113th Congress Priority Issues

Vol. 1

Associated Builders and Contractors, Inc.

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Associated Builders and Contractors, Inc.

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ABC and the Merit Shop Philosophy

ABOUT ABC

- Associated Builders and Contractors (ABC) is a national trade association representing 22,000 members from more than 19,000 construction and industry-related firms. Founded on the merit shop philosophy, ABC and its 72 chapters help members win work and deliver that work safely, ethically and profitably for the betterment of the communities in which they work.

MERIT SHOP DEFINITION

- Merit shop is a way of doing business in which companies reward employees based on performance and encourage them to reach their highest level of achievement, and in which contracts are awarded based on safety, quality and value, regardless of labor affiliation.

CORE VALUES

- **ABC values** economic freedom within a free-market economy, with open and fair competition and diverse participants constantly striving to achieve the highest levels of personal and company performance.
- **ABC values** the highest levels of personal and corporate standards of behavior characterized by responsibility, accountability and integrity, with demonstrated personal and industry professionalism by all participants.

VISION AND CORE PURPOSE

- The **Vision** of ABC is an environment in which people and companies succeed based on free-enterprise principles within the free-market system.
- The **Core Purpose** of ABC is to advance and defend the principles of the merit shop in the construction industry and to provide members and their employees with an opportunity to succeed.

MERIT SHOP ENVIRONMENT

- A free-market environment should be characterized by company practices consistent with good corporate citizenship; where contractors are selected, regardless of labor affiliation. A merit shop company is held to a higher standard by an evaluation of its activities, people, and its demonstrated performance. Within the merit shop environment, people and companies will have the freedom to make their own choices and will be held accountable for their choices.

MISSION

- ABC will continually strive to be the leading voice promoting free enterprise within the construction industry. ABC will promote and defend the merit shop philosophy. The philosophy encourages open competition and a free-enterprise approach to construction based solely on merit, regardless of labor affiliation.

Government-Mandated Project Labor Agreements

OVERVIEW

Government-mandated project labor agreements (PLAs) end open competition on public works projects, denying the vast majority of qualified contractors the opportunity to fairly bid on federal and federally assisted construction contracts. Government-mandated PLAs needlessly increase construction costs, discourage competition from qualified merit shop contractors and stifle job creation for their skilled employees in the construction industry, which suffered from an unemployment rate averaging 13.5 percent in 2012.

On Feb. 6, 2009, President Obama issued Executive Order 13502, which strongly encourages federal agencies to require anti-competitive and costly PLAs on a case-by-case basis on federal construction projects exceeding $25 million in total cost. On April 13, 2010, the Federal Acquisition Regulatory Council issued a final rule, effective May 12, 2010, implementing Executive Order 13502 into federal procurement regulations.

The Obama administration repealed former President George W. Bush's Executive Orders 13202 and 13208, which maintained government neutrality in federal contracting by prohibiting the government from requiring contractors to adhere to a government-mandated PLA as a condition of winning federal or federally funded construction contracts. Between 2001 and 2008, Bush's executive orders protected $147.1 billion worth of federal construction projects and hundreds of billions of dollars in federally assisted construction spending from government-mandated PLAs.

Despite congressional hearings and inquiries, the Office of Management and Budget has failed to release detailed data about the frequency or scope of the use of government-mandated PLAs and discriminatory PLA preferences on federal projects during President Obama's first term. However, ABC estimates billions of dollars' worth of federal and federally assisted projects have been needlessly subjected to government-mandated PLAs.

Although President Obama's pro-PLA executive order does not mandate PLAs on all federal construction contracts exceeding $25 million in total cost—as a blanket PLA mandate policy likely would be struck down by the courts—the order exposes federal procurement officials to intense political pressure to mandate PLAs from special interest groups, politicians and federal agency political appointees.

During President Obama's second term, there is concern the White House may enact Section 7 of Executive Order 13502. Section 7 could lower the current $25 million threshold or expand the order to apply to federally assisted projects, which would expose a much larger portion of the construction industry to government-mandated PLA threats.

Since 2011, 12 states have responded to the threat of costly federal PLA mandates and preferences by adopting legislation or executive orders that restrict PLA mandates on projects that receive state funding and are likely to receive federal assistance. To date, a total of 16 states have measures that guarantee fair and open competition on taxpayer-funded construction projects.

During the 113th Congress, ABC will continue to meet with members of Congress, the Obama administration and federal agencies procuring construction services to adamantly oppose any effort to mandate PLAs or discriminatory PLA preferences on federal and federally assisted construction projects.

WHAT IS A PLA?

Anti-competitive government-mandated PLAs are special interest kickback schemes that end open, fair and competitive bidding on taxpayer-funded construction projects.

A PLA is a project-specific collective bargaining agreement with multiple unions unique to the construction industry. When a PLA is *mandated* by a government agency, construction contracts can be awarded only to contractors and subcontractors that agree to the terms and conditions of the PLA. Typically, PLAs force contractors to recognize unions as the representatives of their employees on a job; use the union hiring hall to obtain workers; hire apprentices exclusively through union apprenticeship programs; pay fringe benefits into union-managed benefit and multi-employer pension programs; and obey the unions' restrictive and inefficient work rules and job classifications.

Contracts subject to government-mandated PLAs are special interest carve-outs designed to funnel work to favored unionized contractors and their unionized workforces, which represent just 13.2 percent of the U.S. private construction workforce, according to 2013 Bureau of Labor Statistics data. Qualified merit shop contractors, their skilled employees and many communities strongly oppose government-mandated PLAs because they discourage fair and open competition.

Merit shop contractors contend that government-mandated PLAs are unfair to their skilled employees because the agreements limit or completely prohibit a contractor from employing its existing tradespeople on a PLA jobsite. In the unlikely event that a limited number of nonunion employees are permitted to work on a PLA project, they can be required to join a union or pay union dues even though they are not union members. Employers typically are required to contribute to union benefit and retirement plans on behalf of their nonunion employees for the life of the PLA project. The nonunion employees will not benefit from their employer's contribution unless they join the union and/or become vested in the union benefit and retirement plans. This scheme is a financial windfall for these union plans and harms nonunion employees.

An October 2009 report by Dr. John R. McGowan found that employees of nonunion contractors forced to perform under government-mandated PLAs suffer a reduction in take-home pay that is conservatively estimated to be 20 percent.

In a September 2009 study, the Beacon Hill Institute (BHI) predicted government-mandated PLAs would add 12 percent to 18 percent to construction costs on federal projects without providing corresponding benefits to taxpayers or construction owners. To determine this cost increase, BHI used the results of three previous studies measuring the effect government-mandated PLAs had on school construction projects subject to prevailing wage laws in Massachusetts, Connecticut and New York.

Recent government-mandated PLAs on federal projects have led to reduced competition, increased costs and delays. In 2013, after years of delay and costly litigation concerning the first attempted PLA mandate by the Obama administration, a contract to build a U.S. Department of Labor Job Corps Center in Manchester, N.H., experienced three times as many bidders and bid prices that were 16 percent lower than when the project was bid with a PLA mandate. In 2010, two projects procured by the U.S. General Services Administration (GSA) in Washington, D.C.—renovations to the Lafayette Building and the 1800 F. St. building—suffered from increased costs, delays, and problems with local hire as a result of PLA preferences and requirements.

