

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1270

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1270
January 29, 2013
Job # 17884

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for open and fair competition in governmental construction; and to provide for application.

Minutes:

Attachments #1a, 1b, 2-4

Hearing opened.

Representative Kasper, District 46, Co-Sponsor: Introduced bill and first speaker.

Chris Deitch, Regional Director of Associated Builders and Contractors: Written testimony, attached #1a.

Support:

Phil Kraemer, Lunseth Plumbing and Heating, Grand Forks: We are for this bill. We have seen both state and national where we have been cut out of the competition because we are a merit shop contractor or we don't have the right letters behind our names. This bill would not discriminate against us whether we are a union or a nonunion contractor. We see this as a benefit for contractors throughout the state to eliminate some of the roadblocks we have before us to bid competitively for state contracts.

Representative M. Nelson: (8:30) Is this where we should be prohibiting certain kinds of things from these contracts, or should we be prohibiting these contracts in general? Have you ever been on a contract where there is a uniform work schedule? Why should we prohibit having a uniform work schedule in order to ensure there is an open shot for your company?

Phil Kraemer: (9:17) For us a uniform work schedule is dictated by the contract. It is on an individual basis.

Representative M. Nelson: (10:10) What makes a project labor agreement if a contract spells all these standards for your labor?

Phil Kraemer: The project labor agreement says that those who work on this project will have a collective bargaining agreement. Otherwise we can't bid the project.

Representative M. Nelson: So it's just that one feature?

Phil Kraemer: Yes.

Sue Gustafson, Westcon Industries: (11:10) We are one of the contractors blessed to be working in the Bakken and headquartered in Bismarck. We have built most of the gas plants in the last few years. We employ 700 to 1,000 people with a payroll of \$2 million per week. 75% of that payroll tax stays here in North Dakota. We bring a lot of revenue into the state. We feel it is unfair when we cannot bid on a job because of PLAs especially when they are funded by tax dollars. One of the most recent jobs we were denied bidding on was the Keystone Pump Station in Montana. That was all union so we were not allowed to bid on them. We are an open-shop contractor. We have highly skilled craftsmen in both safety and the trades. We bring value by providing a quality project at a competitive rate.

Representative M. Nelson: (14:08) You talked about bidding on government projects and the Keystone Pump out in Montana.

Sue Gustafson: We were allowed to bid on the nine stations in South Dakota.

Susan Bowman, Vice President of Comstock Construction: Our corporate office is in Wahpeton with another in Fargo as well as Bismarck. The work going on right now in our state is primarily in the west. However, we're out here and are doing the best we can. One of the big projects coming up is the diversion for Fargo. The Army Corp of Engineers has been asking questions about putting a PLA in place for that job. If that happens, that would eliminate 90% of the contractors and most of the workers coming to complete that job would be from out of state. Historically, when PLAs started in the 30's, PLAs were brought on in order to keep things on schedule. PLAs do not guarantee that there will not be strikes. The prime purpose of PLAs when they were first developed was to avoid strikes. There are still strikes. But they are costing more because to get the job done, there has to be overtime. Non-union affiliated companies do not strike. Labor productivity is along those same lines. A majority of contracts out now contain penalties for jobs that are not completed on time, so that is being addressed. These delays cause the increase in costs, which are passed on to the tax payer.

Representative M. Nelson: (19:11) When you're dealing with the Fargo diversion, why would you be locked out?

Susan Bowman: PLAs usually require that anyone working on that project sign on through the agreements of the labor unions. Our employees would have to join the unions for the time period they are working on the job. They would have to pay union fees. Comstock pays very well with benefits. Instead of putting it into our employees' personal retirement plans, that money would have to go to the union pension fund which our employees would never get back unless they joined that union permanently.

Representative M. Nelson: (20:25) You said that scheduling was a primary thing. Did you find that helpful in construction?

Susan Bowman: I'm not sure what you are asking. Scheduling is not an issue for us because whoever is in charge of that project has schedules that are reviewed weekly minimum.

Representative M. Nelson: You said PLAs started with scheduling. If the PLA was limited to scheduling, would that be a problem? It sounds like you are still doing a labor agreement. You are just not calling it a PLA.

Susan Bowman: Scheduling is not the only thing on the PLA. Scheduling is part of every project that is out there. PLAs were first started so that work stoppages didn't occur. Scheduling was part of the history of PLAs. Now there is not a need for that.

Representative M. Nelson: Why?

Susan Bowman: Because I don't know too many projects not completed in a timely basis because of labor for any nonunion contracts.

Representative Kasper: (22:30) Please clarify what a PLA is. A PLA contract, if issued, says that the only companies that can bid for this project must be union; companies that are non-union are prohibited from bidding, correct?

Susan Bowman: (23:05) You do not have to be union, but for that job you must agree to the union labor agreement. You are not prohibited but are restricted. You have to sign on to that labor agreement or else you can't bid it

Chairman Keiser: (23:37) Aren't projects a lot different today than when PLAs first started? Requirements are put into the contracts and bids.

Susan Bowman: (24:16) There are a lot of differences today. The labor force in general is different today than in years past. Unions were begun because workers were being mistreated. That has changed. We are more educated and able to communicate better.

Chris Deitch: Pointed to handout, pages 13-15, has information on facts and myths. (See attached #1b)

Andy Conlin, ABC National, Arlington, VA: (26:15) A Project Labor Agreement is an agreement between a contractor, a union, and sometimes a construction project owner that lays out terms and conditions of employment. PLAs started in the 1930s because at the time, a majority of the workforce was union organized. There were a number of collective bargaining agreements that could all say different things. You needed one way to take all of those agreements, put them together and have a uniform schedule, work conditions, work rules, and tell these unions how to interface with one another. In today's era, when mandated on a government project a project labor agreement is nothing more than an effort to try and discriminate against the vast majority of the construction workforce that chooses not to join a labor organization. In 2013, nationwide, 87% of the construction workforce

now chooses not to join a labor organization. In North Dakota, it is over 90%. PLAs are a relic. There are provisions in them that are insidious. They do include terms that relate to scheduling. They also require contractors to sign a union agreement. Almost every PLA requires a contractor to hire some or all of its workers from a local hiring hall. When an employer has their own workforce, they may have to displace their own workers. Even if the employer retains those workers, they are required to be represented by the union. Almost all PLAs require you to pay union wages and benefits. That sounds fine except the benefits can't be accessed unless they join the union. For a nonunion company to work on a project where a PLA is required, they are essentially required to pay two sets of benefits. One set of benefits into the union is mandated by the PLA and one set to maintain their existing programs. Almost all PLAs require every worker to pay union dues, but that would be unenforceable in a right-to-work state like North Dakota. At the end of the day, PLAs are a bad deal for the workforce that chooses not to join a union and they are a bad deal for taxpayers. A typical PLA mandate increases construction costs by as much as 20%.

At the federal level: From 2001 to 2009 there was a federal executive order that banned government mandated PLAs on federal projects and federally assisted projects. When President Obama got elected, one of his first executive orders repealed that Bush order and instituted his order that encouraged federal agencies to require PLAs on projects costing more than \$25 million and required the federal government within 180 days to come up with a recommendation for expanding PLA use to projects under that \$25 million threshold. One of the side effects of this order is that it has highlighted the PLA issue to state lawmakers all around the country, especially with the threat of government-mandated PLAs being pushed onto state and local projects through that Section 7 of the Obama order. Since then, ten states have banned government mandated PLAs within their borders. This has had an impact in North Dakota. Although this law would not stop the federal government from mandating a PLA, it sends a strong signal that the people of this state don't want PLAs on their projects.

Representative M. Nelson: (34:10) When does a contract become a private labor agreement? The bill in front of us does not say we are prohibiting private labor agreements.

Andy Conlin: This bill prohibits government entities from mandating contractors to enter into an agreement with a labor organization. This allows for more contractors to bid on a project thereby leading to lower costs.

Representative Kasper: (35:46) Why would a labor schedule be better under a PLA than under a private contract agreement where a private owner is very concerned about keeping a schedule? What is the advantage of a PLA agreement for scheduling?

Andy Conlin: None. It is really getting all of the collective bargaining agreements together on one page. Pro-PLA people talk about efficiency because they can get various agreements from all the trades together and set the schedule from there. Frankly, most construction projects do not have project labor agreements attached to them. Most are built on time and on budget without PLAs. The objective of this bill is to get the government out of the business of picking winners and losers.

Representative Kasper: (37:34) If a PLA agreement is in effect and Company A has its own benefit plans, would Company A be required to pay into the union retirement plan as well? If so, how would those employees access those union benefits that they paid for.

Andy Conlin: A nonunion contractor that is awarded a project would have to determine how many of your employees you'd be able to use on the job. If Company A bids on the project, is awarded the project, and is allowed to use ten of their workers but then must hire out of the union hall after that. So now this company must continue their own employees' benefits but they must also pay into union and pension benefit programs as stipulated by the PLA. Now this contractor is paying double benefits. If the employees want to access the union benefits, they have to become vested in the union program. What happens is the contractor completes the work and those employees do not join the union. They don't have the opportunity to become vested. Essentially, that is a windfall for the union pension programs.

Representative Kasper: (40:15) In your example of ten employees, what happens to the rest of the company's workers who are not placed on the site?

Andy Conlin: They may be sent to other jobs. When there is high unemployment, those workers may be out of a job for the life of the project.

Representative Becker: (41:23) If this bill passes, would union shops be precluded from bidding on jobs and winning them?

Andy Conlin: All this bill does is prohibit government-mandated PLAs. It prohibits the state or its political subdivisions from requiring contractors to enter into a PLA as a condition of performing work on public project. The fact is that pre-hire agreements are protected by the National Labor Relations Act on a voluntary basis. So if a contractor comes to a state or local entity with a bid that includes a PLA and it creates the best value for taxpayers, then that public entity is under no obligation to reject that bid. They can accept it and bring that union contractor in. With this bill, let's make sure government does not mandate these PLAs on projects.

Chairman Keiser: (42:42) If we have a project with 80% federal funding and 20% state, would this bill guarantee that the local subdivision would not use a PLA or is there some rate at which federal funding dominates and the feds can say they want a PLA?

Andy Conlin: We think the most likely scenario is federal agencies are going to have to encourage them in some way. We think it is unlikely the administration is going to mandate. The best way for state and local entities to protect their projects is to enact legislation like this.

Representative Kasper: Again, this bill does not prohibit the union shop from bidding for a job. It simply says no mandate. Let the best bid win the project whether it is union or non-union.

Andy Conlin: Yes.

Representative M. Nelson: (44:40) You said that "it is our hope that in federal cost-share contracts that this would protect us." Are we then taking the risk that in some of our flood control projects that they might not receive federal funding?

Andy Conlin: We are trying to project what the administration may do. Out of the 14 states, 10 states since 2011 have enacted this type of legislation. No state has had any of their federal funds even threatened. There is no evidence that federal government would deprive the state of construction money.

Representative Boschee: (45:51) You made the comment that the federal government encourages PLAs but hasn't mandated them to this point. I find it hard to believe this is a concern. Is this a solution looking for a problem?

Andy Conlin: Construction is working in North Dakota. We are trying to make sure it continues to work. We cannot project what will happen with Section 7 and in federally-assisted projects. This is an administration that has tried to push PLAs. Other benefits, I think it sends a strong signal to the construction community that this state is open for business. There is no down side to it.

Representative M. Nelson: (47:55) Read from page 15 of attachment 1b. On the last myth it says "The federal government and four states, Utah, Montana, Arkansas and Minnesota, explicitly prohibit mandating union-only PLAs on state funded construction." Is that true?

Andy Conlin: That is outdated. The federal government had prohibited government mandated PLAs on federal and federally assisted projects during the Bush administration. President Obama's order repealed the Bush order and encouraged PLAs on federal projects costing more than \$25 million. Fourteen states have banned government-mandated PLAs. Organized labor has filed suit in three of those cases. One case has been upheld. Two were struck down and two are on appeal. On the Bush order, the unions filed the same lawsuit there. The Bush executive order was upheld by the D.C. Circuit Court of Appeals. The unions appealed that to the Supreme Court. The Supreme Court denied cert. At this point, we do believe that banning government mandated PLAs is allowable by state and local governments under the National Labor Relations Act, and the controlling case law is still the Allbaird (sp?) Decision that upheld the Bush order. (50:17)

Representative M. Nelson: Would we be prohibiting mandated PLAs or would we also be prohibiting voluntary PLAs.

Andy Conlin: You would be prohibiting government-mandated PLAs.

Russ Hanson, Associated General Contractors of North Dakota: Referred to written testimony, attachment #2. Spoke in support.

Bonnie Staiger, State Director for National Federation of Independent Business: (51:54)

We also support this bill.

Jon Godfread, Greater North Dakota Chamber of Commerce: Provided written testimony #3. Spoke in support.

Opposition:

Renee Pfenning on behalf of the North Dakota Building and Construction Trades Council and the North Dakota Electrical Workers Council (53:35)
Written testimony #4.

Representative Kasper: (55:19) In your third paragraph you indicated Project Labor Agreements are negotiated during the planning process. Who does those negotiations?

Renee Pfenning: It would be the entity that is letting the bid. Also whoever that entity invited to the table to do those negotiations.

Representative Kasper: Who is invited to the table? Is it only union people?

Renee Pfenning: I don't know because I don't believe the state of North Dakota has ever had a project labor agreement.

Representative Kasper: In your fourth paragraph, "Project agreements provide the mechanism for a highly skilled workforce on all segments of large complex projects." Is it your testimony that non-union shops in North Dakota do not have highly skilled workforce.

Renee Pfenning: (56:11) I'm not saying that.

Representative Kasper: In your fifth paragraph, "Project Labor Agreements do not exclude non-union contractors from bidding on a PLA project." But if it is a PLA project, then if a non-union shop gets it, there will be ramifications of joining the union?

Renee Pfenning: Not in a right-to-work state. Also non-union contractors can bid those projects.

Representative Kasper: We heard testimony earlier that there is the opportunity for the non-union shop to have additional costs for benefits.

Renee Pfenning: The PLA agreement for contractors who supply health care and pension benefits can be written so that they pay into their own plans so they aren't double paying for health care and pension.

Representative Kasper: It could be but it isn't required. So there is a possibility there could be double costs?

Renee Pfenning: I would refer that to the President of the North Dakota Building and Construction Trades.

Representative Kreun: (58:10) Read from testimony in paragraph # 3 & 4. In what area is that labor agreement responsible for any of those changes?

Renee Pfenning: Asked for clarification on question.

Representative Kreun: If they are interested in this project and the changes in the contract that take place and are part of that, would they not be a part of the responsibility if there are cost overruns on the project as the contractor or subcontractor or the owner?

Renee Pfenning: (59:13) That might be a question better answered by Tom Rodgers, President of the Building Trades.

Representative Ruby: (59:27) You state that 1270 limits the options for the state and political subdivisions on large-scale complex long-term construction projects by prohibiting the use of Project Labor Agreements. I think from what we heard today, it doesn't prohibit the use of them. It prohibits the requirement of them to bid the project. Would you agree?

Renee Pfenning: The way I read the bill, they are prohibited on any state or local government project.

Representative Ruby: Maybe we need to look at how that's written. Would you feel more comfortable if it doesn't prohibit the use of them, it just prohibits the requirement or mandate that the project has the PLA.

Renee Pfenning: (1:00:20) There is nothing in the code right now that mandates a PLA for a state or local government project.

Chairman Keiser: (1:00:42) Did you say you are not aware of any PLA being used in the state of North Dakota for a public project? If that is the status quo, why not codify what the status quo is?

Renee Pfenning: (1:01:01) Yes. Why would we want to limit an option for a complex project the way our state is growing? Down the road it may be necessary.

