State Legislative Handbook

2013 Edition

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Dear ABC Leader:

As ABC looks back on the 2011-2012 biennium, it is hard not to be pleased with the progress made by newly elected governors and legislative majorities. Public sector employee reforms in Wisconsin and Ohio already are improving the business environments in those states. And notably for the merit shop community, project labor agreement (PLA) reforms enacted in 10 states during the last two years are creating significant opportunities for ABC members to win work without the threat of discriminatory pro-union mandates.

While there have been major successes, a great deal of state-level work remains to be done. The *2013 State Legislative Handbook* is full of tools ABC leaders can use to continue advancing the merit shop agenda at the state level. In addition to model legislation, this resource provides a review of state activities in 2012, key state legislative information and talking points for ABC priority issues.

This handbook also provides information on StateScape, ABC National's state legislative tracking service. This service uses a combination of legislative analyst filtering and keyword searching to identify and monitor priority legislation on key issues in all 50 states. Every chapter and state association can access StateScape to track legislation in their state and all others, compare amended legislation to previous drafts or review archived legislation dating back to 2002. Access to StateScape is available for free through ABC National.

Our staff is eager to do everything it can to assist you in advancing pro-merit shop legislation nationwide. If you need assistance, feel free to contact me at (703) 812-2048 or conlin@abc.org. Also, please take advantage of the state affairs conference call on the first Thursday of every month, as well as the chapter government affairs staff listserve at gastaff@abc.org.

Thank you for your efforts to defend the merit shop philosophy at the state and local levels. Your support is crucial to ABC's continued success.

Sincerely,

Andy Conlin
Sr. Manager, State and Local Affairs

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* Created by the SBA Office of Advocacy

2012 State Legislative Overview

Introduction

As the 2011-2012 biennium comes to a close and state legislative sessions end, the past two years will likely be remembered as one of the most productive periods in the history of ABC's state advocacy efforts for labor reforms, such as project labor agreements (PLAs), Right to Work and prevailing wages.

At the federal level, the U.S. House of Representatives voted four times on proposals related to bans on government-mandated project labor agreements (PLAs). These votes marked the first four times the U.S. Congress has ever voted on the PLA issue since it approved pre-hire agreements as part of the National Labor Relations Act (NLRA).

At the state level, free market issues were clearly on the minds of state lawmakers in 2011-2012, as many of them were forced to confront significant budget deficits. To compensate for these shortfalls, some elected leaders looked to control skyrocketing public employee benefit costs. After several high profile battles against public employees' unions, impactful reforms were enacted in several states – including Wisconsin, which is considered the birthplace of the public sector unionization movement by many Labor leaders. The reforms benefited all states in which they were enacted and Wisconsin saw an immediate improvement in its business environment. Wisconsin turned a significant budget deficit in 2011 into a $340 million surplus at the end of 2012. In addition, these types of reforms sent the signal to the business community that the state is open for business.

PLA Mandates

Although the fight against PLA mandates goes back decades, President Barack Obama (D) signaled his position in 2009 when he issued Executive Order 13502 after less than 60 days in office. E.O. 13502 encourages federal agencies to require PLAs on federal projects costing more than $25 million. It also repealed a Bush-era executive order that guaranteed fair and open competition on federal and federally assisted projects during his two terms in office.

While Obama was the first U.S. president to issue a pro-PLA executive order, he was not the only elected official to take a pro-PLA stance in advance of the 2010 elections. Several state elected officials issued similar orders to curry favor with organized labor. In February 2010, Iowa Gov. Chet Culver (D) issued an executive order that mirrored E. O. 13502. Illinois Gov. Pat Quinn (D) did the same a little more than a month later. Although PLA policy was not a priority issue for either administration in the first three years of their terms, election-year politics seemed to bring the PLA issue into greater focus for both governors. There is little doubt that the threat of electoral defeat in November 2010 prompted them both to take action.

Despite the initial setback of the Illinois and Iowa pro-PLA executive orders, the results of the November 2010 elections changed the political dynamics of the PLA issue. New Republican governors in Pennsylvania and Ohio stopped imminent PLA requirements on several large-scale projects, including blocking potential PLA mandates on more than $800 million worth of prison construction projects in Pennsylvania. In addition, Gov. John Kasich (R) used executive action to effectively eliminate PLA requirements on nearly all K-12 school construction projects in Ohio.

While these developments were significant, newly elected Iowa Gov. Terry Branstad (R) elevated the fight in January 2011 when he issued an executive order banning government-mandated PLAs on any construction project using state funds, reversing former Gov. Culver's 2011 order. This was the first executive order or bill enacted by a state government entity to curtail the use of PLA mandates since Missouri enacted legislation banning PLA mandates on state projects in 2007.

The PLA battle picked up even more momentum in 2011 when six other states followed Iowa's lead. By July, Idaho, Tennessee, Louisiana, Arizona, Maine and even Michigan had all enacted legislation to ban PLA mandates on state and local projects, as responsible leaders recognized the threat of potential PLA expansion to projects in their states.

In Michigan, a state organized labor considers a stronghold, the ban on PLA mandates had an immediate impact for taxpayers. The law opened up millions of dollars' worth of construction to the vast majority of the construction workforce that chooses not to join a labor organization, as government entities complied with the law by removing PLA mandates from requests for proposal. This was an important step for getting Michigan's construction workforce back to work.

But Big Labor would not go down without a fight. Attorneys representing construction unions in Iowa, Idaho and Michigan all filed lawsuits in federal court, claiming that the government neutrality executive order issued in Iowa and the bills enacted in Idaho and Michigan are preempted by the NLRA.

Merit shop supporters were surprised by these actions because the Iowa executive order was carefully drafted to avoid preemption issues and the Idaho and Michigan laws were modeled after President George W. Bush's Executive Order 13202, which was upheld by the U.S. Circuit Court of Appeals for the D.C. Circuit.

In a strong show of support for states that choose to guarantee government neutrality with regard to PLAs, a federal district court judge in Iowa dismissed the union's suit in September 2011. Unfortunately, in December 2011 and February 2012, federal judges in Idaho and Michigan, respectively, found those state laws to be preempted by the NLRA. Both judges were appointed by President Bill Clinton. The judge in the Michigan case went so far as to say the appeals court erred when it found the Bush executive order to be allowable. Both rulings contradict the controlling case law on this issue and are on appeal.

Big Labor responded to the merit shop construction industry's successes at the state legislative level as well. In the summer of 2011, the Illinois General Assembly codified the 2011 executive order issued by Gov. Quinn encouraging PLAs on state-funded projects. In addition, the California Legislature took a shot

at local governments by enacting legislation that nullifies bans on PLA mandates in general law municipalities and deprives charter cities of state funding for construction if they ban PLA mandates. The Legislature then strengthened the charter city provisions in 2012.

Undeterred by Big Labor's efforts, state leaders throughout the country continued to take on the PLA issue. In both Michigan and Idaho, lawmakers enacted new bills that addressed the issues raised by the two federal court opinions, while preserving the intent of the original government neutrality bills.

In addition, Oklahoma, Virginia and Kansas all enacted legislation to ban PLA mandates in their states. The Virginia win was especially important, as it helped to stop a potential PLA preference that would have amounted to a PLA requirement on Phase 2 of the Metro expansion to Dulles International Airport. The law ensures that the 97 percent of Virginia's construction workforce that chooses not to join a union can still have the opportunity to compete for one of the most important projects in the DC-region in decades.

The only two major setbacks for the merit shop came from Hawaii and Connecticut. In May 2012, Big Labor was able to convince their long-time ally Gov. Neil Abercrombie (D) to issue a directive encouraging the use of PLAs. In addition, Connecticut Gov. Dan Malloy (D) signed legislation in June that authorizes PLA mandates by local government entities.

Still, it remains clear that the momentum in the PLA fight is with the merit shop as we head into 2013 – and many more states are poised to take action against PLA mandates within their borders. As they do, these states will join the other states who have banned government-mandated PLAs in sending a clear signal that they are open for business. Guaranteeing open competition shows these governments understand that the most effective way to create value for taxpayers on public construction is to get the best construction at the best price, and that happens by allowing the entire construction workforce – not just those in a politically connected union – to compete for projects funded by their own tax dollars.

Right to Work

While public sector employee reforms got most of the headlines from cable news throughout 2011-2012, leaders in many states also were able to secure significant private sector labor reforms. The most significant of these reform battles took place in Indiana and New Hampshire, where state legislative leaders promised to make enacting Right to Work laws a top priority.

After a tumultuous 2011 legislative session, during which members of the Democrat caucus of the Indiana House of Representatives fled to neighboring Illinois, the multi-year battle to enact a Right to Work law in the Hoosier State finally succeeded in 2012. Indiana became the first state to pass

Right to Work legislation since Oklahoma enacted their law in 2001 and the second state to do so since 1987. The Republicans in the legislature were able to enact this reform despite labor protests and threats to disrupt the 2012 Super Bowl festivities in Indianapolis.

The Republican leadership in New Hampshire also attempted to enact a Right to Work law in 2012. This was their second attempt since gaining control of the General Court after the 2010 election. Unlike their counterparts in Indiana, New Hampshire legislators had to contend with Democrat Gov. John Lynch, who was vocal in his opposition to Right to Work reform. The Republicans pushed the reform in spite of the governor's opposition because they held a veto-proof majority of legislators in both chambers of the General Court. After passing the legislation and having it vetoed by Lynch, Republican leaders fell just short of gaining enough votes to override the veto. The issue is likely to be revisited after the 2012 elections if Republicans maintain their majorities.

Prevailing Wage Requirements

Reforming state and local prevailing wage requirements continues to be a difficult task for ABC chapters and members. Despite significant increases in Republican control of elected offices after the 2010 elections, very few state governments reformed their prevailing wage requirements in the biennium that followed.

The most significant reforms came in Ohio, where the legislature was able to enact reforms as part of the 2011-2012 budget. These reforms include prohibiting school districts from requiring contractors to adhere to prevailing wage requirements, modestly raising the prevailing wage thresholds for projects covered by the act, and improving the investigation procedures for prevailing wage violation complaints by limiting the definition of "interested parties," shrinking the pool of entities who can file prevailing wage violation complaints.

ABC chapters also pursued significant changes to prevailing wage laws in Nevada and Pennsylvania, although both efforts failed to be enacted. The proposed changes to the Nevada law were part of a major legislative compromise package that failed in 2011. They are still a top priority for Republicans trying to regain control of the state's House of Representatives and Senate in 2012. In Pennsylvania, a legislative package of prevailing wage reforms that included raising the applicability threshold and codifying job descriptions for some trades stalled in the legislative process.

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State Legislative Monitoring Overview

STATESCAPE

POLICY TRACKING AND ANALYSIS

Services

StateScape Tracking – The Basics

Quick and Accurate
At StateScape, we know that our clients' ability to respond effectively to legislative developments depends critically on the speed and accuracy of our information. We have used this knowledge to develop systems and procedures that maximize speed while preserving accuracy.

Customized
Each client is different. As obvious as this may seem, some tracking systems take a "one size fits all" approach to serving their clients. Not StateScape. At StateScape, we will listen to ABC's perspective and tailor our system to meet its needs. In addition, each ABC user will find numerous ways to customize the StateScape system to suit his or her preferences.

Easy-to-Use
StateScape is designed to be used by people who work at different times, from different locations, and with different levels of computer comfort. Because StateScape makes information gathered for a client available online, it is accessible from any location and at any time. In addition, those who log in to StateScape.com can access legislative and regulatory information either through the feature-rich LegisTrack page or through a slimmed down QuickSearch page. And for those who would prefer to sit back and have StateScape push new and updated information to them, we offer a fully customizable e-mail alert system.

Superior Customer Service
StateScape prides itself on offering superior customer service. In a 2005 client survey, clients awarded StateScape 4.87 out of 5 possible points for customer service (5 being "excellent"). ABC will be provided a single point of contact who will respond expeditiously to questions and comments. ABC's contact at StateScape will be backed up by a team of analysts, who will step in if he or she is temporarily unavailable. Finally, StateScape offers to train ABC's users, so they know how to use our system to maximum benefit. StateScape would be willing to conduct such training sessions via teleconference or in person at ABC meetings and forums.

ABC-Specific Tracking

Analyst Filtering
For ABC, bills under the following subjects will be identified and categorized by an experienced team of StateScape analysts according to custom criteria already agreed to by ABC:

- Apprenticeship
- General Procurement
- Green
- Immigration
- Independent Contracting Reform
- Prevailing Wage
- Project Labor Agreements (PLAs)

Analyst filtering is superior to automated keyword filtering (see below) for two reasons:

- *It saves time.* If bills are identified strictly on the basis of keywords, ABC can expect to receive a substantial number that are irrelevant, but happen to contain relevant words and phrases. Though the StateScape system makes it possible for designated users to delete irrelevant bills, doing so takes time.
- With automated keyword filtering, it is possible to miss bills that are relevant, but do not contain the keywords envisioned. *Analyst filtering avoids this pitfall because each bill will be reviewed by an analyst who knows ABC's issues, regardless of whether the bill contains relevant keywords.* However, despite the clear advantages of analyst filtering, automated keyword filtering is also available from StateScape as an alternative. If the total cost of this proposal exceeds ABC's budgetary requirements, ABC may wish to consider keyword filtering for some subjects.

Keyword Filtering

For the subjects outlined below, bills will be identified and categorized automatically via keyword filtering (based on agreed-upon search strings):

- Contractor Licensing
- Job Targeting
- Right to Secret Ballot Election
- Salting

Keyword filtering is the most cost-effective method of bill identification, but ABC may expect to receive some bills that are irrelevant. In many instances, keywords may appear in a measure, but not in a section changing current law, or may be used in such a way that their meaning is not representative of ABC's concerns.

Using BillFinder

With StateScape's powerful BillFinder search engine, you can find any bill or resolution introduced at the state or federal level using either keywords and phrases or the bill number and state. ABC users may conduct an unlimited number of searches using the BillFinder search engine. Searches may be run using either keywords and phrases or bill and resolution numbers. Jurisdictions covered include all 50 states, the District of Columbia, and the U.S. Congress. Bills and resolutions considered in previous years (since 2002) also may be searched.

ABC may add an unlimited number of bills falling within the issue and/or geographic scope defined for LegisTrack and up to 50 bills falling outside that issue and/or geographic scope. If ABC wishes to add more bills for tracking outside of scope, blocks of 100 bills are available for an additional cost.

ABC will have access to a subject titled "Misc. – ABC." This subject may be populated by ABC users who utilize BillFinder as a means of categorizing any legislation that may impact ABC's constituency, but does not fit into any other subject (as listed above).

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2013 State Legislative Calendar

Government Affairs

2013 State Legislative Calendar (As of November 2012)

State	Session Start Date	Estimated Session Adjournment Date	Last Date for Gov Action	Legislation Effective Date
Alabama	February 5, 2013	May 20, 2013	6 days (excluding Sundays) following legislative presentment during session; 10 days (excluding Sundays) following legislative adjournment	Effective immediately upon approval or upon date specified in bill.
Alaska	January 15, 2013	April 14, 2013	15 days (excluding Sundays) following legislative presentment during session; 20 days (excluding Sundays) following legislative presentment after adjournment	90 days after approval unless otherwise specified.
Arizona	January 14, 2013	April 2013	5 days (excluding Sundays) following legislative presentment during session; 10 days (excluding Sundays) following legislative adjournment	91st day after the Legislature adjours sine die unless otherwise specified in the bill text.
Arkansas	January 14, 2013	March 21, 2013	5 days during session (excluding Sundays) or if legislation is transmitted with less than 5 days left in the session, governor must act within 20 days of transmittal (excluding Sundays) or legislation becomes law without signature.	90 days after sine die adjournment unless otherwise specified.
California	January 1, 2013	11/30/2013	12 days following legislative presentment during session; 30 days following legislative adjournment	January 1 following session unless otherwise specified.
Colorado	January 9, 2013	May 8, 2013	10 days following legislative presentment during session; 30 days following legislative adjournment	Effective immediately unless otherwise specified within bill text.
Connecticut	January 9, 2013	June 5, 2013	Five days (exclusive of Sundays and holidays) following legislative presentment during session; fifteen days following legislative adjournment.	Public acts: October 1 following session in which they are passed unless otherwise specified in Act. Special acts: upon approval unless otherwise specified.
Delaware	January 8, 2013	June 30, 2013	10 days following legislative presentment during session; 30 days after adjournment	Effective immediately upon approval or upon date specified in bill.
Florida	March 5, 2013	May 3, 2013	7 days following legislative presentment during session; 15 days following presentment after legislative adjournment	60 days after sine die adjournment unless otherwise specified.
Georgia	January 14, 2013	April 2013	6 days following legislative presentment during session; 40 days following legislative adjournment	July 1 following session unless otherwise specified.
Hawaii	January 16, 2013	May 2013	10 days following legislative presentment during session; 45 days (excluding Saturdays, Sundays, and holidays) following legislative adjournment	Effective immediately upon approval or upon date specified in bill.
Idaho	January 7, 2013	April 1, 2013	5 days (excluding Sundays) following legislative presentment; 10 days (excluding Sundays) following legislative adjournment	Upon passage unless otherwise specified.
Illinois	January 9, 2013	December 2013	60 days following legislative presentment during session.	Effective immediately upon approval or upon date specified in bill.
Indiana	January 8, 2013	April 29, 2013	7 days following legislative presentment during session	July 1 following approval unless otherwise specified.
Iowa	January 14, 2013	May 3, 2013	3 days (excluding Sundays) following legislative presentment during session; 30 days following legislative adjournment	July 1 unless otherwise specified
Kansas	January 14, 2013	May 1, 2013	10 days following legislative presentment	July 1 or date of publication unless otherwise specified.
Kentucky	January 8, 2013	3/36/2013	10 days (excluding Sundays) to act on a bill after it has been received.	Effective 90 days after the end of the session at which they are passed.
Louisiana	April 8, 2013	June 6, 2013	10 days following legislative presentment; 20 days following legislative adjournment.	August 15 unless otherwise specified.
Maine	December 5, 2012	June 1, 2013	10 days (excluding Sundays) following legislative presentment; 3 days into the next session if presented after adjournment	90 days after adjournment unless otherwise specified.
Maryland	January 9, 2013	April 8, 2013	6 days (excluding Sundays) prior to adjournment of any session of the General Assembly.	June 1, July 1 or October 1 following approval unless otherwise specified.
Massachusetts	January 2, 2013	December 1, 2013	10 days (excluding Sundays and holidays) following legislative presentment	90 days after approval unless otherwise specified.
Michigan	January 9, 2013	December 1, 2013	14 days following legislative presentment	90 days after adjournment unless otherwise specified.
Minnesota	January 8, 2013	May 20, 2013	3 days (excluding Sundays) following legislative presentment during session; 14 days following legislative adjournment	August 1 unless otherwise specified for all regular acts; July 1 for appropriation bills. Special law: day following day when approval filed with Secretary of State unless otherwise specified.
Mississippi	January 8, 2013	April 7, 2013	5 days (excluding Sundays) following legislative presentment during session; 15 days (excluding Sundays) following presentment after legislative adjournment.	60 days after approval unless otherwise specified.

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State	Session Start Date	Estimated Session Adjournment Date	Last Date for Gov Action	Legislation Effective Date
Missouri	January 9, 2013	May 30, 2013	15 days after transmittal during session, or it becomes law without signature. If transmittal occurs with less than 15 days remaining in the session, governor must act within 45 days after the end of session, or legislation becomes law without signature.	90 days following adjournment
Montana	January 7, 2013	April 27, 2013	10 days after transmittal, or legislation becomes law without signature.	October 1 unless otherwise specified
Nebraska	January 9, 2013	May 1, 2013	5 days (excluding Sundays), following legislative presentment	3 months following adjournment unless otherwise specified.
Nevada	February 4, 2013	June 4, 2013	5 days after the day following transmittal during session (Sunday excepted) or ten days after adjournment (Sundays excepted), or legislation becomes law without signature.	October 1 unless otherwise specified
New Hampshire	January 2, 2013	June 1, 2013	5 days (excluding Sundays) following legislative presentment.	60 days after approval unless specified.
New Jersey	January 8, 2013	January 13, 2014	45 days following legislative presentment; 7 days for bills passed within 10 days of adjournment	July 4 unless otherwise specified.
New Mexico	January 15, 2013	March 16, 2013	3 days (excluding Sundays) following legislative presentment during session; 20 days following legislative adjournment	90 days following adjournment unless otherwise specified.
New York	January 9, 2013	December 1, 2013	10 days (excluding Sundays) following legislative presentment during session; 30 days following legislative adjournment	Specified within bill text.
North Carolina	May 13, 2013	June 2013	10 days following legislative presentment during session; 30 days following legislative adjournment or recess longer than 30 days	Effective immediately upon governor approval unless otherwise specified. 60 days following sine die adjournment if passed without governor approval and no date specified in bill.
North Dakota	January 8, 2013	May 1, 2013	3 days after transmittal (Saturdays and Sundays excepted), or it becomes law without signature. If legislation is transmitted to governor with less than 3 days remaining in session (Saturdays and Sundays excepted), governor must act within 15 days after transmission (Saturdays and Sundays excepted), or legislation becomes law without signature.	August 1, unless they are appropriations or tax bills, in which case they become effective on July 1 or otherwise specified.
Ohio	January 7, 2013	December 2013	10 days (excluding Sundays) following legislative presentment during session; 10 days (excluding Sundays) following legislative adjournment	91 days after filing with the Secretary of State except emergency, current appropriation, tax legislation effective immediately.
Oklahoma	February 4, 2013	May 31, 2013	5 days after transmittal (Sundays excepted), of it becomes law without signature. If transmittal occurs with less than 5 days left in the session, governor must act within 15 days of the date of session adjournment, or legislation is pocket vetoed.	90 days following adjournment
Oregon	February 4, 2013	June 1, 2013	5 days (excluding Saturdays and Sundays) following presentment during session; 30 days, excluding Saturdays and Sundays, following adjournment	January 1 of the year after passage unless otherwise specified
Pennsylvania	January 1, 2013	December 1, 2013	10 days following legislative presentment during session; 30 days following legislative adjournment	Specified within bill text.
Rhode Island	January 1, 2013	June 1, 2013	6 days (excluding Sundays) following legislative presentment during session; 10 days following legislative adjournment	July 1 of calendar year of enactment unless otherwise specified.
South Carolina	January 8, 2013	June 6, 2013	5 days (excluding Sundays) following legislative presentment during session; 2 days into next session following adjournment	20 days after approval unless otherwise specified.
South Dakota	January 8, 2013	March 25, 2013	5 days after transmission (excepting weekends and holidays), or it becomes law without signature. Legislation transmitted less then 5 days before session adjournment must by acted upon by the governor within 15 days of adjournment (excepting weekends and holidays), or it becomes law without signature.	90 days following adjournment unless otherwise specified.
Tennessee	January 8, 2013	May 1, 2013	10 days (excluding Sundays) following legislative presentment; 10 days (excluding Sundays) following legislative adjournment.	Effective immediately upon approval or upon date specified in bill.

Government Affairs

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State	Session Start Date	Estimated Session Adjournment Date	Last Date for Gov Action	Legislation Effective Date
Texas	January 8, 2013	May 27, 2013	10 days of transmittal (excepting Sundays), or it becomes law without signature. For legislation transmitted with less than 10 days left in the session, governor has 20 days after adjournment to act, or legislation becomes law without signature.	90 days after the adjournment of the session at which it was enacted, unless otherwise specified.
Utah	January 28, 2013	March 14, 2013	20 days of passage, or it becomes law without signature.	60 days following adjournment, unless otherwise specified.
Vermont	January 9, 2013	May 1, 2013	5 days (excluding Sundays) following legislative presentment.	July 1 after approval unless otherwise specified.
Virginia	January 9, 2013	February 23, 2013	7 days following legislative presentment during session; 30 days following legislative adjournment	July 1 following adjournment for all bills except appropriations bills.
Washington	January 14, 2013	April 28, 2013	5 days following legislative presentment during session; 20 days following legislative adjournment	90 days following adjournment unless otherwise specified.
West Virginia	January 9, 2013	April 14, 2013	5 days of transmittal (excluding Sunday). For bills transmitted after session adjourns, governor has 15 days to act from adjournment (excluding Sundays), except in case of budget or appropriations bills, where the governor has only 5 days (excluding Sunday).	90 days from approval unless otherwise specified.
Wisconsin	January 7, 2013	December 2013	6 days (excluding Sundays) following legislative presentment	The day following approval unless otherwise specified.
Wyoming	January 8, 2013	March 1, 2013	3 days (excepting Sundays), or it becomes law without signature. Legislation received by the governor with 2 days or less remaining in the session, must be acted upon by the governor within 15 days after adjournment, or legislation becomes law without signature.	Specified within bill text.

Apprenticeship

1. ABC Model State Apprenticeship Law
2. Pennsylvania 29.29 Compliance Bill

ASSOCIATED BUILDERS & CONTRACTORS

Model State Apprenticeship Law

TITLE I

Sub-Chapter I
General Provisions, Definitions, and Rules

Section 1 Statement of Policy

It is recognized that there is a continuing need to increase the opportunities for voluntary apprenticeship and training so as to increase the number of skilled employees available to perform much needed services in a variety of industries and to increase the earning opportunities that increased skills allow. It shall therefore be the policy of this State to increase such voluntary apprenticeship and training opportunities, and to remove arbitrary barriers to the approval and operation of such programs, without regard to race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof, *inter alia*, as follows:

(a) open to individuals in the State the opportunity to obtain training that will equip them for profitable employment and citizenship, and as a means to this end, encourage and approve programs of voluntary apprenticeship and training under approved apprenticeship and training standards for their training and guidance in the arts and crafts of industry and trade;

(b) promote the voluntary cooperation of industry in providing employment opportunities for citizens under conditions providing adequate training;

(c) establish and specify consistency, non-discrimination, and due process in the operating procedures of the Apprenticeship and Training Council ("ATC") intended to facilitate approval of apprenticeship programs meeting specified standards while protecting the welfare of apprentices;

(d) establish standards for apprenticeship and training programs no more restrictive than those standards established by the U.S. Department of Labor;

(e) establish standards and procedures for fair and expeditious resolution of controversies regarding apprenticeship programs;

(f) encourage the establishment and utilization of apprenticeship and training programs regardless of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof.

Section 2 Definitions

For the purposes of this title, the term:

(1) "Apprentice" means an individual who is at least sixteen (16) years of age who has entered into a written agreement, hereinafter referred to as an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for at least two thousand (2,000) hours of reasonably continuous employment for such person and for his participation in a program of training approved under the provisions of this chapter. Any apprentice who has entered into an apprenticeship agreement approved by the U.S. Department of Labor or by any registration agency recognized by the U.S. Department of Labor shall be deemed to be an apprentice within the meaning of this definition.

(2) "Apprenticeable occupation" means a skilled trade(s) or craft(s) which is customarily learned in a practical way through supervised training; is identified and recognized within an industry; involves manual, mechanical, or technical skills and knowledge; and involves skill sufficient to establish career sustaining employment.

(3) "Apprenticeship agreement" means a written agreement approved under this chapter between an apprentice and either the apprentice's employer(s), or a program sponsor recognized by the Apprenticeship and Training Council, containing the terms and conditions of the employment and training of the apprentice and referencing the approved apprenticeship program standards.

(4) "Apprenticeship program" means a plan for administering an apprenticeship agreement(s). The plan must contain all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

(5) "Cancellation" means the termination of the registration or approval status of an apprenticeship program or an apprenticeship agreement.

(6) "Certificate of completion" means a record of the successful completion of a term of apprenticeship**.**

(7) "Certification" means written approval by the ATC of: (a) a set of apprenticeship standards established by an apprenticeship program sponsor and substantially conforming to the standards established by the ATC; and (b) an individual as eligible for employment as an apprentice under a registered apprenticeship program.

(8) "Competent instructor" means an instructor who has demonstrated a satisfactory employment performance in his/her occupation or trade.

(9) "Current instruction" means the related/supplemental instructional content is and remains reasonably consistent with the latest trade practices, improvements, and technical advances.

(10) "Distance learning forums" means courses or techniques of instructional learning presented through written correspondence, video teleconferencing, on-line/internet communications, or other two-way inter-active media (including computer-based training).

(11) "Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice, irrespective of labor affiliation.

(12) "Executive Director" means the individual appointed by the ATC under this Act.

(13) "Journey level" means an individual who has sufficient skills and knowledge of a trade, craft, or occupation, either through formal apprenticeship training or through practical on-the-job work experience, to be recognized by the State and/or an industry as being fully qualified to perform the work of the trade, craft, or occupation.

(14) "Registration" means maintaining the records of apprenticeship and training agreements and of training standards.

(15) "Related/supplemental instruction" means an instruction as described in this Act, approved by the program sponsor, and taught by an instructor approved by the program sponsor. Instructors must be competent in his/her trade or occupation.

(16) "Sponsor" means any person, firm, association, or organization operating an apprenticeship and training program and in whose name the program is registered or is to be registered.

(17) "Sponsored applicant" means one who is gainfully employed by a subscribing employer who applies as an applicant into an approved apprenticeship program having already met the minimum qualifications for apprenticeship as enumerated in this Act, thereby qualifying for immediate registration into the apprenticeship program.

(18) "Standards" means specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as described in this Act**.**

(18) "Supervision" means the necessary education, assistance, and control provided by a journey-level employee that is on the same job site at least seventy-five percent of each working day.

Section 3 Rule Development and Adoption

(a) In developing and adopting rules, the ATC will:

(1) seek the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.

(2) promote the operation of apprenticeship and training programs to satisfy the needs of employers and employees for high quality training.

(3) recognize that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.

(4) seek to assure that all apprenticeship standards are entitled to approval without discrimination on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof.

(5) recognize that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are provided by registered apprenticeship programs.

(6) assure that such rules are not more restrictive than the rules for approval of apprenticeship programs as established by the U.S. Department of Labor at Part 29 of Title 29 of the Code of Federal Regulations

(b) All rules and/or regulations under this Chapter must be promulgated in accordance with the State's Administrative Procedure Act ("Administrative Procedure Act").

Sub-Chapter II
Duties of Apprenticeship and Training Council And Executive Director

Section 4 Apprenticeship and Training Council Composition

The ATC will be composed of twelve (12) members appointed by the Governor for staggered four year terms, plus the Secretary of Education or his/her designee as an *ex officio* voting member. The 12 appointed ATC members will be drawn from employer representatives (4); employee representatives (4); and public members who are not member of employer or employee organizations (4). The Governor shall designate the Chairperson from among the public members. Representation from union or non-union organizations (whether employer or employee) shall be proportional to percentages of workers represented by unions according to the U.S. Department of Labor.

Section 5 Executive Director

The ATC will appoint the Executive Director ("E.D.") for a four (4) year term. The E.D. will encourage and promote apprenticeship; act as secretary to the ATC; when authorized by the ATC, register apprenticeship agreements; maintain records of apprenticeship agreements; take appropriate informal steps to resolve controversies about apprenticeship agreements; and recommend termination or cancellation of apprenticeship agreements. The E.D. will also review apprenticeship programs and recommend cancellation of such programs when appropriate; consult with the private and public sectors on apprenticeship and training; conduct systematic review of all programs and agreements and investigate discrepancies between actual and required operations; and recommend sanctions for non-compliance to the ATC.

Section 6 Meetings

The ATC will meet once a month, and advance notice of the meeting will be published in the official State register. All meetings must conform to the State's open-meeting law. The following actions may only take place during a regular meeting: (1) any approval, disapproval, de-registration or reinstitution of an apprenticeship or training program (2) action on a complaint regarding an apprenticeship agreement (3) action on an apprenticeship program compliance review and (4) punitive action under any provision of this Chapter.

Special meetings of the ATC my be called by the chairperson or by a majority of the members. Written notice must be given to each member individually, published at least once in a local newspaper of general circulation; and delivered or mailed to each individual or entity which is the subject of the special meeting. The written notice must list the date, time, and location of the meeting and specify the business to be conducted; and must conform to the State's open-meeting law. All notices of special meetings must be given at least three (3) business days before the meeting.

Section 7 Voting

All valid action of the ATC must take place by majority vote when a quorum is present. A quorum is two-thirds of ATC members entitled to vote.

