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MEMORANDUM OF OPPOSITION

BILL: S.2975-A (Murphy) / A.5498-A (Bronson)

SUBJECT: Mandates All Construction Projects and "Custom Fabricated" Products Financed, In Whole or Part, to Pay Prevailing Rates For Hours, Wages and Supplements

DATE: January 23, 2018

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and non-union construction companies strongly opposes S.2975-A (Murphy) / A.5498-A (Bronson) which subjects virtually all construction projects financed, whole or in part, through certain public entities to pay prevailing wage rates for hours, wages and supplements.

This bill would establish an overly expansive definition of the term 'public work' to include most future construction projects that are financed with any amount of public funding. Therefore, public work that is partially financed with public funding could be subject to the strictures of the competitive bidding laws, the onerous and costly Wick's Law, and the New York State prevailing wage law and its enforcement mechanisms. This legislation would establish an economically destructive precedent for New York and contribute to the outmigration of people and businesses to other taxpayer friendly states.

Specifically, this bill defines "paid for in whole or in part of public funds" to include payment of money, issuance of bonds and grants by a public entity or third party, public asset transfers, loans, tax credits, and other forms of public subsidy. This bill would apply to economically distressed areas, industrial development agencies, commissions, and an unknown number of other entities. Thus, with one nickel of public funding construction projects in New York State would be deemed 'public work'.

The amended version of this bill was expanded to include "custom fabrication" of construction products that occur off-site to be compensated at a prevailing wage rate. This section of the bill would have a negative impact on interstate and international commerce, areas that New York should not be regulating. Off-site materials are an integral part of public work projects and can be fabricated anywhere in the locality, state, nation, or world at varying costs.

Imposing a prevailing wage on a product that is made across the country or the globe would completely contradict the policy implemented on the federal level by the Davis-Bacon Act. Davis-Bacon mandates that federal prevailing wage rates apply only for wages paid to workers "employed directly upon the site of the work." Both state and federal prevailing wage rates often exist for a single project. Enacting this legislation would cause confusion as to which rules apply in that situation and potentially opens the State to all kinds of litigation. Confusion is bound to occur in determining if a product or a type of material should be classified as "custom." Hundreds of products and materials for a project are often supplied by a single company. Sorting out the differences between "standard" and "custom materials" would be difficult and onerous.

Furthermore, the sponsors of this legislation make fiscally reckless claim that the bill does not have a fiscal impact on taxpayers. There is no evidence available to confirm the sponsor's fiscal impact claim. This legislation would clearly result in significant cost increases for all affected construction projects and would have a chilling effect on economic development in New York State resulting in fewer jobs.

AGC NYS strongly opposes S.2975-A (Murphy) / A5498-A (Bronson) and urges the Legislature to reject this proposal.