



Associated Builders and Contractors **Talking Points**

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Associated Builders and Contractors Talking Points

The ABC Story

Associated Builders and Contractors (ABC) is a national trade association representing nearly 25,000 merit shop contractors, subcontractors, material suppliers and related firms in 78 chapters across the United States. 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 industrial and commercial sectors.

Through its national office and chapters, ABC's objective is to provide members with an organization to address industry-wide issues. ABC's activities encompass government relations, legal advocacy, education, workforce development, communications, technology, recognition through national and chapter awards programs, employee benefits and an online contractor search directory that offers information on best practices and business development.

ABC serves as the construction industry's voice for the legislative, executive and judicial branches of the federal government and for state and local governments, as well as the news media. Listed among *Fortune* magazine's top 50 most influential national organizations, ABC is devoted exclusively to the advancement of the merit shop construction philosophy, which encourages open competition and a free-enterprise approach that awards contracts 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 the fastest growing association in the United States. Today, ABC is recognized as one of the leading organizations representing America's business community and the U.S. construction industry.

The U.S. Construction Industry: A National Profile

Construction and the U.S. Economy

- The U.S. construction industry's value added to the nation's gross domestic product (GDP) totaled \$562.6 billion in 2007, which represented roughly 4.1 percent of total GDP. The corresponding figure in 2006 was \$630 billion or 4.8 percent of total GDP. (Department of Commerce)
- As of August 2008, the seasonally adjusted annual rate of construction spending (value put in place) in the U.S. was \$1.07 trillion, down 5.9 percent from the same period in 2007, but up 49.8 percent since August 1998. Spending on private sector construction comprises more than 70 percent of total construction. (Census Bureau)
- The U.S. construction industry supported 7.1 million full- and part-time employees in September 2008, representing 33.4 percent of employees in the nation's goods-producing sector and approximately 5.2 percent of the total non-farm workforce. (Bureau of Labor Statistics, Department of Labor).
- Total employment in the U.S. construction industry has grown 14.5 percent over the past ten years (Sept. 1998- Sept. 2008) or by 0.9 million employees. Nonresidential building construction employment decreased 1.3 percent over the past ten years. (Bureau of Labor Statistics, Department of Labor).
- Producer prices have been generally increasing over the past year. Inputs to the construction industry as of September 2008 were 13.1 percent more expensive than a year prior and 54.3 percent higher than during the same month in 1998. (Bureau of Labor Statistics)

The Construction Workforce

- The composition of the U.S. construction industry workforce has changed dramatically during the past five years, with significant increases in the number of females, African-Americans, Hispanics and other immigrant workers. The number of women in construction increased 144,000 during a recent five-year period between 2003-2007 to 1,119,000 or 9.4 percent of the total construction workforce. At the end of 2007, African-American workers made up approximately 5.7 percent of the entire construction workforce. (Bureau of Labor Statistics, Department of Labor)
- Hispanic workers made up 25.3 percent of the U.S. construction industry workforce in 2007, compared to 17.1 percent of the overall U.S. workforce. Between 2003 and 2007, Hispanic employment in the U.S. construction industry increased by 936,000, rising to approximately 3 million Hispanic workers. (Bureau of Labor Statistics)

- Union membership in the U.S. construction industry was 13.9 percent in 2007, up from 13 percent in 2006, but down from 18.6 percent in 1997 and 21 percent in 1987. (Bureau of Labor Statistics, Department of Labor)
- Of the total construction industry, 22.4 percent or 1,596,800 employees were associated with the building construction category in September 2008. Within this category, 51.5 or 822,000 employees fell within the residential building construction sub-category, while 48.5 percent or 774,800 employees were associated with the nonresidential sub-sector (commercial and industrial). (Bureau of Labor Statistics, Department of Labor)
- The average hourly earnings of a construction production worker were \$20.99 in the second quarter of 2008, 5.9 percent higher than the average hourly earnings of all private sector workers. Total compensation for construction workers rose 4.2 percent in Q2:2008 compared to Q2:2007, significantly higher than the 3.3 percent growth for all private sector workers. (Bureau of Labor Statistics, Department of Labor)

The Construction Workforce of Tomorrow

- Employment in the construction industry is expected to grow 10 percent between 2006 and 2016, compared with a 3.3 percent decline projected for all goods-producing industries. (Bureau of Labor Statistics, Department of Labor)
- Government and private sector sources estimate the construction industry must hire 185,000 new workers each year between now and 2015 in order to meet the industry's workforce needs. (Associated Builders and Contractors)
- Given the recent passing of the Emergency Economic Stabilization Act and its tax provisions, firms involved with alternative energy construction (e.g., wind power) are likely to benefit disproportionately. (Associated Builders and Contractors)

Construction and Small Business

- As of 2006, approximately 90 percent of all construction firms employed fewer than 20 people. (Bureau of Labor Statistics)
- Escalating materials costs and the shortage of labor remain concerns for the U.S. construction industry, especially for smaller firms. Continued price volatility for iron and steel scrap, gypsum, nickel, copper and petroleum products are likely over the near term as global investors continue to utilize commodities to hedge against a variety of market risks. (Associated Builders and Contractors)

Construction Industry Safety Record

- Because of the nature of work performed, construction companies must provide employees with a safe workplace in an inherently dangerous profession. As a result of the industry's initiatives, the injury rate has declined steadily in recent years. According to the Bureau of Labor Statistics (BLS), the injury/illness rates for construction hit an all-time low in 2001.

The most recent BLS statistics on injuries/illnesses per 100,000 workers are as follows: 1999—8.6 per 100; 2000—8.3 per 100; 2001—7.9 per 100; 2002—7.1 per 100; 2003—6.8 per 100; 2004—6.4 per 100; 2005—6.3 per 100; 2006—5.9 per 100. (Bureau of Labor Statistics)

- During the past several years, the number of construction-related fatalities has remained steady at between 1,100 and 1,300 per year. According to BLS, the number of fatalities is as follows: 1999—1,190; 2000—1,154; 2001—1,225; 2002—1,121; 2003—1,131; 2004—1,234; 2005—1,192, and 2006—1,273. (Bureau of Labor Statistics)
- According to the BLS, the construction and extraction (mining) fatality rate at 13.4 per 100,000 workers in 2006 was up from 12.9 per 100,000 workers in 2005 and 13.4 per 100,000 workers in 2004. (Bureau of Labor Statistics)

Construction Safety Initiatives

- **ABC's National Environment, Health and Safety Committee** – provides leadership and direction to ABC chapters and their members on safety, environmental and health issues. The goal is to assist small and medium-sized contractors in developing effective, onsite safety training programs.
- **ABC's Safety, Training and Evaluation Process (STEP)** – an annual program that allows construction 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. STEP is the cornerstone of many local and regional partnerships ABC maintains with OSHA. www.abc.org/Safety/STEP
- **ABC National Safety Excellence Awards** – premier recognition given annually to companies with exemplary safety records.
- **ABC-OSHA partnerships/alliances** – ABC chapters have established local and regional partnerships with OSHA. These partnerships recognize the safe practices and performances of ABC member companies.
- **OSHA-VPP Challenge** – ABC is one of four national construction associations invited by OSHA to participate in the Voluntary Protection Program (VPP) Challenge. The VPP Challenge recognizes construction companies with safety management systems that go beyond OSHA standards. Companies must submit to voluntary, random inspections by OSHA and are subject to fines for any violations. www.abc.org/Safety/OSHA_Partnership/OSHA_Challenge
- **OSHA Susan Harwood Training Grant Program** – a series of 2- or 4-hour training classes on “Focus Four” hazards in the construction industry is presented in various locations across the country. To date, more than 15,000 construction industry employees have been trained through the Trimmer Education Foundation's grant program in both English and Spanish.

- **Industry leadership on safety** – ABC members participate on industry panels including the Advisory Committee for Construction Safety and Health (ACCSH), Negotiation and Rulemaking committees (NegReg), American National Standards Institute (ANSI) Accredited Standards Committee and numerous local safety councils. In addition, ABC members are regular recipients of the Construction Users' Round Table (CURT) Construction Industry Safety Excellence (CISE) award.
- **Construction Safety Manual** – a collection of safety programs, policies and procedures in English and Spanish that provides construction companies with a template on which to base their safety programs.
- **Construction Safety Management: Fundamental Components of Successful Safety Programs** – a publication providing guidance on ways to build and improve construction safety management programs.
- **Safety Toolbox Talks** – a collection of 89 *Safety Toolbox Talks* in English and Spanish designed to educate employees on the construction jobsite.
- **Safety classes** – ABC offers numerous classes, both through its chapters and annual Education Conference, 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.

