

6902--B

Cal. No. 502

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I N   A S S E M B L Y

April 10, 2015

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Introduced by M. of A. BLAKE, PEOPLES-STOKES, MOSLEY, BARRON, COOK, WRIGHT, CLARK, SEAWRIGHT, HOOPER -- Multi-Sponsored by -- M. of A. THIELE, WOERNER -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, in relation to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice

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

1     Section 1. Subdivisions 2 and 3 of section 179-f of the state finance  
2     law, subdivision 2 as amended and subdivision 3 as added by chapter 153  
3     of the laws of 1984, are amended and a new subdivision 6 is added to  
4     read as follows:  
5     2. The required payment date shall be thirty calendar days, excluding  
6     legal holidays, PROVIDED, HOWEVER, THAT FOR A SMALL BUSINESS THE  
7     REQUIRED PAYMENT DATE SHALL BE FIFTEEN CALENDAR DAYS, EXCLUDING LEGAL  
8     HOLIDAYS, or in the case of final payments on highway construction  
9     contracts seventy-five calendar days, excluding legal holidays, after  
10    receipt of an invoice for the amount of the contract payment due; except  
11    when:  
12    (a) the state comptroller in the course of his OR HER audit determines  
13    that there is reasonable cause to believe that payment may not properly  
14    be due, in whole or in part;  
15    (b) in accordance with specific statutory or contractual provisions,  
16    payment must be preceded by an inspection period or by an audit to  
17    determine the resources applied or used by a contractor in fulfilling  
18    the terms of the contract;

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

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

3 (d) the cash balance of the fund or sub-fund from which the payment is  
4 to be made is insufficient to finance the payment;

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

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

10 (g) the required payment date is modified in accordance with subdivi-  
11 sion three of this section; or

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

20 Any time taken to satisfy or rectify any of the types of conditions  
21 described in paragraphs (a) through (f) or (h) of this subdivision shall  
22 extend the required payment date by an equal period of time, PROVIDED,  
23 HOWEVER, THAT FOR SMALL BUSINESSES, THE REQUIRED PAYMENT DATE SHALL BE  
24 FIFTEEN CALENDAR DAYS, EXCLUDING LEGAL HOLIDAYS, AFTER SUCH CONDITIONS  
25 HAVE BEEN SATISFIED OR RECTIFIED, AND PROVIDED FURTHER THAT ALL REASON-  
26 ABLE AND PRACTICABLE EFFORTS SHALL BE TAKEN TO SATISFY OR RECTIFY SUCH  
27 CONDITIONS AS SOON AS POSSIBLE.

28 3. Each state agency shall have fifteen calendar days after receipt of  
29 an invoice by the state agency at its designated payment office, OR IN  
30 THE CASE OF AN INVOICE RECEIVED FROM A SMALL BUSINESS, SEVEN CALENDAR  
31 DAYS, to notify the contractor of (a) defects in the delivered goods,  
32 property, or services, (b) defects in the invoice, or (c) suspected  
33 improprieties of any kind; and the existence of such defects or impro-  
34 prieties shall prevent the commencement of the time period specified in  
35 subdivision two of this section. When a state agency fails to notify a  
36 contractor of such defects or suspected improprieties within fifteen  
37 calendar days, OR SEVEN CALENDAR DAYS IF SUCH CONTRACTOR IS A SMALL  
38 BUSINESS, of receiving the invoice, the number of days allowed for  
39 payment of the corrected proper invoice will be reduced by the number of  
40 days between the fifteenth day, OR SEVENTH DAY IF PAYMENT OF SUCH PROPER  
41 INVOICE IS FOR A SMALL BUSINESS, and the day that notification was tran-  
42 smitted to the contractor. If the state agency, in such situations,  
43 fails to provide reasonable grounds for its contention that a defect or  
44 impropriety exists, the required payment date shall be calculated from  
45 the date of receipt of an invoice.

46 6. AS USED IN THIS SECTION, "SMALL BUSINESS" SHALL MEAN A BUSINESS  
47 WHOSE PRIMARY PLACE OF BUSINESS IS IN NEW YORK STATE, HAS A SIGNIFICANT  
48 BUSINESS PRESENCE IN THE STATE, IS INDEPENDENTLY OWNED AND OPERATED, NOT  
49 DOMINANT IN ITS FIELD, AND EMPLOYS NO MORE THAN THREE HUNDRED EMPLOYEES.

50 S 2. This act shall take effect on the one hundred eightieth day after  
51 it shall have become a law and shall apply only to invoices received  
52 after such date.