ABC SUPPORTS

- The Government Neutrality in Contracting Act (S. 109/H.R. 436), introduced by Sen. David Vitter (R-La.) and Rep. Andy Harris (R-Md.), which would codify into law language from Bush's Executive Orders 13202 and 13208.
- Legislative or executive measures to preserve full and open competition on public construction contracts in the spirit of Executive Orders 13202 and 13208.
- Federal construction contracts awarded based on sound and credible criteria, such as quality of work, experience and cost—not a company's union affiliation and willingness to sign a PLA.

ABC OPPOSES

- Claims by PLA proponents that government mandates and preferences for PLAs will improve the economy and efficiency in federal contracting.
- Government-mandated PLAs and discriminatory PLA preferences on federal and federally assisted construction projects. These agreements cause delays, lead to jobsite disputes, disrupt local collective bargaining agreements, discourage merit shop contractors from bidding on projects paid for by their own tax dollars and drive up federal construction costs, which results in fewer infrastructure improvements and reduced job creation. These special interest agreements prevent taxpayers from receiving the best possible construction product at the best possible price.

Davis-Bacon Act/Prevailing Wage

OVERVIEW

The Davis-Bacon Act is an 80-year-old wage subsidy law administered by the U.S. Department of Labor (DOL) that mandates so-called "prevailing" wages for employees of contractors and subcontractors performing work on federally financed construction projects.

The Davis-Bacon Act, as administered by DOL, unnecessarily hinders economic growth, increases the federal deficit, and imposes an enormous paperwork burden on both contractors and the federal government. It stifles contractor productivity by raising costs, ignores skill differences for different jobs, and imposes rigid craft work rules.

The inefficient wage survey process used by DOL to calculate Davis-Bacon wages often results in union wages being deemed "prevailing," even though only 13.2 percent of the construction industry is unionized. As a result, Davis-Bacon frequently mandates union wages and requires contractors to use outdated and inefficient union job classifications that ignore the productive work practices successfully used by merit shop contractors.

In addition, Davis-Bacon fails to provide equal access to work opportunities because complexities and inefficiencies in the act's implementation make it nearly impossible for many qualified, small merit shop firms to competitively bid on publicly funded projects. These businesses—and construction in general—are at an even greater disadvantage due to low net profit margins and double-digit unemployment facing the industry.

DOL's handling of the Davis-Bacon wage determination process is not just bad for construction—it's bad for taxpayers as well. The Congressional Budget Office has estimated that the Davis-Bacon Act will raise federal construction costs by $15.7 *billion* over the next ten years.

Although ABC has long advocated for repeal of the Davis-Bacon Act, it also has made numerous recommendations over the years that could have mitigated some of the act's damage to the economy. However, despite repeated criticisms from the Government Accountability Office (GAO) and DOL's Office of Inspector General, the agency has implemented few, if any, meaningful reforms in its administration of the act since the early years of the Reagan administration.

A 2011 GAO report found the Davis-Bacon wage survey process suffers from a lack of transparency in how the published wage rates are set, as well as contains data errors regarding the number of employees and hourly and fringe benefit rates. This report makes it clear that DOL is simply incapable of implementing the Davis-Bacon Act's provisions in a fair and common-sense manner. Therefore, ABC sees no alternative than to repeal the act entirely.

ABC SUPPORTS

- Repeal of the Davis-Bacon Act, as well as legislative and regulatory efforts designed to improve federal wage determinations and limit the negative impacts of DOL's current policy.
- The Davis-Bacon Repeal Act (H.R. 2013), introduced by Rep. Steve King (R-Iowa), which would repeal the Davis-Bacon Act.
- The Responsibility in Federal Contracting Act (H.R. 448), introduced by Rep. Paul Gosar (R-Ariz.), which would require federal construction wage rates be determined scientifically by DOL's Bureau of Labor Statistics, rather than by the flawed wage survey process currently in use.

ABC OPPOSES

- Unequal access to work opportunities. Davis-Bacon prevents many qualified small and merit shop businesses from bidding on publicly funded projects because complexities and inefficiencies in the act make it nearly impossible for them to compete.
- Waste, fraud and abuse. Numerous studies have demonstrated that prevailing wage laws set artificial, often fraudulent wages, restrict competition, mandate the use of outdated job classifications and result in billions of dollars being unnecessarily added to the cost of public works.
- A legislative agenda that pushes for expansion of the Davis-Bacon Act into areas of public and private projects in which it has previously not been mandated.

National Labor Relations Board

OVERVIEW

The National Labor Relations Board (NLRB) is tasked with interpreting and enforcing the National Labor Relations Act (NLRA). The Board—which normally consists of five members—was meant to serve as a neutral arbiter of federal labor law. However, the NLRB largely has abandoned this role in an effort to unabashedly promote union organizing without regard to its impact on employers, employees and economic growth. The Board has issued controversial rulemakings, expanded its enforcement authority and issued dozens of precedent-reversing legal decisions impacting American workplaces—all under questionable authority.

On Jan. 4, 2012, the White House ignored constitutionally established separation of powers and the rules of the U.S. Senate by "recess" appointing three individuals to the NLRB while the chamber was in session. Several legal challenges were filed against the appointments, including *Noel Canning v. NLRB*. On Jan. 25, 2013, a three-member panel of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) unanimously ruled in the *Noel Canning* case that the president's recess appointments were unconstitutional, affirming the Senate's responsibility to provide advice and consent on presidential appointments. In addition, on May 16, 2013, the U.S. Court of Appeals for the Third Circuit went even further in ruling the March 27, 2010, appointment of Craig Becker to be invalid, as well. Despite these rulings, NLRB Chairman Mark Pearce defiantly stated the Board will continue to push ahead and issue decisions, even as it formally seeks U.S. Supreme Court review of the Jan. 25 decision.

Uncertainty surrounding the unlawful appointments continues to raise questions regarding the NLRB's authority as it applies to recently decided cases, as well as pending and future enforcement actions and adjudications. The situation continues to impose tangible time and resource costs on employers and other parties involved in pending Board actions.

The NLRB also is responsible for rulemakings seeking to promote union organizing in the construction industry and elsewhere. If fully implemented, the Board's radical agenda would silence employers during the union election process through "ambush" style union elections; prevent employee access to balanced information about their labor rights; and trample free speech and private property rights by inviting greater union intimidation of employers, employees and their customers.

The Obama administration has failed to appropriately address the uncertainty created in the wake of the D.C. Circuit's decision in *Noel Canning*, and the Board has been unwilling to impose any kind of self-restraint. Therefore, it is up to Congress to intervene and ensure the Board does not make an already unfortunate situation worse. Amid today's economic challenges, merit shop contractors cannot afford to let the Board carry out its radical pro-union agenda. If left unchecked, NLRB actions will further jeopardize economic recovery and profoundly impact millions of American employers and their employees.

