STATE OF NEW YORK

8848

IN SENATE

May 24, 2018

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to payment and retainage in construction contracts

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

Section 1. Section 756 of the general business law is amended by adding a new subdivision 7 to read as follows:

7. "Substantial completion" means the state in the progress of the project when the work required by the construction contract with the project owner is sufficiently complete in accordance with the construction contract so that the project owner may occupy or utilize the work for its intended use; provided further, that "substantial completion" shall apply to the entire project or a portion of the entire project if the construction contract with the project owner provides for occupancy or use of a portion of the project.

§ 2. The opening paragraph of paragraph (a) of subdivision 2 of section 756-a of the general business law, as amended by chapter 417 of the laws of 2009, is amended to read as follows:

A contractor shall be entitled to invoice the owner for interim payments at the end of the billing cycle. A contractor shall be entitled to submit a final invoice for payment in full [~~upon the performance of all the contractor's obligation under the contract~~] **upon reaching substantial completion under the construction contract**.

§ 3. Section 756-c of the general business law, as added by chapter 127 of the laws of 2002, is amended to read as follows:

§ 756-c. Retention. By mutual agreement of the relevant parties an owner may retain [~~a reasonable amount~~] **no more than five per centum** of the contract sum as retainage. A contractor or subcontractor may also retain [~~a reasonable amount~~] **no more than five per centum** for retainage [~~so long as the amount does not~~] **and in no case shall retainage** exceed the actual percentage retained by the owner. Retainage shall be released by the owner to the contractor no later than thirty days after the final approval of the work under a construction contract. In the event that an

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

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owner fails to release retainage as required by this article, or the contractor or subcontractor fails to release a proportionate amount of retainage to the relevant parties after receipt of retainage from the owner, the owner, contractor, or subcontractor, as the case may be, shall be subject to the payment of interest at the rate of one percent per month on the date retention was due and owing.

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