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August 2025

Several Bills of Interest Heading to the Governor

With the conclusion of the 2025 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.

Paid Family Leave for Union Construction Workers – This legislation (S.50/A.4727) will extend paid family leave benefits to union construction workers who perform work for multiple employers. This includes employees who perform construction, demolition, reconstruction, excavation, rehabilitation, repairs, renovations, alterations or improvements for multiple employers pursuant to a collective bargaining agreement. The legislation, if signed by the Governor, is intended to ensure that these workers are eligible for paid family leave benefits if they have been employed for at least twenty-six of the last thirty-nine weeks by any covered employer that is signatory to a collective bargaining agreement.

Rebuttable Presumption for MWBE Recertification – This legislation (S.596/A.2296) will provide that if there is no change in ownership or material change in the nature or management of an MWBE company, a rebuttable presumption exists for that MWBE's recertification. The legislation, if signed by the Governor, is intended to address the often lengthy and unnecessary delays for the recertification of MWBE businesses that have been long established.

Prevailing Wage on Custom Fabrication – This legislation (S.2536-A/A.2747-A) will greatly expand the application of Section 220 of the Labor Law in New York State by including off-site custom fabrication as public work for purposes of payment of the prevailing wage. The legislation, if signed by the Governor, will require payment of the prevailing rate of wage for the county in which the public works project is situated 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 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 a commission appointed pursuant to law is a party.

Mentorship Opportunities for MWBE – This legislation (S.6315/A.7235) will expand construction mentorship opportunities for small and minority and women-owned business enterprises. Existing law provides for mentorship opportunities where there is a contractual relationship between MWBEs and public owners. This legislation, if signed by the Governor, will expand mentorship opportunities by authorizing contractors and subcontractors performing work on state contracts to enter into mentor-protégé relationships with MWBE subcontractors where there is privity of contract between the contractor/subcontractor and the MWBE.

Prevailing Wage on Brownfield Remediation – This legislation (S.5379/A.4914) will apply prevailing wage requirements to certain brownfield remediation work performed under private contract. The legislation, if signed by the Governor, will apply prevailing wages to "covered" brownfield remediation work where the amount of public funding is at least 30 percent of the total project costs and where such project costs are over five million dollars.

UI Trust Fund Paid Off: Maximum UI Benefits to Increase in October

New York State has officially paid off the nearly \$7 billion federal Unemployment Insurance Trust Fund loan. The debt has accrued since the COVID-19 pandemic, when New York exhausted its Unemployment Trust Fund and borrowed \$11 billion from the federal government to pay a tidal wave of unemployment claims. Ever since, the State has assessed businesses with a surcharge to pay down the debt. By paying off the loan, the surcharge to businesses has been eliminated.

Laid off workers will also benefit because the maximum weekly benefit has been frozen at \$504 since 2019 due to the federal loan. By paying off this debt, unemployed New Yorkers will see an increase in maximum weekly benefits – from \$504 to \$869 – in October 2025.



PRESIDENT'S MESSAGE

I hope you are taking the time to enjoy this summer which represents a time when NESCA plans for our many activities during the coming year, including our upcoming golf outing, October Trade Show, Membership Meetings, Young Professional Events, and our Educational Programs. While summer is generally a busy time for business, please take the time to enjoy your family and friendships we all have in life.

NESCA's "Day at the Races in Saratoga was another success as more than 350 members and their guests attended. This was a great day from what I was told by many peers and some co-workers but unfortunately, I had a prior commitment, but hope to be there next year.

NESCA's September 8th Golf Outing at Colonie Golf & Country Club sold out in a matter of weeks after distribution of registration materials. There are 248 registered golfers participating in the morning and afternoon flights. Let's

hope for some great weather again this year. We have many special events at the outing including multiple longest drive, straightest drive, and closest-to-the-pin events as well as hole-in-one event with a prize of \$25,000. Many thanks to our sponsors for making this possible again this year.

By now, you probably know that NESCA's "5% retainage bill" was passed by both the Senate and Assembly and will be sent to the Governor for her consideration. This bill follows previously enacted legislation and will clarify that the withholding of retainage by owners of private commercial construction projects is limited to no more than 5 percent of the contract value. In the next few weeks, NESCA will be sending members a sample support letter for you to complete on your company letterhead and return to the NESCA office. The more support letters we receive back from members of NESCA, the better our chances of getting this bill signed into law by Governor Hochul. So, if you would like to see your private commercial work limited to 5% retainage, please return the letter to NESCA. I can tell you Armistead Mechanical has benefited in the past year by reducing our private work retainage to a maximum of 5% and seeing the benefits. The key to this reduction is to have a good relationship with your client to not have any other holdbacks held as disguised retainage. This comes down to doing the job you were contracted to do and having an open dialogue with your customers.

Thank you to the many members who have remitted their 2025-26 membership dues. Your continued support of NESCA through the renewal of your membership will allow the

association to continue to offer our many member benefits and services that we have become accustomed to.

In closing I would like to say enjoy the rest of your summer and I look forward to seeing you at our next event.

Joe Jerkowski, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

The implementation of Payment Requisition software, such as Textura and others, by contractors and construction managers have been a benefit to subcontractors by reducing the administrative time involved in processing payment requisitions through electronic filing.

