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Several Bills of Interest Heading to the Governor

With the conclusion of the 2026 NYS legislative session, several bills of interest to the construction industry have passed both houses and will be sent to Governor Hochul for her consideration. As follows is a brief summary of these bills.

Reciprocal MWBE Certification (NYS and NYC) – If signed by the Governor, this legislation (S.267/A.8294) will authorize the Director of the Division of Minority and Women’s Business Development in the New York State Department of Economic Development and the Mayor of the City of New York to enter into a memorandum of understanding providing for the reciprocal acceptance of minority and women-owned business enterprise (MWBE) certification between the local program administered by the City of New York and the state program administered by the Department of Economic Development (Empire State Development). Currently, the process to establish and to maintain certification at both levels of government can be administratively burdensome for MWBEs. By authorizing reciprocal certification, this legislation will enable the establishment of a coordinated, non-duplicative procedure between the City and State.

MWBE Utilization Plans – If signed by the Governor, this legislation (S.4155A/A.3518-A) will require contractors to submit MWBE utilization plans with the submission of their bids to state contracting agencies, rather than post-bid, pre-award. Prior to contract award, the contracting agency shall review the utilization plan submitted by the contractor and shall post the utilization plan and any waivers of compliance issued on the website of the contracting agency. Within five business days after contract award the contracting agency is required to submit an award notification letter to each minority and women-owned business enterprise listed on the utilization plan. The legislation further requires the contractor to utilize the MWBEs listed on the utilization plan at the time of bid and the utilization plan shall not be amended or changed by the contractor without good cause shown and the written approval of the contracting agency. Within forty-five days of contract award, the contractor is required to execute a subcontract agreement with each MWBE listed on the utilization plan. The bill requires the contractor to make payment to subcontractors, including MWBE subcontractors, within

twenty (20) days after receiving payment from the contracting agency. [NOTE: Regarding public work contracts, Section 139-f (2) of the State Finance Law has long required contractors to pay subcontractors within seven (7) calendar days after the contractor’s receipt of payment from the public owner]. Finally, the bill allows a subcontractor to notify the contracting agency of a violation of the prompt payment requirement, and requires the contracting agency to notify the contractor to correct the payment deficiency within ten (10) days. Failure by the contractor to correct a payment deficiency shall result in disqualification.

Wage Theft – Bonuses – If signed by the Governor, this legislation intends to bolster protections against wage theft for employees by clarifying that all bonuses and other forms of employment remuneration that are not purely discretionary count as wages. For bonus or other form of employment compensation to be excluded from “wages”, the employer must notify the employee in a clear, prominent, timely and uncontradicted fashion that the employer has sole and absolute discretion to decide whether or not to pay it. The legislation also provides that failure by an employer to produce the written terms of employment, upon request of the Commissioner of Labor, or an employee, shall give rise to a presumption that the terms of employment that the employee has presented are the agreed terms of employment.

Construction Reporting Pay Act – If signed by the Governor, this legislation will require construction industry employers to provide four (4) hours pay at the prevailing rate (for public projects), or four (4) hours pay at the employee’s regular hourly rate (for non-public projects) if the employee reports for work and is sent home. The legislation will also require employers to provide two hours pay if a shift is canceled with less than twelve (12) hours’ notice. Since 2017, all employers in New York have been required to comply with Department of Labor promulgated “Call in Pay” regulations. These regulations require employees who report to work to be paid for a least four hours at the basic minimum hourly wage. The current legislation that will soon be considered by the Governor represents a significant increase in “Call in Pay” to construction employees. No other industries (such as manufacturing or retail) are impacted by this bill.



PRESIDENT'S MESSAGE

Well after a cool wet beginning, it looks like summer is finally here! I know this is typically everyone's busiest time of the year but be sure to carve out a little time for family and friends. Grab a ballgame, jump on the boat or attend one of NESCA's summer events. Hopefully you were able to attend NESCA's annual Day at the Races in Saratoga, did some socializing and maybe even won a little money. This year, as always, was another success with more than 350 members and their guests in attendance. If you missed the track, maybe we'll see you at the September 14th NESCA Golf Outing at Shaker Ridge Country Club where 256 fellow golfers will be vying for the lowest score, longest drive, closest to the pin and other contests during the event. Thank you to all the sponsors for your contributions in adding to the success of this outing.