ABC's registered apprenticeships are provided in nearly 30 craft professions through specialized craft training, including specialties in carpentry, electrical and plumbing. Skills' training incorporates hand tool and power tool safety, along with safe practices employed for each particular skilled profession.

Key Legislative Issues

Card Check/Secret Ballot Elections

- ABC strongly opposes federal legislation that would rob American workers of their rights to a fair election, free of fraud, when determining whether they want union representation. The so-called Employee Free Choice Act (EFCA) (S.1041 and H.R.800) as introduced by Sen. Ted Kennedy (D-Mass.) and Rep. George Miller (D-Calif.) would replace secret ballot elections with a "card check" process. ABC opposes this legislation as it overturns the established National Labor Relations Board (NLRB) procedures that guarantee a fair union election.
- EFCA would take away a worker's right to a federally supervised private ballot when deciding whether or not to join a union. It would replace the private ballot with a biased and inferior "card check" process that allows a union to organize if a majority of workers simply sign a card. Under this system, the workers' votes are made public to the employer, the union organizers and coworkers.

- At a time when we spend tremendous resources to foster and support free elections around the world, it makes no sense to roll back the clock on our own workplace elections by abolishing federally protected private ballots.
- EFCA is fundamentally incompatible with protecting the interests of individual liberty and the principles of a sound democracy. If Congress passes this proposal, they will be stripping away federally protected private ballots from the hands of American workers.
- No one, employers and union organizers alike, should fear an election conducted by private ballot. It is the only manner in which to protect an individual's freedom to choose without subtle or overt coercion. The only way to guarantee worker protection is through the continued use of a federally supervised private ballot. Private ballots protect free choice.
- Swapping federally supervised private ballot elections for a card check process tramples the privacy of individual workers who should not have to reveal to anyone how they exercise their right to choose whether to organize with their coworkers in a union.
- On March 1, 2007, the U.S. House of Representatives passed the Employee Free Choice Act along near party line votes.
- On June 26, 2007, the U.S. Senate failed to meet the 60 vote threshold necessary to pass the legislation. Similar to the House vote, the Senate voted along strict party lines.
- ABC supports the Secret Ballot Protection Act (H.R.866 and S.1312) which would guarantee workers the right to a secret ballot election when deciding whether to unionize, and would prohibit unions from being recognized based solely on a card check. Introduced by the late Rep. Charlie Norwood (R-Ga.) and Sen. Jim DeMint (R-S.C.), this vital legislation preserves the sanctity of employee free choice and every employee's right to a secret ballot election. The right to a private, fair and honest election, free of coercion is something every employee deserves.

Immigration

- ABC supports comprehensively reforming the nation's immigration policy to facilitate a sustainable workforce for the American economy while ensuring national security. The construction industry faces an increasingly problem with shortages of both craft professionals and legal laborers who have difficulty becoming citizens or obtaining the necessary work permits.
- ABC's Board of Directors has adopted a policy stating that any successful 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. Reform will fail without a legal channel allowing willing, essential foreign workers the opportunity to work legally in this country.

- In December 2005, the House of Representatives passed major immigration reform legislation geared toward improved border security, internal enforcement of immigration laws and the development of a new employee verification system. ABC opposed the overall legislation because it failed to offer comprehensive reform and would have subjected employers to largely increased criminal penalties and potential jail time for failure to comply with vast and overreaching new mandates placed on businesses.
- In March 2007, the “*Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007*” (H.R.1645), was introduced in the House of Representatives. While the bill is an important first step toward bipartisan comprehensive immigration reform, the measure has many flaws that first must be addressed in order for it to be beneficial to the construction industry. The bill is currently going through the committee process and ABC is working with Congress to further craft the legislation.
- Also in March of 2007, Senator Barbara Mikulski (D-Md.) introduced the “*Save Our Small and Seasonal Business Act of 2007*” S. 988. Congressman Bart Stupak (D-Mich.) introduced the corresponding House bill, H.R. 1843, the same month. These bipartisan bills would simply renew the highly successful relief provision for the H-2B visa program that was initially approved by the Senate by 94-6 in 2005. This relief provision (that sunset on September 30, 2007) exempts reliable and trustworthy past participants in the H-2B program who have completely followed the law during the past three from counting toward the statutory cap of 66,000 H-2B visas. Both bills were referred to the Judiciary Committees in their respective Chambers.
- In May 2007, the U.S. Senate introduced the “*Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007*” (S.1348). This legislation was the product of months of bipartisan negotiations between the U.S. Senate and the Bush administration. While ABC viewed this as a good blueprint for comprehensive immigration reform, there was still room for improvement before ABC could fully support final passage of the legislation. On June 7, 2007, a cloture vote on S. 1348 failed by a vote of 34-61.
- On November 6, 2007 Congressman Heath Shuler (D-N.C.) introduced the “*Secure America Through Verification and Enforcement Act of 2007*” (SAVE Act), H.R. 4088. Senator Mark Pryor (D-Ark.) introduced the corresponding Senate bill, S.2368, on November 15. These bills are an “enforcement only” approach to immigration reform that would mandate the use of the Department of Homeland Security’s E-Verify program by all employers in the United States.
- ABC continues to actively participate in the ongoing debate about comprehensive immigration reform. The association is using a strong grassroots campaign and is involved in industry coalition meetings with members of Congress.

The 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. The law is named after co-authors Sen. James Davis (R-Pa.) and Rep. Robert Bacon (R-N.Y.).
- Under federal law, the geographic scope of Davis-Bacon in federal construction contracts is limited to the 50 States and the District of Columbia.
- In 2008, Congress has been adding Davis-Bacon provisions to legislation that would either expand the Act into private construction projects or into other areas of federal public construction not covered by Davis-Bacon.
- According to the Congressional Budget Office (CBO), in 2001, approximately \$67 billion in federal funds was authorized for construction projects covered by the Davis-Bacon Act. Fifty-two percent of that amount went to transportation projects, 12 percent to the Department of Housing and Urban Development and other community and regional development projects, and 12 percent to the Department of Defense.
- Key facts concerning the Davis-Bacon Act include:
 - **It costs taxpayers money:** According to the CBO, if Congress were to repeal the Davis-Bacon Act, the federal government would save \$9.5 billion over the 2002 to 2011 period relative to the 2001 appropriations and \$10.5 billion relative to 2001 appropriations adjusted for inflation.
 - **Prevailing wage laws like the Davis-Bacon Act inflate construction costs from 5 percent to 38 percent:** Eliminating the Davis-Bacon Act's requirements would reduce unnecessary federal spending and guarantee more construction for the dollar for important public projects such as schools, roads, bridges, low-income housing, hospitals and prisons. It also would remove barriers that preclude emerging businesses and entry-level workers (helpers) from working on public projects paid for with their own tax dollars.
 - **The Davis-Bacon Act disadvantages small, emerging and minority businesses:** The Davis-Bacon Act discourages many qualified small and minority-owned contractors from bidding on public projects because the complex and inefficient wage and work restrictions make it nearly impossible for small businesses to compete with better-capitalized corporations. As a result, few small and minority owned firms win Davis-Bacon contracts, and many others give up trying. Davis-Bacon also prices out entry-level workers.
 - **The Davis-Bacon Act is anti-states' rights:** Nineteen states have chosen not to have a state prevailing wage law (and six more have some exemptions for schools) because the wage mandates drastically inflate construction costs.

These states should not have to be saddled with the outdated federal law, which serves as an “unfunded mandate” imposed on state and local projects, just because they have received \$2,000 or more in federal assistance.

