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## MEMORANDUM OF OPPOSITION

**BILL:** S.1604-F (Ramos) / A.8935-C (Bronson)

**SUBJECT:** Construction/Infrastructure - Temperature of Indoor and Outdoor Worksites

**DATE:** May 28, 2024

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and open shop construction companies strongly opposes S.1604-F (Ramos) / A.8935-C (Bronson), which establishes an unnecessary, duplicative, and excessive temperature standard for all indoor and outdoor construction worksites.

### Unnecessary and Duplicative in NYS

Currently, the [New York State Plan](#) office covers all public sector workplaces in the state, including: state, county, town, and village governments, as well as public authorities, school districts, and paid and volunteer fire departments. The Occupational Safety and Health Administration (OSHA) maintains jurisdiction over all private sector workplaces; federal agencies; maritime employers (e.g., shipyards, marine terminals, and longshoring); military facilities; Indian sovereignty workplaces; and the United States Postal Service (USPS).

The New York Public Employee Safety and Health (PESH) Bureau is part of the New York Department of Labor. The New York Department of Labor is headed by the Commissioner. New York PESH has generally adopted all OSHA standards applicable to state and local government employment. In addition, the Commissioner has the authority to develop alternative and/or state-initiated standards to protect the safety and health of state and local government workers in New York in consultation with the Hazard Abatement Board.

OSHA is utilizing [section 5\(a\)\(1\) of the General Duty clause of the OSA Act](#) for enforcement if employers are not protecting their employees from heat injuries and illnesses. This current enforcement mechanism is in place as the Secretary awaits the issuance of a final Standard addressing heat-related occupational hazards. This memorandum establishes an enforcement initiative to prevent and protect employees from serious heat-related illnesses and deaths while working in hazardous hot indoor or outdoor environments. It expands on the agency's ongoing heat-related illness prevention campaign by setting forth the enforcement component and reiterating its compliance assistance and outreach efforts. The initiative prioritizes heat-related interventions and inspections of work activities on days when the heat index exceeds 80°F. Employers will be encouraged to implement proactive interventions, such as water, rest, and shade, and other important prevention measures such as acclimatization of new or returning workers.

### New OSHA Heat Standard – 900+ Public Comments

On October 27, 2021, OSHA published an Advance Notice of Proposed Rulemaking (ANPRM) for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings in the Federal Register. The publication of the ANPRM initiated a public comment period allowing OSHA to gather information, diverse perspectives, and technical expertise on issues that might be considered in developing a heat standard. The ANPRM is available on the [Federal Register webpage](#) and at [www.regulations.gov](http://www.regulations.gov), which is the Federal e-Rulemaking Portal. The

comment period closed on January 26, 2022. OSHA received 965 unique comments from stakeholders, which are available at [www.regulations.gov/document/OSHA-2021-0009-0001](http://www.regulations.gov/document/OSHA-2021-0009-0001).

OSHA concluded the Small Business Regulatory Enforcement Fairness Act (SBREFA) process on November 3, 2023. This step in the rulemaking process included the convening of a Small Business Advocacy Review (SBAR) panel to gain input from small entity representatives (SERs) on the potential impacts of a heat-specific standard. On April 24, 2024 the Occupational Safety and Health Administration (OSHA) plans to consult the [Advisory Committee on Construction Safety and Health \(ACCSH\)](#) on its proposed regulatory framework for the [Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings](#) rule. The final rule is expected to be published this summer.

### **NYS Excessive Overreach – Opaque Lawmaking**

Unlike the deliberative federal rule making process to adopt an equitable OSHA standard, S.1604-F (Ramos) / A.8935-C (Bronson) was recently amended several times without a public hearing, formal comment process, or input from governmental agencies and authorities. After the amendments, the bill with limited co-sponsorship was jammed through committees and is poised for passage in the Senate and Assembly. This deeply flawed bill is being passed in the final hectic days of legislative session to appease agenda driven special interests.

AGC NYS is opposed to this bill because:

- Establishes an unscientific heat stress definition of 80 degrees.
- Creates a rebuttable presumption for employees based on an unscientific heat stress definition creating legal peril for employers.
- Will increase heat stress related workers' compensation and disability claims and costs.
- Empowers the understaffed NYSDOL to promulgate rules for enforcement and any other reporting or enforcement protocols necessary.

### **New York City – Department of Buildings After-Hours Variances Will Increase**

Under this bill, an 80-degree heat stress threshold will increase the use of after-hours variances for construction in the City of New York. Construction worksites vary in size and scope, but all have a specific workflow to ensure efficiency and safety. This bill will disrupt the efficiency and safety of worksites because 80-degrees varies greatly. For example, workers on a roof will reach the threshold before workers in other areas. Workers on a paving project in a work zone will surely reach 80-degrees most months. Furthermore, workers on public work are bound by the New York State Constitution to work no-more than 5 eight-hour days consecutively leading to delays and cost overruns.

Worksite safety is of the utmost importance for members of AGC NYS because construction is an inherently hazardous business, and federal, state, and local safety laws were enacted to protect employers, workers, and the public. Construction is performed under public and private contracts by trained and skilled workers at hazardous sites including elevated heights, highway work zones, bridges, congested roadways, subway tunnels, confined spaces, schools, hospitals, and airports.

AGC NYS strongly opposes S.1604-F (Ramos) / A.8935-C (Bronson) because it would establish an unnecessary, duplicative, and excessive temperature standard for all indoor and outdoor construction worksites in NYS.