

MEMORANDUM IN OPPOSITION

March 20, 2012

A.9375 Camara

AN ACT to amend the labor law, in relation to prevailing wages for service workers

Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (the “Companies”) are subsidiaries of Consolidated Edison, Inc., one of the nation's largest investor-owned energy companies, providing electric, gas and steam service to 3.3 million customers in New York City, Westchester County, Orange County, and Rockland County. In aggregate, the Companies employ almost 15,000 employees and pay more than \$2.3 billion annually in state and local taxes.

This legislation expands the coverage of Labor Law Article 9 to cover all contracted service employees, and adds new enforcement provisions to existing law. **This bill would not apply to Con Edison’s unionized employees – it is intended to extend the payment of prevailing wages to contracted employees not covered by the union’s collective bargaining agreement.**

Specifically, the bill would include all janitorial and security service work under contract in excess of \$2,000 with any “public agency.” However, the term “public agency” is expanded to include utility companies, which should not be defined as such. It also makes the willful failure to file payroll records with the appropriate public agency a class E felony, and increases criminal penalties for failure to pay prevailing wages to one particular set of contracted employees.

This bill is similar to two measures that were vetoed by the Governor in 2010 (A.8379 - Veto #6838, and S.8454 – Veto #6839).

Utility Customers Already Pay Too Much In Taxes and Fees

If enacted into law, this bill would increase utility labor costs, therefore increasing the cost of electric and gas service which would be borne by Con Edison’s customers. In effect, all of New York’s utility customers would be required to subsidize mandated wage rates that apply to just one class of workers.

The sponsor has not, to date, quantified the cost of this bill, which is necessary to understand the implications of the proposed changes. However, regardless of the exact cost impact this legislation must be viewed as another of tax or surcharge imposed on utility bills by state government. The 18-a assessment, the recent expansion of net metering subsidies, and the advent of the on-bill financing program approved in recent years by the legislature have driven up the costs of electric and gas service in New York State by hundreds of millions of dollars annually.

Given the financial hardship that many New Yorkers are facing today, we urge the Legislature not to impose on New York's customers— residential, commercial, industrial, local governments and school districts – to bear yet another mandate to fund a wage increase for one set of employees in one particular industry.

This Bill Imposes a Significant Administrative Burden on Utilities

This bill would require utilities to comply with costly and burdensome prevailing wage rules and payroll verification requirements. The Companies would have to collect extensive data on each of the service contracts they enter into. For each such contract, the Companies would be required to maintain and audit weekly payroll records from the contractor(s) indicating the number of hours worked by each employee, each employee's pay rate, and benefit payments made.

The bill would, for the first time, criminalize the willful failure to pay prevailing wages to these specified employees.

This Bill Will Harm Small and Minority-Owned Businesses

Con Edison and Orange & Rockland contractors are often relatively small companies, and contracts with the Companies often represent a large portion of their overall businesses. These companies, in turn, subcontract work to smaller companies, including many women and minority-owned firms that are already facing significant financial pressures. Such small companies are often able to compete with their larger competitors by submitting lower, more cost-effective service bids. The wage mandate imposed by this bill would eliminate the cost advantage that these smaller, community-based contractors may have, and may drive these small businesses to close their doors.

The same administrative burdens that the Company would have to manage – additional recordkeeping and payroll verification requirements and significant penalties for failure to do so – would be particularly onerous for smaller companies.

For these reasons, the Companies urge that no favorable action be taken on this legislation.