Sub-Chapter III
Apprenticeship and Training Programs

Section 8 Approval of Apprenticeship and Training Programs

The following apprenticeship programs may be approved by the ATC: (1) group-joint or area-joint (programs jointly sponsored by a group of employers and a labor organization) (2) individual-joint (programs jointly sponsored by an individual employer and a labor organization) (3) group nonjoint or area group (programs where there is no labor organization) (4) individual nonjoint (programs sponsored by an individual employer without a labor organization) (5) plant (program sponsored for a single physical location or group of physical locations owned by the sponsor). Other on-the-job training programs may be authorized by the ATC, consistent with the provisions of the Act.

Apprenticeship or training program proposals must be submitted to the ATC for approval at least fifteen (15) days before any regular ATC meeting and the ATC must take action with thirty (30) days of submission. ATC shall approve programs that meet the standards set forth in the Act. If ATC does not act on a request for approval within thirty (30) days of submission, then the requesting program is deemed approved. Disapproval of a program proposal by the ATC must be by written order with specific and rational reasons for the disapproval, and may be appealed to State Court. The Court may affirm, reverse, vacate, or modify such order or take any other action deemed necessary or appropriate. Disapproval shall not bar any party from submitting an apprenticeship or training program proposal at any time in the future.

In ruling on requests for approval of apprenticeship and training programs, ATC shall not discriminate on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof. ATC shall also not base any approval decisions on perceptions of the "need" for additional apprenticeship programs, but shall make all such approval decisions in accordance with the Policy underyling this Act, that there is a continuing need for increased opportunities for apprenticeship training.

Section 10 Apprenticeship Program Standards

The ATC will develop, administer, and enforce program standards for apprenticeship and training programs in a manner consistent with those standards established by the U.S. Department of Labor, including the following:

(a) a statement of the trade or craft to be taught and the required hours for completion of the apprenticeship

(b) a statement identifying the program sponsor and describing the sponsor's duties and responsibilities.

(c) an Equal Employment Opportunity Pledge

(d) only when applicable, an affirmative action plan and selection procedures consistent with the Code of Federal Regulations.

(e) a numeric ratio of apprentices to journey-level workers consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any, provided that any ratio that has been approved within a craft or trade by the U.S. Department of Labor or any registration agency recognized by the U.S. Department of Labor shall be considered acceptable in this State. [A ratio of a one apprentice to no more than one journeyperson shall be approved].

(f) a statement regarding the content, format, hours of study per year in connection with related/supplemental instruction (if any)

(g) an attendance policy

(h) a provision for instruction of the apprentice in safe and healthful work practices in compliance with applicable State laws and federal laws and regulations.

(i) a provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the ATC.

(j) a provision for the timely notice to the ATC of all requests for disposition or modification of apprenticeship agreements

(k) a provision for advancing an apprentice's standing based on previous experience in the skilled trade or in some other related capacity and performance-based measures.

(l) a provision for the transfer of an apprentice from one training agent to another in order to provide to the extent possible continuous employment and diversity of training experiences for apprentices.

(m) a provision for the amendment of the standards or de-registration of the program consistent with the provisions of this Chapter.

(n) an apprenticeship complaint procedure in compliance with the Act

(o) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(p) a statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction (if any), provided that advancement of an apprentice may be accelerated or extended based upon demonstrated achievement of skills and knowledge or lack thereof, in a manner consistent with the requirements of Title 29 of the Code of Federal Regulations.

(q) a statement of the minimum qualifications for persons entering the apprenticeship program

(r) a provision that the services of the Executive Director and the ATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement.

(s) disciplinary procedures and criteria for apprentices. The procedures may include disciplinary probation during which (A) periodic wage advancements may be withheld; (B) the apprenticeship agreement may be suspended or canceled (C) further disciplinary action may be taken; and (D) the disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file a complaint of the disciplinary action under the provisions of this chapter

(t) a provision for an initial probation during which the ATC may terminate an apprenticeship agreement at the written request by any affected party.

(u) provisions prohibiting discrimination on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof, or as otherwise specified by law during all phases of apprenticeship.

(v) provisions to ensure adequate records of the selection process are maintained.

(w) provisions to ensure any proposed standards for apprenticeship and training are reasonably consistent with any standards for apprenticeship and training already approved by the ATC for the industry, craft or trade in question.

(x) a provision to ensure the progressively increasing wage scales based on specified percentages of journey-level wage, provided that the arithmetic average of each individual contractor's journeyperson rates will become the journeyperson rate upon which the apprentice wage schedules shall be applied for apprentices employed by that contractor and in no event shall the State's prevailing wage laws be applied so as to cause apprentices to be paid by individual employers at rates higher than those paid to journeypersons by such employers.

(y) a provision to ensure the confidentiality of the personal information of individual apprentices such as residential addresses, telephone numbers, and social security numbers.

(z) such additional standards as may be prescribed in accordance with the provisions of this Chapter.

Section 11 Related/Supplemental Instruction.

The ATC may approve supplemental instruction for trades and occupations as necessary or appropriate. The ATC shall not disapprove any supplemental instruction activity (if any is required) on the grounds that such supplemental instruction will take place on the site of construction or at any other location (including distance learning forums) provided that resident apprentices have a reasonable opportunity to attend the supplemental instruction activities.

Section 12 Records Required by the ATC.

Each sponsor must keep adequate records including, but not limited to selection of applicants; operation of the apprenticeship program; affirmative action plans; documentation as may be necessary to establish a sponsor's good faith effort in implementing its affirmative action plan; qualification standards and evidence that the sponsor's qualification standards meet the requirements of the Act. Such records shall be kept for the time period prescribed by the Code of Federal Regulations.

Section 13 Registration of Apprenticeship Agreement.

All individual agreements are subject to the approval of the ATC and must be registered with the ATC. Personal information contained in such agreements shall not be subject to public disclosure under the State's public records law.

Section 14. Comment by Unions and Other Third Parties.

When apprenticeship programs allowing for substantive union participation are proposed for registration by an employer or employers' association and the union is in fact actively participating in the proposed program, the proposal must be accompanied by a written statement from the union supporting the registration. Nothing in this provision shall entitle a union or any other third party to object to approval of or file a complaint

regarding any apprenticeship program in which the union or other third party does not actively participate.

Section 15 Reciprocity.

The ATC shall recognize and approve apprenticeship agreements and apprenticeship programs approved or recognized by the U.S. Department of Labor pursuant to the Code of Federal Regulations, or by any registration agency recognized by the U.S. Department of Labor. The ATC may enter into such additional agreements with other state apprenticeship and training councils for reciprocal approval of apprenticeship programs under such terms and conditions as the ATC deems appropriate and consistent with the purposes and intent of this chapter.

Section 16 Apprentice Complaint Review

Any party to an apprenticeship agreement may, after taking informal action to reach resolution, submit a complaint to the Apprenticeship and Training Council for final review and decision. The submission must be in writing, must specify the reasons supporting the complaint, and a copy of the submission must be provided to all parties involved in the controversy. The Executive Director will promptly make an initial review of the complaint and determine whether reasonable cause exists to believe that a violation of the agreement has taken place. If the Executive Director determines that reasonable cause does not exist, the complaint will be dismissed, subject to final order of the ATC after notice and opportunity for a hearing as hereinafter provided. If the Executive Director determines that reasonable cause has been presented, the complaint will be transmitted to the ATC for action. The ATC will conduct a hearing to consider the complaint, and will issue an order with written findings of fact and conclusions of law within ninety (90) days from the date of submission of the complaint.

Section 17 Apprenticeship Program Compliance Review.

The sponsor shall be notified in writing if a compliance review is undertaken by the ATC. A compliance review may be required (1) for all existing programs on a regular and comprehensive basis; (2) when the ATC receives a complaint from an apprentice participating in the program; (3) when a sponsor seeks to register a new program; or (4) at such other time and under such circumstances as the ATC deems appropriate, provided that the ATC shall not discriminate in the instigation or conduct of compliance reviews on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof.

If a compliance review indicates that the sponsor is not operating as required by this Act, the ATC must notify the sponsor in writing of the preliminary results of the review and permit the sponsor to comment in writing prior to issuing final results. The ATC must (1) make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before imposition of penalties authorized in the Act; and (2) provide recommendations to the sponsor to assist in achieving compliance.

Section 18 Sanctions for Non-Compliance.

When the ATC concludes that an apprenticeship program is not in compliance with the requirements of this chapter and that the sponsor has not taken or refuses to take voluntary corrective action, the ATC may, after notice and opportunity for a hearing, cancel or revoke the program registration, order modification of the program, or take such other action as may be appropriate and authorized under this chapter Proceedings under this section will be contested cases under the State's Administrative Procedure Act. Sanctions by the ATC must be by written order with specific and rational reasons for the disapproval, and may be appealed to State Court. The Court may affirm, reverse, vacate, or modify such order or take any other action deemed necessary or appropriate. No program shall be cancelled under this provision without prior consideration of intermediate sanctions.

185934

PRINTER'S NO. 1552
THE GENERAL ASSEMBLY OF PENNSYLVANIA
SENATE BILL
No.
1248
Session of
2011
INTRODUCED BY FOLMER, RAFFERTY, D. WHITE, WAUGH, PICCOLA, BROWNE AND WASHINGTON, SEPTEMBER 20, 2011
REFERRED TO LABOR AND INDUSTRY, SEPTEMBER 20, 2011

AN ACT

Establishing the State Apprenticeship and Training Commission; transferring functions of the State Apprenticeship and Training Council; providing for an Executive Director of Apprenticeship and Training and for subjects of transfer; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the State Apprenticeship and Training Commission Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advisory council." The State Apprenticeship Advisory Council.

"Commission." The State Apprenticeship and Training Commission.

"Executive director." The Executive Director of

Apprenticeship and Training and the Administrator of the State Apprenticeship and Training Commission.

"Subjects of transfer." Powers, duties, personnel, appropriations, allocations, documents, files, records, contracts, agreements, equipment, materials, orders and rights and obligations utilized or accruing in connection with functions transferred from one entity to another under this act.

Section 3. State Apprenticeship and Training Commission.

(a) Establishment.--The State Apprenticeship and Training Commission is established and shall be fully implemented and operational one year from the effective date of this section.

(b) Transferred powers and duties.--The following functions of the State Apprenticeship and Training Council are transferred to the commission:

(1) Overseeing apprenticeship and training programs in this Commonwealth.

(2) Establishing standards for apprenticeship in conformity with the provisions of this act and applicable statutes and regulations of the Federal Government, including a description of the standards, criteria and requirements for apprenticeship program registration or approval.

(3) Where deemed appropriate, according reciprocal approval for Federal purposes to apprentices, apprenticeship programs and standards that are registered in other states by the Federal Office of Apprenticeship or a federally approved state registration agency if reciprocity is requested by the apprenticeship program sponsor, provided that the state's registration agency grants reciprocity to Pennsylvania programs.

(4) Providing for the cancellation or deregistration of

programs and for temporary suspension, cancellation or deregistration of apprenticeship agreements.

(5) Establishing policies, procedures and plans that demonstrate how the State's economic development strategies and public work force investment system integrate registered apprenticeship as a critical work-based learning, postsecondary education, training and employment option available through the One-Stop Career Center System.

(6) Establishing a State plan for equal employment opportunity in apprenticeship, incorporating policies and procedures to promote equality of opportunity in apprenticeship programs.

(7) Establishing apprentice-to-journeyperson ratios that are uniform and indiscriminate between joint and nonjoint programs. In no instance shall the ratio be stricter than two apprentices to one journeyperson.

(8) Acting as and allocating sufficient staff and budget to carry out the functions of a State registration agency, including outreach and education, registration of programs and apprentices, provision of technical assistance and monitoring.

(9) Establishing a unique civil service classification encompassing all the powers and duties enumerated in this section for the purpose of staffing the commission's professional level positions.

(10) Serving as a single point of contact for the United States Department of Labor with respect to the National

Apprenticeship System.

(11) Maintaining close liaison and serving as the single point of contact for apprenticeship and training for all

agencies that carry on work force development programs, work-based learning and other activities closely related to the purpose of this act.

(12) Conducting studies, surveys and investigations of the special problems or the training of unemployed or employed persons in order to improve or modernize work skills and making recommendations to the cooperating entities represented on the advisory council, local community organizations and local school boards, among others.

(13) Acting as a convening agency in local communities to bring together local representatives of employers, employees, educational agencies and industrial development entities in order to promote closer local cooperation in establishing better apprenticeship, work-based learning and other occupational training programs, including programs for employed persons who wish to improve and modernize their work skills.

(14) Using all appropriate mediums of information and education to acquaint employers, employees and the public at large with the advantages of apprenticeship and other work-based learning and occupational training programs.

(15) Studying the effectiveness of apprenticeship agreements and making recommendations for their improvement.

(16) Report to the General Assembly on or before

February 15 of each year, indicating:

(i) the extent of apprenticeship and other occupational programs during the previous year;

(ii) trends in employment requiring adjustments in apprenticeship training, work-based learning and other occupational training programs;

(iii) the need for expansion of apprenticeship, work-based learning and other occupational training programs; and

(iv) activities of the commission and such recommendations as are in accord with the purposes of this act.

(17) Serving as the recognized State apprenticeship registration entity and register apprenticeship programs and apprentices and provide technical assistance and conduct reviews for compliance and quality assurance assessments.

(18) Performing such other duties as may be necessary to give full effect to the provisions of this act.

Section 4. Executive Director of Apprenticeship and Training.

The Governor shall appoint an Executive Director of Apprenticeship and Training who shall be confirmed by the Senate and responsible to the General Assembly in carrying out the provisions of this act. The commission shall appoint, hire and otherwise make available to the executive director the clerical, technical and professional services necessary to the performance of the executive director's duties, including, but not limited to, appointments to the advisory council.

Section 5. Powers and duties of executive director.

The executive director shall carry out the purposes of this act and shall have the following powers and duties:

(1) Oversight of the advisory council.

(2) Encouragement and promotion of the standards established in accordance with this act and with the basic standards of the Federal Committee on Registered Apprenticeship.

(3) Settlement of differences arising out of

apprenticeship agreements.

(4) Supervision of the execution of apprenticeship agreements and maintenance of standards.

(5) Registration of such apprenticeship agreements as the commission shall authorize as conforming to the established standards.

(6) Participation in and utilizing the Federal Registered Apprenticeship Information System Database.

(7) Establishment and maintenance of Statewide database for the purpose of keeping a record of the following:

(i) Apprenticeship agreements.

(ii) Statistics and demographics about apprentices and programs.

(iii) Issuance of interim, competence and completion certificates.

(iv) Transfers.

(v) Program sponsors.

(8) Execution of the actions of the commission in all of

its powers and duties under section 3.

(9) Encouragement of liaison and cooperation among all Federal, State and other public and private agencies concerned with apprenticeship work-based learning and occupational training in industries that have not traditionally used the registered apprenticeship model as a viable option for work force development and work force education.

(10) Promotion of employer, employee, student, parent and public awareness of apprenticeship, the apprenticeship model, work-based learning and other occupational training.

(11) Expanding apprenticeship opportunities for workers

in industries that have not traditionally used the registered apprenticeship model, including, but not limited to, new and emerging occupations and high-technology and green industries.

Section 6. State Apprenticeship Advisory Council.

(a) Composition.--The advisory council shall be comprised of:

(1) Four representatives of employees, two of whom shall represent industries other than construction trade industries. Collective bargaining units and open-shop employees shall be equally represented.

(2) Four representatives of employers, two of whom shall represent industries other than construction trades industries. Collective bargaining units and open-shop employees shall be equally represented.

(3) Two representatives of community colleges.

(4) One representative of the general public.

(5) The Deputy Secretary for Workforce Development in the Department of Labor and Industry.

(6) The Executive Director of the Pennsylvania Workforce Investment Board.

(7) One work force development representative from each of the following: Department of Aging, Department of Education, Department of Community and Economic Development, Department of Public Welfare, Department of Military and Veterans Affairs and the Pennsylvania Council of Chief Juvenile Probation Officers.

(b) Term of membership.--

(1) Employer, employee and public members shall be appointed by the Governor with the advice and consent of the

Senate. Members shall be citizens of the United States and residents of this Commonwealth.

(2) Members shall serve a term of four years or until a successor has been appointed and qualified, but in no event longer than six months beyond the four-year period.

(3) In the event that a member dies or resigns or is otherwise disqualified during the term of office, a successor shall be appointed in the same way and with the same qualifications and shall hold office for the remainder of the unexpired term.

(4) An employer, employee or public member shall not be eligible to hold more than two consecutive terms.

(c) Appointments.--For employer, employee and public members initially appointed to the board pursuant to this act, the term of office shall be as follows:

(1) Five members shall serve for a term of four years.

(2) Two members shall serve for a term of three years.

(3) Two members shall serve for a term of two years.

(d) Officers.--The advisory council shall organize immediately upon appointment and annually thereafter by the election of one of its members as chairman, one as vice chairman and one as recording secretary.

(e) Meetings.--The advisory council shall conduct meetings quarterly unless otherwise scheduled by the executive director.

(f) Expenses.--Each member of the advisory advisory council shall receive actual traveling expenses and per diem at the rate of $25 each day for time spent attending advisory council meetings.

(g) Status.--The advisory council shall be ineligible for recognition as the State's registration entity and shall provide

recommended advice and guidance to the commission on the operation of the State's apprenticeship system. The advisory council operates at the direction and discretion of the commission.

Section 7. Limitation.

This act shall apply only to persons, partnerships, associations, corporations, political subdivisions, employer associations or organizations or associations of employees that voluntarily elect to conform with the provisions of this act.

Section 8. Subjects of transfer.

(a) General rule.--The subjects of transfer from the council are transferred to the commission with the same force and effect as if those subjects of transfer had originally belonged or had been incurred or entered into by the commission.

(b) Employees.--The transfer made under this act shall not affect the civil service status of affected employees of the council with the exception that employees without civil service status shall, if qualified, be granted civil service status in their classifications.

Section 9. Repeals.

(a) Intent.--The General Assembly declares that the repeal under subsection (b) is necessary to effectuate the purposes of this act.

(b) Absolute.--The act of July 14, 1961 (P.L.604 No.304), known as The Apprenticeship and Training Act, is repealed.

(c) General.--All acts or parts of acts are repealed insofar as they are inconsistent with this act.

Section 20. Effective date.

This act shall take effect in 60 days.

Best Value

1. Delaware Best Value Sample Legislation
2. Pennsylvania “Stop Best Buddy” Legislation

BEST VALUE-SAMPLE LEGISLATION FROM DELAWARE

DELAWARE STATE SENATE
140TH GENERAL ASSEMBLY
SENATE BILL NO. 204
AS AMENDED BY
SENATE AMENDMENT NO.5

AN ACT TO AMEND CHAPTER 69, TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PROCUREMENT

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1.
This legislation shall be known as "The Quality Construction Improvement Act of 1999."

Section 2.
Amend 6902, Title 29, Delaware Code by renumbering current 6902 (10) through (18) as 6902 (11) through (19) and insert the following as new 6902 (10):

(10) "Labor supply ratio means the number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor pursuant to Chapter 2 of Title 19 of the Delaware Code or has otherwise documented 8 years of experience in a particular craft, shall be deemed a skilled crafts person for the purposes of this definition."

Section 3.
Amend 6962(c), Title 29, Delaware Code by deleting it in its entirety and substituting in lieu thereof the following:

"Bidder prequalification requirements
(1) An agency may require any potential contractor proposing to bid on a public works contract to complete a questionnaire containing any or all of the following information for the purposes of pre-qualification:

(a) The most recent audited financial statement and/or financial statement review, as provided by a Certified Public Accountant, containing a complete statement of that proposing contractor's financial ability and standing to complete the work specified in the invitation to bid;
(b) The proposing contractor's experience on other public works or private projects, including but not limited to, the size, complexity and scope of the firm's prior projects;
(c) The supply of labor available to the proposing contractor to complete the project including but not limited to, the labor supply ratio as defined by 6902(10)

(d) Performance reviews of the proposing contractor on previously awarded public works or private construction projects within the last 10 years;
(e) Civil judgments and/or criminal history of the proposing contractor's principals;
(f) Any debarment or suspension by any government agency;
(g) Any revocation or suspension of a license; or
(h) Any bankruptcy filings or proceedings.

(2) Based upon the proposing contractor's answers to the pre-qualification questionnaire, the agency may deny pre-qualification for any one of the following specified reasons;
(a) Insufficient financial ability to perform the contract
(b) Inadequate experience to undertake the project;
(c) Documented failure to perform on prior public or private construction contracts, including but not limited to, final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;
(d) Prior judgments for breach of contract that indicate the proposing contractor may not be capable of performing the work or completing the project;
(e) Criminal convictions for fraud, misrepresentation or theft relating to contract procurement
(f) Inadequate labor supply available to complete the project in a timely manner;
(g) Previous debarment or suspension of the contractor by any government agency that indicate the proposing contractor may not be capable of performing the work or completing the project;
(h) Previous revocation or suspension of a license that indicate the proposing contractor may not be capable of performing the work or completing the project
(i) Previous bankruptcy proceedings that indicate the proposing contractor may not be capable of performing the work or completing the project; or
(j) Failure to provide pre-qualification information.

(3) Denial of pre-qualification shall be in writing and shall be sent to the contractor within five (5) working days of such decision. The agency may refuse to provide to provide any contractor disqualified under this section the plans and specifications for the project. Any agency receiving a bid from a contractor disqualified under this section shall not consider such bid.

(4) Any contractor disqualified pursuant to subsections (c)(1)(2) and (3) of this section may review such decision with the Agency Head. No action in law or equity shall lie against any agency or its employees if the contractor does not first review the decision with the Agency Head. To the extent the contractor brings an action challenging a decision pursuant to subsections (c)(1)(2) and (3) after such review by the Agency Head, the Court shall afford great weight to the decision of the Agency Head and shall not overturn such decision unless the contractor proves by clear and convincing evidence that such decision was arbitrary and capricious.

Section 4.

Amend 6962 (d)(5) a, Title 29, Delaware Code by inserting an additional paragraph at the conclusion thereof after the words "under the contract except for amount retained." as follows:

"The agency may at the beginning of each public works contract establish a time schedule for the completion of the project. If the project is delayed beyond the completion date due to the contractor's failure to meet his or her responsibilities, the agency may forfeit all or part of retainage at its discretion."

Section5.

Amend 6962(d)(13), Title 29, Delaware Code by deleting 6962(13)a, in its entirety and substituting in lieu thereof the following:

(A) The contracting agency shall award any public works contract within thirty (30) days of the bid opening to the lowest responsive and responsible bidder, unless the agency elects to award on the basis of best value, in which case the election to award on the basis of best value shall be stated in the invitation to bid. Any public school district and its board shall award public works contracts in accordance with this section's requirements except it shall award the contract within sixty (60) days of the bid opening.

(B) Each bid on any public works contract must be deemed responsible by the agency to be considered for award. A responsive bid shall conform in all material respects to the requirements and criteria set forth in the contract plans and specifications.

(C) An agency shall determine that each bidder on any public works contract is responsible before awarding the contract. Factors to be considered in determining the responsibility of a bidder include:

(1) The bidder's financial, physical, personnel or other resources including subcontracts;

(2) The bidder's record of performance on past public or private construction projects, including, but not limited to, defaults and/or final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;

(3) The bidder's written safety plan;

(4) Whether the bidder is qualified legally to contract with the State;

(5) Whether the bidder supplied all necessary information concerning in responsibility; and

(6) Any other specific criteria for a particular procurement, which an agency may establish; provided however, that the criteria shall be set forth in the invitation to bid and is otherwise in conformity with State and/or federal law.

If an agency determines that a bidder is nonresponsive and/or nonresponsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be sent to the affected bidder within five (%) working days of said determination. The final determination shall be made part of the procurement file.

If the agency elects to award on the basis of best value, the agency must determine that the successful bidder is responsive and responsible, as defined in this subsection. The determination of best value shall be based upon objective criteria that have been communicated to the bidders in the invitation to bid. The following objective criteria shall be assigned a weight consistent with the following;

(1) Price-must be at least seventy percent (70%) but no more than ninety percent (90%); and
(2) Schedule-must be at least ten percent (10%) but no more than thirty percent (30%); and

A weighted average stated in the invitation to bid shall be applied to each criterion according to its importance to each project. The agency shall rank the bidder according to the established criteria and award to the highest ranked bidder.

Section 6.

Amend 6962, Title 29, Delaware Code by inserting as new 6962(14) the following:

"(14) Suspension and Debarment-Any contractor who fails to perform a public works contract or complete a public works project within the time schedule established by the agency in the invitation to bid, may be subject to suspension or debarment for one or more of the following reasons: 1) failure to supply the adequate labor supply ratio for the project; 2) inadequate financial resources; or, 3) poor performance on the project.

Upon such failure for any of the above stated reasons, the agency that contracted for the public works project may petition the Secretary of the Department of Administrative Services for suspension or debarment of the contractor. The agency shall send a copy of the petition to the contractor within three (3) working days of filing with the Secretary. If the Secretary concludes that the petition has merit, the Secretary shall schedule and hold a hearing to determine whether to suspend the contractor, debar the contractor or deny the petition. The agency shall have the burden of proving, by a preponderance of the evidence, that the contractor failed to perform or complete the public works project within the time schedule established by the agency and failed to do so for one or more of the following reasons;

(1) failure to supply the adequate labor supply ratio for the project;
(2) inadequate financial resources; or
(3) poor performance on the project

Upon a finding in favor of the agency, the Secretary may suspend a contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the contractor for a third offense. The Secretary shall issue a written decision and shall send a copy to the contractor and the agency. Such decision may be appealed to the Superior Court within thirty (30) days for a review on the record."

PRINTER'S NO. 2749

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1996 Session of 2005

INTRODUCED BY PETRI, CLYMER, ARMSTRONG, CALTAGIRONE, FAIRCHILD, HENNESSEY, HERSHEY, KILLION, NAILOR, REICHLEY, SATHER, TURZAI, WATSON, WILT AND YOUNGBLOOD, SEPTEMBER 28, 2005

REFERRED TO COMMITTEE ON STATE GOVERNMENT, SEPTEMBER 28, 2005

AN ACT

Amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, further providing for competitive sealed proposals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 513(a) of Title 62 of the Pennsylvania Consolidated Statutes is amended to read:

§ 513. Competitive sealed proposals.

(a) Conditions for use.--When the contracting officer determines in writing that the use of competitive sealed bidding is either not practicable or advantageous to the Commonwealth, a contract <u>for services or supplies, but not for construction,</u> may be entered into by competitive sealed proposals.

* * *

Section 2. This act shall take effect immediately.

Contractor Licensing

1. Model Elevator Contractor Licensing Legislation

Associated Builders and Contractors (ABC) Model Act:
Elevator and Escalator Mechanic Licensing and Contractor Certification

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SECTION 1. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "ELEVATOR AND ESCALATOR CERTIFICATION ACT."

SECTION 2. DEFINITIONS. AS USED IN THIS ACT, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCREDITED NATIONAL CONVEYANCE ASSOCIATION" MEANS A CONVEYANCE ASSOCIATION THAT IS ACCREDITED TO CERTIFY CONVEYANCE INSPECTORS BY A NATIONALLY RECOGNIZED STANDARDS ASSOCIATION, INCLUDING, WITHOUT LIMITATION, AMERICAN SOCIETY OF MECHANICAL ENGINEERS.

(2) "ADMINISTRATOR" MEANS A DIRECTOR WITHIN THE DEPARTMENT OF LABOR OR THE DIRECTOR'S DESIGNEE.

(3) "ASME" MEANS THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS OR ITS SUCCESSOR.

(4) "ASME A17.1" MEANS THE SAFETY CODE FOR ELEVATORS AND ESCALATORS PUBLISHED AS "A17.1 SAFETY CODE FOR ELEVATORS AND ESCALATORS" AS AMENDED BY ASME INTERNATIONAL.

(5) "ASME A17.3" MEANS THE SAFETY CODE FOR ELEVATORS AND ESCALATORS PUBLISHED AS "A17.3 SAFETY CODE FOR EXISTING ELEVATORS AND ESCALATORS" AS AMENDED BY ASME INTERNATIONAL.

(6) "ASME A18.1" MEANS THE SAFETY CODE FOR ELEVATORS AND ESCALATORS PUBLISHED AS "A18.1 SAFETY STANDARD FOR PLATFORM LIFTS AND STAIRWAY CHAIRLIFTS" AS AMENDED BY ASME INTERNATIONAL.

(7) "CONVEYANCE" MEANS A MECHANICAL DEVICE TO WHICH THIS ACT APPLIES PURSUANT TO SECTION 3 OF THIS ACT.

(8) "CONVEYANCE CONTRACTOR" MEANS A PERSON WHO ENGAGES IN THE BUSINESS OF ERECTING, CONSTRUCTING, INSTALLING, ALTERING, SERVICING, REPAIRING, OR MAINTAINING CONVEYANCES.

(9) "CONVEYANCE APPRENTICE" MEANS A PERSON WHO WORKS UNDER THE GENERAL DIRECTION OF A CERTIFIED CONVEYANCE MECHANIC.

(10) "CONVEYANCE MECHANIC" MEANS A PERSON WHO ERECTS, CONSTRUCTS, INSTALLS, ALTERS, SERVICES, REPAIRS, OR MAINTAINS CONVEYANCES.

(11) "DORMANT CONVEYANCE" MEANS A CONVEYANCE THAT HAS BEEN TEMPORARILY PLACED OUT OF SERVICE.

(12) "LICENSEE" MEANS A PERSON WHO IS LICENSED AS A CONVEYANCE MECHANIC OR CONVEYANCE INSPECTOR PURSUANT TO THIS ACT.

(13) "LOCAL JURISDICTION" MEANS A CITY, COUNTY, OR CITY AND COUNTY OR ANY AGENT THEREOF.

(14) "PRIVATE RESIDENCE" MEANS A SEPARATE DWELLING, OR A SEPARATE APARTMENT IN A MULTIPLE-APARTMENT DWELLING, THAT IS OCCUPIED BY MEMBERS OF A SINGLE-FAMILY UNIT.

(15) "SINGLE-FAMILY RESIDENCE" MEANS A PRIVATE RESIDENCE THAT IS A SEPARATE BUILDING OR AN INDIVIDUAL RESIDENCE THAT IS PART OF A ROW OF RESIDENCES JOINED BY COMMON SIDEWALLS.

(16) "THIRD-PARTY CONVEYANCE INSPECTOR" MEANS A DISINTERESTED CONVEYANCE INSPECTOR WHO IS RETAINED TO INSPECT A CONVEYANCE BUT IS NOT EMPLOYED BY OR AFFILIATED WITH THE OWNER OF THE CONVEYANCE NOR THE CONVEYANCE MECHANIC WHOSE REPAIR, ALTERATION, OR INSTALLATION IS BEING INSPECTED.

(17) “SUPERVISION” MEANS EMPLOYED BY A CERTIFIED CONVEYANCE CONTRACTOR FOR THE PURPOSE OF THIS ACT.

SECTION 3. SCOPE. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS ACT SHALL APPLY TO THE DESIGN, CONSTRUCTION, OPERATION, INSPECTION, TESTING, MAINTENANCE, ALTERATION, AND REPAIR OF THE FOLLOWING EQUIPMENT:

(a) HOISTING AND LOWERING MECHANISMS EQUIPPED WITH A CAR OR PLATFORM THAT MOVES BETWEEN TWO OR MORE LANDINGS. SUCH EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, ELEVATORS AND PLATFORM LIFTS, PERSONNEL HOISTS, STAIRWAY CHAIR LIFTS, AND DUMBWAITERS.

(b) POWER-DRIVEN STAIRWAYS AND WALKWAYS FOR CARRYING PERSONS BETWEEN LANDINGS. SUCH EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, ESCALATORS AND MOVING WALKS.

(c) AUTOMATED PEOPLE MOVERS AS DEFINED IN ASCE 21.

