

# STATE OF NEW YORK

4097

2019-2020 Regular Sessions

## IN SENATE

February 28, 2019

Introduced by Sens. RANZENHOFER, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to damages to contracts occasioned by delay

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

1 Section 1. The state finance law is amended by adding a new section  
2 138-b to read as follows:

3 § 138-b. Damages occasioned by delay. 1. For purposes of this section  
4 the following terms shall have the following meanings:

5 (a) "Public entity" shall mean any state agency, department, board,  
6 bureau, municipal corporation, public benefit corporation, public  
7 authority or any other state entity, any school district or any other  
8 special district, or any instrumentality of the state or a political  
9 subdivision of the state.

10 (b) "Contract" shall mean any agreement awarded by a public entity for  
11 the design, construction, reconstruction, demolition, alteration, repair  
12 or improvement of any public works.

13 (c) "Delay" shall mean any delay, disruption, interference, ineffi-  
14 ciencies, impedance, hindrance or acceleration in the performance of the  
15 contract which causes damages to be incurred by a contractor, subcon-  
16 tractor or materialman to a contract and which is a direct result of the  
17 act or omission of the public entity for whom the contractor, subcon-  
18 tractor or materialman is providing services as provided for in the  
19 contract.

20 (d) "Claim" shall mean a request for additional costs from the follow-  
21 ing causes listed in this subdivision attributable to delay in the  
22 performance of a contract, occasioned by any act or omission to act by  
23 the public entity with whom a contractor, subcontractor or materialman  
24 has contracted with, but shall not include delay from any other cause,

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

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1 which delay shall be compensated for solely by an extension of time to  
2 complete the performance of the work:

3 (i) the failure of the public entity to take reasonable measures to  
4 coordinate and progress the work;

5 (ii) extended delays attributable to the public entity in the review  
6 or issuance of orders-on-contract or field orders, in shop drawing  
7 reviews and approvals or as a result of the cumulative impact of multi-  
8 ple orders on contract, which constitute a qualitative change to the  
9 project work and which have a verifiable impact on project costs;

10 (iii) the unavailability of the site for such an extended period of  
11 time which significantly affects the scheduled completion of the  
12 contract; or

13 (iv) the issuance of a stop work order relative to a substantial  
14 portion of work for a period exceeding thirty days.

15 2. All contracts made and awarded shall contain a clause which allows  
16 a contractor, subcontractor or materialman to make a claim for addi-  
17 tional costs arising from delay if such delay in the performance of the  
18 contract is caused by or occasioned by any act or omission of the entity  
19 with whom they have contracted in the contract, or any of such entity's  
20 representatives or agents.

21 3. The contractor, subcontractor or materialman shall provide a notice  
22 of claim of an anticipated claim for delay to a public entity by  
23 personal service or certified mail no more than fifteen days after such  
24 contractor knew the facts which form the basis of the claim. The public  
25 entity shall acknowledge receipt of the notice, in writing, within five  
26 days. Such notice shall at a minimum provide a description of any oper-  
27 ations that were, are being or will be delayed, and the date or dates  
28 and reasons for the delay. In no case shall oral notice constitute  
29 notice pursuant to this section or be deemed to constitute a waiver of  
30 the written notice requirement. For the purposes of this section, fail-  
31 ure to provide such notice shall be considered to have prejudiced the  
32 public entity.

33 4. Failure by a contractor to adequately progress the completion of  
34 work shall be considered in determining the causes of delay. For any  
35 claim asserted pursuant to this title, the contractor, subcontractor or  
36 materialman shall keep detailed written records of the costs and shall  
37 make them available for the purposes of audit and review. Failure to  
38 provide the required written notice or to maintain and furnish records  
39 of the costs of such claims shall constitute a waiver of the claim.

40 5. The following information shall be provided by the contractor upon  
41 request of a public entity if not previously supplied:

42 (a) a description of the operations that were delayed, the reasons for  
43 the delay and an explanation of how they were delayed;

44 (b) a detailed factual statement of the claim providing all necessary  
45 dates, locations and items of work affected by the claim;

46 (c) the date on which actions resulting in the claim occurred or  
47 conditions resulting in the claim became evident;

48 (d) the names, functions and activities of each contractor, subcon-  
49 tractor and materialman involved in, or knowledgeable about facts that  
50 gave rise to such claim;

51 (e) the identification of any pertinent documents, and the substance  
52 of any material oral communication relating to such claim;

53 (f) the amount of additional compensation sought; and

54 (g) if an extension of time is also requested, the specific number of  
55 days for which it is sought and the basis for such request as determined  
56 by an analysis of the construction progress schedule.

1     6. When submitting any claim, the contractor, subcontractor or materi-  
2     alman shall certify in writing and under oath that the supporting data  
3     is accurate and complete to his or her best knowledge or belief, and  
4     that any amount demanded reflects, in good faith, what he or she  
5     believes to be the public entity's liability.

6     § 2. This act shall take effect on the one hundred eightieth day after  
7     it shall have become a law and shall apply to all contracts entered into  
8     on and after such date.