

## KD Construction Alert: Governor Cuomo Vetoes Materials Retainage Bill - To Relief of Many in the Construction Industry

By **Erik Ortmann**

On December 11, 2015 Governor Andrew Cuomo vetoed legislation A.796/S.2931 (Veto No. 275) which would have amended the State Finance Law, General Municipal Law and the General Business Law to provide that material suppliers would not be subject to retainage on private and public construction projects.

While supported by material suppliers, the bill was opposed by members of essentially all other interested parties in the construction process, including public and private owners, construction managers, general contractors, and subcontractors. Overall, it was argued that the bill would have a negative impact on the construction industry and business interests in general, as prohibiting retention on materials would cause most parties in the process to assume greater risk and liability for defective materials; delay the ability to address defective material issues; and increase the cost of project financing and construction costs in general. In short, most interested parties viewed the bill as a disruptive and potentially costly departure from time-honored standards and contracting practices in the construction industry.

In issuing the veto, the Governor specifically stated that; retainage is a well-established practice that permits municipalities, governmental entities, and public and private entities to withhold a small percentage of payment, ranging up to 5 to 10 percent, from contractors until the completion of a project. The Governor noted that retainage is an effective method of ensuring that public construction projects are properly, timely, and fully completed. The Governor also found that retainage in this instance ensures that substantial fiscal and safety risks associated with defective materials are not shifted to public owners.

If you have any questions concerning this bill, or any other construction issue, please contact us at Kaufman Dolowich & Voluck LLP.