(2) THIS ACT SHALL NOT APPLY TO ANY OF THE FOLLOWING:

(a) MATERIAL HOISTS;

(b) MOBILE SCAFFOLDS, TOWERS, AND PLATFORMS;

(c) POWERED PLATFORMS AND EQUIPMENT FOR EXTERIOR AND INTERIOR MAINTENANCE;

(d) CRANES, DERRICKS, HOISTS, HOOKS, JACKS, AND SLINGS;

(e) INDUSTRIAL TRUCKS WITHIN THE SCOPE OF ASME PUBLICATION B56;

(f) ITEMS OF PORTABLE EQUIPMENT THAT ARE NOT PORTABLE ESCALATORS;

(g) TIERING OR PILING MACHINES USED TO MOVE MATERIALS BETWEEN STORAGE LOCATIONS THAT OPERATE ENTIRELY WITHIN ONE STORY;

(h) EQUIPMENT FOR FEEDING OR POSITIONING MATERIALS AT MACHINE TOOLS, PRINTING PRESSES, AND OTHER SIMILAR EQUIPMENT;

(i) SKIP OR FURNACE HOISTS;

(j) WHARF RAMPS;

(k) RAILROAD CAR LIFTS OR DUMPERS;

(l) LINE JACKS, FALSE CARS, SHAFTERS, MOVING PLATFORMS, AND SIMILAR EQUIPMENT USED BY A CERTIFIED CONVEYANCE CONTRACTOR FOR INSTALLING A CONVEYANCE;

(m) A PASSENGER TRAMWAY DEFINED IN SECTION 25-5-702, C.R.S.;

(n) CONVEYANCES IN OR AT A PRIVATE OR SINGLE-FAMILY RESIDENCE.

(3) THIS ACT SHALL NOT BE CONSTRUED TO PROHIBIT A LOCAL JURISDICTION FROM REGULATING CONVEYANCES IF THE LOCAL JURISDICTION HAS STANDARDS THAT MEET OR EXCEED THE STANDARDS ESTABLISHED BY THIS ACT.

SECTION 4. LICENSE REQUIRED. (1) (a) NO PERSON SHALL ERECT, CONSTRUCT, ALTER, REPLACE, MAINTAIN, REMOVE, OR DISMANTLE A CONVEYANCE WITHIN A BUILDING OR STRUCTURE UNLESS THE PERSON IS LICENSED AS A CONVEYANCE MECHANIC AND IS WORKING UNDER THE SUPERVISION AS DEFINED IN SECTION 2 OF THIS ACT OF A CERTIFIED CONVEYANCE CONTRACTOR. NO PERSON SHALL WIRE A CONVEYANCE UNLESS THE PERSON IS LICENSED AS A CONVEYANCE MECHANIC AND IS WORKING UNDER THE SUPERVISION OF A CERTIFIED CONVEYANCE CONTRACTOR. NO OTHER LICENSE SHALL BE REQUIRED TO PERFORM THE WORK DESCRIBED IN THIS PARAGRAPH (a).

(b) NO PERSON SHALL BE REQUIRED TO BE A CERTIFIED CONVEYANCE CONTRACTOR OR LICENSED CONVEYANCE MECHANIC TO REMOVE OR DISMANTLE CONVEYANCES THAT ARE DESTROYED AS A RESULT OF A COMPLETE DEMOLITION OF A SECURED BUILDING OR STRUCTURE OR WHERE THE HOISTWAY OR WELLWAY IS DEMOLISHED BACK TO THE BASIC SUPPORT STRUCTURE AND NO ACCESS THAT ENDANGERS THE SAFETY OF A PERSON IS PERMITTED.

(c) A CONVEYANCE APPRENTICE SHALL BE EXEMPTED FROM THE LICENSEING REQUIREMENTS ESTABLISHED UNDER THIS ACT, BUT SHALL BE REQUIRED TO ADHERE TO ALL GUIDELINES WITHIN THE STATE APPRENTICESHIP STANDARDS.

(2) NO INSPECTION OF A CONVEYANCE SHALL BE CONDUCTED FOR PURPOSES OF THE ISSUANCE OF A CERTIFICATE OF OPERATION UNLESS CONDUCTED BY AN INSPECTOR LICENSED IN ACCORDANCE WITH THIS ARTICE.

SECTION 5. LICENSE QUALIFICATIONS - MECHANIC - INSPECTOR. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO APPLICANT SHALL BE LICENSED AS A CONVEYANCE MECHANIC UNLESS THE APPLICANT SATISFIES ONE OF THE FOLLOWING CRITERIA:

(a) POSSESSES A CERTIFICATE OF COMPLETION FROM A NATIONALLY RECOGNIZED CONVEYANCE ASSOCIATION MECHANIC TRAINING PROGRAM, SUCH AS THE NATIONALELEVATOR INDUSTRY EDUCATION PROGRAM OR THE NATIONAL ASSOCIATION OF ELEVATOR CONTRACTORS' CERTIFIED ELEVATOR TECHNICIAN PROGRAM;

(b) POSSESSES A CERTIFICATE OF COMPLETION OF AN APPRENTICESHIP PROGRAM FOR ELEVATOR MECHANICS, PROVIDED THE PROGRAM HAS STANDARDS SUBSTANTIALLY EQUIVALENT TO THOSE OF THIS ACT, AS DETERMINED BY THE ADMINISTRATOR, AND IS PROPERLY REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR OR THE APPROPRIATE STATE APPRENTICESHIP AGENCY;

(c) HOLDS A VALID LICENSE FROM ANOTHER STATE WITH QUALIFICATION STANDARDS THAT, AT A MINIMUM, ARE SUBSTANTIALLY EQUIVALENT TO THOSE OF THIS ACT, AS DETERMINED BY THE ADMINISTRATOR;

(d) HAS SUCCESSFULLY COMPLETED A COMPUTER-GENERATED EXAMINATION APPROVED BY THE ADMINISTRATOR ON THE APPLICABLE STATE CODES AND STANDARDS THAT APPLY TO CONVEYANCES; AND FURNISHES EVIDENCE ACCEPTABLE TO THE ADMINISTRATOR THAT THE APPLICANT HAS WORKED AS A CONVEYANCE MECHANIC FOR AT LEAST THE THREE PRIOR YEARS WITHOUT DIRECT SUPERVISION;

(e) HAS AT LEAST THREE YEARS EXPERIENCE IN MAINTAINING OR INSTALLING HYDRAULIC, ELECTRICAL OR MECHANICAL EQUIPMENT WHICH IS DEEMED ACCEPTABLE BY THE ADMINISTRATOR OF THE DEPARTMENT, AN ASSOCIATES OR BACHELORS DEGREE IN ELECTRONICS OR ENGINEERING AND HAS SUCCESSFULLY COMPLETED A COMPUTER-GENERATED EXAMINATION APPROVED BY THE ADMINISTRATOR ON THE APPLICABLE STATE CODES AND STANDARDS THAT APPLY TO CONVEYANCES; OR

(f) FURNISHES EVIDENCE ACCEPTABLE TO THE ADMINISTRATOR THAT THE APPLICANT WORKED AS A CONVEYANCE MECHANIC FOR THE THREE YEARS PRIOR TO JANUARY 1, 20XX, WITHOUT DIRECTSUPERVISION; HOWEVER, NO APPLICANT MAY QUALIFY UNDER THIS SUBPARAGRAPH OF THIS ACT ON OR AFTER JULY 1, 20XX.

(2) (a) AN APPLICANT SHALL NOT BE LICENSED AS A CONVEYANCE INSPECTOR UNLESS THE APPLICANT IS CERTIFIED TO INSPECT CONVEYANCES BY ASME OR ANOTHER NATIONALLY RECOGNIZED ELEVATOR SAFETY ASSOCIATION,

(b) (I) IN LIEU OF QUALIFYING PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), AN APPLICANT SHALL QUALIFY IF THE APPLICANT WAS APPOINTED OR DESIGNATED AS A CONVEYANCE INSPECTOR FOR A CITY OR CITY AND COUNTY BEFORE JANUARY 1, 2008. AN APPLICANT WHO QUALIFIES AS A CONVEYANCE INSPECTOR PURSUANT TO THIS PARAGRAPH (b) SHALL NOT REMAIN LICENSED AFTER JULY 1, 2010, UNLESS THE APPLICANT QUALIFIES TO BE LICENSED UNDER PARAGRAPH (a) OF THIS SUBSECTION (2). A LICENSE ISSUED PURSUANT THIS SUBPARAGRAPH (I) SHALL EXPIRE UPON THE LICENSEE TERMINATING EMPLOYMENT WITH THE LOCAL JURISDICTION.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2011.

SECTION 6. CERTIFICATION - QUALIFICATIONS - CONTRACTOR (1) A PERSON WHO IS NOT QUALIFIED TO BE A CONVEYANCE CONTRACTOR SHALL NOT BE CERTIFIED AS A CONVEYANCE CONTRACTOR.

(2) TO BE A CERTIFIED CONVEYANCE CONTRACTOR, AN APPLICANT SHALL DEMONSTRATE THE FOLLOWING QUALIFICATIONS:

(a) THE APPLICANT SHALL EMPLOY AT LEAST ONE LICENSED CONVEYANCE MECHANIC; AND IS IN COMPLIANCE OR WILL COMPLY WITH THE INSURANCE REQUIREMENTS IN SECTION 9 OF THIS ACT.

(b) IN LIEU OF QUALIFYING UNDER PARAGRAPH (a) OF THIS SUBSECTION (2), AN APPLICANT SHALL QUALIFY IF THE APPLICANT POSSESSES A VALID LICENSE OR CERTIFICATE ISSUED BY A STATE HAVING STANDARDS SUBSTANTIALLY EQUIVALENT TO THOSE OF THIS ACT.

SECTION 7. LICENSE AND CERTIFICATION - RULES - ISSUANCE - RENEWAL - FEE. (1) (a) UPON THE ADMINISTRATOR'S APPROVAL OF AN APPLICATION, THE ADMINISTRATOR SHALL CERTIFY OR LICENSE THE CONVEYANCE CONTRACTOR, CONVEYANCE MECHANIC, OR CONVEYANCE INSPECTOR.

(b) THE ADMINISTRATOR SHALL PROMULGATE RULES REQUIRING A LICENSED CONVEYANCE MECHANIC AND A CONVEYANCE INSPECTOR TO OBTAIN AT LEAST TEN HOURS OF CONTINUING EDUCATION EVERY YEAR.

(2) (a) WHEN AN EMERGENCY HAS BEEN DECLARED BY THE GOVERNOR TO EXIST IN THIS STATE DUE TO A DISASTER, ACT OF GOD, OR WORK STOPPAGE AND THE NUMBER OF LICENSED CONVEYANCE MECHANICS IN THE STATE IS INSUFFICIENT TO DEAL WITH THE EMERGENCY WITHOUT ALTERING THEIR STANDARD HIRING PRACTICES, AN UNLICENSED CONVEYANCE MECHANIC MAY RESPOND AS NECESSARY TO ASSURE THE SAFETY OF THE PUBLIC, PROVIDED THAT (1) THE PERSON HAS IN THE JUDGMENT OF A CERTIFIED CONVEYANCE CONTRACTOR, AN ACCEPTABLE COMBINATION OF DOCUMENTED EXPERIENCE AND EDUCATION TO PERFORM THE CONVEYANCE WORK REQUIRED DURING THE EMERGENCY, AND

(2) IN THE EVENT THAT THE PERIOD OF EMERGENCY IS ANTICIPATED TO LAST FIVE (5) OR MORE DAYS, THE PERSON SHALL SEEK AN EMERGENCY CONVEYANCE MECHANIC LICENSE FROM THE ADMINISTRATOR WITHIN FIVE BUSINESS DAYS AFTER COMMENCING WORK FOR WHICH A CONVEYANCE MECHANIC LICENSE IS REQUIRED.

(b) THE ADMINISTRATOR SHALL ISSUE EMERGENCY CONVEYANCE MECHANIC LICENSES PURSUANT TO PARAGRAPH (2)(a) OF THIS SECTION IN A TIMELY MANNER.

(3) (a) IN ADDITION TO EMERGENCY LICENSES ISSUED PURSUANT TO SUBSECTION (2) OF THIS SECTION, A CERTIFIED CONVEYANCE CONTRACTOR MAY, WHEN THERE ARE NO CERTIFIED CONVEYANCE MECHANICS AVAILABLE TO PERFORM CONVEYANCE WORK WITHOUT ALTERING THEIR STANDARD HIRING PRACTICES, REQUEST THE ADMINISTRATOR TO ISSUE A TEMPORARY CONVEYANCE MECHANIC LICENSE TO A PERSON WHO, IN THE JUDGMENT OF THE CERTIFIED CONVEYANCE CONTRACTOR, HAS AN ACCEPTABLE COMBINATION OF DOCUMENTED EXPERIENCE AND EDUCATION TO PERFORM CONVEYANCE WORK WITHOUT DIRECT SUPERVISION, WITHOUT NEED FOR THE PERSON TO COMPLY WITH THE LICENSING REQUIREMENTS OF SECTION 5 OF THIS ACT, PROVIDED SUCH PERSON APPLIES FOR A TEMPORARY CONVEYANCE MECHANIC LICENSE AND PAYS SUCH FEE AS THE ADMINISTRATOR SHALL DETERMINE.

(b) EACH SUCH TEMPORARY LICENSE ISSUED UNDER THIS SUBSECTION SHALL BE, AND SHALL STATE THAT IT IS, VALID FOR SIXTY DAYS AFTER THE DATE OF ISSUANCE, PROVIDED THAT SUCH PERSON REMAINS EMPLOYED BY THE CERTIFIED CONVEYANCE CONTRACTOR WHO CERTIFIED THE INDIVIDUAL AS QUALIFIED. THE CERTIFICATION SHALL BE RENEWABLE AS LONG AS THERE IS A SHORTAGE OF LICENSED CONVEYANCE MECHANICS.

(4) THE ADMINISTRATOR SHALL ESTABLISH AND COLLECT ANNUAL FEES FOR LICENSES ISSUED PURSUANT TO THIS SECTION. THE FEES SHALL BE IN AN AMOUNT NECESSARY TO OFFSET THE DIRECT COSTS OF ADMINISTERING THIS ACT.

SECTION 8. LICENSE AND CERTIFICATION DISCIPLINE. (1) LICENSES AND CERTIFICATIONS ISSUED PURSUANT TO THIS ACT MAY BE SUSPENDED OR REVOKED UPON A FINAL DETERMINATION BY THE ADMINISTRATOR OF ANY OF THE FOLLOWING, FOLLOWING A FULL AND FAIR OPPORTUNITY FOR A PERSON WHOSE LICENSE OR CERTIFICATION IS BEING SUSPENDED OR REVOKED TO CONTEST THE SUSPENSION OR REVOCATION:

(a) A FALSE STATEMENT IN THE APPLICATION CONCERNING A MATERIAL MATTER;

(b) FRAUD, MISREPRESENTATION OR BRIBERY IN THE COMMISSION OF APPLYING FOR A LICENSE OR CERTIFICATION;

(c) A VIOLATION OF ANY PROVISION OF THIS ACT OR OF ANY RULE ADOPTED PURSUANT TO THIS ACT.

(2) THE ADMINISTRATOR SHALL NOT ISSUE A LICENSE OR CERTIFICATION TO A PERSON WHOSE LICENSE HAS BEEN REVOKED WITHIN THE LAST TWO YEARS.

SECTION 9. CONVEYANCE - INSTALLATION AND REPAIR. A CONVEYANCE SHALL NOT BE ERECTED, CONSTRUCTED, INSTALLED, OR ALTERED WITHIN A BUILDING OR STRUCTURE UNLESS IT CONFORMS TO THE APPLICABLE STATE AND/OR LOCAL BUILDING AND CONSTRUCTION REQUIREMENTS AND THE WORK IS PERFORMED BY A CERTIFIED CONVEYANCE CONTRACTOR.

SECTION 10. INSURANCE. (1) EACH CONVEYANCE CONTRACTOR SHALL SUBMIT TO THE ADMINISTRATOR AN INSURANCE POLICY, CERTIFICATE OF INSURANCE, OR CERTIFIED COPY OF EITHER ISSUED BY AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE. SUCH POLICY SHALL PROVIDE GENERAL LIABILITY COVERAGE OF AT LEAST ONE MILLION DOLLARS FOR THE INJURY OR DEATH OF EACH PERSON IN EACH OCCURRENCE AND COVERAGE FOR AT LEAST FIVE HUNDRED THOUSAND DOLLARS FOR PROPERTY DAMAGE IN EACH OCCURRENCE. IN ADDITION, A CONVEYANCE CONTRACTOR SHALL SUBMIT EVIDENCE OF THE INSURANCE MANDATED BY STATE WORKER'S COMPENSATION LAWS.

(2) LICENSED CONVEYANCE INSPECTORS SHALL SUBMIT TO THE ADMINISTRATOR AN INSURANCE POLICY, CERTIFICATE OF INSURANCE, OR CERTIFIED COPY OF EITHER ISSUED BY AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE. SUCH POLICY SHALL PROVIDE GENERAL LIABILITY COVERAGE OF AT LEAST ONE MILLION DOLLARS FOR THE INJURY OR DEATH OF EACH PERSON IN EACH OCCURRENCE AND COVERAGE FOR AT LEAST FIVE HUNDRED THOUSAND DOLLARS FOR PROPERTY DAMAGE IN EACH OCCURRENCE.

(3) THE ADMINISTRATOR SHALL NOT CERTIFY A CONVEYANCE CONTRACTOR OR LICENSE A CONVEYANCE INSPECTOR UNLESS THE APPLICANT HAS DELIVERED THE POLICY, CERTIFIED COPY, OR CERTIFICATE OF INSURANCE REQUIRED BY THIS SECTION IN A FORM APPROVED BY THE ADMINISTRATOR. CERTIFIED CONVEYANCE CONTRACTORS AND LICENSED CONVEYANCE INSPECTORS SHALL NOTIFY THE ADMINISTRATOR AT LEAST TEN DAYS BEFORE A MATERIAL ALTERATION, AMENDMENT, OR CANCELLATION OF A POLICY IS MADE.

SECTION 11. ENFORCEMENT - RULES. (1) THE ADMINISTRATOR SHALL ADOPT RULES TO ADMINISTER AND ENFORCE THIS ACT.

(2) THE ADMINISTRATOR SHALL APPOINT A CONVEYANCE ADVISORY BOARD TO ASSIST IN THE FORMULATION AND ENFORCEMENT OF RULES AUTHORIZED BY THIS SECTION, INCLUDING THE APPEAL PROCESS. THE CONVEYANCE ADVISORY BOARD SHALL CONSIST OF (5) FIVE MEMBERS, ONE OF WHOM SHALL BE THE ADMINISTRATOR OR THEIR DESIGNEE. THE FOUR REMAINING MEMBERS SHALL BE APPOINTED BY THE GOVERNOR AND SERVE FOUR YEAR TERMS.

(3) THE BOARD SHALL CONSIST OF:

(a) ONE MEMBER WHO IS AN OWNER OF A BUILDING THAT CONTAINS A CONVEYANCE AS DEFINED BY SUBSECTIONS 4-6 OF SECTION 2 OF THIS ACT;

(b) ONE CERTIFIED CONVEYANCE CONTRACTOR UTILIZING A NATIONAL ELEVATOR INDUSTRY EDUCATIONAL PROGRAM CURRICULUM OR ITS SUCCESSOR;

(c) ONE CERTIFIED CONVEYANCE CONTRACTOR UTILIZING THE NATIONAL ASSOCIATION OF ELEVATOR CONTRACTORS' CERTIFIED ELEVATOR TECHNICIAN PROGRAM OR ITS SUCCESSOR; and

(d) ONE REPRESENTATIVE OF THE RIDING PUBLIC AT LARGE

(2) A PERSON MAY REQUEST AN INVESTIGATION INTO AN ALLEGED VIOLATION OF THE RULES OR THIS ACT BY GIVING NOTICE TO THE ADMINISTRATOR OF SUCH VIOLATION. SUCH NOTICE SHALL BE IN WRITING, SHALL SET FORTH WITH REASONABLE PARTICULARITY THE GROUNDS FOR THE NOTICE, AND SHALL BE SIGNED BY THE PERSON MAKING THE REQUEST. UPON THE REQUEST OF A PERSON SIGNING THE NOTICE, SUCH PERSON'S NAME SHALL NOT APPEAR ON ANY COPY OF SUCH NOTICE OR ANY RECORD PUBLISHED, RELEASED, OR MADE AVAILABLE.

(3) UPON RECEIPT OF SUCH NOTIFICATION, IF THE ADMINISTRATOR DETERMINES THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT SUCH VIOLATION EXISTS, THE ADMINISTRATOR SHALL INVESTIGATE IN ACCORDANCE WITH THIS ACT TO DETERMINE IF SUCH VIOLATION EXISTS. IF THE ADMINISTRATOR DETERMINES THAT THERE ARE NO REASONABLE GROUNDS TO BELIEVE THAT A VIOLATION EXISTS, THE ADMINISTRATOR SHALL NOTIFY THE PARTY IN WRITING OF SUCH DETERMINATION.

(4) IF THE ADMINISTRATOR DETERMINES THAT THERE IS REASONABLE EVIDENCE TO BELIEVE A VIOLATION OCCURRED, THE ADMINISTRATOR SHALL REFER THE COMPLAINT AND GROUNDS FOR THE COMPLAINT TO THE [STATE NAME] CONVEYANCE ADVISORY BOARD FOR AN ADMINISTRATIVE HEARING WITHIN TEN DAYS.

SECTION 12. LIABILITY. THIS ACT SHALL NOT BE CONSTRUED TO RELIEVE OR LESSEN THE RESPONSIBILITY OR LIABILITY OF A PERSON OWNING, OPERATING, CONTROLLING, MAINTAINING, ERECTING, CONSTRUCTING, INSTALLING, ALTERING, INSPECTING, TESTING, OR REPAIRING A CONVEYANCE FOR DAMAGES TO PERSON OR PROPERTY CAUSED BY A DEFECT, NOR DOES THE STATE ASSUME ANY SUCH LIABILITY OR RESPONSIBILITY BY THE ADOPTION OR ENFORCEMENT OF THIS ACT.

SECTION 13. REPEAL OF THIS ACT. THIS ACT IS REPEALED, EFFECTIVE JULY 1, 2020. PRIOR TO SUCH REPEAL, THE FUNCTIONS OF THE ADMINISTRATOR SHALL BE SUBJECT TO LEGISLATIVE REAUTHORIZATION

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Green Training Incentives

1. Model Green Training Incentive Legislation
2. Michigan Green Construction/Renovation Incentive Legislation

Associated Builders and Contractors – Green Module/LEED Accredited Professional Training Tax Credit Model Legislation
Drafted: September 19, 2008

Summary:

This model legislation would provide construction employers with a tax credit of up to $2,000 for each of their employees who either becomes a Leadership in Energy and Environmental Design (LEED) Accredited Professional or successfully completes an industry-recognized craft training program affiliated with an accredited university, such as the National Center for Construction Education and Research's green module, "Your Role in the Green Environment."

Model Legislation Text:

(1) As used in this section:

(a) "USGBC" means the United States Green Building Council, which measures and evaluates the energy and environmental performance of a building according to its own Leadership in Energy and Environmental Design (LEED) rating system and administers the LEED Accredited Professional program.

(b) "Qualified expenses" means all of the following training and related expenses paid by the taxpayer during the tax year for their employees' LEED accreditation or other training authorized under this section:

(i) salary and wages attributable to those employees;
(ii) fringe benefits and other payroll expenses attributable to those employees; and
(iii) costs of classroom instruction, training, and other related expenses identified as costs for which the taxpayer is responsible.

(2) For tax years beginning on and after January 1, 2008, a taxpayer that is included in the Standard Industrial Classification Code Major Groups 15, 16, or 17 as compiled by the U.S. Department of Labor or Sector 23 of the North American Industry Classification System may claim a credit against the taxpayer's revenue taxes imposed under this [section/provision of the state tax code] equal to the lesser of either the sum of 50 percent of the qualified expenses defined in subsection (1)(b)(i) and (ii) of this section and 100 percent of the qualified expenses defined in subsection (1)(b)(iii) of this section paid by the taxpayer during that tax year, or a tax credit of $2,000 for each employee of the taxpayer who becomes a LEED Accredited Professional or who successfully completes an industry-recognized craft training program affiliated with an accredited university during the tax year.

(3) If the credit allowed under this section exceeds the tax liability of the taxpayer under this act for the tax year, that portion of the credit that exceeds the tax liability shall be refunded [or taken as a carry-over for the next tax year].

HOUSE BILL No. 6178

May 22, 2008, Introduced by Reps. Bieda, Angerer, Sheltrown, Byrnes, Opsommer, Valentine, Condino, Marleau, Moolenaar, McDowell, Mayes, Lahti, Young, Stahl, Calley, Corriveau, Kathleen Law, Simpson, LeBlanc, Knollenberg, Byrum and Meisner and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled

"Michigan business tax act,"

(MCL 208.1101 to 208.1601) by adding sections 461 and 462.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 461. (1) FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2008, A TAXPAYER THAT CONSTRUCTS OR RENOVATES AN INDUSTRIAL GREEN BUILDING OR COMMERCIAL GREEN BUILDING MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT EQUAL TO $10,000.00 FOR EACH INDUSTRIAL GREEN BUILDING AND COMMERCIAL GREEN BUILDING OR AN AMOUNT EQUAL TO THE COST OF LEED CERTIFICATION AS REQUIRED UNDER THIS SECTION PER BUILDING, WHICHEVER IS GREATER, BUT NOT MORE THAN $22,500.00 PER BUILDING.

(2) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION FOR

HOUSE BILL No. 6178

AN INDUSTRIAL GREEN BUILDING OR COMMERCIAL GREEN BUILDING UNLESS THAT GREEN BUILDING HAS RECEIVED LEED CERTIFICATION. THE TAXPAYER SHALL ATTACH THE CERTIFICATE TO THE ANNUAL RETURN FILED UNDER THIS ACT ON WHICH THE CREDIT UNDER THIS SECTION IS CLAIMED. FOR AN INDUSTRIAL GREEN BUILDING OR COMMERCIAL GREEN BUILDING, THE CERTIFICATE REQUIRED UNDER THIS SUBSECTION SHALL STATE, AT A MINIMUM, THAT THE INDUSTRIAL OR COMMERCIAL BUILDING MEETS OR EXCEEDS THE SILVER LEVEL LEED CERTIFICATION STANDARDS FOR HUMAN AND ENVIRONMENTAL HEALTH; SUSTAINABLE SITE DEVELOPMENT; WATER SAVINGS; ENERGY EFFICIENCY; MATERIALS SELECTION; AND INDOOR ENVIRONMENTAL QUALITY WITHIN 365 DAYS OF COMPLETION OF THE CONSTRUCTION OR RENOVATION.

(3) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED BY THIS SECTION EXCEED THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR, THAT PORTION THAT EXCEEDS THE TAX LIABILITY FOR THE TAX YEAR SHALL NOT BE REFUNDED BUT MAY BE CARRIED FORWARD TO OFFSET TAX LIABILITY IN SUBSEQUENT TAX YEARS FOR 4 YEARS OR UNTIL USED UP, WHICHEVER OCCURS FIRST.

(4) AS USED IN THIS SECTION:

(A) "COMMERCIAL GREEN BUILDING" MEANS A GREEN BUILDING THAT IS NOT A RESIDENTIAL GREEN BUILDING OR INDUSTRIAL GREEN BUILDING BUT IS A PLACE WHERE A BUSINESS IS LOCATED AND IS FREQUENTED BY THE PUBLIC.

(B) "GREEN BUILDING" MEANS A RESOURCE-EFFICIENT, ENVIRONMENTALLY SENSITIVE STRUCTURE THAT IS DESIGNED TO SAVE MONEY, REDUCE WASTE, WATER, AND ENERGY USAGE, INCREASE WORKER

PRODUCTIVITY, AND CREATE HEALTHIER ENVIRONMENTS FOR PEOPLE TO LIVE AND WORK IN.

(C) "INDUSTRIAL GREEN BUILDING" MEANS ANY GREEN BUILDING THAT IS SUITABLE FOR, AND INTENDED FOR OR INCIDENTAL TO, USE AS A FACTORY, MILL, SHOP, PROCESSING PLANT, ASSEMBLY PLANT, FABRICATING PLANT, WAREHOUSE, RESEARCH AND DEVELOPMENT FACILITY, AN ENGINEERING, ARCHITECTURAL, OR DESIGN FACILITY, OR A TOURIST AND RESORT FACILITY.

(D) "LEED CERTIFICATION" MEANS THE CERTIFICATION AWARDED BY THE USGBC BASED ON THE MOST CURRENT LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN GREEN BUILDING RATING SYSTEM DEVELOPED AND ADOPTED BY THE USGBC FOR NEW BUILDINGS AND MAJOR RENOVATIONS.

(E) "RESIDENTIAL GREEN BUILDING" MEANS ANY GREEN BUILDING THAT IS A DETACHED 1- AND 2-FAMILY DWELLING, TOWNHOUSE, OR ACCESSORY STRUCTURE REGULATED BY THE MICHIGAN RESIDENTIAL CODE PROMULGATED PURSUANT TO THE STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION CODE ACT, 1972 PA 230, MCL 125.1501 TO 125.1531.

(F) "USGBC" MEANS THE UNITED STATES GREEN BUILDING COUNCIL, WHICH MEASURES AND EVALUATES THE ENERGY AND ENVIRONMENTAL PERFORMANCE OF A BUILDING ACCORDING TO ITS OWN LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) RATING SYSTEM.

SEC. 462. (1) FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2008, A TAXPAYER THAT IS INCLUDED IN MAJOR GROUPS 15, 16, OR 17 UNDER THE STANDARD INDUSTRIAL CLASSIFICATION CODE AS COMPILED BY THE UNITED STATES DEPARTMENT OF LABOR MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT EQUAL TO THE SUM OF 50% OF THE QUALIFIED EXPENSES DEFINED IN SUBSECTION (3)(B)(*i*) AND (*ii*) AND 100%

OF THE QUALIFIED EXPENSES DEFINED IN SUBSECTION (3)(B)(*iii*) PAID BY THE TAXPAYER DURING THE TAX YEAR OR $2,000.00 FOR EACH EMPLOYEE THAT BECOMES A LEED ACCREDITED PROFESSIONAL DURING THE TAX YEAR, WHICHEVER IS LESS.

(2) IF THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS THE TAX LIABILITY OF THE TAXPAYER UNDER THIS ACT FOR THE TAX YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY SHALL BE REFUNDED.

(3) AS USED IN THIS SECTION:

(A) "LEED CERTIFICATION" MEANS THE CERTIFICATION AWARDED BY THE USGBC BASED ON THE MOST CURRENT LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN GREEN BUILDING RATING SYSTEM DEVELOPED AND ADOPTED BY THE USGBC FOR NEW BUILDINGS AND MAJOR RENOVATIONS.

(B) "QUALIFIED EXPENSES" MEANS ALL OF THE FOLLOWING EXPENSES PAID BY THE TAXPAYER DURING THE TAX YEAR FOR TRAINING AND LEED ACCREDITATION OF ITS EMPLOYEES:

(*i*) SALARY AND WAGES ATTRIBUTABLE TO THOSE EMPLOYEES SEEKING LEED PROFESSIONAL ACCREDITATION.

(*ii*) FRINGE BENEFITS AND OTHER PAYROLL EXPENSES ATTRIBUTABLE TO THOSE EMPLOYEES SEEKING LEED PROFESSIONAL ACCREDITATION.

(*iii*) COSTS OF CLASSROOM INSTRUCTION, TRAINING, AND OTHER RELATED EXPENSES IDENTIFIED AS COSTS FOR WHICH THE TAXPAYER IS RESPONSIBLE UNDER AN AGREEMENT TO ASSIST THE EMPLOYEE IN OBTAINING LEED PROFESSIONAL ACCREDITATION.

(C) "USGBC" MEANS THE UNITED STATES GREEN BUILDING COUNCIL, WHICH MEASURES AND EVALUATES THE ENERGY AND ENVIRONMENTAL PERFORMANCE OF A BUILDING ACCORDING TO ITS OWN LEADERSHIP IN ENERGY

AND ENVIRONMENTAL DESIGN (LEED) RATING SYSTEM.

