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

3589--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to prompt payments to local governments of certain state aid associated with disaster relief

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

Section 1. Section 179-d of the state finance law, as added by chapter 153 of the laws of 1984, is amended to read as follows:

S 179-d. Legislative intent. Firms and organizations that do business with the state of New York expect and deserve to be paid in a prompt and timely manner. Unjustified delays in paying vendors, construction contractors, and providers of service may discourage such firms and organizations from doing business with the state of New York and may ultimately increase the costs to the state government of purchasing materials, equipment, and supplies; undertaking construction and reconstruction projects; and obtaining a wide variety of professional and other specialized services including those that are provided to persons in need. Consequently, this legislation sets standards for the payment of bills incurred by state agencies within specified periods of time and requires interest payments in situations where contract payments do not conform to these standards. Consistent with accepted business practices and with sound principles of fiscal management, it is the intent of this legislation to encourage state agencies in all three branches of state government to make payments at least as expeditiously as they currently do and further to reduce existing payment processing times whenever feasible, while at the same time permitting the state agencies to perform proper and reasonable financial oversight activities designed to ensure that the state government receives the quality of goods and

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

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services to which it is entitled and to ensure that public funds are spent in a prudent and responsible manner. ADDITIONALLY, THE PROMPT PAYMENT OF AMOUNTS DUE TO LOCAL GOVERNMENT UNITS ASSOCIATED WITH STORM RELIEF AND RECOVERY IS VITAL TO THE CONTINUED ECONOMIC VIABILITY OF THE STATE AS A WHOLE. STORM-RAVAGED COMMUNITIES MUST BE PROVIDED RELIEF IN A MANNER THAT ALLOWS FOR EXPEDITED REPAIR OF MUNICIPAL INFRASTRUCTURE SO THAT RESIDENTS OF SUCH COMMUNITIES CAN CONTINUE THEIR DAY-TO-DAY LIVES.

S 2. Section 179-e of the state finance law is amended by adding a new subdivision 11 to read as follows:

11. "UNIT OF LOCAL GOVERNMENT" MEANS COUNTIES, CITIES, TOWNS, VILLAGES AND SCHOOL DISTRICTS.

S 3. Subdivisions 1 and 2 of section 179-f of the state finance law, subdivision 1 as amended by chapter 332 of the laws of 1989 and subdivision 2 as amended by chapter 548 of the laws of 2015, are amended to read as follows:

1. Each state agency which is required to make a payment from state funds pursuant to a contract OR PURSUANT TO A STATE OR FEDERAL STATUTORY OR REGULATORY OBLIGATION TO MAKE A PAYMENT TO A UNIT OF LOCAL GOVERNMENT WHERE SUCH PAYMENT IS MEANT TO ASSIST SUCH UNIT WITH RECOVERY FROM A NATURAL DISASTER and which does not make such [contract] payment by the required payment date shall make an interest payment to the contractor OR UNIT OF LOCAL GOVERNMENT in accordance with this article on the amount of the [contract] payment which is due, unless failure to make such [contract] payment is the result of a lien, attachment, or other legal process against the money due said contractor OR UNIT OF LOCAL GOVERNMENT, or unless the amount of the interest payment as computed in accordance with the provisions of section one hundred seventy-nine-g of this article is less than ten dollars. A pro rata share of such interest shall be paid by the contractor or subcontractor, as the case may be, to subcontractors and materialmen in a proportion equal to the percentage of their pro rata share of the contract payment. Such pro rata share of interest shall be due to such subcontractors and materialmen only for those payments which are not paid to such subcontractors and materialmen prior to the date upon which interest begins to accrue between the state agency and the contractor. Such pro rata share of interest shall be computed daily until such payments are made to the subcontractors and materialmen.

2. The required payment date shall be thirty calendar days, excluding legal holidays, or in the case of final payments on highway construction contracts seventy-five calendar days, excluding legal holidays, after receipt of an invoice for the amount of the contract payment due; except when:

(a) the state comptroller in the course of his audit determines that there is reasonable cause to believe that payment may not properly be due, in whole or in part;

(b) in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract;

(c) the necessary state government appropriation required to authorize payment has yet to be enacted;

(d) a proper invoice must be examined by the federal government prior to payment;

(e) the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract;

(f) the required payment date is modified in accordance with subdivision three of this section; or

(g) in the case of final payments on highway construction contracts the commissioner of transportation determines that the contractor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements, by the provisions of subdivision eight of section thirty-eight of the highway law, and by all other applicable state and federal laws in order to enable the department of transportation to process the final payment properly and expeditiously.