- **The Davis-Bacon Act does not improve safety, quality or training:** Despite proponents' claims, the Davis-Bacon Act is not a safety law. Ensuring jobsite safety is the purview of OSHA. The Davis-Bacon Act was not written to address project quality, which is governed by procurement laws, project specifications and bonding requirements. It is not a job training law and does nothing to ensure workers are better trained on public projects. It is purely a wage mandate with outdated job restrictions that do not match the needs of today's competitive business environment.
- According to various studies, the Davis-Bacon Act increases construction costs by an average of 5 percent to 15 percent and by as much as 38 percent in non-urban areas. A 5 percent to 15 percent savings on FY 2003 spending levels of \$31.8 billion would have resulted in an additional \$1.59 billion to \$4.77 billion in highway spending.
- Several studies have called into question the credibility of Davis-Bacon Act wage determinations. A series of audits by outside agencies, as well as the Department of Labor's (DOL) Office of Inspector General (OIG), in 2004 revealed substantial inaccuracies in Davis-Bacon Act wage determinations and suggested that they are vulnerable to fraud.
- The Government Accountability Office (GAO) has issued multiple reports dating from the late 1970s to the late 1990s detailing problems with the determinations.
- In addition, DOL's OIG released three reports highly critical of the wage determination program. The last report, in 2004, stated that the \$22 million the Wage and Hour Division spent to modify the program had yielded limited improvement and that the problems with inaccuracies identified in past reports remained. The report found one or more errors in 100 percent of the wage surveys reviewed.

Green Jobs

- Associated Builders and Contractors (ABC) has been at the forefront of the green building movement since its inception. ABC members were involved in the founding of the U.S. Green Building Council (USGBC) and in the drafting of the Leadership in Energy and Environmental Design (LEED) rating system. As of July 2007, 11 federal agencies followed the standards set forth by the USGBC's LEED rating system.
- Despite the merit shop's track record of successfully completing green construction, anti-business special interest groups are working to attach discriminatory anti-merit shop apprenticeship requirements on green projects and green jobs in the construction industry.

- ABC strongly advocates the merit shop construction philosophy, which encourages open competition and a free-market approach to awarding construction contracts. ABC believes that all contractors should have the opportunity to compete openly and fairly for green projects. Requirements that restrict the ability of merit shop contractors to bid on green projects unnecessarily limit competition and do not offer any benefit to the end users – the general public. Construction contracts should be based on merit and awarded to the most qualified and responsible low bidders, regardless of labor affiliation.
- Special interest groups have already laid the framework to support what will likely become union-only apprenticeship requirements on green job initiatives in Title X of the *Green Jobs of the Energy Independence and Security Act (H.R. 6)*. Lawmakers made \$125 million available to invest in a renewable green job training program, but these funds are only available to entities that are partnered with labor unions. It is vital that mandatory, union-only apprenticeship guidelines are not made a condition for eligibility to receive federal grant money or 86% of the private construction industry – the workforce of merit shop contractors – could be prevented from working on a growing segment of future construction
- As enacted, Title X will significantly reduce the role of America’s businesses community in the training of workers for 21st century jobs. This provision greatly expands government bureaucracy and needlessly benefits labor unions at the expense of full and open competition by allowing unions to assume a major role through legislated training partnerships and in mandated consultation of potential grant proposals.

Green Building

- ABC has established the National Green Building Committee, a panel consisting of a broad cross-section of ABC member contractors. Its mission is to advance ABC members’ ability to support their customers and thrive in the green building industry by providing education and resources; advocating for smart energy policy and legislation; establishing partnerships and working with construction owners; and developing and communicating best practices to demonstrate a commitment to sustainability and promote an eco-friendly culture throughout the association.
- ABC members lead the construction industry by utilizing sustainable construction methods and practices. *Engineering News-Records* Top 100 Green Contractors consists of 53 ABC members with close to \$15 billion in green building revenue.
- ABC recognizes the importance of green building in the commercial and industrial construction community by educating its members through such venues as USGBC workshops and by providing them with resources. For more information go to: www.abc.org/greenbuilding.

Three Percent Withholding Tax - Repeal Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222).

- ABC supports simplified tax laws that minimize the tax burden on American citizens – and the construction industry in particular – and help increase the rate of capital formation, economic growth and job creation.
- A new law (Section 511) requires federal, state and local governments to withhold 3 percent from all payments on goods and services as a guard against possible business tax evasion. The law:
 1. requires withholding of 3 percent on all government payments for products and services made by federal, state and local governments with total expenditures of \$100 million or more;
 2. affects payments for goods and services under government contracts as well as payments to any person for a service or product to a government entity (e.g. Medicare, certain grants); and
 3. applies to all payments starting in 2011.
- ABC opposes the creation of the new withholding tax, Section 511, and supports full repeal of the provision.
- The 3 percent withholding significantly affects company cash flow, especially in construction where the pre-tax profit margins rarely meet or exceed 3 percent. This new withholding requirement is based on revenues from government payments, not on a company's taxable income.
- Federal law requires construction contractors carry several types of bonds. Surety companies that provide these bonds look at cash flow when deciding to cover a contract. This withholding provision will restrict cash flow, leading to higher costs for bonds or the denial of coverage, which ultimately drives up the cost of construction. In addition, the increased costs and difficulty in securing bonding will force smaller firms out of the public sector market, further limiting competition.
- Costly over-regulation will be the result of this new law – and in the end these increases will be paid by taxpayers.
- Two bills have been introduced in Congress to repeal Section 511 (the 3 percent withholding provision): H.R. 1023, sponsored by Congressmen Kendrick Meek (D-Fla.) and Wally Herger (R-Calif.), and S. 777, sponsored by Sen. Larry E. Craig (R-Idaho).
- The U.S. House of Representatives Nov. 9, 2007, voted 216-193 in favor of the Temporary Tax Relief Act of 2007 (H.R. 3996), which would prevent expansion of the individual alternative minimum tax (AMT) for one year.

- Additionally, the legislation would delay by one year the implementation of Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005. Section 511 requires that 3 percent be withheld on all payments for goods and services made to federal, state and local governments with total expenditures of more than \$100 million. H.R. 3996 would move the implementation of the 3 percent withholding from its scheduled date of 2011 to 2012.
- ABC filed comments May 14, 2008, with the U.S. Department of Treasury and the Internal Revenue Service (IRS) giving recommendations on how section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 should be implemented. ABC acknowledged that the Department of Treasury and the IRS are obligated to implement the 3 percent withholding tax, but that “Congress did not intend to put the burden of financing public construction projects on the backs of small businesses when it enacted section 511.”
- The impact of the 3 percent withholding required by section 511 is more significant than it appears on the surface, because the withholding is applied to the contractor’s gross payments, not the net. When you consider how payments are actually remitted on a typical construction project (both public and private), the apparent 13 percent withholding [when you include the 10 percent retainage that contractors are also subjected to] actually results in a 30 percent net reduction in the contractor’s cash flow. At certain points during a given construction project, therefore, this contractor could actually be forced to operate at a considerable cash deficit.
- Section 511 goes beyond the mere imposition of a tax. To the contrary, section 511 requires the withholding of a fixed and arbitrarily-set flat 3 percent of the gross revenue paid on every government contract for services or goods, without any regard to an individual contractor-taxpayer’s actual or eventual tax liability to the federal government for the particular tax year in question.

RESPECT Act

High on the list of organized labor's top legislative priorities is the Re-Empowerment of Skilled and Professional Employees and Construction Trades workers (RESPECT) Act (H.R. 1644 / S.969). Bills were introduced in March 2007 by Rep. Rob Andrews, (D-N.J.) and Sen. Chris Dodd (D-Conn.).

The legislation radically changes the National Labor Relations Act (NLRA) definition of a "supervisor." Under current law, a supervisor is considered an agent of management and owes a duty of undivided loyalty to the employer in labor-management relations, such as during union organizing campaigns, grievances, picketing and strikes. That duty would be compromised by the RESPECT Act.

Specifically the RESPECT Act would:

- Create divided loyalties among front-line supervisors who assign work to employees. Under the RESPECT Act, such supervisors would be covered by the NLRA and could then form, join or assist labor organizations; be eligible to vote in NLRB supervised elections; solicit signatures for union authorization cards from co-workers; or picket, go on strike or engage in other work stoppages that would be inconsistent with a supervisor's duty.

