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January 2026

Governor Signs 5% Retainage Clarification

On December 19, 2025, Governor Kathy Hochul signed NESCA/ESSA drafted legislation which clarifies that the withholding of retainage by owners of private commercial construction projects, where the value of the project equals or exceeds \$150,000, is limited to no more than five percent of the contract sum.

NESCA members may recall that in 2023, Governor Hochul signed legislation amending the NYS General Business Law, which limited the withholding of retainage by owners of private commercial construction projects to no more than five percent. Subsequent to this amendment taking effect, some owners and their attorneys believed that owners could continue to withhold retainage in amounts greater than five percent pursuant to language contained in the owner/contractor contract. They interpreted the law to mean that unless a particular contractual provision was specifically prohibited in the “void and unenforceable” provisions found in Section 757 of the General Business Law, the statutory language could be superseded by contract.

While NESCA and its statewide affiliate, the Empire State Subcontractors Association (ESSA), continued to believe the legislative intent of the 2023 law was clearly to limit retainage on private commercial projects to no more than five percent, examples of commercial contracts calling for 10% retainage persisted. Because of this, the legislation signed by the Governor on December 19th made clear that 5% retainage is the maximum allowed by including retainage in excess of 5% as a “void and unenforceable” contract provision in the General Business Law.

Because the General Business Law prohibits prime contractors from withholding a higher percentage of retainage from subcontractors and suppliers than the owner is withholding from the prime contractor, subcontractors and suppliers will benefit equally from the five percent limitation.

This new law represents NESCA’s and ESSA’s 41st legislative success since 1975, and brings retainage provisions for private commercial construction projects more in line with the retainage provisions found on state and local public work projects. Many thanks to our lobbyists, Greg Serio and Tom Buchan from Park Strategies, for getting this done.

NESCA to Change Meeting Venue Beginning in January

Due to the closure of the Century House, for the first time in nearly 50 years, NESCA will be holding our membership meetings and events at a different venue. Beginning with the January 15, 2026 membership meeting, NESCA will hold its meetings at the Duo at the Dunes, Italian American Community Center, 257 Washington Avenue Extension, Albany.

NESCA thanks the O’Hearn family, general manager Colin DeMers and the entire Century House staff for five decades of exemplary service. There is a reason NESCA held its events at the Century House for so many years, and that was for the delicious food, the friendly staff, and the special treatment we received at all our meetings and events. So once again, thank you to the Century House for a job well done.

NESCA Membership Meeting

January 15, 2026

Duo at the Dunes

**Italian American Community Center
257 Washington Avenue Extension, Albany
6:00 p.m.**

Annual Joint Meeting with NAWIC

6:00 Open Bar/Registration

6:30 Dinner: Prime Rib

7:15 Business Announcements

**7:30 Program: General Contractor Showcase
Featuring MLB Construction Services**

Join us at this membership meeting to become better acquainted with MLB Construction Services and its leadership team.

Reception, Dinner, Tax & Gratuities - \$75



PRESIDENT'S MESSAGE

As we welcome 2026, I would like to take the time to thank everyone who attended the Holiday reception held on December 11th for their generous donations to Toys for Tots. We had more than 170 attend the event and hundreds of toys were donated along with a check for \$6,019 to the Marine Corps Toys for Tots Campaign. A special thank you to Jon Finlan with Absolute Fire Protection for donating his \$685 in 50/50 winnings to Toys for Tots. The food and atmosphere were great and as many of you know, this was our last event at Century House. Sadley after 50 years, the Holiday event was our final event there and we would like to thank the management and staff for the great service over the last half century. Our January membership meeting will be held on January 15th at the Italian American Community Center, 257 Washington Avenue Extension, Albany.

Our January membership meeting will be our annual joint membership meeting with the National Association of Women in Construction (NAWIC) and our program will be a General Contractor Showcase featuring MLB Construction

Services, LLC. This meeting will offer members of NESCA a great chance to become better acquainted with the type of work MLB performs, their market area, how they select their subcontractors and run projects.

In February, based on the success of the "Construction Industry Mixer" NESCA hosted last February, we will be holding another construction industry mixer at Revolution Hall, Brown's Brewing Co. in Troy. This mixer will feature two hours of networking and socializing with others within the construction industry. Along with NESCA members, we have again invited representatives from the Capital District's general contractor community to attend.

In the coming months, the NESCA/AGC/ECA Educational Partnership will be offering several popular programs. On March 22nd a seminar entitled "Performing NYS Public Work" will be held at the Building Industrial Center. This popular 3-hour seminar was last offered three years ago and will provide an overview of what every contractor and subcontractor need to know when performing public work, from the bidding process to project closeout. Then at the end of April and into May, we are bringing back our leadership development series for young professionals. This series of seminars will cover the fundamentals of insurance, bonding, banking, accounting, human resources, and construction law. Please be on the lookout for registration forms for these educational programs coming soon.

In closing I hope everyone had a great Holiday season enjoyed with family and friends and I look forward to meeting up with you all over the next year at many of our events.

