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Senate Finance Committee
Assembly Ways and Means Committee

Joint Legislative Public Hearing on 2021 Executive Budget Proposal: Topic Transportation

Good morning Senator Krueger, Assemblymember Weinstein and members of the Legislature. I am Walter Pacholczak, Vice President of Government Affairs for the Associated General Contractors of New York State (AGC NYS). AGC NYS is the leading statewide trade association for New York's construction industry representing union and open shop businesses. We represent nearly 600 contractor, subcontractor, and related firms and have more than 80 years of experience working with public agencies and private developers to deliver quality projects that are the lifeblood of our communities.

AGC NYS members perform the majority of the public and private transportation, building and environmental infrastructure work in every region of New York State. I thank you for holding this important public hearing to discuss the 2021 Executive Budget proposal on transportation.

Today's testimony will briefly discuss the transportation capital program and related Article VII legislative proposals.

Governor Cuomo, recognizing the critical nature of the construction industry to New York's economy, has kept construction essential throughout the COVID-19 pandemic. The members of AGC NYS which, already had significant experience applying rigorous safety protocols and utilizing personal protective equipment, developed and honed a comprehensive plan of best practices to mitigate health risks for construction workers. The construction industry, informed by that experience and driven by our abiding commitment to safety, was exceptionally well prepared to continue moving the New York State Department of Transportation (NYSDOT) and Metropolitan Transportation Authority (MTA) capital programs forward during the pandemic. And, even as the industry has worked—safely—on projects that have remained online during this time, New York lost more construction jobs year over year than any state other than California, a loss of nearly 10%.

Governor Andrew Cuomo's FY 2022 Executive Budget is another step to build out the bold agenda to rebuild New York's economy through a broad and visionary infrastructure plan that puts our State's construction industry front and center to lead the Empire State's economic resurgence.

At the same time, the Governor has again made clear that action by the federal government is essential to the realization of this aggressive plan and the recovery of our economy. AGC NYS and our members have been consistently hammering that message home to our Congressional Delegation and will continue to do so. With new leadership in Washington, there is hope that the next 'Infrastructure Week' will at long last lead to real action and not just another punchline.

The construction industry is ready to meet Governor Cuomo's challenge to 'Build Back Better,' a vision echoed by President Biden. That means building signature projects, the core NYSDOT program, and local roads and bridges across the entire State. The COVID-19 pandemic creates the need and gives us the opportunity to reconfigure and reimagine much of this infrastructure, a challenge we must meet now.

The Executive Budget provides \$5.8 billion in FY 2022 for the second year of a two-year DOT Capital Plan which will facilitate the improvement of New York State's roads, bridges, airports, rail facilities, ports, and other transit systems. The Capital Plan includes FY 2022 funding of \$478 million for the CHIPS and Marchiselli local highway and bridge programs; \$125 million for non-MTA transit systems, including \$20 million for the second year of a five-year, \$100 million investment in electric buses; \$28 million for freight and passenger rail; and \$17 million for aviation. The Plan also commits \$100 million in local highway aid through the PAVE NY program and \$100 million to fund local bridge projects from the BRIDGE NY program. AGC NYS supports the Executive Budget proposal but is urging additional funding for local roads and bridges through the CHIPS and Marchiselli programs.

For the past several years or maybe longer, AGC NYS has testified at the joint legislative public hearings urging the Legislature to require the NYSDOT to submit annual road and bridge conditions reports. The reports increase governmental transparency and will help the Legislature and public to determine whether or not the NYSDOT capital program is meeting our needs, and if all of the approved funding is actually being spent on road and bridge construction.

AGC NYS supports Senate bill 199-A sponsored by Senator Anna Kaplan that would require the NYSDOT to submit to the Legislature an annual highway pavement and bridge conditions report. The bill passed the Senate in 2020. As stated by the sponsors, this legislation seeks to help inform the Legislature and public as to where funds are needed and are being appropriated to help repair and maintain New York's roads and bridges. A similar concept was included as part of the DOT 2015-2019 five-year capital plan, this legislation seeks to codify into transportation law this report. Having this information readily available will help pinpoint and address the roads and bridges that are in need of repair, while ensuring that the public can feel certain that the highways and bridges they use are being addressed to the best capabilities of New York.