- Fundamentally change the dual functions of the national labor policy: (1) to protect the rights of rank-and-file employees in exercising their rights to form, join or assist a union without managerial or supervisory interference, while at the same time (2) ensuring supervisors act as agents in the interests of their employers in matters of labor-management relations.
- Have broad legal consequences, not only for the definition of a supervisor under the NLRA, but also potentially under a variety of other labor laws, such as the Fair Labor Standards Act, Occupational Safety and Health Act, anti-discrimination laws, and other federal and state statutes, regulations and rules in which a determination of supervisory or exempt status could be used to hold an employer liable for the acts of its supervisory agents.
- Trigger an explosion of litigation involving individuals currently classified as "supervisors" who perform non-management duties that are not listed in the definition, yet are vital to the success of an employer's business.

Currently Section 2(11) of the NLRA defines "supervisor" as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The RESPECT Act would make three major changes to the current definition. It would eliminate the two most common supervisory duties in the construction industry- the authority "to assign" other employees, and the authority to "responsibly to direct" other employees. In addition, the RESPECT Act would require that the "majority of a supervisor's work time" be spent engaging in the remaining duties outlined in the definition above – a requirement few construction supervisors could meet.

Independent Contracting Reform

- Independent contractor relationships can be advantageous for all involved. The arrangement allows for independent contractors to have the freedom 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.
- Some policymakers claim that a large number of construction industry employers wrongfully classify their workers as independent contractors in an attempt to avoid paying payroll, unemployment, and workers compensation taxes.

- Critics argue that rampant and wrongful classification of workers can lead to a decline in public revenue as these contractors would not be paying the appropriate payroll taxes.
- 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.
- Unfortunately, because Internal Revenue Service (IRS) and states' guidelines for classifying a worker as an independent contractor are ambiguous and inconsistent in applying independent contractor classification standards, a number of law abiding contractors misclassify workers as independent contractors in error.
- The tests to determine if a worker is an independent contractor are vague and contradictory among various federal and state agencies. 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 recently-introduced federal and state independent contracting reform measures would severely penalize contractors for mistakenly classifying employees as independent contractors, limit contractors' ability to legally use the independent contractor status for workers and eliminate the safe harbor protections currently include in federal law.
- A July 2006 U.S. Government Accountability Office (GAO) study of the 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 activities of those taking advantage of their workforce without increasing complicated and burdensome regulations on business.
- 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.

Transportation

- In January 2007, the Ten-in-Ten Fuel Economy Act of 2007 (S.357), intended to increase Corporate Average Fuel Economy (CAFE) standards for motor vehicles, was introduced in the U.S. Senate.
- ABC believes the decisions Congress makes on fuel economy standards will have a dramatic effect on the future of the construction industry. If CAFE standards are set too high, there can be unintended consequences, resulting in the types of vehicles needed by the construction industry to be either no longer available or priced so high that our members simply could not afford to purchase them.

- On Aug. 10, 2005, President Bush signed into law the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (H.R. 3). The transportation reauthorization measure provided more than \$826 billion for new highways, roads, airports, bridges, transit facilities and other transportation-related projects. SAFETEA-LU is set to expire in 2009.
- The U.S. Department of Transportation estimates an increase of \$1 billion in federal highway construction spending combined with a state matching fund ratio of 20 percent, for a total of \$1.25 billion dollars spent on transportation infrastructure, will create nearly 48,000 new jobs.
- ABC believes a strong, safe and reliable transportation infrastructure is vital to the nation's competitiveness in the global economy, and the federal government has a responsibility to help maintain this infrastructure.
- ABC supports funding transportation infrastructure at necessary levels and designating all gas and excise taxes to the highway trust fund, with assurances that the revenue will be spent on much-needed infrastructure improvements.

Project Labor Agreements (PLAs)

- Imposing a union-only PLA typically limits the number of bidders to only union contractors or to those few open shop contractors that are willing to become signatory to the PLA and the unions, hire workers through union hiring halls, hire apprentices through union apprenticeship programs, and obey the union's restrictive work rules, job classifications and arbitration procedures.
- Unions use the threat of labor unrest to coerce construction users into signing union-only agreements. This is a particularly disingenuous argument because labor unions cause such project delays through strikes, work stoppages, jurisdictional disputes and illegal organizing.
- To make delays and the threat of work stoppage the basis for granting unions a monopoly is rewarding the potential perpetrators, penalizing the victims and unnecessarily driving up costs for taxpayers. In addition, a PLA does not necessarily guarantee a project's labor peace.
- It is wrong for federal, state or local governments to impose discriminatory PLAs that deny the vast majority of construction workers access to publicly funded projects. These are workers who choose not to join a union. Such discrimination denies taxpayers the ability to work on projects being paid for by their own tax dollars.
- Ultimately, labor unions use PLAs to try to regain lost market share. PLAs protect unions from competition. But, open competition is fair to both union and non-union workers, and provides taxpayers with safe, on-time, low-cost construction. The U.S. free market system is based on full and open competition. PLAs limit competition while reserving work to one small sector of the industry. Open competition provides the best value for American taxpayers and workers.

- In 2001, the Bush administration's first policy action was to implement Executive Order 13202, which ensures a neutral government position and full and open competition in the federal contracting process. This order, challenged by the AFL-CIO's Building and Construction Trades Department, was upheld by the U.S. Court of Appeals for the D.C. Circuit, a decision that was maintained when the U.S. Supreme Court denied certiorari in the case, thereby upholding the lower court's decision. This was a major victory for American taxpayers and for the more than four out of five U.S. construction workers discriminated against by union-only PLAs.
- ABC strongly supports legislation introduced in the 110th Congress to codify the language of the Bush Executive Order into law. Introduced by Rep. John Sullivan (R-Okla.) and Sen. David Vitter (R-La.), the Government Neutrality in Contracting Act (H.R. 2558 and S. 1597) would prohibit construction projects that receive federal assistance from implementing a union-only PLA.
- As of May 2007, anti-PLA/pro-open competition laws can be found at the state level in Utah, Montana and Missouri. These laws prevent state government agencies from requiring construction industry employers to enter into agreements, such as PLAs, with labor organizations. However, these laws do not prohibit employers from voluntarily entering into agreements with labor organizations.
- Some governors have recognized the importance of state government neutrality in awarding public construction contracts. The governors of Arkansas and Minnesota have signed executive orders similar to President Bush's executive order. In contrast, governors from Illinois, New Jersey, New York and Nevada have executive orders authorizing and encouraging PLAs on public works construction projects.

In May 2006, The Beacon Hill Institute released a study concluding that the use of PLAs on New York's school construction projects increased project 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.

Small Business Health Plans (SBHPs)

According to the latest U.S. Census data, the number of people without any health insurance coverage is up to 44.8 million. 27 million of those uninsured individuals are owners, workers and dependents in small businesses.

- Premiums for employer-sponsored family health care have increased by 87 percent since 2000.
- According to a recent study by the Commonwealth Fund, employees in firms with fewer than 10 workers pay, on average, 18 percent more in health insurance premiums for the same benefits than those in the largest firms.
- SBHPs will empower small businesses with the same tools that large employers and labor unions use to make health insurance more affordable – such as economies of scale and increased bargaining power, administrative savings with one set of rules across state lines, design flexibility and increased health insurance market competition.

- SBHPs can create a 15 percent to 20 percent health benefit cost reduction. Workers in small businesses need a new mechanism to pool their resources together to increase their bargaining power and create more competition in health insurance markets.

Union Salting Abuse

- "Salting" abuse is the intentional placing of trained union professional organizers and agents in an open shop facility 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.
- ABC strongly supports the Truth in Employment Act of 2007 introduced by Rep. Steve King (R-IA) and Sen. Jim DeMint (R-SC). H.R. 2670 and S. 1570 would amend section 8(a) of the National Labor Relations Act to make clear that an employer is not required to hire any person who is not a "bona fide applicant" because the applicant is simply seeking a job to promote interests unrelated to those of the employer.

Key Regulatory and Legal Issues

Apprenticeship

ABC supports an open door policy for new apprentices. Essential system reforms should include these principles:

- No policy by design or by operation shall discriminate between or among apprenticeship programs based on the type of management (employer, union, nonunion, association, etc.) of the program.
- Program registration denial is strictly prohibited if based solely or primarily on the existence of another program offering apprenticeship in the same craft and geographic region.
- Any policy or operating procedures implemented by a State Apprenticeship Council (SAC) that depart from or impose requirements in addition to federal regulations are not in effect until such time they are approved in writing by U.S. Department of Labor.
- No local government may adopt standards different from those of the U.S. Department of Labor or SAC for apprenticeship.