Any time taken to satisfy or rectify any of the types of conditions described in paragraphs (a) through (e) or (g) of this subdivision shall extend the required payment date by an equal period of time. FOR PURPOSES OF A PAYMENT TO A UNIT OF LOCAL GOVERNMENT WHERE SUCH PAYMENT IS MEANT TO ASSIST SUCH UNIT WITH RECOVERY FROM A NATURAL DISASTER, THE REQUIRED PAYMENT DATE SHALL BE NO LATER THAN REQUIRED BY LAW.

S 4. Subdivision 2 of section 179-f of the state finance law, as separately amended by chapters 548 and 568 of the laws of 2015, is amended to read as follows:

2. The required payment date shall be thirty calendar days, excluding legal holidays, provided, however, that for a small business the required payment date shall be fifteen calendar days, excluding legal holidays, or in the case of final payments on highway construction contracts seventy-five calendar days, excluding legal holidays, after receipt of an invoice for the amount of the contract payment due; except when:

(a) the state comptroller in the course of his or her audit determines that there is reasonable cause to believe that payment may not properly be due, in whole or in part;

(b) in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract;

(c) the necessary state government appropriation required to authorize payment has yet to be enacted;

(d) a proper invoice must be examined by the federal government prior to payment;

(e) the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract;

(f) the required payment date is modified in accordance with subdivision three of this section; or

(g) in the case of final payments on highway construction contracts the commissioner of transportation determines that the contractor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements, by the provisions of subdivision eight of section thirty-eight of the highway law, and by all other applicable state and federal laws in order to enable the department of transportation to process the final payment properly and expeditiously.

Any time taken to satisfy or rectify any of the types of conditions described in paragraphs (a) through (e) or (g) of this subdivision shall extend the required payment date by an equal period of time, provided, however, that for small businesses, the required payment date shall be fifteen calendar days, excluding legal holidays, after such conditions have been satisfied or rectified, and provided further that all reason-

able and practicable efforts shall be taken to satisfy or rectify such conditions as soon as possible. FOR PURPOSES OF A PAYMENT TO A UNIT OF LOCAL GOVERNMENT WHERE SUCH PAYMENT IS MEANT TO ASSIST SUCH UNIT WITH RECOVERY FROM A NATURAL DISASTER, THE REQUIRED PAYMENT DATE SHALL BE NO LATER THAN REQUIRED BY LAW.

S 5. Section 179-g of the state finance law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

S 179-g. Computation of interest payment. Interest payments on amounts due to a contractor, OR UNIT OF LOCAL GOVERNMENT pursuant to this article shall be paid to the contractor, OR UNIT OF LOCAL GOVERNMENT for the period beginning on the day after the required payment date and ending on the payment date for those payments required according to this article and shall be paid at the rate of interest in effect on the date when the interest payment is made. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law.

S 6. Section 179-h of the state finance law, as amended by chapter 153 of the laws of 1984, is amended to read as follows:

S 179-h. Determination of appropriations against which interest payments are to be charged. Except in situations when federal law or the provisions of section one hundred seventy-nine-o of this article require otherwise, an interest payment required by this article shall be paid from the same appropriation as that from which the related proper invoice, OR NATURAL DISASTER RELIEF ASSISTANCE is paid; provided, however, (1) that the interest payment shall not reduce the amount of money that otherwise will be payable to the contractor, OR UNIT OF LOCAL GOVERNMENT under the terms of the relevant contract, OR NATURAL DISASTER RELIEF ASSISTANCE RESPECTIVELY and, FOR PURPOSES OF AN INTEREST PAYMENT OWED TO A CONTRACTOR (2) that if the obligation to make an interest payment is incurred in whole or in part because it takes the department of audit and control more than eight calendar days, excluding legal holidays, from the date it receives an approvable voucher from another state agency to process a contract payment, then the portion of the total interest payment that is attributable to delays by the department of audit and control shall be paid from funds made available to the department of audit and control. Notwithstanding any other provision of law to the contrary, if the amount of money available from any such appropriation to the state agency which received the proper invoice is insufficient to pay the interest and if for any reason it is not feasible for the director of the budget to exercise the transfer or interchange authority established by section fifty-one or ninety-three of this chapter, the director of the budget may issue a certificate or certificates transferring or interchanging within a fund such amount as is needed to pay the interest to said appropriation within such fund from the unspent balance of any appropriation that is available to the same state agency. In exercising the latter transfer or interchange authority, the director of the budget shall transfer or interchange amounts that are not needed to accomplish the purposes for which the appropriation was made, except, however, the director of the budget may, to the extent he deems it practicable, transfer or interchange amounts from appropriations that otherwise would be available for the administration and operations of the state agency which incurred the interest payment. Any such certificate or certificates issued by the director of the budget shall be sent to the state comptroller and copies shall be

filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

S 7. Section 179-k of the state finance law, as added by chapter 153 of the laws of 1984, is amended to read as follows:

S 179-k. Acceptance of payment. The acceptance of payment, in whole or in part, by a contractor, OR UNIT OF LOCAL GOVERNMENT shall not be deemed to constitute a waiver of interest otherwise due under the provisions of this article nor to supersede the provisions of section one hundred forty-five of this chapter.

S 8. Subdivision 1 of section 179-m of the state finance law, as added by chapter 153 of the laws of 1984, paragraph d as amended by chapter 618 of the laws of 1994, is amended to read as follows:

1. The state comptroller shall:

a. Promulgate such rules and regulations as may be necessary to carry out the comptroller's responsibilities under this article.

b. Develop and implement a procedure for calculating the amount of interest, if any, due to any contractor, OR UNIT OF LOCAL GOVERNMENT pursuant to the provisions of this article. [Such] FOR PURPOSES OF AN INTEREST PAYMENT OWED TO A CONTRACTOR, SUCH procedure shall include provisions for calculating (i) the amount of time, in calendar days, between the date of receipt of a proper invoice by the state agency and the date on which an approvable voucher was delivered to the state comptroller; (ii) the amount of time between the date on which an approvable voucher was delivered to the state comptroller and the payment date; (iii) the amount of interest, if any, chargeable to the state agency involved pursuant to this article; and (iv) the amount of interest, if any, chargeable to the department of audit and control pursuant to this article.

c. [Develop] FOR PURPOSES OF AN INTEREST PAYMENT OWED TO A CONTRACTOR, DEVELOP and implement a procedure for paying such interest in not more than seven days from the payment date on those proper invoices for which interest is due and for which the director of the budget does not issue a certificate or certificates increasing, transferring, or interchanging funds so that an interest payment can be made [pusuant] PURSUANT to this article. The comptroller shall also develop and implement a procedure for paying such interest in not more than fourteen days from the payment date on those proper invoices for which interest is due and for which the director of the budget does issue a certificate or certificates increasing, transferring, or interchanging funds so that an interest payment can be made pursuant to this article.

d. [Develop] FOR PURPOSES OF AN INTEREST PAYMENT OWED TO A CONTRACTOR, DEVELOP and implement a procedure by which every state agency will notify contractors promptly and directly whenever the state comptroller rejects a voucher and returns it to the state agency due to an error or omission in the voucher by the contractor.

S 9. Section 179-p of the state finance law, as added by chapter 153 of the laws of 1984, is amended to read as follows:

S 179-p. Inapplicability of the provisions. The provisions of this article shall not apply to payments due and owing by the state:

1. under the eminent domain procedure law;

2. as interest allowed on judgments rendered by a court pursuant to any provision of law other than those provisions contained in this article;

3. to the federal government; to any state agency or its related instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school

districts, special districts, or any of their related instrumentalities EXCEPT IN THE CASE IN WHICH STATE PAYMENTS ARE MADE FOR EXPENSES RELATED TO DAMAGE RESULTING FROM A NATURAL DISASTER; to any public authority or public benefit corporation; or to employees of state agencies when acting in, or incidental to, their public employment capacity;

4. to contractors of third party payment agreements including, but not limited to, the fiscal agent or fiscal intermediary designated pursuant to section three hundred sixty-seven-b of the social services law;

5. to entities which receive state funds through any intermediary organization other than a state agency; or

6. in situations where the comptroller exercises a legally authorized set-off against all or part of the payment due the contractor.

S 10. This act shall take effect immediately; provided however, that if chapter 568 of the laws of 2015 shall not have taken effect on or before such date, then section four of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2015 takes effect.