

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATORS LORIGO, MILLS, DIXON, MORTON, RATH & HARDWICK**

Re: Support for release of Subcontractor's Retainage Fees

WHEREAS, current New York State laws allows contractors to accept public funds and pay their subcontractors after an entire project has been completed; and

WHEREAS, many subcontractors finish a substantial portion of their work prior to the completion of the final project; and

WHEREAS, in certain instances the subcontractor may be waiting on the 5% to 10% retainage fee for nearly a year or more before being paid the retainage fee; and

WHEREAS, retainage fees often represent the profit that will be made by the subcontractor, leaving them to carry lost revenue for the duration of the holding period; and

WHEREAS, members of the New York State Legislature and the construction industry have put forth proposals requiring the release of subcontractor retainage fees held by a public owner or contractor sixty (60) days after completion of the subcontracting work; and

WHEREAS, this measure would help subcontractors get paid immediately after completion of their work, while affording the general contractor the opportunity to inspect the sub's work.

NOW, THEREFORE, BE IT

RESOLVED, that this honorable body hereby supports the New York State Senate bill S2924-2015 and the Assembly's companion bill A4266-2015; and, be it further

RESOLVED, that certified copies of this resolution be sent to the Western New York delegations to the New York State Senate and Assembly.

Fiscal Impact: None

S02924 Summary:

BILL NO S02924
 SAME AS SAME AS UNI.
 SPONSOR DEFRANCISCO
 COSPNSR
 MLTSPNSR

Amd S139-f, St Fin L; amd S106-b, Gen Muni L

Provides for release of subcontractor's retainage held by a public owner contractor sixty days after substantial completion of work.

S02924 Text:

S T A T E O F N E W Y O R K

S. 2924

A. 4

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 30, 2015

IN SENATE -- Introduced by Sen. DeFRANCISCO -- read twice and printed, and when printed to be committed to the Committee on F

IN ASSEMBLY -- Introduced by M. of A. CUSICK, PEOPLES-STOKES -- Sponsored by -- M. of A. ROBINSON -- read once and referred to Committee on Governmental Operations

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
 2 amended by section 16 of part MM of chapter 57 of the laws of 20
 3 amended to read as follows:

4 2. Payment by contractors to subcontractors. Within seven c
 5 days of the receipt of any payment from the public owner, the con
 6 shall pay each of his subcontractors and materialmen the proceed
 7 the payment representing the value of the work performed and/or

Intro. 11-3

Page 2 of 10

8 als furnished by the subcontractor and/or materialman and reflect
 9 percentage of the subcontractor's work completed or the materi
 10 material supplied in the requisition approved by the owner ar
 11 upon the actual value of the subcontract or purchase order 1
 12 amount necessary to satisfy any claims, liens or judgments agai
 13 subcontractor or materialman which have not been suitably dischar
 14 less any retained amount as hereafter described. Failure by the c
 15 tor to pay any subcontractor or materialman within seven calenda
 16 of the receipt of any payment from the public owner shall result
 17 commencement and accrual of interest on amounts due to such subc
 18 tor or materialman for the period beginning on the day imme
 19 following the expiration of such seven calendar day period and er
 20 the date on which payment is made by the contractor to such subc
 21 tor or materialman. Such interest payment shall be the sole resp

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

LBD075

S. 2924

2

1 ity of the contractor, and shall be paid at the rate of inte
 2 effect on the date payment is made by the contractor. Notwiths
 3 any other provision of law to the contrary, interest shall be c
 4 at the rate established in paragraph (b) of subdivision one of
 5 seven hundred fifty-six-b of the general business law. The cor
 6 shall retain not more than five per centum of each payment
 7 subcontractor and/or materialman except that the contractor may
 8 in excess of five per centum but not more than ten per centum
 9 payment to the subcontractor provided that prior to entering
 10 subcontract with the contractor, the subcontractor is unable or
 11 ing to provide a performance bond and a labor and material bond,
 12 the full amount of the subcontract, at the request of the cont
 13 However, the contractor shall retain nothing from those payments
 14 enting proceeds owed the subcontractor and/or materialman f
 15 public owner's payments to the contractor for the remaining amou
 16 the contract balance as provided in subdivision one of this sect
 17 the contractor has failed to submit a requisition for payment
 18 remaining amounts of the contract balance within ninety days of s
 19 tial completion as provided in subdivision one of this section, t
 20 clause in the subcontract between the contractor and the subcor
 21 or materialman which states that payment by the contractor t
 22 subcontractor or materialman is contingent upon payment by the c
 23 the contractor shall be deemed invalid. Within seven calendar c
 24 the receipt of payment from the contractor, the subcontractor
 25 materialman shall pay each of his subcontractors and materialmen
 26 same manner as the contractor has paid the subcontractor, in
 27 interest as herein provided above. Nothing provided herein shall
 28 any obligation on the part of the public owner to pay or to see
 29 payment of any moneys to any subcontractor or materialman fr
 30 contractor nor shall anything provided herein serve to cre
 31 relationship in contract or otherwise, implied or expressed, betw
 32 subcontractor or materialman and the public owner. NOTWITHSTANDI

