

NY Gov. Vetoes 'Game-Changing' Construction Bill, Law360, ft. Andrew Richards

Andrew L. Richards, co-managing partner – Long Island office of Kaufman Dolowich & Voluck, LLP (KD) and Chair Construction Law practice group, was quoted in a January 2, 2019 Law360 article that was written by John Kennedy.

Law360 (January 2, 2019, 9:38 PM EST) — Members of New York’s construction industry said they’re disappointed the governor vetoed a “game-changing” bill that would’ve let companies working on public projects seek payment for delays caused by government agencies.

Between Christmas and the new year, Gov. Andrew Cuomo deep-sixed S06686, which would’ve changed state law to require that all public contracts allow contractors, subcontractors and suppliers to make claims for additional cash if project delays are caused by the agency or official overseeing the work. Many state construction contracts currently include clauses that forbid companies from making such claims, Cuomo said.

The governor, a Democrat, said in his decision that the bipartisan bill suffers from some technical problems and that there’s a large amount of case law that interprets these “no damage for delay” clauses. He described issues including potentially “costly and complex” disputes that could further delay projects and said allowing subcontractors and suppliers to bring claims may lead to an increased volume of claims and court fights.

Overturning “well-settled law” would increase what the government could be held legally responsible for, he added.

That was part of what the construction industry liked about the bill, though, according to Andrew L. Richards, chair of Kaufman Dolowich & Voluck LLP’s construction practice group. He said it appears the governor understands public agencies “can’t get out of their own way” and used existing law to give them the defense they need when they perform poorly.

“He’s just protecting the public entities from their own bad services,” Richards said. “They should be held responsible for their bad acts.”

Whatever happens, the construction industry seems willing to continue the fight.

One trade group, the Subcontractors Trade Association, said Wednesday it plans to craft a legislative strategy for possible future proposals and will seek meetings with the governor in an attempt to find common ground on the issue.

For now, though, “It’s business as usual,” Richards said.