



**LEGISLATIVE MEMO**  
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## **MEMORANDUM OF OPPOSITION**

**BILL: S.5475-A (Jackson) / A.373-A (Bronson)**

**SUBJECT: Requires Prevailing Wage on "Custom Fabricated" Building Products**

**DATE: March 25, 2024**

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.5475-A (Jackson) / A.373-A (Bronson) which amends the labor law, in relation to inclusion of certain off-site custom fabrication as public work for the purposes of payment of prevailing wage. This bill is particularly troubling in a time of rising inflation and supply chain disruptions for construction products.

This bill would establish an expansive definition of the term "custom fabricated" to apply the prevailing wage law to the fabrication of exterior or interior wall panel systems, the fabrication of woodwork, cases, cabinets or counters and the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation solely and specifically designed and engineered for installation in the construction, repair or renovation of a building which is the subject of a contract to which the state, a municipal corporation, a public benefit corporation or a commission appointed pursuant to law is a party.

This bill would apply to economically distressed areas, industrial development agencies, commissions, and an unknown number of other entities. Among the categories of construction projects that would be negatively impacted by this bill are community based not-for-profit organizations, schools, brownfield redevelopments, affordable housing programs, historic preservation, health care, renewable energy, and others.

"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 products 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 fabricated" would be difficult and onerous.

Furthermore, "custom fabrication" would be subject to the strictures of the competitive bidding laws, the onerous and costly Wicks 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.

The sponsors of this legislation make fiscally reckless claims 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.5475-A (Jackson) / A.373-A (Bronson) and urges the Legislature to reject this proposal.