



Associated Builders and Contractors

Testimony From

Empire State Chapter of the Associated Builders and Contractors

Presented To

Joint Legislative Hearing on Economic Development

**Transportation, Economic Development and Environmental Conservation Part
FFF Expansion of Prevailing Wage**

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Good morning, I would like to thank you for the opportunity to speak today about the Governor's proposal to include the expansion of prevailing wage in the 2020-2021 State Budget. My name is Brian Sampson. I am the President of the Empire State Chapter of the Associated Builders & Contractors, which is a construction trade association representing hundreds of merit shop contractors, employing tens of thousands of workers across New York state. Our organization promotes fair competition, free enterprise and provides education and world-class safety services for our members. According to the U.S. Bureau of Labor Statics (BLS) averages for New York state, Empire Chapter members are 460% safer than industry averages. The Total Recordable Incident Rate the Empire Chapter contractors is 60% below the New York BLS average and 46% below the national average, which clearly establishes our commitment to safety.

The members of Associated Builders and Contractors, Empire Chapter are deeply troubled by the Governor's proposal to expand prevailing wage to private work. The catalyst for this concern stems from the current State Labor Law section 220, the

prevailing wage law, which is profoundly flawed and in danger of becoming even more fractured under the Governor's proposal.

The current system for certifying wage rates is opaque, outdated and in need of significant reform. New York State taxpayers are being considerably overcharged for public works projects, with prevailing wage rates that are up to twice the market wage. Prevailing wages are set each year based upon collective bargaining agreements for particular trades in various jurisdictions of the state. The collective bargaining rate can be negotiated when 30 percent or more of the workers in such trade are represented. However, no one in state government verifies whether prevailing wage rates accurately reflect true market conditions. The New York State Department of Labor used to conduct wage surveys to ascertain whether trade unions represented at least 30 percent of employees in a given area in a given trade and to ascertain what the wage rates were, but no longer. Neither the State Labor Department nor the State Comptroller's Office verifies the accuracy of prevailing wage rates, which is particularly worrisome since these rates are paid by taxpayers. Simply put, there is no transparency in how prevailing wage rates are set. Research has found the prevailing wage mandate inflates building costs as much as 25-30 percent, depending on the region. These additional costs would offset or exceed any public financial assistance incentives. The proposal to expand that murky, antiquated mandate to private projects receiving taxpayer incentives will have devastating consequences for development in New York, with fewer projects being built and more workers unemployed.

The payment of prevailing wages is extremely complex and penalties for violations are severe. As a result, many contractors including those that employ thousands of minority workers, including many registered Minority and Women-Owned Businesses (MWBEs), will not participate on projects with prevailing wage mandates and will lose out on this critical work, depriving local workers of safe, stable, good paying jobs. With turnstile and worksite data collected from over 130 open and merit shop major projects across the five boroughs, it has been established that New York City's open and merit-shop workforce is more than 90% minority and nearly all reside in the five boroughs. These workers will be the direct casualties of expanded prevailing wage.

While applying prevailing wage rates to projects with budgets over \$5 million in which 30 percent is covered by incentives is the basis for the Governor's proposal, the bias of exemptions cannot go unnoticed. A project is exempt if an owner signs a project labor agreement (PLA), agreeing to hire workers through local trade unions, which is the ultimate goal of Section 220. As the Governor looks to expand Section 220 labor terms, what he's doing is effectively crushing incentives to bring development to New York. You can't cultivate construction and business opportunities by driving up costs to build and negating incentives for developers.

The 421-a property tax exemptions on new residential construction in New York City is a tax abatement program, much like PILOT programs across New York State. However, the Governor is proposing to strip cities and towns outside of the five boroughs from having greater flexibility to make their local governments leaner and more cost effective by exempting 421-a, but not PILOT and industrial development agency projects from the prevailing wage mandate. New York City would be extended local decision privileges when it comes to tax abatement programs, while the rest of the state would be forced into an unaffordable prevailing wage mandate.