Intro. 11-3

Page 3 of 10

33 OTHER PROVISION OF THIS SECTION OR OTHER LAW, ANY RETAINAGE HE
 34 PUBLIC OWNER OR CONTRACTOR REPRESENTING RETAINAGE FOR A SUBCONTR
 35 WORK SHALL BE RELEASED, LESS AN AMOUNT NECESSARY TO SATISFY ANY
 36 LIENS OR JUDGMENTS AGAINST THE SUBCONTRACTOR OR MATERIALMAN WHIC
 37 NOT BEEN SUITABLY DISCHARGED AND LESS AN AMOUNT NECESSARY TO SATI
 38 CHARGES FOR UNFINISHED PUNCH LIST ITEMS, NO LATER THAN SIXTY DA
 39 THE COMPLETION AND ACCEPTANCE BY THE PUBLIC OWNER OF THE SUBCONTR
 40 WORK.

41 S 2. Subdivision 2 of section 106-b of the general municipal l
 42 amended by section 15 of part MM of chapter 57 of the laws of 2
 43 amended to read as follows:

44 2. Payment by contractors to subcontractors. Within seven c
 45 days of the receipt of any payment from the public owner, the con
 46 shall pay each of his subcontractors and materialmen the procee
 47 the payment representing the value of the work performed and/or
 48 als furnished by the subcontractor and/or materialman and reflect
 49 percentage of the subcontractor's work completed or the materi
 50 material supplied in the requisition approved by the owner and
 51 upon the actual value of the subcontract or purchase order
 52 amount necessary to satisfy any claims, liens or judgments again
 53 subcontractor or materialman which have not been suitably dischar
 54 less any retained amount as hereafter described. Failure by the c
 55 tor to make any payment, including any remaining amounts of the c
 56 balance as hereinafter described, to any subcontractor or mate
 S. 2924 3

1 within seven calendar days of the receipt of any payment from the
 2 owner shall result in the commencement and accrual of inter
 3 amounts due to such subcontractor or materialman for the period
 4 ning on the day immediately following the expiration of suc
 5 calendar day period and ending on the date on which payment is n
 6 the contractor to such subcontractor or materialman. Such interes
 7 be the sole responsibility of the contractor, and shall be paid
 8 rate of interest in effect on the date payment is made by the c
 9 tor. Notwithstanding any other provision of law to the contrary,
 10 est shall be computed at the rate established in paragraph (b) of
 11 vision one of section seven hundred fifty-six-b of the general k
 12 law. The contractor shall retain not more than five per centum
 13 payment to the subcontractor and/or materialman except that the c
 14 tor may retain in excess of five per centum but not more than t
 15 centum of each payment to the subcontractor provided that p
 16 entering into a subcontract with the contractor, the subcontrac
 17 unable or unwilling to provide a performance bond and a labor ar
 18 rial bond both in the full amount of the subcontract at the requ
 19 the contractor. However, the contractor shall retain nothing frc
 20 payments representing proceeds owed the subcontractor and/or mate
 21 from the public owner's payments to the contractor for the re
 22 amounts of the contract balance as provided in subdivision one
 23 section. If the contractor has failed to submit a requisiti
 24 payment of the remaining amounts of the contract balance withir
 25 days of substantial completion as provided in subdivision one c
 26 section, then any clause in the subcontract between the contrac

