



NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING

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## MEMORANDUM OF OPPOSITION S.1948 (Ramos)/A.1915 (Crespo)

The New York State Association for Affordable Housing (NYSFAH) strongly opposes S.1948/A.1915, which would mandate the payment of prevailing wages to construction workers who build private projects in New York City that receive any public benefits or incentives. This bill would require the payment of substantially higher wages for the construction of affordable housing projects and result in fewer affordable units being built.

Studies show requiring the payment of prevailing wages would increase construction costs by at least 23 percent.<sup>1</sup> These additional costs would offset or exceed any public financial assistance incentives to construct affordable housing, thereby reducing the number of affordable housing units to be built by as much as 50 percent.<sup>2</sup>

New York State cannot forego any affordable housing development as it is in the midst of a housing crisis with more than 3 million households across our state exceeding the “affordability threshold” for housing; as they pay 30 percent or more of their household income for housing costs. Of this population, more than 1.5 million households paid a staggering 50 percent or more of their income for housing. In 2017, the Senate and the Assembly joined with Governor Andrew Cuomo to make a landmark commitment of \$2.5 billion in public subsidies for a five-year housing plan that will create 100,000 units of housing and help address this crisis. However, mandating prevailing wage payments on housing projects would weaken that historic appropriation and diminish our ability to address the housing crisis.

It would also have a negative impact on hardworking people. Because the payment of prevailing wages is administratively complex and penalties for violations are severe, many small contractors, including many Minority and Women-Owned Businesses (MWBs), will not participate on projects with prevailing wage mandates and will lose out on this critical work as a result. Large contractors are able to absorb these administrative costs and responsibilities, giving them a significant competitive advantage compared to small contractors and MWBs. Further, prevailing wage projects tend to cut out the local, non-union workforce, thereby depriving local workers of steady, good paying jobs.

The legislation purports to address the concern of the impact upon affordable housing by providing that where a project will receive \$15 million or less in public financial assistance *and* is comprised of 300

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<sup>1</sup> New York City Independent Budget Office, *The Impact of Prevailing Wage Requirements on Affordable Housing Construction in New York City* (February 2016). See <https://ibo.nyc.ny.us/iboreports/the-impact-of-prevailing-wage-requirement-on-affordable-housing-construction-in-new-york-city.pdf>

<sup>2</sup> The Center for Urban Real Estate, *The Complex Worlds of New York Prevailing Wage* (June 2012). See <http://www.nysafah.org/cmsBuilder/uploads/The-Complex-World-of-Prevailing-Wage.pdf>

residential units or fewer, it may apply to the Director of the New York State Division of the Budget for an exemption from the prevailing wage mandate. The bill does not provide any criteria to guide the Director in his or her determination related to an exemption, resulting in a troubling process that does not meet any legal or policy standards of fairness or transparency.

Moreover, while we appreciate the sponsors' apparent effort to protect affordable housing from this costly and detrimental wage mandate, the exemption criteria in the bill are unworkable since virtually ALL affordable housing projects in New York City receive more than \$15 million in public financial assistance due to the greater costs of development, land, and labor and materials. The effect of the bill's stated exemption language is that no affordable housing project would be eligible to apply for the exemption.

To ensure we maintain the ability to furnish those most in need in New York City with good, quality affordable housing, using the most efficient processes and subsidy allocations, we recommend changes to Section 2 of the bill to modify subparagraph (ii) of paragraph (b) of new subdivision 10, regarding exemption language for affordable housing projects (strike through language is proposed to be removed from the current bill language, and the **bold** language is NYSAFAH's proposed additions):

(ii) A covered developer on a financially assisted project for a multiple family dwelling receiving or expecting to receive financial assistance valued at less than fifteen million dollars aggregated from all shall be exempt from the requirements of this subdivision, provided such project receives or expects to receive financial assistance from all any public sources, and a total of all residential units of three hundred units or less, including affordable and non-affordable units, may apply to the director of the division of budget for an exemption from the requirements of this subdivision no less than thirty-five percent of the residential units of the multiple family dwelling are affordable, and such project is subject to a government-sponsored regulatory agreement; provided further, that such exemption shall apply to any construction performed on non-residential space related to such project. Covered development projects with a total of residential units over three hundred are not eligible for an exemption. The director of the division of budget may, upon consultation with the commissioner of labor, take into consideration the nature and type of development, the funding estimated for the project, the complexity of the work to be performed, the existence of apprenticeship and/or safety training programs in the area and their relation to the project, the size and composition of the labor pool and unemployment rate in the area, and other factors deemed relevant by the commissioner in determining the application for an exemption. In the event the financial assistance awarded the development project ultimately exceeds thirty million dollars, the director of the division of budget may withdraw the exemption for the remainder of the development project.

For these reasons, we strongly urge the Legislature to reject S.1948/A.1915, as written, and any prevailing wage mandate proposals which raise costs for affordable housing projects. For more information regarding this bill, please contact: Jim Walsh, Manatt, Phelps & Phillips, LLP, at (518) 431-6717 or Jolie Milstein, NYSAFAH President and CEO, at (646) 473-1208.

*Formed in 1998, NYSAFAH is the trade association for New York's affordable housing industry statewide. NYSAFAH's 375 members include for-profit and nonprofit developers, lenders, investors, attorneys, architects and others active in the financing, construction, and operation of affordable housing. Together, NYSAFAH's members are responsible for most of the housing built in New York State with federal, state and local subsidies and incentives.*