Tom Rodgers, President of the North Dakota Building Construction Trades and Business Manager of IBW Local 714 in Minot: I heard testimony this morning that union membership is required to work on projects. We have currently written referrals for employment out of our local union to contractors all over the state. In western North Dakota we have over 900 electricians working. If guys come into the union hall and say that they are electricians, we refer them whether or not they are union. We currently have project labor agreements in the state. Gave examples. Things are working well in the state. Why break what is working? The requirement for a contractor to sign with a union is not necessarily true. We are a right-to-work state. 6.1% of the population is union. Training is required.

Representative Boschee: (1:05:21) What I've heard from prior testimony, it sounds like we are concerned about the government coming in and telling our state how to operate our trades. From what I heard you say, there's a pretty healthy relationship between the trades merit shop and union shop. Do you see that not continuing in the future, whether or not this is in place?

Tom Rodgers: (1:05:48) We've worked along side all of them and it has never been a problem. I can't see any benefit to this bill.

Representative M. Nelson: (1:06:23) You said PLAs are currently here. Do you know if any of those are requiring employers to have a relationship with the unions and sign contracts and pay double pensions, etc.

Tom Rodgers: Even if they are, if a guy comes into my union hall and wants to go to work, he doesn't have to join the union.

Walt Welton, Plumbers and Pipefitters Local 300: (1:07:40) We have a lot of members working in the state right now. They are all on time and on budget. We have no problem manning these projects. It seems like skilled labor is getting thrown under the bus. We have a skilled labor force, and we're willing to work with anyone. The people doing the projects are the ones that request a PLA. I've seen studies by Cornell University and Harvard that show the PLAs were a benefit to the communities and cost of savings is 18%. When you have a skilled and trained workforce doing their job, I don't see why we need to have this.

Tom Ricker, President of North Dakota AFL-CIO: (1:09:38) I think this is a solution trying to fix a problem that does not exist. Anyone has a right to bid on a job. The only issue I see with this is a labor union issue. People sign contracts every day. Once you take away the issue of organized labor, an agreement is an agreement.

Neutral: None

Hearing closed.

Representative Kasper: Moved to amend with the emergency clause.

Representative Ruby: Seconded the motion.

A Roll Call vote was taken: Yes 14, No 0, Absent 1. (Rep. Amerman)

Representative Kasper: Moved to do pass as amended

Representative Ruby: Seconded the motion.

Chairman Keiser: (1:12:57) At one time in my company I had three unions. I do see the value of a PLA. Each time we came into negotiations we worked hard to make sure all three contracts were similar. There were always little technical issues that one union required and the others didn't. I really support this bill because it does provide a clear definition of policy.

Representative Kasper: (1:14:14) I want to reiterate what this bill does not do. This bill does not prohibit any unions from doing business in ND. It doesn't prohibit any unions from

bidding for projects. It doesn't discriminate against unions. It simply says that there will be an open and fair competition for any projects bid in the state of North Dakota.

A Roll Call vote was taken: Yes 11, No 3, Absent 1. (Rep. Amerman)

Motion carries.

January 29, 2013

49/13
CSC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1270

Page 1, line 1, remove the second "and"

Page 1, line 2, after "application" insert "; and to declare an emergency"

Page 3, after line 13, insert:

"SECTION 7. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-29-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1270**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent Calendar

Motion Made By Kasper Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	nb
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschée	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigasaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Emergency clause

Date: 1-29-2013Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1270**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent Calendar

Motion Made By Kasper Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	nb	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee		✓
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Marvin Nelson		✓
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigasaa	✓				

Total Yes 11 No 3Absent 1Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1270: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1270 was placed
on the Sixth order on the calendar.

Page 1, line 1, remove the second "and"

Page 1, line 2, after "application" insert "; and to declare an emergency"

Page 3, after line 13, insert:

"SECTION 7. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1270

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1270
March 13, 2013
Job Number 19841

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for open and fair competition in governmental construction

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Representative Kasper: Introduced and explained the bill.

Chris Deitch, Regional Director of Associated Builders and Contractors, Inc.: Written Testimony Attached (1).

Andy Conlin, Senior Manager, State and Local Affairs, Associated Builders and Contractors, Inc.: Written Testimony Attached (2).

Russ Hanson, Executive Vice President, Associated General Contractors of North Dakota: Written Testimony and Letter Attached (3).

Bonnie Staiger, Executive Vice President, National Federation of Independent Business: In support.

Jon Godfread, Greater North Dakota Chamber of Commerce: Written Testimony Attached (4) and Written Testimony from Andy Peterson, President and CEO of the Greater North Dakota Chamber of Commerce (5).

Phil Kraemer, Vice President, Lunseth Plumbing and Heating: In support. Commented that in Minnesota a lot of the projects have state money in them with strings attached, therefore they are not able to compete. He said as long as there is a free and open competition they can do well but if there is something mandated, a project labor agreement, it cuts them out. (23:00-25:07)

Sue Gustafson, Westcon Incorporated: In support. They are an open shop contractor and most of their electrical contractors are union contractors and quite a few of their painting contractors are union. She spoke more about Westcon Incorporated. (26:30-30:30)

Jim Roers, Chairman of Roers Companies: In support. He shared an experience he had when he did a project in Iowa and it was mandated that he had to hire union members. (34:58-37:15)

Opposition

Marc Jurek, Business Rep for the Iron Workers Union 512: Said that the bill really comes down to money. The non-union companies come in and bid five to ten percent lower than union contractors. They pay their employees thirty to fifty percent lower than union companies. He said that it is the owners of the companies that pocket the money. He is here to fight for the American people at a decent wage. (37:45-42:00)

Renee Pfenning, North Dakota Building and Construction Trades Council and the North Dakota Electrical Workers Council: Written Testimony Attached (6).

Chairman Klein: Closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1270
March 18, 2013
Job Number 20092

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for open and fair competition in governmental construction

Minutes:

Vote

Chairman Klein: Said to go to HB 1270 that deals with Project Labor Agreements.

Senator Laffen: Moved a do pass on Engrossed HB 1270.

Senator Sorvaag: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Laffen

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. Engrossed 1270**

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider _____

Motion Made By Senator Laffen Seconded By Senator Sorvaag

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Laffen

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1270, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1270 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1270



Minnesota/
North Dakota Chapter

Briefing to the ND House – Industry, Business & Labor Committee (on **HB 1270**)

#1a
1/29/13

January 29th, 2013 – Opening Statement by **Chris Deitch**, Regional Director – ABC North Dakota

Chairman Keiser and Members of the IBL Committee: Thank you for allowing us to introduce...

House Bill NO. 1270 - *Open and Fair Competition in Governmental Construction... for North Dakota*

Introduce fellow attendees:

Russ Hanson, Executive Vice President – **Associated General Contractors / North Dakota** – Bismarck, ND

Bill Shalhoob and **Jon Godfread** – **Greater North Dakota Chamber** – Bismarck, ND

Bonnie Staiger, Executive Vice President – **National Federation of Independent Business** – Bismarck, ND

Andy Conlin, Senior Manager, State and Local Affairs – **ABC National** – Arlington, VA

Phil Raines, Vice President of Public Affairs – **ABC – Minnesota / North Dakota Chapter** – Eden Prairie, MN

Phil Kraemer, Vice President – **Luneth Plumbing and Heating** – Grand Forks, ND

Jim Roers, Chairman – **ROERS Companies** – Fargo, ND

Sue Gustafson, Senior Manager – **Westcon Industries** – Bismarck, ND

Susan Bowman, Senior Finance Manager – **Comstock Construction** – Wahpeton, ND

On behalf of our Coalition of Construction and Business organizations along with North Dakota based Construction company leaders and job producers, we want to thank you Chairman Keiser and all the members of the IBL committee for visiting with us today.

We have been working with key Legislators such as **Representative Jim Kasper** to introduce House Bill 1270 in the 63rd Session of the Legislative Assembly.

HB 1270: Open and Fair Competition in Governmental Construction – for North Dakota.

Seeks to eliminate the use of **Project Labor Agreements (PLAs)** on publicly funded construction projects (Partially or Fully) funded by the State of North Dakota. We believe this bill will accomplish 3 key results:

1. Promote the highest level of economic efficiency in governmental construction projects, which will help demonstrate the continued tradition of great stewardship of ND Taxpayer's money. Numerous Studies to back this up. (Examples: Measuring the Cost of PLAs on School Construction in California, Fargo Diversion)
2. Neutrality in Governmental Construction projects. Sending the message that in North Dakota we demand the highest possible quality construction at the best price. Nothing more, nothing less. Competition on a level playing field is what we expect in North Dakota. The foundation and essence of free enterprise in America.
3. Signals to public and private development entities, who are considering the issuance of a Project Labor Agreement, that in North Dakota we prefer to have as many North Dakota construction companies as possible (and their highly skilled construction professionals, over 92% of which are non-union), to have an equal opportunity at securing all construction projects without regard to the size and scope of the project, or affiliation to a labor union.

We are not asking for special treatment over Union Construction Companies. **HB 1270** simply seeks to place all construction companies (union and non-union) on a level playing field. Thank you! Introduce fellow speakers...



Minnesota/
North Dakota Chapter

Briefing to the ND House – Industry, Business & Labor Committee (on... HB 1270)

January 29th, 2013 – Opening Statement by Chris Deitch, Regional Director – ABC North Dakota

Chairman Keiser and Members of the IBL Committee: Thank you for allowing us to introduce...

House Bill NO. 1270 - Open and Fair Competition in Governmental Construction... for North Dakota

Introduce fellow attendees:

Russ Hanson, Executive Vice President – **Associated General Contractors / North Dakota** – Bismarck, ND

Bill Shalhoob and Jon Godfread – **Greater North Dakota Chamber** – Bismarck, ND

Bonnie Staiger, Executive Vice President – **National Federation of Independent Business** – Bismarck, ND

Andy Conlin, Senior Manager, State and Local Affairs – **ABC National** – Arlington, VA

Phil Raines, Vice President of Public Affairs – **ABC – Minnesota / North Dakota Chapter** – Eden Prairie, MN

Phil Kraemer, Vice President – **Lunseth Plumbing and Heating** – Grand Forks, ND

Jim Roers, Chairman – **ROERS Companies** – Fargo, ND

Sue Gustafson, Senior Manager – **Westcon Industries** – Bismarck, ND

Susan Bowman, Senior Finance Manager – **Comstock Construction** – Wahpeton, ND

On behalf of our Coalition of Construction and Business organizations along with North Dakota based Construction company leaders and job producers, we want to thank you Chairman Keiser and all the members of the IBL committee for visiting with us today.

We have been working with key Legislators such as **Representative Jim Kasper** to introduce House Bill 1270 in the 63rd Session of the Legislative Assembly.

HB 1270: Open and Fair Competition in Governmental Construction – for North Dakota.

Seeks to eliminate the use of Project Labor Agreements (PLAs) on publicly funded construction projects (Partially or Fully) funded by the State of North Dakota. We believe this bill will accomplish 3 key results:

1. Promote the highest level of economic efficiency in governmental construction projects, which will help demonstrate the continued tradition of great stewardship of ND Taxpayer's money. Numerous Studies to back this up. (Examples: Measuring the Cost of PLAs on School Construction in California, Fargo Diversion)
2. Neutrality in Governmental Construction projects. Sending the message that in North Dakota we demand the highest possible quality construction at the best price. Nothing more, nothing less. Competition on a level playing field is what we expect in North Dakota. The foundation and essence of free enterprise in America.
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We are not asking for special treatment over Union Construction Companies. HB 1270 simply seeks to place all construction companies (union and non-union) on a level playing field. Thank you! Introduce fellow speakers...

THE TRUTH ABOUT PROJECT LABOR AGREEMENTS

Leading the fight against government-mandated PLAs

Say "NO" to Government-Mandated Project Labor Agreements on **North Dakota Construction Projects**

A project labor agreement (PLA) is a special interest scheme that discourages competition from nonunion contractors and their workers by requiring a construction project to be awarded only to contractors and subcontractors that agree to recognize unions as the representatives of their employees on that job; use the union hall to obtain workers; obey the union's restrictive apprenticeship and work rules; and contribute to union pension plans and other funds in which their nonunion employees will never benefit unless they join a union.

If mandated on public construction projects in North Dakota, PLA requirements would make it nearly impossible for the more than 90 percent of North Dakota's construction workforce that chooses not to join a labor union to compete for projects funded by their own tax dollars.

Government-mandated PLAs can occur in Right to Work states, though they are less common. Although Right to Work laws prevent workers from being forced to pay dues to a union as a condition of employment, workers in both Right to Work and non-Right to Work states are still required to work under nearly all of the terms and conditions negotiated by the union under a PLA. These provisions are enough to discourage competition from nonunion contractors and significantly increase construction costs for taxpayers.

In February 2009, President Barack Obama issued an executive order encouraging federal agencies to require PLAs on projects costing more than \$25 million. This order left open the door for potential PLA mandates on both federal projects costing less than \$25 million and federally assisted construction. By enacting a statute to guarantee government neutrality with regard to PLA mandates, state leaders can signal to the Obama administration that taxpayers in their state want the best construction at the best price, not special interest handouts, for their hard-earned public construction dollars.

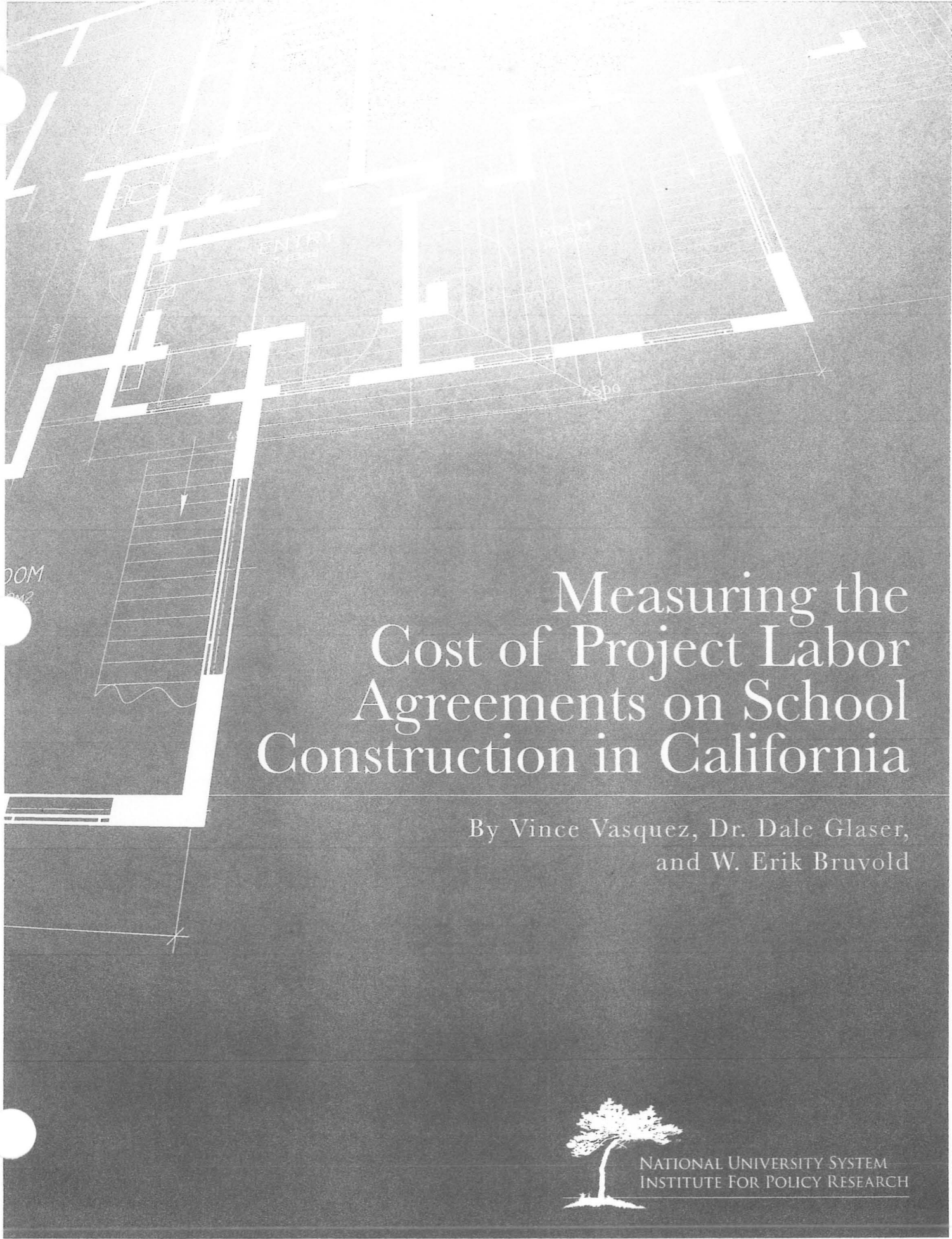
Learn more about government-mandated PLAs at www.thetruthaboutplas.com/NorthDakota.

