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MEMORANDUM OF OPPOSITION

BILL: S.6576 (Savino) / A.8071 (Abbate)

SUBJECT: Mandates off-site custom fabrication as public work for the purposes of prevailing wage payment

DATE: June 9, 2017

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and non-union construction companies strongly opposes S.6576 (Savino) / A.8071 (Abbate) which mandates off-site custom fabrication as public work for the purposes of prevailing wages.

Requiring custom fabrications that occur off-site to be compensated at a prevailing wage rate would have a negative impact on interstate and international commerce, areas that New York should not be regulating. Off-site materials are an integral part of public work projects and can be fabricated anywhere in the locality, state, or nation at varying costs.

Our specific concerns with this bill are as follows:

1. Creates Competitive Advantage to Out-of-State Businesses: Products used in construction projects can be fabricated in border-states like New Jersey, Vermont, Massachusetts and Connecticut. The prevailing wage requirements imposed in this bill will increase the cost on New York businesses, but not their competitors from neighboring states. Without a means to enforce these requirements on those materials produced outside New York, local businesses will suffer.

2. Negative Environmental Impact: Increasingly, the construction industry is utilizing lean construction techniques which are beneficial to the environment. By creating a competitive advantage for out-of-state businesses, more custom fabricated materials would be shipped into New York State which would increase the amount of green-house gas emissions.

3. Contradicts Federal Policy: Imposing a prevailing wage on a product that is made across the country or the globe would completely contradict the policy implemented on the federal level by the Davis-Bacon Act. Davis-Bacon mandates that federal prevailing wage rates apply only for wages paid to workers “employed directly upon the site of the work.” Both state and federal prevailing wage rates often exist for a single project. Enacting this legislation would cause confusion as to which rules apply in that situation and potentially opens the State to all kinds of litigation.

4. Impossible to Administer: The requirement to pay the “on-site” prevailing wage rate, regardless of where the product is fabricated, is literally impossible. Many products are fabricated well before they are purchased by a general contractor to be used in a public works project. How can a business located in Albany know in advance that a particular product they manufacture will be used on a public works project in New York City? Furthermore, that business may make products in one day that will eventually be used on projects in Syracuse, Rochester, Buffalo and even New Jersey. How will that employer know what prevailing wage rate to pay? A different rate would apply every hour for every worker.

5. “Custom” Broadly Defined: Confusion is bound to occur in determining if a product or a type of material should be classified as “custom.” Hundreds of products and materials for a project are often supplied by a single company. Sorting out the differences between “standard” and “custom materials” would be difficult and onerous.

6. Significant Fiscal Impact: The sponsors of this legislation make a fiscally reckless claim that the bill does not have a fiscal impact on taxpayers. There is no evidence available to confirm the sponsor’s fiscal impact claim. This legislation would clearly result in significant cost increases for all affected construction projects and would have a chilling effect on economic development in NYS resulting in fewer jobs.

7. Another Unfunded Mandate: The bill would increase the costs of construction projects on the state, a municipal corporation, public benefit corporation or commission and any third party acting on behalf of any public entity.

In sum, this legislation would establish a significant economic burden for New York taxpayers, impede on the free market as it strives for efficiency, is contrary to federal law, and is impossible to administer. **Accordingly, the AGC NYS strongly opposes S.6576 (Savino) / A.8071 (Abbate).**