

STATE OF NEW YORK

7098

2025-2026 Regular Sessions

IN ASSEMBLY

March 20, 2025

Introduced by M. of A. BICHOTTE HERMELYN, HYNDMAN, SEAWRIGHT, WALKER --
read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the general municipal law, in
relation to payment by public owners to contractors and subcontractors

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

1 Section 1. The opening paragraph and subdivisions 1 and 2 of section
2 139-f of the state finance law, the opening paragraph as added by chap-
3 ter 769 of the laws of 1978, subdivision 1 as amended by chapter 128 of
4 the laws of 2021 and subdivision 2 as amended by section 16 of part MM
5 of chapter 57 of the laws of 2008, are amended to read as follows:

6 Notwithstanding the provisions of any other law to the contrary,
7 except the provisions of section thirty-eight of the highway law, all
8 contracts made and awarded by the state, or by any public department, or
9 by any public benefit corporation or by any public corporation or offi-
10 cial thereof, hereafter referred to as the public owner, for
11 construction, reconstruction or alteration of any public work project
12 shall provide for payment by the public owner to the contractor and
13 [~~payment by the contractor~~] to the subcontractor or subcontractors in
14 accordance with the following:

15 1. Payment by public owners to contractors. The contractor shall peri-
16 odically, in accordance with the terms of the contract, submit to the
17 public owner and/or [~~his~~] the public owner's agent a requisition for a
18 progress payment for the work performed and/or materials furnished to
19 the date of the requisition by the contractor and all subcontractors,
20 less any amount previously paid to the contractor or subcontractors. The
21 public owner shall in accordance with the terms of the contract approve
22 and promptly pay the requisition for the progress payment less an amount
23 necessary to satisfy any claims, liens or judgments against the contrac-
24 tor or subcontractors which have not been suitably discharged and less
25 any retained amount as hereafter described. The public owner shall

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

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1 retain not more than five per centum of each progress payment to the
2 contractor and subcontractors, except that the public owner may retain
3 in excess of five per centum but not more than ten per centum of each
4 progress payment to the contractor provided that there are no require-
5 ments by the public owner for the contractor to provide a performance
6 bond and a labor and material bond both in the full amount of the
7 contract. The public owner shall pay, upon requisition from the contrac-
8 tor, for materials pertinent to the project which have been delivered to
9 the site or off-site by the contractor [~~and/or subcontractor~~] and suit-
10 ably stored and secured as required by the public owner and the contrac-
11 tor provided, the public owner may limit such payment to materials in
12 short and/or critical supply and materials specially fabricated for the
13 project each as defined in the contract, including balances owed to
14 subcontractors. When the work or major portions thereof as contemplated
15 by the terms of the contract are substantially completed, the contractor
16 shall submit to the public owner and/or [~~his~~] the public owner's agent a
17 requisition for payment of the remaining amount of the contract balance.
18 Upon receipt of such requisition the public owner shall approve and
19 promptly pay the remaining amount of the contract balance less two times
20 the value of any remaining items to be completed and an amount necessary
21 to satisfy any claims, liens or judgments against the contractor which
22 have not been suitably discharged. As the remaining items of work are
23 satisfactorily completed or corrected, the public owner shall promptly
24 pay, upon receipt of a requisition, for these remaining items less an
25 amount necessary to satisfy any claims, liens or judgments against the
26 contractor which have not been suitably discharged. Any claims, liens
27 and judgments referred to in this section shall pertain to the project
28 and shall be filed in accordance with the terms of the applicable
29 contract and/or applicable laws.

