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MEMORANDUM OF SUPPORT

BILL: S.8213 (Cooney) / A.4549 (Pretlow)

SUBJECT: Establishes time limits after which tort claims for personal injury or wrongful death may not be asserted against design professionals and construction contractors.

DATE: May 17, 2024

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and open shop construction companies supports S.8213 (Cooney) / A.4549 (Pretlow) which, establishes a ten-year time limit after which tort claims for personal injury or wrongful death may not be asserted against design professionals and construction contractors.

This bill repeals section 214(d), subdivision (h) of Rule 3211 and subdivision (i) of Rule 3212, and adds a new section 214(d) to the Civil Practice Law and Rules ("CPLR") to establish a ten-year statute of repose for professional injury or wrongful death actions brought against professional engineers, architects, landscape architects, land surveyors or construction contractors. The accrual date for the limitations period would be the date of completion of the project.

The term completion is defined in subsection 4 of the proposed statute. The bill also includes a one-year extension of time so that if an injury or death occurs during the tenth year after completion of the project the plaintiff will have an extra year to commence an action.

Subsection 3 of the proposed statute provides that the affirmative defense shall not be asserted by an architect, engineer, landscape architect, land surveyor or construction contractor in actual possession or control of the premises at the time an injury occurs. Subsection 3 also limits the applicability of the ten-year statute of repose to third party actions, thereby leaving intact the existing 3- or 6-year statute of limitations governing actions by an owner/client.

AGC NYS concurs with the sponsors of the bill that it is unfair to hold design professionals and contractors liable for errors in design and construction where injuries are sustained many years after the rendition of services and where the design professional or contractor no longer has supervision or control over the premises. This legislation recognizes the fact that there comes a time when a structure passes from a well-designed building to a well-maintained building. The bill seeks to place liability on the person in the best position to correct the defects -- the present owner of the building, and to relieve the design professional and the contractor from the threat of perpetual liability that exists under current law.

Therefore, AGC NYS supports S.8213 (Cooney) / A.4549 (Pretlow) and urges the Legislature to approve this proposal.