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MEMORANDUM OF OPPOSITION

BILL: S.8306-B (Budget-Part JJ) / A.8806-B (Budget-Part KK)

SUBJECT: URGENT! DON'T CUT SUNY CONSTRUCTION FUNDING - OPPOSE SUNY PLA MANDATE

DATE: March 25, 2024

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.8306-B (Budget – Part JJ / A.8806-B (Budget – Part KK) which requires project labor agreements for SUNY construction fund projects that would cost \$3 million or more.

AGC NYS strongly urges Governor Hochul and the Legislature to reject sections of the Assembly and Senate budget which mandates project labor agreements (PLA) for State University of New York (SUNY) construction fund projects that would cost \$3 million or more. From the outset, this legislation will require expensive and lengthy studies on every one of the hundreds of construction projects that are to be issued in the next few critical years. This financial burden on SUNY and its' campuses is wasteful and unnecessary.

In the highly competitive and expensive market of higher education, mandating a PLA would amount to a dramatic cut to SUNY funding for construction projects leading to declines in the conditions of campus housing and academic facilities. The savings typically identified in PLA benefit analyses are illusory or de minimis at best. To the extent that PLA benefit analyses are objective, they tend to be entirely at the expense of workers on the project in the form of deviating from prevailing wage or denying overtime or holiday pay. Over the past decade, SUNY enrollment has declined by more than ninety-two thousand students and declining conditions at SUNY campuses would negatively impact enrollment and become the financial burden of current and future parents and students.

Lawmakers should be committed to fair and open competition because mandating PLAs will preclude or limit open shop competition on construction projects. Mandated PLAs also negatively impact union contractors as they undermine collective bargaining by withholding issues that should be collectively bargained for inclusion in PLAs.

Under state law, a PLA benefit analysis is required to determine whether to implement such an agreement before the construction project commences. **However, PLA studies rarely, if ever, consider the following:**

- PLA studies do not measure the impact of lost competition both by prime and subcontractors and balance that against any theoretical savings in the PLA is defective on its face. With labor shortages and recently enacted regressive state labor mandates there is already a limited pool of bidders on SUNY projects.
- The use of a mandated PLA would potentially limit and negatively impact teaming and subcontracting arrangements with MWBE and SDVOB companies. As referenced in the [State of New York 2016 Minority and Women Business Enterprises \(MWBE\) Disparity Study](#), many union and open shop interviewees expressed concern about the impact of PLAs have on nonunion MWBEs.

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- The impact of lost competition for PLAs is the justification for S.752 (Sepulveda). This bill ensures an unredacted, public feasibility study is created and released prior to the engagement in any project labor or apprenticeship agreement, allowing for the analysis of impact on minority, women and service-disabled veteran owned businesses.
- The size and complexity of a typical SUNY construction project requires large amounts of skilled labor. Historically unions have been able to provide a large pool of skilled labor, but with workforce shortages that pool has become limited. Flexibility is necessary to assemble the workforce and skilled trades needed to complete SUNY construction projects that should include a combination of union and open shop labor.
- Geography and the makeup of the construction industry matter in PLA benefit analyses because it reflects the general makeup of the regional construction industry. SUNY has sixty-four campuses, most of which are in upstate New York.
- PLA benefit analyses typically identify preventing labor unrest as a benefit. There is, however, a history of unrest caused by the decision to impose a mandated PLA on a Thruway Authority project that was subjected to a legal challenge in 2017, a controversy that arose entirely as the result of the determination to mandate a PLA on that procurement.
- Contractors and the entities that collectively bargain on their behalf are excluded from negotiations over mandated PLAs, causing them to deviate from local collective bargaining agreements. If there is to be a PLA, the employers who will be bound by it and those who collectively bargain on their behalf should be at the negotiating table.

For these reasons, AGC NYS urges Governor Hochul and the Legislature to reject S.8306-B (Budget - Part JJ) & A.8806-B (Budget - Part KK) requiring mandated PLAs on SUNY Construction projects.