ABC SUPPORTS

- The nomination of future NLRB members who are committed to the Board's original mission of balanced decision making. We support full Senate confirmation of these nominees, as required by the U.S. Constitution.
- The Preventing Greater Uncertainty in Labor-Management Relations Act (S. 850/H.R. 1120), introduced by Sen. Lamar Alexander (R-Tenn.) and Rep. Phil Roe (R-Tenn.), which would immediately prevent the NLRB's invalid quorum from issuing more decisions, cease any enforcement of existing decisions issued since Jan. 4, 2012, and ensure that any such decisions are reviewed and approved by a constitutionally valid Board panel as soon as one is seated. H.R. 1120 passed in the House of Representatives on April 12, 2013, by a 219-209 vote, and is awaiting Senate action.

ABC OPPOSES

- Any presidential appointments made during Senate pro forma sessions (or during any *intrasession* break) to fill NLRB vacancies. Such appointments violate the U.S. Constitution, as well as the rules of the Senate.
- Any current or future policy or regulation that deprives employees of valuable information about the union representation process—including the implementation of "ambush" style elections, which are aimed at obstructing and silencing employers during this process.
- Any current or future policy or regulation that requires employers to post NLRA-related notices in their workplaces absent an unfair labor practice finding. The Board lacks statutory authority to require notice postings in such a manner.
- Any efforts by the NLRB to overturn balanced precedent or implement anti-employer policies and rulemakings.

"Persuader" Reporting Requirements

OVERVIEW

In June 2011, the U.S. Department of Labor (DOL) proposed drastic regulatory changes to how it interprets and enforces Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), which covers federal reporting and disclosure requirements for entities hired by employers to communicate to employees regarding their right to organize. For decades, both employers and "persuaders" have been obligated to file public reports with DOL that disclose finances and other information if they engage in such activity.

Section 203(c), better known as the "advice exemption," has long exempted attorneys, trade associations and other third-party advisors from these reporting requirements when they discuss labor issues with an employer but do not engage in direct contact with its employees. Currently, employers that engage in these protected services also are exempt.

Under DOL's proposed rule, the "advice exemption" will no longer extend to most advisors or their employer clients, who could be required to start filing persuader reports as well. Any activity in which DOL deems an advisor planned (or orchestrated) a campaign or program to avoid (or counter) a union organizing or collective bargaining effort will now be reportable. This means some communications between attorneys and their clients that were previously deemed to be privileged will now trigger the Section 203 reporting requirements. One of only a handful of examples provided in the proposal indicated that some advisors could become persuaders merely by hosting conferences or meetings that focus on labor relations. However, the exact situations and activities that will trigger the new reporting requirements generally are unclear. These ambiguous procedures are alarming—especially considering criminal penalties could be imposed for non-compliance.

DOL's proposal has generated serious concern for several reasons. It guts the underlying statute's protection of attorney-client privilege, improperly restricts the definition of "advice," blurs the line defining true persuasion and conflicts with attorney ethics. Further, it infringes on the employers' rights to free speech, freedom of association and legal counsel, as well as limits employees' collective right to obtain balanced information to decide whether or not to be represented by a union. In turn, competitors, union organizers and others stand to benefit from having access to previously confidential information.

DOL's proposal runs contrary to the congressional intent behind the LMRDA, and is not supported by any compelling justification for such drastic changes. However, the agency tentatively plans to finish its rulemaking in 2013. If implemented, the new requirements will have a profound chilling effect on employers in need of advice on labor relations matters, as well as the parties from which they seek advice. Small businesses will be unquestionably discouraged from using outside legal assistance, and newly minted "persuaders" also will be more reluctant to offer what previously constituted as advice due to the unreasonable burdens that could be placed on them and their other clients. It is essential that employers in the construction industry, many of which do not have in-house attorneys or advisors, retain the ability to receive expert counsel.

ABC SUPPORTS

- The preservation of the long-held and current interpretation of the LMRDA's Section 203(c) "advice exemption" provision.
- Legislative efforts to block DOL from implementing its proposed "persuader" reporting rule.

ABC OPPOSES

- Implementation of DOL's "persuader" reporting rule.
- Any current or future policy or regulation that deprives employees of valuable, balanced information regarding the union representation process by obstructing employers' ability to communicate with their employees about union organizing.

Immigration Reform

OVERVIEW

ABC supports the reform of U.S. immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity. Once the economy is restored, the construction industry will face an ever growing problem of shortages, both of craft-professionals and legal laborers who have difficulty becoming citizens or obtaining the necessary work permits. Unfortunately, the overall process to obtain legal eligibility in the United States is slow and cumbersome. ABC supports a more streamlined and expedited process to make the pathway to citizenship more efficient.

SECURITY ELEMENT

Homeland security can best succeed where individuals are truly identifiable. It is to the advantage of all security programs for the United States to provide a means to safely encourage non-U.S. citizens to register with their true identities. Thus, any significant immigration reform policy must contain that element. Further, without significant improvements to border security and the enforcement of immigration laws, a guest worker program is destined to fail.

TEMPORARY GUEST WORKER PROGRAM

ABC SUPPORTS

- Establishing a temporary guest worker program that would allow non-U.S. citizens to apply for the right to work legally in this country for multi-year renewable terms.
- Requiring employers to offer the same benefits to guest workers as they do to citizen employees, within the guidelines of the Employee Retirement Income Security Act.
- Offering the guest worker the possibility to obtain citizenship, provided the worker complies with all the requirements for establishment of citizenship under law. Any guest worker who is convicted of a felony will lose his/her guest worker status.
- Allowing workers participating in the guest worker program portability between employers during the term of the program, with a grace period to find another job.
- Requiring participants in the guest worker program to pay all taxes and other fees required of U.S. workers.

ABC OPPOSES

- Including "prevailing wage" requirements under the Davis-Bacon Act in any temporary guest worker program. (The Davis-Bacon Act/prevailing wage is addressed in more detail in a separate position paper).

EMPLOYEE VERIFICATION REQUIREMENTS

E-Verify is a system that electronically verifies the employment eligibility of newly hired employees. As of Sept. 8, 2009, the federal government requires the use of E-Verify on all federal solicitations and contract awards. However, Congress has not mandated the use of E-Verify for all employers.

If employers are mandated to use an electronic verification system—such as E-Verify—as well as comply with Form I-9 requirements, the following items should be considered.

A. SAFE HARBOR PROVISIONS FOR EMPLOYERS WHO USE OR ARE MANDATED TO USE E-VERIFY AND I-9 COMPLIANCE

ABC believes the government should not target or prosecute employers that enroll in and properly use E-Verify, or properly comply with Form I-9 requirements. Good faith compliance should be an affirmative defense that the employer did not knowingly hire an undocumented worker. Before imposing any civil or criminal penalties, the government should be required to prove beyond a reasonable doubt the employer had actual knowledge that the employee circumvented the electronic verification system/Form I-9 documentation.

