



February 8, 2021

MEMORANDUM IN OPPOSITION

Bill S2766/A3350 Construction Industry Wage Theft

The Construction Exchange of Buffalo & WNY, representing 900 companies active in the Western New York construction industry, OPPOSES bill S2766/A3350 which seeks to hold contractors, including construction managers, general contractors and prime contractors, liable for wage claims made against subcontractors.

If passed into law, this bill would single out the construction industry from all other industries that use subcontractors by adding unnecessary costs, burdensome processes and improperly apportioned liability in the interest of correcting a problem that is nonexistent in most areas of the state.

Skilled trade workers are a construction company's most valued asset. With a labor shortage and fierce competition for workers, companies do not treat their employees in a way that may encourage them to leave. In addition, the New York State Department of Labor and Attorney General aggressively enforce New York state's wage laws, bringing civil and criminal actions against employers who violate them. These existing market forces and laws are more than sufficient to compel construction companies to follow the rules while putting the penalty for noncompliance in the right place – on those who break the law.

Generally, contractors do not have control over subcontractors' wage payments to their employees. Attempts at oversight of wage payments, such as through certified payroll, have proven to add costly administrative expense and are ineffective. An employer willing to engage in wage theft is also presumably willing to falsify certified payroll or otherwise misrepresent wages paid. Expanding the use of such oversight processes would further burden an industry already facing upward cost pressures and significant regulatory requirements without providing meaningful benefit.

This bill seeks to increase costs and proliferate ineffective oversight while forcing liability on companies with little control over the prohibited actions. For these reasons, the Construction Exchange strongly requests this bill not be advanced by the legislature.

A handwritten signature in black ink that reads 'Joseph W. Benoit 2'.

Executive Director