For more information, please contact:

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Regional Director
Minnesota/North Dakota Chapter
Associated Builders and Contractors
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Measuring the Cost of Project Labor Agreements on School Construction in California

By Vince Vasquez, Dr. Dale Glaser,
and W. Erik Bruvold



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NATIONAL UNIVERSITY SYSTEM
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**ABOUT THE NATIONAL UNIVERSITY SYSTEM
INSTITUTE FOR POLICY RESEARCH**

The National University System Institute for Policy Research is a non-partisan organization that formulates and promotes high quality economic, policy, and public-opinion research to improve the efficiency and effectiveness of local governments in San Diego County and the quality of life enjoyed by the region's citizens. For more information, visit: www.nuinsstitute.org

This study was underwritten, in part, by the Associated Builders and Contractors, California Cooperation Committee (ABC-CCC). All conclusions, errors and omission are the sole responsibility of the authors. We thank ABC-CCC for their support.

This study examines the relationship between the adoption of PLAs and public school construction costs in California.

EXECUTIVE SUMMARY

Project Labor Agreements (PLAs) are collectively bargained contracts that establish working conditions and management rights. They have been used by both public and private entities since the 1930s. In the debate over the use of PLAs, one of the most prominent areas of disagreement is whether these contracts effect construction costs¹. Supporters argue that PLAs save public dollars because contractors with highly skilled workers are more likely to participate in construction projects, resulting in higher worker productivity and fewer change orders². Proponents also contend that special provisions in PLAs enhance job site cooperation and ensure quick and effective resolution of labor disputes that would otherwise result in delays that could either increase costs or create severe operational disruptions.

Opponents argue that PLAs increase costs. They claim that the requirements imposed by PLAs discourage nonunion contractors from bidding on projects and subcontractors from participating. This reduced competition, it is claimed, results in overall higher bids. Opponents also claim that the work condition rules required in PLAs increase labor costs and that these are passed onto the project's developer.

This study examines the relationship between the adoption of PLAs and public school construction costs in California. We examine the inflation-adjusted square foot construction costs for 551 school projects in California built between 1995 and 2009. Sixty-five of these projects were built using PLAs in eight separate school districts.



Our research shows that PLAs are associated with higher construction costs. We found that costs are 13 to 15 percent higher when school districts construct a school under a PLA. In inflation-adjusted dollars, we found that the presence of a PLA is associated with costs that are \$28.90 to \$32.49 per square foot higher.

The relationship between the presence of a PLA and higher school construction costs was found when controlling for other factors that previous study in this field found to effect the costs of construction. We conducted three sensitivity tests, including and excluding projects known to have extraordinary costs and employing statistical tests that neutralize the impact of outliers on results. In each case, we found that school construction costs were higher when PLAs were used.

OutreachSystems Search for January 8, 2013

The government contract opportunity enclosed with this email is provided to you by the Procurement Technical Assistance Center (PTAC) at the Metropolitan Economic Development Association. This service is provided to clients as part of PTAC's government contracting assistance services. This contract opportunity notice is based upon your product/service profile. If you wish to revise your product/service profile, or have questions concerning this contract opportunity, contact Sherri Komrosky at skomrosky@mnptac.org.

**Department of the Army, U.S. Army Corps of Engineers, USACE District, St. Paul,
Attn: CEMVP-CT 180 East Fifth Street St. Paul MN 55101-1678**

Y -- PROJECT LABOR AGREEMENTS (PLAs), SOURCES SOUGHT SYNOPSIS W912ES-13-SS-0002 012213
Patricia M. Simon, Phone 6512905418, Email patricia.m.simon@usace.army.mil PROJECT LABOR AGREEMENTS (PLAs), SOURCES SOUGHT SYNOPSIS W912ES-13-SS-0002



St. Paul District Corps of Engineers is soliciting comments from the construction community addressing the potential use of **Project Labor Agreements (PLAs)** on large scale construction contracts (exceeding \$25 million) for upcoming work on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. The overall Project description is as follows:

The Project consists of a Diversion Channel with Low Flow Channel, a Connecting Channel that diverts water from the Red and Wild Rice Rivers to the Diversion Channel, an upstream staging area for floodwaters, associated structures, non-structural features, recreation features and environmental mitigation. The Connecting Channel starts on the Red River approximately four miles south of the confluence of the Red and Wild Rice Rivers and extends west and north, crossing the Wild Rice River, to the Diversion inlet structure that is located just south of Horace. The Diversion Channel extends from its Inlet Structure, around the cities of Horace, Fargo, West Fargo and Harwood. It ultimately will re-enter the Red River north of the confluence of the Red and Sheyenne rivers near the city of Georgetown, MN. The 35-mile path of the Connecting Channel and Diversion Channel will cross the Wild Rice, Sheyenne, Maple, Lower Rush and Rush rivers. Two hydraulic structures will control the flows passing into the protected area during larger flood events; one on the Red River and the other on the Wild Rice River. The gated Diversion Inlet Structure is located at Cass County Highway 17 south of Horace, ND. At the Sheyenne and Maple rivers, aqueduct structures will allow base flows to follow the natural river channels to maintain habitat in the natural channels. The Lower Rush and Rush rivers will have drop structures that will drop the entire flow of those rivers into the Diversion Channel. The main line of flood risk management at the south end of the Project includes the embankments adjacent to the Diversion Channel and a tie-back embankment from the Red River control structure to high ground in Minnesota. In order to reduce downstream impacts, upstream water staging of approximately 200,000 acre-feet immediately upstream of the Diversion Channel inlet will be required. A wide variety of mitigation features are required to offset the impacts associated with construction and operation of the Project. Measures required for aquatic habitat and connectivity mitigation include stream restoration, riparian corridor restoration, a meandering Low-Flow Channel in the Diversion Channel and providing fish passage at the Diversion Outlet, control structures and several existing dams. Floodplain forest mitigation will be provided by reestablishing floodplain forest on 239 acres of floodplain agricultural land or pastured land. Wetland mitigation will be provided in the Diversion Channel by planting the bottom and fringe of the side slopes with native wetland species. The meandering Low-Flow Channel and attendant grade control structures will facilitate the development of wetland habitat in the Diversion Channel.

Construction of various features is expected to occur in a series over time and has not yet been authorized or funded by Congress. Construction reaches have not yet been fully defined. Approximately 13 of the reaches are expected to exceed \$25,000,000 and may vary in estimated magnitude from approximately \$25,000,000 to \$75,000,000 and may include but would not be limited to excavation, small inlets, levee construction, channel construction, structure work, and aqueducts, or any combination thereof. The Corps will not be accepting questions regarding construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project at this time. Previously published information regarding the Project can be found at <http://www.internationalwaterinstitute.org/> and <http://www.fmDiversion.com/>.

U.S. ARMY CORPS OF ENGINEERS... *R*



Project Labor Agreement Questionnaire

Fargo Moorhead Metropolitan Area

Flood Risk Management Project

W912ES-13-SS-0002

Please provide your comments via e-mail, citing "PLA COMMENTS" in the subject line, to Patricia Simon, Contract Specialist, at patricia.m.simon@usace.army.mil no later than 22 January 2013.

Prepared by: _____

Organization Name: _____

Address: _____

Phone: _____

1. Describe the degree to which the Fargo-Moorhead area construction labor force is represented by unions.
2. Is there currently a shortage of skilled construction labor in the area? Is a labor shortage projected?
3. What investments have been made in the area to support registered apprenticeship programs?
4. Have PLAs been used on other construction projects undertaken by public or private entities in the region? Please explain.
5. Describe the degree to which labor disputes or other labor issues have contributed to project delays in the local area.
6. The contract performance periods for the various construction reaches are anticipated to last between one and four years. Are relevant Collective Bargaining Agreements likely to expire during the course of the Project under consideration?

Pg 6 "A"

(OVER) →

7. How do open shop and union wage rates influence prevailing wage rates in the local market and compare to the Davis Bacon rates?
8. Describe whether a PLA might contribute to cost savings in any of the following ways:
 - Harmonization of shifts and holidays between the trades to cut labor costs
 - Minimizing disruptions that may arise due to expiration of a CBA
 - Availability of trained, registered apprentices, efficient for highly skilled workforce
 - Serving as a management tool that ensures highly skilled workers from multiple trades are coordinated in the most efficient way
 - Other
9. Describe whether a PLA might minimize risk and contribute to greater efficiency in any of the following ways:
 - Mechanisms to avoid delays
 - Complying with Davis Bacon and other labor standards, safety rules and EEO and OFCCP laws
 - Ensuring a steady supply of skilled labor in markets with low supply or high competition for workers
 - Other
10. Are there ways in which a PLA might increase costs on this particular Project?
11. Based on consideration of the factors above, please provide a short summary explaining why you would recommend or would not recommend the use of a PLA for this Project.

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1270

Introduced by

Representatives Kasper, Beadle, Belter, Carlson, Dosch, Headland, Keiser, Ruby, Thoreson

Senators Klein, Miller, Wardner

1 A BILL for an Act to provide for open and fair competition in governmental construction; and to
2 provide for application.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.**

5 **Definitions.**

6 **As used in this Act:**

7 1. "Facility" means a physical improvement to real property owned or leased, directly or
8 through a building authority, by a governmental unit, including a road, bridge, runway,
9 rails, or building or structure along with the building's or structure's grounds,
10 approaches, services, and appurtenances.

11 2. "Governmental unit" means the state or a political subdivision.

12 **SECTION 2.**

13 **Prohibited labor organization terms in construction contract clauses.**

14 A governmental unit awarding a contract for the construction, repair, remodeling, or
15 demolition of a facility and any construction manager acting on that governmental unit's behalf
16 may not include any of the following in the bid specifications, project agreements, or other
17 controlling documents:

18 1. A term that requires or prohibits a bidder, an offeror, a contractor, or a subcontractor
19 from entering or adhering to agreements with one or more labor organizations relating
20 to the construction project or a related construction project; or
21 2. A term that otherwise discriminates against a bidder, an offeror, a contractor, or a
22 subcontractor for becoming, remaining, or refusing to become or remain a signatory to
23 or for adhering to or refusing to adhere to an agreement with one or more labor
24 organizations in regard to that project or a related construction project.

1 **SECTION 3.**

2 **Prohibited labor organization terms in a grant, tax abatement, and tax credit.**

3 1. A governmental unit may not award a grant, tax abatement, or tax credit that is
4 conditioned upon a requirement that the awardee include a term prohibited under
5 section 2 of this Act in a contract document for any construction, improvement,
6 maintenance, or renovation of real property or fixtures that are the subject of the grant,
7 tax abatement, or tax credit.

8 2. This Act does not prohibit a governmental unit from awarding a contract, grant, tax
9 abatement, or tax credit to a private owner, bidder, contractor, or subcontractor that
10 enters, is a party to, or adheres to an agreement with a labor organization, if:

11 a. Being or becoming a party or adhering to an agreement with a labor organization
12 is not a condition for the award of the contract, grant, tax abatement, or tax credit;
13 and

14 b. The governmental unit does not discriminate against a private owner, bidder,
15 contractor, or subcontractor in the awarding of that contract, grant, tax
16 abatement, or tax credit based upon the status as being or becoming, or the
17 willingness or refusal to become, a party to an agreement with a labor
18 organization.

19 3. This Act does not prohibit a contractor or subcontractor from voluntarily entering or
20 complying with an agreement entered with one or more labor organizations in regard
21 to a contract with a governmental unit or a contract funded in whole or in part from a
22 grant, tax abatement, or tax credit from a governmental unit.

23 **SECTION 4.**

24 **Exemptions.**

25 The head of a governmental unit may exempt a particular project, contract, subcontract,
26 grant, tax abatement, or tax credit from the requirements of any or all of the provisions in this
27 Act if after public notice and hearing the governmental unit finds special circumstances require
28 an exemption to avert an imminent threat to public health or safety. A finding of special
29 circumstances under this section may not be based on the possibility or presence of a labor
30 dispute concerning:

- 1 1. The use of contractors or subcontractors that are nonsignatories to or otherwise do not
- 2 adhere to agreements with one or more labor organizations; or
- 3 2. Employees on the project who are not members of or affiliated with a labor
- 4 organization.

5 **SECTION 5.**

6 **Limitations.**

7 This Act may not be construed to:

- 8 1. Prohibit an employer or other party from entering an agreement or engaging in any
- 9 other activity protected by the National Labor Relations Act [29 U.S.C. 151 et seq.]; or
- 10 2. Interfere with labor relations of a party which are left unregulated under the National
- 11 Labor Relations Act [29 U.S.C. 151 et seq.].

12 **SECTION 6. APPLICATION.** This Act applies to construction contracts executed on and
13 after the effective date of this Act.



Government-Mandated PLA Talking Points

June 12, 2012

General Talking Points:

- A project labor agreement (PLA) is a special interest scheme that discourages competition from nonunion contractors and their workers by requiring a construction project to be awarded only to contractors and subcontractors that agree to recognize unions as the representatives of their employees on that job; use the union hall to obtain workers; obey the union's restrictive apprenticeship and work rules; and contribute to union pension plans and other funds in which their nonunion employees will never benefit unless they join a union.
- When a government entity requires a PLA on a construction project, they are essentially tilting the playing field in favor of contractors that agree to use organized labor. On government-funded or assisted projects, this means that the 86 percent of the private construction workforce that chooses not to join a labor union cannot compete on an equal basis for projects funded by their own tax dollars.
- On government-funded or assisted projects, taxpayers deserve the best product for the best price. Numerous studies show that PLA mandates can increase construction costs by nearly 20 percent. With government deficits ballooning nationwide, government-mandated PLAs are a special interest handout that taxpayers simply can't afford.
- PLAs were established in the early twentieth-century, when a significant percentage of the private construction workforce was unionized, to help trade unions cooperate. In modern construction, PLAs are nothing more than wasteful market recovery programs for unions that need to rebuild their membership after seeing their numbers decline for the last 50 years.
- Unions use the threat of strikes or labor unrest to coerce construction users into requiring contractors to sign these pro-union agreements. This is a particularly disingenuous argument because unions are the cause of strikes, work stoppages, jurisdictional disputes and illegal organizing. Nevertheless, these actions still occur on PLA projects despite the promise of labor peace. Merit shop employees never engage in these activities on construction jobsites.
- Government-mandated PLAs discriminate against merit shop contractors and disadvantaged businesses. This discrimination is particularly harmful to women- and minority-owned construction businesses and their workers, who traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

On Construction Costs:

- In a 2011 study conducted by the National University System Institute for Policy Research (NUSIPR), California school construction projects built using project labor agreements (PLAs) experienced increased costs of 13 percent to 15 percent, or \$28.90 to \$32.49 per square foot, compared to projects that did not use a PLA.
- A study released Sept. 23, 2010 by the Beacon Hill Institute (BHI) found that PLAs significantly increase construction costs on federal projects. Had President Obama's pro-PLA Executive Order 13502 been in effect in 2008, and all 2008

federal construction projects worth \$25 million or more had been performed under PLAs, it would have increased the cost to federal taxpayers by \$1.6 billion to \$2.6 billion.

