

STATE OF NEW YORK

5344--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 8, 2017

Introduced by M. of A. CUSICK, PEOPLES-STOKES, D'URSO, MORINELLO, SANTA-BARBARA, SEPULVEDA, COLTON, BICHOTTE -- 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 and the general municipal law, in relation to release of subcontractor's retainage

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 139-f of the state finance law, as
2 amended by section 16 of part MM of chapter 57 of the laws of 2008, is
3 amended to read as follows:
4 2. Payment by contractors to subcontractors. Within seven calendar
5 days of the receipt of any payment from the public owner, the contractor
6 shall pay each of his subcontractors and materialmen the proceeds from
7 the payment representing the value of the work performed and/or materi-
8 als furnished by the subcontractor and/or materialman and reflecting the
9 percentage of the subcontractor's work completed or the materialman's
10 material supplied in the requisition approved by the owner and based
11 upon the actual value of the subcontract or purchase order less an
12 amount necessary to satisfy any claims, liens or judgments against the
13 subcontractor or materialman which have not been suitably discharged and
14 less any retained amount as hereafter described. Failure by the contrac-
15 tor to pay any subcontractor or materialman within seven calendar days
16 of the receipt of any payment from the public owner shall result in the
17 commencement and accrual of interest on amounts due to such subcontrac-
18 tor or materialman for the period beginning on the day immediately
19 following the expiration of such seven calendar day period and ending on
20 the date on which payment is made by the contractor to such subcontrac-
21 tor or materialman. Such interest payment shall be the sole responsibil-

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

LBD00257-02-7

1 ity of the contractor, and shall be paid at the rate of interest in
2 effect on the date payment is made by the contractor. Notwithstanding
3 any other provision of law to the contrary, interest shall be computed
4 at the rate established in paragraph (b) of subdivision one of section
5 seven hundred fifty-six-b of the general business law. The contractor
6 shall retain not more than five per centum of each payment to the
7 subcontractor and/or materialman except that the contractor may retain
8 in excess of five per centum but not more than ten per centum of each
9 payment to the subcontractor provided that prior to entering into a
10 subcontract with the contractor, the subcontractor is unable or unwill-
11 ing to provide a performance bond and a labor and material bond, both in
12 the full amount of the subcontract, at the request of the contractor.
13 However, the contractor shall retain nothing from those payments repres-
14 enting proceeds owed the subcontractor and/or materialman from the
15 public owner's payments to the contractor for the remaining amounts of
16 the contract balance as provided in subdivision one of this section. If
17 the contractor has failed to submit a requisition for payment of the
18 remaining amounts of the contract balance within ninety days of substan-
19 tial completion as provided in subdivision one of this section, then any
20 clause in the subcontract between the contractor and the subcontractor
21 or materialman which states that payment by the contractor to such
22 subcontractor or materialman is contingent upon payment by the owner to
23 the contractor shall be deemed invalid. Within seven calendar days of
24 the receipt of payment from the contractor, the subcontractor and/or
25 materialman shall pay each of his subcontractors and materialmen in the
26 same manner as the contractor has paid the subcontractor, including
27 interest as herein provided above. Nothing provided herein shall create
28 any obligation on the part of the public owner to pay or to see to the
29 payment of any moneys to any subcontractor or materialman from any
30 contractor nor shall anything provided herein serve to create any
31 relationship in contract or otherwise, implied or expressed, between the
32 subcontractor or materialman and the public owner. Notwithstanding any
33 other provision of this section or other law, any retainage held by a
34 public owner or contractor representing retainage for a subcontractor's
35 work shall be released, less two times the value of any remaining items
36 to be completed by the subcontractor and an amount necessary to satisfy
37 any claims, liens or judgments against the subcontractor or materialman
38 which have not been suitably discharged no later than sixty days from
39 the completion and acceptance by the public owner of the subcontractor's
40 work.

41 § 2. Subdivision 2 of section 106-b of the general municipal law, as
42 amended by section 15 of part MM of chapter 57 of the laws of 2008, is
43 amended to read as follows:

44 2. Payment by contractors to subcontractors. Within seven calendar
45 days of the receipt of any payment from the public owner, the contractor
46 shall pay each of his subcontractors and materialmen the proceeds from
47 the payment representing the value of the work performed and/or materi-
48 als furnished by the subcontractor and/or materialman and reflecting the
49 percentage of the subcontractor's work completed or the materialman's
50 material supplied in the requisition approved by the owner and based
51 upon the actual value of the subcontract or purchase order less an
52 amount necessary to satisfy any claims, liens or judgments against the
53 subcontractor or materialman which have not been suitably discharged and
54 less any retained amount as hereafter described. Failure by the contrac-
55 tor to make any payment, including any remaining amounts of the contract
56 balance as hereinafter described, to any subcontractor or materialman

1 within seven calendar days of the receipt of any payment from the public
2 owner shall result in the commencement and accrual of interest on
3 amounts due to such subcontractor or materialman for the period begin-
4 ning on the day immediately following the expiration of such seven
5 calendar day period and ending on the date on which payment is made by
6 the contractor to such subcontractor or materialman. Such interest shall
7 be the sole responsibility of the contractor, and shall be paid at the
8 rate of interest in effect on the date payment is made by the contrac-
9 tor. Notwithstanding any other provision of law to the contrary, inter-
10 est shall be computed at the rate established in paragraph (b) of subdi-
11 vision one of section seven hundred fifty-six-b of the general business
12 law. The contractor shall retain not more than five per centum of each
13 payment to the subcontractor and/or materialman except that the contrac-
14 tor may retain in excess of five per centum but not more than ten per
15 centum of each payment to the subcontractor provided that prior to
16 entering into a subcontract with the contractor, the subcontractor is
17 unable or unwilling to provide a performance bond and a labor and mate-
18 rial bond both in the full amount of the subcontract at the request of
19 the contractor. However, the contractor shall retain nothing from those
20 payments representing proceeds owed the subcontractor and/or materialman
21 from the public owner's payments to the contractor for the remaining
22 amounts of the contract balance as provided in subdivision one of this
23 section. If the contractor has failed to submit a requisition for
24 payment of the remaining amounts of the contract balance within ninety
25 days of substantial completion as provided in subdivision one of this
26 section, then any clause in the subcontract between the contractor and
27 the subcontractor or materialman which states that payment by the
28 contractor to such subcontractor or materialman is contingent upon
29 payment by the owner to the contractor shall be deemed invalid. Within
30 seven calendar days of the receipt of payment from the contractor, the
31 subcontractor and/or materialman shall pay each of his subcontractors
32 and materialmen in the same manner as the contractor has paid the
33 subcontractor, including interest as herein provided above. Nothing
34 provided herein shall create any obligation on the part of the public
35 owner to pay or to see to the payment of any moneys to any subcontractor
36 or materialman from any contractor nor shall anything provided herein
37 serve to create any relationship in contract or otherwise, implied or
38 expressed, between the subcontractor or materialman and the public
39 owner. Notwithstanding any other provision of this section or other
40 law, any retainage held by a public owner or contractor representing
41 retainage for a subcontractor's work shall be released, less two times
42 the value of any remaining items to be completed by the subcontractor
43 and an amount necessary to satisfy any claims, liens or judgments
44 against the subcontractor or materialman which have not been suitably
45 discharged no later than sixty days from the completion and acceptance
46 by the public owner of the subcontractor's work.

47 § 3. This act shall take effect immediately and shall apply to all
48 contracts entered into on or after such effective date.