



Associated Builders and Contractors

**Empire State**

**2022**

# **Legislative Agenda**





## PROJECT LABOR AGREEMENTS (PLAs)

Government mandated PLAs encourage discriminatory hiring practices, forcing contractors to hire 80% of their workforce from a union hall. The DOL's own statistics show that nearly 75% of our construction workforce is open shop, meaning PLAs discriminate against the majority of the construction industry in New York State.

ABC reviewed turnstile data from open shop construction projects across New York City. We found that out of the 14,000 workers on those projects, over 90% of the workers are Black or Latino, living in the five boroughs. This data shows that PLAs on city projects negatively impact a large number of minority workers: the same economically disadvantaged groups that we should be helping.

The numbers are clear. Discriminatory PLA mandates restrict New Yorkers from benefitting from projects they are more than qualified to work on. ***For these reasons, ABC opposes government mandated PLAs.***

## SCAFFOLD LAW REFORM

The "Scaffold Law" {Labor Law 240}, unchanged since its adoption in the 1800s, holds contractors absolutely liable for any gravity-related accident on the jobsite and eliminates their ability to defend themselves. Combined with legalized marijuana, it has made liability insurance unaffordable for contractors operating in this state.

To offset the added costs, the price of premiums is reflected in contractors' bids, forcing taxpayers to pay an estimated \$785 million per year more. The Scaffold Law is hindering our economic recovery by forcing the cost of construction to continually rise.

The current "absolute liability" standard must be replaced with a "comparative negligence" standard through which liability is apportioned by a jury, in proportion to the actual fault. In doing so, New York can rebuild our dilapidated infrastructure without gouging its taxpayers.

***ABC supports Scaffold Law Reform.***



## Minority and Women-Owned Business Enterprise (M/WBE) Reform

ABC supports New York's M/WBE program which is essential for the industry, however, comprehensive changes are needed to strengthen the program.

The goals mandated by the 2016 Disparity Study are unattainable in many regions, especially in rural communities. As a result, contractors must obtain waivers, which is a slow and inconsistently applied process. Creating attainable goals will improve the effectiveness of New York's M/WBE program.

The original M/WBE law has been manipulated by a flawed Disparity Study. A new study must be conducted to determine the true data on M/WBE companies. The law must also be amended to require project-specific goal analysis be made available to bidders, pre-bid, ensuring that project goals are set according to law and will protect both M/WBE and non-M/WBE firms. These changes will strengthen New York's M/WBE program.

***ABC supports reform of New York's essential M/WBE program.***



## PREVAILING WAGE REFORM

New York must reform the prevailing wage law as it is currently in violation of its own law regarding who can negotiate the wage. The State cannot continue to operate outside of its own laws.

As outlined by the Empire Center's report, "Prevailing Waste," New York's prevailing wage process costs taxpayers billions of dollars each year on public projects. The issue is exacerbated by the 2020 expansion of prevailing wage to jobs historically considered private work.

Albany must repeal the expansion of prevailing wage or make use of a provision in the law that allows for the delay of implementation due to economic hardships. New York cannot afford this expansion due to the effects of the pandemic, supply issues, and skilled labor shortages.

In light of a full repeal, Albany must:

- Broadly define what is deemed "construction"
- Modernize the prevailing wage calculation, by no longer using the rate negotiated by CBAs
- Institute a reasonable and responsible prevailing wage to save taxpayers billions on construction projects while supporting economic development.

***ABC supports prevailing wage reform.***

## ANNUALIZATION REFORM

Under the current model, the New York State Department of Labor's calculations annualize both private and public benefits by the same method. This practice results in outrageous costs to contractors already providing benefits to their workers.

Due to this, many contractors are moving away from traditional benefits packages and, instead, are offering the benefits as a cash supplement in their employee's paychecks.

This growing practice eliminates the double payment as previously offered benefits by contractors. However, it subjects the employee to higher taxes and the employer to more payments in payroll taxes and other burdens while leaving employees without essential benefits.

***ABC supports annualization reform that will allow contractors to provide, and employees to receive, essential benefits without penalty.***



## CRANE LICENSING

New York State is facing a serious skilled labor crisis for licensed crane operators. Other states facing this problem have adopted a federally compliant license or certification. New York, on the other hand, forces crane operators wanting to be compliant to hold two certifications: one state and one federal.

The process to become a licensed crane operator in New York is extremely cumbersome. An individual must meet federal requirements by passing an OSHA test, in addition to passing New York's practical test at one of three facilities operated by the Union of Operating Engineers. This deters people from pursuing this as a career exacerbating the skilled labor crisis.

Albany must fix the crane licensing process by passing legislation to accept a federal OSHA crane certification. The National Commission for the Certification of Crane Operators license is currently accepted in New York City and all surrounding states. Accepting this will create more opportunities for individuals to obtain a license in New York.

***ABC supports the reform of New York's existing crane licensing process.***

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## NO PROJECT LABOR AGREEMENTS (PLAs) - FEDERAL INFRASTRUCTURE

As a result of President Biden's \$1.2 trillion infrastructure bill, New York will be receiving \$26.9 billion for major construction projects across the state. While ABC fully supports the use of this money to rebuild our state's crumbling infrastructure, leaders in Albany must not mandate harmful Project Labor Agreements (PLAs) on these projects.

As outlined earlier in this agenda (see page 1), PLAs unfairly discriminate against the majority of construction workers in New York State: 75% of them to be exact. If Albany implements PLAs on these projects, these construction workers will be excluded from the opportunity to benefit from the work their tax dollars funded: work that is happening in their own backyards.

Not only do PLAs have a negative impact on construction workers, they also harm the taxpayers who will be forced to pay 15-30% more for these construction projects than if the project was bid without a PLA.

Albany must refrain from mandating PLAs on these projects and allow the best quality and most cost-effective bid to win, regardless of labor affiliation. In doing so, Albany can ensure all construction workers have the opportunity to benefit from these projects and taxpayers are protected from elevated costs.

***ABC opposes PLAs on federally funded infrastructure projects.***

## THE PROTECTING THE RIGHT TO ORGANIZE (PRO) ACT

The PRO Act (H.R. 842 and S. 420) attempts to increase union density and union leverage without regard for the negative impacts it would have on workers, businesses, and the economy.

Reminiscent of the Employee Free Choice Act, this bill will strip away workers' free choice in union elections, as well as their privacy rights by forcing employers to share their employees' personal information – including home addresses, shift schedules, and personal contact information – with unions. It will also codify the National Labor Relations Board's controversial joint-employer standard that has threatened our country's small, local businesses and limit opportunities for people to work independently through gig economy platforms, such as Uber and Lyft or more traditional independent contractor roles.

***For these reasons, ABC opposes the passage of the PRO Act (H.R. 842 and S. 420).***

## GOVERNMENT NEUTRALITY IN CONTRACTING

A contractor's affiliation and willingness to comply with a PLA should not be the reason they are awarded federal construction contracts. We believe these contracts should be awarded based on sound and credible criteria, such as quality of work, experience, and cost.

***The Government Neutrality in Contracting Act supports this position and ABC supports this Act.***

## DAVIS-BACON ACT REFORM

The Davis-Bacon Act mandates contractors pay "prevailing" wages on federally financed construction projects. It significantly increases the cost of construction which impedes economic growth, imposes enormous burdens that stifle contractor productivity, ignores skill differences for different jobs, and imposes rigid craft work rules.

***ABC supports reforms to the Davis-Bacon Act.***