Perhaps the most troubling portion of the Governor's proposal is the creation of a public subsidy board. Seats on this board will be filled by gubernatorial appointees, with a strong bias toward the construction workforce that is signatory to a union. However, according to a recent report by the Empire Center, only 21% of New York's private construction workforce is unionized. This unelected board will wield the power to adjust thresholds that would trigger the prevailing wage mandate, in addition to deciding whether to exempt individual projects or entire categories of projects from the mandate. This level of unregulated control is the formula for corruption and discrimination. With no legislative oversight, the board could lower the percentage threshold, lower the total construction cost amount, add or remove conditions for "construction work" or make other decisions that fundamentally alter the proposal, with the full force and effect of law. The far-reaching impact and implications of this legislation demands the responsibility of regulation remain with the elected body, not an arbitrary board that can completely rewrite the law without legislative approval. In recent years, taxpayers have

seen an increase of ineffective appointed boards or special commissions. This is nothing more than a method of passing the buck. When taking office, every elected official accepted the responsibility to make these decisions. Granting that power to a board of unelected individuals is negligent and indolent. During the budget address, Governor Cuomo stated he was looking forward to crafting a fair prevailing wage law, together with the legislature. By including a board that has the power to undo anything negotiated with the legislature or stakeholders, this proposal is neither fair nor cooperative. We need the legislature to remove the board and collectively craft a law to ensure this measure is reasonable and regulated responsibly.

While facing a \$6 billion deficit, I would caution that the limited availability of funding for development will only be effective if it maximizes every dollar and puts local New York construction workers on the jobs. The best way to accomplish this task would be to incorporate measures which encourage competition among all qualified contractors. The Governor's proposal to expand prevailing wage will have the opposite effect. It will discourage growth, make projects unaffordable, and lead to increased unemployment.

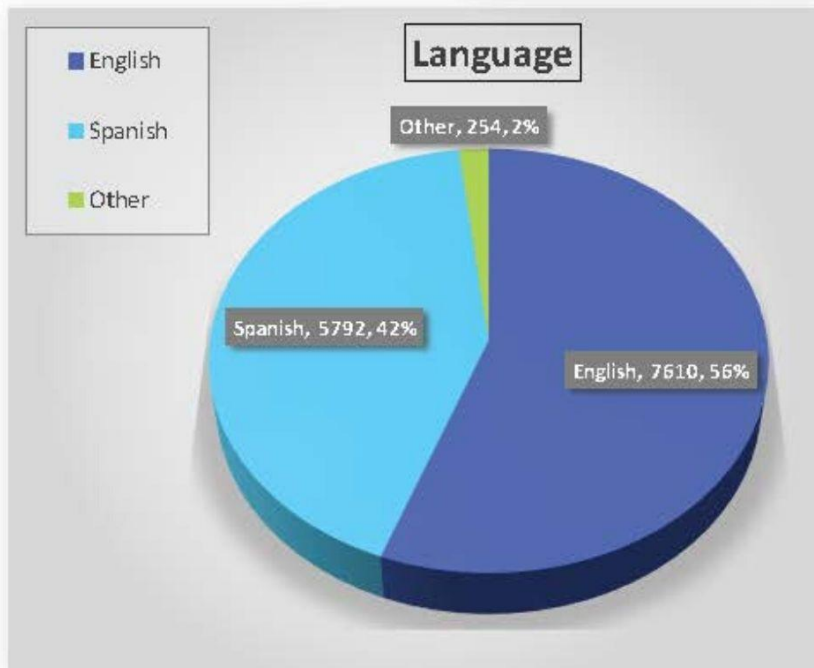
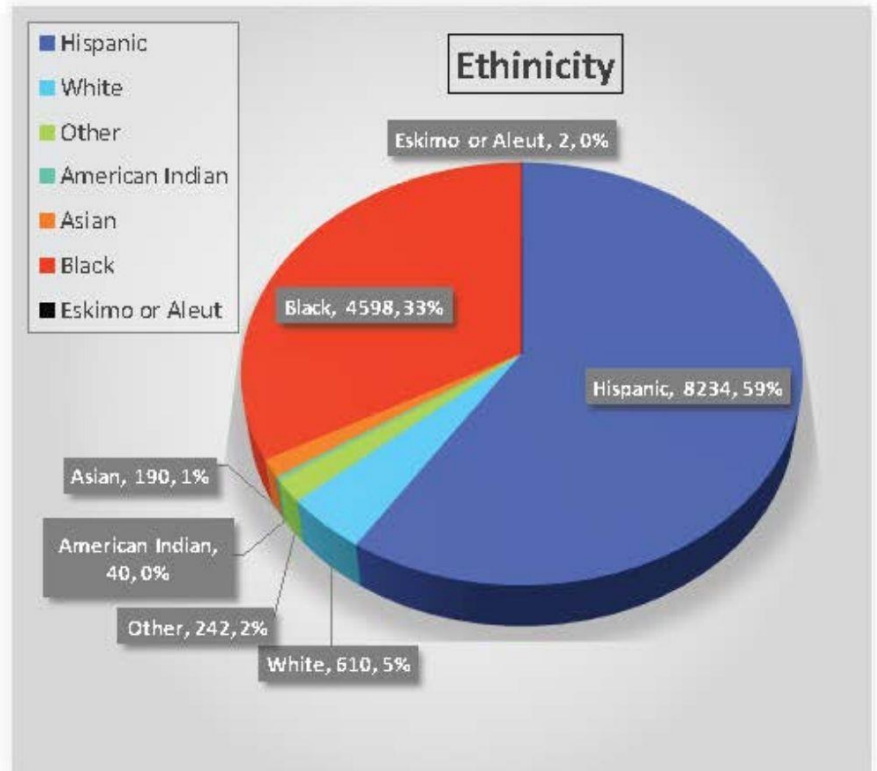
Simply put, this measure is flawed. Given the number of carve outs and exceptions, it's easy to reason that even the Governor recognizes there are a number of detrimental issues surrounding prevailing wage, as is. If we are to put more New Yorkers back to work and maximize our finite taxpayer dollars, ABC implores you to reject the inclusion of prevailing wage expansion in the budget.

