



LEGISLATIVE MEMO
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MEMORANDUM OF OPPOSITION

BILL: S.9428 (Ryan) / A.10634 (Hunter)

SUBJECT: Adds Significant Time, Money and Risk to Construction Contracts

DATE: May 21, 2026

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and open shop construction companies, strongly opposes S.9428 (Ryan) / A.10634 (Hunter) which would delay construction projects by adding significant and costly risks to contractors.

This bill S.9428 (Ryan) / A.10634 (Hunter) would vastly upend New York General Obligations Law §5-322.1.2 to include, in addition to a claim against a payment bond, any contract provision conditioning a subcontractor's or supplier's right to file a lawsuit or arbitration against a prime contractor. If enacted, the bill would take effect immediately and shall apply to all contracts entered into, renewed, modified, or amended on or after such effective date.

Time, money, and risk. These are the key factors in the success of a construction job or any other business endeavor. In most situations, these factors are fixed by the parties' negotiations which result in a written, enforceable contract. With few exceptions, parties to a contract are free to make their own agreements which the courts will then enforce. This is the "freedom of contract" doctrine which is favored by New York courts. This doctrine says that people and businesses are allowed to bargain and make their own deals. Any agreement reached will be enforced if it is clearly written and not in violation of a specific law or an established public policy. Our courts seek to ensure certainty in commercial transactions by holding that one party may not escape its agreements by claiming that it lacked sufficient bargaining power, or that the final deal was "unfair", or that the agreement was the product of "duress".

Currently, reputable subcontractors and material suppliers have strong legal remedies for contract payments. Chapter 224 of the Laws of 2009 prohibits any agreement relating to the construction, alteration, repair or maintenance of a building requiring subcontractors and materialmen to exhaust all their remedies prior to filing a claim and/or commencing an action on a payment bond. Section 34 of the Lien Law protects all contractors. It says that any agreement which attempts to waive the right to file or enforce a mechanic's lien is void as against public policy and is unenforceable. Except for federal projects in New York, almost all projects in this State are lienable, be they public or private, and even including those financed with Industrial Development Agency bonds.

General contractors bear a great deal of risk – financial and otherwise – in the management of a construction project. In New York State, they bear the ultimate risk of owner default such that they must eventually pay their subcontractors. This is not the case in many States. In an effort to manage that risk while maintaining the ability to effectively manage and complete construction projects critical to the NYS economy, terms and conditions are duly negotiated between general contractors, subcontractors, and materials suppliers. This legislation would seek to invade upon contractual relationships and, in so doing, damage the New York State Economy.

If enacted, this bill would add significant time, increased costs, and pose significant risks to construction projects at a time when affordability is of the utmost concern. **The bill recklessly applies to contracts entered into, renewed, modified or amended on or after such effective date. Therefore, the bill applies to all present and future contracts. AGC NYS strongly urges the Legislature to reject this bill.**