

Testimony of Terrence M. McDonough
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Presented to The House Republican Policy Committee
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Chairman Saylor and Members of the House Republican Policy Committee:

On behalf of the General Contractors Association of Pennsylvania (GCAP) I would like to thank you for inviting me to appear before the Committee to discuss HB 2010 and why GCAP opposes the mandated use of project labor agreements (PLAs) in state contracts.

Incorporated in October 1953, GCAP represents the member interests of the Master Builders Association of Western PA (MBA), the Keystone Contractors Association (KCA) and the General Building Contractors Association (GBCA). As such, we are the statewide voice for more than 500 union-affiliated general and specialty contractors and their affiliates throughout the Commonwealth.

GCAP members are well-respected contractors who engage in public and private construction throughout the Commonwealth. As such, our members believe that the most effective ways to increase efficiency and ensure quality are the same regardless of who the owner of a project is. And, there is no good policy reason why public construction should not mimic the best practices of private construction.

While GCAP members regularly employ a union workforce, our general contractors have no seat at the table when a PLA is negotiated between a public owner and a union. In the current process, the provisions agreed to by the union are for their benefit and their benefit alone.

GCAP opposes government-mandated PLAs on any publicly funded construction project because we believe that publicly financed contracts should be awarded without regard to the lawful labor relations policies and practices of the government contractor. GCAP believes that neither a public owner nor its representative should mandate the use of a PLA that would compel any firm, union or nonunion, to change its labor policy or practice in order to compete for or to perform work on a publicly financed project. GCAP further believes that government-mandated PLAs restrain competition, drive up costs and disrupt local collective bargaining.

It is important to note that GCAP is unaware of any reliable study establishing that PLA mandates consistently lower costs, increase efficiency, or improve the quality of construction of public projects. In its 1998 study titled "Project Labor Agreements: The Extent of Their Use and Related Information" the Government Accounting Office (GAO) reported that it could not document the alleged benefits of past PLA mandates on federal projects and that it doubted such benefits could ever be documented due to the difficulty of finding projects similar enough to compare and the difficulty of conclusively demonstrating that performance differences were due to the use of the PLA versus other factors.

Further, in geographic areas where union market share is weak – the effect of a government mandated PLA is to limit the number of potential bidders and competition, leading to increased

costs to the public owner and, ultimately, the taxpayers. This is because government-mandated PLAs typically require contractors (union and nonunion) to make fundamental, and often costly, changes in the way they do business. This includes adopting different work rules, hiring practices, jurisdictional work assignments and wage and benefits, as well as restraining their ability to use their current employees on the project. These changes are not practical for many potential bidders, particularly those firms not historically signatory to a collective bargaining agreement. Even if the changes do not deter potential bidders, the mandate can drive up costs that successful bidders are forced to pass on to the contracting agency.

In theory, a PLA can establish uniform standards and dispute-resolution mechanisms that may help avoid or solve certain jobsite problems. However, the more frequent reality is that a government-mandated PLA exacerbates such problems by forcing a new labor framework onto previously nonunion employees or by forcibly altering the agreed-upon status quo of union-contractor employees. In addition, a PLA does not guarantee freedom from the effects of strikes and work stoppages. It cannot prohibit off-site strikes or work stoppages at related facilities (such as a fabrication or material yard) which could then impede progress on the PLA-covered project.

Ultimately, the biggest problem with a PLA is that it doesn't allow the proper parties to negotiate the key provisions of the agreement. Whether union or non-union, contractors and their employees suffer when government officials with little or no experience in construction, set work rules and mandate specific terms of employment. If it is the case that a union workforce will be doing the job, GCAP strongly believes that it should be the contractor and the labor organizations representing workers covered by the agreement, since these are the parties that form the basis for the employer-employee relationship. They have a vested interest in forging a stable employment relationship and ensuring that the project is completed in an economic and efficient manner, and are authorized to enter into such an agreement under the National Labor Relations Act.

Of course, we believe our members, utilizing a mostly organized work force, will be in the best position to do the best job. But, we also believe the best way for us to demonstrate this is through a fair and open competitive process – one that allows us to prove our excellence through the bidding process and at the negotiating table. Ironically, the PLA concept could work if contractors were given the opportunity to negotiate key terms (i.e. negotiating real concessions that would create incentives for savings and efficiencies). Unfortunately, that isn't the case.

In closing, mandated PLAs – like Pennsylvania's Separations Act – create arbitrary conditions around public construction that make no financial sense. There is nothing inherently different about a public "building" that should require the Commonwealth or any other public owner to relinquish their ability to negotiate with a general contractor on price, delivery method, etc.

The truth is that Pennsylvania's indiscriminate use of PLAs combined with an entrenched reliance on an archaic Separations Act and guarantee that public construction in the Commonwealth will continue to be much more expensive and far less efficient than it should. These are 20th century relics that are preventing our state from enjoying the benefits of 21st century best practices, especially when it comes to proven delivery methods such as design build.

Thank you again for the opportunity to be here today. I would be pleased to answer any questions you may have.