- A June 2009 study conducted by property and construction consulting firm Rider Levett Bucknall prepared for the U.S. Department of Veterans Affairs (VA) Office of Construction and Facilities Management found that PLAs would likely increase construction costs by as much as 9 percent on three of the five construction markets (Denver, New Orleans and Orlando) in which the VA is planning to build hospitals. The VA hired this firm to evaluate the cost impact of PLAs in various markets where the VA plans to build hospitals in light of President Obama's order that encourages federal agencies to mandate PLAs. This report shows the PLAs have an especially pronounced impact on construction costs in construction markets with low union density.
- In May 2006, BHI released a study concluding that the use of PLAs on New York's school construction projects increased bid 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. Additional BHI studies comparing PLA to non-PLA school construction projects in Connecticut and Massachusetts came up with similar results.
- The studies listed above and others showing negative impact of PLAs are available at www.abc.org/plastudies

The Impact of PLAs on Competition:

- Merit shop contractors are either barred or discouraged from bidding on PLA projects because of the unreasonable terms and conditions included in a typical PLA. As a result, the number of bidders on projects where a PLA is required is usually limited to only union contractors or to those few merit shop contractors willing to become a signatory to a PLA.
- Proponents of PLAs maintain that nonunion contractors are not barred and point to open shop contractors that have successfully bid and worked on PLA projects. These arguments find rare exceptions to the indisputable fact that few merit shop contractors bid on PLA projects.

On Workers:

- According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, approximately 13 percent of America's private construction workforce belongs to a union. This means PLA requirements discriminate against more than eight out of 10 construction workers who would otherwise work on construction projects if not for a government-mandated PLA.
- PLAs hurt local workers. Proponents of PLAs claim PLAs ensure the use of local workers, but PLA supporters fail to mention "local workers" doesn't include local nonunion workers. Nearly all PLAs require contractors to get a significant percentage of their workers from union hiring halls, where dispatch rules put non-local union workers on jobs before local nonunion workers.
- An October 2009 report by Dr. John R. McGowan, "The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements" finds that employees of nonunion contractors that are employed under government-mandated PLAs suffer a reduction in their take home pay that is conservatively estimated at 20 percent. The report estimates that as a result of President Obama's pro-PLA

Executive Order 13502, hundreds of millions of dollars of nonunion employees' income on federal construction projects will be distributed to union pension funds, from which nonunion employees will likely receive no benefits.

- PLAs take away workers' rights. Workers normally are permitted to choose whether to join a union through a federally supervised private ballot election. Nearly all PLAs require unions to be the exclusive bargaining representative for workers during the life of the project. The decision to recognize union representation is made by the employer rather than the employees. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The National Labor Relations Act generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the right of construction workers to a federally supervised private ballot election when deciding whether to join a union.
- Workers who do not belong to the union don't benefit from PLAs. Unions usually make money or sustain struggling pension programs through employers and employees' payment of benefits into the union coffers. However, there is little to no direct benefit for workers who have not joined the union, as they will never see the benefits of the contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, have to continue to pay for existing programs as well as into union programs under a PLA.

In Right to Work States:

- Government-mandated PLAs can occur in Right to Work states, though they are less common. Although Right to Work laws prevent workers from being forced to pay dues to a union as a condition of employment, workers in both Right to Work and non-Right to Work states are still required to work under nearly all of the terms and conditions negotiated by the union under PLAs.
- In non-Right to Work states, PLAs can go further in that they can require employees not only to work under a union contract but also to pay dues to a union while working on a covered project. Workers cannot be forced to pay union dues in a Right to Work state.
- Government-mandated PLAs in Right to Work states can still require contractors to recognize unions as the sole representative of their employees, hire all or some of their workers from union hiring halls, pay the union wage scale, follow inefficient union work rules and pay into union pension and benefit funds. These provisions are enough to discourage competition from nonunion contractors and significantly increase construction costs for taxpayers.

Myths and Facts

Union-Only Project Labor Agreements

Government mandated union-only project labor agreements (PLAs) can be costly to local workers, minorities and women, small and local contractors, and taxpayers. While a union-only project labor agreement is by law intended to be a voluntary contract between a construction employer and unions, a government mandated union-only PLA forces most workers and contractors to enter into a contract they never negotiated.

Myths about union-only PLAs have overshadowed the facts about the harmful impact of such agreements.

MYTH: Saves Money	FACT: Academic studies overwhelmingly show that union-only PLAs cost more per square foot for construction projects such as schools. Anecdotal evidence of PLA projects with cost overruns, such as the San Francisco Airport expansion, Seattle's Safeco Field and Boston's Big Dig, show union-only PLAs are no protection against poor cost management and no guarantee that the alleged economic benefits of a PLA will translate into real cost savings.
MYTH: Workers Benefit	FACT: More than 85 percent of construction workers nationwide are not members of a union and will be shut out from working on a union-only PLA project or, alternatively, will be forced to pay union dues and fees, sit on the union-bench, follow union work rules for their craft, and be subjected to discipline under union rules. Contractors and workers object to these stipulations because they force workers into union representation and business practices, even though employees have not chosen to belong to unions.
MYTH: Assures Local Jobs	FACT: Unions represent a minority of construction workers in every state. Union membership is decreasing as a share of the overall construction workforce. As a result, local unions may not be able to provide an adequate labor supply for a specific project. A union-only PLA allows unions to fill this labor shortage by recruiting non-local union members to work on local projects.
MYTH: Minorities Benefit	FACT: The National Black Chamber of Commerce, Women Construction Owners and Executives, Latin Builders Association, National Association of Women Business Owners and other associations representing small, disadvantaged, minority- and women-owned businesses are publicly opposed to union-only PLAs. Local minority workers are shut out for much the same reason as most local workers: they overwhelmingly do not belong to unions.

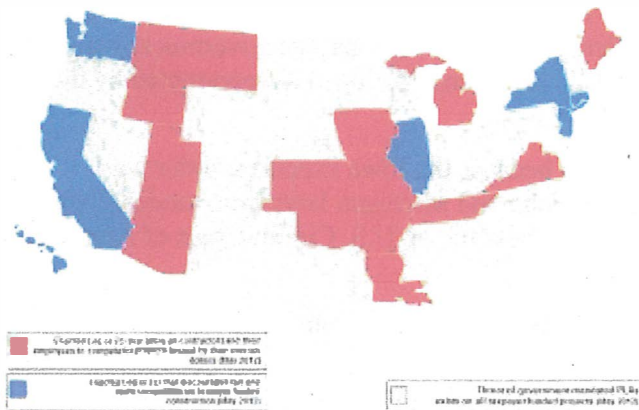
MYTH: Quality Construction	FACT: When comparing projects with and without union-only PLAs, there is no evidence of superior work on PLA projects. Union-only PLA projects, such as Boston's Big Dig, demonstrate that a union-only PLA can't substitute for quality control management.
MYTH: Complex Projects Need Union-Only PLAs	FACT: Most large projects are built successfully without a PLA. Examples such as: the rebuilt Wilson Bridge in the Washington, D.C. area; the renovation of the Pentagon after 9/11; FedEx Field (formerly Jack Kent Cooke Stadium) in Landover, Maryland; Camden Yards in Baltimore, Maryland; and many other large projects are built on time and within budget – without a PLA.
MYTH: Worksite Harmony	FACT: Strikes may be launched under a PLA. As recently as June 2006, the Laborers International Union Local 6 engaged in a work stoppage on an \$850 million project in Chicago, Illinois. Regardless, work stoppages are rare and the threat of a strike is weak. The few strikes in the construction industry are only orchestrated by unions. Legal picketing, where unions protest the use of workers who do not choose to belong to a union, does not disrupt worksites or jeopardize tight construction schedules.
MYTH: Wages Are Better	FACT: Worker shortages in construction are driving up market wages and benefits for construction workers. Contractors must offer competitive pay to attract top talent. Under some state laws, a construction prevailing wage covers the project without a union-mandated wage under a PLA. Union-only PLAs actually hurt the benefits of workers who do not belong to the union. If a worker doesn't face forced termination, they must pay union fees and dues from any wage.
MYTH: Fringe Benefits Are Better	FACT: Workers who don't belong to the union don't benefit. Unions usually make money or sustain struggling pension programs through employers' payment of benefits into the union coffers. However, there is little to no direct benefit for workers who have not joined the union, as they will never see the benefits of the contributions unless they join a union. Employers who offer their own benefits, including health and pension plans, have to continue to pay for the existing program <i>and</i> into union programs under a union-only PLA with no increased benefits.
MYTH: Safer Work	FACT: OSHA statistics show that union workers historically have a higher rate of fatalities than nonunion workers. There is no evidence to prove that workers are safer under PLAs. Safety and health management is the key to safe workplaces – not PLAs.

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A Summary of PLA Reform in the States

August 22, 2012 Featured, State & Local Construction

Like the U.S. Congress, most state legislatures conduct two-year legislative sessions. Now that most of these sessions are complete and lawmakers are focusing on election season, we are taking a look back at the successes and setbacks American taxpayers have experienced in the fight against wasteful and discriminatory government-mandated project labor agreements (PLAs).



Although the fight against PLA mandates goes back decades, President Barack Obama made it a national issue in 2009 when he issued [Executive Order 13502](#) after less than 60 days in office. E.O. 13502 encourages federal agencies to require PLAs on federal projects costing more than \$25 million. It also repealed a [Bush-era executive order](#) that guaranteed fair and open competition on federal and federally assisted projects during his two terms in office.

Although President Obama was the first U.S. president to issue a pro-PLA executive order, he was not the only elected official to take a pro-PLA stance in advance of the competitive 2010 elections. Many local elected officials issued similar orders to curry favor with organized labor. In February 2010, Iowa Gov. Chet Culver (D) [issued an executive order](#) that mirrored President Obama's Executive Order 13502. Illinois Gov. Pat Quinn (D) [did the same](#) a little more than a month later. Although PLA policy was not a priority issue for either administration for the first three years of their terms, election-year politics seemed to bring the PLA issue into greater focus for both governors. There is little doubt that the threat of electoral defeat in November 2010 prompted them both into action.

Despite the initial setback of the Illinois and Iowa pro-PLA executive orders, the results of the November 2010 elections changed the political dynamics of the PLA issue. New Republican governors in Pennsylvania and Ohio stopped imminent PLA requirements on several large-scale projects, including stopping potential PLA mandates on more than \$800 million worth of prison construction projects in Pennsylvania. In addition, Gov. John Kasich (R) used [executive action](#) to effectively eliminate PLA requirements on nearly all K-12 school construction projects in Ohio. While these developments were significant, newly elected Iowa Gov. Terry Branstad (R) elevated the fight in January 2011 when he issued an [executive order](#) banning government-mandated PLAs on

any construction project using state funds, reversing former Gov. Culver's 2011 order. This was the first executive order or bill enacted by a state government entity to curtail the use of PLA mandates since Missouri enacted legislation banning PLA mandates on state projects in 2007.

The PLA battle picked up even more momentum in 2011 when six other states followed Iowa's lead. By July, [Idaho](#), [Tennessee](#), [Louisiana](#), [Arizona](#), [Maine](#) and even [Michigan](#) had all enacted legislation to ban PLA mandates on state and local projects, as responsible leaders recognized the threat of potential PLA expansion to projects in their states.

In Michigan, a state organized labor considers a stronghold, the ban on PLA mandates had an immediate impact for taxpayers. The law opened up millions of dollars' worth of construction to the vast majority of the construction workforce that chooses not to join a labor organization, as government entities complied with the law by removing PLA mandates from requests for proposal. This was an important step for getting Michigan's construction workforce back to work.

But Big Labor would not go down without a fight. Attorneys representing construction unions in Iowa, Idaho and Michigan all filed lawsuits in federal court, claiming that the government neutrality executive order issued in Iowa and the bills enacted in Idaho and Michigan are preempted by the National Labor Relations Act (NLRA).

Merit shop supporters were surprised by these actions because the Iowa executive order was carefully drafted to avoid preemption issues and the Idaho and Michigan laws were modeled after President Bush's Executive Order 13202, which was upheld by the U.S. Circuit Court of Appeals for the D.C. Circuit.

In a strong statement of support for states that choose to guarantee government neutrality with regard to PLAs, a federal district court judge in Iowa dismissed the union's suit in September 2011. Unfortunately, in December 2011 and February 2012, federal judges in Idaho and Michigan, respectively, found those state laws to be preempted by the NLRA. Both judges were appointed by President Clinton. The judge in the Michigan case went so far as to say the appeals court erred when it found the Bush executive order to be allowable. Both rulings contradict the controlling case law on this issue and are on appeal.

Big Labor responded to the merit shop construction industry's successes at the state legislative level as well. In the summer of 2011, the Illinois General Assembly [codified](#) the 2011 executive order issued by Gov. Quinn. In addition, the California Legislature took a shot at local governments by [enacting legislation](#) that nullifies bans on PLA mandates in general law municipalities and deprives charter cities of state funding for construction if they ban PLA mandates. The Legislature then [strengthened](#) the charter city provisions in 2012.