B. PREEMPTION OF STATE AND LOCAL LAWS

Allowing each state and locality to promulgate its own employment verification laws creates an unworkable legal patchwork and poses an undue burden on businesses. Employers need a uniform legal framework to alleviate confusion about their responsibilities under the law. To date, nineteen states have enacted E-Verify laws as a result of the lack of federal law and guidance.

C. NO REVERIFICATION OF EXISTING EMPLOYEES

Requiring employers to re-verify the eligibility of their current workforce is not only unduly burdensome for business, it is unnecessary. However, employers who want to re-verify their existing workforce should have that option. Any new legislation must deal with employers already enrolled in E-Verify as well as federal contractors covered by the Federal Acquisition Regulation, who are already implementing E-Verify for many or all existing employees.

D. NO LIABILITY FOR SUBCONTRACTORS OR FRANCHISEES

ABC opposes "cross-liability" provisions that hold employers accountable for the workers of other employers with whom they have contracts, subcontracts or other forms of exchange. Small employers are particularly ill-equipped to manage and keep track of the hiring and firing practices of other entities with which they have business relationships. Employers do not have the authority to hire or fire the employees of other companies; they have no legal right to access the personnel files of those other companies and, in many instances, will never even meet most of the other entity's workers.

E. ONE VERIFICATION OBLIGATION

Employers should not have to comply with two, duplicative verification obligations. Should a reliable E-Verify system be implemented for a given class of employers, those employers should no longer be required to complete and retain paper I-9 forms. Business owners who wish to retain paper copies of the electronic system's confirmation of employment eligibility should be permitted to do so, and those paper copies should be sufficient evidence that employment eligibility was verified. No business should be required to continue with two different methods of processing new employees.

F. VERIFYING EARLIER IN THE EMPLOYMENT PROCESS

If an E-Verify system for a certain group of employers is implemented, they should be allowed to begin the E-Verify process sooner. For example, it should begin when a job has been offered and accepted (currently acceptable under I-9 process), rather than the date the employee starts to work. This would make the system more efficient and make it possible to identify problems earlier in the process.

G. ADMINISTRATIVE AND TECHNICAL VIOLATIONS

Employers that participate in and comply with the E-Verify system and/or Form I-9 requirements should not be subject to excessive penalties or prosecution for minor violations of law, regulation and policy. The government should distinguish between substantive violations (intentionally hiring unauthorized workers) and technical violations (missing a filing date or an inadvertent error or omission on a form).

H. DOCUMENTATION

ABC is strongly opposed to any policy that shifts the burden of policing citizenship documentation, such as social security cards and drivers' licenses, to employers. The majority of ABC's 22,000 member firms are small businesses, which lack the time, resources, and expertise to effectively and conclusively determine whether they are being presented with fraudulent documents.

Energy/Environment

OVERVIEW

The call for a comprehensive energy policy has grown steadily stronger as gasoline prices rise. ABC agrees that alternative/renewable energy sources are vital to America's future; however, ABC also believes the implementation of such sources will only succeed when coupled with measures designed to lessen U.S. dependence on foreign sources of energy. These measures include increased domestic exploration and production of fossil fuels, as well as responsible deepwater drilling.

ABC opposes any actions to halt or limit deepwater exploration and production off America's coasts, which would increase the cost of energy across the United States and contribute to job loss in the construction industry. The threat of further workforce cuts is especially troubling to the construction industry, which has experienced sustained, double-digit unemployment for several years. As many American households and businesses struggle to make ends meet, an increase in the cost of gasoline prices and energy will undoubtedly impact company and family budgets alike.

ABC also is troubled by the energy and environmental policy actions of the Obama administration, which have been moving forward—without congressional approval—via regulation and other administrative methods. The U.S. Environmental Protection Agency (EPA) has brazenly pursued costly and burdensome regulations without regard for the grave implications they would have on American businesses and their employees.

For example, having already implemented regulations for residential construction, the EPA now plans to regulate lead exposure in renovation, repair and painting practices in the commercial sector. ABC is wary of this expansion, questioning the EPA's authority to implement such a rule and highlighting the agency's failure to conduct a sector-specific analysis (despite being required to do so by the Toxic Substances Control Act) before moving forward with a proposal. The EPA also plans to move forward with a proposed rule on post-construction stormwater runoff, despite a recent federal court ruling that prohibits the agency from regulating stormwater as a "pollutant" under the Clean Water Act.

Finally, the EPA's push to regulate greenhouse gas emissions could be highly detrimental to job growth in the construction industry in particular. These regulations would increase energy, material and operating costs for the construction industry and thus, impede economic recovery and job creation.

During the 113th Congress, ABC will continue to advocate for a comprehensive energy policy and oppose any actions that would destroy American jobs and increase the cost of energy across the United States.

ABC SUPPORTS

- Decreasing America's dependence on foreign sources of energy by increasing domestic exploration and production of fossil fuels.
- Allowing responsible oil and gas development off-shore and in the Arctic National Wildlife Refuge.
- The development of oil shale technology and the construction of new refineries, along with new and sustainable energy sources.
- New construction and upgrades to power plants and transmission infrastructure (e.g., pipelines) built with open competition and without government-mandated project labor agreements.
- Tax incentives for energy efficiency and conservation for homeowners and businesses.

ABC OPPOSES

- Any actions that would halt deepwater exploration and production off America's coasts.
- The EPA overstepping its statutory authority.

Estate Tax Repeal

OVERVIEW

When the owner of a construction company dies, the value of the company is added to the owner's estate and taxed after exemptions. The estate tax, also known as the "death tax," places a significant burden on future generations of family business owners, as well as their employees, customers and suppliers. Small, family-owned construction companies are particularly hard hit by the death tax because the value of these businesses is not in liquid assets.

The estate tax constitutes slightly more than 1 percent of federal revenue, but is most likely revenue-neutral when the full impact of closing a business is considered. At roughly 1 percent of annual federal revenue, ABC believes the death tax is hardly worth the devastation it causes to family-owned construction businesses.

Former President George W. Bush signed into law a temporary repeal of the estate tax as part of the administration's $1.3 trillion tax relief package, the Economic Growth and Tax Relief Reconciliation Act of 2001. The estate tax was repealed on Dec. 31, 2009, for one year.

On Dec. 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (H.R. 4853), which established a 35 percent rate for the estate, gift and generation skipping transfer tax, as well as an exemption of $5 million per person and $10 million per couple, effective through 2012.

With a pre-2001 era rate of 55 percent and a $1 million exemption poised to return as part of the "fiscal cliff," Congress in January 2013 passed a tax compromise to permanently raise the estate tax rate to 40 percent while maintaining the higher exemption threshold, spousal portability and indexing of the previous deal. While a fixed estate tax level is preferable to constant fluctuation, the White House already has proposed rolling back the current compromise and Treasury Secretary Jack Lew recently testified in the context of estate tax levels that the administration doesn't view any policy as permanent.

Family-owned businesses are the backbone of the U.S. economy and give Americans a sense of pride and accomplishment. In the construction industry, they provide valuable jobs and play an integral role in building communities. ABC believes these businesses are worth preserving for the next generation.