- Apprenticeship program applications must be reviewed and approved or denied within a certain number of days (e.g., 60 days). In the event of denial, a written explanation of deficiencies must be provided with an opportunity to cure.
- An appeals process with judicial review will be provided for denial of an apprenticeship program application.
- All apprenticeship programs and registration agencies shall grant reciprocity to other states' apprentices and programs.
- Apprenticeship requirements, including in-class and on-the-job training, shall be revised to provide for performance standards.
- Graduation should be allowed in a shorter time period – with sufficient performance – but apprenticeship programs should offer continuing education with the incentive of advanced certification as identified by new regulations.

BCTD Attacks on ABC Apprenticeship Programs

- The AFL-CIO Building and Construction Trades Department (BCTD) has issued a number of reports attacking ABC chapters and their apprenticeship programs. However, the BCTD attacks have nothing to do with improving construction training or bettering the construction industry. They are merely organized labor's desperate attempts to reclaim industry market share that has been lost through the past 35 years. (In 2006, according to the Bureau of Labor Statistics, 13 percent of the U.S. construction workforce belonged to labor unions.)
- In its attacks, the BCTD continues citing registered apprenticeship as the primary source of craft training; however, this statement demonstrates the lack of a basic understanding of the current and future industry. In fact, training comes in many forms, such as employer in-house programs, community colleges, ABC and consortium training programs, etc. Today, few workers use the federally-regulated registered apprenticeship system as their sole or primary training model.
- In truth, registered apprenticeship – in its current form – is not necessarily the best training method for craft professionals. Most craft license examinations may be taken after two years of training. Registered apprenticeship programs may require a person to work full-time and go to school at night for four or five years. Therefore, workers and employers often find other programs more useful.
- The great irony of the BCTD attacks is that while the unions provide little comparable data for their own programs, the comparisons on cancellations are apples and oranges. Union programs count registered/cancelled apprentices in a different manner than all other programs. Registered union program apprentices are not “cancelled” when they change employers. Generally, all other programs must record a cancellation when a registered apprentice changes employment, even if they never leave the apprenticeship program.

- In addition, union apprentices are indentured to the union, and departing students are sued for violating their contractually agreed-upon indenture.
- ABC and other merit shop training programs have an open-door policy in which every qualified candidate may go directly into the program as soon as they are employed. On the other hand, unions commonly screen out candidates by requiring them to wait one year before becoming registered, thereby keeping cancellation rates down. Further, union registered apprentices risk being sued by the unions for money invested in training if they leave a program and/or the union. ABC and other nonunion apprentices do not face this threat for exiting a program.
- The U.S. Department of Labor has not accepted the BCTD attacks against ABC as legitimate. Assistant Secretary of Employment and Training Emily DeRocco directly responded to the BCTD in a June 1, 2004, letter: “[M]y conclusion is that the data alone are insufficient to draw many of the conclusions that have been made regarding program performance overall.”
- ABC encourages the BCTD to discontinue these politically motivated attacks and instead work collaboratively with industry and government agencies to develop a training model reflecting the industry’s current and future needs. ABC will continue to educate tomorrow’s workforce while working with the industry and government agencies to find the best ways to innovatively meet the training needs of the 21st century construction workforce.
- At the request of Sens. Edward Kennedy (D-Mass.) and Patty Murray (D-Wash.), in August 2005 the Government Accountability Office (GAO), the investigative arm of Congress, issued a report recommending improvements to the operation of the U.S. Department of Labor’s Office of Apprenticeship Training, Employer and Labor Relations. The report recommends: 1) better database use to assess apprenticeship programs; and 2) better review of state apprenticeship councils “to ensure that state activities are in accord with those requirements set forth by federal law.” The BCTD used these recommendations to criticize the Labor Department; the report does not criticize ABC programs. While the report makes note of varying cancellation rates, it does not purport to support the supposition that cancellation rates link directly with program quality.

The GAO report’s major shortcoming was its failure to mention the unconscionable inequities of the policies and practices that discriminate against the merit shop apprentices and programs. Some of the policy failures are:

- States continue to impose or enforce different standards on merit programs (e.g., ratios or hours of training);
- Union apprentices may move among employers without canceling from a program while merit apprentices must cancel and re-enroll;
- Unions sue exiting apprentices, thereby keeping cancellations artificially low;
- Registered apprenticeship programs — crafted to reflect the union programs’ seniority and time-based method of training — do not meet current or future workforce and industry needs.

U.S. Department of Labor Derecognition of California Apprenticeship System

- ABC filed an amicus brief to support the U.S. Department of Labor's legal proceedings to derecognize the state of California's apprenticeship system, which has implemented numerous roadblocks to effective apprenticeship programs.
- On Jan. 31, 2007, the U.S. Department of Labor (DOL) Administrative Review Board (ARB), acting under authority delegated by the Secretary of Labor, issued a Final Decision and Order that withdrew recognition, for Federal purposes, from the California Department of Industrial Relations (CDIR) and the California Apprenticeship Council, which constitute California's State Apprentice Council (SAC). Therefore, under the implementing regulations (29 CFR part 29) for the National Apprenticeship Act (29 U.S.C. 50), the SAC no longer has the authority to register or oversee apprenticeship programs for "federal purposes."
- Accordingly, apprenticeship programs registered in California must register with DOL's Office of Apprenticeship (OA) if they wish to pay apprentice wages at the rates authorized under the regulations implementing Davis-Bacon and related acts. This notice sets out the process for accomplishing the transition from SAC registration to OA registration, for federal purposes. After March 2, 2007, (30 days after the date of the ARB's order withdrawing recognition of California's registration agency), the department ceased to recognize, for federal purposes, each apprenticeship program registered with the State of California, unless registered with OA by March 2, 2007.
- The DOL's decision to offer federal registration for state apprenticeship programs advances opportunities for individuals seeking craft training. Merit shop construction contractors benefit by having the opportunity to operate their own apprenticeship programs under the federal regulations.
- In correspondence with the state of California in October 2004, the Department of Labor clarified to the state of California that it must permit federally registered apprentices to work on public projects that have any federal support. This policy was contrary to the state's practices of rejecting federally registered apprentices.
- The decision to offer program registration both through the DOL's Office of Apprenticeship Training, Employer, and Labor Services and the California Division of Industrial Relations comes in response to the agency's ongoing effort to derecognize California's apprenticeship system, which imposes numerous restrictions that often block apprenticeship programs, including merit shop programs, from registering or operating in the state.

Job Targeting

- Job-targeting funds are monies collected from union employees for the purposes of reimbursing contractors that use union labor for the costs associated with underbidding contractors that do not use union labor. For instance, if a union contractor underbids a merit shop contractor on a federal project, the union under agreement with the contractor will reimburse the contractor for costs exceeding the published bid price.

- 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.
- The courts and the U.S. Department of Labor have declared it illegal to collect job-targeting funds from employees' prevailing wages on public construction projects.
- Specifically, the D.C. Circuit Court of Appeals held Dec. 9, 1994, that union dues assessed for job targeting are not exempt membership dues, and therefore could not lawfully be deducted or rebated from wages paid to union employees on public work under the Davis-Bacon Act. *Building and Construction Trades Dept. v. Reich*, upheld the Department of Labor's findings published at 1991 WL 494718. This ruling was followed by the Ninth Circuit Court of Appeals a year later in *IBEW v. Brock*. In 2000, the National Labor Relations Board confirmed that the rulings remained valid in *Kingston Contractors*.
- In 2004, ABC filed an amicus brief with the National Labor Relations Board (NLRB) urging it to further clarify that collecting job-targeting fees from workers on federal and state public projects is illegal. The case is still pending.
- The Department of Labor and the courts consistently have determined that collecting job-targeting funds from employees is illegal under the prevailing wage law for public construction projects. However, this practice is prevalent because the unions have not been required to submit thorough accounting of the collection and disbursement of the funds, and the Department of Labor, under the Clinton administration, chose not to enforce the law.
- This financial disclosure reform for unions is similar to the government's efforts to expand the reporting requirements of public corporations. The department increased the requirements placed on unions with annual receipts of \$250,000 or more, which represents only about 20 percent of all unions.

