

## Removal of Retainage Requirement for Construction Materials

### S.2931 (Libous)/A.796 (Braunstien)

June 15, 2015

#### **ON CALENDAR**

**THE COUNCIL OPPOSES** this legislation that would remove the current 5% retainage requirement for construction materials as part of a public construction project, including school district capital projects.

This legislation proposes to exempt construction materials from the current statutory 5% retainage requirement for public construction projects, including school districts.

Under current law, all public construction projects allow the contracting public entity to withhold 5% of the total contract value to be released upon final inspection of the completed project. This is done to ensure that the work and material construction are satisfactory.

School construction is a very serious and important undertaking. As school superintendents, our members entrust the health and safety of their students, employees and communities when undertaking construction of the buildings and grounds they will enter every day. The current contract retainage requirement ensures that contractors fully complete the work to the satisfaction of the school district and use the appropriate materials in doing so.

School districts are generally not party to contracts between material suppliers and the general contractor. Retainage is the only safeguard to ensure that the correct materials are used. By removing the retainage provision for construction materials, there is no immediate recourse for disputes arising from use of shoddy or dangerous materials. A school district's only option may be to pursue a substandard materials supplier through the legal system or even through bankruptcy.

Without the current retainage provision for all elements of a school construction project, there is less incentive for contractors to provide high-quality work or materials for these vitally sensitive projects. This is true of all public construction projects to which this legislation would apply.

The New York State Council of School Superintendents **OPPOSES** this legislation and urges lawmakers to reject it.