

June 30, 2022

The Honorable Kathy Hochul  
Governor of New York State  
633 3<sup>rd</sup> Avenue  
New York, New York 10017

NYS Capitol Building  
Albany, New York 12224

RE: Proposed Chapter Amendments for Carlos Law S621-B/A4947-B

Dear Governor Hochul,

As you know, the Building Trades Employers' Association and the Minority Developers and Contractors Association, the National Association of Minority Contractors, NYC Chapter, and Women Builders Council, Reverend Jacques DeGraff and Elizabeth Velez of the Velez Group opposed S621/A4947-A as it was submitted. While safety is, was, and will continue to be our number one priority, we continue to be concerned about the potential impact the legislation will have on Minority and Women-Owned businesses, small contractors, and small businesses.

We continue to have those concerns and hope that the Governor will consider some revisions which will not affect the intent of the bill, but will protect MWBEs, small contractors, and small businesses. As you know, the bill was proposed in response to the tragic loss of a construction worker, Carlos Moncayo. Although two companies and individuals were criminally charged and convicted, the caps on fines - \$10,000 for a felony and \$5,000 for a misdemeanor, were unacceptable. We propose:

- removing the minimum requirements, which handcuff prosecutors and judges, and threaten to put MWBEs, small contractors, and small businesses out of business;
- including "recklessly" as the standard to avoid drastic fines for companies, which will put them out of business for any misdemeanor or violation related to conduct of any agent, not just a high managerial agent, of a corporation;
- including "serious physical injury" instead of just injury, which is undefined in the penal code;



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- clarifying that the bill should apply prospectively;
- the penal law already allows prosecutors to bring criminal proceedings against a corporation for assault and manslaughter and they have shown their willingness to do so where the facts determine they do so. The language that makes a corporation strictly liable for actions that are in relation to a crime involving the death or injury of a worker is unnecessary and should be stricken.

These minor changes do not take away the teeth of the bill – corporations, high managerial agents, and agents can still be criminally liable and substantial fines can still be imposed - but the very real threat of putting good MWBE and small contractors out of business by imposing a mandatory \$300,000 fine where a worker trips and breaks a wrist, or a dishwasher putting broken dishware in the trash gets cut, is removed.

The Building Trades Employers Association has 159 M/WBE contractors, more than any other contractor Association in New York State:

- 42% of BTEA M/WBE contractors have revenues of \$ 5 million or more
- 21% of BTEA M/WBE contractors have revenues of \$ 1-5 million

In 2020, the U.S. Department of Labor Occupational Health and Safety Administration statistics (attached for your review) show that 72% of construction fatalities occurred on jobsites of small contractors; 79% of these fatalities occurred on construction sites below 10 stories.

These statistical facts show the real threat to small contractors, Minority and Women-Owned contractors who build projects of this size and will disproportionately suffer the unfathomable economic consequences should fatalities or accidents occur on their jobsites.

### Summary

There is nothing more important to BTEA contractors than to ensure a safe work environment and making sure all workers return home safely to their families safe, healthy, and sound each and every single night.

Sound public policy must take into consideration the implications of all the constituencies who are affected by it. Our proposed changes provide strong worker safety protections while at the same time protecting the economic vibrancy of small contractors, Minority and Women-Owned contractors and their ability to grow their companies into the effective economic generator of the jobs the New York State economy needs—especially in recovering from the devastating economic impact of the COVID virus.



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I look forward to the opportunity of discussing with you and your staff why our proposed amendments are good for the safety of all construction workers, good for small businesses and Minority and Women-Owned contractors and good for New York State. To memorialize the above revisions in the context of a chapter amendment will achieve the goals we all share in making all our jobsites safer.

Best Regards,

A handwritten signature in black ink that reads 'Louis J. Coletti'.

Louis J. Coletti  
President

Cc: Kathryn Garcia, Director of State Operations  
Rebecca Wood, Deputy Counsel to the Governor  
Jill Starishevsky, Assistant Counsel to the Governor



Minority & Women  
Contractors & Developers  
Association

# STATE OF NEW YORK

621--B

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. SANDERS, ADDABBO, BAILEY, BIAGGI, BOYLE, BROOKS, BROUK, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAPLAN, KENNEDY, KRUEGER, LIU, MATTERA, MAYER, PALUMBO, PARKER, RAMOS, RIVERA, SALAZAR, SAVINO, SEPULVEDA, SKOUFIS, STAVISKY, THOMAS, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to crimes involving the death or serious physical injury of an employee [worker]

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 "Carlos' law".

3 § 2. Paragraph (c) of subdivision 2 of section 20.20 of the penal law,  
4 as amended by chapter 671 of the laws of 1986, is amended to read as  
5 follows:

6 (c) The conduct constituting the offense is engaged in by an agent of  
7 the corporation while acting within the scope of his employment and in  
8 behalf of the corporation, and the offense is (i) a misdemeanor or a  
9 violation, (ii) one defined by a statute which clearly indicates a  
10 legislative intent to impose such criminal liability on a corporation,  
11 ~~(iii)~~ (iii) any offense set forth in title twenty-seven of article seven-  
12 ty-one of the environmental conservation law, or (iv) is in relation to  
13 a crime involving the death or serious physical injury of an employee  
[worker] where the corporation acted recklessly.