Flawed Davis-Bacon Surveys

- A report from the U.S. Department of Labor's Office of the Inspector General (OIG) covering Oct. 1, 2003, to March 31, 2004, questions the credibility of the Employment Standards Administration's Wage and Hour Division wage determinations under the Davis-Bacon Act. OIG's audit discovered errors in nearly 100 percent of the reviewed wage reports. The OIG report called for a "representative and unbiased" wage survey process that is statistically viable. The OIG recommended that DOL's Wage and Hour division base the wage rates on a system similar to that of the BLS, which OIG says uses statistically valid methodology for conducting national wage surveys. From FY 1997 to 2003, the DOL spent \$22 million for the Davis-Bacon Act's wage determination improvements. OIG says those changes have resulted in few actual improvements.
- The U.S. Department of Labor's Administrative Review Board on March 31, 2006, rejected the wage rate determinations in western Pennsylvania, where the Wage and Hour division violated its own regulations by over-counting union contractor surveys. (This is in the matter of Mistick Construction.)

- ABC submitted comments to the Department of Labor's (DOL) Employment Standards Administration (ESA) on October 12, 2007, regarding the Report of Construction Contractor's Wages Form (WD-10). ABC stated that, as long as the Davis-Bacon Act remains law, DOL's prevailing wage surveys and information collections need to be made as efficient and practical as possible for all contractors. Doing so will increase the accuracy and credibility of the resulting wage determinations – goals and objectives which the Department shares with employers and employees in the construction industry.

Davis-Bacon Act Expansion

- On Feb. 20, 2004, ABC filed comments with the Federal Acquisition Regulation Council (FARC) on its proposal to revise the “site of work” definitions to include distant sites “where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.”
- If implemented, prevailing wages would be required at these secondary sites. Further, the proposed changes would require prevailing wage to be paid for transportation of materials to and from construction sites, pre-fabrication of construction components, batch plant operation and other related tasks.
- In addition, the proposed rule would impose the retroactive application of the wage determinations to secondary sites. The council states, “[A]ny subsequent incorporation to the contract of a wage determination for a secondary site shall become retroactively effective from the first day of work under the contract ... without any adjustment in contract price or estimated cost.”
- Further, the rule implies that a wage determination at the current site would apply to a new “secondary site” without regard to a new wage determination based on the location.
- ABC urged the council to withdraw the proposal and follow the established case law that flatly rejects paying prevailing wages at secondary sites. The council's proposal is an attempt to follow a Labor Department rule issued during the Clinton administration's last days. The council, however, has the discretion and responsibility to reject departure from case law and to follow the Davis-Bacon Act's clear language.
- Additionally, ABC commented that the council had failed to analyze the regulation's cost on small businesses. In particular, the rule's retroactive aspects will be devastating to small firms currently working on federal construction projects.

Procurement

- Reverse Auctions Rejected by U.S. Army Corps of Engineers (USACE): In a July 27, 2005, report to Congress, the USACE found that purchasing construction services through reverse auctions had no measurable savings. The report was a result of a pilot program mandated by statute. The report is on ABC's reverse auction information website: www.abc.org/reverseauctions.

- Performance-Based Service Acquisition: ABC filed comments on federal acquisition supporting the general concept of performance-based service acquisition. The proposed rule seeks to mandate performance-based contracting in general industry, but could affect ABC members that perform non-construction services, such as maintenance. ABC generally agrees with the proposed rule in the context of a fair, objective pre-qualification requirement, but believes the contract should then be awarded based on a low-bid process.

Political Action

- Since 1997, and the beginning of the Regional Political Managers program, ABC has dramatically increased its political involvement with grassroots and political campaign activities. Each year and each election cycle, the association's membership has grown to become more involved and motivated. The association has tested new tactics and has expanded its technological and innovative programs.

Associated Builders and Contractors' Political Action Committee (ABC PAC)

- Founded in 1978, ABC PAC is one of the nation's largest, most principled PACs. Its sole mission is to collect voluntary contributions from the executive and administrative personnel of ABC member firms for the purpose of electing to the White House, U.S. Senate and U.S. House of Representatives champions of the merit shop legislative agenda.
- When ABC members give to ABC PAC, they are speaking as part of a powerful collective of Americans running small businesses. During the 2004–2006 election cycle, ABC PAC contributed more than \$1.6 million to 206 races and had a 72 percent success rate.
- In the 2006 cycle, ABC PAC was once again the second largest construction-related PAC to donate funds to federal candidates. Only the National Association of Home Builders' PAC was larger.
- As of October 6, 2008, ABC PAC has raised \$1,089,016, which is 88 percent of its 2008 goal.
- Fifteen ABC contractor members make up a board of trustees that oversees the PAC, makes final policy and direction decisions, and approves all donations.
- Candidates must agree with ABC on key issues (e.g., health care), must oppose union-only PLAs and be committed to stopping salting abuse. They also must meet minimum voting criteria.
- ABC PAC is bipartisan, however the importance of having House and Senate leadership that shares ABC's philosophy is also recognized.

Free Enterprise Alliance (FEA)

The Free Enterprise Alliance is the issue advocacy arm of ABC National (not an independent organization), comprised of ABC members from each region, it is dedicated to issue advocacy and the education of ABC members, member company employees and the general public on the merit shop construction agenda.

The Free Enterprise Alliance is advancing the merit shop agenda in several areas:

- **Educating merit shop craft professionals:** FEA sponsors an employee education campaign, which is a nonpartisan and legally approved plan for reaching out to all ABC members, and most importantly, to ABC employees and craft professionals. The program helps educate ABC employees about the merit shop construction issues affecting the industry, and the role they play as a merit shop employee. FEA uses a wide range of mediums to accomplish this task, some of which include video, “Toolbox Talks” and “Paycheck Stuffers.”
- **Issue advocacy:** FEA does not advocate the election or defeat of any candidate. It does, however, educate the public on issues of importance to free enterprise.
- **Advancing public policy legislative efforts:** As permitted by law, FEA helps advance a free enterprise agenda by working with state, local and federal officials on business legislation, initiatives and referendums.

During the past four years, the Free Enterprise Alliance has financed, produced, promoted and/or supported:

- The Coalition for a Democratic Workplace (www.myprivateballot.com), a national coalition of more than 500 companies and organizations that have joined together to keep secret ballot elections in the workplace and rise in opposition to the Employee Free Choice Act.
- Issue advocacy campaigns in California, Colorado, Kentucky, Louisiana, Mississippi, Minnesota, New Hampshire and North Carolina which were heard and seen by tens of thousands of voters.
- ABC Merit Majority Travel Teams which deployed to educate ABC members in Missouri, Tennessee and Washington during the 2006 elections; and in Colorado, Mississippi, Minnesota, New Hampshire and North Carolina during the 2008 elections.
- Right to Work ballot initiatives in Colorado and Iowa.
- Ohio First, a grassroots organization created to defeat four Ohio campaign finance reform ballot initiatives, that would have severely limited the extent to which ABC of Ohio could become involved in the political process.
- In 2008, independent expenditure pieces comparing the presidential candidates’ positions on issues important to the merit shop.

The Free Enterprise Alliance may accept personal or corporate donations. All contributions to FEA are voluntary and not tax deductible for federal income tax purposes.

The Bush Administration

Level Playing Field for Merit Shop

- The Bush administration has provided a more level playing field for merit shop contractors. Gone are discriminatory policies advanced by previous administrations, such as union-only PLAs, which gave preferential treatment to certain industry sectors based on labor affiliation.

PLA Executive Order

- One of the Bush administration's first actions was to implement Executive Order 13202, which ensures a neutral government position and full and open competition in the federal contracting process. This order, challenged by the AFL-CIO's Building and Construction Trades Department, was upheld by the U.S. Court of Appeals for the D.C. Circuit, a decision that was maintained when the U.S. Supreme Court denied certiorari in the case, thereby upholding the lower court's decision. This was a major victory for American taxpayers and for the more than four out of five U.S. construction workers discriminated against by union-only PLAs.

