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Economic Development Budget
Panel

Tuesday, January 31, 2012

**Empire State
Chapter**

Testimony from Stephen Lefebvre
President

The Associated Builders & Contractors,
Empire State Chapter

Good morning, Senator Alesi, Assemblyman Schimminger, and members of the panel, I would like to thank you for the opportunity to come and talk to you today about the economic development opportunities for the 2012-13 State Budget. My name is Steve Lefebvre, I am President of the Empire State Chapter of the Associated Builders & Contractors, which is the construction trade association representing nearly 550 merit shop contractors and professional services companies employing tens of thousands of workers throughout the State of New York. Our chapter is one of 73 across the country that promotes fair competition, free enterprise and provides education services as well as other membership services.

Our State's infrastructure is in serious crisis and I am not just talking about the condition of our roads and bridges. We face a financial strain on budgets that threatens our ability to fund these projects. I applaud you and our other State leaders for the forward thinking that has given us a Design Build law and a renewed focus on economic development, and we find promising the pledge in Governor Cuomo's Executive Budget proposal to fund the repair of our State's infrastructure. I would caution that increased funding for infrastructure will only be effective if it maximizes every dollar and puts local New York construction workers on those jobs.

Something that ABC has long fought against are the use of anti-competitive Project Labor Agreements (PLAs), which are agreements between public owners and labor unions under which construction contractors must hire workers through union hiring halls. In effect, a PLA requires the open shop contractor to sever its connection with its own qualified, albeit non-union, employees and to use workers provided through union halls that are a party to the PLA. The contractor is then subjected to antiquated and inefficient work rules and forced to pay into union pensions and benefit plans. Moreover, temporary workers hired through the union hall solely for the job governed by the PLA do not ultimately receive any union pension payments or benefits, because the duration of the work is never long enough for the employee to vest in those plans. In effect, union hiring halls utilize PLAs to finance their pension and benefit programs. Wage is not an issue in a PLA. Rather benefits, prescribed by law, now go into the union programs

instead of the workers pocket. Finally, the contractor has to operate under work rules (or union contract) established by the PLA even if it could operate better, smarter and more efficiently.

Because of these inequities, PLAs have the effect of creating jobs exclusively for union-only workers and drive up the costs of construction for public work projects. In New York State, just over a quarter of all construction workers choose to belong to a union. This means PLAs effectively discriminate against the 74% of the State's construction workers who choose not to belong to unions. Many open shop contractors will simply not bid when a PLA is applied to a job because of the consequences of becoming signatory to a union contract. In turn, this denies hardworking men and women –many of whom are your constituents - the opportunity to support their families and the economic vitality of their communities.

In New York there is a long-standing misimpression that Project Labor Agreements save money. A recent experience with a New York State Department of Transportation (“DOT”) bid on the Exit 122 project in Orange County clearly demonstrates that PLAs fleece taxpayers. With this bid, the DOT imposed a PLA on an already advertised procurement. The PLA was issued via a contract amendment more than one month after the bid was initially advertised. The bids were due just 13 days after the PLA was imposed. The low bid, submitted by a reputable and longtime heavy highway contractor and ABC member, Lancaster Development, Inc., was \$4.5 million *below* the next lowest bid. Lancaster's bid also had almost 16% of project work reserved for disadvantaged business enterprises (DBE), even though the PLA study called for just 9% of the project to be reserved for such firms. Despite having the lowest bid, DOT rejected Lancaster's bid because Lancaster did not agree to sign a union-only PLA. In effect, the State is telling Lancaster and its 250 employees (who are all New York State residents and taxpayers) that they are to be discriminated against, even though they are the low bidder, because they are not part of a unionized workforce.

If we are to put more New Yorkers back to work and maximize our finite taxpayer dollars in these challenging fiscal times, ABC implores you to incorporate the fair and cost-effective approach to public works contracting contained in the Public Construction Savings Act (S.4121 introduced by Senator Ranzenhofer and /A.7855) introduced by Assemblyman Schimminger.

