



# News

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**May 28, 2026**

## **AGC NYS and Coalition of Business and Industry Groups File Federal Lawsuit to Block Unconstitutional Expansion of Prevailing Wage Law to Custom Offsite Fabrication**

*Coalition seeks emergency injunction to stop enforcement of amendment before its June 18, 2026 effective date*

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**ALBANY, N.Y.** — The Associated General Contractors of New York State (AGC NYS), together with a broad coalition of business and construction industry organizations and contractors, today filed a federal lawsuit in the U.S. District Court for the Northern District of New York challenging a newly-enacted amendment to New York’s prevailing wage law that would—for the first time in the law’s nearly century-long history—extend prevailing wage requirements to off-site manufacturing and fabrication facilities that manufacture products not just for one specific public project, but for many projects, including those outside New York State and outside the United States. The coalition is simultaneously seeking an emergency temporary restraining order and preliminary injunction to prevent the amendment from taking effect on June 18, 2026.

### **THE LAW BEING CHALLENGED**

The amendment (A2747-A/S5236A of the laws of 2025), enacted as New York Labor Law § 220(3)(f), requires companies that supply “custom fabricated” products to New York public works projects—such as precast concrete, structural steel, curtain wall systems, electrical duct systems, rebar cages, and mechanical insulation—to register as subcontractors with the State, pay prevailing wages based on the county where the public project is located, and submit certified payrolls, regardless of where the fabrication actually takes place.

Critically, the amendment’s requirements apply “regardless of whether the custom fabrication occurs on-site, off-site, or in another jurisdiction,” meaning that fabricators operating in other states or foreign countries would be subject to New York’s wage enforcement regime. General contractors are made vicariously liable for the prevailing wage compliance of every fabricator they use on a covered project, even those they cannot monitor or control.

The plaintiffs in this action are:

- Associated General Contractors of New York State, LLC (AGC NYS) — the leading trade association for New York’s building, highway-heavy, and utility construction industry, representing approximately 600 member companies statewide and celebrating its centennial in 2026.
- Associated General Contractors of America, Inc. (AGCA) — the leading national trade association representing the construction industry.
- Business Council of New York State — New York’s premier business advocacy organization.
- Northeastern Subcontractors Association, Inc. (NESCA)
- National Electrical Contractors Association (NECA)
- Allied Building Metal Industries, Inc.
- Building Contractors Association, Inc. (BCA NY)
- Precast/Prestressed Concrete Institute (PCI) Northeast
- Utility Contractors Association of New York, Inc. (NUCA NY)
- E.W. Howell Co., LLC
- W.M. Schultz Construction, Inc.

The complaint names the following New York State officials as defendants in their official capacities:

- Governor Kathy Hochul, Governor of the State of New York
- Roberta Reardon, Commissioner, New York State Department of Labor
- Shaun McCready, Director, Bureau of Public Work and Prevailing Wage Enforcement
- Letitia James, Attorney General of the State of New York

The lawsuit raises multiple constitutional challenges to the amendment:

The complaint alleges that the amendment violates the Commerce Clause of the U.S. Constitution, which grants Congress—not the states—exclusive authority to regulate interstate and foreign commerce. By requiring fabricators in other states and countries to submit to New York’s full prevailing wage regulatory apparatus, including wage mandates, certified payrolls, and the threat of debarment and criminal penalties, the amendment improperly extends New York’s reach beyond its borders.

The legislative history confirms that the amendment was expressly designed to protect in-state fabricators from out-of-state competition—a violation of the dormant Commerce Clause.

The complaint further alleges that the amendment is unconstitutionally vague. The law applies to products that are “solely and specifically designed and engineered for a specific public work project,” as opposed to products that are “stocked or readily available”—but those terms are not defined. The covered product categories are described through a non-exhaustive list, leaving contractors, subcontractors, and fabricators with no clear guidance on what is covered. Neither the New York State Department of Labor (NYSDOL) nor the bill’s own sponsors have been able to answer basic questions about where the law’s coverage begins and ends. The NYSDOL has not promulgated any regulations and has no time to do so before the June 18 effective date.