Intro. 11-3

Page 4 of 10

27 the subcontractor or materialman which states that payment
28 contractor to such subcontractor or materialman is conting
29 payment by the owner to the contractor shall be deemed invalid.
30 seven calendar days of the receipt of payment from the contract
31 subcontractor and/or materialman shall pay each of his subcont
32 and materialmen in the same manner as the contractor has p
33 subcontractor, including interest as herein provided above.
34 provided herein shall create any obligation on the part of the
35 owner to pay or to see to the payment of any moneys to any subcor
36 or materialman from any contractor nor shall anything provided
37 serve to create any relationship in contract or otherwise, imp
38 expressed, between the subcontractor or materialman and the
39 owner. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION C
40 LAW, ANY RETAINAGE HELD BY A PUBLIC OWNER OR CONTRACTOR REPRE
41 RETAINAGE FOR A SUBCONTRACTOR'S WORK SHALL BE RELEASED, LESS AN
42 NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE
43 TRACTOR OR MATERIALMAN WHICH HAVE NOT BEEN SUITABLY DISCHARGED A
44 AN AMOUNT NECESSARY TO SATISFY ANY CHARGES FOR UNFINISHED PUNC
45 ITEMS, NO LATER THAN SIXTY DAYS FROM THE COMPLETION AND ACCEPT
46 THE PUBLIC OWNER OF THE SUBCONTRACTOR'S WORK.
47 S 3. This act shall take effect immediately and shall apply
48 contracts entered into on or after such effective date.



Bill A4266-2015

Provides for release of subcontractor's retainage held by a public owner or contractor sixty days after substantial completion of work

Provides for release of subcontractor's retainage held by a public owner or contractor sixty days after substantial completion of work.

Details

- Same as:S2924-2015
 - VersionsA4266-2015
 - Sponsor:Cusick
 - Multi-sponsor(s):Robinson
 - Co-sponsor(s):Peoples-Stokes
 - Committee:GOVERNMENTAL OPERATIONS
 - Law Section: State Finance Law
 - Law: Amd §139-f, St Fin L; amd §106-b, Gen Muni L
-

Actions

- Jan 30, 2015: referred to governmental operations

Text

STATE OF NEW YORK

S. 2924

A. 4266

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

January 30, 2015

IN SENATE -- Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- Introduced by M. of A. CUSICK, PEOLES-STOKES -- Multi-Sponsored by -- M. of A. ROBINSON -- 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 release of subcontractor's retainage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 139-f of the state finance law, as amended by section 16 of part MM of chapter 57 of the laws of 2008, is amended to read as follows:

2. Payment by contractors to subcontractors. Within seven calendar days of the receipt of any payment from the public owner, the contractor shall pay each of his subcontractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialman and reflecting the percentage of the subcontractor's work completed or the materialman's material supplied in the requisition approved by the owner and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or materialman which have not been suitably discharged and less any retained amount as hereafter described. Failure by the contractor to pay any subcontractor or materialman 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 payment shall be the sole responsibility

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

LBD07512-01-5

S. 2924

2

A. 4266

ity 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 AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE SUBCONTRACTOR OR MATERIALMAN WHICH HAVE NOT BEEN SUITABLY DISCHARGED AND LESS AN AMOUNT NECESSARY TO SATISFY ANY CHARGES FOR UNFINISHED PUNCH LIST ITEMS, NO LATER THAN SIXTY DAYS FROM THE COMPLETION AND ACCEPTANCE BY THE PUBLIC OWNER OF THE SUBCONTRACTOR'S WORK.

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

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

S. 2924

3

A. 4266

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 AN AMOUNT NECESSARY TO SATISFY ANY CLAIMS, LIENS OR JUDGMENTS AGAINST THE SUBCONTRACTOR OR MATERIALMAN WHICH HAVE NOT BEEN SUITABLY DISCHARGED AND LESS AN AMOUNT NECESSARY TO SATISFY ANY CHARGES FOR UNFINISHED PUNCH LIST ITEMS, NO LATER THAN SIXTY DAYS FROM THE COMPLETION AND ACCEPTANCE BY THE PUBLIC OWNER OF THE SUBCONTRACTOR'S WORK.

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

Comments



This content is licensed under Creative Commons BY-NC-ND 3.0. Permissions beyond the scope of this license are available [here](#).

The software and services provided under this site are offered under the BSD License and the GPL v3 License.