30 2. Payment by [~~contractors~~] public owners to subcontractors. [~~Within~~
31 ~~seven calendar days of the receipt~~] (a) Each subcontractor shall period-
32 ically, in accordance with the terms of the contract, submit to the
33 public owner and/or the public owner's agent and to the contractor
34 and/or the contractor's agent a requisition for a progress payment for
35 the work performed and/or materials furnished to the date of the requi-
36 sition, less any amount previously paid to the contractor. At the time
37 of any payment [~~from~~] by the public owner[7] to the contractor as
38 provided in subdivision one of this section, the public owner shall pay
39 each of [~~his~~] the subcontractors and materialmen the proceeds from the
40 payment representing the value of the work performed and/or materials
41 furnished by the subcontractor and/or materialman and reflecting the
42 percentage of the subcontractor's work completed or the materialman's
43 material supplied in the requisition approved by the owner and based
44 upon the actual value of the subcontract or purchase order less an
45 amount necessary to satisfy any claims, liens or judgments against the
46 subcontractor or materialman which have not been suitably discharged and
47 less any retained amount as hereafter described. [~~Failure by the~~
48 ~~contractor to pay any subcontractor or materialman within seven calendar~~
49 ~~days of the receipt of any payment from the public owner shall result in~~
50 ~~the commencement and accrual of interest on amounts due to such subcon-~~
51 ~~tractor or materialman for the period beginning on the day immediately~~
52 ~~following the expiration of such seven calendar day period and ending on~~
53 ~~the date on which payment is made by the contractor to such subcon-~~
54 ~~tractor or materialman. Such interest payment shall be the sole responsibil-~~
55 ~~ity of the contractor, and shall be paid at the rate of interest in~~
56 ~~effect on the date payment is made by the contractor. Notwithstanding~~

1 ~~any other provision of law to the contrary, interest shall be computed~~
2 ~~at the rate established in paragraph (b) of subdivision one of section~~
3 ~~seven hundred fifty six b of the general business law. The contractor~~
4 ~~shall retain not more than five per centum of each payment to the~~
5 ~~subcontractor and/or materialman except that the contractor may retain~~
6 ~~in excess of five per centum but not more than ten per centum of each~~
7 ~~payment to the subcontractor provided that prior to entering into a~~
8 ~~subcontract with the contractor, the subcontractor is unable or unwill-~~
9 ~~ing to provide a performance bond and a labor and material bond, both in~~
10 ~~the full amount of the subcontract, at the request of the contractor.~~
11 ~~However, the contractor shall retain nothing from those payments repres-~~
12 ~~enting proceeds owed the subcontractor and/or materialman from the~~
13 ~~public owner's payments to the contractor for the remaining amounts of~~
14 ~~the contract balance as provided in subdivision one of this section. If~~
15 ~~the contractor has failed to submit a requisition for payment of the~~
16 ~~remaining amounts of the contract balance within ninety days of substan-~~
17 ~~tial completion as provided in subdivision one of this section, then any~~
18 ~~clause in the subcontract between the contractor and the subcontractor~~
19 ~~or materialman which states that payment by the contractor to such~~
20 ~~subcontractor or materialman is contingent upon payment by the owner to~~
21 ~~the contractor shall be deemed invalid. Within seven calendar days of~~
22 ~~the receipt of payment from the contractor, the subcontractor and/or~~
23 ~~materialman shall pay each of his subcontractors and materialmen in the~~
24 ~~same manner as the contractor has paid the subcontractor, including~~
25 ~~interest as herein provided above. Nothing provided herein shall create~~
26 ~~any obligation on the part of the public owner to pay or to see to the~~
27 ~~payment of any moneys to any subcontractor or materialman from any~~
28 ~~contractor nor shall anything provided herein serve to create any~~
29 ~~relationship in contract or otherwise, implied or expressed, between the~~
30 ~~subcontractor or materialman and the public owner.] The public owner~~
31 shall retain not more than five per centum of each progress payment to
32 the subcontractor except that the public owner may retain in excess of
33 five per centum but not more than ten per centum of each progress
34 payment to the subcontractor provided that there are no requirements by
35 the public owner for the subcontractor to provide a performance bond and
36 a labor and material bond both in the full amount of the contract. The
37 public owner shall pay, upon requisition from the contractor as provided
38 in subdivision one of this section, for materials pertinent to the
39 project which have been delivered to the site or off-site by the subcon-
40 tractor and suitably stored and secured as required by the public owner
41 and the subcontractor provided, the public owner may limit such payment
42 to materials in short and/or critical supply and materials specially
43 fabricated for the project each as defined in the contract. When the
44 work or major portions thereof as contemplated by the terms of the
45 contract are substantially completed, the subcontractor shall submit to
46 the contractor and/or the contractor's agent a requisition for payment
47 of the remaining amount of the contract balance. The contractor shall
48 submit a contract requisition containing all requisitions from subcon-
49 tractors to the public owner. Upon receipt of such requisition the
50 public owner shall approve and promptly pay the remaining amount of the
51 contract balance less two times the value of any remaining items to be
52 completed and an amount necessary to satisfy any claims, liens or judg-
53 ments against the subcontractor which have not been suitably discharged.
54 As the remaining items of work are satisfactorily completed or
55 corrected, the public owner shall promptly pay, upon receipt of a requi-
56 sition, for these remaining items less an amount necessary to satisfy