Thank you for the opportunity to speak today. I would be happy to answer any questions.

14,000 Workers = 95% Minority Workers

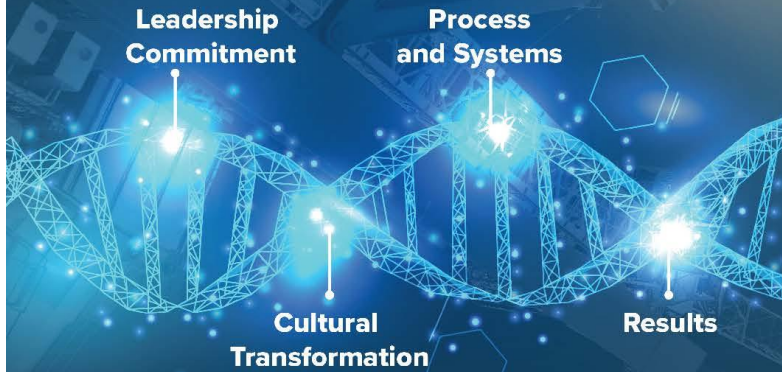
The following data reflects 130+ Private Major Projects throughout NYC / the Five Boroughs

Worker Boroughs
Bronx County
Kings County
New York County
Queens County
Richmond County



Zip Codes		
10473	10457	10005
10801	10473	10009
10038	10538	10027
07102	10018	11201
10009	10036	07094
10466	10018	11354
10538	10075	11222
11224	10003	11222
07107	11201	10128
10468	10018	11201
10029	11101	10002
11208	10001	10002
10457	11102	11201
10002	10005	10002
		10306

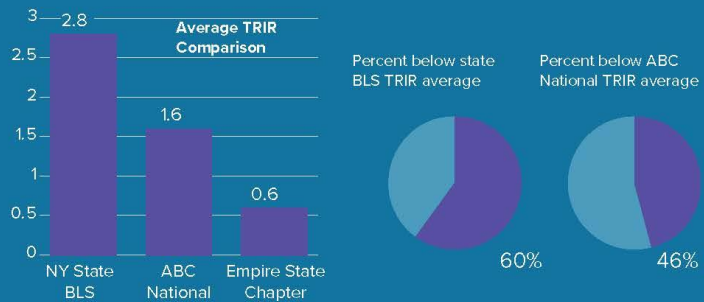
Source: Worksite / Turnstile Data (2019 / 2020)



Make SAFETY a part of your company's DNA

Associated Builders and Contractors' First STEP, a safety assessment tool, allows contractor members of the **ABC Empire State Chapter** to benchmark overall 2019 safety performance against the U.S. Bureau of Labor Statics averages for New York state. And the results clearly show that the contractors surveyed are truly high performers in worker safety in the construction industry.

The Total Recordable Incident Rate for the contractors who participated in the survey is 60% below the New York BLS average and 46% below the ABC national STEP member participants' average, as outlined in the 2019 ABC Safety Performance report. This means that when compared to state BLS TRIR data, Empire State Chapter First STEP participants are 460% safer, which clearly establishes their commitment to world-class safety.



In addition, when looking at Days Away and Restricted or Transferred rates, Empire State Chapter participants were 58% below the state BLS average and 48% below the ABC National average DART rate. That translates to Empire State Chapter First STEP participants DART rates being 500% safer than the state average.