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Job Targeting

1. Missouri Fairness in Public Construction Act of 2007
2. Amend State Prevailing Wage Laws to Prohibit Job Targeting
3. Idaho S.B.1007 of 2001

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 339

94TH GENERAL ASSEMBLY

2007

1248S.06T

AN ACT

To repeal section 290.250, RSMo, and to enact in lieu thereof eight new sections relating to public contracts, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 290.250, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 34.203, 34.206, 34.209, 34.212, 34.216, 290.095, 290.250, and 1, to read as follows:

34.203. The provisions of sections 34.203 to 34.216 shall be known and may be cited as the "Fairness in Public Construction Act".

34.206. The purpose of sections 34.203 to 34.216 is to fulfill the state's proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and efficient expenditures of public funds in connection with publicly funded or assisted construction projects. Nothing in sections 34.203 to 34.216 shall prohibit employers or other parties covered by the National Labor Relations Act from entering into agreements or engaging in any other activity arguably protected by law, nor shall any aspect of sections 34.203 to 34.216 be interpreted in such a way as to interfere with the labor relations of parties covered by the National Labor Relations Act.

34.209. The state, any agency of the state, or any instrumentality thereof, when engaged in procuring or letting contracts for construction of a project that is funded by greater than fifty percent of state funds, shall ensure that bid specification, project agreements, and other controlling documents entered into, required, or subject to approval by the state, agency, or instrumentality do not:

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects; or

(2) Discriminate against bidders, offerors, contractors, or subcontractors for entering or refusing to enter or to remain signatory or otherwise adhere to agreements with one or more labor organizations on the same or related construction projects.

34.212. 1. The state, any agency of the state, or any instrumentality thereof shall not issue grants or enter into cooperative agreements for construction projects, a condition of which requires that bid specifications, project agreements, or other controlling documents pertaining to the grant or cooperative agreement contain any of the elements specified in section 34.209.

2. The state, any agency of the state, or any instrumentality thereof shall exercise such authority as may be required to preclude a grant recipient or party to a cooperative agreement from imposing any of the elements specified in section 34.209 in connection with any grant or cooperative agreement awarded or entered into. Nothing in sections 34.203 to 34.216 shall prohibit contractors or subcontractors from voluntarily entering into agreements described in section 34.209.

34.216. 1. For purposes of this section, the term "project labor agreement" shall be defined as a multi-employer, multi-union pre-hire agreement designed to systemize labor relations at a construction site that is required by the state or a political subdivision of the state as a condition of a bid specification for a construction project, thereby insuring that all contractors and subcontractors on a project comply with the terms of a union-only agreement.

2. The state or a political subdivision of the state may enter into a union-only project labor agreement for the procurement of construction services, except as provided in section 34.209, on a project-by-project basis only if the project is funded fifty percent or less with state funds and only on the condition that:

(1) The state or political subdivision must analyze the impact of a union-only project labor agreement and consider:

(a) Whether the union-only project labor agreement advances the interests of the public entity and its citizens;

(b) Whether the union-only project labor agreement is appropriate considering the complexity, size, cost impact, and need for

efficiency on the project;

(c) Whether the union-only project labor agreement impacts the availability of a qualified work force; and

(d) Whether the scope of the union-only project labor agreement has a business justification for the project as bid;

(2) The state or political subdivision shall publish the findings of subdivision (1) of this subsection in a document titled "Intent to Enter Into a Union Project Labor Agreement". The document shall establish a rational basis upon which the state or political subdivision bases its intent to require a union-only project labor agreement for the project;

(3) No fewer than fourteen days but not more than thirty days following publication of the notice of a public hearing, the state or political subdivision shall conduct a public hearing on whether to proceed with its intent to require a union-only project labor agreement;

(4) Within thirty days of the public hearing set forth in subdivision (3) of this subsection, the state or political subdivision shall publish its determination on whether or not to require a union-only project labor agreement.

3. (1) Any interested party may, within thirty days of the determination of the state or political subdivision as set forth in subdivision (4) of subsection 2 of this section, appeal to the labor and industrial relations commission for a determination as to whether the state or political subdivision complied with subsection 2 of this section for a union-only project labor agreement as defined in subsection 1 of this section.

(2) The labor and industrial relations commission shall consider the appeal in subdivision (1) of this section under a rational basis standard of review.

(3) The labor and industrial relations commission shall hold a hearing on the appeal within sixty days of the filing of the appeal. The commission shall issue its decision within ninety days of the filing date of the appeal.

(4) Any aggrieved party from the labor and industrial relations commission decision set forth in subdivision (3) of this subsection may file an appeal with the circuit court of Cole County within thirty days of the commission's decision.

290.095. 1. No contractor or subcontractor may directly or

indirectly receive a wage subsidy, bid supplement, or rebate for employment on a public works project if such wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by the employer on a given occupational title below the prevailing wage rate as provided in section 290.262.

2. In the event a wage subsidy, bid supplement, or rebate is lawfully provided or received under subsections 1 or 2 of this section, the entity receiving such subsidy, supplement, or rebate shall report the date and amount of such subsidy, supplement, or rebate to the public body within thirty days of receipt of payment. This disclosure report shall be a matter of public record under chapter 610, RSMo.

3. Any employer in violation of this section shall owe to the public body double the dollar amount per hour that the wage subsidy, bid supplement, or rebate has reduced the wage rate paid by the employer below the prevailing wage rate as provided in section 290.262 for each hour that work was performed. It shall be the duty of the department to calculate the dollar amount owed to the public body under this section.

290.250. **1.** Every public body authorized to contract for or construct public works, before advertising for bids or undertaking such construction shall request the department to determine the prevailing rates of wages for workmen for the class or type of work called for by the public works, in the locality where the work is to be performed. The department shall determine the prevailing hourly rate of wages in the locality in which the work is to be performed for each type of workman required to execute the contemplated contract and such determination or schedule of the prevailing hourly rate of wages shall be attached to and made a part of the specifications for the work. The public body shall then specify in the resolution or ordinance and in the call for bids for the contract, what is the prevailing hourly rate of wages in the locality for each type of workman needed to execute the contract and also the general prevailing rate for legal holiday and overtime work. It shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workmen employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages shall be paid to all workmen performing work under the contract. **[**It shall also require in all contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly

wage clause as provided by contract.**]** The **[**contractor**]** **employer** shall forfeit as a penalty to the state, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded **[**ten**]** **one hundred** dollars for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under said contract, by him or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of sections 290.210 to 290.340 committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under said contract, to withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of sections 290.210 to 290.340, and if payment has already been made to him, the contractor may recover from him the amount of the penalty in a suit at law.

2. In determining whether a violation of sections 290.210 to 290.340 has occurred, and whether the penalty under subsection 1 of this section shall be imposed, it shall be the duty of the department to investigate any claim of violation. Upon completing such investigation, the department shall notify the employer of its findings. If the department concludes that a violation of sections 290.210 to 290.340 has occurred and a penalty may be due, the department shall notify the employer of such finding by providing a notice of penalty to the employer. Such penalty shall not be due until forty-five days after the date of the notice of the penalty.

3. The employer shall have the right to dispute such notice of penalty in writing to the department within forty-five days of the date of the notice. Upon receipt of this written notice of dispute, the department shall notify the employer of the right to resolve such dispute through arbitration. The state and the employer shall submit to an arbitration process to be established by the department by rule, and in conformance with the guidelines and rules of the American Arbitration Association or other arbitration process mutually agreed upon by the employer and the state. If at any time prior to the department pursuing an enforcement action to enforce the monetary

penalty provisions of subsection 1 of this section against the employer, the employer pays the backwages as determined by either the department or the arbitrator, the department shall be precluded from initiating any enforcement action to impose the monetary penalty provisions of subsection 1 of this section.

4. If the employer fails to pay all wages due as determined by the arbitrator within forty-five days following the conclusion of the arbitration process, or if the employer fails to exercise the right to seek arbitration, the department may then pursue an enforcement action to enforce the monetary penalty provisions of subsection 1 of this section against the employer. If the court orders payment of the penalties as prescribed in subsection 1 of this section, the department shall be entitled to recover its actual cost of enforcement from such penalty amount.

5. Nothing in this section shall be interpreted as precluding an action for enforcement filed by an aggrieved employee as otherwise provided in law.

Section 1. Notwithstanding the provisions of section 1.140, RSMo, the provisions of sections 290.095 and 290.250, RSMo, and sections 34.203 to 34.216, RSMo, of this act shall not be severable. In the event a court of competent jurisdiction rules that any part of this act is unenforceable, the entire act shall be rendered null and void.

✓

_____

President of the Senate

_____

Speaker of the House of Representatives

_____

Governor

JOB TARGETING MODEL LEGISLATION FOR AMENDING STATE PREVAILING WAGE LAWS

Summary:

This legislation would prohibit the collection of job targeting or market recovery fees from workers on state-funded projects.

Section ___:

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the (state), to give up any part of the compensation to which he is entitled under his contract of employment, including any amounts collected by or on behalf of labor organizations, whether or not labeled as dues or assessments, where the purpose of such collections is to fund in whole or in part any payments to one or more employers, shall be fined under this title not less than $_____, or imprisoned not more than five years, or both.

Section ___:

"The Secretary of (agency of jurisdiction) shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. No amounts of said wages shall be collected by or on behalf of labor organizations, whether or not labeled as dues or assessments, where the purpose of such collections is to fund inwhole or in part any payments to one or more employers.

Any appropriations bill could include a "stand alone" provision to the same effect as follows:

No amounts of wages paid by contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States shall be collected by or on behalf of labor organizations, whether or not labeled as dues or assessments, where the purpose of such collections is to fund in whole or in part any payments to one or more employers.

LEGISLATURE OF THE STATE OF IDAHO

Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1007

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO LABOR ORGANIZATIONS; AMENDING CHAPTER 20, TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2012, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE FOR INTENT, TO PROHIBIT CERTAIN ACTIVITIES RELATING TO LABOR ORGANIZATIONS, TO PROVIDE FOR VIOLATIONS AND PENALTIES AND TO PROVIDE FOR CHALLENGES BY INTERESTED PARTIES; AND AMENDING SECTION 44-2012, IDAHO CODE, TO REDESIGNATE THE SECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 20, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 44-2012, Idaho Code, and to read as follows:

44-2012. PROHIBITED ACTIVITY. (1) The provisions of this act shall be known as the "Fairness in Contracting Act." The intent of this act is to promote fairness in bidding and contracting.

(2) No contractor or subcontractor may directly or indirectly receive a wage subsidy, bid supplement or rebate on behalf of its employees, or provide the same to its employees, the source of which is wages, dues or assessments collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments.

(3) No labor organization may directly or indirectly pay a wage subsidy or wage rebate to its members in order to directly or indirectly subsidize a contractor or subcontractor, the source of which is wages, dues or assessments collected by or on behalf of its members, whether or not labeled as dues or assessments.

(4) It is illegal to use any fund financed by wages collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments, to subsidize a contractor or subcontractor doing business in the state of Idaho.

(5) Any contractor, subcontractor or labor organization that violates the provisions of this section shall be guilty of a misdemeanor and fined an amount not to exceed ten thousand dollars ($10,000) for a first offense, twenty-five thousand dollars ($25,000) for a second offense, and one hundred thousand dollars ($100,000) for each and every additional offense.

(6) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement in violation of the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

SECTION 2. That Section 44-2012, Idaho Code, be, and the same is hereby amended to read as follows:

44-2012~~2~~3. SEVERABILITY. The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

Neutrality Agreements

1. The Labor Peace Agreement Preemption Act

THE LABOR PEACE AGREEMENT PREEMPTION ACT

Summary

Local governments are under constant pressure from labor unions to require employers to adopt "labor peace" agreements as a condition for granting business licenses, zoning variances, waivers, and the like. These agreements force employers to waive their ability to express views in opposition to unionization, to forfeit their employees' rights to vote in a secret ballot election conducted by the National Labor Relations Board (NLRB), and to forfeit procedural protections of NLRB decisions regarding appropriate bargaining units and other related issues. This legislation declares this a matter of statewide concern and prohibits local governments from establishing such ordinances.

Section 1. The Labor-Peace Agreement Preemption Act

Section 2. {Statement of Purpose}

The purpose of this legislation is to ensure that employers cannot be compelled by local governments to forfeit rights guaranteed them under the Labor Management Relations Act, the National Labor Relations Act and the Railway Labor Act(the "Acts") in order to obtain zoning variances, waivers, and business licenses.

Section 3. {Definitions}

For the purposes of this Section:

(1) "Employer" means a person, association, legal, or commercial entity receiving services from an employee and, in return, giving compensation of any kind to such employee.

(2) "Federal labor laws" means the National Labor Relations Act, the Labor Management Relations Act and the Railway Labor Act, hereinafter collectively referred to as "the Acts", Presidential Executive Orders issued relating to labor/management or employee/employer issues and the United States Constitution as amended and as construed by the federal courts. The rights protected under the federal labor laws include but are not limited to:

(a) An employer's or employee's right to express views on unionization and any other labor relations issues to the full extent allowed by the First Amendment of the United States Constitution and Section 8(c) of the National Labor Relations Act.

(b) An employer's right to demand, and an employee's right to participate in, a secret ballot election under the Acts, including without limitation, the full procedural protections afforded by the Acts for defining the unit, conducting the election campaign and election, and making any challenges or objections thereto.

(c) An employer’s right not to release employee information and an employee's right to maintain the confidentiality of his or her information to the maximum extent allowed by the Acts.

(d) An employer's right to restrict access to its property or business to the maximum extent allowed by the Acts.

(e) An employer’s right to negotiate over all mandatory and permissive issues of collective bargaining to the maximum extent allowed by the Acts.

(3) "Governmental body" means any local government or its subdivision, including but not limited to cities, parishes, municipalities, and any public body, agency, board, commission or other governmental, quasi governmental, or quasi public body or any body that acts or purports to act in a commercial, business, economic development, or like capacity of local government or its subdivision.

Section 4. {Legislation}

A. Any agreement, contract, understanding or practice, written or oral, implied or expressed, between any employer and any labor organization in violation of the provisions of this Part is hereby declared to be unlawful, null and void, and of no legal effect.

B. No governmental body may pass any law, ordinance, or regulation, or impose any contractual, zoning, permitting, licensing, or other condition on, with employers' or employees' full freedom to act under the federal labor laws. Such prohibited actions shall include but not be limited to:

(1) Conditioning any purchase, sale, lease, loan or other business or commercial transaction with any employer on waiver or limitation of any right the employer may have under the federal labor laws.

(2) Conditioning any regulatory, zoning, permitting, licensing, or any other governmental requirement, or any tax or free abatement, with any employer on waiver or limitation of any right the employer may have under the federal labor laws.

(3) Enacting any ordinance, regulation, or other action that waives or limits any right the employer may have under the federal labor laws.

(4) Conditioning or requiring any employer to not deal with another employer on waiver or limitation of any right either employer may have under the federal labor laws.

C. An employer or employee is entitled to and shall receive injunctive relief necessary to prevent any violations of this Section.

Section 5. {Limitations}

Nothing in this legislation should be construed as limiting the regulatory, legal or preemptive operation of the National Labor Relations Act, the Labor management Relations Act, or the Railway Labor Act.

Section 6. {Effective Date}

Paycheck Protection

1. Employee Rights Reform Act
2. Labor Organization Deductions Act
3. Political Funding Reform Act

LABOR ORGANIZATIONS DEDUCTIONS ACT

Summary

The Labor Organizations Deductions Act requires labor organizations to establish separate funds for political purposes, establishes registration and disclosure requirements for each political fund, establishes certain criminal provisions governing a labor organization's political activities, and prohibits employees from authorizing automatic payroll deductions for contributions to a labor organization's political committee or fund except through an explicit, signed statement.

Model Legislation

Section 1. {Short Title.}This Act shall be known as the Labor Organizations Deductions Act.

Section 2. {Legislative Declarations.}This legislature finds and declares that:

(A) Some unions spend nearly 90 percent of total dues income on political activities.

(B) The Supreme Court's *Communications Workers of America v. Beck*, 487 U.S. 735, 108 S. Ct. 2641 (1988) decision held that unions cannot use fees collected from nonunion employees, if the employee objects, on activities other than collective bargaining.

(C) However, few union members are aware of this right, and formal procedures for receiving refunds are not in place.

(D) As a result, unions should be prevented from collecting funds for political purposes unless members expressly give employers permission to deduct such fees from their wages.

Section 3. {Definitions.}

(A) "Fund" means the separate segregated fund established by a labor organization for political purposes according to the procedures and requirements of this part.

(B) (1) "Labor organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) "Labor organization" includes employee associations and unions for public employees, including both the National Education Association and American Federation of Teachers, and each local education association or affiliate of a national education association.

Section 4. {Limits on labor organization contributions.}

(A) Except as provided in subsection (B), a labor organization may not expend money for lobbying, electoral, and political activities not bearing upon the ratification or implementation of a collective bargaining agreement. This includes, but is not limited to, independent expenditures or contributions to any candidate, political party, voter registration campaign or any other political cause.

(B) (1) A labor organization may only expend money for lobbying, electoral, and political activities not bearing upon the ratification or implementation of a collective bargaining agreement if the labor organization establishes a separate segregated fund to be used for political purposes.

(2) The labor organization shall ensure that:

(a) contributions to the fund are solicited independently from any other solicitations by the labor organization;

(b) dues or other fees for membership in the labor organization are not used for political purposes, transferred to the segregated fund, or intermingled in any way with fund monies; and

(c) the cost of administering the fund is paid from fund contributions and not from dues or other fees for membership in the labor organization.

Section 5. {Criminal acts -- penalties.}

(A) (1) It is unlawful for a labor organization to make a contribution by using money or anything of value:

(a) secured by physical force, job discrimination, membership discrimination, or financial reprisals, or threat of force, job discrimination, membership discrimination, or financial reprisals; or

(b) from dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment; or

(c) obtained in any commercial transaction.

(2) At the time the labor organization is soliciting money for the fund from an employee, it is unlawful for a labor organization to fail to:

(a) inform an employee of the fund's political purpose; and

(b) inform an employee of the employee's right to refuse to contribute without fear of reprisal.

(3) It is unlawful for a labor organization to solicit monies for the fund from any person other than its members and their immediate families.

(4) It is unlawful for a labor organization to pay a member for a contribution to the fund by providing a bonus, expense account, rebate of dues or other membership fees, or any other form of direct or indirect compensation.

(B) Any person violating this section is guilty of a misdemeanor.

Section 6. {Registration -- Disclosure.}

Each fund established by a labor organization under this part shall:

(A) register as a political action committee as required by law; and

(B) file the financial reports for political action committees required by law.

Section 7. {Assignments to labor unions -- Effect}

(A) Except as provided in subsection (D), an employee of any person, firm, school district, or private or municipal corporation within the State/Commonwealth of (insert state) may sign and deliver to his employer a written instrument directing the employer to:

(1) deduct a specified sum from his monthly wages; and

(2) pay the deduction to a labor organization or union or any other organization of employees as assignee.

(B) An employer who receives a written instrument assigning a specified sum from the employee's wages shall:

(1) keep the instrument on file;

(2) deduct the specified sum from the employee's salary; and

(3) pay the deducted amount to the organization or union designated by the employee.

(C) The employer shall continue to make and pay the deduction as directed by the employee until the employee revokes or modifies the deduction in writing.

(D)(1) Notwithstanding subsection (A), an employee may not direct an employer to deduct monies from his wages and pay them to:

(a) a registered political action committee;

(b) a fund defined by section 3; or

(c) any intermediary that contributes to a regional political committee or fund as defined by section 3.

(2) Nothing in this section prohibits an individual from making personal contributions to a registered political action committee or to a fund as defined by section 1.Section 8. {Severability Clause.}

Section 9. {Repealer Clause.}
Section 10. {Effective Date.}

POLITICAL FUNDING REFORM ACT

Summary

This model bill prohibits the payroll deduction of monies used for political purposes. It also establishes penalties for a violation of this section.

Model Legislation

Section 1. {Short Title}
This Act shall be known as the Political Funding Reform Act.

Section 2. {Legislative Declaration}
This legislature finds and declares:
A. That it is in the interest of this State's citizens to ensure that government resources, including public employee time, public property or equipment, and supplies be used exclusively for activities that are essential to carrying out the necessary functions of government;

B. That necessary governmental functions do not include using government resources to confer a political benefit or advantage on any private individual or organization, including, but not limited to, public employee unions and their members;

C. That using government resources in any way to promote, support, or enhance the political activities of any private individual or organization, above that of other citizens or private organizations, is not a necessary or desirable function of government; and

D. Therefore, it is the public policy of this State to prohibit the use of any government resources to collect or assist in the collection of political funds or to promote or assist in the political activity on behalf of any private individual or organization.

Section 3. {Definitions}
A. For the purposes of this Act, "public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.

B. For purposes of this act, all money shall be deemed to be "political funds" if any portion thereof is expended upon, or commingled with funds used for political activity, including, but not limited to:
i. independent expenditures for communications advocating the election or defeat of clearly identified candidates for public office;
ii. participating in, or intervening in (including the publication or distribution of

statements), any political campaign on behalf of (or in opposition to) any candidate for public office, or any political party or committee;
iii. supporting or opposing any pending or proposed ballot measure, including but not limited to efforts to collect signatures to place a measure on the ballot, and any efforts, including but not limited to direct mail and media campaigns, to solicit signatures for initiative petitions or to discourage voters from signing initiative petitions;
iv. contributions to, and/or the operations or expenses of, a Political Action Committee; or
v. communications or other activities of organizations where a substantial part of their activity which involves carrying on propaganda, or otherwise attempting to influence voters or legislation or ballot issues.

C. The terms used in this subsection shall have the same meaning as under Section 501(c)(3) of Title 26, United States Code, and regulations promulgated by the Secretary of the Treasury thereunder.

D. This section shall not apply to activities that are necessary to fulfill statutory obligations to inform the electorate and/or the public about the candidates or issues to be voted upon in a forthcoming election.

Section 4. {Prohibitions}
A. A public employer is prohibited from collecting or deducting or transmitting political funds within the meaning of this section.

Section 5. {Penalties}
A. For a period of two years, no public employer shall collect, deduct, or assist in the collection or deduction of funds for any purpose for a person or organization if, in violation of this article, the person or organization has:
i. used as political funds, as defined in section 3(A) or (B), any of the funds collected or deducted for it by any public employer, or
ii. commingled funds collected or deducted by any public employer with political funds.
iii. whenever funds for multiple levels of an organization (local, regional, state, and/or national) are deducted, collected, and/or transmitted to a single recipient for all affiliates that receive funds from the recipient organization.
B. Any employee whose wages have been deducted in violation of the provisions of this article may bring suit in a court of competent jurisdiction to obtain injunctive relief against the violator or person or public employer threatening violation. If the state enjoys sovereign immunity, nothing in this section shall be considered or otherwise construed to waive, or in any way abrogate such immunity.
An employee whose wages have been deducted in violation of this article may bring suit in a court of competent jurisdiction to recover damages equal to:
i. from a public employer violating the provisions of this article, or failing to take appropriate action when informed of the violation, any amounts actually deducted

from the public employee's wages; and
ii. from any individual or organization acting separately or in league with a public employer to violate the provisions of this article, twice any amounts actually received by said individual or organization from the injured public employee
iii. The remedies in i. and ii. above shall not preempt any other causes of action and damage awards which may be available to public employees injured as a result of violations of this act.
C. In any judgement for the plaintiff intended to enforce of this article the court may award reasonable attorneys' fees as part of the court costs.

Section 6. {Void Agreements}
Any written or oral agreement, understanding, or practice between a public employer and any individual or organization that is in violation of the provisions of this article shall be deemed void on the effective date of this legislation, or ninety (90) days after its passage, whichever is later.

Section 7. {Severability Clause}
If any phrase, clause, or part of this article is found to be unconstitutional by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

Section 8. {Effective Date}

Approved 01/11/99 by ALEC Board

Public-Private Partnerships

AN ACT

relating to the creation of public and private facilities and infrastructure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapters 2267 and 2268 to read as follows:

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(2) "Comprehensive agreement" means the comprehensive agreement authorized by Section 2267.058 between the contracting person and the responsible governmental entity.

(3) "Contracting person" means a person who enters into a comprehensive or interim agreement with a responsible governmental entity under this chapter.

(4) "Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

(5) "Governmental entity" means:

(A) a board, commission, department, or other agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, that elects to

operate under this chapter through the adoption of a resolution by the institution's board of regents; and

(B) a political subdivision of this state that elects to operate under this chapter by the adoption of a resolution by the governing body of the political subdivision.

(6) "Interim agreement" means an agreement authorized by Section 2267.059 between a contracting person and a responsible governmental entity that proposes the development or operation of the qualifying project.

(7) "Lease payment" means any form of payment, including a land lease, by a governmental entity to the contracting person for the use of a qualifying project.

(8) "Material default" means any default by a contracting person in the performance of duties imposed under Section 2267.057(f) that jeopardizes adequate service to the public from a qualifying project.

(9) "Operate" means to finance, maintain, improve, equip, modify, repair, or operate a qualifying project.

(10) "Qualifying project" means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate

the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

(11) "Responsible governmental entity" means a governmental entity that has the power to develop or operate an applicable qualifying project.

(12) "Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that support the development or operation of a qualifying project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the project.

(13) "Service contract" means a contract between a governmental entity and a contracting person under Section 2267.054.

(14) "Service payment" means a payment to a contracting person of a qualifying project under a service contract.

(15) "User fee" means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a qualifying project under a comprehensive agreement.

Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION OF CHAPTER. (a) The legislature finds that:

(1) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion,

equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;

(2) the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

(3) there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

(4) financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to develop qualifying projects; and

(5) authorizing private entities or other persons to develop or operate one or more qualifying projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

(b) An action authorized under Section 2267.053 serves the public purpose of this chapter if the action facilitates the timely development or operation of a qualifying project.

(c) The purposes of this chapter include:

(1) encouraging investment in this state by private entities and other persons;

(2) facilitating bond financing or other similar financing mechanisms, private capital, and other funding sources that support the development or operation of qualifying projects in order to expand and accelerate financing for qualifying projects that improve and add to the convenience of the public; and

(3) providing governmental entities with the greatest possible flexibility in contracting with private entities or other persons to provide public services through qualifying projects subject to this chapter.

(d) This chapter shall be liberally construed in conformity with the purposes of this section.

(e) The procedures in this chapter are not exclusive. This chapter does not prohibit a responsible governmental entity from entering into an agreement for or procuring public and private facilities and infrastructure under other statutory authority.

Sec. 2267.003. APPLICABILITY. This chapter does not apply to:

(1) the financing, design, construction, maintenance, or operation of a highway in the state highway system;

(2) a transportation authority created under Chapter 451, 452, 453, or 460, Transportation Code; or

(3) any telecommunications, cable television, video service, or broadband infrastructure other than technology installed as part of a qualifying project that is essential to the project.

Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This chapter does not alter the eminent domain laws of this state or grant the power of eminent domain to any person who is not expressly granted that power under other state law.

[Sections 2267.005-2267.050 reserved for expansion]

SUBCHAPTER B. QUALIFYING PROJECTS

Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL FOR QUALIFYING PROJECT. (a) A person may not develop or operate a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. The person may initiate the approval process by submitting a proposal requesting approval under Section 2267.053(a), or the responsible governmental entity may request proposals or invite bids under Section 2267.053(b).

(b) A person submitting a proposal requesting approval of a qualifying project shall specifically and conceptually identify any facility, building, infrastructure, or improvement included in the proposal as a part of the qualifying project.

(c) On receipt of a proposal submitted by a person initiating the approval process under Section 2267.053(a), the responsible governmental entity shall determine whether to accept the proposal for consideration in accordance with Sections 2267.052 and 2267.065 and the guidelines adopted under those sections. A responsible governmental entity that determines not to accept the proposal for consideration shall return the proposal, all fees, and the accompanying documentation to the person submitting the proposal.

(d) The responsible governmental entity may at any time reject a proposal initiated by a person under Section 2267.053(a).

Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE GOVERNMENTAL ENTITIES. (a) Before requesting or considering a proposal for a qualifying project, a responsible governmental entity must adopt and make publicly available guidelines that enable the governmental entity to comply with this chapter. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) compliance with the requirements of Chapter 2268;

(8) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);

(9) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

(10) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including:

(A) specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a);

(B) a reasonable period of not less than 45 days, as determined by the responsible governmental entity, to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and

(C) a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B):

(1) may include the provisions required under Subsection (b); and

(2) must include a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant,

not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by employees of the governmental entity.

Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

(1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;

(2) a description of the qualifying project, including:

(A) the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure; and

(B) a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;

(3) a statement of the method the person proposes for securing necessary property interests required for the qualifying

project;

(4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time; and

(10) any additional material and information the responsible governmental entity reasonably requests.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a

qualifying project. A responsible governmental entity shall consider the total project cost as one factor in evaluating the proposals received, but is not required to select the proposal that offers the lowest total project cost. The responsible governmental entity may consider the following factors:

(1) the proposed cost of the qualifying project;

(2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;

(3) the proposed design of the qualifying project;

(4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;

(5) comments from local citizens and affected jurisdictions;

(6) benefits to the public;

(7) the person's good faith effort to comply with the goals of a historically underutilized business plan;

(8) the person's plans to employ local contractors and residents;

(9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing; and

(10) other criteria that the responsible governmental entity considers appropriate.

(c) The responsible governmental entity may approve as a qualifying project the development or operation of a facility needed by the governmental entity, or the design or equipping of a

qualifying project, if the responsible governmental entity determines that the project serves the public purpose of this chapter. The responsible governmental entity may determine that the development or operation of the project as a qualifying project serves the public purpose if:

(1) there is a public need for or benefit derived from the project of the type the person proposes as a qualifying project;

(2) the estimated cost of the project is reasonable in relation to similar facilities; and

(3) the person's plans will result in the timely development or operation of the qualifying project.

(d) The responsible governmental entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees and fees for financial, technical, and other necessary advisors or consultants.

(e) The approval of a responsible governmental entity described by Section 2267.001(5)(A) is subject to the private entity or other person entering into an interim or comprehensive agreement with the responsible governmental entity.

(f) On approval of the qualifying project, the responsible governmental entity shall establish a date by which activities related to the qualifying project must begin. The responsible governmental entity may extend the date.

(g) The responsible governmental entity shall take action appropriate under Section 552.153 to protect confidential and proprietary information provided by the contracting person under an

agreement.

(h) Before entering into the negotiation of an interim or comprehensive agreement, each responsible governmental entity described by Section 2267.001(5)(A) must submit copies of detailed proposals to the Partnership Advisory Commission in accordance with Chapter 2268.

(i) This chapter and an interim or comprehensive agreement entered into under this chapter do not enlarge, diminish, or affect any authority a responsible governmental entity has to take action that would impact the debt capacity of this state.

Sec. 2267.054. SERVICE CONTRACTS. A responsible governmental entity may contract with a contracting person for the delivery of services to be provided as part of a qualifying project in exchange for service payments and other consideration as the governmental entity considers appropriate.

Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A person submitting a proposal to a responsible governmental entity under Section 2267.053 shall notify each affected jurisdiction by providing a copy of its proposal to the affected jurisdiction.

(b) Not later than the 60th day after the date an affected jurisdiction receives the notice required by Subsection (a), the affected jurisdiction that is not the responsible governmental entity for the respective qualifying project shall submit in writing to the responsible governmental entity any comments the affected jurisdiction has on the proposed qualifying project and indicate whether the facility or project is compatible with the local comprehensive plan, local infrastructure development plans,

the capital improvements budget, or other government spending plan. The responsible governmental entity shall consider the submitted comments before entering into a comprehensive agreement with a contracting person.

Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC PROPERTY. (a) After obtaining any appraisal of the property interest that is required under other law in connection with the conveyance, a governmental entity may dedicate any property interest, including land, improvements, and tangible personal property, for public use in a qualifying project if the governmental entity finds that the dedication will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the governmental entity or reducing the delivery time of a qualifying project.

(b) In connection with a dedication under Subsection (a), a governmental entity may convey any property interest, including a license, franchise, easement, or another right or interest the governmental entity considers appropriate, subject to the conditions imposed by general law governing such conveyance and subject to the rights of an existing utility under a license, franchise, easement, or other right under law, to the contracting person for the consideration determined by the governmental entity. The consideration may include the agreement of the contracting person to develop or operate the qualifying project.

Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON. (a) The contracting person has:

(1) the power granted by:

(A) general law to a person that has the same form of organization as the contracting person; and

(B) a statute governing the business or activity of the contracting person; and

(2) the power to:

(A) develop or operate the qualifying project; and

(B) collect lease payments, impose user fees subject to Subsection (b), or enter into service contracts in connection with the use of the project.

(b) The contracting person may not impose a user fee or increase the amount of a user fee until the fee or increase is approved by the responsible governmental entity.

(c) The contracting person may own, lease, or acquire any other right to use or operate the qualifying project.

(d) The contracting person may finance a qualifying project in the amounts and on the terms determined by the contracting person. The contracting person may issue debt, equity, or other securities or obligations, enter into sale and leaseback transactions, and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

(e) In operating the qualifying project, the contracting person may:

(1) establish classifications according to reasonable categories for assessment of user fees; and

(2) with the consent of the responsible governmental

entity, adopt and enforce reasonable rules for the qualifying project to the same extent as the responsible governmental entity.

(f) The contracting person shall:

(1) develop or operate the qualifying project in a manner that is acceptable to the responsible governmental entity and in accordance with any applicable interim or comprehensive agreement;

(2) subject to Subsection (g), keep the qualifying project open for use by the public at all times, or as appropriate based on the use of the project, after its initial opening on payment of the applicable user fees, lease payments, or service payments;

(3) maintain, or provide by contract for the maintenance or upgrade of, the qualifying project, if required by any applicable interim or comprehensive agreement;

(4) cooperate with the responsible governmental entity to establish any interconnection with the qualifying project requested by the responsible governmental entity; and

(5) comply with any applicable interim or comprehensive agreement and any lease or service contract.

(g) The qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible governmental entity, to protect public safety or for reasonable construction or maintenance activities.

(h) This chapter does not prohibit a contracting person of a qualifying project from providing additional services for the qualifying project to the public or persons other than the

responsible governmental entity, provided that the provision of additional service does not impair the contracting person's ability to meet the person's commitments to the responsible governmental entity under any applicable interim or comprehensive agreement.

Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before developing or operating the qualifying project, the contracting person must enter into a comprehensive agreement with a responsible governmental entity. The comprehensive agreement shall provide for:

(1) delivery of letters of credit or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities;

(2) review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity if the plans and specifications conform to standards acceptable to the responsible governmental entity, except that the contracting person may not be required to complete the design of a qualifying project before the execution of a comprehensive agreement;

(3) inspection of the qualifying project by the responsible governmental entity to ensure that the contracting person's activities are acceptable to the responsible governmental entity in accordance with the comprehensive agreement;

(4) maintenance of a public liability insurance policy, copies of which must be filed with the responsible

governmental entity accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible governmental entity and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the qualifying project;

(5) monitoring of the practices of the contracting person by the responsible governmental entity to ensure that the qualifying project is properly maintained;

(6) reimbursement to be paid to the responsible governmental entity for services provided by the responsible governmental entity;

(7) filing of appropriate financial statements on a periodic basis; and

(8) policies and procedures governing the rights and responsibilities of the responsible governmental entity and the contracting person if the comprehensive agreement is terminated or there is a material default by the contracting person, including conditions governing:

(A) assumption of the duties and responsibilities of the contracting person by the responsible governmental entity; and

(B) the transfer or purchase of property or other interests of the contracting person to the responsible governmental entity.

(b) The comprehensive agreement shall provide for any user fee, lease payment, or service payment established by agreement of

the parties. In negotiating a user fee under this section, the parties shall establish a payment or fee that is the same for persons using a facility of the qualifying project under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or an amendment to the agreement is conclusive evidence that the user fee, lease payment, or service payment complies with this chapter. A user fee or lease payment established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, a service payment.

(c) A comprehensive agreement may include a provision that authorizes the responsible governmental entity to make grants or loans to the contracting person from money received from the federal, state, or local government or any agency or instrumentality of the government.

(d) The comprehensive agreement must incorporate the duties of the contracting person under this chapter and may contain terms the responsible governmental entity determines serve the public purpose of this chapter. The comprehensive agreement may contain:

(1) provisions that require the responsible governmental entity to provide notice of default and cure rights for the benefit of the contracting person and the persons specified in the agreement as providing financing for the qualifying project;

(2) other lawful terms to which the contracting person and the responsible governmental entity mutually agree, including provisions regarding unavoidable delays or providing for a loan of public money to the contracting person to develop or operate one or

more qualifying projects; and

(3) provisions in which the authority and duties of the contracting person under this chapter cease and the qualifying project is dedicated for public use to the responsible governmental entity or, if the qualifying project was initially dedicated by an affected jurisdiction, to the affected jurisdiction.

(e) Any change in the terms of the comprehensive agreement that the parties agree to must be added to the comprehensive agreement by written amendment.

(f) The comprehensive agreement may provide for the development or operation of phases or segments of the qualifying project.

Sec. 2267.059. INTERIM AGREEMENT. Before or in connection with the negotiation of the comprehensive agreement, the responsible governmental entity may enter into an interim agreement with the contracting person proposing the development or operation of the qualifying project. The interim agreement may:

(1) authorize the contracting person to begin project phases or activities for which the contracting person may be compensated relating to the proposed qualifying project, including project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities of the qualifying project;

(2) establish the process and timing of the negotiation of the comprehensive agreement; and

(3) contain any other provision related to any aspect of the development or operation of a qualifying project that the parties consider appropriate.

Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE. (a) The contracting person and the responsible governmental entity may use any funding resources that are available to the parties, including:

(1) accessing any designated trust funds; and

(2) borrowing or accepting grants from any state infrastructure bank.

(b) The responsible governmental entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive the assistance.

(c) If the responsible governmental entity is a state agency, any money received from the state or federal government or any agency or instrumentality of the state or federal government is subject to appropriation by the legislature.

(d) The responsible governmental entity may determine that it serves the public purpose of this chapter for all or part of the costs of a qualifying project to be directly or indirectly paid from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality of the government.

Sec. 2267.0605. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) The construction, remodel, or repair of a qualifying project may be performed only after performance and payment bonds for the construction, remodel, or repair have been executed in compliance

with Chapter 2253 regardless of whether the qualifying project is on public or private property or is publicly or privately owned.

(b) For purposes of this section, a qualifying project is considered a public work under Chapter 2253 and the responsible governmental entity shall assume the obligations and duties of a governmental entity under that chapter. The obligee under a performance bond under this section may be a public entity, a private person, or an entity consisting of both a public entity and a private person.

Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the contracting person commits a material default, the responsible governmental entity may assume the responsibilities and duties of the contracting person of the qualifying project. If the responsible governmental entity assumes the responsibilities and duties of the contracting person, the responsible governmental entity has all the rights, title, and interest in the qualifying project, subject to any liens on revenue previously granted by the contracting person to any person providing financing for the project.

(b) A responsible governmental entity that has the power of eminent domain under state law may exercise that power to acquire the qualifying project in the event of a material default by the contracting person. Any person who has provided financing for the qualifying project, and the contracting person to the extent of its capital investment, may participate in the eminent domain proceedings with the standing of a property owner.

(c) The responsible governmental entity may terminate, with

cause, any applicable interim or comprehensive agreement and exercise any other rights and remedies available to the governmental entity at law or in equity.

(d) The responsible governmental entity may make any appropriate claim under the letters of credit or other security or the performance and payment bonds required by Section 2267.058(a)(1).

(e) If the responsible governmental entity elects to assume the responsibilities and duties for a qualifying project under Subsection (a), the responsible governmental entity may:

(1) develop or operate the qualifying project;

(2) impose user fees;

(3) impose and collect lease payments for the use of the project; and

(4) comply with any applicable contract to provide services.

(f) The responsible governmental entity shall collect and pay to secured parties any revenue subject to a lien to the extent necessary to satisfy the contracting person's obligations to secured parties, including the maintenance of reserves. The liens shall be correspondingly reduced and, when paid off, released.

(g) Before any payment is made to or for the benefit of a secured party, the responsible governmental entity may use revenue to pay the current operation and maintenance costs of the qualifying project, including compensation to the responsible governmental entity for its services in operating and maintaining the qualifying project. The right to receive any payment is

considered just compensation for the qualifying project.

(h) The full faith and credit of the responsible governmental entity may not be pledged to secure any financing of the contracting person that was assumed by the governmental entity when the governmental entity assumed responsibility for the qualifying project.

Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the contracting person, the responsible governmental entity may exercise any power of eminent domain that it has under law to acquire any land or property interest to the extent that the responsible governmental entity dedicates the land or property interest to public use and finds that the action serves the public purpose of this chapter.

(b) Any amounts to be paid in any eminent domain proceeding shall be paid by the contracting person.

Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The contracting person and each facility owner, including a public utility, a public service company, or a cable television provider, whose facilities will be affected by a qualifying project shall cooperate fully in planning and arranging the manner in which the facilities will be affected.

(b) The contracting person and responsible governmental entity shall ensure that a facility owner whose facility will be affected by a qualifying project does not suffer a disruption of service as a result of the construction or improvement of the qualifying project.

(c) A governmental entity possessing the power of eminent

domain may exercise that power in connection with the relocation of facilities affected by the qualifying project or facilities that must be relocated to the extent that the relocation is necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which includes construction of, renovation to, or improvements to temporary facilities to provide service during the period of construction or improvement. The governmental entity shall exercise its power of eminent domain to the extent required to ensure an affected facility owner does not suffer a disruption of service as a result of the construction or improvement of the qualifying project during the construction or improvement or after the qualifying project is completed or improved.

(d) The contracting person shall pay any amount owed for the crossing, constructing, or relocating of facilities.

Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace officer of this state or of any affected jurisdiction has the same powers and jurisdiction within the area of the qualifying project as the officer has in the officer's area of jurisdiction. The officer may access the qualifying project at any time to exercise the officer's powers and jurisdiction.

Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters 2155, 2156, and 2166, any interpretations, rules, or guidelines of the comptroller and the Texas Facilities Commission, and interpretations, rules, or guidelines developed under Chapter 2262 do not apply to a qualifying project under this chapter.

(b) A responsible governmental entity may enter into a comprehensive agreement only in accordance with guidelines that

require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in:

(1) Section 2166.2531;

(2) Section 44.036, Education Code;

(3) Section 51.780, Education Code;

(4) Section 271.119, Local Government Code; or

(5) Subchapter J, Chapter 271, Local Government Code, for civil works projects as defined by Section 271.181(2), Local Government Code.

(c) This chapter does not authorize a responsible governmental entity or a contracting person to obtain professional services through any process except in accordance with Subchapter A, Chapter 2254.

(d) Identified team members, including the architect, engineer, or builder, may not be substituted or replaced once a project is approved and an interim or comprehensive agreement is executed without the written approval of the responsible governmental entity.

Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day after the date a responsible governmental entity accepts a proposal submitted in accordance with Section 2267.053(a) or (b), the responsible governmental entity shall provide notice of the proposal as follows:

(1) for a responsible governmental entity described by Section 2267.001(5)(A), by posting the proposal on the entity's

Internet website; and

(2) for a responsible governmental entity described by Section 2267.001(5)(B), by:

(A) posting a copy of the proposal on the entity's Internet website; or

(B) publishing in a newspaper of general circulation in the area in which the qualifying project is to be performed a summary of the proposal and the location where copies of the proposal are available for public inspection.

(b) The responsible governmental entity shall make available for public inspection at least one copy of the proposal. This section does not prohibit the responsible governmental entity from posting the proposal in another manner considered appropriate by the responsible governmental entity to provide maximum notice to the public of the opportunity to inspect the proposal.

(c) Trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person.

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement.

(e) On completion of the negotiation phase for the development of an interim or comprehensive agreement and before an interim agreement or comprehensive agreement is entered into, a

responsible governmental entity must make available the proposed agreement in a manner provided by Subsection (a) or (b).

(f) A responsible governmental entity that has entered into an interim agreement or comprehensive agreement shall make procurement records available for public inspection on request. For purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means.

(g) Cost estimates relating to a proposed procurement transaction prepared by or for a responsible governmental entity are not open to public inspection.

(h) Any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.

(i) This section applies to any accepted proposal regardless of whether the process of bargaining results in an interim or comprehensive agreement.

CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2268.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Partnership Advisory Commission.

(2) "Comprehensive agreement" has the meaning assigned by Section 2267.001.

(3) "Detailed proposal" means a proposal for a

qualifying project accepted by a responsible governmental entity beyond a conceptual level of review that defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

(4) "Interim agreement" has the meaning assigned by Section 2267.001.

(5) "Qualifying project" has the meaning assigned by Section 2267.001.

(6) "Responsible governmental entity" has the meaning assigned by Section 2267.001.

Sec. 2268.002. APPLICABILITY. This chapter applies only to responsible governmental entities described by Section 2267.001(5)(A).

[Sections 2268.003-2268.050 reserved for expansion]

SUBCHAPTER B. COMMISSION

Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The Partnership Advisory Commission is an advisory commission in the legislative branch that advises responsible governmental entities described by Section 2267.001(5)(A) on proposals received under Chapter 2267.

Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission consists of the following 11 members:

(1) the chair of the House Appropriations Committee or the chair's designee;

(2) three representatives appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee or the

chair's designee;

(4) three senators appointed by the lieutenant governor; and

(5) three representatives of the executive branch, appointed by the governor.

(b) The legislative members serve on the commission until the expiration of their terms of office or until their successors qualify.

(c) The members appointed by the governor serve at the will of the governor.

Sec. 2268.053. PRESIDING OFFICER. The members of the commission shall elect from among the legislative members a presiding officer and an assistant presiding officer to serve two-year terms.

Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of the commission is not entitled to compensation for service on the commission but is entitled to reimbursement for all reasonable and necessary expenses incurred in performing duties as a member.

Sec. 2268.055. MEETINGS. The commission shall hold meetings quarterly or on the call of the presiding officer.

Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL, AND OTHER SUPPORT. (a) The legislative body that the presiding officer serves shall provide administrative staff support for the commission.

(b) The Texas Legislative Council shall provide legal, research, and policy analysis services to the commission.

(c) The staffs of the House Appropriations Committee,

Senate Finance Committee, and comptroller shall provide technical assistance.

(d) The comptroller or a state agency shall provide additional assistance as needed.

Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the proceedings of the commission shall be filed with the legislative body that the presiding officer serves.

Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before beginning to negotiate an interim or comprehensive agreement, each responsible governmental entity receiving a detailed proposal for a qualifying project must provide copies of the proposal to:

(1) the presiding officer of the commission; and

(2) the chairs of the House Appropriations Committee and Senate Finance Committee or their designees.

(b) The following qualifying projects are not subject to review by the commission:

(1) any proposed qualifying project with a total cost of less than $5 million; and

(2) any proposed qualifying project with a total cost of more than $5 million but less than $50 million for which money has been specifically appropriated as a public-private partnership in the General Appropriations Act.

(c) The commission may undertake additional reviews of any qualifying project that will be completed in phases and for which an appropriation has not been made for any phase other than the current phase of the project.

(d) Not later than the 10th day after the date the commission receives a complete copy of the detailed proposal for a qualifying project, the commission shall determine whether to accept or decline the proposal for review and notify the responsible governmental entity of the commission's decision.

(e) If the commission accepts a proposal for review, the commission shall provide its findings and recommendations to the responsible governmental entity not later than the 45th day after the date the commission receives complete copies of the detailed proposal. If the commission does not provide its findings or recommendations to the responsible governmental entity by that date, the commission is considered to have declined review of the proposal and to not have made any findings or recommendations on the proposal.

(f) The responsible governmental entity on request of the commission shall provide any additional information regarding a qualifying project reviewed by the commission if the information is available to or can be obtained by the responsible governmental entity.

(g) The commission shall review accepted detailed proposals and provide findings and recommendations to the responsible governmental entity that include:

(1) a determination on whether the terms of the proposal and proposed qualifying project create state tax-supported debt, taking into consideration the specific findings of the comptroller with respect to the recommendation;

(2) an analysis of the potential financial impact of

the qualifying project;

(3) a review of the policy aspects of the detailed proposal and the qualifying project; and

(4) proposed general business terms.

(h) Review by the commission does not constitute approval of any appropriations necessary to implement a subsequent interim or comprehensive agreement.

(i) Except as provided by Subsection (e), the responsible governmental entity may not begin negotiation of an interim or comprehensive agreement until the commission has submitted its recommendations or declined to accept the detailed proposals for review.

(j) Not later than the 30th day before the date a comprehensive or interim agreement is executed, the responsible governmental entity shall submit to the commission and the chairs of the House Appropriations Committee and Senate Finance Committee or their designees:

(1) a copy of the proposed interim or comprehensive agreement; and

(2) a report describing the extent to which the commission's recommendations were addressed in the proposed interim or comprehensive agreement.

Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS SUBMITTED TO COMMISSION. Records and information afforded protection under Section 552.153 that are provided by a responsible governmental entity to the commission shall continue to be protected from disclosure when in the possession of the commission.

SECTION 2. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.153 to read as follows:

Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under Chapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a contracting person to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the contracting person;

(B) financial records of the contracting person, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) other information submitted by the contracting person that, if made public before the execution of an interim or comprehensive agreement, would adversely affect the financial interest or bargaining position of the responsible governmental entity or the person.

(c) Except as specifically provided by Subsection (b), this section does not authorize the withholding of information concerning:

(1) the terms of any interim or comprehensive agreement, service contract, lease, partnership, or agreement of any kind entered into by the responsible governmental entity and the contracting person or the terms of any financing arrangement that involves the use of any public money; or

(2) the performance of any person developing or operating a qualifying project under Chapter 2267.

SECTION 3. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1048 passed the Senate on April 19, 2011, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendments on May 27, 2011, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 1048 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 114, Nays 28, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Prevailing Wage

1. Prevailing Wage Repeal Act
2. Maryland Legislation to Increase the Prevailing Wage Threshold

PREVAILING WAGE REPEAL ACT

Summary

This act repeals all laws which require administratively determined employee compensation rates, including wages, salaries and benefits.

Model Legislation

Section 1. {Short Title.} This Act shall be known as the Prevailing Wage Repeal Act.

Section 2. {Legislative Declarations.}

The legislature finds and declares that:

(A) Prevailing wage laws increase the costs of government and business and diminish the number of jobs generated by the economy.

(B) Prevailing wage laws raise the wages and benefits for the few at the expense of taxpayers.

(C) Prevailing wage laws add as much as 30 percent to the cost of public construction, renovation, and other public services.

(D) Prevailing wage laws are most harmful to the young, minorities, and to other new or would-be entrants to the work force.

(E) Repeal of prevailing wage laws will increase the efficiency of public investments, reduce the cost of government, and eliminate government's preferential treatment for the politically powerful few.

Section 3. {Definition} Prevailing wage means any administratively determined employee compensation rate, including wages, salary, and benefits.

Section 4. {Repeal of State Law.} Any and all prevailing wage laws are repealed.

Section 5. {Severability clause.}

Section 6. {Repealer clause.}

Section 7. {Effective date.}

SENATE BILL 660
Unofficial Copy 2004 Regular Session
P2 4lr2676
CF HB 425

By: **Senator Hooper**
Introduced and read first time: February 6, 2004
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Prevailing Wage Rates - Public Works Contracts – Exclusions

FOR the purpose of altering the threshold contract amount to which certain provisions regarding prevailing wage rates apply; providing that a certain threshold contract amount shall be adjusted annually in accordance with a certain Consumer Price Index; and generally relating to the prevailing wage rates for public works contracts.

BY repealing and reenacting, with amendments,
Article - State Finance and Procurement
Section 17-202
Annotated Code of Maryland
(2001 Replacement Volume and 2003 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - State Finance and Procurement

17-202.

(a) This subtitle does not limit:

(1) the hours of work an employee may work in a particular period of time; or

(2) the right of a contractor to pay an employee under a public work contract more than the prevailing wage rate.

(b) This subtitle does not apply to:

(1) a public work contract of less than [$500,000] $2,500,000, WHICH SHALL BE ADJUSTED ANNUALLY IN ACCORDANCE WITH THE APPLICABLE CONSUMER PRICE INDEX, AS SELECTED BY THE COMMISSIONER; or

(2) the part of a public work contract for which the federal government provides money if, as to that part, the contractor is required to pay the prevailing wage rate as determined by the United States Secretary of Labor.

(c) If this subtitle and the federal Davis-Bacon Act apply and the federal act is suspended, the Governor may declare this subtitle suspended for the same period for:

(1) the part of that public work contract for which the United States Secretary of Labor would have been required to make a determination of a prevailing wage rate; or

(2) that entire public work contract.

PRIOR PRINTER'S NO. 2130 PRINTER'S NO. 2469

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1685 Session of 2011

INTRODUCED BY BEAR, TURZAI, SAYLOR, MILLER, AUMENT, BLOOM, BOYD, CAUSER, COX, CREIGHTON, CUTLER, DELOZIER, DENLINGER, EVERETT, GILLESPIE, GINGRICH, GRELL, GROVE, HELM, HENNESSEY, HICKERNELL, KAUFFMAN, MARSICO, METCALFE, MILNE, MOUL, PERRY, PICKETT, RAPP, ROAE, ROCK, ROSS, SCHRODER, SWANGER, TALLMAN, TOEPEL AND VULAKOVICH, JUNE 17, 2011

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 3, 2011

AN ACT

Amending the act of August 15, 1961 (P.L.987, No.442), entitled "An act relating to public works contracts; providing for prevailing wages; imposing duties upon the Secretary of Labor and Industry; providing remedies, penalties and repealing existing laws," further providing for definitions ~~and for administration~~; AND PROVIDING FOR DUTIES OF DEPARTMENT.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Sections 2 and 7 of the act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act, amended August 9, 1963 (P.L.653, No.342), are amended to read:~~

SECTION 1. SECTION 2 OF THE ACT OF AUGUST 15, 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE ACT, AMENDED AUGUST 9, 1963 (P.L.653, NO.342), IS AMENDED TO READ:

Section 2. Definitions.--As used in this act--

"Advisory Board" means the board created by section 2.1 of

this act.

"Appeals Board" means the board created by section 2.2 of this act.

[(1)] "Department" means Department of Labor and Industry of the Commonwealth of Pennsylvania.

"Federal occupational classifications" means the Occupational Outlook Handbook of the Federal Bureau of Labor Statistics, published under 40 U.S.C § 3142(b) (relating to rate of wages for laborers and mechanics).

[(2)] "Locality" means any political subdivision, or combination of the same, within the county in which the public work is to be performed. When no workmen for which a prevailing minimum wage is to be determined hereunder are employed in the locality, the locality may be extended to include adjoining political subdivisions where such workmen are employed in those crafts or trades for which there are no workmen employed in the locality as otherwise herein defined.

[(3)] "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

[(4)] "Public body" means the Commonwealth of Pennsylvania, any of its political subdivisions, any authority created by the General Assembly of the Commonwealth of Pennsylvania and any instrumentality or agency of the Commonwealth of Pennsylvania.

[(5)] "Public work" means construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of twenty-five thousand dollars ($25,000), but shall not include work performed under a

rehabilitation or manpower training program.

[(6)] "Secretary" means the Secretary of Labor and Industry or his duly authorized deputy or representative.

[(7)] "Workman" includes laborer, mechanic, skilled and semi-skilled laborer and apprentices employed by any contractor or subcontractor and engaged in the performance of services directly upon the public work project, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employes who do not perform services at the job site.

[(8)] "Work performed under a rehabilitation program," means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.

[(9) "Advisory Board" means the board created by section 2.1 of this act.

(10) "Appeals Board" means the board created by section 2.2 of this act.]

~~Section 7. Duty of Secretary.--The secretary shall, after consultation with the advisory board, determine the general prevailing minimum wage rate in the locality in which the public work is to be performed for each craft or classification of all workmen needed to perform public work contracts during the anticipated term thereof: Provided, however, That employer and employe contributions for employe benefits pursuant to a bona fide collective bargaining agreement shall be considered an integral part of the wage rate for the purpose of determining the minimum wage rate under this act. Nothing in this act, however, shall prohibit the payment of more than the general prevailing minimum wage rate to any workman employed on public~~

~~work. The secretary shall forthwith give notice by mail of all determinations of general prevailing minimum wage rates made pursuant to this section to any representative of any craft, any employer or any representative of any group of employers, who shall in writing request the secretary so to do. Unless otherwise authorized by statute, the secretary shall base the scope of a craft or classification of workmen under this section on the most recent version of the Federal occupational classifications, utilizing the description of the craft or classification in the "nature of work" subsection for each rate category.~~

SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

SECTION 7.1. DUTIES OF DEPARTMENT.--(A) THE DEPARTMENT SHALL DEVELOP OR ADOPT A COMPLETE LISTING OF WORKER CLASSIFICATIONS AND THEIR RESPECTIVE DEFINITIONS, AND SHALL MAKE THE LISTINGS AVAILABLE TO THE PUBLIC IN A CONSPICUOUS LOCATION ON THE DEPARTMENT'S INTERNET WEBSITE. THE LISTING SHALL, AT ALL TIMES, BE AVAILABLE FOR PUBLIC VIEWING, AND SHALL BE MAINTAINED ON A STATEWIDE BASIS FOR EACH WORKER CLASSIFICATION. IN DEVELOPING THE LIST, THE DEPARTMENT MAY CONSIDER THE FOLLOWING SOURCES:

(1) COLLECTIVE BARGAINING AGREEMENTS;

(2) FEDERAL OCCUPATIONAL CLASSIFICATIONS;

(3) INPUT FROM THE ADVISORY BOARD;

(4) OPINIONS OF REPRESENTATIVES FROM ORGANIZED LABOR AND THE OPINIONS OF CONTRACTORS AND CONTRACTOR ASSOCIATIONS AS THEY RELATE TO THE CUSTOM AND USAGE APPLICABLE TO THE CONSTRUCTION INDUSTRY IN THIS COMMONWEALTH; AND

(5) ANY OTHER INFORMATION THAT THE DEPARTMENT DEEMS PERTINENT.

THE DEFINITIONS FOR EACH CLASSIFICATION IN THIS SUBSECTION SHALL BE UNIFORM THROUGHOUT THIS COMMONWEALTH.

(B) WORKER CLASSIFICATIONS AS DEFINED BY THE DEPARTMENT AT THE TIME OF THE BEGINNING OF A PROJECT SHALL BE USED THROUGHOUT COMPLETION OF THAT PROJECT, AND SHALL BE CONTROLLING FOR PURPOSES OF ANY DISPUTE. FOR PURPOSES OF THIS SUBSECTION, THE BEGINNING OF A PROJECT SHALL BE DEEMED TO BE THE EARLIER OF THE ACCEPTANCE OF BIDS OR OFFERS OR THE EXECUTION OF A CONTRACT.

(C) THE DEPARTMENT SHALL PUBLISH THE COMPLETE LISTING OF WORKER CLASSIFICATIONS AND THEIR RESPECTIVE DEFINITIONS, AS REQUIRED IN SUBSECTION (A) WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, PROVIDED THAT AFTER THE INITIAL WORK DESCRIPTIONS ARE PUBLISHED, THE DEPARTMENT MAY CHANGE THE DESCRIPTIONS FROM TIME TO TIME IN ACCORDANCE WITH THE CRITERIA IN SUBSECTION (A).

Section ~~2~~ 3. This act shall take effect in 60 days. ←

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Project Labor Agreements

1. ABC National Model Government Neutrality Legislation
2. Iowa Executive Order 69 (2001)
3. Federal Executive Order 13202
4. Connecticut Legislation Concerning Public Hearings for PLAs on State Funded School Construction (Sunshine)
5. Resolution Opposing Frivolous Complaints and Permit Extortion (Anti-Greenmail Resolution)

AS INTRODUCED

An Act relating to government contracts; creating the Fair and Open Competition in Governmental Construction Act; providing short title; defining terms; providing for fair and open competition in governmental construction contracts, grants, tax abatements, and tax credits; prohibiting requirements for certain terms in government contracts and contracts supported through government grants and tax subsidies and abatements; prohibiting expenditure of public funds under certain conditions; prohibiting certain terms in procurement documents for certain expenditures involving public facilities; providing for powers and duties of certain public officers, employees, and contractors; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF:

SECTION 1. NEW LAW This act shall be known and may be cited as the "Fair and Open Competition in Governmental Construction Act".

SECTION 2. NEW LAW As used in the Fair and Open Competition in Governmental Construction Act:

1. "Facility" means any actual physical improvement to real property owned, or leased, directly or through a building authority, by a governmental unit, including, but not limited to, roads, bridges, runways, rails, or a building or structure along with the building's or structure's grounds, approaches, services, and appurtenances; and

2. "Governmental unit" means this state, a county, city, township, village, school district, intermediate school district, community college, or public university that receives appropriations from this state, or any agency, board, commission, authority, or instrumentality of the foregoing.

SECTION 3. NEW LAW Notwithstanding any other provision of law, a governmental unit shall not enter into or expend funds under a contract for the construction, repair, remodeling, or demolition of a facility if the contract or a subcontract under the contract contains any of the following:

1. A term that requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or other related construction projects; or

2. A term that discriminates against bidders, contractors, or subcontractors based on the status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or other related construction projects.

SECTION 4. NEW LAW A governmental unit shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in paragraph 1 or 2 of Section 3 of this act in a contract document for any

construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

This section does not prohibit a governmental unit from awarding a grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a collective bargaining organization, if being or becoming a party or adhering to an agreement with a collective bargaining organization is not a condition for award of the grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a collective bargaining organization.

SECTION 5. NEW LAW A governmental unit or a construction manager or other contracting entity acting on behalf of a governmental unit shall not place any of the terms described in Section 3 of this act in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a facility. Any such included term is void and of no effect.

SECTION 6. NEW LAW The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions in this section if the governmental unit finds, after public notice and hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with 1 or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

SECTION 7. NEW LAW The requirements of this act shall not be construed to apply to construction contracts executed before the effective date of this act.

SECTION 8. NEW LAW The provisions of this act shall not be construed to:

1. Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act pursuant to 29 U.S.C. 151 to 169; or

2. Interfere with labor relations of parties that are protected under the National Labor Relations Act pursuant to 29 U.S.C. 151 to 169.

SECTION 9. This act shall become effective July 1, 2012.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

EXECUTIVE ORDER NUMBER SIXTY-NINE

WHEREAS, the proliferation of Project Labor Agreements as a result of Executive Order Number 22, dated February 3, 2010, issued by Governor Chet Culver has impacted the essence and the spirit of the competitive bidding process for state funded projects and has infringed upon Iowa's Right to Work law; and

WHEREAS, in the procurement of public projects, Project Labor Agreements have disadvantaged small business, minority and women owned companies and contractors throughout the State of Iowa; and

WHEREAS, Project Labor Agreements have increased the costs of Public Works Projects, chilled the competitive bidding environment for Public Works Projects, and thereby caused detriment to the Iowa taxpayer and our citizenship; and

WHEREAS, the State of Iowa shall endeavor to encourage efficiency and reward contractor innovation in the procurement and construction of Public Works Projects by avoiding the use of Project Labor Agreements, which only increase limitations and restrictions on a contractor's ability to perform effectively; and

WHEREAS, fair and open contracting for publicly funded construction projects aids in lowering the cost of such projects and ensures that all workers, both union and non-union, have a fair and equal opportunity to work on Public Works Projects being built in the great State of Iowa.