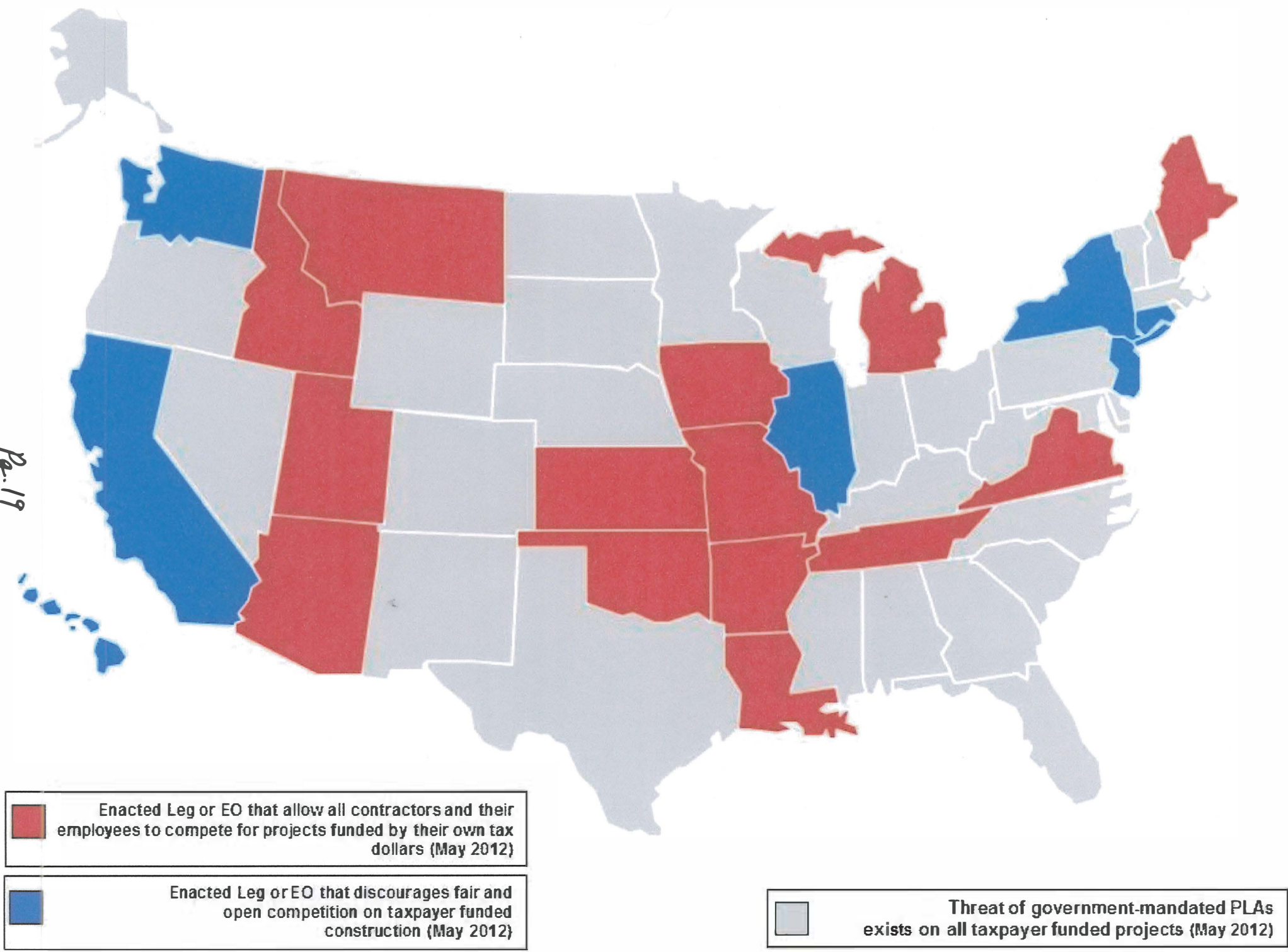
Undeterred by Big Labor's efforts, state leaders throughout the country continued to take on the PLA issue. In both Michigan and Idaho, lawmakers enacted new bills that addressed the issues raised by the two federal court opinions, while preserving the intent of the original government neutrality bills.

In addition, [Oklahoma](#), [Virginia](#) and [Kansas](#) all enacted legislation to ban PLA mandates in their states. The Virginia win was especially important, as it [helped to stop](#) a potential PLA preference that would have amounted to a PLA requirement on Phase 2 of the Metro expansion to Dulles International Airport. The law ensures that the [97 percent](#) of Virginia's construction workforce that chooses not to join a union can still have the opportunity to compete for one of the most important projects in the DC-region in decades.

The only two major setbacks for the merit shop came from Hawaii and Connecticut. In May 2012, Big Labor was able to convince their long-time ally Gov. Neil Abercrombie (D) to [issue a directive](#) encouraging the use of PLAs. In addition, Connecticut Gov. Dan Malloy (D) signed [legislation](#) in June that authorizes PLA mandates by local government entities.

Still, it remains clear that the momentum in the PLA fight is with the merit shop as we head into 2013 – and many more states are poised to take action against PLA mandates within their borders. As they do, these states will join the other states who have banned government-mandated PLAs in sending a clear signal that they are open for business. Guaranteeing open competition shows these governments understand that the best way to create value for taxpayers on public construction is to get the best construction at the best price, and that happens by allowing the entire construction workforce – not just those in a politically connected union – to compete for projects funded by their own tax dollars.

pg. 19



#16
1/29/13
Chris Deitch

Myths and Facts Union-Only Project Labor Agreements

Government mandated union-only project labor agreements (PLAs) can be costly to local workers, minorities and women, small and local contractors, and taxpayers. While a union-only project labor agreement is by law intended to be a voluntary contract between a construction employer and unions, a government mandated union-only PLA forces most workers and contractors to enter into a contract they never negotiated.

Myths about union-only PLAs have overshadowed the facts about the harmful impact of such agreements.

MYTH: Saves Money	FACT: Academic studies overwhelmingly show that union-only PLAs cost more per square foot for construction projects such as schools. Anecdotal evidence of PLA projects with cost overruns, such as the San Francisco Airport expansion, Seattle's Safeco Field and Boston's Big Dig, show union-only PLAs are no protection against poor cost management and no guarantee that the alleged economic benefits of a PLA will translate into real cost savings.
MYTH: Workers Benefit	FACT: More than 85 percent of construction workers nationwide are not members of a union and will be shut out from working on a union-only PLA project or, alternatively, will be forced to pay union dues and fees, sit on the union-bench, follow union work rules for their craft, and be subjected to discipline under union rules. Contractors and workers object to these stipulations because they force workers into union representation and business practices, even though employees have not chosen to belong to unions.
MYTH: Assures Local Jobs	FACT: Unions represent a minority of construction workers in every state. Union membership is decreasing as a share of the overall construction workforce. As a result, local unions may not be able to provide an adequate labor supply for a specific project. A union-only PLA allows unions to fill this labor shortage by recruiting non-local union members to work on local projects.
MYTH: Minorities Benefit	FACT: The National Black Chamber of Commerce, Women Construction Owners and Executives, Latin Builders Association, National Association of Women Business Owners and other associations representing small, disadvantaged, minority- and women-owned businesses are publicly opposed to union-only PLAs. Local minority workers are shut out for much the same reason as most local workers: they overwhelmingly do not belong to unions.



FREEDOM WORK

MYTH: Quality Construction	FACT: When comparing projects with and without union-only PLAs, there is no evidence of superior work on PLA projects. Union-only PLA projects, such as Boston's Big Dig, demonstrate that a union-only PLA can't substitute for quality control management.
MYTH: Complex Projects Need Union-Only PLAs	FACT: Most large projects are built successfully without a PLA. Examples such as: the rebuilt Wilson Bridge in the Washington, D.C. area; the renovation of the Pentagon after 9/11; FedEx Field (formerly Jack Kent Cooke Stadium) in Landover, Maryland; Camden Yards in Baltimore, Maryland; and many other large projects are built on time and within budget – without a PLA.
MYTH: Worksite Harmony	FACT: Strikes may be launched under a PLA. As recently as June 2006, the Laborers International Union Local 6 engaged in a work stoppage on an \$850 million project in Chicago, Illinois. Regardless, work stoppages are rare and the threat of a strike is weak. The few strikes in the construction industry are only orchestrated by unions. Legal picketing, where unions protest the use of workers who do not choose to belong to a union, does not disrupt worksites or jeopardize tight construction schedules.
MYTH: Wages Are Better	FACT: Worker shortages in construction are driving up market wages and benefits for construction workers. Contractors must offer competitive pay to attract top talent. Under some state laws, a construction prevailing wage covers the project without a union-mandated wage under a PLA. Union-only PLAs actually hurt the benefits of workers who do not belong to the union. If a worker doesn't face forced termination, they must pay union fees and dues from any wage.
MYTH: Fringe Benefits Are Better	FACT: Workers who don't belong to the union don't benefit. Unions usually make money or sustain struggling pension programs through employers' payment of benefits into the union coffers. However, there is little to no direct benefit for workers who have not joined the union, as they will never see the benefits of the contributions unless they join a union. Employers who offer their own benefits, including health and pension plans, have to continue to pay for the existing program <i>and</i> into union programs under a union-only PLA with no increased benefits.
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② 1270
1-29-2013

Testimony HB 1270
House, Industry, Business & Labor Committee

January 29, 2013

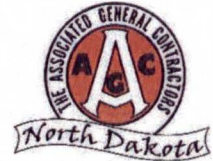
Mr. Chairman, and members of the House Industry, Business, & Labor Committee – my name is Russ Hanson representing the Associated General Contractors of North Dakota. The AGC of ND is a 500 member association consisting of commercial contractors, sub contractors, specialty contractors, and materials/equipment suppliers. We are affiliated with the Associated General Contractors of America - our national association which has been in existence since 1918.

The AGC of ND supports HB 1270. The AGC is committed to full and open competition for all public projects. AGC believes the choice of whether to adopt a collective bargaining agreement should be left to the contractor-employers and their employees, and that choice should not be imposed as a condition to competing for, or performing a publicly funded project.

The AGC of North Dakota has commented on federal projects considering the use of project labor agreements in this area and submitted correspondence urging the federal government to oppose the use of mandatory project labor agreements.

AGC of ND requests your favorable consideration of HB 1270 and urges you to issue a Do Pass Recommendation. I appreciate the opportunity to testify today and would attempt to address any questions.

Associated General Contractors of North Dakota



422 North 2nd Street, PO Box 1624, Bismarck, North Dakota 58502 • Phone: 701-223-2770 • FAX: 701-223-6719 • www.agcnd.org

January 21, 2013

Ms. Patricia Simon
USACE
180 East Fifth Street
St. Paul, MN 55101-1678

Dear Ms. Simon:

I understand the Associated General Contractors of America has (or will be) submitting comments regarding opposition to a mandated Project Labor Agreement for a Fargo Moorhead Area Flood Risk Management Project.

The Associated General Contractors of North Dakota concur with the position held by our national organization. We strongly oppose government mandates for PLA use and holds that most contracting agencies should allow their contractors – the parties that have experience in construction labor relations and that would be directly governed by a PLA – to decide whether a PLA is appropriate for a particular project and, if so, execute one voluntarily should they deem it appropriate.

We oppose government mandates for PLA's and urge you to refrain from imposing such a mandate on the Fargo Moorhead Area Flood Risk Management Project.

I appreciate the opportunity to forward our position on this issue to you.

Sincerely,

Russ Hanson
Executive Vice President

BUILD WITH THE BEST



3



1-29-2013
HB 1270

Testimony of Jon Godfread
Greater North Dakota Chamber of Commerce
HB 1270
January 29, 2013

Mr. Chairman and members of the committee, my name is Jon Godfread and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of HB 1270.

HB 1270 comes in response to a 2009 executive order issued by President Obama. This executive order sought to encourage federal agencies to require Project Labor Agreements on projects costing more than \$25M. HB 1270 will enact a statute to guarantee government neutrality with regard to PLA mandates. As you know, North Dakota is a right to work state; this measure will ensure that those principles will be upheld in the future.

Government-mandated PLAs have been shown time and time again to increase the cost of projects. By remaining neutral and providing for open and fair competition in government construction projects; this legislature can assure the citizens of North Dakota that the projects conducted by the North Dakota government are done at the best price.

Thank you for the opportunity to appear before you today in support of HB 1270, I urge this committee to recommend a Do Pass. I would happily attempt to answer any questions.

Champions  Business

PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

H4
1-29-13

2013 HB 1270

**Testimony before the House Industry, Business and Labor Committee
North Dakota Building and Construction Trades Council
North Dakota Electrical Workers Council
North Dakota
January 29, 2013**

Good morning, Chairman Keiser and members of the House Industry, Business and Labor Committee; My name is Renee Pfenning on behalf of the ND Building and Construction Trades Council and the North Dakota Electrical Workers Council, I rise in opposition to HB 1270.

HB 1270 limits the options for state and political subdivisions on large scale complex, long term construction projects by prohibiting the use of Project Labor Agreements.

The contents of a Project Labor Agreement are negotiated during the planning process, before the bids are let and work on the construction project starts. That way, contractors interested in working on the project can take the requirements of the agreement under consideration as they prepare their bids.

Contractors and subcontractors are constantly changing on large scale construction projects as they work on the segments of the project they are responsible for. Project agreements provide the mechanism for a highly skilled workforce on all segments of large complex, long term construction projects, resulting in increased efficiency and on-time completion. Schedules and work rules of multiple contractors and subcontractors are coordinated by the construction manager or general contractor.

Project Labor Agreements do not exclude non-union contractors from bidding on a PLA project. In fact, Federal Law prohibits it. It is solely at their discretion, if a non-union contractor chooses not to bid on a PLA project.

In closing, I respectfully ask the House Industry, Business and Labor Committee to give HB 1270 a Do Not Pass recommendation.



Minnesota/
North Dakota Chapter

Briefing to the ND Senate – Industry, Business & Labor Committee (on... HB 1270)

March 13th, 2013 – Opening Statement by Chris Deitch, Regional Director – ABC North Dakota

Chairman Klein and Members of the IBL Committee: Thank you for allowing us to introduce...

House Bill NO. 1270 - *Open and Fair Competition in Governmental Construction...for North Dakota*

Introduce fellow attendees:

Russ Hanson, Executive Vice President – **Associated General Contractors / North Dakota** – Bismarck, ND

Andy Peterson, President & CEO – **Greater North Dakota Chamber** – Bismarck, ND

Bonnie Staiger, Executive Vice President – **National Federation of Independent Business** – Bismarck, ND

Andy Conlin, Senior Manager, State and Local Affairs – **ABC National** – Arlington, VA

Phil Kraemer, Vice President – **Lunseth Plumbing and Heating** – Grand Forks, ND

Jim Roers, Chairman – **ROERS Companies** – Fargo, ND

On behalf of our Coalition of Construction and Business organizations along with North Dakota based Construction company leaders and job producers, we want to thank you Chairman Klein and all the members of the Senate IBL committee for visiting with us today.

We have been working with key Legislators such as **Representative Jim Kasper** to introduce House Bill 1270 in the 63rd Session of the Legislative Assembly. As you know, the House IBL committee gave HB 1270 a "Do Pass" recommendation, and the full House passed the bill by a vote of 72 for and 19 against with 3 no votes. Also we would like to point out that 3 Democrat House members voted for HB 1270, so there was bi-partisan support.

HB 1270: Open and Fair Competition in Governmental Construction – for North Dakota.

Seeks to eliminate the use of **Project Labor Agreements (PLAs)** on publicly funded construction projects (Partially or Fully) funded by the State or political subdivisions in North Dakota. We believe this bill will accomplish 3 key results:

1. Promote the highest level of economic efficiency in governmental construction projects, which will help demonstrate the continued tradition of great stewardship of ND Taxpayer's money. There are Numerous Studies to back this up...(One Example: Measuring the Cost of PLAs on School Construction in California)
2. Neutrality in Governmental Construction projects. Sending the message that in North Dakota we demand the highest possible quality construction at the best price. Nothing more, nothing less. Competition on a level playing field is what we expect in North Dakota, and is the foundation of free enterprise in America.
3. Signals to public and private development entities, who are considering the issuance of a Project Labor Agreement, that in North Dakota we prefer to have as many North Dakota construction companies as possible (and their highly skilled construction professionals, over 92% of which are non-union), to have an equal opportunity at securing all construction projects without regard to the size and scope of the project, or affiliation to a labor union.

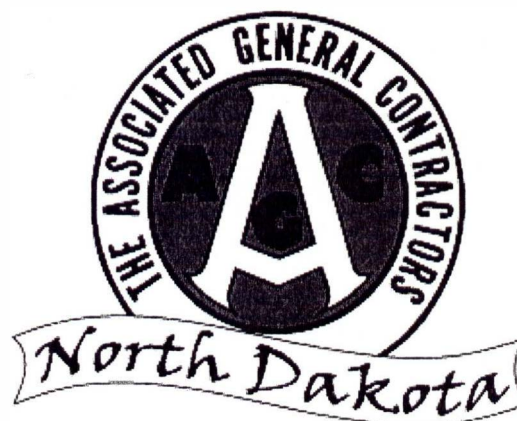
We are not asking for special treatment over Union Construction Companies. **HB 1270** simply seeks to place all construction companies (union and non-union) on a level playing field. Thank you! Introduce fellow speakers...

A Coalition of Construction and Business Associations...