1 any claims, liens or judgments against the subcontractor which have not
2 been suitably discharged. Any claims, liens and judgments referred to in
3 this section shall pertain to the project and shall be filed in accord-
4 ance with the terms of the applicable contract and/or applicable laws.

5 (b) As used in this section, "subcontractor" means only those subcon-
6 tractors that report directly to the main contractor with whom the
7 public owner has entered into the contract, and does not include subcon-
8 tractors of subcontractors.

9 § 2. The opening paragraph and subdivisions 1 and 2 of section 106-b
10 of the general municipal law, the opening paragraph as amended by chap-
11 ter 661 of the laws of 1992, subdivision 1 as amended by chapter 128 of
12 the laws of 2021 and subdivision 2 as amended by section 15 of part MM
13 of chapter 57 of the laws of 2008, are amended to read as follows:

14 Notwithstanding the provisions of any other law to the contrary, all
15 contracts made and awarded by the appropriate officer, board or agency
16 of a political subdivision or of any district therein, hereafter
17 referred to as the public owner, for construction, reconstruction or
18 alteration of any public work project shall provide for payment by the
19 public owner to the contractor and [~~payment by the contractor~~] to the
20 subcontractor or subcontractors in accordance with the following:

21 1. Payment by public owners to contractors. (a) The contractor shall
22 periodically, in accordance with the terms of the contract, submit to
23 the public owner and/or [~~his~~] the public owner's agent a requisition for
24 a progress payment for the work performed and/or materials furnished to
25 the date of the requisition by the contractor and all subcontractors
26 less any amount previously paid to the contractor or subcontractors. The
27 public owner shall in accordance with the terms of the contract approve
28 and promptly pay the requisition for the progress payment less an amount
29 necessary to satisfy any claims, liens or judgments against the contrac-
30 tor or subcontractors which have not been suitably discharged and less
31 any retained amount as hereafter described. The public owner shall
32 retain not more than five per centum of each progress payment to the
33 contractor or subcontractors except that the public owner may retain in
34 excess of five per centum but not more than ten per centum of each
35 progress payment to the contractor provided that there are no require-
36 ments by the public owner for the contractor to provide a performance
37 bond and a labor and material bond both in the full amount of the
38 contract. The public owner shall pay, upon requisition from the contrac-
39 tor, for materials pertinent to the project which have been delivered to
40 the site or off-site by the contractor [~~and/or subcontractor~~] and suit-
41 ably stored and secured as required by the public owner and the contrac-
42 tor provided, the public owner may limit such payment to materials in
43 short and/or critical supply and materials specially fabricated for the
44 project each as defined in the contract. When the work or major portions
45 thereof as contemplated by the terms of the contract are substantially
46 completed, the contractor shall submit to the public owner and/or [~~his~~]
47 the public owner's agent a requisition for payment of the remaining
48 amount of the contract balance, including balances owed to subcontrac-
49 tors. Upon receipt of such requisition the public owner shall approve
50 and promptly pay the remaining amount of the contract balance less two
51 times the value of any remaining items to be completed and an amount
52 necessary to satisfy any claims, liens or judgments against the contrac-
53 tor which have not been suitably discharged. As the remaining items of
54 work are satisfactorily completed or corrected, the public owner shall
55 promptly pay, upon receipt of a requisition, for these items less an
56 amount necessary to satisfy any claims, liens or judgments against the

