



ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE



The New York State Chapter of the
Associated General Contractors of America

August 14, 2018

The Honorable Andrew M. Cuomo
Governor of New York State
Executive Chamber
State Capitol
Albany, NY 12224

RE: Opposition A.8293-A (Morelle) / S.6622-A (Ranzenhofer)

Dear Governor Cuomo:

The Associated General Contractors of New York State, LLC (AGC NYS) the leading statewide general contractor association providing advocacy and education for contractors and affiliated firms opposes A.8293-A/S.6622-A, which amends the general municipal law, the public authorities law, and the state finance law, in relation to liability of design professionals.

This bill would limit the indemnification requirements to the degree or percentage or fault attributable to design professionals (architects, engineers, and surveyors), and unfairly shifts liability, risk, and litigation expenses to contractors, subcontractors, and construction managers. The bill would apply to all state, public authority, city, county, town, village, industrial development agency, land bank or public benefit corporation construction projects jeopardizing critical economic development, affordable housing, and other infrastructure projects.

Through this legislation, design professionals are trying to shed responsibility for their own mistakes. In addition, they are seeking to circumvent the absolute liability standard of New York's notorious "Scaffold Law." Design professionals carry errors and omissions insurance and this bill would create a gap in the responsibility for damages that do not rise to the level of negligence. As a result, this will shift litigation defense costs from insurers to contractors which will increase the risks and costs of state and local infrastructure projects.

As it stands, NYS General Obligations Law already prohibits indemnification for one's own negligence. As for Scaffold Law, New York remains the only state in the nation to impose absolute liability on construction projects. The Scaffold Law drives up costs on virtually every segment of our economy, from major employers, small business and farmers seeking to make capital investments in their businesses, to school districts and local governments. They not only face higher construction costs, but are also on the hook for the Scaffold Law's outrageous, only-

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in-New York absolute liability standard. Local governments, public authorities, and state agencies face the same challenges, and see their already generally constrained capital dollars being consumed by much higher insurance costs. Taxpayers and homeowners are paying the price, too, both in the form of higher residential construction costs and even higher tax bills. Even victims of natural disasters like Super Storm Sandy are being hurt by the Scaffold Law, as evidenced by the many relief and recovery organizations that have recently come out in favor of reform.

Rather than limiting design professionals indemnification requirements to the degree or percentage or fault attributable, New York should work reform the absolute liability standard of the Scaffold Law. Therefore, AGC NYS opposes A.8293-A/S.6622-A and urges you to veto this legislation.

Sincerely,



Walter Pacholczak
Vice President of Government Affairs

Cc: Alphonso David, Counsel to the Governor
Ali Chaudhry, Deputy Secretary for Transportation
Senator Michael Ranzenhofer
Assemblyman Joseph Morelle