



EASTERN CONTRACTORS ASSOCIATION, INC.

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MEMORANDUM IN SUPPORT

**A6985-B Cusick – In Assembly Economic Development Committee
S5482-B Breslin – In Consumer Protection Committee**

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

On behalf of Eastern Contractors Association, Inc. (ECA), its nearly 300 members, and the 500 signatory contractors it represents through collective bargaining, we support A6985-B Cusick/S5482B Breslin. This legislation would amend the general business law by creating a definition of substantial completion in private construction contracts, and limiting the retainage held by private project owners to 5%.

ECA is a trade association of general contractors, subcontractors, suppliers, and service firms engaged in commercial, industrial, and institutional construction throughout eastern New York. ECA traces its history to 1890 and is the region's only "full-service" contractor association serving the needs of all segments of the construction industry. The Association's footprint covers counties in the eastern part of New York State, from just south of Albany up to the Canadian border and as far west as Utica.

Under the current operation of law in New York, contractors and subcontractors are often required to wait a long period of time (sometimes over a year) after an owner occupies a construction contract to receive the retainage on a contract. Retainage is a portion of the agreed upon contract price that deliberately withheld until the work is "substantially complete". The goal of retainage is to assure that a contractor or subcontractor will satisfy its obligations and complete a construction project.

This legislation will ensure that contractors and subcontractors are treated fairly by owners in construction contracts by defining substantial completion as how the term is negotiated or contemplated by the contract. The ambiguity in existing law relative to the definition of substantial completion and the release of retainage leads to unnecessary disputes, which can delay the payment of retainage by a year.

Under current New York law, retainage in private construction projects can be any "reasonable amount", often up to 10% (which can be the entire profit margin for a contractor or subcontractor) of a project's total value. This legislation would limit retainage to 5%, which ensures that contractors and subcontractors do not lose all of their profit to unnecessary delays during disputes as to whether substantial completion is met. Since contractors and subcontractors often advance the cost of materials on a project, this legislation will ensure that they recuperate the majority of their costs, while still ensuring that contractors and subcontractors finish the work to guarantee the rest of their profit.

Further, over the past two years, these issues have been addressed in public contracts. Most recently, A.967 (Cusick) / S.880 (Breslin) (a chapter amendment to Chapter 341 of 2020) passed both houses. That bill defines substantial completion in public contracts as negotiated or contemplated under the terms of a contract. This legislation mirrors that recently passed framework, and limits retainage to 5% (mirroring the maximum retainage of public contracts in New York).

For these reasons, the Eastern Contractors Association strongly supports this bill.

If you have any questions or need additional information, contact our government affairs representatives: Nick Barrella, Park Strategies, LLC (nick@capitolgroupllc.com); 518-426-3800.

Sincerely,



Todd G. Helfrich
President and CEO
Eastern Contractors Association, Inc.