



Feedback on Int. 1147-B
September 18, 2017

Thank you for the opportunity to submit comments on Int. 1447-B. This version of the bill fails to address many of the issues that have been articulated by the affordable housing industry and its diverse stakeholders, including MWBE and merit shop contractors, throughout this process.

The industry's major concerns remain as follows:

The Phase-In Period

The phase-in period for all workers to comply with the provisions of the bill are unrealistic, given the shortage of qualified trainers that exists in the marketplace currently. We believe the legislation would make that worse by stipulating that only those who currently provide OSHA-10 and OSHA-30 training can be approved as instructors, eliminating many current trainers, further limiting the pool.

Despite our repeated requests, an assessment of the current marketplace was never done. Without the Council transparently showing their work on how they arrived at the compliance dates for the temporary, limited and full Site Safety Training (SST) cards, experts can only look at the current landscape and speculate what an additional 100,000 or more workers would mean. We believe it would lead to a massive backlog, widespread difficulty in obtaining the training and eventually work stoppages—which is a devastating scenario specifically for affordable housing, which has critical deadlines connected to its financing.

Even worse, any such slowdown or work stoppage would have a devastating impact on the workers themselves. It hurts a developer to have its project delayed, but that impact is minimal compared to the worker who is unable to feed his or her family on account of being at home for a prolonged period of time due to a stoppage.

This bill must add language that allows Department of Buildings (DOB) to push back the phase-in date in case critical capacity issues haven't been addressed in time.

Grandfathering of Largely Unionized Workforce

Despite assurances throughout the process that this bill would treat all workers the same, Int. 1447-B does the opposite by granting SST cards to workers who have been through NYS or Federal Department of Labor (DOL) apprenticeship training, which is almost exclusively run by union-affiliated operators.

Tragically, there have been a number of deaths on union sites in 2017. As the industry has said all along, the union versus merit shop distinction is a false one when it comes to what makes for

a safe culture on job sites. If the Council feels the safety training outlined in this legislation is the answer, why is it not being applied equally to all classes of workers?

If this bill is truly about protecting all workers, rather than just a union ploy to gain a market advantage, then all workers must be subject to its requirements.

Barriers to Access for Underserved Communities

As with all prior versions of Int. 1447, this bill does not adequately address how the currently unemployed, young people seeking entry into the construction field, New York City Housing Authority (NYCHA) residents and other local hires would have access to this expensive training. Perhaps the most serious concern of the affordable housing industry to date has been how this legislation would devastate the local hiring efforts that are vital to the success of our projects throughout the city.

This bill simply pushes the problem to another day, stating that the department or another agency designated by the mayor shall develop a program to assist those who do not have equal access to training. This is not a solution and leaves only further questions: how will these individuals be defined? What will the level of assistance be, and for how long? How much will this cost? These are serious issues that the Council has not done the hard work of even beginning to adequately address.

At the very least, this bill should add language allowing the six-month grace period with a temporary SST card to be a permanent option. This is an important provision that will allow for many workers to be on the site and determine if the construction industry is a fit for them, without requiring the very expensive full training regimen.

Additional Burden on Emerging and MWBE Contractors

As with prior versions, this bill will impose excessive hardship on the emerging businesses that can least afford them. As we have testified to in the past, there is not merely an issue with unemployed workers in terms of obtaining the training, but with smaller, emerging and MWBE subcontractors who already have employees. Costs will fall on them to pay for the training for their workers—not large General Contractors (GC) and not developers. This bill again fails to offer any assistance to these small businesses.

Oversight

The system of oversight and penalties for violations of the bill's provision in many areas appear misdirected. For example, the provision that no permits will be issued unless the applicant certifies that all workers are trained is problematic and belies a misunderstanding of the construction process. Bids are being sought by GCs throughout the life of a development project; there is no possibility of such a guarantee from the very outset. Further, if a subcontractor breaches this agreement, the GC will have unwittingly certified a condition inaccurately. The enforcement process should be completely separated from permit issuances which often precede portions of buyout and contract negotiations, and should instead be directly connected to each Contractor's Licensing requirements.

Additionally, the bill's provision that violations be issued to the site owners in addition to the other parties is senseless. An owner has a contract with its GC, but has no reasonable ability to directly monitor nor control onsite subcontractor compliance on a daily basis. If one worker for one subcontractor of dozens neglects to bring his SST card to work and is found in violation, how is a site owner supposed to have prevented this outcome?

Finally, all building sites should be treated the same under this legislation—including two- and three-family homes. Deaths and accidents have occurred on these projects and there is a gap in oversight on these smaller sites. As with the issue of grandfathering union workers, this is either a bill to prevent deaths and accidents, or it is not.

Thank you for the opportunity to comment. We sincerely hope that there is an opportunity for meaningful changes to this draft prior to its vote.

Contact: Patrick Boyle, Policy Director, (646) 473-1209 patrick@nysafah.org