Now, therefore, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the power and authority vested in me by the Constitution and statutes of the State of Iowa, do hereby rescind Executive Order Number 22, dated February 3, 2010, issued by Governor Chet Culver. Further, I order and issue this Executive Order prohibiting the use of Project Labor Agreements by the State of Iowa and its Political Subdivisions on Public Works Projects effective immediately:

1. For the purposes of this Order, the following definitions shall apply:
   a. "State Funds" as used in this order includes any tax payer dollars or other funds of the State, including, but not limited to, general fund obligations, funds derived from the assessment of fines, fees of any sort, income taxes, corporate taxes, property taxes, sales taxes, taxes on gaming revenues, funds derived from the proceeds on the issuance general purpose, appropriation and/or revenue bonds, projects funded from the Rebuild Iowa Infrastructure Fund, projects funded by road use tax funds, projects funded in whole or in part by state grants, financial assistance, loans, forgivable loans, loan guarantees, subsidies, tax exemptions and tax credits.
   b. "Political Subdivision" as used in this Order includes a city, county, township, school district, area education agency, institutions under the control of the State Board of Regents, community colleges, or any other local board, commission, committee, council, association or tribal council that receives or uses any State Funds.
   c. "Project Labor Agreement" means an arrangement mentioned or outlined within the project specifications or bidding documents of a Public Works Project that imposes requirements, controls or limitations on staffing, source of employee referrals, assignment of work, source of insurance and benefits including health, life and disability insurance and retirement pensions, training

programs or standards, or wages; or requires a contractor to enter into any sort of agreement as a condition of submitting a bid that directly or indirectly limits or requires the contractor to recruit, train or hire employees from a particular source to perform work on the Public Works Project.

d. "Public Owner" as used in this order includes any person or entity receiving or using State Funds in whole or in part, including the State, its Departments, its Agencies, its Political Subdivisions, any board or commission of the State or of a Political Subdivision of the State, any institution supported in whole or in part by State Funds, or any agent, officer, official, or authority of any of these.

e. "Public Works Project" as used in this order means a building or other project which is constructed by or under the control of a Public Owner and is paid for in whole or in part with State Funds or funds from any federal source. Public Works Project includes, but is not limited to, any contract for the construction, rehabilitation, alteration, conversion, extension, maintenance, or repair of buildings, highways, bridges, tunnels, transportation facilities, water or sewage treatment plants, power plants, or other improvements to real property.

f. "Labor Organization" as used in this Order shall have the same meaning as it has in 29 U.S.C. 152(5) and 42 U.S.C. 2000e(d), and shall also include and mean an area or state building and construction trades or crafts council, organization or association or comparable body.

2. The State, its Departments, its Agencies, its Political Subdivisions, and any Public Owner shall not enter into or utilize a Project Labor Agreement on any Public Works Project. The State, its Departments, its Agencies, its Political Subdivisions, and any Public Owner shall also not enter into or utilize any sort of agreement that attempts to impose any of the following requirements as a condition of submitting a bid or entering into a construction contract for or relating to a Public Works Project:

a. Controls or puts limitations on staffing.
b. Serves as a single source of employee referrals.
c. Designates assignment of work.
d. Stipulates a specific source of insurance and benefits including health, life and disability insurance and retirement pensions.
e. Requires proprietary training programs or standards.
f. Mandates wage levels, except in those instances of federal Davis-Bacon wage requirements.

3. Through this Order, a contractor shall not be obligated to become a party to a contract with any Labor Organization nor shall it be required to observe the terms and conditions of a contract entered into with one or more Labor Organizations for the construction of any Public Works Project.

4. This Order shall apply to any and all Public Works Projects for which a construction contract has not yet been entered into by the State, its Departments, its Agencies or any of its Political Subdivisions, unless otherwise prohibited by federal law or regulation. Further, with respect to all contracts for Public Works Projects which were entered into prior to the date of this Order but where the lowest, responsible and responsive bidder had not yet been selected, the State, its Departments, Agencies, and all Political Subdivisions affected must take action, to the extent practical and permitted by law, to conform said contracts, related bid specifications, project agreements, and other controlling documents, in order to conform to and implement the provisions of this Order. However, this Order shall not govern any contracts for Public Works Projects that were both entered into and where the lowest, responsible and responsive bidder had been selected prior to the date of this Order.

5. The heads of all State Departments and Agencies, and Political Subdivisions of the state will immediately revoke any orders, rules, regulations, guidelines, or policies related to contracts for Public Works Projects which are not consistent with this Order, or immediately commence revocation action pursuant to law. In addition, the heads of all State Departments and Agencies, and Political Subdivisions of such, will immediately promulgate and implement any orders, rules, regulations, guidelines, or policies necessary to comply with the purposes and intent of this Order.

6. If any provision of this Order, or the application of such provision to any person or circumstance, is held to be invalid, the remaining provisions, as applied to any person or circumstance, shall not be affected thereby.

7. This Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the State of Iowa, its Departments, Agencies, or Political Subdivisions, or its officers, employees, or agents, or any other person.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of January, in the year of our Lord two thousand eleven.

_____
TERRY E. BRANSTAD
GOVERNOR

ATTEST:

_____
MATTHEW SCHULTZ
SECRETARY OF STATE

Presidential Documents

Executive Order 13202 of February 17, 2001

Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, and in order to (1) promote and ensure open competition on Federal and federally funded or assisted construction projects; (2) maintain Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal Government and to the taxpayers; (4) expand job opportunities, especially for small and disadvantaged businesses; and (5) prevent discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects, it is hereby ordered that:

Section 1. To the extent permitted by law, any executive agency awarding any construction contract after the date of this order, or obligating funds pursuant to such a contract, shall ensure that neither the awarding Government authority nor any construction manager acting on behalf of the Government shall, in its bid specifications, project agreements, or other controlling documents:

(a) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

(b) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

(c) Nothing in this section shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subsection (a).

Sec. 2. Contracts awarded before the date of this order, and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this order.

Sec. 3. To the extent permitted by law, any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects, shall ensure that neither the bid specifications, project agreements, nor other controlling documents for construction contracts awarded after the date of this order by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on their behalf, shall contain any of the requirements or prohibitions set forth in section 1(a) or (b) of this order.

Sec. 4. In the event that an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of the foregoing, performs in a manner contrary to the provisions of sections 1 or 3 of this order, the executive agency awarding the contract, grant, or assistance shall take such action, consistent with law and regulation, as the agency determines may be appropriate.

Sec. 5. (a) The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of any or all of the provisions of sections 1 and 3 of this order, if the agency head finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(b) A finding of ''special circumstances'' under section 5(a) may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

Sec. 6. (a) The term ''construction contract'' as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The term ''executive agency'' as used in this order shall have the same meaning it has in 5 U.S.C. 105, excluding the General Accounting Office.

(c) The term ''labor organization'' as used in this order shall have the same meaning it has in 42 U.S.C. 2000e(d).

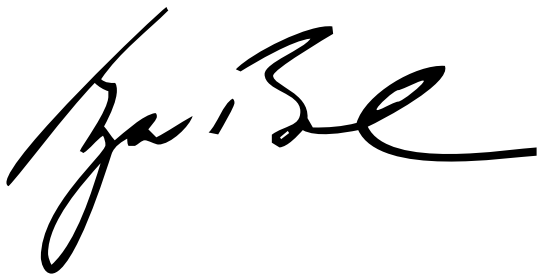
Sec. 7. With respect to Federal contracts, within 60 days of the issuance of this order, the Federal Acquisition Regulatory Council shall take whatever action is required to amend the Federal Acquisition Regulation in order to implement the provisions of this order.

Sec. 8. As it relates to project agreements, Executive Order 12836 of February 1, 1993, which, among other things, revoked Executive Order 12818 of October 23, 1992, is revoked.

Sec. 9. The Presidential Memorandum of June 5, 1997, entitled ''Use of Project Labor Agreements for Federal Construction Projects'' (the ''Memorandum''), is also revoked.

Sec. 10. The heads of executive departments and agencies shall revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing the Memorandum or Executive Order 12836 of February 1, 1993, as it relates to project agreements, to the extent consistent with law.

Sec. 11. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforce able by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 17, 2001

[FR Doc. 01–4622
Filed 02–21–01; 11:16 am]
Billing code 3195–01–P

General Assembly

Raised Bill No. 1202

January Session, 2005

LCO No. **3936**

*03936_____PD_*

Referred to Committee on Planning and Development

Introduced by:
(PD)

AN ACT CONCERNING LOCAL APPROVAL OF SCHOOL BUILDING PROJECTS AND LABOR AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2005*) No school building project for which state assistance is sought under chapter 173 of the general statutes shall be approved by the Department of Education unless the town or regional board of education submits documentation to the department that any labor agreement for the project was approved, after a public hearing, by a written resolution of such board of education adopted at a public meeting. Notice of the time and place of any such hearing or meeting shall be published in a newspaper having a substantial circulation in the town or, in the case of a regional board of education, in each town that is a member of the district, not less than thirty days before such hearing or meeting. For the purposes of this section, "labor agreement" means a hiring agreement that establishes wages, uniform work schedules and rules for dispute resolution to manage construction projects and includes, but is not limited to, provisions for payment of union dues or fees to a labor organization or membership in or affiliation with a labor organization.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2005*	New section

Statement of Purpose:

To require local boards of education to hold a public hearing on and approve by resolution at a public meeting any project labor agreement relating to a school building project.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

RESOLUTION IN OPPOSITION TO FRIVOLOUS COMPLAINTS AND PERMIT EXTORTION

Summary

The Resolution in Opposition to Frivolous Complaints and Permit Extortion recognizes that some unions have engaged in questionable pressure tactics to put open shop companies out of business or force them to join a union. These harassment and intimidation tactics have come in the form of frivolous and unwarranted complaints and environmental permit delays that are contrary to good public policy. This Resolution urges governments at all levels to enforce appropriate laws and to pass legislation to deter such tactics. The costs associated with defending frivolous complaints in legal and administrative actions have literally put some companies out of business. In the construction trades, such tactics can cause major delays, which can impose millions of dollars in additional costs. Often, when open shops concede to union demands, the complaints mysteriously disappear.

Model Resolution

WHEREAS, regulatory agencies; limited resources are being squandered for harassment purposes, in pursuit of non-life threatening complaints against employers; and

WHEREAS, complaints about Hazard Communication Standards (record keeping) and many other classifications that are "non-serious" violations have become a useful tool to harass employers by escalating the citation to "willful", "repeat", or "egregious" and thus increase the penalty exposure exponentially; and

WHEREAS, regulators should focus on leading hazards, and should not subject "non-serious" violations to reclassification and/or multiple fines; and

WHEREAS, it is a criminal act to knowingly fine a false claim with the NLRB, although the NLRB virtually never prosecutes; and

WHEREAS, it does not cost harassing parties anything to file frivolous claims, whereas companies are often subjected to large attorney fees to defend such claims;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that harassment and intimidation tactics in the form of frivolous and unwarranted complaints and environmental permit delays are contrary to good public policy and urges governments at all levels to enforce current mechanisms and to pass legislation to deter such tactics.

Right to Work

1. Oklahoma Right to Work Act
2. Michigan Right to Work Zone Authorization
3. Indiana Right to Work Act

OKLAHOMA RIGHT TO WORK LAW

Okla. Const. art. XXIII

Okla. Const. art. 23, § 1A provides:

A. As used in this section, "labor organization" means any organization of any kind, or agency or employee representation committee or union, that exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation.

B. No person shall be required, as a condition of employment or continuation of employment, to:

1. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

2. Become or remain a member of a labor organization;

3. Pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;

4. Pay to any charity or other third party, in lieu of such payments, any amount equivalent to or pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or

5. Be recommended, approved, referred, or cleared by or through a labor organization.

C. It shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization unless the employee has first authorized such deduction.

D. The provisions of this section shall apply to all employment contracts entered into after the effective date of this section and shall apply to any renewal or extension of any existing contract.

E. Any person who directly or indirectly violates any provision of this section shall be guilty of a misdemeanor.

(Oklahoma's Right to Work law went into effect on September 28, 2001. Union-employer contracts entered into before that date requiring employees to pay union dues or fees as a condition of employment remain legally enforceable until the collective bargaining agreements expire or are renewed or extended.)

SENATE BILL No. 1457

September 9, 2008, Introduced by Senator CASSIS and referred to the Committee on Commerce and Tourism.

A bill to amend 1939 PA 176, entitled

"An act to create a commission relative to labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; and to prescribe means of enforcement and penalties for violations of this act,"

by amending section 14 (MCL 423.14) and by adding section 14a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 14. ~~Nothing~~ **EXCEPT AS PROVIDED IN SECTION 14A, NOTHING** in this act shall be construed to interfere with the right of an employer to enter into an all-union agreement with 1 labor organization if it is the only organization established among his ~~employes~~ **OR HER EMPLOYEES** and recognized by him **OR HER**, by consent,

SENATE BILL No. 1457

as the representative of a majority of his ~~employes~~ **OR HER EMPLOYEES**; nor shall anything in this act be construed to interfere with the right of the employer to make an all-union agreement with more than 1 labor organization established among his ~~employes~~ **OR HER EMPLOYEES** if ~~such~~ **THE** organizations are recognized by him **OR HER**, by consent, as the representatives of a majority of his ~~employes~~ **OR HER EMPLOYEES**.

SEC. 14A. A CITY, COUNTY, TOWNSHIP, OR VILLAGE MAY AUTHORIZE A RIGHT-TO-WORK ZONE WITHIN ITS BOUNDARIES BY A VOTE OF ITS GOVERNING BODY OR BY ADOPTION OF A MEASURE INITIATED BY THE PEOPLE. THE COMMISSION SHALL NOT ENFORCE AN ALL-UNION SHOP AGREEMENT COVERING EMPLOYEES IN A RIGHT-TO-WORK ZONE IF THE EMPLOYER ENTERED INTO OR RENEWED THE AGREEMENT AFTER THE DATE OF ADOPTION OF THE MEASURE CREATING THE RIGHT-TO-WORK ZONE.

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1001

AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 6. Right to Work

Sec. 1. This chapter does not apply to the following:

(1) An employee of the United States or a wholly owned corporation of the United States.

(2) An:

(A) employee; and

(B) employer;

subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.).

(3) An employee employed on property over which the United States government has exclusive jurisdiction for the purpose of labor relations.

(4) An employee of the state.

(5) An employee of a political subdivision (as defined in IC 36-1-2-13).

Sec. 2. This chapter does not apply to the extent that it:

(1) conflicts with; or

(2) is preempted by;

federal law.

Sec. 3. Nothing in this chapter is intended, or should be

construed, to change or affect any law concerning collective bargaining or collective bargaining agreements in the building and construction industry other than:

(1) a law that permits agreements that would require membership in a labor organization;

(2) a law that permits agreements that would require the payment of dues, fees, assessments, or other charges of any kind or amount to a labor organization; or

(3) a law that permits agreements that would require the payment to a charity or a third party of an amount that is equivalent to or a pro rata part of dues, fees, assessment, or other charges required of members of a labor organization;

as a condition of employment.

Sec. 4. As used in this chapter, "employer" means:

(1) a person employing at least one (1) individual in Indiana; or

(2) an agent of an employer described in subdivision (1).

Sec. 5. As used in this chapter, "labor organization" means:

(1) an organization;

(2) an agency;

(3) a union; or

(4) an employee representation committee;

that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

Sec. 6. As used in this chapter, "person" means:

(1) an individual;

(2) a proprietorship;

(3) a partnership;

(4) a firm;

(5) an association;

(6) a corporation;

(7) a labor organization; or

(8) another legal entity.

Sec. 7. As used in this chapter, "the state" includes:

(1) a board;

(2) a branch;

(3) a commission;

(4) a department;

(5) a division;

(6) a bureau;

(7) a committee;

(8) an agency;

(9) an institution (including a state educational institution as defined in IC 21-7-13-32);

(10) an authority; or

(11) another instrumentality;

of the state.

Sec. 8. A person may not require an individual to:

(1) become or remain a member of a labor organization;

(2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or

(3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization;

as a condition of employment or continuation of employment.

Sec. 9. A contract, agreement, understanding, or practice, written or oral, express or implied, between:

(1) a labor organization; and

(2) an employer;

that violates section 8 of this chapter is unlawful and void.

Sec. 10. A person that knowingly or intentionally, directly or indirectly, violates section 8 of this chapter commits a Class A misdemeanor.

Sec. 11. An individual who is employed by an employer may file a complaint that alleges a violation or threatened violation of this chapter with the attorney general, the department of labor, or the prosecuting attorney of the county in which the individual is employed. Upon receiving a complaint under this section, the attorney general, department of labor, or prosecuting attorney may:

(1) investigate the complaint; and

(2) enforce compliance if a violation of this chapter is found. In addition to any other remedy available under this chapter, if the department of labor determines that a violation or a threatened violation of this chapter has occurred, the department of labor may issue an administrative order providing for any of the civil remedies described in section 12 of this chapter. The department of labor may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out its responsibilities under this chapter.

Sec. 12. (a) If an individual suffers an injury:

(1) as the result of any act or practice that violates this chapter; or

(2) from a threatened violation of this chapter;

the individual may bring a civil action.

(b) A court may order an award of any or all of the following to an individual who prevails in an action under subsection (a):

(1) The greater of:

(A) actual and consequential damages resulting from the violation or threatened violation; or

(B) liquidated damages of not more than one thousand dollars ($1,000).

(2) Reasonable attorney's fees, litigation expenses, and costs.

(3) Declaratory or equitable relief, including injunctive relief.

(4) Other relief the court considers proper.

(c) The remedies and penalties set forth in subsection (b) are:

(1) cumulative; and

(2) in addition to other remedies and penalties imposed for a violation of this chapter.

Sec. 13. Sections 8 through 12 of this chapter:

(1) apply to a written or oral contract or agreement entered into, modified, renewed, or extended after March 14, 2012; and

(2) do not apply to or abrogate a written or oral contract or agreement in effect on March 14, 2012.

SECTION 2. **An emergency is declared for this act.**

Salting

1. Resolution Opposing Salting
2. Resolution Opposing Violence in Labor Disputes
3. Miscellaneous Anti-Salting Language for State Legislation

RESOLUTION IN OPPOSITION TO SALTING (HARASSING OR DISRUPTIVE UNION ORGANIZING)

Summary

Salting abuse is the placing of trained union professional organizers and agents in a nonunion facility to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business. The objectives of the union agents are accomplished through filing frivolous and unfair labor procedure complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC). Salting campaigns have been used successfully in the construction industry and are quickly expanding into other industries across the country. The Resolution in Opposition to Salting (Harassing or Disruptive Union Organizing) affirms the pri8nciple that salting activities are contrary to good public policy and urges Congress to pass legislation so that employers are not required to employ any employee or agent of any other person, where the employee or agent seeks access to the employer's workplace in furtherance of their other employment or agency status.

Model Resolution

WHEREAS, the unions' avowed purpose in these salting campaigns is to harass the company, it's employees, and to disrupt the workplace until the company is financially devastated or its employees agree to join the union; and

WHEREAS, in defending themselves against these frivolous charges, employers must incur thousands of dollars in legal expenses, delays and lost hours of productivity in time spent fighting the charges, and risk jeopardizing their business through excessive problems they may not endure; and

WHEREAS, unions have trained their members to use state and federal regulatory agencies, including, but not limited to the NLRB, OSHA, and EEOC as offensive weapons against nonunion employers; and

WHEREAS, such agencies wasted limited resources investigating frivolous complaints and several small companies have literally been driven out of business defending against such complaints; and

WHEREAS, a manager who finds a particular employee to be disruptive in the workplace, regardless of labor affiliation, should be free to exclude that disruptive employee from the workplace without fear of receiving an unfair labor practice charge; and

WHEREAS, in the recently decided Town & Country case, the U.S. Supreme Court held that paid professional union organizers are "bona fide" employees, and therefore, protected under the National Labor Relations Act (NLRA); and

WHEREAS, union's salting tactics frequently result in an abuse of the hiring process and the harassment of employees without serving the interests of any bona fide employees;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that salting activities are contrary to good public policy and urges Congress to pass legislation so that employers are not required to employ an employee or agent of any other person, where the employee or agent seeks access to the employer's workplace in furtherance of their other employment or agency status.

RESOLUTION IN OPPOSITION TO VIOLENCE IN LABOR DISPUTES

Summary

The Anti-Racketeering Act of 1934 (The Copeland Act) marked the beginning of federal authority to prosecute and punish criminal acts of extortion affecting commerce. In response to union fears that the law could be applied to non-violent forms of protest, the bill was amended to read "(T)hat no court of the United States shall construe or apply any of the provisions of this Act in such a manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objectives thereof, as such rights are expressed in existing statutes of the United States." The Act was later amended by the Hobbs Act which provided that violent acts could be prosecuted under the Copeland Act, even where the acts were carried out in the name of legitimate objectives of bona-fide labor organizations. The Hobbs Act was not meant to preempt state and local laws already in place to combat violence, but rather to supplement such laws. However, the corrections made to the Copeland Act by the Hobbs Act were nullified by the Supreme Court's ruling in United States v. Enmons, which held that the Hobbs Act is not applicable to violence that takes place in "an effort to promote appropriate collective bargaining demands." The Resolution in Opposition to Violence in Labor Disputes affirms the principle that violence in labor disputes in contrary to good public policy and urges governments at all levels to enforce current mechanisms and pass further legislation to deter such violence.

Model Resolution

WHEREAS, the National Labor Relations Board (NLRB) and the courts have generally held that federal labor laws so not preempt local laws with respect to tortious and criminal conduct by union members; and

WHEREAS, the NLRB generally does not protect employees who engage in such conduct; and

WHEREAS, some cases have been vague as to what constitutes protected union conduct, with the NLRB observing in one case that "the emotional tension of a strike almost inevitably gives rise to a certain amount of disorder and …conduct on a picket line cannot be expected to approach the etiquette of the drawing room or breakfast table;" and

WHEREAS, many court decisions on the state and federal level have created vague standards with respect to the applicability of criminal laws to union violence; and

WHEREAS, union officials should not be immune from prosecution under federal, state and local law for violence committed in furtherance of union objectives; and

WHEREAS, disputes arising in the labor-management arena are best resolved through open discussion of ideas, and never through senseless violence directed at persons or property; and

WHEREAS, the use of violence is ultimately detrimental to all parties involved, often creating permanent animosities that forever color the working environment and lower productivity;

NOW THEREFORE BE IT RESOLVED, that the State/Commonwealth of (insert state) affirms the principle that violence in labor disputes is contrary to good public policy and urges governments at all levels to enforce current mechanisms and pass further legislation to deter such violence.

SALTING MISC.

FALSIFICATION OF EMPLOYMENT INFORMATION

It shall be a violation of state law for any person to knowingly submit false employment applications or resumes to an employer for purposes of obtaining employment or for any person to conspire with or direct another person to do so. An employer to whom such false applications or resumes have been submitted shall be authorized to bring a civil action to recover compensatory and punitive damages.

SABOTAGE

It shall be a violation of state law for any person to engage in sabotage of work or property of an employer or the employer's customer, or for any person to conspire with or direct another person to do so. An employer whose work or property has been sabotaged shall be authorized to bring a civil action to recover compensatory and punitive damages.

DAMAGING OR INTERFERING WITH EMPLOYER'S BUSINESS

It shall be a violation of state law for any person to seek or obtain employment with an employer for the purpose or damaging or interfering with the employer's business, or for any person to conspire with or direct another person to do so. An employer whose business has been damaged or interfered with shall be authorized to bring a civil action to recover compensatory and punitive damages.

INTERFERENCE WITH EMPLOYMENT

It shall be a violation of state law for any person to seek or obtain employment with an employer for the purpose of persuading or attempting to persuade other employees to quit their employment, or for conspiring with or directing another employee to do so. An employer who has been the subject of such a violation shall be authorized to bring a civil action to recover compensatory and punitive damages.

Small Business Regulatory Flexibility

Model Legislation

A BILL

To improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

Findings

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) Small businesses bear a disproportionate share of regulatory costs and burdens;

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) When adopting regulations to protect the health, safety, and economic welfare of [State], state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses with limited resources;

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

(10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

Section 1. Short Title

This act may be cited as the Regulatory Flexibility Act of [2006].

Section 2. Definitions

(a) As used in this section:

(1) "Agency" means each state board, commission, department, or officer authorized by law to make regulations or to determine contested cases;

(2) "Proposed regulation" means a proposal by an agency for a new regulation or for a change in, addition to, or repeal of an existing regulation;

(3) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings, or (C) intra-agency or interagency memoranda;

(4) "Small business" means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than [five hundred] full-time employees or has gross annual sales of less than [six] million dollars.

Section 3. Economic Impact Statements

(a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of the small businesses subject to the proposed regulation;

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(3) A statement of the probable effect on impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Section 4. Regulatory Flexibility Analysis

(a) Prior to the adoption of any proposed regulation on and after [January 1, 2007], each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses;

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) The consolidation or simplification of compliance or reporting requirements for small businesses;

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the [Department of Economic and Community Development or similar state department or council that exists to review regulations] of its intent to adopt the proposed regulation. The [Department of Economic and Community Development or similar state department or council that exists to review regulations] shall advise and assist agencies in complying with the provisions of this section.

Section 5. Judicial Review

(a) For any regulation subject to this section, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section.

(b) A small business may seek such review during the period beginning on the date of final agency action and ending one year later.

Section 6. Periodic Review of Rules

(a) Within four years of the enactment of this law, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this law should be reviewed every five years of the publication of such rules as the final rule to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Key Elements of Advocacy's Model Bill

Every state has some form of administrative procedure law that governs the agency rulemaking process, and many states currently have provisions that pertain to regulations affecting small businesses and provide for regulatory flexibility. However, recognizing that some laws are missing key components that give regulatory flexibility its effectiveness, legislators continue to introduce legislation to strengthen their current systems.

"I think that our passage of a law requiring all South Dakota governmental agencies to complete and file small business impact statements whenever they promulgate new rules is one of the best things we have ever done for small business."
—Jerry Wheeler, Executive Director, South Dakota Retailers Association

Advocacy's model legislation is patterned after the federal regulatory flexibility law and contains the following five key elements: 1) a small business definition; 2) an economic impact analysis; 3) a regulatory flexibility analysis; 4) periodic review of existing regulations; and 5) judicial review.

Small Business Definition

It is important for "small business" to be defined by statute and for the definition to be consistent with how other laws and/or permitting authorities within the state characterize "small." If there is no such definition currently provided by statute, states generally use the number of employees and/or the gross annual sales of the entity to define "small business."

Economic Impact Analysis

Pursuant to most state administrative procedure laws, agencies are already required to prepare some form of economic impact analysis to determine how the proposed regulation will affect the entities being regulated. Segmenting out the impact on small business is a necessary additional step in the analysis because small businesses bear a disproportionate share of regulatory costs and burdens. By recognizing the cost of a regulation to small businesses and the differences in scale and resources of regulated businesses, agencies are able to craft regulations that consider the uniqueness of small businesses. As a result, small businesses are better able to comply with agency rules and to survive in a competitive marketplace.

"This in turn will mean that agencies specified in the bill will have to consider the adverse impacts to small business before promulgating regulations. I am encouraged by this move to help return common sense to the regulatory process affecting this very important sector of our economy."—Alaska Governor Frank Murkowski

Regulatory Flexibility Analysis

Sometimes, because of their size, the aggregate importance of small businesses in the economy is overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them. The intent of Advocacy's model legislation is to require regulatory agencies to consider small businesses when regulations are developed and particularly to consider whether there are alternative regulatory solutions that do not unduly burden small business but still accomplish the agency goal.

Tailoring regulatory proposals to the unique needs of small business saves small employers money that is better used to hire additional employees, provide health care, train existing staff, and upgrade their facilities and equipment. This can be accomplished without sacrificing health, safety, and welfare issues of major importance to state governments.

Judicial Review

The federal regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996.

The effect of the 1996 law was to give the RFA some "teeth" and to focus the heightened attention of regulatory officials on small business issues. Approximately 4,000 regulations are finalized in any given year. Only 12 to 13 lawsuits that cite noncompliance with the RFA have been filed per year since federal judicial review was enacted in 1996. Allowing small businesses to challenge state agencies for failure to adequately consider their impact on small business during the regulatory process is critical, as it provides an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis.

"Adding judicial review is an important step forward for our state's small businesses. Now the law has some teeth, and that will help small business and state agencies work together to produce good regulations that get the job done without causing serious harm. It means a better business and job-creating climate for Missouri."—Scott George, President and CEO of Mid American Dental and Hearing Center, Mt. Vernon, MO

Periodic Review

Existing regulations may also unduly burden small businesses because the rule may no longer serve its purpose, may be duplicated by newer federal or state legislation, or may have been promulgated without consideration of the effects on small businesses. Also, given the length of time that may have passed since the rule was promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rule. Therefore, it is critical that agencies review rules periodically to determine whether they should be continued without change, amended, or rescinded to minimize the economic impact of the rule on small businesses.

A clear example of how benefits can be derived from efforts to periodically review existing regulations comes from the Massachusetts Office of Consumer Affairs and Business Regulation (OCABR). OCABR has implemented a comprehensive 10-month review of every regulation promulgated by OCABR agencies to identify those that have become outdated or irrelevant. After publishing the proposed revisions, OCABR held a series of public hearings that gave affected small entities the opportunity to voice concerns about existing regulations and the proposed changes. OCABR was then able to refine the proposed changes based on this input.

The review is still in progress; however, approximately 50 pages of regulations have already been eliminated. Also as a result of this review process, the remaining rules are more precisely tailored, easier for regulated entities to understand, and less difficult for agency personnel to apply. OCABR also recognized that because the review process is now in place, future analyses should take considerably less time.

Exemptions

Even the strongest regulatory flexibility law has little value if most agencies and/or certain rules are exempt from it. Therefore, legislation should provide exemptions only to agencies or rules when it is absolutely necessary.

Fiscal Notes

During a time of tight state budgets, a common question is how much it will cost a state to implement regulatory flexibility for small businesses. The answer is that implementing a regulatory flexibility system can be accomplished at minimal to no additional cost to the state. In fact, the state saves money by getting input on costly or unnecessary regulation prior to implementation. Requiring small business analysis, input, and consideration of less burdensome alternatives ensures that state agencies make good final decisions. On the other hand, if regulations are poorly written and do not consider small businesses, they may need to be rewritten, which is more costly to state government than doing a thorough analysis the first time.

*Trained in FY 2003

Implementing regulatory flexibility for small businesses also does not require state agencies to incur excessive compliance costs for the preparation of the economic impact and regulatory flexibility analyses. Many states already conduct a general regulatory flexibility analysis. Segmenting out the impact on small business is a necessary additional step in the analysis. Moreover, rules that are finalized without adequate impact analysis run the risk of being more costly to both citizens and state agencies. And it is not in the interest of state agencies to propose and finalize a rule that small businesses cannot comply with and that causes widespread industry burdens resulting in layoffs and business closures.

Regulatory Flexibility Implementation

In states that have passed regulatory flexibility laws, the Office of Advocacy works with the small business community, state legislators, and state government agencies (usually the department of economic development) to assist with implementation and to ensure its effectiveness. Small business owners are the greatest resource that agencies can use to understand how regulations affect small businesses and what alternatives may be less burdensome.

"Our regulatory flexibility laws help to ensure a level playing field for South Carolina's small business."—Monty Felix, Alaglass Pools, Saint Matthews, SC, and chairman of the South Carolina Small Business Regulatory Review Committee

One of the most successful tools in communicating with small businesses and facilitating the implementation of regulatory flexibility legislation has been use of a free email regulatory alert system. A regulatory alert system allows interested parties to sign up and receive automatic regulatory alerts when agencies file a notice for a proposed rule that may affect their small business. Creating a user-friendly Internet-based tool allows small business owners, trade associations, chambers of commerce and/or other interested parties to stay on top of agency activities that may have an impact on small businesses. It also provides an avenue through which stakeholders can voice their concerns about the adverse impact of a proposed rule and suggest regulatory alternatives that are less burdensome.

Advocacy's state model legislation has been successful because policymakers across the country are realizing that regulatory flexibility is an economic development tool. More than 23.7 million small businesses in the United States create between 60 and 80 percent of the net new jobs in the U.S. economy. There is also no question that small businesses are the driving force of the economy in each state across the country.

