

Law Alert: New York State Governor Signs Retainage Bill Into Law, by Andrew Richards, Esq., 11-20-2023

On Friday, November 17, New York State Governor Kathy Hochul signed Empire State Subcontractors Association's "5% Retainage Bill" into law, which amends the general business law as it relates to payment and retainage in construction contracts. This bill is intended to reduce delays occurring in the release of retainage on private construction jobs that have met "substantial completion" requirements. This new law takes effect immediately and applies to contracts entered into on or after the effective date of November 17.

Specifically, the legislation (S.3539/A.4167), which amends Sections 756-a and 756-c of the New York State General Business Law, will limit the withholding of retainage by owners of private commercial construction projects to no more than five (5) percent of the contract sum where the value of the project equals or exceeds \$150,000.

This will ultimately benefit subcontractors since the law already prohibits general contractors from withholding a higher percentage of retainage from subcontractors than the owner is withholding from the general contractor. The new law will also accelerate final payment to the contractor and, therefore, to subcontractors by providing that the general contractor may submit a final invoice for payment in full upon reaching "substantial completion" as such term is defined in the contract or as it is contemplated by the terms of the contract.

Ultimately, it will be interesting to see how the general contractors deal with holding back some money for final completion since retainage is generally paid upon final completion. The bill is being touted as a win for contractors and ultimately subcontractors, with the Subcontractors Trade Association calling it "a crucial step forward in ensuring fairer practices and greater financial stability for subcontractors operating with New York State."

Kaufman Dolowich Can Help

Kaufman Dolowich's construction law practice is well-known throughout New York and New Jersey for providing comprehensive legal services to the construction industry. Whether it's navigating this new law or any other local or state statutes, Kaufman Dolowich's team of skilled construction attorneys can assist.