

**Testimony From
Empire State Chapter of the Associated Builders and Contractors**

**Presented To
Joint Legislative Hearing on Transportation**

Subject: Maximizing Transportation Funding

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Good morning members of the panel, I would like to thank you for the opportunity to come and talk to you today about the transportation funding included in the 2013-14 State Budget. My name is Joshua Reap, I am the Director of Government Affairs for the Empire State Chapter of the Associated Builders & Contractors, which is the construction trade association representing hundreds of merit shop contractors and professional services companies employing tens of thousands of workers throughout the State of New York. Our chapter is one of 73 across the country that promotes fair competition, free enterprise and provides education services as well as other membership services.

Our State's infrastructure is in serious crisis and I am not just talking about the condition of our roads and bridges. We face a serious financial strain on budgets that threatens our ability to fund these projects. I would caution that the limited availability of funding this year for infrastructure will only be effective if it maximizes every dollar and puts local New York construction workers on those jobs. The best way to do accomplish this task would be to incorporate measures which encourage competition among all qualified contractors.

Something that ABC has long fought for is a fair and competitive bidding process for all New York State contractors. It is in the spirit of this state's public finance laws that the taxpayers receive the utmost value for their tax dollars when many qualified contractors bid on public highway jobs, however, sometimes the state imposes certain anti-

competitive mandates which deter competition and drive up costs. Government-mandated Project Labor Agreements (“PLAs”) are agreements between public owners and labor unions under which construction contractors must hire workers (typically 85%) through union hiring halls. Should a merit shop contractor bid on a state job that has the PLA mandate, the agreements requires that contractor to sever the connection it has with virtually all of its own qualified, albeit non-union, employees and to use workers provided through union halls that are a party to the PLA. For the small number of merit shop employees who are working on a PLA job, the contractor is forced to pay into union pensions and benefit plans, despite the fact that his employees can never receive these benefits. As such, the contractor has to pay benefits twice. Rather than give up their own workforce and be forced to pay duplicate benefits, open shop contractors will usually not bid on PLA jobs. Moreover, temporary workers hired through the union hall solely for the job governed by the PLA do not ultimately receive any union pension payments or benefits, because the duration of the work is never long enough for the employee to vest in those plans. In effect, labor unions utilize PLAs to finance their pension and benefit programs and to discourage non-union competition. Wages are not the issue because prevailing wages are paid on public works projects whether or not a PLA is required. Rather benefits, prescribed by law, now go into the union programs instead of the workers pocket. Finally, the contractor has to operate under work rules (or union contract) established by the PLA even if it could operate safer, smarter and more efficiently.

Because of these inequities, PLAs have the effect of deterring competition, producing less responsive bids by otherwise qualified contractors, and thus drive up the costs of construction for public work projects. In New York State, just over a quarter of all construction workers choose to belong to a union. This means PLAs effectively discriminate against the 74% of the State’s construction workers who choose not to belong to unions. Many open shop contractors will simply not bid when a PLA is applied to a job because of the onerous work rules associated with becoming signatory to a union contract. In turn, this denies hardworking men and women –many of whom are your

constituents - the opportunity to support their families and the economic vitality of their communities.

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

If we are to put more New Yorkers back to work and maximize our finite taxpayer dollars, ABC implores you to incorporate the fair and cost-effective approach to public works contracting contained in the Public Construction Savings Act (S.2760 introduced by Senator Ranzenhofer and A.3059 introduced by Assemblyman Schimminger).

The Public Construction Savings Act would allow all contractors to submit responsive bids on public works projects whether or not a PLA is required by the contracting agency – and the agency would be required to award the contract to the lowest responsible bidder in accordance with existing State and municipal law. If a contractor submits a bid that is subject to a PLA and that bid is the lowest cost, it should be awarded the contract. Likewise, if the lowest bid does *not* have a PLA, it would be awarded the public works

contract. It is the only fair and objective way to insure that taxpayer interests are protected in public contracting. If this approach had already been law, the State would have saved \$4.5 million on the Exit 122 project –money that would have gone a long way paying for another highway project. If a PLA is appropriate, let the contractors negotiate the terms of the PLA without a public mandate.

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

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