"Giving small business owners a seat at the table when regulatory decisions are made allows for their voices to be heard and ensures that better decisions are made. This means more jobs and growth at the state and local levels."—Thomas M. Sullivan, Chief Counsel for Advocacy

http://www.sba.gov/advo/laws/law_modeleg.html

Vocational/Technical Education Expansion

1. Michigan Vocational/Technical Education Expansion

HOUSE BILL No. 4410

February 24, 2009, Introduced by Reps. Sheltrown, Hansen, Ball, Mayes, Bauer, Nerat, Lindberg, Cushingberry, Constan, Neumann, Lemmons, Geiss, Slezak, Haase, Young, Calley and Dean and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled

"The revised school code,"

by amending sections 1278a, 1278b, and 1280 (MCL 380.1278a, 380.1278b, and 380.1280), section 1278a as amended by 2008 PA 316, section 1278b as amended by 2007 PA 141, and section 1280 as amended by 2006 PA 123, and by adding section 1278c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1278a. (1) Except as otherwise provided in this section, ~~or~~ section 1278b, **OR SECTION 1278C,** beginning with pupils entering grade 8 in 2006, the board of a school district or board of directors of a public school academy shall not award a high school diploma to a pupil unless the pupil meets all of the following:

(a) Has successfully completed all of the following credit requirements of the Michigan merit standard before graduating from

HOUSE BILL No. 4410

district or public school academy making satisfactory progress toward full implementation of the requirements of this section and section 1278a. If the department disapproves a proposed phase-in plan, the department shall work with the school district or public school academy to develop a satisfactory plan that may be approved. However, if legislation is enacted that adds section 1290 to allow school districts and public school academies to apply for a contract that waives certain state or federal requirements, then this subsection does not apply but a school district or public school academy may take action as described in subsection (13). This subsection does not apply to a high school that is designated as a specialty school under section 1278a(5) and that is exempt under that section from the English language arts requirement under subsection (1)(a) and the social science credit requirement under section 1278a(1)(a)(*ii*).

(13) If a school district or public school academy does not offer all of the required credits or provide options to have access to the required credits as provided under subsection (8) and if legislation is enacted that adds section 1290 to allow school districts and public school academies to apply for a contract that waives certain state or federal requirements, then the school district or public school academy is encouraged to apply for a contract under section 1290. The purpose of a contract described in this subsection is to improve pupil performance.

(14) This section**,** ~~and~~ section 1278a**, AND SECTION 1278C** do not prohibit a pupil from satisfying or exceeding the credit requirements of the Michigan merit standard under this section and

section 1278a **OR THE GENERAL DIPLOMA CURRICULUM UNDER SECTION 1278C** through advanced studies such as accelerated course placement, advanced placement, dual enrollment in a postsecondary institution, or participation in the international baccalaureate program or an early college/middle college program.

(15) Not later than April 1 of each year, the department shall submit an annual report to the legislature that evaluates the overall success of the curriculum required under this section and section 1278a **AND OF THE GENERAL DIPLOMA CURRICULUM REQUIRED UNDER SECTION 1278C**, the rigor and relevance of the course work required by ~~the curriculum~~ **THOSE CURRICULA**, the ability of public schools to implement the ~~curriculum~~ **CURRICULA** and the required course work, and the impact of the ~~curriculum~~ **CURRICULA** on pupil success, and that details any activities the department has undertaken to implement this section, ~~and~~ section 1278a**, AND SECTION 1278C** or to assist public schools in implementing the requirements of this section, ~~and~~ section 1278a**, AND SECTION 1278C**.

SEC. 1278C. (1) BEGINNING WITH PUPILS ENTERING GRADE 8 IN 2006, THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY SHALL NOT AWARD A HIGH SCHOOL DIPLOMA TO A PUPIL UNLESS THE PUPIL EITHER MEETS THE REQUIREMENTS FOR THE MICHIGAN MERIT STANDARD UNDER SECTIONS 1278A AND 1278B OR MEETS THE REQUIREMENTS UNDER THIS SECTION FOR A GENERAL DIPLOMA. THE REQUIREMENTS FOR A GENERAL DIPLOMA ARE AS FOLLOWS:

(A) HAS SUCCESSFULLY COMPLETED ALL OF THE FOLLOWING CREDIT REQUIREMENTS BEFORE GRADUATING FROM HIGH SCHOOL:

(*i*) AT LEAST 3 CREDITS IN MATHEMATICS THAT ARE ALIGNED WITH

SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B, INCLUDING COMPLETION OF AT LEAST ALGEBRA I OR THE INTEGRATED EQUIVALENT IN A CAREER AND TECHNICAL PREPARATION COURSE, GEOMETRY OR THE INTEGRATED EQUIVALENT IN A CAREER AND TECHNICAL PREPARATION COURSE, AND AN ADDITIONAL MATHEMATICS CREDIT.

(*ii*) AT LEAST 4 CREDITS IN ENGLISH LANGUAGE ARTS THAT ARE ALIGNED WITH SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

(*iii*) AT LEAST 2 CREDITS IN SCIENCE THAT ARE ALIGNED WITH SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B, INCLUDING COMPLETION OF AT LEAST BIOLOGY AND AN ADDITIONAL SCIENCE CREDIT.

(*iv*) AT LEAST 2 CREDITS IN SOCIAL SCIENCE THAT ARE ALIGNED WITH SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B, INCLUDING COMPLETION OF AT LEAST THE CIVICS COURSE DESCRIBED IN SECTION 1166(2).

(*v*) AT LEAST 1 CREDIT IN SUBJECT MATTER THAT INCLUDES BOTH HEALTH AND PHYSICAL EDUCATION ALIGNED WITH GUIDELINES DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

(*vi*) AT LEAST 3 CREDITS IN A CAREER AND TECHNICAL PREPARATION ACADEMIC SEQUENCE, ALIGNED WITH GUIDELINES DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

(*vii*) AT LEAST 1 ADDITIONAL CREDIT THAT IS ALIGNED WITH GUIDELINES DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

(B) MEETS THE ONLINE COURSE OR LEARNING EXPERIENCE REQUIREMENT OF SECTION 1278A(1)(B).

(2) IN ADDITION TO THE REQUIREMENTS UNDER SUBSECTION (1), BEGINNING WITH PUPILS ENTERING GRADE 3 IN 2006, THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY SHALL NOT AWARD A HIGH SCHOOL DIPLOMA TO A PUPIL UNLESS THE PUPIL HAS SUCCESSFULLY COMPLETED DURING GRADES 9 TO 12 AT LEAST 2 CREDITS, AS DETERMINED BY THE DEPARTMENT, IN A LANGUAGE OTHER THAN ENGLISH, OR THE PUPIL HAS SUCCESSFULLY COMPLETED AT ANY TIME DURING GRADES K TO 12 COURSE WORK OR OTHER LEARNING EXPERIENCES THAT ARE SUBSTANTIALLY EQUIVALENT TO 2 CREDITS IN A LANGUAGE OTHER THAN ENGLISH, BASED ON GUIDELINES DEVELOPED BY THE DEPARTMENT. FOR THE PURPOSES OF THIS SUBSECTION, ALL OF THE FOLLOWING APPLY:

(A) AMERICAN SIGN LANGUAGE IS CONSIDERED TO BE A LANGUAGE OTHER THAN ENGLISH.

(B) THE PUPIL MAY MEET ALL OR PART OF THIS REQUIREMENT WITH ONLINE COURSE WORK.

(3) THE REQUIREMENTS UNDER THIS SECTION FOR A GENERAL DIPLOMA ARE IN ADDITION TO ANY LOCAL REQUIREMENTS IMPOSED BY THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY. THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, AS A LOCAL REQUIREMENT FOR A GENERAL DIPLOMA UNDER THIS SECTION, MAY REQUIRE A PUPIL TO COMPLETE SOME OR ALL OF THE SUBJECT AREA ASSESSMENTS UNDER SECTION 1279 OR THE MICHIGAN MERIT EXAMINATION UNDER SECTION 1279G, AS APPLICABLE TO THE PUPIL UNDER SECTION 1279G, OR MAY REQUIRE A PUPIL TO PARTICIPATE IN THE MIACCESS ASSESSMENTS IF APPROPRIATE FOR THE PUPIL.

(4) FOR THE PURPOSES OF THIS SECTION, ALL OF THE FOLLOWING APPLY:

(A) A PUPIL IS CONSIDERED TO HAVE COMPLETED A CREDIT IF THE PUPIL SUCCESSFULLY COMPLETES THE SUBJECT AREA CONTENT EXPECTATIONS OR GUIDELINES DEVELOPED BY THE DEPARTMENT THAT APPLY TO THE CREDIT.

(B) A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY SHALL BASE ITS DETERMINATION OF WHETHER A PUPIL HAS SUCCESSFULLY COMPLETED THE SUBJECT AREA CONTENT EXPECTATIONS OR GUIDELINES DEVELOPED BY THE DEPARTMENT THAT APPLY TO A CREDIT AT LEAST IN PART ON THE PUPIL'S PERFORMANCE ON THE ASSESSMENTS DEVELOPED OR SELECTED BY THE DEPARTMENT UNDER SECTION 1278B OR ON 1 OR MORE ASSESSMENTS DEVELOPED OR SELECTED BY THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY THAT MEASURE A PUPIL'S UNDERSTANDING OF THE SUBJECT AREA CONTENT EXPECTATIONS OR GUIDELINES THAT APPLY TO THE CREDIT.

(C) A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY SHALL ALSO GRANT A PUPIL A CREDIT IF THE PUPIL EARNS A QUALIFYING SCORE, AS DETERMINED BY THE DEPARTMENT, ON THE ASSESSMENTS DEVELOPED OR SELECTED FOR THE SUBJECT AREA BY THE DEPARTMENT UNDER SECTION 1278B OR THE PUPIL EARNS A QUALIFYING SCORE, AS DETERMINED BY THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY, ON 1 OR MORE ASSESSMENTS DEVELOPED OR SELECTED BY THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY THAT MEASURE A PUPIL'S UNDERSTANDING OF THE SUBJECT AREA CONTENT EXPECTATIONS OR GUIDELINES THAT APPLY TO THE CREDIT.

(5) IF A HIGH SCHOOL IS DESIGNATED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION AS A SPECIALTY SCHOOL AND THE HIGH SCHOOL MEETS THE REQUIREMENTS OF SUBSECTION (6), THEN THE PUPILS OF THE HIGH SCHOOL ARE NOT REQUIRED TO SUCCESSFULLY COMPLETE THE 4 CREDITS IN

ENGLISH LANGUAGE ARTS OR THE 2 CREDITS IN SOCIAL SCIENCE REQUIRED UNDER SUBSECTION (1)(A) AND THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY IS NOT REQUIRED TO ENSURE THAT EACH PUPIL IS OFFERED THE CURRICULUM NECESSARY FOR MEETING THOSE ENGLISH LANGUAGE ARTS OR SOCIAL SCIENCE CREDIT REQUIREMENTS. THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY DESIGNATE UP TO 15 HIGH SCHOOLS THAT MEET THE REQUIREMENTS OF THIS SUBSECTION AS SPECIALTY SCHOOLS. SUBJECT TO THIS MAXIMUM NUMBER, THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL DESIGNATE A HIGH SCHOOL AS A SPECIALTY SCHOOL IF THE SUPERINTENDENT OF PUBLIC INSTRUCTION FINDS THAT THE HIGH SCHOOL MEETS ALL OF THE FOLLOWING CRITERIA:

(A) THE HIGH SCHOOL INCORPORATES A SIGNIFICANT READING AND WRITING COMPONENT THROUGHOUT ITS CURRICULUM.

(B) THE HIGH SCHOOL USES A SPECIALIZED, INNOVATIVE, AND RIGOROUS CURRICULUM IN SUCH AREAS AS PERFORMING ARTS, FOREIGN LANGUAGE, EXTENSIVE USE OF INTERNSHIPS, OR OTHER LEARNING INNOVATIONS THAT CONFORM TO PIONEERING INNOVATIONS AMONG OTHER LEADING NATIONAL OR INTERNATIONAL HIGH SCHOOLS.

(6) A HIGH SCHOOL THAT IS DESIGNATED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION AS A SPECIALTY SCHOOL UNDER SUBSECTION (5) IS ONLY EXEMPT FROM REQUIREMENTS AS DESCRIBED UNDER SUBSECTION (5) AS LONG AS THE SUPERINTENDENT OF PUBLIC INSTRUCTION FINDS THAT THE HIGH SCHOOL CONTINUES TO MEET ALL OF THE FOLLOWING REQUIREMENTS:

(A) THE HIGH SCHOOL CLEARLY STATES TO PROSPECTIVE PUPILS AND THEIR PARENTS THAT IT DOES NOT MEET THE REQUIREMENTS OF THE GENERAL DIPLOMA CURRICULUM UNDER THIS SECTION BUT IS A DESIGNATED SPECIALTY SCHOOL THAT IS EXEMPT FROM SOME OF THOSE REQUIREMENTS AND THAT A

PUPIL WHO ENROLLS IN THE HIGH SCHOOL AND SUBSEQUENTLY TRANSFERS TO A HIGH SCHOOL THAT IS NOT A SPECIALTY SCHOOL MEETING THE REQUIREMENTS OF THIS SUBSECTION WILL BE REQUIRED TO COMPLY WITH THE REQUIREMENTS OF THE MICHIGAN MERIT STANDARD UNDER SECTIONS 1278A AND 1278B OR OF THE GENERAL DIPLOMA CURRICULUM UNDER THIS SECTION.

(B) FOR THE MOST RECENT YEAR FOR WHICH THE DATA ARE AVAILABLE, THE MEAN SCORES ON BOTH THE MATHEMATICS AND SCIENCE PORTIONS OF THE ACT EXAMINATION FOR THE PUPILS OF THE HIGH SCHOOL EXCEED BY AT LEAST 10% THE MEAN SCORES ON THE MATHEMATICS AND SCIENCE PORTIONS OF THE ACT EXAMINATION FOR THE PUPILS OF THE SCHOOL DISTRICT IN WHICH THE GREATEST NUMBER OF THE PUPILS OF THE HIGH SCHOOL RESIDE.

(C) FOR THE MOST RECENT YEAR FOR WHICH THE DATA ARE AVAILABLE, THE HIGH SCHOOL HAD A GRADUATION RATE OF AT LEAST 85%, AS DETERMINED BY THE DEPARTMENT.

(D) FOR THE MOST RECENT YEAR FOR WHICH THE DATA ARE AVAILABLE, AT LEAST 75% OF THE PUPILS WHO GRADUATED FROM THE HIGH SCHOOL THE PRECEDING YEAR ARE ENROLLED IN A POSTSECONDARY INSTITUTION.

(E) ALL PUPILS OF THE HIGH SCHOOL ARE REQUIRED TO MEET THE MATHEMATICS CREDIT REQUIREMENTS OF SUBSECTION (1)(A), WITH NO MODIFICATION OF THESE REQUIREMENTS UNDER SUBSECTION (8), AND EACH PUPIL IS OFFERED THE CURRICULUM NECESSARY TO MEET THIS REQUIREMENT.

(F) ALL PUPILS OF THE HIGH SCHOOL ARE REQUIRED TO MEET THE SCIENCE CREDIT REQUIREMENTS OF SUBSECTION (1)(A) AND ARE ALSO REQUIRED TO SUCCESSFULLY COMPLETE AT LEAST 2 ADDITIONAL SCIENCE CREDITS, FOR A TOTAL OF AT LEAST 4 SCIENCE CREDITS, WITH NO MODIFICATION OF THESE REQUIREMENTS UNDER SUBSECTION (8), AND EACH PUPIL IS OFFERED THE CURRICULUM NECESSARY TO MEET THIS REQUIREMENT.

(7) IF A PUPIL SUCCESSFULLY COMPLETES 1 OR MORE OF THE HIGH SCHOOL CREDITS REQUIRED UNDER SUBSECTION (1) BEFORE ENTERING HIGH SCHOOL, THE PUPIL SHALL BE GIVEN HIGH SCHOOL CREDIT FOR THAT CREDIT.

(8) THE PARENT OR LEGAL GUARDIAN OF A PUPIL MAY REQUEST A PERSONAL CURRICULUM UNDER THIS SUBSECTION FOR THE PUPIL THAT MODIFIES CERTAIN OF THE GENERAL DIPLOMA CURRICULUM REQUIREMENTS UNDER SUBSECTION (1). IF ALL OF THE REQUIREMENTS UNDER THIS SUBSECTION FOR A PERSONAL CURRICULUM ARE MET, THEN THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY MAY AWARD A HIGH SCHOOL DIPLOMA TO A PUPIL WHO SUCCESSFULLY COMPLETES HIS OR HER PERSONAL CURRICULUM EVEN IF IT DOES NOT MEET THE REQUIREMENTS OF THE GENERAL DIPLOMA CURRICULUM REQUIRED UNDER SUBSECTION (1). ALL OF THE FOLLOWING APPLY TO A PERSONAL CURRICULUM:

(A) THE PERSONAL CURRICULUM SHALL BE DEVELOPED BY A GROUP THAT INCLUDES AT LEAST THE PUPIL, AT LEAST 1 OF THE PUPIL'S PARENTS OR THE PUPIL'S LEGAL GUARDIAN, AND THE PUPIL'S HIGH SCHOOL COUNSELOR OR ANOTHER DESIGNEE QUALIFIED TO ACT IN A COUNSELING ROLE UNDER SECTION 1233 OR 1233A SELECTED BY THE HIGH SCHOOL PRINCIPAL. IN ADDITION, FOR A PUPIL WHO RECEIVES SPECIAL EDUCATION SERVICES, A SCHOOL PSYCHOLOGIST SHOULD ALSO BE INCLUDED IN THIS GROUP.

(B) THE PERSONAL CURRICULUM SHALL INCORPORATE AS MUCH OF THE SUBJECT AREA CONTENT EXPECTATIONS OF THE GENERAL DIPLOMA CURRICULUM REQUIRED UNDER SUBSECTION (1) AS IS PRACTICABLE FOR THE PUPIL; SHALL ESTABLISH MEASURABLE GOALS THAT THE PUPIL MUST ACHIEVE WHILE ENROLLED IN HIGH SCHOOL AND SHALL PROVIDE A METHOD TO EVALUATE

WHETHER THE PUPIL ACHIEVED THESE GOALS; AND SHALL BE ALIGNED WITH THE PUPIL'S EDUCATIONAL DEVELOPMENT PLAN DEVELOPED UNDER SECTION 1278B(11).

(C) BEFORE IT TAKES EFFECT, THE PERSONAL CURRICULUM MUST BE AGREED TO BY THE PUPIL'S PARENT OR LEGAL GUARDIAN AND BY THE SUPERINTENDENT OF THE SCHOOL DISTRICT OR CHIEF EXECUTIVE OF THE PUBLIC SCHOOL ACADEMY OR HIS OR HER DESIGNEE.

(D) THE PUPIL'S PARENT OR LEGAL GUARDIAN SHALL BE IN COMMUNICATION WITH EACH OF THE PUPIL'S TEACHERS AT LEAST ONCE EACH CALENDAR QUARTER TO MONITOR THE PUPIL'S PROGRESS TOWARD THE GOALS CONTAINED IN THE PUPIL'S PERSONAL CURRICULUM.

(E) REVISIONS MAY BE MADE IN THE PERSONAL CURRICULUM IF THE REVISIONS ARE DEVELOPED AND AGREED TO IN THE SAME MANNER AS THE ORIGINAL PERSONAL CURRICULUM.

(F) THE ENGLISH LANGUAGE ARTS AND SCIENCE CREDIT REQUIREMENTS OF SUBSECTION (1) ARE NOT SUBJECT TO MODIFICATION AS PART OF A PERSONAL CURRICULUM UNDER THIS SUBSECTION.

(G) THE MATHEMATICS CREDIT REQUIREMENTS OF SUBSECTION (1) MAY BE MODIFIED AS PART OF A PERSONAL CURRICULUM ONLY AFTER THE PUPIL HAS SUCCESSFULLY COMPLETED AT LEAST 1-1/2 CREDITS OF THE MATHEMATICS CREDITS REQUIRED UNDER THAT SECTION AND ONLY IF THE PUPIL SUCCESSFULLY COMPLETES AT LEAST 2-1/2 TOTAL CREDITS OF THE MATHEMATICS CREDITS REQUIRED UNDER THAT SECTION BEFORE COMPLETING HIGH SCHOOL.

(H) THE CIVICS COURSE DESCRIBED IN SECTION 1166(2) IS NOT SUBJECT TO MODIFICATION AS PART OF A PERSONAL CURRICULUM UNDER THIS SUBSECTION.

(I) THE HEALTH AND PHYSICAL EDUCATION CREDIT REQUIREMENT UNDER SECTION 1278A(1)(A)(*iii*) MAY BE MODIFIED AS PART OF A PERSONAL CURRICULUM ONLY IF THE MODIFICATION REQUIRES THE PUPIL TO COMPLETE 1 ADDITIONAL CREDIT IN ENGLISH LANGUAGE ARTS, MATHEMATICS, OR SCIENCE OR 1 ADDITIONAL CREDIT IN A LANGUAGE OTHER THAN ENGLISH. THIS ADDITIONAL CREDIT MUST BE IN ADDITION TO THE NUMBER OF THOSE CREDITS OTHERWISE REQUIRED UNDER SUBSECTION (1).

(J) IF THE PARENT OR LEGAL GUARDIAN OF A PUPIL REQUESTS AS PART OF THE PUPIL'S PERSONAL CURRICULUM A MODIFICATION OF THE GENERAL EDUCATION CURRICULUM REQUIREMENTS THAT WOULD NOT OTHERWISE BE ALLOWED UNDER THIS SECTION AND DEMONSTRATES THAT THE MODIFICATION IS NECESSARY BECAUSE THE PUPIL IS A CHILD WITH A DISABILITY, THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY ALLOW THAT ADDITIONAL MODIFICATION TO THE EXTENT NECESSARY BECAUSE OF THE PUPIL'S DISABILITY IF THE GROUP UNDER SUBDIVISION (A) DETERMINES THAT THE MODIFICATION IS CONSISTENT WITH BOTH THE PUPIL'S EDUCATIONAL DEVELOPMENT PLAN UNDER SECTION 1278B(11) AND THE PUPIL'S INDIVIDUALIZED EDUCATION PROGRAM. IF THE SUPERINTENDENT OF PUBLIC INSTRUCTION HAS REASON TO BELIEVE THAT A SCHOOL DISTRICT OR A PUBLIC SCHOOL ACADEMY IS ALLOWING MODIFICATIONS INCONSISTENT WITH THE REQUIREMENTS OF THIS SUBDIVISION, THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL MONITOR THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY TO ENSURE THAT THE SCHOOL DISTRICT'S OR PUBLIC SCHOOL ACADEMY'S POLICIES, PROCEDURES, AND PRACTICES ARE IN COMPLIANCE WITH THE REQUIREMENTS FOR ADDITIONAL MODIFICATIONS UNDER THIS SUBDIVISION. AS USED IN THIS SUBDIVISION, "CHILD WITH A DISABILITY" MEANS THAT TERM AS DEFINED IN 20 USC 1401.

(K) IF A PUPIL TRANSFERS TO A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY FROM OUT OF STATE OR FROM A NONPUBLIC SCHOOL, THE PUPIL'S PARENT OR LEGAL GUARDIAN MAY REQUEST, AS PART OF THE PUPIL'S PERSONAL CURRICULUM, A MODIFICATION OF THE GENERAL DIPLOMA CURRICULUM REQUIREMENTS THAT WOULD NOT OTHERWISE BE ALLOWED UNDER THIS SECTION. THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY ALLOW THIS ADDITIONAL MODIFICATION FOR A TRANSFER PUPIL IF ALL OF THE FOLLOWING ARE MET:

(*i*) THE TRANSFER PUPIL HAS SUCCESSFULLY COMPLETED AT LEAST THE EQUIVALENT OF 2 YEARS OF HIGH SCHOOL CREDIT OUT OF STATE OR AT A NONPUBLIC SCHOOL. THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY USE APPROPRIATE ASSESSMENT EXAMINATIONS TO DETERMINE WHAT CREDITS, IF ANY, THE PUPIL HAS EARNED OUT OF STATE OR AT A NONPUBLIC SCHOOL THAT MAY BE USED TO SATISFY THE CURRICULAR REQUIREMENTS OF THE GENERAL DIPLOMA CURRICULUM AND THIS SUBDIVISION.

(*ii*) THE TRANSFER PUPIL'S PERSONAL CURRICULUM INCORPORATES AS MUCH OF THE SUBJECT AREA CONTENT EXPECTATIONS OF THE GENERAL DIPLOMA CURRICULUM AS IS PRACTICABLE FOR THE PUPIL.

(*iii*) THE TRANSFER PUPIL'S PERSONAL CURRICULUM REQUIRES THE PUPIL TO SUCCESSFULLY COMPLETE AT LEAST 1 MATHEMATICS COURSE DURING HIS OR HER FINAL YEAR OF HIGH SCHOOL ENROLLMENT. IN ADDITION, IF THE TRANSFER PUPIL IS ENROLLED IN THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY FOR AT LEAST 1 FULL SCHOOL YEAR, BOTH OF THE FOLLOWING APPLY:

(A) THE TRANSFER PUPIL'S PERSONAL CURRICULUM SHALL REQUIRE THAT THIS MATHEMATICS COURSE IS AT LEAST ALGEBRA I.

(B) IF THE TRANSFER PUPIL DEMONSTRATES THAT HE OR SHE HAS

MASTERED THE CONTENT OF ALGEBRA I, THE TRANSFER PUPIL'S PERSONAL CURRICULUM SHALL REQUIRE THAT THIS MATHEMATICS COURSE IS A COURSE NORMALLY TAKEN AFTER COMPLETING ALGEBRA I.

(*iv*) THE TRANSFER PUPIL'S PERSONAL CURRICULUM INCLUDES THE CIVICS COURSE DESCRIBED IN SECTION 1166(2).

(*l*) IF A PUPIL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR, THE PUPIL MAY ACT ON HIS OR HER OWN BEHALF UNDER THIS SUBSECTION.

(M) THIS SUBSECTION DOES NOT APPLY TO A PUPIL ENROLLED IN A HIGH SCHOOL THAT IS DESIGNATED AS A SPECIALTY SCHOOL UNDER SUBSECTION (5) AND THAT IS EXEMPT UNDER THAT SUBSECTION FROM THE ENGLISH LANGUAGE ARTS AND SOCIAL SCIENCE CREDIT REQUIREMENTS UNDER SUBSECTION (1)(A).

(9) IF A PUPIL RECEIVES SPECIAL EDUCATION SERVICES, THE PUPIL'S INDIVIDUALIZED EDUCATION PROGRAM, IN ACCORDANCE WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, TITLE VI OF PUBLIC LAW 91-230, SHALL IDENTIFY THE APPROPRIATE COURSE OR COURSES OF STUDY AND IDENTIFY THE SUPPORTS, ACCOMMODATIONS, AND MODIFICATIONS NECESSARY TO ALLOW THE PUPIL TO PROGRESS IN THE CURRICULAR REQUIREMENTS OF THIS SECTION, OR IN A PERSONAL CURRICULUM AS PROVIDED UNDER SUBSECTION (8), AND MEET THE REQUIREMENTS FOR A HIGH SCHOOL DIPLOMA.

(10) THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY THAT OPERATES A HIGH SCHOOL SHALL ENSURE THAT EACH PUPIL IS OFFERED THE CURRICULUM NECESSARY FOR THE PUPIL TO MEET THE CURRICULAR REQUIREMENTS OF THIS SECTION. THE BOARD OR BOARD OF DIRECTORS MAY PROVIDE THIS CURRICULUM BY PROVIDING THE CREDITS SPECIFIED IN THIS SECTION, BY USING ALTERNATIVE

INSTRUCTIONAL DELIVERY METHODS SUCH AS ALTERNATIVE COURSE WORK, HUMANITIES COURSE SEQUENCES, CAREER AND TECHNICAL EDUCATION, INDUSTRIAL TECHNOLOGY COURSES, OR CAREER AND TECHNICAL PREPARATION EDUCATION, OR BY A COMBINATION OF THESE. SCHOOL DISTRICTS AND PUBLIC SCHOOL ACADEMIES THAT OPERATE CAREER AND TECHNICAL EDUCATION PROGRAMS ARE ENCOURAGED TO INTEGRATE THE CREDIT REQUIREMENTS OF THIS SECTION INTO THOSE PROGRAMS.

(11) IF THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY WANTS ITS HIGH SCHOOL TO BE ACCREDITED UNDER SECTION 1280, THE BOARD OR BOARD OF DIRECTORS SHALL ENSURE THAT ALL ELEMENTS OF THE CURRICULUM REQUIRED UNDER THIS SECTION ARE MADE AVAILABLE TO ALL AFFECTED PUPILS. IF A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY DOES NOT OFFER ALL OF THE REQUIRED CREDITS, THE BOARD OF THE SCHOOL DISTRICT OR BOARD OF DIRECTORS OF THE PUBLIC SCHOOL ACADEMY SHALL ENSURE THAT THE PUPIL HAS ACCESS TO THE REQUIRED CREDITS BY ANOTHER MEANS, SUCH AS ENROLLMENT IN A POSTSECONDARY COURSE UNDER THE POSTSECONDARY ENROLLMENT OPTIONS ACT, 1996 PA 160, MCL 388.511 TO 388.524; ENROLLMENT IN AN ONLINE COURSE; A COOPERATIVE ARRANGEMENT WITH A NEIGHBORING SCHOOL DISTRICT OR WITH A PUBLIC SCHOOL ACADEMY; OR GRANTING APPROVAL UNDER SECTION 6(6) OF THE STATE SCHOOL AID ACT OF 1979, MCL 388.1606, FOR THE PUPIL TO BE COUNTED IN MEMBERSHIP IN ANOTHER SCHOOL DISTRICT.

(12) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY IS UNABLE TO IMPLEMENT ALL OF THE CURRICULAR REQUIREMENTS OF THIS SECTION FOR PUPILS ENTERING GRADE 9 IN 2007 OR IS UNABLE TO IMPLEMENT ANOTHER REQUIREMENT OF

THIS SECTION, THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY APPLY TO THE DEPARTMENT FOR PERMISSION TO PHASE IN 1 OR MORE OF THE REQUIREMENTS OF THIS SECTION. TO APPLY, THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY SHALL SUBMIT A PROPOSED PHASE-IN PLAN TO THE DEPARTMENT. THE DEPARTMENT SHALL APPROVE A PHASE-IN PLAN IF THE DEPARTMENT DETERMINES THAT THE PLAN WILL RESULT IN THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAKING SATISFACTORY PROGRESS TOWARD FULL IMPLEMENTATION OF THE REQUIREMENTS OF THIS SECTION. IF THE DEPARTMENT DISAPPROVES A PROPOSED PHASE-IN PLAN, THE DEPARTMENT SHALL WORK WITH THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY TO DEVELOP A SATISFACTORY PLAN THAT MAY BE APPROVED. HOWEVER, IF LEGISLATION IS ENACTED THAT ADDS SECTION 1290 TO ALLOW SCHOOL DISTRICTS AND PUBLIC SCHOOL ACADEMIES TO APPLY FOR A CONTRACT THAT WAIVES CERTAIN STATE OR FEDERAL REQUIREMENTS, THEN THIS SUBSECTION DOES NOT APPLY BUT A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY TAKE ACTION AS DESCRIBED IN SECTION 1278B(13). THIS SUBSECTION DOES NOT APPLY TO A HIGH SCHOOL THAT IS DESIGNATED AS A SPECIALTY SCHOOL UNDER SUBSECTION (5) AND THAT IS EXEMPT UNDER THAT SUBSECTION FROM THE ENGLISH LANGUAGE ARTS AND SOCIAL SCIENCE REQUIREMENTS UNDER SUBSECTION (1)(A).

Sec. 1280. (1) The board of a school district that does not want to be subject to the measures described in this section shall ensure that each public school within the school district is accredited.

(2) As used in subsection (1), and subject to subsection (6), "accredited" means certified by the superintendent of public instruction as having met or exceeded standards established under

Workers' Compensation

1. Elimination of Double Recoveries Act
2. The Workplace Responsibility Act
3. Workers' Compensation as Exclusive Remedy Resolution

ELIMINATION OF DOUBLE RECOVERIES ACT

Summary

This Act permits juries to be informed of all sources of compensation an injured party will receive for an injury, such as insurance payments and other settlements. The purpose is to ensure that the jury has complete information regarding the compensation available to the plaintiff. The traditional evidentiary rule preventing juries from learning whether a plaintiff has been compensated for an injury (the Collateral Source Rule) has often led to double and even triple recoveries. This approach has encouraged plaintiffs and their lawyers to view the tort system as a lottery within which windfalls are possible.

ALEC's Elimination of Double Recovery Act allows the admission into evidence of proof of collateral source payments which already have been made or which are substantially certain to be made to the claimant as compensation for the same damages sought in the suit.

