

10446

I N A S S E M B L Y

May 27, 2016

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to payment and retainage in construction contracts

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

1 Section 1. Section 756 of the general business law is amended by  
2 adding a new subdivision 7 to read as follows:

3 7. "SUBSTANTIAL COMPLETION" MEANS THE STATE IN THE PROGRESS OF THE  
4 PROJECT WHEN THE WORK REQUIRED BY THE CONSTRUCTION CONTRACT WITH THE  
5 PROJECT OWNER IS SUFFICIENTLY COMPLETE IN ACCORDANCE WITH THE  
6 CONSTRUCTION CONTRACT SO THAT THE PROJECT OWNER MAY OCCUPY OR UTILIZE  
7 THE WORK FOR ITS INTENDED USE; PROVIDED FURTHER, THAT "SUBSTANTIAL  
8 COMPLETION" SHALL APPLY TO THE ENTIRE PROJECT OR A PORTION OF THE ENTIRE  
9 PROJECT IF THE CONSTRUCTION CONTRACT WITH THE PROJECT OWNER PROVIDES FOR  
10 OCCUPANCY OR USE OF A PORTION OF THE PROJECT.

11 S 2. The opening paragraph of paragraph (a) of subdivision 2 of  
12 section 756-a of the general business law, as amended by chapter 417 of  
13 the laws of 2009, is amended to read as follows:

14 A contractor shall be entitled to invoice the owner for interim  
15 payments at the end of the billing cycle. A contractor shall be entitled  
16 to submit a final invoice for payment in full [upon the performance of  
17 all the contractor's obligation under the contract] UPON REACHING  
18 SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT.

19 S 3. Section 756-c of the general business law, as added by chapter  
20 127 of the laws of 2002, is amended to read as follows:

21 S 756-c. Retention. By mutual agreement of the relevant parties an  
22 owner may retain [a reasonable amount] NO MORE THAN FIVE PER CENTUM of  
23 the contract sum as retainage. A contractor or subcontractor may also  
24 retain [a reasonable amount] NO MORE THAN FIVE PER CENTUM for retainage  
25 [so long as the amount does not] AND IN NO CASE SHALL RETAINAGE exceed  
26 the actual percentage retained by the owner. Retainage shall be released  
27 by the owner to the contractor no later than thirty days after the final  
28 approval of the work under a construction contract. In the event that an

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

1 owner fails to release retainage as required by this article, or the  
2 contractor or subcontractor fails to release a proportionate amount of  
3 retainage to the relevant parties after receipt of retainage from the  
4 owner, the owner, contractor, or subcontractor, as the case may be,  
5 shall be subject to the payment of interest at the rate of one percent  
6 per month on the date retention was due and owing.

7 S 4. This act shall take effect immediately and shall apply to  
8 contracts entered into on or after such effective date.