OWNERS MAY LIMIT SUCH PAYMENT TO MATERIALS IN SHORT AND/OR CRITICAL SUPPLY AND MATERIALS SPECIALLY FABRICATED FOR THE PROJECT EACH AS DEFINED IN THE CONTRACT. WHEN THE WORK OR MAJOR PORTIONS THEREOF AS CONTEMPLATED BY THE TERMS OF THE CONTRACT ARE SUBSTANTIALLY COMPLETED, THE CONTRACTOR SHALL SUBMIT TO THE OWNER OR OWNERS A REQUISITION FOR PAYMENT OF THE REMAINING AMOUNT OF THE CONTRACT BALANCE. UPON RECEIPT OF SUCH REQUISITION THE OWNER OR OWNERS SHALL APPROVE AND PROMPTLY PAY THE REMAINING AMOUNT OF THE CONTRACT BALANCE LESS TWO TIMES THE VALUE OF ANY REMAINING ITEMS TO BE COMPLETED AND AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE CONTRACTOR WHICH HAVE NOT BEEN SUITABLY DISCHARGED. AS THE REMAINING ITEMS OF WORK ARE SATISFACTORILY COMPLETED OR CORRECTED, THE OWNER OR OWNERS SHALL PAY, IN ACCORDANCE WITH THE TERMS OF THE CONTRACT, UPON RECEIPT OF A REQUISITION, FOR THESE REMAINING ITEMS LESS AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE CONTRACTOR WHICH HAVE NOT BEEN SUITABLY DISCHARGED. ANY CLAIMS, LIENS AND JUDGMENTS REFERRED TO IN THIS SECTION SHALL PERTAIN TO THE PROJECT AND SHALL BE FILED IN ACCORDANCE WITH THE TERMS OF THE APPLICABLE CONTRACT AND/OR APPLICABLE LAWS.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.