Joe Jerkowski, President

Mark Your Calendar! Construction Industry Mixer

February 12, 2026
Revolution Hall - Brown's
Brewing Co., Troy, NY
6:00 pm

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

Recently there have been court decisions addressing circumstances in which a contractor performed work in a jurisdiction which contained local laws requiring the contractor to be licensed. If the contractor does not fulfill the licensing requirement its contract may be declared illegal and voided by the municipality or private owner. If the contract is declared illegal and voided, even after performance of the contract, the owner does not retain a legal obligation to make payment for the contractor's work.

A recent Appellate Division case downstate presented an interesting argument by an unlicensed Contractor who was not paid its contract funds due to its lack of a license. However, the contractor had paid the subcontractor the value of its subcontract.

The contractor had subcontracted the full scope of its contract work to a licensed subcontractor who had fully performed the contractor's scope of work. The contractor argued that since the subcontractor was duly licensed

and performed the entire contract the purpose of the licensing statute had been fulfilled, and it should be paid the full contract value.

The Appellate Division determined the agreement between the Owner and contractor was illegal as a result of the contractors' lack of a license. It concluded the agreement between the contractor and subcontractor, even though licensed, could not fulfill the licensing requirement of the contractor.

The court ruled against the contractor, determined the contract was illegal, voided the agreement and no payment was found to be owed by the Owner.

The message of this month's column is that contractors must be aware of any established license requirement, or local laws, to which it must adhere as a condition of being legally qualified to be awarded the contract and entitled to payment for work performed.

Walter G. Breakell, NESCA Legal Counsel

Governor Signs Bill Requiring Prevailing Wage on Certain Off-Site Custom Fabrication

On December 20, 2025, Governor Kathy Hochul signed into law legislation that will greatly 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. Specifically, this legislation will require 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 building which is the subject of a contract to which the state, a department of the state, a board or officer in the state, a municipal corporation, a public benefit corporation or commission appointed pursuant to law is a party.

NESCA opposed the legislation because it is flawed on many accounts. First, and perhaps foremost, this new law will result in significant increased costs to public works projects. Many subcontractors who maintain fabrication shops have indicated that their cost of fabrication will increase by as much as 25% or more. This cost increase could be even more pronounced if materials fabricated in an upstate shop are shipped to a jobsite in the City of New York where the prevailing wage rates are significantly higher than upstate. Further, it is simply not practical, and perhaps impossible, to operate a modern fabrication/manufacturing plant and be required to maintain multiple pay rates based on the location where the fabricated material will be incorporated into a public project.

At this point it is not known whether NYS DOL will issue a guidance document to clarify how the law will be implemented and enforced.

New York State Shared Work Program

Facing a temporary slowdown? The New York State Department of Labor's Shared Work Program helps businesses avoid layoffs by reducing employee hours (20%-60%) while workers receive a portion of their unemployment benefits. For more information, call (518) 457-2315 or email NYSDOLSharedWork@labor.ny.gov.

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518-490-9445

founder@jessecology.com

Contact: Jesse Peters

Calendar of Events

January 15, 2026

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

January 15, 2026

NESCA Membership Meeting
Italian American Comm. Ctr. 6 pm

January 27-30, 2026

OSHA 30-Hour Course
10 Airline Drive, Albany

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

NESCA Membership Meeting
Italian American Comm. Ctr. 6 pm

Milestone Member Anniversaries

CWG Excavation & Timbering – 10 Years

Frank J. Ryan & Sons, Inc. – 10 Years

Snyder's Drywall – 15 Years

Witch Enterprises, Inc. – 15 Years

Z Core Concrete Cutting & Coring – 15 Years

Liberty Mutual – 20 Years

NBT Bank – 20 Years

Sunstream Corporation – 25 Years

Adirondack Mechanical Corp. – 40 Years

In Memoriam – Robert H. Kind

NESCA sadly announces the passing of NESCA Past President Robert H. Kind, on December 11, 2025. Bob was an integral part of Teal, Becker & Chiaramonte, CPAs for over 50 years, and held the role of Managing Shareholder for 10 years prior to retiring in 2024.

A licensed CPA in both New York State and Florida, Bob played a central role in developing and overseeing all aspects of TBC's accounting and auditing services. His expertise supported a broad range of clients, including construction companies, real estate developers, insurance agencies, and professional practices. Bob was deeply committed to developing future leaders at TBC. He consistently encouraged growth and excellence, often sharing his motto: "If you're going to do something well, pick an area you're interested in." He offered this guidance to associates at every level, from entry-level accountants to managers, partners, and Shareholders including his two sons, Robert L. Kind, who assumed the current Managing Shareholder role in 2022, and Scott Kind.

Bob was an active member of NESCA for more than 45 years, and in addition to his many years of service on NESCA's Board of Directors, he became NESCA's 28th President in 2001-2002. Bob also served as NESCA's accountant and served on many NESCA committees over the years (his favorite being the Golf Committee). With the establishment of the Roger H. Jones Scholarship Fund, Bob was instrumental in setting up the NESCA Educational Foundation. Further, Bob believed in cultivating the next generation of NESCA leadership with his son Rob serving as President of NESCA in 2023-24 and Nate Pannucci currently serving on NESCA's Board of Directors.

Most of all, however, Bob was a great friend to many associated with NESCA and the Capital District construction community. He will be missed by all who knew him. Our sincere condolences go out to the entire Kind family. Rest in peace Bob.



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