



**LEGISLATIVE MEMO**  
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## **MEMORANDUM OF OPPOSITION**

**BILL: A.9008-B (Budget – Part B) / S.6408-A (Budget – Part B)**

**SUBJECT: MTA Procurement - Expands owner-controlled insurance programs to bus facilities, and bridge and tunnel projects**

**DATE: February 24, 2016**

The Associated General Contractors of New York State (AGC NYS) the leading statewide trade association representing union and non-union construction companies opposes A.9008 (Budget – Part B) / S.6408-A (Budget – Part B) which would expand owner-controlled (wrap up) insurance programs to Metropolitan Transportation Authority (MTA) bus facilities, and bridge and tunnel projects.

This bill will significantly alter the open competitive bidder statutes; contribute to decreased worker safety; grant a competitive advantage to contractors with poor safety records; and increase the cost of construction on public works projects.

Wrap up insurance is a practice that centralizes coverage for the owner (government), contractors and workers. In New York State, wrap up policies are used on a limited basis for electric generating and transmission facilities; light rail; and rapid transit commuter railroads.

Open competitive bidding with an award to the lowest responsible bidder is required by most public works projects in New York State. Insurance is a major cost included in each contractors bid because of New York's liability climate and few insurers in the market. Insurance costs are experience rated and the premium each contractor pays varies significantly between bidders. Consequently, under current law, contractors with a good safety record have a significant advantage over contractors with a poor safety record. This increases the odds that the low bidder will be a safe contractor.

Wrap up insurance programs reward contractors with poor safety records. Under wrap up insurance, the owner grants the contractor with a poor safety record the same opportunity to become the low bidder as a responsible safe contractor. Responsible contractors are motivated to have an effective safety program and culture in the company to reduce accidents and insurance costs. Under this bill, contractors would be required to cede their rights to purchase insurance that protects their business, and obtain additional insurance for completed operations.

Wrap up insurance will increase the cost of construction for public works projects. Liability costs will increase for contractors and owners and do not include important insurance coverages, such as professional liability, vehicles, and others, which would be required under public projects utilizing wrap up insurance. Public owners would incur new administrative costs including safety management and potential additional insurance premiums. There is no fiscal analysis supporting the bill that the wrap up insurance provision of this bill will control insurance costs for the MTA.

While this bill may provide some short-term relief for MWBE firms struggling to procure insurance on the open market, the long-term effects will be harmful to the business development of these emerging companies because insurers evaluate a contractor's prior history on construction projects. Small or emerging contractors need to develop the business skills necessary to grow including an established record of purchasing insurance on the open market.

AGC NYS supports meaningful mandate relief such as reforming New York's 'scaffold law'. In 1995, Illinois repealed the scaffold law and in the following years more jobs were created because of lower insurance premiums and more insurers entering the market. New York is the only state in the nation that has the dubious distinction of having the scaffold law. New York needs a comparative negligence standard for claims under Labor Law Sections 240-241.

Therefore, AGC NYS opposes A.9008-B (Budget – Part B) / S.6408-A (Budget – Part B) and urges the Legislature to reject this proposal and include meaningful legal reform to help lower insurance costs on construction projects while protecting worker safety.