



Associated General Contractors of New York State, LLC

10 Airline Drive, Suite 203
Albany, NY 12205-1025
518-456-1134 P 518-456-1198 F
www.agcnys.org

**Testimony of Walter Pacholczak
Vice President of Government Affairs
Associated General Contractors of New York State**

**Senate Standing Committee on Transportation
Senate Standing Committee on Corporations, Authorities & Commissions
Assembly Standing Committee on Corporations, Authorities & Commissions**

**Public Hearing on the Impact of COVID-19 on the Metropolitan Transportation
Authority and public transportation.**

Good morning Chairs Kennedy, Comrie and Paulin and the members of the committees. 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 economy. 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 impact of the COVID-19 pandemic on the Metropolitan Transportation Authority (MTA) and public transportation.

Today's testimony will briefly discuss the challenges of working safely during a pandemic, the MTA capital program, and recommendations to improve the procurement process for contractors.

From the onset of the COVID-19 pandemic, Governor Cuomo's Executive Orders deemed most construction as an "essential business". 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 MTA capital program forward during the pandemic.



A Chapter of the Associated General Contractors of America.

Guided by our history of safety education and training, AGC NYS quickly developed recommendations for the “NY Forward” regional reopening plan including mandatory policies and procedures for all construction sites and workers. AGC ‘s proposal mandated that:

- all employees must be trained in established safe practices and are required to follow all measures implemented to protect the workforce from potential exposure to the coronavirus;
- safety plans to protect employees from COVID-19 must be maintained on each construction project; and
- both the training and safety plan procedures related to COVID-19 must be current and modified as site conditions change and to reflect the most current information available by Occupational Safety and Health Administration, Centers for Disease Control, and the New York State Department of Health.

Fast forward to today, the economic devastation of the COVID-19 pandemic and a stalled federal funding recovery agreement with direct aid for public transportation has further deteriorated the MTA’s current and future finances jeopardizing critical transportation services, jobs, and the capital program. A July 2020 report from the New York City Independent Budget Office found that the MTA and its affiliate, NYC Transit, which runs the city’s subways and most of the buses, are highly dependent on two sources of revenue: fares from riders and dedicated taxes. The spread of COVID-19 led to a virtual shutdown of the city for months, causing a collapse in transit ridership and fare revenue. The pandemic-related shutdown also decimated the local economy, leading to a drop-in payrolls, sales, and other economic activity that generates dedicated tax revenue for the transportation authority. Revenue from dedicated taxes comprised 37 percent of the MTA’s operating budget in 2019. Dedicated taxes made up a similar share of NYC Transit’s budget, or nearly \$3.7 billion.

In the coming months and years, the Legislature and Governor will need to make many difficult decisions to restore fiscal stability to the MTA. AGC NYS continues to work with the MTA and the New York State Congressional Delegation to secure the necessary funding to keep the capital plan and operations on track. To date, AGC NYS has hosted fifteen town hall style meetings with the Congressional Delegation urging them to find a bipartisan compromise for direct aid to MTA, as well as, state and local funding.

Furthermore, AGC NYS commends the Legislature for passing legislation to reform the procurement practices of state agencies and authorities. In 2019, the Legislature passed two bills strongly supported AGC NYS. The first bill passed by the legislature in 2019, S.5933-A (Comrie) / A.2040-A (Kim) requires state agency and public authority public works contracts to include a clause authorizing contractors to recover reasonable damages for delay under limited circumstances. Unfortunately, this bill was vetoed by Governor Cuomo. The second bill S.2394 (Breslin) / A.3552 (Cusick) defining substantial completion was introduced and passed by the legislature in 2019 but was vetoed by Governor Cuomo. In 2020, an identical bill defining substantial completion S.7664 (Breslin) and A.9117 (Cusick) was repassed by the legislature and awaits delivery to the Governor.

Each of these bills is of greater importance during the COVID-19 pandemic as contractors, subcontractors and materials suppliers struggle with cash flow and contractual difficulties imposed by state agencies and authorities. The substantial completion bill defines substantial completion and reforms the payment process, including the release of retainage, to ensure timely payments to contractors, subcontractors and materials suppliers while protecting taxpayer dollars. AGC NYS and our partners in the construction industry will work with the Governor's office to enact S.7664 (Breslin) and A.9117 (Cusick) this year.

Once again, thank you for the opportunity to share our thoughts at this important public hearing to discuss the impact of the COVID-19 pandemic on the MTA. AGC NYS stands ready to continue fight for federal funding to ease the fiscal stress caused by the pandemic and working safely to help get the MTA and public transportation capital programs back on track.