14 § 3. Subdivision 5 of section 60.27 of the penal law is amended by  
15 adding a new paragraph (c) to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD05189-05-2

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2

1 (c) If a corporation is found guilty of [an offense involving] recklessly  
causing the death

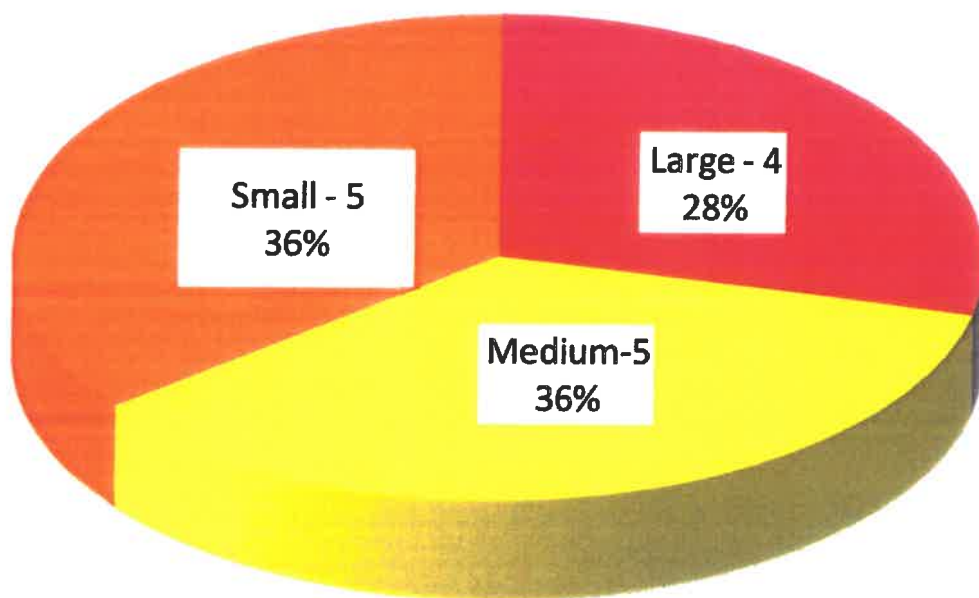
The logo features the letters 'OSHA' in a large, bold, serif font. The 'O' is stylized with a blue and white circular graphic inside. The letters are white with a slight shadow effect. To the right of the 'A' is a registered trademark symbol (®). The background is a stylized American flag with stars and stripes.

**OSHA<sup>®</sup>**

**Occupational Safety  
and Health Administration**



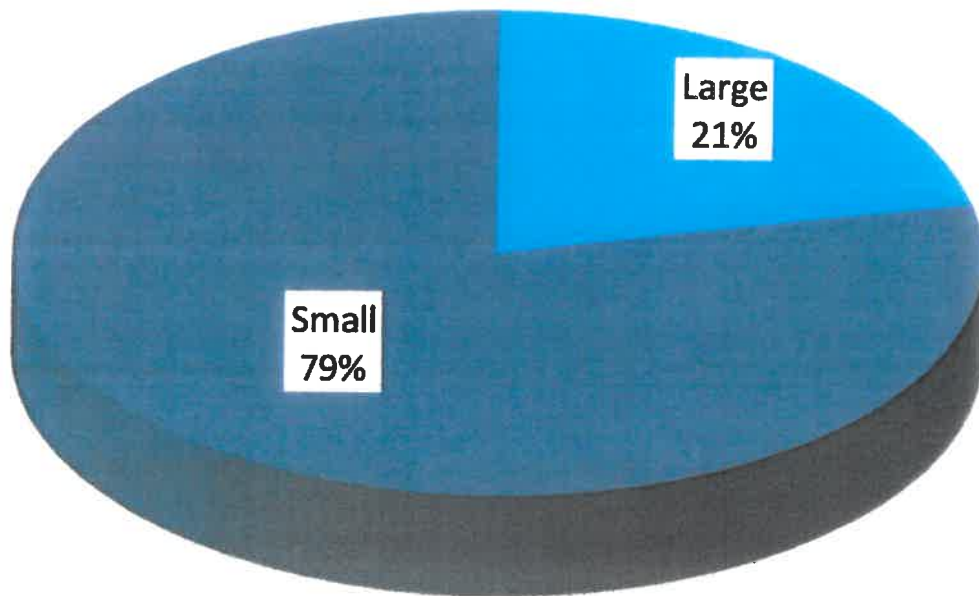
## Construction Fatalities by Company Size in 2020



Small Employer (30 or less employees)  
Medium Employer (30 – 100 employees)  
Large Employer (100 or more employees)



# Construction Fatalities by Worksite Size in 2021



Small worksite (below 10 stories)  
Large worksite (10 stories and above)



## Construction Fatalities by Union Status 2021

