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## **MEMORANDUM OF OPPOSITION**

**BILL: S.2766 (Ramos) / A.3350 (Joyner)**

**SUBJECT: Unmanageable Risk to General Contractors and Construction Managers for Subcontractors' Non-Payment of Wages**

**DATE: January 26, 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.2766 (Ramos) / A.3350 (Joyner). The bill provides that a general contractor or construction manager under contract on a private construction project shall assume liability for any subcontractors' wage violations.

Any general contractor or construction manager that intentionally or willfully violates New York State wage and hour laws should be held liable for unpaid wages and benefits. However, this bill is a misguided attempt to shift the blame from unscrupulous subcontractors to the general contractor or construction manager without any knowledge or legal authority to know of such a wage violation. Over the course of months and years, major construction projects employ dozens and sometimes hundreds of subcontractors with many coming and going over the course of the project. This bill would require general contractors or construction managers to act as investigators, recordkeepers, and defendants of any subcontractors wage violations without any legal authority for such actions. This dramatic shift of liability to the general contractor or construction manager is unfair and wage violations by subcontractors should be kept under the jurisdiction of the New York State Department of Labor, New York State Attorney General and District Attorneys to investigate, charge and penalize any employer.

This bill would apply for up to six years for general contractors or construction managers performing private work in New York State. Thus, well established general contractors, construction managers and emerging contractor businesses would be responsible for up to six years for any wage violation caused by any subcontractor on a specific private project. For up to six years, after any private construction project is finished the general contractor or construction manager without any knowledge is fully responsible for the subcontractors' wage law violations.

If enacted, this bill would result in higher construction costs for general contractors, construction managers, and subcontractors for the following reasons. General contractors or construction managers will be responsible for significant administrative costs of trying to comply with the law and significant legal fees for defending against a private right of action including wages, liquidated damages, and costs associated with the action. The bill would have a disproportionate negative impact on subcontractors as well as the often undercapitalized minority and women owned businesses because they would be required to purchase payment bonds to protect against any wage claims for eternity because the bill does not have statute of limitations. The cost of purchasing payment bonds varies widely based on financial capacity, credit worthiness, and past history.

Furthermore, Part FFF of the 2020-21 New York State Budget established that the prevailing wage be paid on certain construction projects paid for in whole or in part with public funds. The combination of Part FFF and this bill could create a highly confusing dual system of labor law requirements because the decision to deem a project or certain portions of a project either a public or private work would be determined by the to be announced members of the Public Subsidy Wage Board.

If enacted, this bill would cause an unmanageable risk to general contractors and construction managers for subcontractors' non-payment of wages. The significant costs associated with the project risk will have a chilling effect on economic development. For these reasons, AGC NYS strongly opposes S.2766 (Ramos) / A.3350 (Joyner).