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February 2026

Chapter Amendments to Several New Construction Laws Introduced

In NESCA's January Newsletter, we reported that Governor Kathy Hochul had signed into law legislation that will expand the application of Section 220 of the Labor Law in New York State by including certain off-site custom fabrication as public work for purposes of payment of the prevailing wage. This law will take effect on June 18, 2026. Specifically, the legislation requires payment of the prevailing wage rate for the fabrication of exterior or interior wall panel systems, woodwork, electrical, plumbing, heating, cooling, ventilation or exhaust duct systems, rebar cages, and mechanical insulation solely and specifically designed and engineered for installation in the construction, repair or renovation of a public or covered project.

On January 6, 2026, a Chapter Amendment was introduced that restricts application of the law in several ways, as follows:

- The term "custom fabrication" does not include components, portions, modules, or materials that are otherwise stocked or readily available absent a specified public work project.
- Exempts certain transportation projects (highways and structures) from the definition of custom fabrication while including work in rest areas, transit stations, and depots.
- Clarifies the new custom fabrication requirements will not affect current exemptions for certain affordable housing projects.

It is expected the Chapter Amendment will soon be passed by the Legislature and signed into law by the Governor and that the Department of Labor will issue rules to implement the law. The effective date of the law remains unchanged.

Other recently introduced Chapter Amendments include:

Paid Family Leave for Union Construction Workers – This law was signed by the Governor on December 19th and created a new eligibility standard for paid family leave benefits for construction employees who work for multiple employers pursuant to a collective bargaining agreement. Such employees become eligible for paid family leave benefits after employment for at least twenty-six of the last thirty-nine weeks with any employer who is signatory to the collective bargaining agreement. The Chapter Amendment clarifies which employer is responsible when a paid family leave claim is made, that is, such employee will be eligible for paid family leave benefits with the covered employer immediately preceding the period of family

leave. The Chapter Amendment also clarifies that employees eligible for union health plans can continue to receive those benefits during paid family leave and permit parties to collectively bargain for additional health benefits. The Chapter Amendment also extends the effective date to January 1, 2027.

Apprenticeship Agreements on Renewable Energy Projects

This law was signed by the Governor on September 5th and requires all contractors and subcontractors performing construction work on renewable energy systems covered by Labor Law Section 224-d to use apprenticeship agreements, and additionally, require such contractors and subcontractors working on thermal energy networks to also use pre-apprenticeship direct entry providers. The Chapter Amendment adds flexibility for contractors and subcontractors where there may not be enough apprentices or pre-apprentices in the various industries and geographic regions of the state to support renewable energy projects without causing delays by requiring that they have apprenticeship agreements rather than being required to use apprenticeship agreements. In addition, the effective date of this law has been extended from immediately after enactment to September 1, 2026.

NESCA Construction Industry Mixer
Thursday, February 12, 2026
Revolution Hall, Brown's Brewing Co.
425 River Street, Troy, 6:00 pm

Come to NESCA's Construction Industry Mixer for two full hours of pure networking with other NESCA members and representatives from the Capital District's general contracting community. No speaker, no program, no sit-down dinner. Just great food, a beer and wine bar and socializing with the Capital District construction community.

Food, Bar, Tax & Gratuities - \$75



PRESIDENT'S MESSAGE

I hope everyone had a wonderful holiday season and are enjoying this great Northeast weather. One good thing is every day it's brighter longer and Spring is getting closer. We look forward to another active year at NESCA and hope everyone can take advantage of what NESCA has to offer.

On January 15th NESCA held its first membership meeting of the new year at our new venue, the Italian American Community Center on Washington Avenue Ext. in Albany. This meeting was very well attended, and our program was a General Contractor Showcase featuring MLB Construction Services, LLC. MLB brought seven members of their management team to the meeting, and President Jim Dawsey provided NESCA members with information on the projects they are involved with and what they are pursuing going forward. Jim also gave our membership some insight into MLB's company culture and what subcontractors and suppliers can expect when working with them.