Regulatory Reform

- The Bush administration has made a concerted effort to create an environment in which entrepreneurs and small businesses thrive. Small businesses, including those in the construction industry, are disproportionately impacted by federal regulations in terms of cost and time spent reaching compliance. Through regulatory streamlining, removal of duplicative and burdensome paperwork requirements and emphasis on customer service, federal agencies that oversee the business community have become much more user-friendly.

Workforce Development

ABC leads the industry in recognizing education and training professionalism. The association works to improve the industry with innovative recognition programs such as: Craft Professional of the Year, Craft Instructor of the Year, National Craft Championships, Trimmer Excellence in Teaching Award and Trimmer Education Foundation Scholarships.

Craft Training and Apprenticeship

- Every year, ABC trains thousands of craft workers nationwide through both apprenticeship and craft skills upgrade programs. ABC training programs are offered in conjunction with local ABC chapters.

- ABC provides craft, apprenticeship, safety and management training through its network of 78 chapters nationwide. A number of these chapters provide craft training in multiple locations throughout the region they serve. Chapters also provide continuing education to meet requirements to maintain journey person licenses in various construction crafts.
- ABC provides apprenticeship training programs in nearly 30 crafts registered with the U.S. Department of Labor, with the majority of chapters offering training in carpentry, electrical, plumbing, HVAC and sheet metal. Chapters also serve industrial contractors by providing training in crafts such as pipefitting, millwright, industrial painting, industrial maintenance and instrumentation.
- One of the keys to ABC's success is that while ABC training is industry-driven to meet local needs, it is supported by nationally recognized programs such as the National Center for Construction Education and Research (NCCER) Contren® Learning Series curricula. The NCCER produces training and instructor guides for 26 construction trades.
- Each year, ABC National recognizes chapters for Excellence in Craft Training. Some examples of innovations in ABC craft training include the Pelican Chapter, which is among the nation's best-equipped and has the most advanced welding and electrical programs. The Texas Gulf Coast Chapter provides innovative craft assessment and customized Spanish craft and safety training. The Wisconsin Chapter has developed innovative training delivery models such as full-time/daytime classroom training and online on-the-job-training reports. The Florida East Coast Chapter provides an innovative electrical training boot camp and features a performance testing electrical project board.
- ABC chapters partner with educational institutions such as community colleges and vocational/technical centers to utilize facilities for craft training, with at least 20 ABC chapters or their cooperative organizations owning and operating craft training facilities. Eleven ABC chapters belong to merit shop training consortiums, pooling resources with other trade associations to further local construction industry training.

Student Chapters

- ABC student chapters develop future construction industry leaders. These chapters are located at colleges and universities with construction management programs. ABC has added 23 new student chapters in the past four years, with a total of 55 student chapters nationwide, and several more in development.
- Numerous benefits exist for student chapter members. This includes the opportunity to network with local chapter members, which can result in summer internships and post-college job placements.
- Student chapters also can participate in several annual ABC events: a member-sponsored construction management competition; career/leadership conference; scholarships; fellowships to attend the ABC Legislative Conference; an essay/presentation competition; excellence awards; student exhibit booth opportunities at the ABC National Convention; and the development of leadership and teamwork skills.

- The student chapter program is designed to allow ABC to share the merit shop philosophy with tomorrow's industry leaders. It also provides ABC member firms with an opportunity to find talented professionals for the future. The merit shop philosophy is not formally taught in construction higher education and this program provides an excellent opportunity for ABC to build bridges with academia.
- ABC is an active member of the American Council of Construction Education, the accrediting agency for construction higher education programs, as well as the Associated School of Construction and the Constructor Certification Commission of the American Institute of Constructors. ABC annually serves on accreditation visits to two-year and four-year construction degree-granting programs and reviews papers for academic conferences.

School-to-Career

- ABC works to build and maintain career and technical education awareness and opportunities in secondary schools to help prepare tomorrow's workforce. Numerous requests for construction career information are received at ABC's national office, as well as via email through the ABC Try Tools website, www.trytools.org.
- ABC staff and programs are available to help members and chapters promote careers in construction, with products such as the ABC Try Tools website; a wealth of printed and promotional materials (posters, brochures, craft career descriptions, etc.); and guidance for hosting construction career awareness events and classroom visits.
- Partnerships: ABC is active in Skills USA and the Association for Career and Technical Education (ACTE) to promote viable career opportunities and the construction career path. In addition, in June 2007, ABC signed a joint resolution with the National Association of Women in Construction (NAWIC) to renew its partnership. In June 2006, ABC signed two national-level agreements with the National Association of Minority Contractors (NAMC) and Women Construction Owners and Executives, USA (WCOE) to promote free enterprise, open competition and opportunities for all construction firms.
- ABC National, in partnership with the local Washington, D.C.-area ABC chapters, hosts a Careers in Construction EXPO at the National Building Museum that draws more than 1,600 middle-school and high-school students to experience and learn about the skilled construction trades through hands-on exhibits and informational materials.

Trimmer Education Foundation

- The Trimmer Education Foundation is ABC's 501 (c)(3) educational affiliate, with the mission to raise funds to support merit shop education and training efforts through ABC, its chapters and other entities. The foundation supports ABC's strategic educational goals through charitable giving.

Gulf Coast Workforce Development Initiative

ABC and its members and chapters continue offering assistance to the Gulf Coast region following the devastation caused by Hurricanes Katrina and Rita in 2005. Specifically, the focus has been on construction training to help the rebuilding effort.

- On Aug. 29, 2006, ABC announced a \$25,000 contribution to the Gulf Rebuild: Education, Advancement and Training (GREAT) campaign.
- The Business Roundtable started GREAT (www.imgreat.org) with the assistance of ABC and more than 20 other organizations. The Business Roundtable is an association of chief executive officers of leading U.S. companies.
- GREAT is working to recruit and train up to 20,000 new construction workers in the Gulf Coast region by 2009 to assist in rebuilding efforts.
- GREAT participants enroll in a four-week training course that provides the entry-level skills necessary to begin a successful career in the construction industry.
- As of Oct. 1, 2008, more than 18,000 people had gone through the training program.

Building Your Business – ABC Products and Programs

Findcontractors.com

- Findcontractors.com is ABC's online searchable membership directory of contractors, suppliers and construction professionals. It is the ABC website's most visited section, with the number of visits increasing each month. ABC members use the directory to locate other members to provide needed services. www.Findcontractors.com has become one of the most valuable business development tools ABC offers its members.
- In addition to providing visibility to ABC members, the directory is heavily advertised in major industry publications and at expositions nationwide. Findcontractors.com is updated daily as chapters provide new member and contact information, so it has tremendous advantages over printed directories.

Accredited Quality Contractor Program

- ABC's Accredited Quality Contractor (AQC) program provides national accreditation and recognition to construction firms that document their commitment to quality achievement in four areas of corporate responsibility: safety, employee benefits, training, and community relations and outreach activities.
- The AQC program is an effective tool used by many contractors to help recruit and retain employees, secure bids and gain recognition for their corporate citizenship and community outreach activities. All this serves to strengthen the image of the association and its members.

- ABC members may obtain an application from their chapters or from the ABC website at www.abc.org/aqc. Contractors submit their completed application form and fee to ABC National, where applications are graded and screened for completeness. AQC participants must renew their designations in each subsequent year to continue participation in the program. AQC member companies can renew with an abbreviated renewal application form.

Excellence in Construction Awards Program

- The ABC Excellence in Construction annual awards program recognizes the nation's top construction projects. Awards may be presented in nearly 50 categories, including: mega-projects, commercial, health care, historical restoration, industrial, infrastructure-heavy, institutional, pre-engineered building, public works-environmental, renovation, residential, other construction, electrical, interior, exterior, mechanical, site work/landscape/hardscape, and many more. Awards presented include the first place Eagle Award, the second place Pyramid Award and special awards judges deem appropriate, including awards for Design Build and LEED certified projects.

The ABC Emerging Contractors Manual

- ABC's *Emerging Contractors Manual* is a resource for contractors wanting to raise their understanding of their construction company's business side. It covers key areas such as planning, accounting, financial management and organizational development.

Safety Toolbox Talks

- ABC offers a collection of 89 *Safety Toolbox Talks* in English and Spanish that are designed to be used on the construction jobsite. All safety talks are on one CD.

