



Public Finance and Real Estate Practice Groups

State Accelerates Payment of Retainage by Local Governments and School Districts

Syracuse ♦ Ithaca ♦ New York City

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On December 15, 2020, Governor Cuomo signed into law amendments to the New York State Finance Law and the New York State General Municipal Law relating to payment of retainage to contractors of public works projects. The amendments are widely supported by New York State's construction industry. The amendments clarify the definitions of substantial completion for public works projects and school district and BOCES projects and impose a 45-day period from substantial completion for the local government or school district to provide the punch list to contractors.

What is substantial completion for a public works project?

For contracts entered into on or after December 15, 2020, "substantial completion" for public works projects (other than for school district/BOCES projects) occurs when the work required by the contractor is sufficiently completed so that the local government may occupy or utilize the work for its intended use, provided that "substantial completion" may apply to each portion of an entire project if the contract provides for occupancy or use of a portion of the project. "Substantial completion" for school district and BOCES projects occurs on the date the architect or engineer certifies that the project or portion thereof is code compliant and substantially complete in accordance with the contract documents so the school district or BOCES can occupy or utilize the project or portion thereof for its intended use.

When is a punch list due to contractor and to subcontractors?

For contracts entered into on or after December 15, 2020, local governments and school districts/BOCES must within 45 business days after substantial completion of a project provide the contractor with a written list of all remaining items to be completed by the contractor, also known as a punch list. Within 7 calendar days of receiving the punch list, the contractor must submit to each subcontractor from whom retainage is withheld, the subcontractor's portions of the punch list and additional items, if any, required by the contractor.



If you have questions regarding the amendments or require assistance in negotiating construction contracts for public works projects, please contact Jean Everett or Jane Yue Zhang or other members of our Real Estate or Public Finance Groups.

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