Model Legislation

{Title, enacting clause, etc.}

Section 1. This Act shall be known and may be cited as the **Elimination of Double Recoveries Act.**

Section 2. The following words, as used in this Act, shall have the meaning set forth below, unless the context clearly requires otherwise:

(A) "Collateral source" means a benefit paid or payable to the claimant or on his behalf, under, from, or pursuant to:

(1) the United States Social Security Act;

(2) any state or federal income replacement, disability, workers compensation, or other Act designed to provide partial or full wage or income replacement:

(3) any accident, health or sickness, income or wage replacement insurance, income disability insurance, casualty or property insurance including automobile accident and homeowners' insurance benefits, or any other insurance benefits, except life insurance benefits;

(4) any contract or agreement of any group, organization, partnership, or corporation, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services or provide similar benefits;

(5) any contractual or voluntary wage continuation plan, or payments made pursuant to such a plan, provided by an employer or otherwise, or any other system intended to

provide wages during a period of disability.

(B) "Claimant" means any person who brings a personal injury action, and if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if such an action is brought through or on behalf of a minor, the term includes the claimant's parent or guardian.

(C) "Damages" in this Act refer to economic losses paid or payable by collateral sources for wage loss, medical costs, rehabilitation cost, services, and other out-of-pocket costs incurred by or on behalf of a claimant for which that party is claiming recovery through a tort suit.

Section 3. {Admissibility of Evidence.}

(A) In all tort actions, regardless of the theory of liability under which they are brought, the court shall allow the admission into evidence of proof of collateral source payments which already have been made or which are substantially certain to be made to the claimant as compensation for the same damages sought in the suit. Proof of such payments shall be considered by the trier of fact in arriving at the amount of any award, and shall be considered by the court in reviewing awards made for excessiveness.

(B) The trier of fact shall be informed of the tax implication of all damage awards. The trier of fact may hear evidence of the premiums personally paid by the claimant to obtain any collateral sources paid or payable.

Section 4. {Special Damages Findings Required.}

(A) If liability is found in any tort action, regardless of the theory of liability, then the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:

(1) any past damages for:

(a) medical and other costs of health care;

(b) other economic loss; and

(c) noneconomic loss.

(2) any future damages and the periods over which they will accrue, on an annual basis, for each of the following types of damages:

(a) medical and other costs of health care;

(b) other economic loss; and

(c) noneconomic loss.

(B) The calculation of all future medical care and other costs of health care and future noneconomic loss shall reflect the costs and losses during the period of time the claimant will sustain those costs and losses. The calculation for other economic loss must be based on the losses during the period of time the claimant would have lived but for the injury upon which the claim is based.

Section 5. {Severability clause.}

Section 6. {Repealer clause.}

Section 7. {Effective date.}

THE WORKPLACE RESPONSIBILITY ACT

Summary

The Workplace Responsibility Act requires that employees show that their drug and alcohol use did not cause a workplace accident, and that accidents caused by drug and alcohol use are not compensable by worker's compensation. Currently, the burden is on employers to show that drug and alcohol use caused a workplace accident, which is a nearly impossible standard to prove.

Model Legislation

Section 1. {Short Title}
The Workplace Responsibility Act

Section 2. {Legislative Declarations}

The legislature finds and declares that the burden of proof to prove that a workplace accident was not caused by drug or alcohol use shift from the employer to the employee

A. Because it is estimated that drug and alcohol related injuries substantially drive the costs of worker's compensation up; and

B. Due to the fact that it is nearly impossible for employers to prove that drug and alcohol use substantially contributed to a workplace injury

Section 3. {Definitions}

A. For purposes of this section "Controlled substance" means any drug proscribed by Title__, Chapter___ that the employee engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

B. "Incapacitated" means that the employee is physically unable, because of a disability, to testify at the initial compensation hearing.

C. “Initial compensation hearing” means the first formal hearing in front of an administrative law in which the administrative law judge takes formal and recorded testimony.

D. “Refuses to cooperate” means that the employee unjustifiably engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

E. "Proximate cause" means that the injury would not have occurred if the employee had not been under the influence of alcohol per se pursuant to section__ or under the influence of a controlled substance pursuant to 49 code of federal regulations part 40.

Section 4. {Scope}

A. Every employee coming within the provisions of this chapter who is injured, and the dependents of every such employee who is killed by accident arising out of and in the course of his employment, wherever the injury occurred, unless the injury was purposely self-inflicted, shall be entitled to receive and shall be paid such compensation for loss sustained on account of the injury or death, such medical, nurse and hospital services and medicines, and such amount of funeral expenses in the event of death, as are provided by this chapter.

B. Every employee who is covered by insurance in the state compensation fund and who is injured by accident arising out of and in the course of employment, and the dependents of every such employee who is killed, provided the injury was not purposely self-inflicted, shall be paid such compensation from the state compensation fund for loss sustained on account of the injury and shall receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses in event of death, as provided in this chapter.

Section 5. {Non-Compensable Injuries/Death}

A. An employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable

Pursuant to this chapter if the impairment of the employee is due to the employee's use of alcohol or the unlawful use of any controlled substance and is proximate cause of the

employee's personal injury or death. This subsection does not apply if the employer had actual knowledge of and permitted, or condoned, the employee's use of alcohol or the unlawful use of the controlled substance.

B. Notwithstanding subsection C of this section, if the employer has established a policy of drug testing or alcohol impairment testing in accordance with chapter __, article __ of this title, is maintaining that policy on an ongoing manner and, before the date of the employee's injury, the employer files the written certification with the industrial commission as required by subsection D of this section, an employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter, if the employee of such an employer fails to pass, refuses to cooperate with or refuses to take a drug test for the unlawful use of any controlled substance or fails to pass, refuses to cooperate with or refuses to take an alcohol impairment test that is administered by or at the request of the employer not more than twenty-four hours after the employer receives actual notice of the injury, unless the employee proves any of the following:

1. The employee's use of alcohol or the employee's use of any unlawful substance proscribed by title __, chapter __ was not the proximate cause of the employee's injury or death.

2. The alcohol impairment test indicates that the employee's alcohol concentration was lower than the alcohol concentration that would constitute a violation of ____, and would not create a presumption that the employee was under the influence of intoxicating liquor pursuant to section ___.

3. The drug test or alcohol impairment test used cutoff levels for the presence of alcohol, drugs or metabolites that were lower than the cutoff levels prescribed at the time of the testing for transportation workplace drug and alcohol testing programs under 49 code of federal regulations part 40.

C. Notwithstanding Subsection B, if an employee dies or becomes incapacitated prior to the initial compensation hearing, the injury shall be compensable pursuant to this chapter unless the employer proves that the employee’s use of alcohol or the employee’s use of a controlled substance was the proximate cause of the employee’s death or injury.

D. Subsection B of this section does not apply if the employer had actual knowledge of and permitted or condoned the employee's use of alcohol or the employee's unlawful use of any controlled substance.

E. An employer that establishes a policy of drug testing or alcohol impairment testing in accordance with chapter __, article __ of this title shall file a written certification to that effect with the industrial commission. On or before January 15 of each year, an employer

that has previously established a policy of drug testing or alcohol impairment testing and is maintaining that policy shall both file a written certification to that effect with the industrial commission and provide notification to its employees in a manner consistent with section __ that the employer is maintaining that policy.

F. Nothing contained in this section shall be construed to enhance or expand the reporting requirements prescribed in section ___.

Section 6. {Severability}

Section 7. {Effective Date}

WORKERS' COMPENSATION AS EXCLUSIVE REMEDY RESOLUTION

Summary

ALEC's Workers' Compensation as Exclusive Remedy Resolution reasserts the traditional no-fault principle upon which the system is based.

Model Resolution

{Title}

WHEREAS, since the early 1900s every state has adopted some type of workers' compensation system that provides workers with medical, wage loss, and other benefits on a no-fault basis for injuries or death arising during the course of employment; and

WHEREAS, the system is intended to remove all disputes between the employer and employee from the tort system and to be the exclusive remedy for employees; and

WHEREAS, in exchange for employees giving up their right to sue their employer, the employer has agreed to compensate all employees on a no-fault basis; and

WHEREAS, tort immunity is thus a fundamental and necessary element of the workers' compensation system; and

WHEREAS, new legal theories have been advanced in recent years to permit tort recovery from employers for injuries subject to the workers' compensation system; and

WHEREAS, such theories threaten to weaken or destroy the exclusive remedy concept_thereby permitting recovery against the employer under both the workers' compensation and the tort system, for the same injury; and

WHEREAS, the workers' compensation was intended to remove all disputes between employer and employee from the tort system and to be the exclusive remedy for employees;

NOW THEREFORE BE IT RESOLVED, that the State of (insert state) specifically reaffirms the principle of workers' compensation as the exclusive remedy and rejects the rationale for tort liability based on legal theories such as dual capacity/dual persona, intentional injury without proof that the employer acted with deliberate intention to cause the injury, or third party action against employers for work-related injuries.

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2013 State Legislative Talking Points

The ABC Story

Associated Builders and Contractors (ABC) is a national association with 74 chapters representing 22,000 merit shop construction and construction-related firms. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industry's commercial and industrial sectors.

Through its national office and chapters, ABC's objective is to provide its members with products, programs and services to help make their businesses successful. ABC's activities include government relations, political and legal advocacy, media relations, construction economic analysis, management and employee education and development, extensive online resources, established construction safety program evaluation and recognition, valuable employee benefit services and exclusive business discounts.

ABC serves as the merit shop construction industry's voice with the legislative, executive and judicial branches of the federal government and with state and local governments, as well as the news media. ABC is devoted exclusively to the advancement of the merit shop construction philosophy, which encourages open competition and a free-enterprise approach in which construction contracts are awarded based solely on merit, regardless of labor affiliation.

The dramatic rise of ABC began in 1950 when seven contractors gathered in Baltimore to create an association based on the shared belief that construction projects should be awarded on merit to the most qualified and responsible low bidders. Their courage and dedication to the merit shop philosophy spread rapidly, and within time, ABC became one of the fastest growing associations in the United States. Today, ABC is recognized as one of the leading organizations representing America's business community and the merit shop construction industry.

The U.S. Construction Industry: A National Profile

Construction and the U.S. Economy

- ABC's Construction Backlog Indicator (CBI), a measurement of the nation's nonresidential construction industry, was 7.4 months for the first quarter of 2012, down from 0.4 months from the fourth quarter of 2011, but up slightly from one year ago. CBI is a forward-looking measurement reflecting the amount of work to be performed by contractors in the months ahead. (Associated Builders and Contractors)

- The nation's gross domestic product index (GDP) for nonresidential fixed investment in structures decreased 12 percent in the first quarter of 2012 following a 0.9 percent decrease in the fourth quarter of 2011. GDP is a measure of the market value of all goods and services produced in the U.S. during a given period of time. (Department of Commerce, Bureau of Economic Affairs)

- As of May 2012, total nonresidential construction spending in the U.S. – which includes both public and private construction – was $562.3 billion, unchanged from the previous month. Overall, total construction spending – which includes both residential and

nonresidential – was up 0.9 percent from April to May, and is up 7 percent compared to May 2011. (Department of Commerce, Census Bureau)

- As of June 2012, the construction industry unemployment rate is 12.8 percent, down from 14.2 percent the previous month. (U.S. Department of Labor, Bureau of Labor Statistics).

- As of June 2012, construction materials prices fell 0.6 percent from May to June. However, prices are 0.2 percent higher from June 2011. (U.S. Department of Labor, Bureau of Labor Statistics)

- **Updated statistics are available upon request from ABC National**

The Construction Workforce

- Union membership in the U.S. private construction workforce was 14 percent in 2011, up from 13.1 percent in 2010. In contrast, 86 percent of all construction workers chose not to belong to a union. (U.S. Department of Labor, Bureau of Labor Statistics)

- In April 2012, the average hourly earnings of a construction worker were $25.65, up from $25.63 in March 2012, and up from $25.38, or 1.1 percent, from April 2011. (U.S. Department of Labor, Bureau of Labor Statistics)

- The composition of the U.S. construction industry workforce includes a number of female, African American, Hispanic and immigrant workers. The number of women in construction was 9.2 percent in 2011. African American workers made up approximately 5.5 percent of construction employment. (U.S. Department of Labor, Bureau of Labor Statistics)

- Hispanic workers made up 24.4 percent of the U.S. construction industry workforce in 2011, compared to 14.5 percent of the overall U.S. workforce. (U.S. Department of Labor, Bureau of Labor Statistics)

ABC Construction Safety Initiatives

- **The Construction Coalition for a Drug- and Alcohol-Free Workplace (CCDAFW)** – the mission of CCDAFW is to establish industry-wide recognition, and advocate the implementation of a strong substance abuse policy, as well as to provide industry best practices to help achieve the goal of zero substance abuse-related incidences on the jobsite.

- **ABC Safety Training and Evaluation Process (STEP)** – a program that allows ABC member companies to evaluate and strengthen their policies and procedures for a safer workplace. The Occupational Safety and Health Administration (OSHA) has recognized STEP's proactive commitment to safety and health, using the program as the cornerstone of many local and regional partnerships.
    - In 2010, STEP contractors had 93.3 percent fewer OSHA citations per inspection than non-STEP participants;

- In 2010, the incidence rate for STEP contractors was 39.5 percent below the Bureau of Labor Statistics (BLS) national average;
- In 2010, STEP contractors had a 17 percent lower experience modification rate (EMR) than the BLS national average;
- In 2010, the days away, restrictions and transfers (DART) rate for STEP contractors was 34.8 percent lower than the BLS national average.

- **OSHA Challenge** – ABC is one of four national construction associations invited by OSHA to serve as an administrator for the OSHA Challenge pilot program, which recognizes construction companies who are on the path towards safety programs and processes that exceed OSHA standards. OSHA Challenge participants use the program to advance towards OSHA's Voluntary Protection Program (VPP). Companies must submit to voluntary, random inspections by OSHA and administrators, and are subject to fines for any violations.

- **Department of Labor's Advancing Registered Apprenticeship into the 21st Century grant program** – awarded to ABC's Trimmer Education Foundation, the money is used by chapters and partnerships for apprenticeship training. Each selected ABC chapter and partnership is required to use a three-tiered learning structure that includes an online training curriculum.

- **ABC National Safety Excellence Awards** – held in conjunction with ABC's Excellence in Construction Awards gala, ABC's National Safety Excellence and National Safety Merit Awards recognize companies whose safety performance and programs are judged to be exemplary and exhibit a lasting commitment to jobsite safety.

- **ABC National Environment, Health and Safety Committee** – provides leadership and direction to ABC chapters and members on safety, environmental and health issues. The goal is to assist small and medium-sized contractors in developing effective, onsite safety training programs.

- **Industry leadership on safety** – ABC members and staff participate in industry and safety committees and forums, including the American National Standards Institute (ANSI) A10 Accredited Standards Committee (ASC), NCCER Safety Committee and numerous local safety councils. In addition, ABC members are regular recipients of the national Construction Users Roundtable's (CURT) Construction Industry Safety Excellence (CISE) award. ABC members also participate in and are asked to testify in OSHA's rulemaking process.

- **Safety classes –** ABC offers classes through its chapters and annual conferences for construction craft professionals and managers, all with the purpose of providing a safe workplace. Topics include: fall protection safety, steel erection safety, electrical safety, scaffolding safety, trenching and excavation safety, OSHA's 10-hour and 30-hour construction outreach and a 100- hour Construction Site Safety Technician program.

- **Construction safety manuals –** offered by ABC National, this collection of safety programs, policies and procedures are in both English and Spanish, and provide member companies with a template on which to base their safety programs.

- **Safety Toolbox Talks** – offered by ABC National, this collection of 89 Safety Toolbox Talks in English and Spanish is designed to educate employees on the construction jobsite.

- **Safety.abc.org Message Boards** – offered through ABC National, the ABC Safety Message Boards serve as a resource to ABC members and chapters for information on the latest regulatory and legal developments, best practices and general safety guidance.

Public Policy Talking Points

Government-Mandated PLA Talking Points

General Talking Points:

- A project labor agreement (PLA) is a special interest scheme that discourages competition from nonunion contractors and their workers by requiring a construction project to be awarded only to contractors and subcontractors that agree to recognize unions as the representative of their employees on that job; use the union hall to obtain workers; obey the union's restrictive apprenticeship and work rules; and contribute to union pension plans and other funds in which their nonunion employees will never benefit unless they join a union.

- When a government entity requires a PLA on a construction project, they are essentially tilting the playing field in favor of contractors that agree to use organized labor. On government-funded or assisted projects, this means that the 86 percent of the private construction workforce that chooses not to join a labor union cannot compete on an equal basis for projects funded by their own tax dollars.

- On government-funded or assisted projects, taxpayers deserve the best product for the best price. Numerous studies show that PLA mandates can increase construction costs by nearly 20 percent. With government deficits ballooning nationwide, government-mandated PLAs are a special interest handout that taxpayers simply can't afford.

- PLAs were established in the early twentieth-century, when a significant percentage of the private construction workforce was unionized, to help trade unions cooperate. In modern construction, PLAs are nothing more than wasteful market recovery programs for unions that need to rebuild their membership after seeing their numbers decline for the last 50 years.

- Unions use the threat of strikes or labor unrest to coerce construction users into requiring contractors to sign these pro-union agreements. This is a particularly disingenuous argument because unions are the cause of strikes, work stoppages, jurisdictional disputes and illegal organizing. Nevertheless, these actions still occur on PLA projects despite the promise of labor peace. Merit shop employees never engage in these activities on construction jobsites.

- Government-mandated PLAs discriminate against merit shop contractors and disadvantaged businesses. This discrimination is particularly harmful to women- and minority-owned construction businesses and their workers, who traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

The Impact of PLAs on Construction Costs:

- In a 2011 study conducted by the National University System Institute for Policy Research (NUSIPR), California school construction projects built using project labor agreements (PLAs) experienced increased costs of 13 – 15 percent, or $28.90 to $32.49 per square foot, compared to projects that did not use a PLA.

- A study released Sept. 23, 2010, by the Beacon Hill Institute (BHI), found that PLAs significantly increase construction costs on federal projects. Had President Obama's pro-PLA Executive Order 13502 been in effect in 2008, and all 2008 federal construction projects worth $25 million or more had been performed under PLAs, it would have increased the cost to federal taxpayers by $1.6 – $2.6 billion.

- A June 2009 study conducted by property and construction consulting firm Rider Levett Bucknall, prepared for the U.S. Department of Veterans Affairs (VA) Office of Construction and Facilities Management, found that PLAs would likely increase construction costs by as much as 9 percent in three of the five construction markets (Denver, New Orleans and Orlando) in which the VA is planning to build hospitals. The VA hired this firm to evaluate the cost impact of PLAs in various markets where the VA plans to build hospitals in response to President Obama's order that encourages federal agencies to mandate PLAs. This report shows PLAs have an especially pronounced impact on construction costs in construction markets with low union density.

- In May 2006, BHI released a study concluding that the use of PLAs on New York's school construction projects increased bid costs by 20 percent. "Project Labor Agreements and Public Construction Costs in New York State" indicated that a PLA increased a project's base construction bids by $27 per square foot when compared to non-PLA projects. Additional BHI studies comparing PLA to non-PLA school construction projects in Connecticut and Massachusetts came up with similar results.

- The studies listed above and others showing the negative impact of PLAs are available at www.abc.org/plastudies

The Impact of PLAs on Competition:

- Merit shop contractors are either barred or discouraged from bidding on PLA projects because of the unreasonable terms and conditions included in a typical PLA. As a result, bidders on projects where a PLA is required is usually limited to only union contractors or to those few merit shop contractors willing to become a signatory to a PLA.

- Proponents of PLAs maintain that nonunion contractors are not barred and point to open shop contractors that have successfully bid and worked on PLA projects. These arguments find rare exceptions to the indisputable fact that few merit shop contractors bid on PLA projects.

The Impact of PLAs on Workers:

- According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, approximately 13 percent of America's private construction workforce belongs to a union. This means PLA requirements discriminate against more than eight out of 10 construction workers who would otherwise work on construction projects if not for a government-mandated PLA.

- PLAs hurt local workers. Proponents of PLAs claim they ensure the use of local workers, but PLA supporters fail to mention the term "local workers" doesn't include local nonunion workers. Nearly all PLAs require contractors to get a significant percentage of their workers from union hiring halls, where dispatch rules put non-local union workers on jobs before local nonunion workers.

- An October 2009 report by Dr. John R. McGowan, "The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements," finds that employees of nonunion contractors that are employed under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20 percent. The report estimates that as a result of President Obama's pro-PLA Executive Order 13502, hundreds of millions of dollars of nonunion employees income on federal construction projects will be distributed to union pension funds, from which nonunion employees will likely receive no benefits.

- PLAs take away workers' rights. Workers normally are permitted to choose whether to join a union through a federally supervised private ballot election. Nearly all PLAs require unions to be the exclusive bargaining representative for workers during the life of the project. The decision to recognize union representation is made by the employer rather than the employees. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The National Labor Relations Act generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the right of construction workers to a federally supervised private ballot election when deciding whether to join a union.

- Workers who do not belong to the union don’t benefit from PLAs. Unions usually make money or sustain struggling pension programs through employers and employees’ payment of benefits into the union coffers. However, there is little to no direct benefit for workers who have not joined the union, as they will never see the benefits of the contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, have to continue to pay for existing programs as well as into union programs under a PLA.

PLAs in Right to Work States:

- Government-mandated PLAs can occur in Right to Work states, though they are less common. Although Right to Work laws prevent workers from being forced to pay dues to a union as a condition of employment, workers in both Right to Work and non-Right to Work states are still required to work under nearly all of the terms and conditions negotiated by the union under PLAs.

- In non-Right to Work states, PLAs can go further in that they can require employees not only to work under a union contract but also to pay dues to a union while working on a covered project. Workers cannot be forced to pay union dues in a Right to Work state.

- Government-mandated PLAs in Right to Work states can still require contractors to recognize unions as the sole representative of their employees, hire all or some of their workers from union hiring halls, pay the union wage scale, follow inefficient union work rules and pay into union pension and benefit funds. These provisions are enough to discourage competition from nonunion contractors and significantly increase construction costs for taxpayers.

Prevailing Wage Requirements

As of 2012, 32 states and the District of Columbia are subject to inflationary prevailing wage requirements mirroring the federal Davis-Bacon Act. The Davis-Bacon Act is a 1931 federal law that establishes wage rates and other conditions on construction projects involving more than $2,000 in federal funds.

- Prevailing wage laws are wage mandates with outdated job restrictions that do not match the needs of today's competitive construction business environment.

- Prevailing wage requirements discourage many qualified small and minority-owned contractors from bidding on public projects because the complex and inefficient wage rate determinations and work restrictions make it nearly impossible for them to compete with better capitalized corporations.

- Studies have shown that prevailing wage laws like the federal Davis-Bacon Act can inflate construction costs up to 38 percent. Eliminating the Davis-Bacon Act's requirements would reduce unnecessary government spending and guarantee more construction per dollar spent on important public projects such as schools, roads, bridges, low-income housing, hospitals and prisons.

- Prevailing wage laws do not improve safety, quality or training. Ensuring jobsite safety is the purview of OSHA and its state equivalents. Prevailing wage laws were not written to address project quality, which is governed by procurement laws, project specifications and bonding requirements. They are not job training laws and do nothing to ensure workers are better trained on public projects.

Immigration

In 2005, the ABC National Board of Directors adopted a policy stating that any successful immigration reform measure must be comprehensive in nature and provide for the enforcement of our laws, the security of our borders and the prosperity of our economy. Immigration reform will fail without a legal channel allowing willing, essential foreign workers the opportunity to work legally in this country.

- ABC supports comprehensively reforming the nation's immigration policy to facilitate a sustainable workforce for the American economy while ensuring national security.

- In the absence of federal comprehensive immigration reform, many states have enacted immigration legislation on their own. Many of these state bills have unnecessarily increased the burden on businesses to verify the employment status of their workers.

- Different states are enacting drastically different standards for employee eligibility verification. While some states now require employers and state contractors to utilize the federal employment eligibility verification pilot program (E-Verify) to screen all potential employees, The Illinois General Assembly has placed restrictions on the use of the E-Verify program. Compliance with these varying standards can be problematic, leaving good actors susceptible to significant penalties.

Immigration – E-Verify

E-Verify is a system that electronically verifies the employment eligibility of newly hired employees and existing workers. E-Verify allows participating employers to electronically compare employee information taken from the Form I-9 (the paper-based employee eligibility verification form used for all new hires) against more than 425 million records in the Social Security Administration's database and more than 60 million records in the Department of Homeland Security's immigration databases.

- As of September 8, 2009, the federal government now requires the use of E-Verify on all federal solicitations and contract awards. However, Congress has yet to mandate the use of E-Verify for all employers.

- ABC and its members are strongly opposed to the hiring of illegal immigrants, or undocumented workers, and together have been a vocal advocate for comprehensive immigration reform.

- ABC supports the E-Verify program as a voluntary program expressly limited to the verification of Social Security numbers of new employees.

- There are a number of problems with the E-Verify system's current functionality and accuracy that could unnecessarily expose employers – that are acting in good faith – to legal liability.

Independent Contractor Reform

An independent contractor is a person, business or corporation that provides goods or services to another entity under terms specified in a contract or within a verbal agreement. Unlike an employee, an independent contractor does not work regularly for an employer but works as and when required. This arrangement allows independent contractors to choose their own schedule, affords business owners the flexibility to adjust staff demands with seasonal construction volume and provides reasonably priced, quality products and services to the consumer.

- Many businesses in the construction industry cannot afford to maintain specialized trade craftsmen as employees. These specialists may be needed several times throughout the year, but not frequently enough for full-time or even part-time employment. Independent contractors are often the perfect solution to a pressing demand for the unique skills often required for specialized, short-term projects.

- ABC supports stiffer penalties for employers that intentionally classify employees as independent contractors to avoid tax and other consequences. These techniques are employed by dishonest contractors to win jobs against reputable contractors that offer benefits to their workers.

- Various federal and state agencies' tests to determine if a worker is an independent contractor are vague and contradictory. In many cases, three or four different tests can apply to determine the status of a worker. When an employer incorrectly classifies an employee as an independent contractor, the employer can be liable for thousands of dollars in fines, back taxes and benefits.

- Several of the proposed federal and state independent contracting reform measures would severely penalize contractors for mistakenly classifying employees as independent contractors, limit contractors' ability to classify legal workers as independent contractors and eliminate the safe harbor protections in existing federal and state law.

- Independent contractor reform legislation with excessive punitive damages is frequently used as a tool by unions to attack legitimate merit shop businesses. Unions file frivolous claims that frequently require contractors to spend time and resources to defend.

- Several states also included independent contracting reform language in proposed immigration reform bills in 2008. Legislation attempting to reform independent contracting and immigration within the same bill frequently demonstrates a failure to recognize the complexity of the independent contracting issue for both contractors and independent contractors in the current legal environment.

- A July 2006 U.S. Government Accountability Office (GAO) study of misclassification of workers as independent contractors stated that every $1 increase in enforcement by the IRS results in a $4 increase in previously unpaid tax revenue. ABC believes that simple measures like requiring informational posters on job sites and creating a hotline to report wrongful classification could help curb the unscrupulous activities of bad actors without increasing complicated and burdensome regulations on the entire business community.

- Section 530 of the Revenue Act of 1978 provides safe harbor protection for employers that have a reasonable basis for classifying a worker as an independent contractor. ABC supports strong safe harbor provisions to protect law-abiding employers trying to navigate complex and often contradictory standards.

Job Targeting

Job targeting, or market recovery programs, collect fees from union members for the purpose of providing wage subsidies to enable union contractors, and in some case nonunion contractors, to compete for projects on which they otherwise would be uncompetitive. A 2008 research study conducted by George Mason University's John M. Olin Institute for Employment Practice and Policy found that from 2000 – 2007, unions in the construction industry spent more than $1 billion to engage in and support job targeting.

- ABC opposes the illegal collection of job targeting funds on public works projects, and supports full financial disclosure of the collection and disbursement of these funds.

- Job targeting programs increase public construction costs by artificially inflating wages. As a result, the public is unknowingly paying a much higher cost to build fire and police stations, hospitals, schools, roads, libraries and numerous other publicly funded construction projects.

- Taxpayers unknowingly fund job targeting programs. The dollars that union members contribute to fund job targeting programs are not considered "dues" and, therefore, may not be deducted on their tax returns. However, the Olin Report suggests that the money union members pay into job targeting funds are being deducted as dues on tax returns.

- Job targeting programs give unions an unfair advantage. The law currently allows a union to pay money to a company for the purpose of putting another company out of business and taking jobs away from that other company's workers. If a nonunion construction company engaged in the same conduct as a labor union, it would be prosecuted for violating antitrust laws.

Responsible Contracting Policies (RCPs)

RCPs are bidder pre-qualification requirements that are designed to limit merit shop contractors ability to compete for construction projects. RCPs are state and local guidelines adopted by a government entity that adjust bidding criteria from lowest bidder to lowest "responsible" bidder. The "responsibility" of the bidder is typically defined by a process that varies from locality to locality.

- Many RCPs are problematic because criteria used to define "responsible" contractors are designed to unnecessarily favor contractors that use union labor. For example, RCPs often include requirements that employers participate in "registered apprenticeship programs" and implement union-friendly labor and workforce policies.

- Similar to union-only PLAs, RCPs are typically a vehicle for unions to regain lost market share. RCPs are often not aimed at attracting the best contractors, but are policies aimed at attracting only union contractors.

- More information, including RCP studies and additional talking points, is available at www.abc.org/rco.

Registered Apprenticeship Quotas

- Registered apprenticeship quotas require that a certain number of registered apprentices work on every public works job within the jurisdiction of the government that enacts the legislation. For example, a registered apprenticeship quota requirement may mandate that a contractor have no fewer than 10 registered apprentices on a specific school construction project at all times as a condition of working on the project.

- In the example cited above, 10 registered apprentices may be too many apprentices for a specific jobsite and will unnecessarily increase construction costs and reduce workplace efficiency. Training may suffer as the apprentices may not have enough journeymen or senior craft professionals supervising their work. In addition, state prevailing wage laws and other procurement laws specify a certain ratio of journeymen to apprentices. Apprenticeship quotas may violate existing apprenticeship ratios and confuse contractors and expose them to unnecessary prevailing wage and procurement law liability.

- The definition of registered apprentices is controversial among many merit shop contractors and its meaning can also differ from state-to-state. Registered apprentices are typically defined as apprentices who must be enrolled in an apprenticeship program registered and approved by the state Bureau of Apprenticeship Training (BAT) or State Apprenticeship Council (SAC), depending on the state where work is performed. In SAC states, the state apprenticeship council has the authority to de-register and approve apprenticeship programs. Often SAC states with a pro-union board find ways to discriminate against nonunion apprenticeship programs and either refuse to certify, or actively decertify, these competing programs.

- Registered apprenticeship training is based on a recommended 144 hours of classroom training and a total of 2,000 work hours per year. Many apprenticeship programs last three or four years. In an industry where demand for workers is high and supply is low, there is a need to promote proficient workers quickly. It does not make financial or practical sense for a new employee to enroll in a full apprenticeship program when there are so many other advancement opportunities that take less time. New employees participating in most craft training programs can move through the training process more quickly if they possess existing knowledge and skills or if they are fast learners.

- Training and maintaining a skilled workforce is a major industry concern. Training comes in many forms and registered apprenticeship is only one way to train new construction employees. Registered apprentices are a small part of the industry, representing less than four percent of the industry's employees. For example, while precise numbers are not available, less than 50 percent of union construction workers

enter the industry via apprenticeship. Promoting this specific type of pro-union training limits the number of entry-level workers and discriminates against alternative forms of training.

- Registration of apprenticeship programs was originally designed by unions to be union friendly, thus is designed to create hardship for those companies following the merit shop model of construction.

Union Salting Abuse

- "Salting" abuse is the intentional placement of trained union professional organizers and agents into an open shop company to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately drive the company out of business.

- The union agents' objectives are accomplished through filing frivolous and unfair labor practice complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), OSHA and the Equal Employment Opportunity Commission (EEOC).

- While unions have the right to attempt to organize workers, open shop companies and their employees have the right to refrain from supporting union activities and be free from unwarranted harassment.

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