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MEMORANDUM OF OPPOSITION

BILL: S.621 (Sanders) / A.4947 (Bichotte Hermelyn)

SUBJECT: Crimes Involving the Death or Injury of a Worker

DATE: April 30, 2021

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.621 (Sanders) / A.4947 (Bichotte Hermelyn) which, would make any person that is an owner, developer, construction supervisor, or a worksite safety supervisor criminally liable of murder or manslaughter in relation to crimes involving the death or injury of a worker. The bill grants jurisdiction to the New York State Attorney General and the county district attorney to prosecute offenses. The bill also increases civil penalties for violations.

Workplace 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 by trained and skilled workers at hazardous sites including elevated heights, highway work zones, bridges, congested roadways, subway tunnels, confined spaces, schools, hospitals, airports, nuclear facilities, prisons, and other locations. Passage of this legislation will significantly impact the ability of contractors to attract and keep high quality, experienced superintendents. A loss of such personnel will work counter to the stated goals of this legislation such that it will make jobsites less safe.

Compounding the inherent dangers of the construction business and jobsite safety are opioid abuse, proliferation of recreational marijuana, alcohol, distracted driving, and other impairments. According to the Substance Abuse and Mental Health Services Administration; workers in the construction industries had some of the highest rates of illicit drug and alcohol abuse at 13.9 and 16.5 percent respectively. Detecting and preventing opioid and marijuana abuse is an enormous challenge and distracted drivers continue to endanger and tragically take the lives of highway workers.

S.621 (Sanders) / A.4947 (Bichotte Hermelyn) simply elevates the criminal and civil penalties against employers and supervisors that ignore, disregard, or fail to comply with safety protocols will have serious negative unintended consequences on responsible employers and employees. Employers, such as a person or corporation, without direct control over a jobsite could be indicted on felony charges. Employees, such as supervisors and safety personnel could be held personally liable for exposing a worker to a risk of physical injury which, will exacerbate the workforce shortages and undermine efforts to increase diversity in the construction industry, as individuals will be understandably unwilling to accept management and supervisory roles when they could face criminal penalties for an accident.

To improve workplace safety and reduce injuries AGC NYS supports reforming New York's notorious Scaffold Law. Illinois outright repealed their statute, known as the "Structural Work Act," in 1995. In addition to significant reductions in insurance loss costs, they experienced a significant increase in construction employment and significant reductions in construction workplace fatalities and injuries. Illinois Post Reform: number of construction jobs rose by 25%; workplace fatalities decreased by 30% over a six-year span; and overall worker injury rate decreased by 53%, giving Illinois the 10th lowest injury rate in the country.

Undeniably, the City and State of New York have some of the toughest construction safety training laws in the nation but, this bill is a misguided attempt to rectify a perceived problem that does not exist. **Therefore, AGC NYS strongly opposes S.621 (Sanders) / A.4947 (Bichotte Hermelyn) and urges the Senate and Assembly to reject this bill.**