STATE OF NEW YORK

5767

2021-2022 Regular Sessions

IN ASSEMBLY

February 24, 2021

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Judiciary

AN ACT to amend the lien law, in relation to requiring a surety bond for contractors and subcontractors where no public fund has been established for the financing of a public improvement

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

Section 1. Section 5 of the lien law, as amended by chapter 155 of the laws of 2004, is amended to read as follows:

§ 5. Liens under contracts for public improvements. A person performing labor for or furnishing materials to a contractor, his or her subcontractor or legal representative, for the construction or demolition of a public improvement pursuant to a contract by such contractor with the state or a public corporation, and any trust fund to which benefits and wage supplements are due or payable for the benefit of such person performing labor, shall have a lien for the principal and interest of the value or agreed price of such labor, including benefits and wage supplements due or payable for the benefit of any person performing labor, or materials upon the moneys of the state or of such corporation applicable to the construction or demolition of such improvement, to the extent of the amount due or to become due on such contract, and under a judgment of the court of claims awarded to the contractor for damages arising from the breach of such contract by the state, or awarded for furnishing labor or materials not contemplated by the provisions of said contract, upon filing a notice of lien as prescribed in this article, except as hereinafter in this article provided. Where no public fund has been established for the financing of a public improvement with estimated cost in excess of two hundred fifty thousand dollars, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a **surety** bond **issued by a surety duly licensed in the state of**

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

LBD01239-01-1

New York or [~~**other form of undertaking**~~] **an irrevocable letter of credit, in an amount equal to the cost of the construction work** guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

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