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MEMORANDUM OF OPPOSITION

BILL: S.542 (Kaminsky) / A.2591 (Carroll)

SUBJECT: "The New York State Low Embodied Carbon Concrete Leadership Act"

DATE: April 15, 2021

The Associated General Contractors of New York State, (AGC NYS) is the leading statewide trade association representing union and open shop construction companies. As proposed, AGC NYS strongly opposes S.542 (Kaminsky) / A.2591 (Carroll) which establishes an untested and unmanageable low embodied carbon procurement standard for concrete used in public construction projects. AGC NYS members are committed to reducing carbon emissions, rigorous construction safety standards, and delivering quality public works projects. AGC NYS is also committed to finding a sensible solution that is scientifically sound to reduce carbon emissions while protecting equal procurement opportunities for public works contracting. Unfortunately, while we commend the sponsors for their laudable goal, this legislation does not meet those standards.

This bill poses significant safety, quality, environmental, procurement, liability, insurability, technological, feasibility, and constructability problems for public works projects in New York State. State agencies and authorities have rigorous standards for the specification and testing of materials prior to including a requirement in state procurements. This bill mandates low embodied carbon concrete on public work before a thorough state analysis of specifications and testing for the feasibility and practicability for such a construction material. Additionally, without the proper state specifications and testing of low embodied concrete, New York may jeopardize federal infrastructure funding.

Safety: This bill mandates a construction material on public work without adequate review, state specifications, and testing. Such an approach raises serious safety concerns for the public, occupants of the public buildings and facilities and, construction workers on road, bridge, and building projects.

Quality: Absent adequate review and testing, this mandated approach could have significant impact to the quality of our public facilities. While not all such issues may lead to catastrophic results, quality and useful life such things as of flooring, walls, roofing and roadways could suffer and lead to significant impact to the State and taxpayers.

Environment and Technology: Mandates an inflexible and technologically myopic process for the manufacturing of low carbon concrete which will stifle innovation in environmental science, design, engineering, and construction.

Taxpayer Impact: This legislation is likely to create a significant impact to competition and availability. This could result in significant cost increases to construction projects in NYS and, therefore, significant impact to taxpayers. That impact will be exacerbated by the procurement process noted below.

Procurement: Requires an expensive and variable calculation known as an Environmental Product Declaration to receive a bid preference of up to 8%. The bill obligates state agencies and authorities to use low carbon concrete on all projects prior to the design and engineering phase of construction. Notably, this legislation would extend the bid preference requirement to general contractors as they procure subcontractors, sub of subs and suppliers. This approach belies a lack of understanding of the competitive bidding process and is practically unworkable.

Potential MWBE Impact: Given the perversion of the procurement process noted above, this legislation could have significant impact on minority and women owned businesses who provide concrete supply and installation. The bill does not address potential impacts.

Liability/Insurability: This legislation assumes that an unspecified and untested construction material that is intended for use in January 2022 is immune to liability or is insurable under New York State laws. That remains to be seen but the more important point is that such liability and risk, based on the procurement process, will be inappropriately passed on to general contractors. Such may have a significant impact to the cost and availability of general liability insurance which is already an issue in New York State.

The effective date of January 1, 2022 provides an unreasonable timeframe for the implementation of this proposed law.

As stated above, AGC NYS opposes (S.542 (Kaminsky) / A.2591 (Carroll)) and is committed to finding a sensible solution to reduce carbon emissions in concrete production. As laudable as the goals of the legislation may be, this approach is premature, dangerous and unworkable. AGC NYS urges the Legislature to reject this bill.