The summer continues to be busy for NESCA committees also. Both the Trade Show and Young Professional committees met in July to prepare for the coming year's events. These groups do a fantastic job every year planning these

events and they appreciate your support. Membership meetings and educational programs are also being planned as we keep our eye on potential legislative issues.

As you all know, in May NESCA joined a coalition of construction organizations in filing a complaint in federal court to block enforcement of New York's new prevailing wage amendment dealing with off-site custom fabrication. In June the Court entered a consent order delaying enforcement of this law while the case proceeds on the merits. NESCA will keep members fully informed about any new developments as they occur and will continue to work with the coalition to have this amendment to the law invalidated in full.

Finally, your continued support of NESCA allows the association to carry on in serving our members through information, education and representing you in the legislature and the courts. I want to thank the many members who have paid their 2026-27 membership dues.

I look forward to seeing everyone for golf at Shaker Ridge Country Club in September. Enjoy the rest of your summer!

Jeffrey Orvis, President

Mark Your Calendars!

NESCA's 45th Annual Trade Show

October 1, 2026
5:00 – 8:30 p.m.

Albany Marriott
189 Wolf Road
Albany, New York

NESCA NEWSLETTER

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Thank you to the more than 75% of NESCA members have already paid their 2026-27 membership dues. If you haven't remitted your dues yet, please do so as soon as possible.

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COUNSEL'S MESSAGE

This month's column will address prudent procedures to implement into the administration of your construction projects from development of the bid through performance and close out of the project, subcontractors and materialmen should recognize that risk of non-payment commences when evaluating the contract documents when bidding through project closeout.

The person responsible for bidding the project must recognize non-payment risks arise at various times and different forms depending on whether the project is Public or Private. Whether Public or Private it is important to verify the existence of a Labor & Material Payment Bond when compiling the bid. The existence of the Payment Bond will lower the risk of non-payment provided you comply with the contract scope and contractual terms & conditions.

If awarded the subcontract or PO, it is important that a copy of the Payment Bond is obtained from the contractor if it is a private project at bid time. If a public project, then secure the payment bond through a FOIL request and place in the contract file.

Unfortunately, there are limited options to obtain the Payment

Bond on a private project after the subcontract is signed. Accordingly, it is extremely important to secure a copy of the Payment Bond during negotiation and no later than signing of the subcontract. This is important since there exist written Notice of Claim requirements in contracts **and** the Payment Bond which must be complied with if a payment claim is to be enforceable.

On a public project, when securing a copy of the Payment Bond it frequently takes longer than 30 days to secure a copy. If the subcontractor waits until the last second to pursue a Payment Bond claim the statutory time period for written notice may expire and the claim will be denied. Delayed action on these matters is not in the contractor's notice.

When reviewing the project documents during the bidding phase, be sure to secure a copy of the proposed subcontract/PO to evaluate the payment risks in terms and conditions. The higher the risk the more important it is to qualify the exclusions or other modifications of your bid price.

If awarded the subcontract, it is important to carefully calendar the circumstances and time frame when written notice for extra work or changed conditions is required to be provided and to whom. These WRITTEN NOTICES MUST BE COMPLIED WITH TO BE ENFORCEABLE. New York courts strictly interpret compliance with written contractual notice requirements, so preparation is essential. It is good practice to highlight all notice requirements in the contract documents and the PM administrative file.

If the proposed subcontract is extremely one-sided or onerous it is prudent to allocate a monetary cushion in the bid to protect the subcontractor. That cushion can be reduced if the risk is negotiated out of the contract. The critical issue is that the subcontractor is aware of the risks, addresses them in the bid and does not blindly accept a subcontract or PO without evaluating the payment and performance risk exposure.

