

6387

I N S E N A T E

January 8, 2016

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

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; and to amend chapter 568 of the laws of 2015 amending the state finance law relating to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice, in relation to making technical corrections

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

- 1 Section 1. Subdivisions 2 and 6 of section 179-f of the state finance
2 law, subdivision 2 as amended and subdivision 6 as added by chapter 568
3 of the laws of 2015 and subdivision 2 as separately amended by chapter
4 548 of the laws of 2015, are amended to 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, *ABSENT A SHOWING BY THE CONTRACTING AGENCY OF CIRCUMSTANCES*
9 *BEYOND ITS CONTROL, PROVIDED THAT THE SMALL BUSINESS SUBMITS ITS INVOICE*
10 *ELECTRONICALLY, IN CONFORMANCE WITH THE POLICIES AND PROCEDURES OF THE*
11 *ACCOUNTING AND FINANCIAL MANAGEMENT SYSTEM OF STATE GOVERNMENT AND IDEN-*
12 *TIFIES THAT IT IS SEEKING EXPEDITED PAYMENT AS A SMALL BUSINESS, or in*
13 *the case of final payments on highway construction contracts seventy-*
14 *five calendar days, excluding legal holidays, after receipt of an*
15 *invoice for the amount of the contract payment due; except when:*
16 (a) the state comptroller in the course of his or her audit determines
17 that there is reasonable cause to believe that payment may not properly
18 be due, in whole or in part;
19 (b) in accordance with specific statutory or contractual provisions,
20 payment must be preceded by an inspection period or by an audit to
21 determine the resources applied or used by a contractor in fulfilling
22 the terms of the contract;
23 (c) the necessary state government appropriation required to authorize
24 payment has yet to be enacted;

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

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

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

6 (f) the required payment date is modified in accordance with subdivi-
7 sion three of this section; or

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

16 Any time taken to satisfy or rectify any of the types of conditions
17 described in paragraphs (a) through (e) or (g) of this subdivision shall
18 extend the required payment date by an equal period of time, provided,
19 however, that for small businesses, the required payment date shall be
20 fifteen calendar days, excluding legal holidays, after such conditions
21 have been satisfied or rectified, and provided further that all reason-
22 able and practicable efforts shall be taken to satisfy or rectify such
23 conditions as soon as possible.

24 6. As used in this section, "small business" shall mean a business
25 whose primary place of business is in New York state, has a significant
26 business presence in the state, is independently owned and operated, not
27 dominant in its field, and employs no more than [three] TWO hundred
28 employees AT THE TIME OF THE AWARD CONTRACTING AND PAYMENT. THE "SMALL
29 BUSINESS" SHALL, UPON REQUEST, PROVIDE THE CONTRACTING ENTITY WITH
30 SUFFICIENT DOCUMENTATION TO REFLECT AND CONFIRM ITS STATUS AS A SMALL
31 BUSINESS.

32 S 2. Section 2 of chapter 568 of the laws of 2015 amending the state
33 finance law relating to requiring state agencies to pay small businesses
34 within fifteen days of receipt of an invoice, is amended to read as
35 follows:

36 S 2. This act shall take effect on the [one] THREE hundred [eightieth]
37 SIXTY-FIFTH day after it shall have become a law and shall apply only to
38 invoices received after such date.

39 S 3. This act shall take effect immediately; provided, however, that
40 section one of this act shall take effect on the same date and in the
41 same manner as chapter 568 of the laws of 2015 amending the the state
42 finance law relating to requiring state agencies to pay small businesses
43 within fifteen days of receipt of an invoice, takes effect.