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MEMORANDUM OF OPPOSITION

BILL: S.5921 (Krueger) / A.6872 (Zebrowski)

SUBJECT: Enacts the New York Deforestation-Free Procurement Act

DATE: April 23, 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.5921 (Krueger) / A.6872 (Zebrowski) which enacts the New York deforestation-free procurement act requiring that companies contracting with the state do not contribute to tropical or boreal intact forest degradation or deforestation directly or through their supply chains.

This bill is another example of what would seem like a good public policy, stopping the degradation or deforestation of forests, but it establishes a misguided and punitive procurement process for general contractors. In the procurement phase of a project, these types of forest products are supplied by subcontractors and subs of subcontractors which should be ultimately responsible for the wood.

In a broader context, under the punitive “due diligence” procurement provisions of this bill a general contractor is responsible for:

- “Due Diligence” for the contractor includes data detailing the complete list of direct and indirect suppliers and supply chain traceability information, including refineries, processing plants, farms, and plantations, and their respective owners, parent companies, and farmers, maps, and geolocations, for each forest-risk commodity found in products that may be furnished to the state. Measures taken to ensure the product does not contribute to tropical or boreal intact forest degradation or deforestation. Measures taken to ensure the free, prior, and informed consent of directly affected indigenous peoples and local communities. Measures taken to protect biodiversity and prevent the poaching of endangered species in all operations and adjacent areas. Measures taken to ensure compliance with the laws of countries where forest-risk commodities in a company's supply chain were produced. Measures to deter violence, threats, and harassment against environmental human rights defenders (EHRDs), including respecting internationally recognized human rights standards, and educating employees, contractors, and partners on the rights of EHRDs to express their views, conduct peaceful protests, and criticize practices without intimidation or retaliation.
- Knowing the “free, prior, and informed consent” based as described in the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention of 1989, also known as the International Labor Organization Convention 169, and other international instruments.

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- Point of origin as identified by the smallest administrative unit of land.
- Every contract entered into by a state agency or authority that includes the procurement of any product comprised wholly or in part of a forest-risk commodity shall require that the contractor certify that the commodity furnished to the state pursuant to the contract was not extracted from, grown, derived, harvested, reared, or produced on land where tropical or boreal intact forest degradation or deforestation occurred on or after January first, two thousand twenty-two.
- Requires large contractors whose annual revenue is greater than \$1 billion to certify that they have adopted a no deforestation, no peat, no exploitation (NDPE) policy as defined in the statute. Smaller contractors may choose to use the adoption of an NDPE policy to demonstrate compliance with certification requirements.

In a disputed case of due diligence, a general contractor would be investigated and could have the contract voided with financial penalties assessed.

Furthermore, at a time of already record high construction materials costs, this bill would only increase procurement costs for New York and compliance costs for general contractors. In restricting trade, the bill also raises questions about whether such requirements could be applied in a manner that is consistent with obligations under the World Trade Organization Agreement on Government Procurement.

For these reasons, AGC NYS opposes S.5921 (Krueger) / A.6872 (Zebrowski) and urges the Legislature to reject this bill.