ABC SUPPORTS

- Full repeal of the death tax.

ABC OPPOSES

- Any attempt to raise the current rate of 40 percent or lower the exemption from $5 million.

Federal Contracting

OVERVIEW

The Obama administration has attempted to impose increased burdens on federal government contractors via policies that needlessly injure competition, increase taxpayer costs, stifle job creation, and delay the delivery of goods and services to the government and its customers.

The most abusive federal contracting policies affecting the construction industry are the administration's continued efforts to expand the use of project labor agreements and the expanded enforcement of "prevailing wage" requirements under the Davis-Bacon Act. These issues are addressed in more detail in separate position papers. However, these are not the only administration policies that are adversely affecting government contractors.

In December 2011, the U.S. Department of Agriculture (USDA) issued a proposal to require federal contractors to certify that they and their subcontractors are in full compliance with all labor laws and agree to report future violations, or risk "corrective action." The rule also would have forced contractors to notify the government of mere allegations of wrongdoing, under penalty of "corrective action." In January 2012, due to strong opposition by ABC and other federal contractor representatives, USDA withdrew the rule.

The USDA proposal was similar to a Clinton-era policy (ultimately rescinded by the Bush administration in 2001) that permitted de facto blacklisting of federal contractors based on "persuasive evidence," including alleged violations of tax laws or substantial noncompliance with antitrust, labor, employment, worker safety, environmental or consumer protection laws. The USDA proposal was confined to contractors' labor relations records, but it also opened the door for mere allegations to be used against a company, making it particularly alarming. Despite the rule's withdrawal, other federal agencies are still free to pursue similar policies.

In addition to the blacklisting threat, recent actions by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) raise concerns. In December 2011, OFCCP issued a proposal to require federal contractors to drastically alter their current Section 503 affirmative action and nondiscrimination programs. The agency tentatively plans to finish its rulemaking in 2013.

The proposal, drafted under questionable statutory authority, mandates arbitrary quotas (referred to by the agency as "goals") for the hiring of disabled workers by all contractors with a government contract or subcontract of $50,000 or more and 50 or more employees. In addition, the proposal requires construction contractors to complete written job group utilization analyses, engage in laborious data collections and file reports for the first time.

Prior to issuing its proposal, OFCCP failed to analyze or justify the wide-ranging impact of its proposal on the construction industry, which has long been exempted from utilization analyses, data collection and written reporting—all of which will be required if the proposal is finalized.

Further, OFCCP has not compiled any meaningful evidence to indicate federal contractors are failing to meet affirmative action and nondiscrimination obligations in a manner that would justify its proposal. While ABC supports OFCCP's mission to address employment discrimination against individuals with disabilities, concerns remain regarding the agency's proposal.

Numerous protections currently exist that ensure federal contractors meet their statutory obligations. Well-established processes are in place to prequalify responsible firms and screen-out poorly performing and/or unscrupulous contractors. The Obama administration's additional requirements only serve to delay federal construction projects by adding new levels of costly and time-consuming bureaucratic red tape to the federal contracting process.

ABC SUPPORTS

- Congress, the administration, federal procurement officers and stakeholders working together to develop a balanced approach to creating and implementing any reforms to the federal contracting market.
- Safeguards for fair competition and protections against subjectivity and corruption in federal contracting.
- Policies and regulations for federal contractors that are consistent with the federal government's longstanding differentiation of the construction industry from other industries in regard to affirmative action and nondiscrimination requirements.

ABC OPPOSES

- Any executive order, legislation or regulation that would deny federal contractors due process and permit or encourage discrimination in federal contracting based on arbitrary criteria, false and/or anonymous accusations, or a contractor's labor affiliation.
- Any executive order, legislation or regulation that could delay federal construction projects by adding new levels of costly and time-consuming bureaucratic red tape to the federal contracting process.
- OFCCP's proposed rule that would drastically revise its Section 503 affirmative action and nondiscrimination programs.

Health Care

OVERVIEW

Providing quality health care benefits is a top priority for ABC and its member companies. ABC continues to call on Congress to advance common-sense proposals that will address the skyrocketing costs of health insurance, especially for employer-sponsored plans and the rapidly rising number of uninsured Americans. ABC believes true reform should provide greater choice and affordability and allow private insurers to compete for business.

March 23, 2013, marked the third anniversary of the massive health care law, known as the Patient Protection and Affordable Care Act (PPACA). Three years later, the health care law continues to create uncertainty and confusion in the construction industry, making it difficult for the nation's contractors to plan for the future and create jobs.

Beginning in 2014, PPACA mandates that employers with 50 or more full-time equivalent employees offer a certain level of coverage or be subject to taxes. The increased costs related to this onerous mandate are of significant concern to ABC members.

By forcing employers to offer government-prescribed health insurance, ABC members will no longer have the choice or flexibility to structure health care coverage options that meet the needs of their fluctuating workforce. The resulting increased costs will jeopardize the ability of ABC member companies to maintain affordable coverage options for their employees and will force some to drop coverage altogether.

ABC members also have major concerns about implementation of PPACA's employer mandate provisions, which will require significant employer education.

In addition to the costly employer mandate tax, PPACA includes the health insurance premium tax (HIT). HIT is one of the law's largest new taxes that will fall on the backs of small business. This tax is assessed on all health insurance companies based on their "net premiums," which means it is just another new cost passed along to the customer—small business owners. Estimates show this $87 billion tax could annually cost a minimum of $500 per family.

We urge Congress to repeal the burdensome mandates and taxes included in the massive health care law that have only served to hurt employers and increase premiums for millions of Americans.

ABC SUPPORTS

- Allowing Americans to buy insurance across state lines, which would be particularly helpful to those who work in the construction industry, as the unique nature of construction work demands that benefits be portable.
- Raising the self-employed health care deduction to 100 percent and maintaining the tax deductibility of health insurance premiums for all employers.
- Small Business Health Plans that give small businesses the power to pool together to offer health care at lower prices—something many labor unions already are permitted to do.
- Health Savings Accounts (HSAs), which are tax-free savings accounts for medical expenses that allow more small business owners to obtain affordable health coverage for themselves and their employees. ABC supports expanding access to high-deductible health plans and HSAs, as well as increasing HSA contribution limits.
- Flexible Spending Accounts (FSAs) or "cafeteria plans," which allow employees to set aside money (pre-tax) each year to be used for medical expenses such as co-pays, deductibles and services not covered under their base insurance plan. ABC supports repealing the $2,500 annual limit on employee contributions to an FSA, which became effective in 2013.
- Enacting medical malpractice reform, which would dramatically decrease the cost of health insurance for the American public. Unnecessary and frivolous lawsuits are a major reason for the increasing cost of insurance.
- The American Job Protection Act (S. 399/H.R. 903), introduced by Sen. Orrin Hatch (R-Utah) and Rep. Charles Boustany (R-La.), which would repeal the employer mandate provision included in PPACA.
- The Jobs and Premium Protection Act (S. 603), introduced by Sen. John Barrasso (R-Wyo.), and the Repeal the Annual Fee on Health Insurance Providers (H.R. 763), introduced by Rep. Charles Boustany (R-La.). Both bills would repeal the small business health insurance tax included in PPACA.

