

6387--B

Cal. No. 18

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 -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in 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; and to amend a chapter 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, as proposed in legislative bills numbers S.5283-A and A.6902-B, 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 a chapter of
3 the laws of 2015 amending the state finance law relating to requiring
4 state agencies to pay small businesses within fifteen days of receipt of
5 an invoice, as proposed in legislative bills numbers S.5283-A and
6 A.6902-B, subdivision 2 as separately amended by a chapter of the laws
7 of 2015 amending the state finance law relating to the determination of
8 eligibility for payment of interest on amounts owed to contractors, as
9 proposed in legislative bills numbers S.4929 and A.7579, are amended to
10 read as follows:

11 2. The required payment date shall be thirty calendar days, excluding
12 legal holidays, provided, however, that for a small business the
13 required payment date shall be fifteen calendar days, excluding legal
14 holidays, *ABSENT A SHOWING BY THE CONTRACTING AGENCY OF CIRCUMSTANCES*
15 *BEYOND ITS CONTROL, PROVIDED THAT THE SMALL BUSINESS SUBMITS ITS INVOICE*
16 *ELECTRONICALLY, IN CONFORMANCE WITH THE POLICIES AND PROCEDURES OF THE*
17 *ACCOUNTING AND FINANCIAL MANAGEMENT SYSTEM OF STATE GOVERNMENT AND IDEN-*
18 *TIFIES THAT IT IS SEEKING EXPEDITED PAYMENT AS A SMALL BUSINESS, or in*

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

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1 the case of final payments on highway construction contracts seventy-
2 five calendar days, excluding legal holidays, after receipt of an
3 invoice for the amount of the contract payment due; except when:

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

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

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

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

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

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

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

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

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

44 S 2. Section 2 of a chapter of the laws of 2015 amending the state
45 finance law relating to requiring state agencies to pay small businesses
46 within fifteen days of receipt of an invoice, as proposed in legislative
47 bills numbers S.5283-A and A.6902-B, is amended to read as follows:

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

51 S 3. This act shall take effect on the same date and in the same
52 manner as a chapter of the laws of 2015 amending the the state finance
53 law relating to requiring state agencies to pay small businesses within
54 fifteen days of receipt of an invoice, as proposed in legislative bills
55 numbers S.5283-A and A.6902-B, takes effect.