1 contractor which have not been suitably discharged. Any claims, liens
2 and judgments referred to in this section shall pertain to the project
3 and shall be filed in accordance with the terms of the applicable
4 contract and/or applicable laws. Where the public owner is other than
5 the city of New York, the term "promptly pay" shall mean payment within
6 thirty days, excluding legal holidays, of receipt of the requisition
7 unless such requisition is not approvable in accordance with the terms
8 of the contract. Notwithstanding the foregoing, where the public owner
9 is other than the city of New York and is a municipal corporation which
10 requires an elected official to approve progress payments, "promptly
11 pay" shall mean payment within forty-five days, excluding legal holi-
12 days, of receipt of the requisition unless such requisition is not
13 approvable in accordance with the terms of the contract.

14 (b) Not later than forty-five business days after the date when the
15 project has reached substantial completion, as such term is defined in
16 the contract or as it is contemplated by the terms of the contract, the
17 public owner shall submit to the contractor a written list describing
18 all remaining items to be completed by the contractor. Not later than
19 five business days after receiving a written list describing all remain-
20 ing items to be completed by the contractor, the contractor shall submit
21 to each subcontractor from whom the contractor is withholding retainage
22 a written list of all remaining items required to be completed by the
23 subcontractor. Such list may include items in addition to those items on
24 the public owner's list.

25 (c) Each public owner other than the city of New York which is
26 required to make a payment from public funds pursuant to a contract and
27 which does not make such contract payment by the required payment date
28 shall make an interest payment to the contractor on the amount of the
29 contract payment which is due unless failure to make such contract
30 payment is the result of a lien, attachment, or other legal process
31 against the money due said contractor, or unless the amount of the
32 interest payment as computed in accordance with the provisions set forth
33 hereinafter is less than ten dollars. Interest payments on amounts due
34 to a contractor pursuant to this paragraph shall be paid to the contrac-
35 tor for the period beginning on the day after the required payment date
36 and ending on the payment date for those payments required according to
37 this section and shall be paid at the rate of interest in effect on the
38 date when the interest payment is made. Notwithstanding any other
39 provision of law to the contrary, interest shall be computed at the rate
40 equal to the overpayment rate set by the commissioner of taxation and
41 finance pursuant to subsection (e) of section one thousand ninety-six of
42 the tax law. A pro rata share of such interest shall be paid by the
43 contractor or subcontractor, as the case may be, to subcontractors and
44 materialmen in a proportion equal to the percentage of their pro rata
45 share of the contract payment. Such pro rata share of interest shall be
46 due to such subcontractors and materialmen only for those payments which
47 are not paid to such subcontractors and materialmen prior to the date
48 upon which interest begins to accrue between the public owner and the
49 contractor. Such pro rata shares of interest shall be computed daily
50 until such payments are made to the subcontractors and materialmen.

51 (d) For projects of a public owner other than the city of New York, if
52 state funds directly related to and which have been budgeted for the
53 construction of the project for which the payment is due have not been
54 received prior to the expiration of the thirty or forty-five days speci-
55 fied in paragraph (a) of this subdivision, the interest provided for in
56 paragraph (c) of this subdivision shall not begin to accrue and payment

1 shall not be due, until ten days after receipt of the state funds. Noth-
2 ing in this paragraph shall prevent the public owner from approving the
3 requisition, subject to receipt of the state funds. State funds shall
4 mean monies provided to the public owner by the state, its officers,
5 boards, departments, commissions, or a public authority and public bene-
6 fit corporation, a majority of the members of which have been appointed
7 by the governor or who serve as members by virtue of holding a civil
8 office of the state, or a combination thereof.