- The Auto Enroll Repeal Act (H.R. 1254), introduced by Rep. Richard Hudson (R-N.C.), which would repeal the section in PPACA that requires employers of 200 or more full-time employees to automatically enroll employees in a health plan if coverage is not chosen by an employee.
- The Family Health Care Flexibility Act (S. 610/H.R. 1248), introduced by Sen. Mike Johanns (R-Neb.) and Rep. Erik Paulsen (R-Minn.), which would repeal the provision in PPACA that prohibits reimbursement from HSAs and FSAs to pay for over-the-counter drug expenses, unless a prescription is obtained.

ABC OPPOSES

- New federal government mandates that force employers to provide health care or pay a hefty tax for not being able to do so will stifle small businesses. A mandated level of coverage also will result in direct premium increases, making insurance more expensive for employers and employees.
- Tax increases when the construction industry has experienced sustained, double-digit unemployment for several years. Massive tax increases will only further decimate the industry and the craft professionals it employs.

Independent Contractors

OVERVIEW

Independent contractors are an important part of the construction industry due to its fluctuating work demands and are often the answer to a pressing demand for the special skills and know-how required for short-term projects.

Determining whether a worker is an employee or an independent contractor often is difficult. Internal Revenue Service (IRS) and state guidelines for classifying workers as independent contractors are often ambiguous and inconsistent. When the IRS or a state agency rules an employer incorrectly classified an employee as an independent contractor, the employer may be liable for thousands of dollars in fines, back-taxes and benefits.

Companies must be able to make good faith, reasonable decisions about the classification of individuals as employees or independent contractors without fear of misclassification or penalty from the IRS. Section 530 of the Revenue Act of 1978 created a safe harbor provision that provides an employer with some protection from liability for accidental misclassification if the employer acted with a reasonable basis and treated workers consistently. Over the years, there have been several legislative proposals that would eliminate the Section 530 safe harbor. ABC opposes these efforts.

In April 2013, the Obama administration's 2014 budget proposal dedicated nearly $14 million to pursue worker misclassification, including $10 million in grants for states to identify misclassified employees and recover unpaid taxes and $3.8 million to fund enforcement efforts by the Department of Labor's Wage and Hour Division (WHD). WHD funds are intended to strengthen and coordinate federal and state efforts to crack down on what the agency believes is misclassification of independent contractors.

The Obama administration has also expressed an interest in promulgating a rulemaking referred to as "Right to Know," in which employers would be required to provide workers classified as independent contractors with individualized, written "classification analyses" that detail their classification under the Fair Labor Standards Act (FLSA). In addition, employers would be required to provide written justification for workers' status as exempt/non-exempt on a rolling basis. ABC is concerned that such a complex rulemaking would significantly burden employers, serve merely as an enforcement tool, and increase the number of FLSA lawsuits concerning exemption and misclassification issues. The rule was listed in the "Long-Term Action" section of the most recent regulatory agenda. However, WHD continues to collect data it believes will support the need for such regulatory changes, and could re-engage on this rulemaking at any time.

Any independent contractor reform effort must recognize that independent contractors are necessary, productive participants in the construction industry and their ability to contribute to the marketplace must be preserved.

ABC SUPPORTS

- Efforts to provide a clear, concise and reasonable definition of independent contractors.
- Preservation of Section 530 of the Revenue Act of 1978, which provides a safe harbor for many businesses utilizing independent contractors.

ABC OPPOSES

- Any proposals to repeal Section 530 of the Revenue Act of 1978.
- Any proposals that would impede the flexibility of employers to utilize independent contractors.
- Any current or future policy or regulation that would require employers to generate burdensome classification analyses regarding workers' status under the FLSA. Such a requirement would merely serve as an enforcement tool and fuel frivolous litigation.

OSHA Reform

OVERVIEW

As builders of our nation's communities and infrastructure, ABC members know exceptional jobsite safety and health practices are inherently good for business. The construction industry understands the importance of common-sense regulations based on sound evidence and scientific analysis with appropriate consideration paid to implementation costs and input from employers.

Unfortunately, the Occupational Safety and Health Administration's (OSHA) emphasis on enforcement and its simultaneous de-emphasis on successful, collaborative efforts with employers is a growing concern. ABC strongly believes employers should be viewed as partners in achieving safer workplaces, and that OSHA's cooperative programs should not be diminished.

OSHA continues to pursue policies that threaten to impose excessive and burdensome costs that could impact job creation, stifle industry growth and offer little in return in terms of worker safety. ABC has expressed concerns about many of these actions and regulatory proposals, some of which circumvent existing checks and balances within the federal regulatory framework. In addition, OSHA has revised its enforcement and inspection policies to grant nonunion employees the ability to designate an individual "affiliated with a union or community organization" to act as their representative during agency-sanctioned inspections and other enforcement situations.

A more inclusive, fair and reasonable approach to achieving and maintaining safe and healthy workplaces is needed. The construction industry and its workers benefit from legislation and regulations that implement results-based solutions, provide consistent enforcement and increase compliance in a collaborative way.

ABC SUPPORTS

- Meaningful, constructive oversight of OSHA's regulatory and enforcement agendas.
- Strengthening the scientific and technical basis of OSHA standards by making them as practical, performance oriented and cost effective as possible.
- Restructuring the Occupational Safety and Health Act (OSH Act) to incorporate collaborative approaches to education, training and technical assistance. Employers must be encouraged to take advantage of such assistance without undue reprisal.
- Codification of the Voluntary Protection Program and its expansion to small businesses.
- Fair and responsible inspection and enforcement policies, regardless of labor affiliation.

ABC OPPOSES

- The Protecting America's Workers Act (S. 665/H.R. 1648), also known as PAWA, introduced by Sen. Patty Murray (D-Wash.) and Rep. George Miller (D-Calif.). PAWA would amend the OSH Act and dramatically increase both civil and criminal penalties for violations.
- Any legislation that revises the OSH Act's penalty structure. In particular, any change to mens rea requirements for criminal liability (for example, a change from "willful" to "knowing," or broadening the definition of employers from "any responsible corporate officer" to "officer or director") would create uncertainty, lead to increased litigation, and create a more combative relationship between OSHA and employers.
- Any legislation that imposes new abatement requirements on employers. OSHA already has the authority to seek injunctions if hazards pose an imminent threat.
- Any legislation that limits an employer's ability to challenge OSHA citations. Such a policy would deny employers' due process rights.
- Any legislation that holds general contractors (or other site-controlling employers) liable under OSHA's "General Duty Clause" with respect to workers on a jobsite but not under their direct control. Currently, this OSHA enforcement clause only applies to an employer's own employees.
- Any legislation that requires general contractors (or other site-controlling employers) to log all reportable illnesses and injuries among all workers on a jobsite. Such a policy takes a one-size-fits-all approach to liability and fails to take into account the practical nature of many construction worksites. Specialty trades and other subcontractors are experts in the safety practices of their given field, making them the natural and appropriate point of collection for injury and illness data for workers under their control.

