

STATE OF NEW YORK

5238--A

2017-2018 Regular Sessions

IN SENATE

March 16, 2017

Introduced by Sens. DeFRANCISCO, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- 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-
22 ity of the contractor, and shall be paid at the rate of interest in

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

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

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

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

owner shall result in the commencement and accrual of interest on amounts due to such subcontractor or materialman for the period beginning on the day immediately following the expiration of such seven calendar day period and ending on the date on which payment is made by the contractor to such subcontractor or materialman. Such interest shall be the sole responsibility of the contractor, and shall be paid at the rate of interest in effect on the date payment is made by the contractor. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate established in paragraph (b) of subdivision one of section seven hundred fifty-six-b of the general business law. The contractor shall retain not more than five per centum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five per centum but not more than ten per centum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material bond both in the full amount of the subcontract at the request of the contractor. However, the contractor shall retain nothing from those payments representing proceeds owed the subcontractor and/or materialman from the public owner's payments to the contractor for the remaining amounts of the contract balance as provided in subdivision one of this section. If the contractor has failed to submit a requisition for payment of the remaining amounts of the contract balance within ninety days of substantial completion as provided in subdivision one of this section, then any clause in the subcontract between the contractor and the subcontractor or materialman which states that payment by the contractor to such subcontractor or materialman is contingent upon payment by the owner to the contractor shall be deemed invalid. Within seven calendar days of the receipt of payment from the contractor, the subcontractor and/or materialman shall pay each of his subcontractors and materialmen in the same manner as the contractor has paid the subcontractor, including interest as herein provided above. Nothing provided herein shall create any obligation on the part of the public owner to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor or materialman and the public owner. Notwithstanding any other provision of this section or other law, any retainage held by a public owner or contractor representing retainage for a subcontractor's work shall be released, less two times the value of any remaining items to be completed by the subcontractor and an amount necessary to satisfy any claims, liens or judgments against the subcontractor or materialman which have not been suitably discharged no later than sixty days from the completion and acceptance by the public owner of the subcontractor's work.

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