9 2. Payment by ~~[contractors]~~ public owners to subcontractors. ~~[Within~~
10 ~~seven calendar days of the receipt]~~ (a) Each subcontractor shall period-
11 ically, in accordance with the terms of the contract, submit to the
12 public owner and/or the public owner's agent and to the contractor
13 and/or the contractor's agent a requisition for a progress payment for
14 the work performed and/or materials furnished to the date of the requi-
15 sition, less any amount previously paid to the contractor. At the time
16 of any payment ~~[from]~~ by the public owner~~[7]~~ to the contractor as
17 provided in subdivision one of this section, the public owner shall pay
18 each of ~~[his]~~ the subcontractors and materialman the proceeds from the
19 payment representing the value of the work performed and/or materials
20 furnished by the subcontractor and/or materialmen and reflecting the
21 percentage of the subcontractor's work completed or the materialmen's
22 material supplied in the requisition approved by the owner and based
23 upon the actual value of the subcontract or purchase order less an
24 amount necessary to satisfy any claims, liens or judgments against the
25 subcontractor or materialman which have not been suitably discharged and
26 less any retained amount as hereafter described. ~~[Failure by the~~
27 ~~contractor to make any payment, including any remaining amounts of the~~
28 ~~contract balance as hereinafter described, to any subcontractor or~~
29 ~~materialman within seven calendar days of the receipt of any payment~~
30 ~~from the public owner shall result in the commencement and accrual of~~
31 ~~interest on amounts due to such subcontractor or materialman for the~~
32 ~~period beginning on the day immediately following the expiration of such~~
33 ~~seven calendar day period and ending on the date on which payment is~~
34 ~~made by the contractor to such subcontractor or materialman. Such inter-~~
35 ~~est shall be the sole responsibility of the contractor, and shall be~~
36 ~~paid at the rate of interest in effect on the date payment is made by~~
37 ~~the contractor. Notwithstanding any other provision of law to the~~
38 ~~contrary, interest shall be computed at the rate established in para-~~
39 ~~graph (b) of subdivision one of section seven hundred fifty-six b of the~~
40 ~~general business law. The contractor shall retain not more than five per~~
41 ~~centum of each payment to the subcontractor and/or materialman except~~
42 ~~that the contractor may retain in excess of five per centum but not more~~
43 ~~than ten per centum of each payment to the subcontractor provided that~~
44 ~~prior to entering into a subcontract with the contractor, the subcon-~~
45 ~~tractor is unable or unwilling to provide a performance bond and a labor~~
46 ~~and material bond both in the full amount of the subcontract at the~~
47 ~~request of the contractor. However, the contractor shall retain nothing~~
48 ~~from those payments representing proceeds owed the subcontractor and/or~~
49 ~~materialman from the public owner's payments to the contractor for the~~
50 ~~remaining amounts of the contract balance as provided in subdivision one~~
51 ~~of this section. If the contractor has failed to submit a requisition~~
52 ~~for payment of the remaining amounts of the contract balance within~~
53 ~~ninety days of substantial completion as provided in subdivision one of~~
54 ~~this section, then any clause in the subcontract between the contractor~~
55 ~~and the subcontractor or materialman which states that payment by the~~
56 ~~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.]~~

The public owner shall retain not more than five per centum of each progress payment to the subcontractor except that the public owner may retain in excess of five per centum but not more than ten per centum of each progress payment to the subcontractor provided that there are no requirements by the public owner for the subcontractor to provide a performance bond and a labor and material bond both in the full amount of the contract. The public owner shall pay, upon requisition from the contractor as provided in subdivision one of this section, for materials pertinent to the project which have been delivered to the site or off-site by the subcontractor and suitably stored and secured as required by the public owner and the subcontractor provided, the public owner may limit such payment to materials in short and/or critical supply and materials specially fabricated for the project each as defined in the contract. When the work or major portions thereof as contemplated by the terms of the contract are substantially completed, the subcontractor shall submit to the contractor and/or the contractor's agent a requisition for payment of the remaining amount of the contract balance. The contractor shall submit a contract requisition containing all requisitions from subcontractors to the public owner. Upon receipt of such requisition the public owner shall approve and promptly pay the remaining amount of the contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the public owner shall promptly pay, upon receipt of a requisition, for these remaining items less an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged. Any claims, liens and judgments referred to in this section shall pertain to the project and shall be filed in accordance with the terms of the applicable contract and/or applicable laws.

(b) As used in this section, "subcontractor" means only those subcontractors that report directly to the main contractor with whom the public owner has entered into the contract, and does not include subcontractors of subcontractors.

§ 3. This act shall take effect immediately. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.