Unfortunately, in the event of a payment dispute, contractors and construction managers can lock a subcontractor or materialmen out of the payment processing system. This ability can block the subcontractor from submitting its payment requisition for a scope of work performed during a given payment period and circumvents the Prompt Payment Act requiring an approved payment application or written explanation for non-payment within twelve (12) days.

Absent receipt of an approved payment application the contractor/construction manager has begun arguing that an obligation to pay the subcontractor is not triggered under the subcontract. If an obligation to pay

under the subcontract does not exist, then interest on the unpaid funds cannot accrue. Furthermore, if the contractor does not receive a payment application, the obligation to provide written explanation for non-payment under the Prompt Payment Act is not triggered.

To circumvent a lock out from the payment requisition software program, subcontractors have resorted to submitting their monthly payment requisition through certified mail return receipt requested. This process records a payment demand for work performed but also serves as a benchmark when interest may begin accruing.

The content of the payment requisition may also serve to record what work was performed during a given payment period to refute an allegation of non-performance.

Contractors frequently argue they are entitled to withhold contract funds for any number of sundry items. They are now alleging they also are not obligated to merely accept payment requisitions for administrative processing, even if payment is later withheld, not contractually processed by Textura. The logic and enforceability of this argument, when the subcontractor is actively blocked from using the contractually specified payment procedure, remains to be tested in the courts.

In the interim it is strongly suggested that, regardless of the rationale for being locked out of the payment requisition procedure, that subcontractors ensure delivery of their payment requisitions to contractors by CMRRR or personal delivery while being sure to obtain the name & position who is receiving the requisition.

Walter G. Breakell, NESCA Legal Counsel

Help NESCA Grow – Win Big!

If you've benefited from your membership in NESCA, then there must be other commercial, industrial and public work subcontractors and suppliers you know who would also benefit by becoming a member. NESCA is renewing our annual membership recruitment drive that will run through the end of our fiscal year on June 30, 2026. This campaign gives every member of NESCA the opportunity to win cash while helping the association to grow stronger!

Rules of the Campaign

- For each and every new member you sponsor, you'll win \$100 cash!
- For every new member your sponsor after three new members, you'll win \$200 cash!
- All members who sponsor three or more new members will also be eligible for a special prize drawing at the end of the year!

The next time you are on a jobsite, please talk to subcontractors or suppliers who are not currently members of NESCA, let them know about all the things membership in NESCA has to offer, and see if you can get them to consider joining. Tell them that over the last 50 years NESCA has revised the entire body of construction law in New York by drafting and successfully lobbying into law 40 legislative measures that specifically benefit subcontractors and suppliers in such areas as prompt payment, lien rights, retainage and much more. If you would like a membership information packet to be sent to a subcontractor or supplier you believe should become a member of NESCA, please contact the NESCA office at 518-869-9800. Remember, when they join, you win!

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cfirewalker@eriematerials.com

Contact: Christine Fire-Walker

Sullivan Construction Group

21 Allen Lane
Bloomingburg, NY 12721
845-640-2200

anthony@sullivancg.com

Contact: Anthony Perrello, Jr.

Calendar of Events

August 7, 2025

Board of Directors Meeting
Century House, Latham, 6 pm

September 4, 2025

Board of Directors Meeting
Century House, Latham, 6 pm

September 8, 2025

41st Annual Golf Outing
Colonie Golf & Country Club

October 2, 2025

Board of Directors Meeting
Century House, Latham, 6 pm

October 9, 2025

44th Annual Trade Show
Century House, Latham, 4 pm

NESCA Membership Milestone Anniversaries

Midwest Steel, Inc. – 10 Years

AJS Masonry, Inc. – 20 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 ten deserving students enrolled in construction-related programs of study at accredited two-year or four-year colleges or universities for the 2025-26 academic year. As follows are this year's scholarship winners.

Name	College or University	Major
Evan Andrews	Utica University	Construction Management
Benjamin Barber	Penn. Tech	Construction Management
Eric Boggs	SUNY Delhi	Construction Management
Ashley Boyd	University at Buffalo	Civil Engineering
Luke Hughston	Broome Community College	Civil Eng. Technology
Cal Jones	Hudson Valley CC	Electrical Construction
Gregory McCauley	Clarkson University	Engineering & Manag.
Jeffrey Mulhern	Syracuse ESF	Construction Management
Mila Pernell-Gwinup	University of Connecticut	Mechanical Engineering
Ryan VanDerzee	Hudson Valley CC	Electrical Construction

Congratulations to all ten scholarship winners! Scholarship applications for the 2026-27 academic year will be made available in January 2026. NESCA members are encouraged to contribute to the NESCA Educational Foundation to help fund scholarships for future applicants.

Question of the Month

Q. It is my understanding that the lien rights of subcontractors and suppliers working on a public project expire 30 days after the project has been completed and accepted by the public owner. The problem is, I don't necessarily know when a public project I am working on has been certified as completed and accepted. How can I get this information so that my lien rights don't expire without me knowing?

A. Section 11-a of the Lien Law requires, upon the written request of a subcontractor or supplier, that a public owner must provide the subcontractor or supplier with written notice within five days of the completion and acceptance of the project. It is recommended that NESCA members file a written request for notice of project completion at the beginning of every NYS public project you become involved with. Members may contact the NESCA office for a sample letter requesting notification of project completion and acceptance.



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