***In support of HB 1270...Efficient, Open and Fair Competition
in Governmental Construction for North Dakota!***



**Minnesota/
North Dakota Chapter**



March 13th, 2013

Prepared for: ND Senate – Industry, Business and Labor Committee

THE TRUTH ABOUT PROJECT LABOR AGREEMENTS

Leading the fight against government-mandated PLAs

Say "NO" to Government-Mandated Project Labor Agreements on North Dakota Construction Projects

A project labor agreement (PLA) is a special interest scheme that discourages competition from nonunion contractors and their workers by requiring a construction project to be awarded only to contractors and subcontractors that agree to recognize unions as the representatives of their employees on that job; use the union hall to obtain workers; obey the union's restrictive apprenticeship and work rules; and contribute to union pension plans and other funds in which their nonunion employees will never benefit unless they join a union.

If mandated on public construction projects in North Dakota, PLA requirements would make it nearly impossible for the more than 90 percent of North Dakota's construction workforce that chooses not to join a labor union to compete for projects funded by their own tax dollars.

Government-mandated PLAs can occur in Right to Work states, though they are less common. Although Right to Work laws prevent workers from being forced to pay dues to a union as a condition of employment, workers in both Right to Work and non-Right to Work states are still required to work under nearly all of the terms and conditions negotiated by the union under a PLA. These provisions are enough to discourage competition from nonunion contractors and significantly increase construction costs for taxpayers.

In February 2009, President Barack Obama issued an executive order encouraging federal agencies to require PLAs on projects costing more than \$25 million. This order left open the door for potential PLA mandates on both federal projects costing less than \$25 million and federally assisted construction. By enacting a statute to guarantee government neutrality with regard to PLA mandates, state leaders can signal to the Obama administration that taxpayers in their state want the best construction at the best price, not special interest handouts, for their hard-earned public construction dollars.

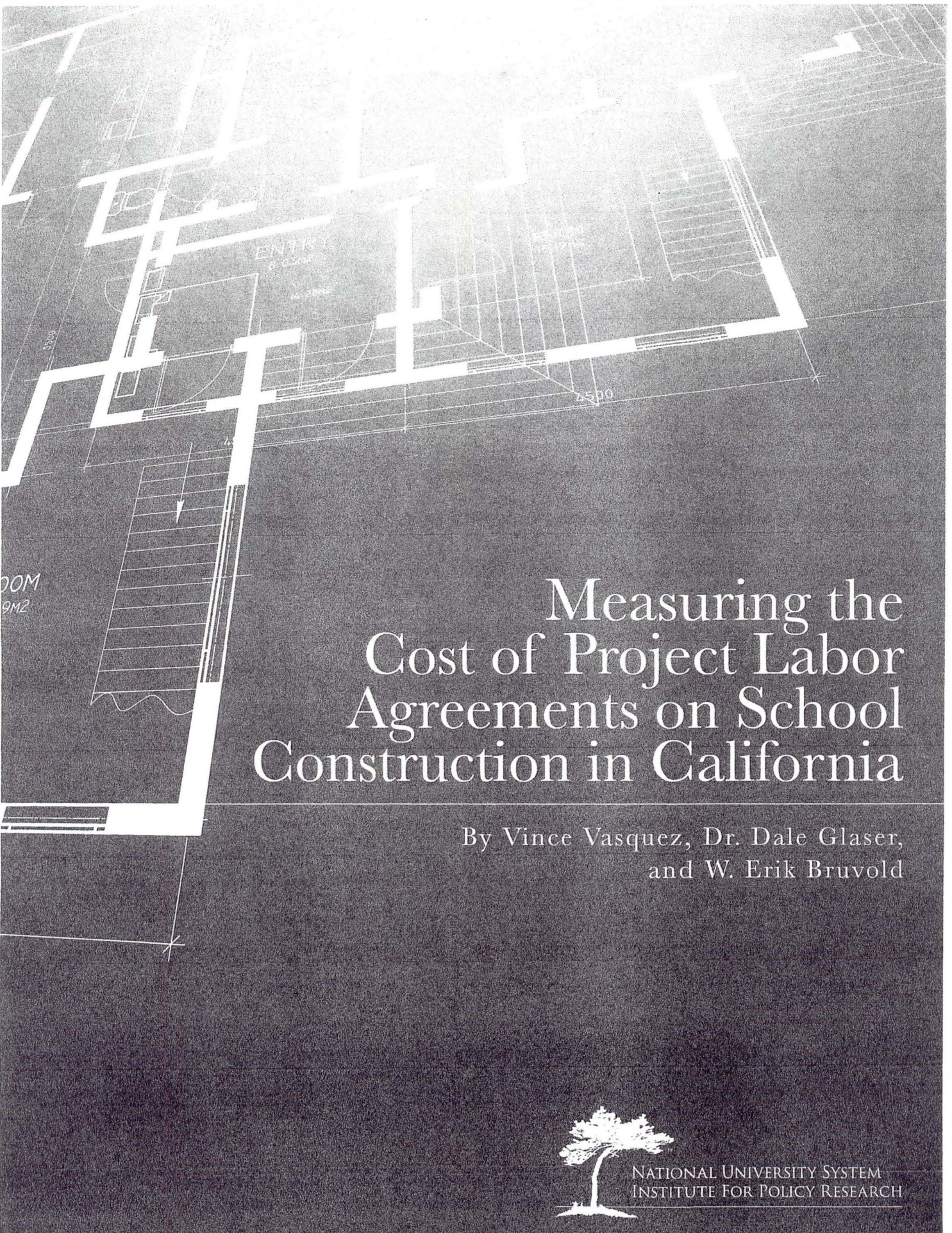
Learn more about government-mandated PLAs at www.thetruthaboutplas.com/NorthDakota.

For more information, please contact:

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cdeitch@ndabc.com

Phil Raines
Vice President of Public Affairs
Minnesota/North Dakota Chapter
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praines@mnabc.com

Andy Conlin
Sr. Manager, State and Local Affairs
Associated Builders and Contractors
Phone: 703-812-2048
Conlin@abc.org



Measuring the Cost of Project Labor Agreements on School Construction in California

By Vince Vasquez, Dr. Dale Glaser,
and W. Erik Bruvold



NATIONAL UNIVERSITY SYSTEM
INSTITUTE FOR POLICY RESEARCH

MEASURING THE COST OF PROJECT LABOR AGREEMENTS ON SCHOOL CONSTRUCTION IN CALIFORNIA



NATIONAL UNIVERSITY SYSTEM
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ABOUT THE NATIONAL UNIVERSITY SYSTEM INSTITUTE FOR POLICY RESEARCH

The National University System Institute for Policy Research is a non-partisan organization that formulates and promotes high quality economic, policy, and public-opinion research to improve the efficiency and effectiveness of local governments in San Diego County and the quality of life enjoyed by the region's citizens. For more information, visit: www.nuinsitute.org

This study was underwritten, in part, by the Associated Builders and Contractors, California Cooperation Committee (ABC-CCC). All conclusions, errors and omission are the sole responsibility of the authors. We thank ABC-CCC for their support.

This study examines the relationship between the adoption of PLAs and public school construction costs in California.

EXECUTIVE SUMMARY

Project Labor Agreements (PLAs) are collectively bargained contracts that establish working conditions and management rights. They have been used by both public and private entities since the 1930s. In the debate over the use of PLAs, one of the most prominent areas of disagreement is whether these contracts effect construction costs¹. Supporters argue that PLAs save public dollars because contractors with highly skilled workers are more likely to participate in construction projects, resulting in higher worker productivity and fewer change orders². Proponents also contend that special provisions in PLAs enhance job site cooperation and ensure quick and effective resolution of labor disputes that would otherwise result in delays that could either increase costs or create severe operational disruptions.

Opponents argue that PLAs increase costs. They claim that the requirements imposed by PLAs discourage nonunion contractors from bidding on projects and subcontractors from participating. This reduced competition, it is claimed, results in overall higher bids. Opponents also claim that the work condition rules required in PLAs increase labor costs and that these are passed onto the project's developer.

This study examines the relationship between the adoption of PLAs and public school construction costs in California. We examine the inflation-adjusted square foot construction costs for 551 school projects in California built between 1995 and 2009. Sixty-five of these projects were built using PLAs in eight separate school districts.



Our research shows that PLAs are associated with higher construction costs. We found that costs are 13 to 15 percent higher when school districts construct a school under a PLA. In inflation-adjusted dollars, we found that the presence of a PLA is associated with costs that are \$28.90 to \$32.49 per square foot higher.

The relationship between the presence of a PLA and higher school construction costs was found when controlling for other factors that previous study in this field found to effect the costs of construction. We conducted three sensitivity tests, including and excluding projects known to have extraordinary costs and employing statistical tests that neutralize the impact of outliers on results. In each case, we found that school construction costs were higher when PLAs were used.

OutreachSystems Search for January 8, 2013

The government contract opportunity enclosed with this email is provided to you by the Procurement Technical Assistance Center (PTAC) at the Metropolitan Economic Development Association. This service is provided to clients as part of PTAC's government contracting assistance services. This contract opportunity notice is based upon your product/service profile. If you wish to revise your product/service profile, or have questions concerning this contract opportunity, contact Sherri Komrosky at skomrosky@mnptac.org.

**Department of the Army, U.S. Army Corps of Engineers, USACE District, St. Paul,
Attn: CEMVP-CT 180 East Fifth Street St. Paul MN 55101-1678**

Y – PROJECT LABOR AGREEMENTS (PLAs), SOURCES SOUGHT SYNOPSIS W912ES-13-SS-0002 012213
Patricia M. Simon, Phone 6512905418, Email patricia.m.simon@usace.army.mil PROJECT LABOR AGREEMENTS (PLAs), SOURCES SOUGHT SYNOPSIS W912ES-13-SS-0002



St. Paul District Corps of Engineers is soliciting comments from the construction community addressing the potential use of **Project Labor Agreements (PLAs)** on large scale construction contracts (exceeding \$25 million) for upcoming work on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. The overall Project description is as follows:

The Project consists of a Diversion Channel with Low Flow Channel, a Connecting Channel that diverts water from the Red and Wild Rice Rivers to the Diversion Channel, an upstream staging area for floodwaters, associated structures, non-structural features, recreation features and environmental mitigation. The Connecting Channel starts on the Red River approximately four miles south of the confluence of the Red and Wild Rice Rivers and extends west and north, crossing the Wild Rice River, to the Diversion inlet structure that is located just south of Horace. The Diversion Channel extends from its Inlet Structure, around the cities of Horace, Fargo, West Fargo and Harwood. It ultimately will re-enter the Red River north of the confluence of the Red and Sheyenne rivers near the city of Georgetown, MN. The 35-mile path of the Connecting Channel and Diversion Channel will cross the Wild Rice, Sheyenne, Maple, Lower Rush and Rush rivers. Two hydraulic structures will control the flows passing into the protected area during larger flood events; one on the Red River and the other on the Wild Rice River. The gated Diversion Inlet Structure is located at Cass County Highway 17 south of Horace, ND. At the Sheyenne and Maple rivers, aqueduct structures will allow base flows to follow the natural river channels to maintain habitat in the natural channels. The Lower Rush and Rush rivers will have drop structures that will drop the entire flow of those rivers into the Diversion Channel. The main line of flood risk management at the south end of the Project includes the embankments adjacent to the Diversion Channel and a tie-back embankment from the Red River control structure to high ground in Minnesota. In order to reduce downstream impacts, upstream water staging of approximately 200,000 acre- feet immediately upstream of the Diversion Channel inlet will be required. A wide variety of mitigation features are required to offset the impacts associated with construction and operation of the Project. Measures required for aquatic habitat and connectivity mitigation include stream restoration, riparian corridor restoration, a meandering Low-Flow Channel in the Diversion Channel and providing fish passage at the Diversion Outlet, control structures and several existing dams. Floodplain forest mitigation will be provided by reestablishing floodplain forest on 239 acres of floodplain agricultural land or pastured land. Wetland mitigation will be provided in the Diversion Channel by planting the bottom and fringe of the side slopes with native wetland species. The meandering Low-Flow Channel and attendant grade control structures will facilitate the development of wetland habitat in the Diversion Channel. Construction of various features is expected to occur in a series over time and has not yet been authorized or funded by Congress. Construction reaches have not yet been fully defined. Approximately 13 of the reaches are expected to exceed \$25,000,000 and may vary in estimated magnitude from approximately \$25,000,000 to \$75,000,000 and may include but would not be limited to excavation, small inlets, levee construction, channel construction, structure work, and aqueducts, or any combination thereof. The Corps will not be accepting questions regarding construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project at this time. Previously published information regarding the Project can be found at <http://www.internationalwaterinstitute.org/> and <http://www.fmDiversion.com/>.

U.S. ARMY CORPS OF ENGINEERS... ↗

Project Labor Agreement Questionnaire
⑧ → Fargo Moorhead Metropolitan Area
Flood Risk Management Project
W912ES-13-SS-0002

Please provide your comments via e-mail, citing "PLA COMMENTS" in the subject line, to Patricia Simon, Contract Specialist, at patricia.m.simon@usace.army.mil no later than 22 January 2013.

Prepared by: _____
Organization Name: _____
Address: _____
Phone: _____

1. Describe the degree to which the Fargo-Moorhead area construction labor force is represented by unions.
2. Is there currently a shortage of skilled construction labor in the area? Is a labor shortage projected?
3. What investments have been made in the area to support registered apprenticeship programs?
4. Have PLAs been used on other construction projects undertaken by public or private entities in the region? Please explain.
5. Describe the degree to which labor disputes or other labor issues have contributed to project delays in the local area.
6. The contract performance periods for the various construction reaches are anticipated to last between one and four years. Are relevant Collective Bargaining Agreements likely to expire during the course of the Project under consideration?

Pg 6 "A"

(OVER) →

7. How do open shop and union wage rates influence prevailing wage rates in the local market and compare to the Davis Bacon rates?
8. Describe whether a PLA might contribute to cost savings in any of the following ways:
 - Harmonization of shifts and holidays between the trades to cut labor costs
 - Minimizing disruptions that may arise due to expiration of a CBA
 - Availability of trained, registered apprentices, efficient for highly skilled workforce
 - Serving as a management tool that ensures highly skilled workers from multiple trades are coordinated in the most efficient way
 - Other
9. Describe whether a PLA might minimize risk and contribute to greater efficiency in any of the following ways:
 - Mechanisms to avoid delays
 - Complying with Davis Bacon and other labor standards, safety rules and EEO and OFCCP laws
 - Ensuring a steady supply of skilled labor in markets with low supply or high competition for workers
 - Other
10. Are there ways in which a PLA might increase costs on this particular Project?
11. Based on consideration of the factors above, please provide a short summary explaining why you would recommend or would not recommend the use of a PLA for this Project.

13.0224.03000

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1270

Introduced by

Representatives Kasper, Beadle, Belter, Carlson, Dosch, Headland, Keiser, Ruby, Thoreson
Senators Klein, Miller, Wardner

- 1 A BILL for an Act to provide for open and fair competition in governmental construction; and to
- 2 provide for application.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1.

5 Definitions.

6 As used in this Act:

- 7 1. "Facility" means a physical improvement to real property owned or leased, directly or
- 8 through a building authority, by a governmental unit, including a road, bridge, runway,
- 9 rails, or building or structure along with the building's or structure's grounds,
- 10 approaches, services, and appurtenances.

- 11 2. "Governmental unit" means the state or a political subdivision.

12 SECTION 2.

13 Prohibited labor organization terms in construction contract clauses.

14 A governmental unit awarding a contract for the construction, repair, remodeling, or
15 demolition of a facility and any construction manager acting on that governmental unit's behalf
16 may not include any of the following in the bid specifications, project agreements, or other
17 controlling documents:

- 18 1. A term that requires or prohibits a bidder, an offeror, a contractor, or a subcontractor
- 19 from entering or adhering to agreements with one or more labor organizations relating
- 20 to the construction project or a related construction project; or
- 21 2. A term that otherwise discriminates against a bidder, an offeror, a contractor, or a
- 22 subcontractor for becoming, remaining, or refusing to become or remain a signatory to
- 23 or for adhering to or refusing to adhere to an agreement with one or more labor
- 24 organizations in regard to that project or a related construction project.

