



MEMORANDUM IN SUPPORT

October 3, 2018

S.6686 Ranzenhofer (Passed Senate Unanimously on 6/14/18)

A.7945-A Kim (Passed Assembly 103-40 on 6/19/18)

Re: AN ACT to amend the state finance law, in relation to damages to contracts occasioned by delay

We, the following undersigned organizations acting in our individual capacities, **STRONGLY SUPPORT** A.7945-A/S.6686, which would provide for delay damages to contractors in public works projects, where such delay is both unreasonable and is the fault or responsibility of the public owner.

All public construction contracts in New York should be **uniform** and **equitable** in their treatment of delay damages occurrences, **where the delay in performance is not the fault of either the general contractor or subcontractor**. A.7945-A/S.6686 provides for fair and uniform treatment of all contractor delay damages claims.

The Court of Appeals in *Kalisch-Jarcho, Inc. v. City of New York* (1983) required that, in order to recover delay damages from a public owner, a contractor must prove that the owner acted in bad faith and with deliberate intent. This standard is extremely difficult, if not nearly impossible to prove, thus providing public owners with an unfair advantage and effectively leaving contractors without the ability to collect delay damages on construction projects. Unfortunately, the *Civetta* decision doesn't help either.

Some public owners recognize that this standard is problematic; the Office of General Services (OGS) voluntarily modified its own standard contract in 1996 to allow for delay damages in state construction contracts where the delay was not the fault of the contractor or subcontractor. Using language virtually identical to that

found in present OGS contracts, A.7945-A/S.6686 would simply require similar provisions regarding delay damages in all public works contracts. *See* OGS Standard Contract, Article 17A-Delays.

Currently, at least 19 other states limit no-damages-for-delay clauses, or void them entirely. By tracking current OGS contract language, this bill would make unfair and unreasonable “no damages for delay” clauses unenforceable in New York where the contractor has suffered a delay that is the fault or responsibility of the project owner. It would require all public contracts to include a clause authorizing contractors to recover damages for delay under such circumstances, which is both fair and equitable.

For the reasons stated above, we **strongly support** this bill and urge that it be adopted.

Respectfully submitted on behalf of:

Allied Building Metal Industries

Associated General Contractors of New York State

Association of Contracting Plumbers NYC

Association of Master Painters and Decorators of New York, Inc.

Building Contractors Association

Building Trades Employers' Association

Contractors' Association of Greater New York

Eastern Contractors Association

Empire State Subcontractors Association, Inc.

The General Contractors Association of New York, Inc

Mechanical Contractors Association of New York, Inc.

New York Building Congress

New York Electrical Contractors Association

Roofing and Waterproofing Contractors Association of New York

Sheet Metal and Air Conditioning Contractors' National Association of New York City

Subcontractors Trade Association