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MEMORANDUM OF SUPPORT

BILL: S.6315 (DeFrancisco) / A.9868 (Cusick)

SUBJECT: Defines "substantial completion" for the purposes of requisition payments to contractors, subcontractors and materials suppliers in construction contracts

DATE: May 6, 2016

The Associated General Contractors of New York State, LLC (AGC NYS) the leading statewide trade association representing the construction industry strongly supports S.6315 (DeFrancisco) / A.9868 (Cusick), which amends the state finance law and general municipal law in relation to payment for construction contracts. This bill clarifies the meaning of "substantial completion" on public work construction projects and reforms the payment process for contractors, subcontractors and materials suppliers.

When a public owner occupies or utilizes a substantially completed construction project, or a portion thereof, it is in the best interest of the taxpayers, contractors, subcontractors and materials suppliers to close out the construction project in a timely and efficient manner. Lack of a clear definition in law of the term substantial completion has led to significant payment issues that negatively impact contractors, subcontractors and materials suppliers on public work throughout the State. M/WBE contractors are often disproportionately impacted by this issue. Too often, this lack of clarity has led to inordinate periods of time and increased risk beyond the time when the owner had taken beneficial use of the construction project resulting in monetary disputes between public owners, contractors, subcontractors and materials suppliers. Related to this has been a slow contract close out process which keeps all parties engaged in a project beyond appropriate timeframes.

This bill establishes and defines substantial completion for public construction contracts and eliminates ambiguities when the work required by the contractor and subcontractor is sufficiently completed and the public owner occupies or utilizes the work for its intended use. In essence, if the public owner is occupying or utilizing the completed project it is deemed substantially completed. Establishing and defining substantial completion on public construction projects would help to reduce the unnecessary financial burden on contractors, subcontractors and materials suppliers because it would compel the public owner to provide final punch lists to close out the project.

This bill would reform the contract payment process by establishing new procedures and timelines for all parties involved in a substantially completed project. As stated in the bill, not later than fourteen calendar days after the date when the project has reached substantial completion, the public owner shall submit a written list describing all remaining items to be completed. Not later than seven calendar days after receiving a written list describing all remaining items to be completed by the contractor, the contractor shall submit to each subcontractor from whom the contractor is withholding retainage a written list of all remaining items.

AGC NYS concurs with the bill sponsors that establishing a new comprehensive definition of substantial completion of public construction projects and reforming the contract payment process, including the release of retainage payments, will ensure timely payments to contractors, subcontractors and material suppliers while protecting taxpayer dollars.

AGC NYS strongly supports and urges the swift passage of S.6315 (DeFrancisco) / A.9868 (Cusick).