



NEW YORK STATE BUILDERS ASSOCIATION, INC.

Philip A. LaRocque
EXECUTIVE VICE PRESIDENT

Thomas Di Benedetto
PRESIDENT

The New York State Builders Association, Inc. (NYSBA) is a not-for-profit trade association comprised of 16 local affiliates across the state. Chartered in 1951, NYSBA represents 3,000 single and multi-family builders, remodelers, developers and associate member firms, ensuring that their interests are represented at the State level. These members perform over \$5 billion in single and multi-family new and rehab residential construction annually and employ over 250,000 across New York State.

MEMORANDUM IN OPPOSITION

A.8237-D (John, et al.)

S.5847F (Onorato)

Construction Industry Fair Play Act

June 7, 2010

The New York State Builders Association writes in opposition to this bill.

As New York State continues to find itself in the worst economic crisis since the Great Depression, the State Legislature seems intent on pushing small residential construction companies out of business. The Construction Industry "Fair Play" Act would apply an industry-strangling definition of an independent contractor relationship specifically targeted at New York State's construction industry; in particular, very small contractors and trade contractors.

The strict three-part test that this legislation requires, makes establishing an independent contractor relationship virtually impossible. As an example, a general contractor hires a wallboard installation company (three employees) for a project. We believe that even if you sign the contract to have the work done and the company has contracts with other general contractors, the state may determine that as a "general contractor", wallboard installation is not "outside the usual course of your business." Therefore the wallboard subcontractor and his employees would be considered employees of yours, subject to all employer liabilities such as payroll taxes, unemployment insurance, works compensation and any other employer responsibilities.

A list of 12 exceptions is also incorporated but missing just one of these exceptions will render all independent contractors as employees of the general contractor.

This attempt by the Legislature to please their labor union allies leaves small residential construction companies with little choice when working with independent contractors. The company must employ the legitimate independent contractor and all of their employees or try to run the gauntlet of the 12 part exception test! This bill essentially dictates to the builder or remodeler who they may subcontract to, and tells them if and when they shall employ versus subcontract (and pay taxes and insurance for).

Building trade unions (particularly the carpenters) in other states have already begun to use this law as a weapon against private sector construction industry general contractors and builders. Even when a

targeted builder is found innocent, they incur an estimated \$15,000 in auditing fees defending themselves in unwarranted investigations. Some cases actually allowed multiple witch hunt investigations and audits resulting in no violations found but costing the builder an additional \$15,000 per audit in legal and accounting fees.

Let's be perfectly clear, NYSBA does not condone the misclassification of independent subcontractors, and we strongly believe that anyone who does this should be punished. However, this legislation presents serious problems for many construction companies that rely upon independent contractors to meet business needs. Independent contractors provide construction companies with flexibility and cost savings. Being an independent contractor also provides an individual with the flexibility to choose their own work schedule and grow their own business. Also, because they are usually engaged on a short term or project basis, independent subcontractors permit many construction companies to react to fast changing marketplace demands.

Most importantly, independent subcontractors allow the consumer the opportunity to benefit from a reasonably priced quality product.

Unfortunately, this legislation will lead many companies to make some difficult choices about whether they can remain businesses. NYSBA strongly believes that New York State should not use the need to generate revenue, or make New York a union-only state as a reason to reclassify who is an independent contractor.

Sincerely,

A handwritten signature in cursive script that reads "Philip A. LaRocque".

Philip A. LaRocque
Executive Vice President
New York State Builders Association