The January membership meeting also served as NESCA's annual joint meeting with the National Association of Women in Construction (NAWIC), and once again NAWIC raffled off a wheelbarrow of cheer which supports their scholarship fund.

On February 12th NESCA will hold its annual Construction Industry Mixer at Brown's Brewing Company/Revolution Hall in Troy. Once again, we are inviting members of the local general contracting community to attend. Last year, 190 people attended the mixer, including a nice blend of general contractors, subcontractors, suppliers and service providers. This event is a premier networking opportunity for the construction industry, so I highly encourage all members to attend.

Members were recently emailed application forms for the Roger H. Jones NESCA Scholarship for the 2026-27 academic year. Several scholarships will be awarded to students enrolled in a two-year or four-year construction-related program of study. Please share this information with your employees. If a son or daughter of someone within your business is interested in applying for a scholarship, please have that person complete the scholarship application form and return it to NESCA by **April 1, 2026**. Scholarship applications will be reviewed by NESCA's Scholarship Committee and scholarship awards will be recommended by the Scholarship Committee to the NESCA Educational Foundation Board of Directors for final approval. It is expected that determinations for scholarship awards will be made by June 1, 2026.

Members were also recently sent information and entry forms for NESCA's 2026 Safety Awards. NESCA has been presenting safety awards to

members for 20 years as a way of recognizing the outstanding safety records of our members. Last year, 110 members received safety awards and we hope to recognize as many or more members this year. If you qualify for a safety award, please complete and submit your entry form to NESCA.

I look forward to seeing you all at our upcoming events. If there is anything Mike, his staff, one of the Board members or I can do to assist your business please feel free to reach out to the resources available at NESCA.

Joe Jerkowski, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

Unfortunately, not all construction projects are successfully completed without some degree of a construction deficiency surfacing. That deficiency may consist of non-compliance with the plans and specifications to outright defective work or material.

A construction deficiency consists of an element of the constructed structure, or material incorporated therein, which deviated from the plans and specifications and negatively impacts the finished product.

Despite opinions of some owners, architects, and construction managers the existence of a construction defect does not always mean the contractor is responsible. If a contractor follows the plans and specifications and performs in a workmanlike manner it is not liable for the defect in the structure.

The contractor is responsible for the work of its employees, subcontractors, and materialmen. Unless contractually specified differently, it does not warrant or guarantee the project plans and

specifications will produce any specific outcome or production.

If the "defect" is the contractor failed to fully perform the contract work, it remains entitled to its contract funds less the owner's cost of completing the work.

At a minimum, the contractor is held to an implied promise to perform its work in a skillful and workmanlike fashion. The caveat is that owners and construction managers incorporate language in a construction contract which imposes a higher standard of finished work than that of the community standard.

The contract may contain language the equipment and structure being built will produce a specific quantity of product per hour after being constructed or maintain a specific level of climate control within certain weather parameters.

These contracts are called performance contracts and, assuming no design deficiency exists, meeting those performance construction criteria can be contractually allocated from the design professional to the contractor. It may not be fair, but it can be enforceable if made part of the contract.

It is the legal and business responsibility of the contractor, subcontractor, or materialman to make the time necessary to carefully read the "boilerplate" language of the contract, which frequently imposes higher standards than those customarily encountered in the industry and negotiate them out of the subcontract.

The prime contractor will make an argument the subcontractor/materialman needs to assume all the obligations the contractor agreed to with the owner in the subcontract.

The pushback is the subcontractor agreed to perform the physical work pursuant to industry customs. It did not agree to the amplified standards and expansive criteria within the primes subcontract but frequently are not within the prime contract.

Once again this is a critical reminder that all subcontractor's owe themselves and their employees a duty and responsibility to identify and negotiate out of their subcontracts one-sided, egregious, and unfair contract language!

