

**Memorandum in Opposition
S.2766 / A.3350**

AN ACT to amend the labor law, in relation to actions for non-payment of wages

The Empire State Chapter of the Associated Builders and Contractors (“ABC”), representing hundreds of merit-shop construction contractors and subcontractors employing hundreds of thousands of workers throughout the State of New York, opposes S.2766 / A.3350.

We support the pursuit and use of all legal remedies against any contractor that intentionally and willfully does not pay the appropriate wages and benefits to employees. However, this bill creates a new private right of action and requires direct contractors to pay any wages, fringe benefits, or other benefit payments or contributions owed by a defaulting subcontractor and is deeply flawed. This will put general contractors at risk of having to pay twice for the same work and will create lengthy litigation. These redundant and unnecessary costs will only exacerbate the affordable and market rate housing crisis in the state.

The bill assumes that all general and subcontractors willfully and knowingly defraud their workers of wages and benefits. In essence, you’re guilty as charged and have little ability to defend yourself. What the bill needs to acknowledge and define are the good faith efforts of all contractors to ensure their workers receive the proper wages and benefits in what many will agree is a complicated and confusing set of rules and laws that govern prevailing wage work. Additionally, Part FFF of the 2020-21 New York State Budget established that the prevailing wage be paid on certain construction projects paid for in whole or in part with public funds. The combination of that new law and this bill will create a confusing set of requirements which will make the tracking even more difficult.

Further, the bill confers broad standing on a number of persons and entities on behalf of the affected workers to file a complaint. While noble, the jurisdiction and investigation of these cases should remain only with the Commissioner of the Department of Labor, the Attorney General of New York, and local District Attorneys. By allowing another person or entity to file on the behalf of a worker opens the door for unscrupulous persons that take advantage of the worker and potentially steal any settlement or dramatically alter what the worker receives by taking unnecessary service/legal fees.

The bill establishes a six (6) year statute of limitations for an employee or his/her representative to file a claim against the contractor. That is far too extensive a timeline for this type of legislation. A contractor, who has already paid for work, will not get notified up to 6 years later that a claim of wage theft has been filed. They’ll have no ability or recourse to try and seek those wages from the contractors that may have violated the law. The contractor is penalized for something he/she never knew occurred. It is patently unfair to the contractor, as well as the worker, and will do nothing but increase litigation and the cost of construction in New York.

As New York begins to emerge from the darkest days of the pandemic, where the Governor and Legislature rightly want to invest in infrastructure, we should be doing everything we can to encourage the growth of the industry. Our fear is legislation like this will only drive contractors away from New York and delay our recovery.

For all the reasons highlighted above, we are opposed to S.2766 / A.3350.

If you have any questions related to this issue, please contact Brian Sampson, President of Associated Builders and Contractors, Inc. at (585) 967-2133.