

July 9, 2019

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12244

Re: S.2394, Breslin/ A.3552, Cusick
Relates to payment in construction contracts

Dear Governor Cuomo,

The New York State School Boards Association **opposes** the above referenced legislation and encourages your veto.

The bill would restrict the ability of public entities, including school districts, to hold a small portion of payment for an existing construction project by requiring full payment when a portion of the building can be occupied or otherwise available for its intended use.

School districts are generally permitted to retain just 5% of a capital project's cost until the project is fully completed as ordered. Retainage is a commonly-used industry practice and represents the only true way a school district can ensure a project is completed in a timely fashion and according to agreed upon specifications. Removal or restriction of this retainage ability is likely to lead to late projects, unfinished work and possible cost increases.

In 2015, similar legislation was vetoed (veto number 275). That proposal would have removed a school district's ability to hold retainage for delivery of materials and supplies. Commenting on the practice of retainage, the 2015 veto message noted:

"Retainage is a well-established practice that permits municipalities, governmental entities, and public and private entities to withhold a small percentage of payment, ranging up to 5 to 10 percent, from contractors until the completion of a project. It is an effective method of ensuring that public construction projects are properly, timely, and fully completed. When there is a problem with project completion, the public owner needs a mechanism, other than litigation, to require that the general contractor fix the problem..."

It is not uncommon for school districts to occupy parts of buildings that still require work as part of a construction project. However, school districts can only begin to receive building aid for capital projects upon successful completion and submission of a 'Final Cost Report.' This report cannot be filed until the project is fully complete. If retainage were required to be released when even just a portion of the building is in use instead of when a project is actually complete, it increases the likelihood of project complications and for a delayed start of building aid, which can increase costs for school districts and their local taxpayers.

Therefore, NYSSBA **opposes** the above referenced legislation and urges your veto. For additional information, please do not hesitate to contact me at 518-783-0200.

Sincerely,

A handwritten signature in cursive script that reads "Julie M. Marlette". The signature is written in black ink and is positioned above the printed name.

Julie M. Marlette
Director of Governmental Relations

CC: Senator Neil Breslin
Assemblymember Michael Cusick
Alphonso David
Nadine Fontaine
Christopher Riano
Dan Fuller
Jamie Frank
Michael Smingler