The MTA's \$51.5 billion 2020-2024 Capital Program was approved in FY20 and the FY21 Executive Budget appropriates and additional \$3 billion. In 2019, the Governor and Legislature secured \$25 billion in financing to directly support the MTA's capital needs, which includes \$15 billion from the Central Business District Tolling Program, and \$10 billion from a tax on high-end real estate sales and from internet sales taxes. Federal approval of the tolling program is critical to the future of the MTA.

Moving on to the FY21 Executive Budget Article VII legislation, I would like to address the following proposals with a direct impact on contractors and the tens of thousands construction workers.

Transportation, Economic Development and Environmental Conservation

PART B – Addressing Safety of Transportation Workers, Pedestrians, and the Public

This bill would enhance the safety of transportation workers, pedestrians, bicyclists, and the traveling public by increasing fines and penalties for violations and by clarifying responsibility and authority relating to accident clearance. Including:

- Creating a new section 118a of the VTL defining highway worker. Includes contractor and flagger;
- Imposing tougher criminal penalties for perpetrators of violence against transportation workers;
- Requiring the mandatory revocation of perpetrator's driver's license following a conviction for certain crimes against highway workers; and
- Establishing new penalties for intrusion into an active work zone.

AGC NYS strongly supports this proposal.

PART C – Clarify Legal Authority for Electronic Bidding on Thruway Construction Contracts

This bill would clarify that construction related bids submitted to the Thruway Authority include those submitted electronically as permitted by the Thruway Authority.

AGC NYS strongly supports this proposal.

PART E – Toll Enforcement

This bill ensures the collection of tolls owed to public authorities such as MTA Bridges and Tunnels and others with toll facilities in New York State. Amends Penal Law to make the intentional use of any toll facility without payment a theft-of-services crime. Amends Vehicle and Traffic Law to increase penalties on drivers operating motor vehicles with altered or obscured license plates while on toll facilities and in the tolled central business district.

AGC NYS strongly supports this proposal but, it is not clear where the anticipated revenues are deposited.

PART F – MTA Procurement

This bill reforms the MTA and NYCT’s bidding processes; eliminates redundant approvals for design-build contracts; alters advertisement procedures for bids; permits the use of existing contracts awarded by governments; allows for a once-yearly review of the Qualified Products Lists; and makes permanent certain existing procurement provisions.

AGC NYS is reviewing this proposal.

PART G – MTA Utility Relocation

Allows MTA construction projects to move forward on schedule by requiring that public utility companies, as well as the City of New York, relocate their pipes, mains, conduits and other infrastructure within time frames set by MTA after consultation with the utility or the City.

AGC NYS supports this proposal.

PART H – MTA Subway Accessibility

Clarifies that subway accessibility projects - even when undertaken indirectly by private developers related to the Metropolitan Transportation Authority or New York City Transit Authority - are MTA transportation facilities. Clarifying that such projects are to remain so designated entitles the MTA to occupy portions of the streets of the City, in consultation with the City’s Department of Transportation, to ensure that such projects proceed expeditiously.

AGC NYS supports this proposal.

PART I – MTA Worker Assault and Harassment

This bill adds transit employee titles to Penal Law which makes it a felony to attack and physically injure transit workers and increases the safety of MTA employees by creating the new crime of aggravated harassment of a transit worker in the second degree, for on-duty public-facing transit workers.

AGC NYS supports strengthening this proposal by adding construction workers to those covered by the definition of assault and harassment.

Revenue

Part H - Enact the Cannabis Regulation and Taxation Act

This bill would create and amend existing laws to legalize adult-use cannabis, consolidate governance of all forms of cannabis and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale and taxation of cannabis within New York State.

AGC NYS supports allowing employers the right to a drug free workplace. This is particularly important to the construction industry where jobsite safety is of the utmost concern. Furthermore, New York is the only state in the nation with a 'Scaffold Law' which places an absolute liability standard for elevation related injuries at construction jobsites. AGC NYS supports reforming the 'Scaffold Law' by establishing a comparative negligence standard for elevation related injuries at construction jobsites.

Thank you for the opportunity to testify at today's public hearing. We look forward to further review of the Executive Budget and Legislative Budget Resolutions as well as engaging our elected officials to ensure that a budget that meets New York's transportation infrastructure needs and drives our economic recovery is enacted.