Regulatory Reform

OVERVIEW

The Obama administration continues to issue rulemakings that directly and indirectly impact the construction industry. In 2012 alone, the federal government imposed or proposed $236.7 billion in new regulatory costs, bringing the administration's first term total to $518 billion. In addition, the administration's most recent agenda lists anticipated rules that will add another $123.2 billion.

ABC members understand the value of standards and regulations when they are based on solid evidence, with appropriate consideration paid to implementation costs and input from the business community. However, some regulations imposed on the construction industry result in crippling costs with questionable benefits. In some cases, these regulations are based on conjecture and speculation, lacking foundation in sound scientific analysis. For the construction industry, unjustified and unnecessary regulations translate to higher costs, which are then passed along to the consumer or lead to construction projects being priced out of the market. This chain reaction ultimately results in fewer projects, and hinders businesses' ability to hire and expand.

Further, the full impact and outcomes of numerous federal regulations proposed by the Obama administration are currently unclear, creating an environment of uncertainty in the construction industry that makes it difficult for firms to adequately plan for the future.

Federal agencies must be held accountable for full compliance with existing rulemaking statutes and requirements when promulgating regulations to ensure they are necessary, current and cost-effective for businesses to implement.

ABC remains committed to reforming the federal regulatory process, and identifying duplicative and burdensome regulations imposed on the construction industry.

ABC SUPPORTS

- Comprehensive regulatory reform, including across-the-board requirements for agencies to evaluate the risks, weigh the costs and access the benefits of regulations. This will better allocate limited resources and target efforts toward achieving our collective environmental, health and safety goals.
- Periodic review of regulations to ensure they are necessary, current and cost-effective. The construction industry should not be forced to operate according to burdensome or inappropriate rules that are not justified for current times.
- Legislation that would reform the Administrative Procedure Act by strengthening existing checks on federal agencies. This would foster more cost-effective regulations through a more transparent process.
- Legislation that would require federal agencies to more closely examine regulatory impacts on small businesses.
- Legislation that would enhance openness and transparency in the regulatory process by requiring early disclosure of proposed consent decrees and regulatory settlements. Agencies should be required to solicit public comment prior to entering into consent decrees with courts in order to provide affected parties proper notice of proposed regulatory settlements and make it possible for affected industries to participate in the actual settlement negotiations.
- Legislation that would streamline the current process for developers and contractors to obtain federal environmental permits and approvals to prevent jobs from being deferred or never being created because of dysfunctional permitting processes.

ABC OPPOSES

- Unnecessary, burdensome and costly regulations resulting from the efforts of Washington bureaucrats who have little accountability for their actions.
- "De facto" rulemaking, in which regulatory provisions are proposed as guidance or administrative interpretations in an effort to circumvent federal rulemaking procedures and avoid stakeholder participation.

Right to Secret Ballot Election

OVERVIEW

Currently, the preferred method for determining whether employees want union representation is a secret ballot election overseen by the National Labor Relations Board (NLRB).

The NLRB follows strict procedures to ensure a fair election, free of employer and union coercion. Under current law, employers are prohibited from making threats of reprisal or force and from promising benefits that might interfere with an election. If employers engage in such conduct and their behavior disrupts election conditions, the NLRB may order the employer to bargain with the union, even if the union lost the election.

If a union enjoys a majority of employee support, current law allows employers to waive the secret ballot election requirement and recognize a union that produces signed union authorization cards from more than 50 percent of the employees.

In the 111th Congress, labor unions unsuccessfully attempted to permanently deprive workers of their right to a secret ballot election through the deceptively named "Employee Free Choice Act" (EFCA), also referred to as "card check" (S. 560/H.R. 1409). EFCA, which ABC vigorously opposed, would have fundamentally tilted the playing field in favor of union organizing by effectively eliminating secret ballot elections as a method of determining whether or not employees want a union. Instead, it would require an employer to recognize a union in all cases based on a mere check of authorization cards that unions would collect from employees. The card-signing process would have none of the protections offered by secret ballot elections, and employees could be subjected to coercion, peer pressure and threats, as well as a process that invites fraud.

Although EFCA has failed to move in Congress, the Obama administration is forcing increased use of card check onto the workforce through the NLRB. ABC and its member companies will continue to oppose any actions that would take away American workers' rights to a secret ballot election.

All workers, in every industry, deserve the fundamental American right to a federally supervised secret ballot election. This right is guaranteed when voting in political elections; there is no reason it should be surrendered in the workplace.

ABC SUPPORTS

- Legislation that would guarantee the right of every worker to a secret ballot vote on decisions regarding union representation.

ABC OPPOSES

- Any effort to overturn or diminish NLRB procedures that protect the rights of employees to fair union elections through secret ballot voting.

Right to Work

OVERVIEW

The 1947 Taft-Hartley Act allows state governments to determine whether workers can be forced to join a union, or pay union dues or fees, as a condition of employment. Right to Work laws guarantee workers can seek employment without fearing they will be required to join (or pay) a union if they are hired.

Twenty-four states have adopted Right to Work laws. Indiana and Michigan, which adopted their laws in 2012, are the most recent states to change their Right to Work status.

The purpose of Right to Work laws is not to eliminate unions, but rather to guarantee basic fairness for workers. Right to Work laws ensure workers have an opportunity to choose whether union representation makes sense for them. If all or most of the members of a bargaining unit believe union representation will advance their interests, then nothing in a Right to Work law inhibits them from exercising their federally protected right to organize a union and collectively bargain with their employer. Right to Work laws simply allow workers who do not want to participate in the union to opt out of joining the union or paying dues or fees.

Many state leaders believe Right to Work laws could be a key to jump-starting economic growth in the wake of the recession. Economic growth in Right to Work states often outpaces growth in states where workers are forced to join a union or pay a fee to organized labor as a condition of employment. For example, the Bureau of Labor Statistics reports private sector employment grew 5.8 percent faster (2000-2010) in Right to Work states than in their non-Right to Work counterparts. Additionally, the Department of Commerce reports real gross domestic product growth in manufacturing increased 10 percent faster in Right to Work states than in non-Right to Work states. While some say these economic gains come at the expense of workers' wages, Department of Commerce data show per capita disposable personal income in 2010 (adjusted for cost of living) was higher in Right to Work states than the national average and higher than non-Right to Work states.

Opponents of Right to Work laws claim the lack of compulsory unionization leads to a "free rider" problem in which unions must represent all workers in the bargaining unit, so workers who choose not to pay union fees are given free representation. This argument fails to recognize the right of organized labor to negotiate member-only contracts, or to simply not represent those who choose not to join the union. Unions dislike these types of contracts because they allow individual workers to negotiate their own employment agreements with management; not representing all workers in the bargaining unit reduces the union's leverage against the employer.

