



**LEGISLATIVE MEMO**  
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**MEMORANDUM OF OPPOSITION**

**BILL: S.8334 (Mayer) / A.10626 (Bronson)**

**SUBJECT: Prevailing Wage Mandate – Delivery and Hauling of Aggregate Construction Materials**

**DATE: July 15, 2020**

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.8334 (Mayer) / A.10626 (Bronson) which amends section 224-a of the labor law as added by section 1 of part FFF of chapter 58 of the laws of 2020 to mandate the prevailing wage in the delivery and hauling of aggregate construction materials on covered projects.

AGC NYS opposed Part FFF of chapter 58 of the laws of 2020 because among its provisions is a requirement to mandate the prevailing wage to be paid on certain construction projects, paid for in whole or in part, where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars. Another provision of the law is the establishment and broad policy making authority of a thirteen member Public Subsidy Wage Board to be appointed by the governor. The Public Subsidy Wage Board has the authority to examine, make recommendations, and issue binding determinations including construction work excluded as a covered project and the definition of construction.

With the ink barely dry on one of the most controversial policy proposals of the enacted FY 21 New York State Budget, this bill S.8334 (Mayer) / A.10626 (Bronson) further expands the prevailing wage mandate by defining construction to include the delivery and hauling of aggregate construction materials. This bill would create a logistical conundrum for contractors and subcontractors because the delivery and hauling of construction aggregate can originate in-state or interstate and can be split into multiple loads for public or private work. Imposing a prevailing wage on a product that can originate in or out of New York State 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.

The bill usurps power from the Public Subsidy Wage Board by amending Part FFF of Chapter 58 of the laws of 2020 before any appointments by the Governor to the Board, and a transparent public discussion about the implications of the prevailing wage mandate on covered projects. Part FFF provides that prior to making any recommendation intended to apply to all projects, the board shall hold a public hearing. At each hearing, the board may hear testimony and/or review written documents from any interested stakeholders related to the planned agenda of the meeting. The board shall make any such recommendations in writing. In making its recommendations, the board shall examine the impact of such thresholds and circumstances on private development in light of available public subsidies, existing labor market conditions, prevailing wage and supplement practices, and shall consider the extent to which adjustments to such thresholds and circumstances could ameliorate adverse impacts, if any, or expand opportunities for prevailing wage and supplement standards on publicly subsidized private construction projects in any region or regions of the state. The board shall be

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empowered to issue binding determinations to any public entity, or any private or not-for-profit owner or developer as to any particular matter related to an existing or potential covered project.

The bill would have a disproportionate negative impact on the burgeoning minority and women-owned business trucking companies that often begin as owner-operator businesses. Once again, the bill contradicts New York State's goal to promote equality of economic opportunities for MWBEs and to eliminate barriers to their participation in state contracts.

If enacted, this bill would result in a greater volume of truck traffic on roads and bridges as contractors and subcontractors would be forced to split loads between public and private work to comply with the prevailing wage mandate. Producing greater volumes of heavy duty truck traffic is in direct contradiction to New York's environmental goals to reduce carbon emissions in the transportation sector.

For these reasons, AGC NYS opposes S.8334 (Mayer) / A.10626 (Bronson) and urges the Legislature to reject this bill.