

ALERTS AND UPDATES

New York Amends Public Authorities Law for Subcontractors Filing Liens on NYC School Construction Authority Projects

September 27, 2010

On September 17, 2010, New York Gov. David Paterson signed into law an amendment to section 1735 of the state's Public Authorities Law to prevent subcontractors on New York City School Construction Authority (SCA) projects who file public-improvement mechanic's liens from also being able to receive payment protections from the SCA. The stated purpose of the amendment is to eliminate double withholding of payments to contractors on SCA construction contracts.

Section 1735 of the Public Authorities Law affords special payment protections to subcontractors on SCA projects. Where a subcontractor contends that the general contractor has failed to timely pay the subcontractor, the SCA may withhold money due and owing to the contractor in order for the subcontractor to be paid directly or for the money allegedly owed to be placed in escrow pending the resolution of the dispute between the subcontractor and the contractor.

An issue, however, is that in addition to seeking payment protection from the SCA under section 1735 of the Public Authorities Law, a subcontractor may also file a public-improvement mechanic's lien, causing the SCA to separately withhold one-and-a-half times the amount of the lien from money due the contractor. Thus, prior to the statute being amended, the SCA could withhold two-and-a-half times the disputed amount from money due the contractor. The amendment maintains the subcontractors' ability to request that the SCA withhold the disputed amount, but precludes the subcontractor from also filing a mechanic's lien, eliminating the possibility of double withholding on SCA contracts.

The amendment also increases the amount the SCA can withhold from 100 percent of the disputed amount to 150 percent. Thus, whether the subcontractor chooses to petition the SCA under the special payment protections of section 1735 of the Public Authorities Law or to file a public-improvement mechanic's lien under New York's Lien Law, the amount withheld is the same: one-and-a-half times the amount that the subcontractor claims it is owed.

Finally, the statute, as amended, permits the contractor to post a bond or other form of undertaking to secure payment to the subcontractor, so that the money withheld by the SCA can be released to the contractor.

For Further Information

If you have any questions regarding this *Alert* or would like more information about New York's Public Authorities Law, please contact [John S. Wojak, Jr.](#), [Jose A. Aquino](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.