Analysis: Democrats' "Inflation Reduction Act" Is a Reckless Tax-and-Spend Bill

ABC opposes Democrats' partisan reconciliation package, which would raise taxes in an economy pointed toward recession, exacerbate inflation and cost American jobs. New, restrictive labor policies included in the Senate-passed proposal make the package even more damaging.

The Democrats' so-called Inflation Reduction Act would impose a 15% corporate minimum tax and funds clean energy projects, many of which would include restrictive labor incentives—Davis-Bacon prevailing wages and registered apprenticeship quotas—that would exclude more than 87% of the construction workforce from participating.

As the U.S. economy faces recessionary trends, rising costs of doing business, supply chain delays and historically high gas prices, adding a substantial tax burden would make it even more difficult for America's job creators to grow their business and fully recover from the economic effects of the COVID-19 pandemic.

While Democrats have stated this bill will reduce inflation, the Penn Wharton Budget Model shows low confidence that the legislation will have any impact on reducing inflation.

ABC believes that the Democrats' bill imposes anti-competitive policies that will handicap merit-shop construction contractors and further jeopardize the nation's economy at this critical time.

Tax Hikes on American Companies and Workers

Starting in 2023, the Inflation Reduction Act would impose a 15% minimum tax on financial statement income of corporations that have annual average adjusted financial statement—or "book"—income exceeding $1 billion over a three-year period.

- The **15% rate applies to a company's financial statement income after certain adjustments** and allowing certain tax credits to be taken into account for purposes of the book minimum tax liability. The provision allows companies to take general business credits, such as the credits for research and development, energy and low-income housing.
- The bill includes an amendment from Sen. John Tune, R-S.D., that **carves out subsidiaries of private equity firms from a new 15% minimum tax on U.S. corporations** with at least $1 billion in profits.
    - However, to offset this change Democrats approved another amendment from Sen. Mark Warner, D-Va. that **extends limits on pass-through business losses** that can be used to reduce other taxable income. This **$52 billion tax increase on pass-through businesses is particularly harmful when the economy is struggling and an increasing number of businesses are suffering losses.**

While the messaging around these tax provisions focuses on the wealthy, these severe tax hikes on American companies could **further exacerbate high materials prices for nonresidential construction projects, which have increased by 20% during the past 12 months and 46% since Feb. 2020**, and expose contractors to additional supply chain and employment issues as they continue to recover from the COVID-19 pandemic.

Tax on Oil and Gas:

The bill reinstates the Hazardous Substance Superfund financing rate on crude oil and imported petroleum products at the rate of 16.4 cents per barrel, indexed to inflation. **ABC is concerned that this tax would cause further increases in gas prices, utility costs and additional price spikes in petroleum-based products.** Many construction materials are petroleum-based and already have seen a price increase of 100% or more over the past year.

Restrictive Labor Requirements:

The bill modifies several of the clean energy and energy efficiency tax incentives to provide two different credit values: a base rate and an alternative or bonus rate. The bonus rate equals five times the base rate and applies to projects that meet **both wage and apprenticeship requirements**. ABC believes this new bonus credit penalizes employers that believe in fair and open competition and pay wages based on experience, quality and market rates and limits opportunities for thousands of construction workers and industry-recognized apprentices.

- The bonus rate rules require that the taxpayer **ensure laborers and mechanics are paid prevailing wages during the construction of a qualifying project**, and, in some cases, for the alteration and repair of the project for a defined period after the project is placed into service.
- **The apprenticeship rules require that the taxpayer ensure that government-registered apprentices perform a specific percentage of total labor hours of the project**. The requirement is 10% of apprentices for projects for which construction begins in 2022, 12.5% in 2023 and 15% thereafter. The taxpayer and any contractor or subcontractor that employs four or more individuals to perform construction on a qualifying project must also employ at least one government-registered apprentice to perform such work.
- The unprecedented expansion of Davis-Bacon is additionally concerning with the **Biden administration pursuing a new rule affecting prevailing wage rates** that fails to fix the unscientific wage determination process, rescinds modest pro-taxpayer reforms that have been in place for nearly 40 years and increases regulatory burdens on small businesses, new industries and more public works projects.
- All things considered, while the bill provides **$250 billion in incentives for clean energy projects, 83% of the value of these credits lies in projects ABC members will be largely prevented from participating in** due to these labor restrictions.

For an industry facing a workforce shortage of 650,000 in 2022, this is no time to impose restrictive labor policies that would harm so many of America's workers. **ABC believes this new credit would put ABC members at a serious competitive disadvantage when it comes**

to winning contracts for these critical energy projects and limit the ability of many otherwise qualified small businesses and skilled construction workers and apprentices from participating in these projects. In addition, the government-registered apprenticeship system is unlikely to have the capacity to meet this added demand as a result of these tax incentives in concert with other Biden administration policies pushing government-registered apprenticeship programs on federally assisted construction projects.

Domestic Content/Buy American Requirements

The bill also contains additional domestic content tax incentives, which can be well-meaning, but at a time when we are facing such a significant rise in material costs could have **severe unintended consequences for the costs of these projects and the ability to complete them on time and on budget**.

The domestic content provisions require that, with respect to the project for which a tax credit is claimed, the taxpayer must ensure that any steel, iron or manufactured product that is part of the project at the time of completion was produced in the United States. **To meet the tax credit requirements, steel and iron used on a project must be 100% produced in the United States.**

Manufactured products are deemed to have been manufactured in the United States if the adjusted percentage of the total cost of the components and subcomponents of the project is attributable to components that are mined, produced or manufactured in the United States.

The adjusted percentage is:

- 40% for projects that begin construction before 2025;
- 45% for projects that begin construction in 2025;
- 50% for projects that begin construction in 2026; and
- 55% for projects that begin construction thereafter.

For offshore wind facilities, the adjusted percentage is:

- 20% for projects that begin construction before 2025;
- 27.5% for projects that begin construction in 2025;
- 35% for projects that begin construction in 2026;
- 45% for projects that begin construction in 2027; and
- 55% for projects that begin construction thereafter.

The domestic content requirements generally apply for purposes of the production and investment tax credits. **Projects meeting the requirements can receive higher value credits. Projects not meeting the requirements may be restricted in the amount of the credit that is eligible** for the direct pay elections provided for most credits under the bill's energy section.

Permitting and Environmental Analysis

The bill includes **hundreds of millions in funding to implement complex environmental review processes.** While this funding may appear to assist in the environmental review process, ABC is concerned some of the funding and guidance could hinder the permitting process for critical infrastructure and construction projects with additional consideration requirements.

According to Senate Democrats, the agreement also calls for comprehensive permitting reform legislation to be passed before the end of the fiscal year, but the proposal remains to be seen. **ABC has consistently advocated for a more streamlined permitting process that considers serious environmental concerns but does not allow for needless delays and obstruction.**