1 **SECTION 3.**

2 **Prohibited labor organization terms in a grant, tax abatement, and tax credit.**

- 3 1. A governmental unit may not award a grant, tax abatement, or tax credit that is
4 conditioned upon a requirement that the awardee include a term prohibited under
5 section 2 of this Act in a contract document for any construction, improvement,
6 maintenance, or renovation of real property or fixtures that are the subject of the grant,
7 tax abatement, or tax credit.
- 8 2. This Act does not prohibit a governmental unit from awarding a contract, grant, tax
9 abatement, or tax credit to a private owner, bidder, contractor, or subcontractor that
10 enters, is a party to, or adheres to an agreement with a labor organization, if:
11 a. Being or becoming a party or adhering to an agreement with a labor organization
12 is not a condition for the award of the contract, grant, tax abatement, or tax credit;
13 and
14 b. The governmental unit does not discriminate against a private owner, bidder,
15 contractor, or subcontractor in the awarding of that contract, grant, tax
16 abatement, or tax credit based upon the status as being or becoming, or the
17 willingness or refusal to become, a party to an agreement with a labor
18 organization.
- 19 3. This Act does not prohibit a contractor or subcontractor from voluntarily entering or
20 complying with an agreement entered with one or more labor organizations in regard
21 to a contract with a governmental unit or a contract funded in whole or in part from a
22 grant, tax abatement, or tax credit from a governmental unit.

23 **SECTION 4.**

24 **Exemptions.**

25 The head of a governmental unit may exempt a particular project, contract, subcontract,
26 grant, tax abatement, or tax credit from the requirements of any or all of the provisions in this
27 Act if after public notice and hearing the governmental unit finds special circumstances require
28 an exemption to avert an imminent threat to public health or safety. A finding of special
29 circumstances under this section may not be based on the possibility or presence of a labor
30 dispute concerning:

Sixty-third
Legislative Assembly

- 1 1. The use of contractors or subcontractors that are nonsignatories to or otherwise do not
- 2 adhere to agreements with one or more labor organizations; or
- 3 2. Employees on the project who are not members of or affiliated with a labor
- 4 organization.

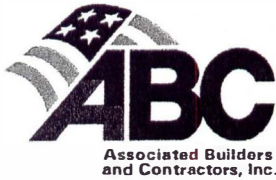
5 **SECTION 5.**

6 **Limitations.**

7 This Act may not be construed to:

- 8 1. Prohibit an employer or other party from entering an agreement or engaging in any
- 9 other activity protected by the National Labor Relations Act [29 U.S.C. 151 et seq.]; or
- 10 2. Interfere with labor relations of a party which are left unregulated under the National
- 11 Labor Relations Act [29 U.S.C. 151 et seq.].

12 **SECTION 6. APPLICATION.** This Act applies to construction contracts executed on and
13 after the effective date of this Act.



Government-Mandated PLA Talking Points
June 12, 2012

General Talking Points:

- A project labor agreement (PLA) is a special interest scheme that discourages competition from nonunion contractors and their workers by requiring a construction project to be awarded only to contractors and subcontractors that agree to recognize unions as the representatives of their employees on that job; use the union hall to obtain workers; obey the union's restrictive apprenticeship and work rules; and contribute to union pension plans and other funds in which their nonunion employees will never benefit unless they join a union.
- When a government entity requires a PLA on a construction project, they are essentially tilting the playing field in favor of contractors that agree to use organized labor. On government-funded or assisted projects, this means that the 86 percent of the private construction workforce that chooses not to join a labor union cannot compete on an equal basis for projects funded by their own tax dollars.
- On government-funded or assisted projects, taxpayers deserve the best product for the best price. Numerous studies show that PLA mandates can increase construction costs by nearly 20 percent. With government deficits ballooning nationwide, government-mandated PLAs are a special interest handout that taxpayers simply can't afford.
- PLAs were established in the early twentieth-century, when a significant percentage of the private construction workforce was unionized, to help trade unions cooperate. In modern construction, PLAs are nothing more than wasteful market recovery programs for unions that need to rebuild their membership after seeing their numbers decline for the last 50 years.
- Unions use the threat of strikes or labor unrest to coerce construction users into requiring contractors to sign these pro-union agreements. This is a particularly disingenuous argument because unions are the cause of strikes, work stoppages, jurisdictional disputes and illegal organizing. Nevertheless, these actions still occur on PLA projects despite the promise of labor peace. Merit shop employees never engage in these activities on construction jobsites.
- Government-mandated PLAs discriminate against merit shop contractors and disadvantaged businesses. This discrimination is particularly harmful to women- and minority-owned construction businesses and their workers, who traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

On Construction Costs:

- In a 2011 study conducted by the National University System Institute for Policy Research (NUSIPR), California school construction projects built using project labor agreements (PLAs) experienced increased costs of 13 percent to 15 percent, or \$28.90 to \$32.49 per square foot, compared to projects that did not use a PLA.
- A study released Sept. 23, 2010 by the Beacon Hill Institute (BHI) found that PLAs significantly increase construction costs on federal projects. Had President Obama's pro-PLA Executive Order 13502 been in effect in 2008, and all 2008

federal construction projects worth \$25 million or more had been performed under PLAs, it would have increased the cost to federal taxpayers by \$1.6 billion to \$2.6 billion.

- A June 2009 study conducted by property and construction consulting firm Rider Levett Bucknall prepared for the U.S. Department of Veterans Affairs (VA) Office of Construction and Facilities Management found that PLAs would likely increase construction costs by as much as 9 percent on three of the five construction markets (Denver, New Orleans and Orlando) in which the VA is planning to build hospitals. The VA hired this firm to evaluate the cost impact of PLAs in various markets where the VA plans to build hospitals in light of President Obama's order that encourages federal agencies to mandate PLAs. This report shows the PLAs have an especially pronounced impact on construction costs in construction markets with low union density.
- In May 2006, BHI released a study concluding that the use of PLAs on New York's school construction projects increased bid 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. Additional BHI studies comparing PLA to non-PLA school construction projects in Connecticut and Massachusetts came up with similar results.
- The studies listed above and others showing negative impact of PLAs are available at www.abc.org/plastudies

The Impact of PLAs on Competition:

- Merit shop contractors are either barred or discouraged from bidding on PLA projects because of the unreasonable terms and conditions included in a typical PLA. As a result, the number of bidders on projects where a PLA is required is usually limited to only union contractors or to those few merit shop contractors willing to become a signatory to a PLA.
- Proponents of PLAs maintain that nonunion contractors are not barred and point to open shop contractors that have successfully bid and worked on PLA projects. These arguments find rare exceptions to the indisputable fact that few merit shop contractors bid on PLA projects.

On Workers:

- According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, approximately 13 percent of America's private construction workforce belongs to a union. This means PLA requirements discriminate against more than eight out of 10 construction workers who would otherwise work on construction projects if not for a government-mandated PLA.
- PLAs hurt local workers. Proponents of PLAs claim PLAs ensure the use of local workers, but PLA supporters fail to mention "local workers" doesn't include local nonunion workers. Nearly all PLAs require contractors to get a significant percentage of their workers from union hiring halls, where dispatch rules put non-local union workers on jobs before local nonunion workers.
- An October 2009 report by Dr. John R. McGowan, "The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements" finds that employees of nonunion contractors that are employed under government-mandated PLAs suffer a reduction in their take home pay that is conservatively estimated at 20 percent. The report estimates that as a result of President Obama's pro-PLA

Executive Order 13502, hundreds of millions of dollars of nonunion employees' income on federal construction projects will be distributed to union pension funds, from which nonunion employees will likely receive no benefits.

- PLAs take away workers' rights. Workers normally are permitted to choose whether to join a union through a federally supervised private ballot election. Nearly all PLAs require unions to be the exclusive bargaining representative for workers during the life of the project. The decision to recognize union representation is made by the employer rather than the employees. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The National Labor Relations Act generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the right of construction workers to a federally supervised private ballot election when deciding whether to join a union.
- Workers who do not belong to the union don't benefit from PLAs. Unions usually make money or sustain struggling pension programs through employers and employees' payment of benefits into the union coffers. However, there is little to no direct benefit for workers who have not joined the union, as they will never see the benefits of the contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, have to continue to pay for existing programs as well as into union programs under a PLA.

In Right to Work States:

- Government-mandated PLAs can occur in Right to Work states, though they are less common. Although Right to Work laws prevents workers from being forced to pay dues to a union as a condition of employment, workers in both Right to Work and non-Right to Work states are still required to work under nearly all of the terms and conditions negotiated by the union under PLAs.
- In non-Right to Work states, PLAs can go further in that they can require employees not only to work under a union contract but also to pay dues to a union while working on a covered project. Workers cannot be forced to pay union dues in a Right to Work state.
- Government-mandated PLAs in Right to Work states can still require contractors to recognize unions as the sole representative of their employees, hire all or some of their workers from union hiring halls, pay the union wage scale, follow inefficient union work rules and pay into union pension and benefit funds. These provisions are enough to discourage competition from nonunion contractors and significantly increase construction costs for taxpayers.

Myths and Facts

Project Labor Agreement Mandates

Government-mandated project labor agreements (PLAs) can be costly to local workers, minorities and women, small and local contractors, and taxpayers. While a PLA is a voluntary contract between a construction employer and unions, a government *mandated* PLA forces most workers and contractors to enter into a contract they never negotiated. PLA mandates force contractors to accept terms and conditions negotiated by government and unions as a condition of performing work and winning construction contracts.

Myths about PLAs have overshadowed the facts about the harmful impact of such agreements.

MYTH: Saves Money	FACT: Academic studies overwhelmingly show that PLA mandates cost more per square foot for construction projects such as schools. Anecdotal evidence of various PLA projects with cost overruns, such as the San Francisco Airport expansion, Seattle's Safeco Field and Boston's Big Dig, show government-mandated PLAs are no protection against poor cost management and no guarantee that the alleged economic benefits of a PLA will translate into real cost savings.
MYTH: Workers Benefit	FACT: Approximately 87 percent of construction workers nationwide are not members of a union and will be shut out from working on projects subject to PLA mandates or, alternatively, will be forced to pay union dues and fees, sit on the union-bench, follow union work rules for their craft, and be subjected to discipline under union rules. Contractors and workers object to these stipulations because they force workers into union representation and business practices, even though employees have not chosen to belong to unions.
MYTH: Assures Local Jobs	FACT: Unions represent a minority of construction workers in every state. Union membership is decreasing as a share of the overall construction workforce. As a result, local unions may not be able to provide an adequate labor supply for a specific project. A PLA allows unions to fill this labor shortage by recruiting non-local union members to work on local projects.
MYTH: Minorities Benefit	FACT: The National Black Chamber of Commerce, Women Construction Owners and Executives, Latin Builders Association, National Association of Women Business Owners and other associations representing small, disadvantaged, minority- and women-owned businesses are publicly opposed to PLA mandates. Local minority workers are shut out for much the same reason as most local workers: they overwhelmingly do not belong to unions.

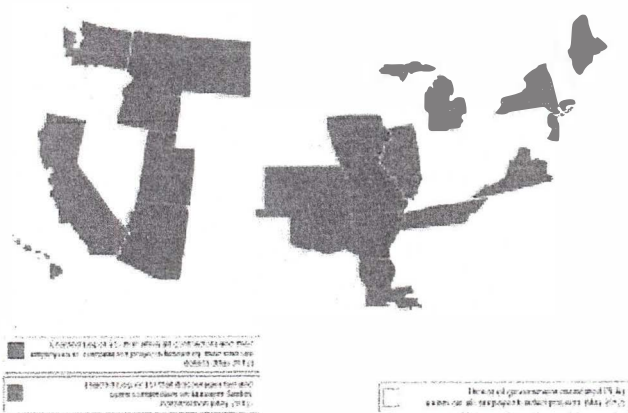
MYTH: Quality Construction	FACT: When comparing projects with and without union-only PLAs, there is no evidence of superior work on PLA projects. Union-only PLA projects, such as Boston's Big Dig, demonstrate that a union-only PLA can't substitute for quality control management.
MYTH: Complex Projects Need PLAs	FACT: Most large projects are built successfully without a PLA. Examples such as: the rebuilt Wilson Bridge in the Washington, D.C. area; the renovation of the Pentagon after 9/11; FedEx Field (formerly Jack Kent Cooke Stadium) in Landover, Maryland; Camden Yards in Baltimore, Maryland; and many other large projects are built on time and within budget – without a PLA.
MYTH: Worksite Harmony	FACT: Strikes may be launched under a PLA. As recently as the summer of 2011, strikes stopped work on public projects subject to a PLA in New York City, Indiana and Chicago. Regardless, work stoppages are rare and the threat of a strike is weak. The few strikes in the construction industry are only orchestrated by unions. Legal picketing, where unions protest the use of workers who do not choose to belong to a union, does not disrupt worksites or jeopardize tight construction schedules.
MYTH: Wages Are Better	FACT: Contractors must offer competitive pay to attract top talent. Under some state laws, a construction prevailing wage covers the project even if there is no PLA. PLA mandates actually hurt the benefits of workers who do not belong to the union. If a worker doesn't face forced termination if they refuse to join a union as a condition of working on the project, they must pay union fees and dues for the life of the project.
MYTH: Fringe Benefits Are Better	FACT: Workers who don't belong to the union don't benefit. Unions usually make money or sustain struggling pension programs through employers' payment of benefits into the union coffers. However, there is little to no direct benefit for workers who have not joined the union, as they will never see the benefits of the contributions unless they join a union. Employers who offer their own benefits, including health and pension plans, have to continue to pay for the existing program <i>and</i> into union programs under a PLA with no increased benefits.
MYTH: Safer Work	FACT: There is no evidence to prove that workers are safer under PLAs or in an all-union environment. Safety and health management is the key to safe workplaces – not PLAs.

MYTH: More Training	FACT: PLAs limit access to training. PLAs prohibit apprentices who are not enrolled in a union program from working and learning on-the-job. Penalizing workers who participate in training programs alternative to union programs is unfair and has contributed to the shortage of skilled workers in the construction industry.
MYTH: Anyone Can Bid	FACT: Most construction companies that are not signatory to a union do not bid on projects subject to a PLA mandate. By submitting a bid and agreeing to the terms and conditions of a PLA, contractors have to relinquish management of their own workforce to a third-party (the unions) by terminating their employees or in some circumstances, forcing their workers to go to the union hall for a worksite referral with no guarantee that their workers will be assigned back to their original employer.
MYTH: Anyone Can Work	FACT: As long as workers and contractors relinquish all control to a third-party (the unions), they can work. PLA mandates are a tool to regain lost market share for union contractors and capture more workers into the union with mandated union rules and payment of union fees and dues during a PLA project.
MYTH: PLAs Are Legal	FACT: PLA mandates are not necessarily legal in public construction. Fourteen states have passed measures explicitly prohibiting PLA mandates on state-funded construction but continue to allow contractors and unions to <i>voluntarily</i> enter into PLAs. State government labor neutrality allows free and open competition to flourish. Some local and state courts have struck down PLAs for violating open competition requirements under competitive bidding laws.

A Summary of PLA Reform in the States

August 22, 2012 Featured, State & Local Construction

Like the U.S. Congress, most state legislatures conduct two-year legislative sessions. Now that most of these sessions are complete and lawmakers are focusing on election season, we are taking a look back at the successes and setbacks American taxpayers have experienced in the fight against wasteful and discriminatory government-mandated project labor agreements (PLAs).



