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MEMORANDUM OF SUPPORT

BILL: A.8805 (Brennan) / S.6577 (Ranzenhofer)

SUBJECT: Relates to Claims and Actions Against the New York City School Construction Authority Arising Out of Contracts

DATE: June 12, 2014

The Associated General Contractors of New York State, LLC (AGC NYS), the leading statewide trade association representing union and non-union construction companies supports A.8805/S.6577 which relates to claims and actions against the New York City School Construction Authority arising out of contracts.

This bill amends subdivision two of § 1744 of the Public Authorities Law to add an additional sentence that provides that in the case of an action or special proceeding for monies due arising out of contract, accrual of such claim shall be deemed to have occurred as of the date payment for the amount claimed was denied. It will bring the time of accrual for contractual work performed by the New York City School Construction Authority into conformance with Education Law §3813 which is applicable to all other school districts statewide.

§1744 of the Public Authorities Law and §3813 of the Education Law continue to be the source of litigation for contractors and school districts. Some courts have continued to apply the common law rule that a claim accrues when damages are ascertainable. Some have continued to follow the old rule that the claim accrues upon substantial completion. The biggest confusion for contractors has surrounded what constitutes a "denial". Contractors have regularly been plagued with otherwise legitimate claims being denied in Court based upon nebulous determinations of when "denial" occurs or when the event giving rise to the claim occurred.

AGC NYS commends the sponsors of this legislation for taking an important first step at conforming the time of accrual for contractual work performed by the New York City School Construction Authority into conformance with the Education Law provisions applicable to all other school districts statewide.

Additional legislation establishing a process of a formal written denial is necessary to avoid unnecessary litigation and establish a fair and balanced approach to claims under §1744 of the Public Authorities Law and §3813 of the Education Law.

Therefore, AGC NYS supports A.8805 (Brennan) / S.6577 (Ranzenhofer).