Construction Safety Manual

- The ABC *Construction Safety Manual* is a collection of safety programs, policies and procedures in English or Spanish. These programs are in an electronic format on an easy-to-use CD and provide construction companies with a template on which to base their safety programs. Topics include confined space entry, fall protection, trenching and excavation, and much more.

Construction Safety DVDs

- ABC offers DVDs that provide construction safety training. Titles include Fall Protection for Construction, Scaffolding, Trenching & Shoring, Forklift Safety for Construction, HR Orientation for Employees and Construction Safety Orientation for Employees, Hazard Communication Training for Employees, Work Zone Safety for Construction & Utility Employees, Electrical Safety, and Confined Space Training.
- ABC has developed safety orientation videos for new employees and new project managers, as well as workers who are starting new projects. The 22-minute DVD, available in both English and Spanish, provides an overview of what needs to be done to ensure a safe jobsite. This includes protection from fall hazards, caught-between points and electrical hazards.

English/Spanish Pocket Dictionary and Phrasebook

- ABC's Spanish/English pocket dictionary includes words and phrases frequently used on construction sites. The pocket dictionary will enable project managers and workers to better communicate with Hispanic speakers and improve jobsite safety. Included are terms for colors, days of the week and numbers; everyday construction phrases; words and phrases associated with construction safety and jobsite conversation; and an alphabetized list of common words used daily.

OSHA Construction Safety Standards Manual

- ABC members can obtain the *29 Code of Federal Regulations (CFR) 1926 OSHA Construction Safety Standards*, the OSHA standards covering the construction industry, in book form from ABC National and its chapters. Each manual contains the complete text of the OSHA standards along with excerpts of other OSHA standards, including *Inspections, Citations and Proposed Penalties* (29 CFR 1903), *Recording and Reporting Occupational Injuries and Illnesses* (29 CFR 1904) and *General Industry* (29 CFR 1910).

Construction Safety Management Guide: Fundamental Components of Successful Safety Programs

- The *ABC Construction Safety Management: Fundamental Components of Successful Safety Programs* provides guidance on ways to build and improve construction safety management programs. This book offers valuable insight into fundamental components considered critical for an effective safety and health program.

Diversity

- ABC is committed to assisting members with the challenge of employing a culturally diverse workforce, and believes that a diverse workforce provides ABC members with a strategic business advantage.
- The composition of the U.S. construction industry workforce has changed dramatically during the past five years, with significant increases in the number of females, African-Americans, Hispanics and other immigrant workers. The number of women in construction increased 144,000 during a recent five-year between 2003-2007 to 1,119,000 or 9.4 percent of the total construction workforce. At the end of 2007, African-American workers made up approximately 5.7 percent of the entire construction workforce. (Bureau of Labor Statistics, Department of Labor)
- Hispanic workers made up 25.3 percent of the U.S. construction industry workforce in 2007, compared to 17.1 percent of the overall U.S. workforce. Between 2003 and 2007, Hispanic employment in the U.S. construction industry increased by 936,000, rising to approximately 3 million Hispanic workers. (Bureau of Labor Statistics)
- ABC offers the *Assessment of Diversity Activities and Practices Tool (ADAPT)* to assist contractors in developing business practices that attract and retain minorities and women.

- In June 2007, ABC signed a joint resolution renewing its partnership with the National Association of Women in Construction (NAWIC). In June 2006, ABC signed two national-level agreements with the National Association of Minority Contractors (NAMC) and Women Construction Owners and Executives, USA (WCOE) to promote free enterprise, open competition and opportunities for all construction firms.
- The agreements outline the shared understanding that the U.S. construction industry must continue to diversify in order to remain globally competitive. This involves attracting significantly more women and more members of the minority community.
- The agreements allow construction industry leaders to develop national initiatives designed to improve the business climate for all contractors as well as empower minority and women-owned firms by providing them with access to service, training, networking and other support programs.
- ABC chapters are eligible for the diversity grants that satisfy six critical elements in the application process: partnering with local organizations representing minorities or women, maintaining a commitment from leadership, using effective practices, securing additional resources from strategic partners, developing models on effective approaches and measuring results.

ABC has created bilingual safety products to assist the industry in working with the increasing Hispanic workforce. These include:

- Construction safety orientation video in Spanish;
- Safety Toolbox Talks in Spanish;
- English-Spanish Construction Phrases Pocket Dictionary; and
- English-Spanish audio CD.

In addition, a number of local ABC chapters provide safety and training classes in Spanish.

Contractor Councils

Currently, ABC has a national council for industrial contractors, electrical contractors, mechanical contractors and metal building assemblers/erectors.

- The purpose of the national councils is to serve the needs of specific trade groups within ABC. The councils are charged with identifying and then providing ABC initiatives and services specifically tailored to members of their trades. In addition, the councils serve as a sounding board for ABC regarding trade-specific legislative, regulatory and other industry issues.
- Council activities include: workforce development initiatives; publishing a trade newsletter; assisting with the National Craft Championships; developing relationships and partnering with other industry trade associations; facilitating peer group formation; providing trade-specific management education programs; and assisting chapters in communicating trade-specific membership benefits to current and potential members.

Peer Groups (Peer-to-Peer)

Peer groups, or business exchange forums, are made up of similar companies that meet regularly to discuss matters of business and personal interest.

- **Groups consist of six to 10 non-competing members:** Peer group members must not be in competition with one another to avoid antitrust problems from the sharing of competitively sensitive information - in particular, job-selection criteria, estimating techniques and overhead/markup determination. Having non-competing members also means that participants freely share information without fear that they will give an advantage to a direct competitor.
- **The concept is based on “win-win” sharing:** Each member learns something from the other members of the group while contributing their own ideas and experiences.
- **ABC National facilitates the formation of peer groups:** Group members take turns hosting or chairing a meeting in their hometown. Groups typically meet twice a year.

Project Management Institute

- ABC National has a partnership with Purdue University in West Lafayette, Ind., that offers project management training specifically for electrical and mechanical Contractors. ABC’s Electrical and Mechanical Contractor Councils participated in the development of the curriculum, which consists of 80-hour programs, broken into two 40-hour sessions. All classes are conducted on Purdue University’s campus.

Building and Protecting Your Business

ABC’s Insurance Programs

- ABC Insurance has been a strategic growth partner with contractors for 50 years. ABC provides member firms with objective, resource-based solutions that better equip them to attract, retain and reward employees so the member firm can grow consistently and profitably. These solutions are delivered through health and welfare programs, incentive-based programs and administrative services tailored to the construction industry.
- ABC Merit Choice is a national brand for high-quality fringe benefits for merit shop contractors and their employees. It offers a variety of products through its two business units – ABC Insurance Services and ABC Insurance Trust. ABC Insurance Services is ABC’s owned and operated national health insurance agency. ABC Insurance Trust, with 50 years of experience in serving ABC members, is the association’s health and welfare trust. Together, they offer innovative and industry-specific solutions to the growing need for high-quality, affordable benefits.
- ABC-designed association health plan, dental, life, vision and disability plans are all available through the ABC Insurance Trust.

- ABC administers a Dollar Bank program to provide cost-effective group insurance benefits for hourly employees. This program is designed for both prevailing wage jobs and regular commercial construction work. A worker accumulates one hour of insurance credit in his/her account for each hour worked. Coverage becomes effective the month after the employee has deposited the required number of hours into the Dollar Bank account.
- Health insurance coverage is also available from more than 60 companies through ABC Insurance Services and includes Health Reimbursement Accounts (HRAs) or Health Savings Accounts (HSAs). Individual and limited benefits plans are also available. To learn more about ABC Insurance, visit www.abc.org/meritchoice.

Construction Legal Rights Foundation

- ABC established the Construction Legal Rights Foundation in 1990 as an independent nonprofit organization to support precedent-setting legal efforts aimed at preserving and advancing merit shop principles of free enterprise and open competition.
- The foundation, in cooperation with ABC National, has funded hundreds of legal cases on issues involving salting abuse, apprenticeships, job targeting, prevailing wage, licensing and workplace safety.
- The foundation also funds ABC chapter campaigns to educate the public on the value of merit shop competition in the form of safe workplaces, an educated workforce, cost efficiency and quality projects. These campaigns address the disadvantages of requiring union-only project labor agreements and encourage open competition on construction projects nationwide.



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