ABC SUPPORTS

- The right of all individuals to work without having to join a union, or pay union dues or fees, as a condition of employment.

ABC OPPOSES

- Any federal or state laws that require workers to join a union, or pay union dues or fees, as a condition of employment or as a condition of participating on a construction project procured by a federal, state or local government entity.

Salting Abuse

OVERVIEW

"Salting" abuse is the intentional placement of trained union professional organizers and agents in a merit shop facility to harass and/or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business.

Salting is not merely an organizing tool—it has become an instrument of economic destruction aimed at nonunion companies. Unions send their agents into merit shop workplaces under the guise of seeking employment. Hiding behind the shield of the National Labor Relations Act (NLRA), these "salts" often try to destroy their employers or deliberately increase costs through various actions, including workplace sabotage and frivolous discrimination complaints with various agencies.

Frivolous salting charges cost companies significant time, money and resources, and prevent employers from hiring more employees, investing in better equipment, and securing more work to grow the company and provide additional jobs in the community.

ABC will continue to work with the House Education and the Workforce Committee and the Senate Health, Education, Labor and Pensions Committee to educate Congress about the detrimental impacts of union salting.

ABC SUPPORTS

- The Truth in Employment Act of 2013 (H.R. 1746), introduced by Rep. Steve King (R-Iowa), which would amend the NLRA to make it clear that an employer is not required to hire any person who seeks a job primarily to organize employees or put nonunion companies out of business, or do both. This change would not infringe on any rights or protections otherwise afforded to employees under the NLRA. It would alleviate the legal pressures imposed on employers to hire individuals whose overriding purpose for seeking a job is to disrupt the workplace or otherwise inflict economic harm.

ABC OPPOSES

- Union salting procedures that drive up costs for targeted merit shop construction companies. In defending themselves against false and frivolous charges, employers incur thousands of dollars in legal expenses, delays and lost hours of time.

Tax Reform

OVERVIEW

More than a quarter century after its last significant reform, our nation's tax system is creaking under its own weight. The sweeping changes of 1986 have been eroded over time by tens of thousands of pages of new regulations, loopholes and preferences. In its current form, the internal revenue code disproportionately affects small businesses, which are forced to expend significant time and resources in order to comply with increasingly burdensome tax provisions. Moreover, Congress impedes economic growth with unpredictable, ad hoc tax policies extended on a year-to-year basis.

In order to avert much of the "fiscal cliff," Congress in January 2013 passed legislation to permanently extend Bush-era tax levels for most taxpayers, while creating a new threshold for higher earners who pay an elevated top rate. Although this statutory permanence lends some needed certainty to the business community, it adds further layers of complexity while opening up a significant gap between Main Street and Fortune 500 companies. With the overwhelming majority of construction businesses paying income tax at the individual level, many now face a combined rate up to 25 percent higher than that of America's largest corporations. This new baseline must be used as an opportunity to pursue fundamental, comprehensive reform in a way that keeps rates low and similar for corporations and individuals alike.

As the United States struggles to emerge from a deep recession, the country can ill afford perpetually higher taxes on small business, the primary engine of job creation. Comprehensive tax reform will establish an encouraging climate for capital investment and economic growth. ABC supports minimizing the overall tax burden while reducing complexity and providing needed certainty to the construction industry and the broader business community.

ABC SUPPORTS

- Comprehensive tax reform that lowers marginal rates and simplifies the internal revenue code while maintaining parity for main street businesses and large corporations.
- Repeal of the Estate Tax ("death tax").
- Repeal of the individual and corporate Alternative Minimum Tax (AMT).
- Increasing and indexing the Completed Contract Method (CCM) threshold.
- Repeal of look-back accounting requirements.
- Reform of depreciation schedules to reflect the useful life of capital investments.
- Making permanent worthy business tax credits and deductions ("extenders").
- Repeal of newly effective Patient Protection and Affordable Care Act taxes on wages and investment income.

ABC OPPOSES

- The widening gap between small business tax rates on pass-through entities and those for large corporations.

Workforce Development

OVERVIEW

The construction industry provides good, well-paying jobs to American workers every year. To qualify for many of these jobs, however, workers need high-quality, flexible skilled training. Such training can lead to a lifetime career opportunity in a lucrative field. ABC believes all American workers, regardless of labor affiliation, should enjoy equal access to critical job training.

ABC's formal apprenticeship programs are registered with the appropriate federal and state government agencies and meet all federal and state requirements, including employer-sponsored classroom instruction and on-the-job training.

ABC works closely with NCCER, a not-for-profit 501(c)(3) education foundation created in 1996 as The National Center for Construction Education and Research. Led by ABC National and ABC members, NCCER was developed by more than 125 construction CEOs and various association and academic leaders who united to revolutionize training for the construction industry. Sharing the common goal of developing a safe and productive workforce, these companies created a standardized training and credentialing program for the industry. This on-going, multi-million dollar investment in training illustrates NCCER's commitment to the future of the industry. Since its inception, the program has evolved into curricula for more than 60 craft areas. NCCER, headquartered in Alachua, Fla., is affiliated with the University of Florida's M.E. Rinker, Sr. School of Building Construction.

Increased skilled training is vital to the future of the construction industry. ABC will continue to work to ensure construction companies' training needs are addressed.

WORKFORCE INVESTMENT ACT

The Workforce Investment Act (WIA) system was created in 1998 to help unprecedented numbers of Americans find jobs and job training. As the economy works toward recovery, hundreds of thousands of Americans are searching for jobs and careers that can help ensure security and safety for their families. However, the WIA system sometimes is hampered by duplicative and redundant bureaucracy that prevents it from being as effective as possible for workers and their families.

ABC supports legislation that will strengthen our nation's workforce development system by creating a more streamlined approach that focuses on businesses' hiring and training needs, which will increase employment opportunities and improve WIA.

Additionally, ABC supports legislation that ensures access to WIA-funded programs by all employers and employees (regardless of union affiliation) and increases employer involvement in the process. Only through employer involvement and equal access can job training programs meet the needs of their communities.

ABC SUPPORTS

- Increased skilled training opportunities, without discrimination based on labor affiliation.
- Continued modernization of the federal apprenticeship law known as the Fitzgerald Act of 1937, which was enacted at a time when labor unions dominated the construction market. As a result, federal and state laws and regulations tend to favor the union style of apprenticeship programs and do not accurately reflect merit shop apprenticeship programs.
- School-to-career programs, which offer students a course of study that brings together academics, on-the-job learning and paid work experience—all before high school graduation.
- The Supporting Knowledge and Investing in Lifelong Skills Act (H.R. 803), introduced by Rep. Virginia Foxx (R-N.C.), which would address the much needed reform to our country's workforce training system by providing a framework that will consolidate programs and increase the role of business. H.R. 803 passed in the House of Representatives on March 15, 2013, by a 215-202 vote, and is awaiting Senate action.

ABC OPPOSES

- Inconsistent actions that conflict with the goal of expanding job training opportunities by denying workers the fundamental right to choose to train and work in the merit shop sector of the construction industry.

Associated Builders and Contractors, Inc.