The Public Construction Savings Act would allow all contractors to submit responsive bids on public works projects whether or not a PLA is required by the contracting agency – and the agency would be required to award the contract to the lowest responsible bidder in accordance with existing State and municipal law. If a contractor submits a bid that is subject to a PLA and that bid is the lowest cost, it should be awarded the contract. Likewise, if the lowest bid does *not* have a PLA, it should be awarded the public works contract. It is the only fair and objective way to insure that taxpayer interests are protected in public contracting. If this approach had been law last year, the State would have saved \$4.5 million on the Exit 122 project – money that would have gone a long way paying for another highway project. If a PLA is appropriate, let the contractors negotiate such without a public mandate.

Finally, I will point out that because PLAs inherently favor union firms, they are especially disadvantageous to women-owned and minority businesses (MWBEs) since such firms are overwhelmingly non-union. With the Cuomo Administration's MWBE goals of up to 20% on state contracts, it is imperative that the false promise of PLAs should not also jeopardize those critical efforts.

Thank you for the opportunity to speak today. I would be happy to answer any questions.



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MEMORANDUM OF SUPPORT S.4121 (Ranzenhofer)/A.7855 (Schimminger)

The Empire State Chapter of the Associated Builders and Contractors (ABC), representing over 600 merit-shop construction contractors and subcontractors employing thousands of workers throughout the State of New York, strongly supports enactment of S.4121/A.7855. This legislation, the **Public Construction Savings Act**, will level the competitive playing field and allow all contractors – whether union or non-union – to fairly compete for public construction projects.

ABC has long opposed imposition of mandatory Project Labor Agreements (PLA) on public construction projects. PLAs require that virtually all construction workers on a project be hired from union halls. As such, if a non-union or merit shop contractor were to bid on a project with a PLA – such contractor must do so knowing that its own, trusted workforce cannot be hired for the project. In this regard, PLAs are discriminatory and unfair against ABC's members and their thousands of workers, especially in light of the fact that over 70% of New York State construction workers choose not to belong to a union.

Current law requires that a PLA can only be imposed after a “study” to determine if the public interest is served by requiring a PLA on a procurement. The analysis is supposed to consider the public interest in obtaining work at the lowest price, while preventing favoritism, fraud and corruption. In addition, any history of “labor unrest” is supposed to be considered as is whether there is a possibility of delay in the project.

However, the PLA studies are often little more than subjective opinion masquerading as fact. Indeed, government entities seem to reach a conclusion as to imposing a PLA based upon political considerations seeking to satisfy desires of politically active building trades unions, instead of considering the factors outlined in the legislation.

The ultimate decision on whether a PLA is good for taxpayers should be the bids submitted by competitors. Taxpayer interests are best served by allowing PLAs to be **optional** and not mandatory. In this way, contractors can bid a project **with or without** a project labor agreement.

Recent experience with a New York State Department of Transportation bid on the Exit 122 project in Orange County is a perfect example. With this bid, the DOT imposed a PLA on an already advertised procurement. The PLA was issued via a contract amendment more than one month after the bid was initially advertised. The bids, due just 13 days after the PLA was imposed, were opened on March 24, 2011. The low bid, submitted by a reputable heavy

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Unfortunately, many in our State seem to believe that the easiest way to obtain state and local government construction contracts is to get the State Legislature and local government officials to tilt the playing field in the unions favor by imposing contract terms which actually promote favoritism for some and discrimination for others. Instead of insuring that the lowest responsible bidder is awarded the contract, PLAs are a specific means to circumvent State and local finance laws which require procurements to be awarded to the lowest responsible bidder.

Incidentally, PLAs have nothing to do with paying prevailing wages to workers since all public work – whether performed by union or non-union contractors – requires that prevailing wages be paid. Moreover, construction unions could easily reform their work rules and bargaining agreements to make themselves more competitive. Rather than take such reasonable steps, trade unions want government to require mandatory PLAs as a means of limiting competition from open shop firms.

Also, because PLAs inherently favor union firms, they are especially disadvantageous to women-owned and minority businesses (MWBs) since such firms are overwhelmingly non-union.

This bill would protect the taxpayer, and would not bias state and local contracting practices in favor of or against PLAs. It would simply allow contractors to submit responsive bids whether they choose to use a PLA or not. It is the only fair and objective way to insure that taxpayer interests are protected in public contracting.

For additional information regarding this issue, please contact Jim Walsh, with Manatt, Phelps & Phillips, LLP, at (518) 431-6700 or Steve Lefebvre, with Empire State ABC, at (315) 463-7539.

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