The complaint also asserts that the amendment violates the Contracts Clause by substantially impairing existing collective bargaining agreements, which have negotiated specific wage rates and classifications for fabrication workers, and the Takings Clause, by forcing businesses out of the New York public works market, and thereby jeopardizing their entire operations, without just compensation. Finally, the complaint raises an Equal Protection challenge to the amendment’s arbitrary carve-outs — the transportation industry was exempted at the behest of the MTA, but contractors building schools, universities, and wastewater infrastructure received no equivalent relief, even though those sectors face identical consequences and the very same fabricators are making the very same components for both types of projects.

[You can review the complaint at this link.](#)

If the amendment takes effect, it will create immediate, irreparable, and severe consequences for AGC NYS members, other contractors, manufacturers, public owners, and taxpayers:

- Vicarious liability with no ability to monitor: General contractors will be held legally responsible for prevailing wage compliance by fabricators operating in facilities the GC has no access to, in other states and countries. Two “willful” violations—which could occur on the same project—trigger automatic debarment from public work.
- Supply chain disruption: Out-of-state and international fabricators—including sole-source suppliers of specialized components—have already begun refusing to bid on New York public projects as a result of this law. New York does not have the domestic fabrication capacity to replace them.
- Impossible compliance for fabricators: Fabrication facilities process dozens of orders simultaneously for multiple clients, counties, and projects. The amendment requires tracking which worker touched which item, destined for which county, at which moment—a system that does not exist and, for most shops, cannot be built.
- Bidding uncertainty: Fabricators are already inserting change-order clauses into their quotes to preserve the right to pass compliance costs through to GCs after bid submission—meaning GCs cannot know their true project costs before submitting binding public bids. Such provisions will not be sufficient to shed statutory liability.
- Criminal exposure: Failure to submit certified payrolls can be charged as a felony. Willful underpayment of prevailing wages can result in criminal conviction, fines, imprisonment, and permanent exclusion from public contracts.
- Cost impact on critical public projects: The MTA estimated that applying the amendment to subway platforms alone would cost billions of dollars — and the MTA successfully obtained a transportation exemption. Schools, wastewater treatment facilities, universities, and other public infrastructure did not.

#### **STATEMENT FROM AGC NYS**

“This law, as written, is unconstitutional, unworkable, and will inflict serious harm on the very industry that builds New York’s public infrastructure—as well as New York’s taxpayers. Off-site fabrication is not public works construction—it is manufacturing. New York has no basis to extend its prevailing wage regime to factories in New York, across the country, and around the world. This amendment will drive fabricators and contractors out of the New York public works market, blow up project budgets, and ultimately deprive New Yorkers of critical schools, hospitals, and infrastructure they need. This law cannot and should not stand,” said Mike Elmendorf, President & CEO, Associated General Contractors of New York State.

**RELIEF SOUGHT**

The coalition is asking the federal court to issue a temporary restraining order and/or preliminary injunction to halt enforcement of the amendment while the case proceeds on the merits. If granted, the injunction would preserve the legal status quo that has governed prevailing wage law for nearly eighty years while the court considers the constitutional arguments. The coalition is also seeking a declaration that the amendment is unconstitutional and void.

**LEGAL COUNSEL**

The plaintiffs are represented by Hinckley, Allen & Snyder LLP, with the matter being led by Chad J. Caplan, Janelle A. Pelli, and Jeremy M. Smith of the firm's Albany office.

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*The Associated General Contractors of New York State (AGC NYS) is the leading voice of the building, highway-heavy, and utility construction industry in New York. Founded in 1926 and celebrating its centennial in 2026, AGC NYS represents approximately 600 member companies dedicated to the ideals of skill, integrity, and responsibility. For more information, visit [www.agcnys.org](http://www.agcnys.org)*