Although the fight against PLA mandates goes back decades, President Barack Obama made it a national issue in 2009 when he issued [Executive Order 13502](#) after less than 60 days in office. E.O. 13502 encourages federal agencies to require PLAs on federal projects costing more than \$25 million. It also repealed a [Bush-era executive order](#) that guaranteed fair and open competition on federal and federally assisted projects during his two terms in office.

Although President Obama was the first U.S. president to issue a pro-PLA executive order, he was not the only elected official to take a pro-PLA stance in advance of the competitive 2010 elections. Many local elected officials issued similar orders to curry favor with organized labor. In February 2010, Iowa Gov. Chet Culver (D) [issued an executive order](#) that mirrored President Obama's Executive Order 13502. Illinois Gov. Pat Quinn (D) [did the same](#) a little more than a month later. Although PLA policy was not a priority issue for either administration for the first three years of their terms, election-year politics seemed to bring the PLA issue into greater focus for both governors. There is little doubt that the threat of electoral defeat in November 2010 prompted them both into action.

Despite the initial setback of the Illinois and Iowa pro-PLA executive orders, the results of the November 2010 elections changed the political dynamics of the PLA issue. New Republican governors in Pennsylvania and Ohio stopped imminent PLA requirements on several large-scale projects, including stopping potential PLA mandates on more than \$800 million worth of prison construction projects in Pennsylvania. In addition, Gov. John Kasich (R) used [executive action](#) to effectively eliminate PLA requirements on nearly all K-12 school construction projects in Ohio. While these developments were significant, newly elected Iowa Gov. Terry Branstad (R) elevated the fight in January 2011 when he issued an [executive order](#) banning government-mandated PLAs on

any construction project using state funds, reversing former Gov. Culver's 2011 order. This was the first executive order or bill enacted by a state government entity to curtail the use of PLA mandates since Missouri enacted legislation banning PLA mandates on state projects in 2007.

The PLA battle picked up even more momentum in 2011 when six other states followed Iowa's lead. By July, Idaho, Tennessee, Louisiana, Arizona, Maine and even Michigan had all enacted legislation to ban PLA mandates on state and local projects, as responsible leaders recognized the threat of potential PLA expansion to projects in their states.

In Michigan, a state organized labor considers a stronghold, the ban on PLA mandates had an immediate impact for taxpayers. The law opened up millions of dollars' worth of construction to the vast majority of the construction workforce that chooses not to join a labor organization, as government entities complied with the law by removing PLA mandates from requests for proposal. This was an important step for getting Michigan's construction workforce back to work.

But Big Labor would not go down without a fight. Attorneys representing construction unions in Iowa, Idaho and Michigan all filed lawsuits in federal court, claiming that the government neutrality executive order issued in Iowa and the bills enacted in Idaho and Michigan are preempted by the National Labor Relations Act (NLRA).

Merit shop supporters were surprised by these actions because the Iowa executive order was carefully drafted to avoid preemption issues and the Idaho and Michigan laws were modeled after President Bush's Executive Order 13202, which was upheld by the U.S. Circuit Court of Appeals for the D.C. Circuit.

In a strong statement of support for states that choose to guarantee government neutrality with regard to PLAs, a federal district court judge in Iowa dismissed the union's suit in September 2011. Unfortunately, in December 2011 and February 2012, federal judges in Idaho and Michigan, respectively, found those state laws to be preempted by the NLRA. Both judges were appointed by President Clinton. The judge in the Michigan case went so far as to say the appeals court erred when it found the Bush executive order to be allowable. Both rulings contradict the controlling case law on this issue and are on appeal.

Big Labor responded to the merit shop construction industry's successes at the state legislative level as well. In the summer of 2011, the Illinois General Assembly codified the 2011 executive order issued by Gov. Quinn. In addition, the California Legislature took a shot at local governments by enacting legislation that nullifies bans on PLA mandates in general law municipalities and deprives charter cities of state funding for construction if they ban PLA mandates. The Legislature then strengthened the charter city provisions in 2012.

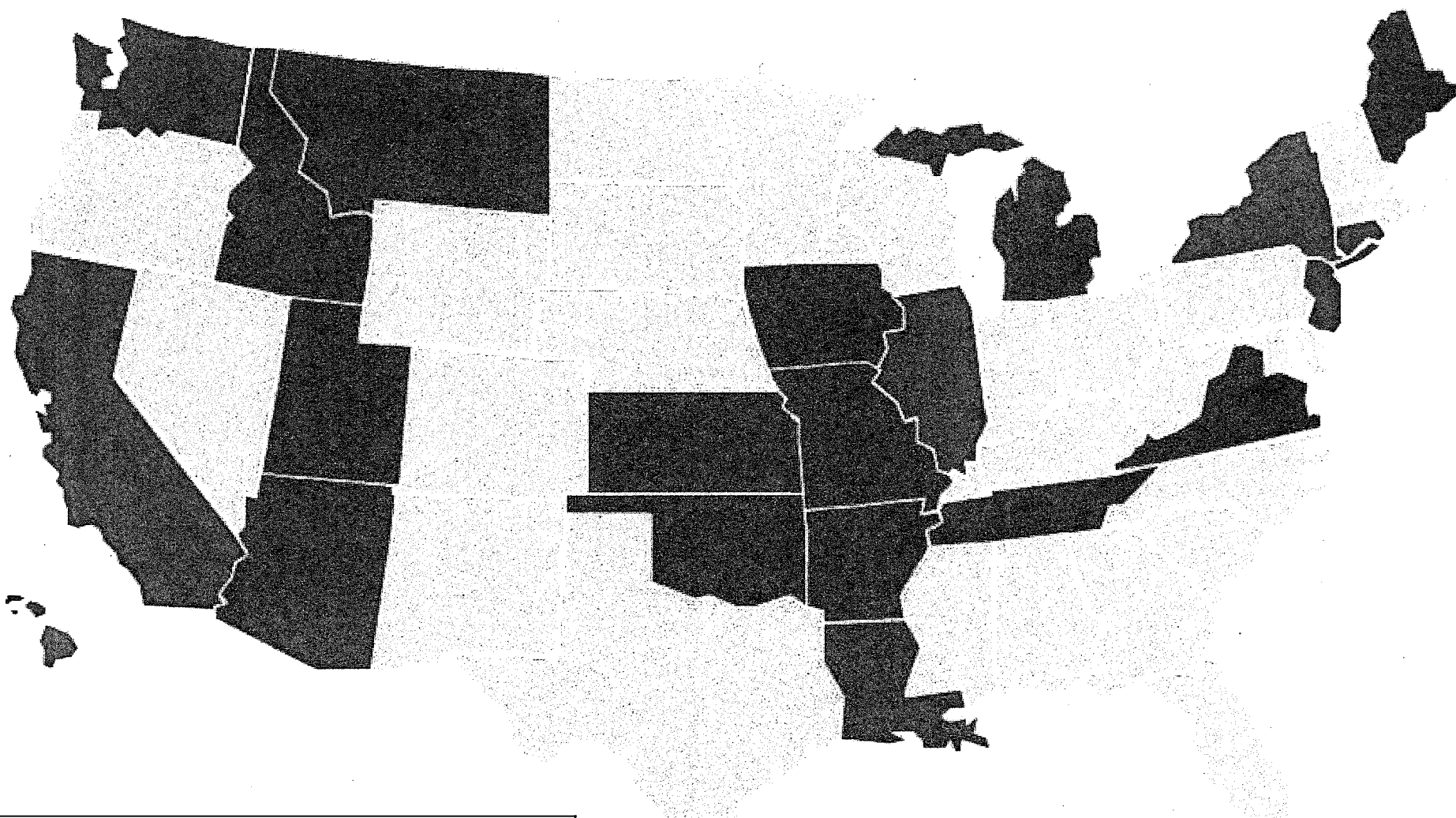
Undeterred by Big Labor's efforts, state leaders throughout the country continued to take on the PLA issue. In both Michigan and Idaho, lawmakers enacted new bills that addressed the issues raised by the two federal court opinions, while preserving the intent of the original government neutrality bills.

In addition, Oklahoma, Virginia and Kansas all enacted legislation to ban PLA mandates in their states. The Virginia win was especially important, as it helped to stop a potential PLA preference that would have amounted to a PLA requirement on Phase 2 of the Metro expansion to Dulles International Airport. The law ensures that the 97 percent of Virginia's construction workforce that chooses not to join a union can still have the opportunity to compete for one of the most important projects in the DC-region in decades.

The only two major setbacks for the merit shop came from Hawaii and Connecticut. In May 2012, Big Labor was able to convince their long-time ally Gov. Neil Abercrombie (D) to issue a directive encouraging the use of PLAs. In addition, Connecticut Gov. Dan Malloy (D) signed legislation in June that authorizes PLA mandates by local government entities.


Still, it remains clear that the momentum in the PLA fight is with the merit shop as we head into 2013 – and many more states are poised to take action against PLA mandates within their borders. As they do, these states will join the other states who have banned government-mandated PLAs in sending a clear signal that they are open for business. Guaranteeing open competition shows these governments understand that the best way to create value for taxpayers on public construction is to get the best construction at the best price, and that happens by allowing the entire construction workforce – not just those in a politically connected union – to compete for projects funded by their own tax dollars.

Ag. 19



☐ Enacted Leg or EO that allow all contractors and their employees to compete for projects funded by their own tax dollars (May 2012)

	Enacted Leg or EO that discourages fair and open competition on taxpayer funded construction (May 2012)	
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	Threat of government-mandated PLAs exists on all taxpayer funded projects (May 2012)
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Testimony HB 1270
Senate, Industry, Business & Labor Committee

March 13, 2013

Mr. Chairman, and members of the Senate Industry, Business, & Labor Committee – my name is Russ Hanson representing the Associated General Contractors of North Dakota. The AGC of ND is a 500 member association consisting of commercial contractors, sub contractors, specialty contractors, and materials/equipment suppliers. We are affiliated with the Associated General Contractors of America - our national association which has been in existence since 1918.

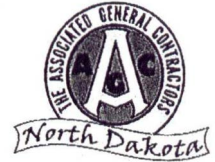
The AGC of ND supports HB 1270. The AGC is committed to full and open competition for all public projects. AGC believes the choice of whether to adopt a collective bargaining agreement should be left to the contractor-employers and their employees, and that choice should not be imposed as a condition to competing for, or performing a publicly funded project.

The AGC of North Dakota has commented on federal projects considering the use of project labor agreements in this area and submitted correspondence urging the federal government to oppose the use of mandatory project labor agreements.

AGC of ND requests your favorable consideration of HB 1270 and urges you to issue a Do Pass Recommendation. I appreciate the opportunity to testify today and would attempt to address any questions.

(3)

Associated General Contractors of North Dakota



422 North 2nd Street, PO Box 1624, Bismarck, North Dakota 58502 • Phone: 701-223-2770 • FAX: 701-223-6719 • www.agcnd.org

January 21, 2013

Ms. Patricia Simon
USACE
180 East Fifth Street
St. Paul, MN 55101-1678

Dear Ms. Simon:

I understand the Associated General Contractors of America has (or will be) submitting comments regarding opposition to a mandated Project Labor Agreement for a Fargo Moorhead Area Flood Risk Management Project.

The Associated General Contractors of North Dakota concur with the position held by our national organization. We strongly oppose government mandates for PLA use and holds that most contracting agencies should allow their contractors – the parties that have experience in construction labor relations and that would be directly governed by a PLA – to decide whether a PLA is appropriate for a particular project and, if so, execute one voluntarily should they deem it appropriate.

We oppose government mandates for PLA's and urge you to refrain from imposing such a mandate on the Fargo Moorhead Area Flood Risk Management Project.

I appreciate the opportunity to forward our position on this issue to you.

Sincerely,

Russ Hanson
Executive Vice President

BUILD WITH THE BEST





Testimony of Jon Godfread
Greater North Dakota Chamber of Commerce
HB 1270
March 13, 2013

Mr. Chairman and members of the committee, my name is Jon Godfread and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of HB 1270.

HB 1270 comes in response to a 2009 executive order issued by President Obama. This executive order sought to encourage federal agencies to require Project Labor Agreements on projects costing more than \$25M. HB 1270 will enact a statute to guarantee government neutrality with regard to PLA mandates. As you know, North Dakota is a right to work state; this measure will ensure that those principles will be upheld in the future.

Government-mandated PLAs have been shown time and time again to increase the cost of projects. By remaining neutral and providing for open and fair competition in government construction projects; this legislature can assure the citizens of North Dakota that the projects conducted by the North Dakota government are done at the best price.

Thank you for the opportunity to appear before you today in support of HB 1270, I urge this committee to recommend a Do Pass. I would happily attempt to answer any questions.

Champions **(for)** Business

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Testimony of Andy Peterson
Greater North Dakota Chamber of Commerce
HB 1270
March 13, 2013

Mr. Chairman and members of the committee, my name is Andy Peterson, I am the President and CEO of the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of HB 1270.

The GNDC supports the proactive legislation to maintain North Dakota's labor laws. According to the US Chamber's Competitive States Index, North Dakota ranks as having the fastest growing per capita income of all fifty states. Moreover, North Dakota ranks number one in short and long term job growth. We are doing well.

Having come from Minnesota, a state too friendly with organized labor, I have firsthand experience with Project Labor Agreements. During my tenure at the Duluth Area Chamber of Commerce, the City of Duluth instituted Project Labor Agreements on all city projects - a resolution I firmly opposed at the time. The city reasoned the "labor peace" would be the norm if all work was awarded to unionized contractors. As a result of the PLA resolution, the city limited itself to bidding its projects to companies that utilized organized labor and eliminated any non-union companies in their bid process. As you might expect, project costs increased as a result of a more limited pool of bidders, some expertise was lost as non-organized companies were no longer allowed to bid, and many functions of city work were eventually pulled in house as those projects were now "competitive." The city remains in a state of disrepair and the unions have extorted their extended prowess into political power.

To be sure, the GNDC is not against organized companies bidding for our work in a competitive manner. In fact, we encourage them to bid on any project they are qualified to perform in North Dakota. We are against limiting competition and free enterprise by instituting any governmental controls that favor one company over another in North Dakota.

Thank you for allowing me to submit this testimony in support of HB 1270. The Greater North Dakota Chamber strongly supports a Do Pass on HB 1270.

2013 HB 1270**Testimony before the House Industry, Business and Labor Committee****North Dakota Building and Construction Trades Council****North Dakota Electrical Workers Council****March 13, 2013**

Chairman Klein and members of the ~~House~~^{Senate} Industry, Business and Labor Committee; My name is Renee Pfenning on behalf of the ND Building and Construction Trades Council and the ND Electrical Workers Council, I rise in opposition to HB 1270.

HB 1270 limits the options for state and political subdivision on large scale complex, long term construction projects by prohibiting the use of Project Labor Agreements.

The contents of a Project Labor Agreement are negotiated during the planning process, before the bids are let and work on the construction project starts. That way, contractors interested in working on the project can take the requirements of the agreement under consideration as they prepare their bids.

Contractors and subcontractors are constantly changing on large scale construction projects as they work on the segments of the project they are responsible for. Project agreements provide a mechanism for an uninterrupted supply of skilled workers for all phases of large complex, long term construction projects. Allowing for increased efficiency and on-time completion. Provisions within a project agreement allow the construction manager or general contractor the ability to coordinate schedules and work rules of multiple contractors and subcontractors.

Project Labor Agreements do not exclude non-union contractors from bidding on a PLA project. In fact, Federal Law prohibits it. It is solely at their discretion, if a non-union contractor chooses not to bid on a PLA project.

In closing, I respectfully ask the Senate Industry, Business and Labor Committee to give HB 1270 a Do Not Pass committee recommendation.