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MEMORANDUM OF SUPPORT

BILL: S.6582 (Hannon) / A.8073 (Kim)

SUBJECT: Requires public contracts to include a clause authorizing contractors to recover damages for delay

DATE: February 22, 2016

The Associated General Contractors of New York State, LLC (AGC NYS) the leading statewide trade association representing the construction industry strongly supports S.6582 (Hannon) / A.8073 (Kim), which requires public contracts to include a clause authorizing contractors to recover damages for delay.

This bill is good public policy because it follows specifications contained in the Office of General Services (OGS) General Conditions Standard Contract Clause – Article 17A-Delays. This bill would reform and create fairness in the public works contracting business by taking a uniform and coordinated approach. It would increase the efficiency and accountability and encourage more private firms to bid for contracts resulting in healthy competition for New Yorkers.

In 2008, the City of New York began a five-year pilot study comparing construction projects with and without no damages for delay contract clauses. The purpose of the study was to determine the impact of the clauses on bid prices, project delivery time, number of bidders, owner caused delays, and other issues. In 2013, the study resulted in the City of New York eliminating the standard no damages for delay clauses and permit claims for costs incurred by the contractor.

Several public agencies (NYS OGS, DOT and the MTA) have already recognized the unfairness of this restriction and have provided in their public contracts for a more equitable allowance for damages for delays resulting from public agency action.

No damages for delay clauses in contracts for public works projects create an inequity in the contracting process. The elimination of no damage for delay clauses will provide incentive for public owners to make decisions, provide required direction, and ensure construction projects are completed on time. Such an incentive will lower the cost of projects by avoiding the additional costs associated with delay-related disputes. This bill brings legal equality to the contracting process.

AGC strongly supports and urges the swift passage of S.6582/A.8073.