Many years ago, a client stated to me "... sometimes the best projects are the ones you decide not to accept." That was surprising advice then, yet over the years it has proven to be very insightful.

The membership would be well served to consider the above guidance when evaluating their projects and compiling administrative procedures to protect themselves during contract performance.

Walter G. Breakell, NESCA Legal Counsel

In Memoriam

NESCA sadly announces the passing of Thomas L. McDermott, Jr. on July 18, 2026. Tom was a former President of Schenectady Steel Co., Inc. and served as President of NESCA in 1984-85. After retiring from Schenectady Steel in 1994, Tom enjoyed his retirement in Myrtle Beach, South Carolina.

During his tenure as NESCA President, the association experienced a tremendous growth in membership and became one of the largest subcontractor associations in the country. Tom personally recruited many new members and was instrumental in the establishment of a subcontractors' association in Burlington Vermont. Also, during Tom's tenure he led NESCA in a lawsuit against the State of New York regarding illegal MWBE requirements. This legal action helped NESCA members recover more than \$2 million in withheld payments on several prison bond construction projects. Throughout his career, Tom was a respected leader and dedicated advocate for the construction industry. In addition to his service with NESCA, he served as President of the New York State Steel Fabricators Association.

Anyone who knew Tom will remember his adventurous spirit, his strong work ethic, and his warm sense of humor. Our deepest sympathies are extended to his children: David, Kim and Thomas.

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Calendar of Events

August 6, 2026

Board of Directors Meeting
Italian American Comm. Ctr. 6 pm

September 3, 2026

Board of Directors Meeting
Italian American Comm. Ctr. 6 pm

September 14, 2026

42nd Annual Golf Outing
Shaker Ridge Country Club

October 1, 2026

45th Annual Trade Show
Albany Marriott, 5 pm

October 8, 2026

Board of Directors Meeting
Italian American Comm. Ctr. 6 pm

NESCA Membership Milestone Anniversaries

United Rentals Reliable Onsite Services – 5 Years

KM Masonry – 15 Years

Buckley Associates, Inc. – 20 Years

Vanguard Roofing, Inc. – 40 Years

Roger H. Jones Scholarship Award Winners Announced

The NESCA Educational Foundation has announced that Roger H. Jones NESCA Scholarships have been awarded to each of six deserving students enrolled in construction-related programs of study at accredited two-year or four-year colleges or universities for the 2026-27 academic year. As follows are this year's scholarship winners.

Name	College or University	Major
Evan Andrews	Utica University	Construction Management
Eric Boggs	SUNY Delhi	Construction Management
Caitlin Cammett	University of Delaware	Chemical Engineering
Robert Frey	Roger Williams University	Engineering
Eleanor O'Neill	RPI	Chemical Engineering
David Rhodes	Alfred State	Construction Supervision

Congratulations to all six scholarship winners! Scholarship applications for the 2027-28 academic year will be made available in January 2027. NESCA members are encouraged to contribute to the NESCA Educational Foundation to help fund scholarships for future applicants.

Expansion of Davis-Bacon Vacated by Federal Court

On July 2, 2026 the U.S. District Court for the Northern District of Texas vacated a Biden-era expansion of the federal Davis Bacon Act after the U.S. Department of Labor conceded to a final court order vacating the 2023 final rule titled "*Updating the Davis Bacon and Related Acts Regulations*". The Davis-Bacon Act sets construction wage rates for federal public works projects. The rule, which was challenged by the Associated General Contractors of America, attempted to expand the reach of the Davis Bacon Act in three ways:

- Extend Davis-Bacon coverage to material suppliers owned/operated by contractors and subcontractors.
- Extend Davis-Bacon coverage to delivery truck drivers who spent a "not de minimus" amount of time at a project jobsite.
- Impose Davis-Bacon requirements retroactively on contracts that omitted inclusion of the Davis-Bacon requirements.

The Court ruling restored the original scope of the Davis-Bacon Act, limiting its application to authorized construction contexts.



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