



New York State Governor Cuomo Vetoes "Game-Changing" Delay Damages Construction Bill

By Andrew L. Richards, co-managing Partner – Long Island office of Kaufman Dolowich & Voluck, LLP (KDV) and Chair Construction Law practice group; Erik Ortmann, Partner Construction Law, and Elizabeth Marchionni, Construction Law attorney at KDV.

*UPDATE: December 28, 2018 – New York Gov. Andrew Cuomo has vetoed a bill that would have allowed contractors and subcontractors to bring claims for delay damages or inefficiency damages, citing concerns over increasing liability for public entities and “technical deficiencies.” The rejection is a setback to the construction industry contractors and vendors who bid public works projects and who have supported the legislation. The legislation, which was modeled from provisions in an existing State contract, would have more broadly opened the door for delay claims, beyond the narrow exceptions set forth by the New York Court of Appeals in the seminal case *Corinno-Civetta Construction Corp. v. City of New York*, 67 N.Y.2d 291 (1986). The veto stated that the bill went beyond the model State contract provisions by, allowing subcontractors and suppliers to make direct claims against the State, removing language that would limit and qualify what delay costs/damages are recoverable, and eliminating certain notice requirements. Gov. Cuomo suggested that the legislation would “make it impossible for public owners to effectively mitigate risk” and would create “a significant administrative burden to all public entities”.*

The veto was not surprising, considering that Gov. Cuomo had rejected legislation in 2016 that would have invalidated certain contractual notice provisions in public contracts, including those which would have related to delay claims. See Veto No. 304 of 2016. The State has sent a clear message that the existing contractual and legal hurdles to pursuing a delay claim will remain in place and be enforced. The State will continue to shift the risk and burden of delay and delay claims to the contractor. Our firm has seen too many justifiable delay claims jeopardized because a contractor has not properly preserved or presented its claim and come to our office too late. Now more than ever, contractors must immediately work with their staff and legal counsel to ensure that delay claims are timely and properly noticed, documented, calculated, presented, and articulated in the context of the common law exceptions to no damages for delay.

Read our previous post regarding this bill (July 15, 2018): [New York State Delay Damages Bill \(A.7945-A\) Passed the Senate on June 14th, 2018.](#)

Read Veto memo #355 - Senate Bill Number 6686.