Walter G. Breakell, NESCA Legal Counsel

Question of the Month

Q. Regarding the new requirement to report our certified payroll records on public projects to the Department of Labor electronically, one of the things we need in order to report our payrolls is the PRC Number for the project. We frequently have small maintenance contracts with public owners who are unfamiliar with the PRC number and can't provide it to us. Since I need the PRC number to report our certified payrolls, what should I do?

A. When a public owner requests a prevailing wage schedule from the Department of Labor, DOL assigns a Prevailing Wage Case Number (PRC number) to that project. If the public owner is unable to provide you with the PRC number, you may contact the Bureau of Public Work at the Department of Labor directly to obtain the PRC number by calling 518-457-5589 or emailing them at ask.pwask@labor.ny.gov. Because some local public owners may not be up to snuff on the electronic submission of certified payroll records, contractors may have to educate them as this new requirement continues to roll out.

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Welcome New Member

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psonger1026@gmail.com

Contact: Perry Songer

Calendar of Events

February 5, 2026

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

February 11, 2026

Seminar: Handling OSHA Inspections
10 Airline Drive, Albany, 10 am

February 12, 2026

Construction Industry Mixer
Brown's Brewing Co., Troy, 6 pm

March 5&6, 2026

OSHA 10-Hour Course
10 Airline Drive, Albany, 9 am

March 12, 2026

Board of Directors Meeting
Italian American Comm. Ctr. 5 pm

March 12, 2026

NESCA Membership Meeting
Italian American Comm. Ctr. 6 pm

March 12, 2026

STP Unit 2 Communication Begins
Building Industry Center, 6 pm

March 18, 2026

Seminar: Performing Public Work
Building Industry Center, 8:30 am

NESCA Milestone Anniversaries

Rapid Roofing and Restoration – 5 Years

N.E.P. Glass Co., Ltd. – 10 Years

Performance Contracting, Inc. – 10 Years

Louis Petraccione & Sons Plumbing & Heating – 10 Years

Alliance Masonry Corp. – 15 Years

AMAHA Electrical, Inc. – 15 Years

1st National Bank of Scotia – 15 Years

Martin Electric – 15 Years

Martin Zombek Construction Services, LLC – 15 Years

Gorick Construction Co., Inc. – 20 Years

GSL Landscaping & Nursery, LLC – 20 Years

Classic Environmental Inc. – 25 Years

Security Plumbing & Heating Supply – 40 Years

Advance Glass Inc. – 45 Years

Campito Plumbing & Heating, Inc. – 55 Years

Sage Bros. Painting Co., Inc. – 55 Years

Applications for Roger H. Jones Scholarship Available

In 2018, NESCA Past President Roger Jones of Campito Plumbing & Heating, Inc. donated \$20,000 to the association for the establishment of a new college scholarship which has since been named the Roger H. Jones NESCA Scholarship.

We are pleased to announce the NESCA Educational Foundation now has several scholarships (\$750 - \$1,500) available for the 2026-27 academic year for students enrolled in or about to be enrolled in a construction-related program of study at an accredited two-year or four-year college or university. Applicants must have at least a 2.5 GPA, and priority will be given to applicants demonstrating need and a relationship to NESCA (son or daughter of a NESCA member or of a NESCA member's employee). To obtain a copy of the Roger H. Jones NESCA Scholarship Application Form, please contact the NESCA office. Completed applications should be submitted to NESCA by April 1, 2026.

If you are interested in contributing to the Roger H. Jones NESCA Scholarship to help fund future college scholarships, you may make a tax-deductible contribution to the NESCA Educational Foundation, Inc., 6 Airline Drive, Albany, New York 12205.

Remember to Post Your OSHA Form 300A

All members with more than 10 employees are reminded to post your 2025 OSHA Form 300A (Summary of Work-Related Injuries and Illnesses) in a common area between February 1 and April 30, 2026.



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