



# State Legislative Handbook

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# Table of Contents

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## **2014 STATE LEGISLATIVE OVERVIEW**

### **STATE LEGISLATIVE MONITORING OVERVIEW**

#### **APPRENTICESHIP**

1. ABC Model State Apprenticeship Law
2. Pennsylvania 29.29 Compliance Bill

#### **BEST VALUE**

1. Delaware Best Value Sample Legislation
2. Pennsylvania “Stop Best Buddy” Legislation

#### **CONTRACTOR LICENSING**

1. Model Elevator Contractor Licensing Legislation

#### **GREEN TRAINING INCENTIVES**

1. Model Green Training Incentive Legislation
2. Michigan Green Construction/Renovation Incentive Legislation

#### **JOB TARGETING**

1. Missouri Fairness in Public Construction Act of 2007
2. Amend State Prevailing Wage Laws to Prohibit Job Targeting
3. Idaho S.B.1007 of 2011

#### **NEUTRALITY AGREEMENTS**

1. The Labor Peace Agreement Preemption Act

#### **PAYCHECK PROTECTION**

1. Labor Organization Deductions Act
2. Political Funding Reform Act

#### **PUBLIC-PRIVATE PARTNERSHIPS**

1. Texas Public-Private Partnerships Authorizing Statute

#### **PREVAILING WAGE**

1. Prevailing Wage Repeal Act
2. Maryland Legislation to Increase the Prevailing Wage Threshold
3. Pennsylvania Job Classification Legislation

#### **PROJECT LABOR AGREEMENTS**

1. ABC National Model Government Neutrality Legislation–Michigan S.B.1085
2. Federal Executive Order 13202
3. Connecticut Legislation Concerning Public Hearings for PLAs on State Funded School Construction (Sunshine)
4. Resolution Opposing Frivolous Complaints and Permit Extortion (Anti-Greenmail Resolution)



## **RIGHT TO WORK**

2. Michigan Right to Work Act
2. Michigan Right to Work Zone Authorization
3. Indiana Right to Work Act

## **SALTING**

1. Resolution Opposing Salting
2. Resolution Opposing Violence in Labor Disputes
3. Miscellaneous Anti-Salting Language for State Legislation

## **SMALL BUSINESS REGULATORY FLEXIBILITY**

1. Small Business Regulatory Flexibility Model Legislation\*

## **VOCATIONAL/TECHNICAL EDUCATION EXPANSION**

1. Michigan Vocational/Technical Education Expansion

## **WORKERS' COMPENSATION**

1. Elimination of Double Recoveries Act
2. The Workplace Responsibility Act
3. Workers' Compensation as Exclusive Remedy Resolution

## **WORKFORCE DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION (CTE)**

1. Kansas Career Technical Workforce Grant Program
2. Kansas District Financial Incentive for Graduates of Industry-recognized Credentials
3. Virginia High School Accreditation Credit for Graduates with Certain Industry Certifications
4. Nebraska Career Academy Authorization
5. Virginia High School-to-Work Partnerships
6. Indiana Career Council Authorization
7. Texas CTE Partnerships with Higher Education, Local Business and Community (Bill Excerpt)
8. Texas Dual Credit for Certain CTE Courses toward high school Diplomas and Apprenticeship
9. Texas Authorization for Advanced CTE Courses to Apply to STEM Requirements
10. New Mexico Authorization for High Schools Districts to Provide Apprenticeship Programs
11. South Carolina Apprenticeship Tax Credit

## **2014 STATE POLICY TALKING POINTS**

# 2014 State Legislative Overview

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As President Obama began his second term in 2013, he faced a hostile Congress, an American economy struggling to find its footing and a signature health care initiative that Americans found out later was not quite ready for primetime.

In addition, the Obama administration started 2013 still struggling to realize Big Labor's hope of widespread use of government-mandated PLAs on large-scale federal construction projects and amended union organizing regulations to stifle the ability of private sector employers to respond to union organizing campaigns.

Meanwhile, the federal government spent the year mired in gridlock and unable to accomplish the most basic tasks. This dysfunction hits its peak in October 2013 when the Obama administration and Congress failed to strike a budget deal, leading to a 16-day government shutdown.

It is against the backdrop of a Washington stalemate that state leaders are working to move their states forward. Reform-minded governors and state legislators have initiated important reforms on politically sensitive issues.

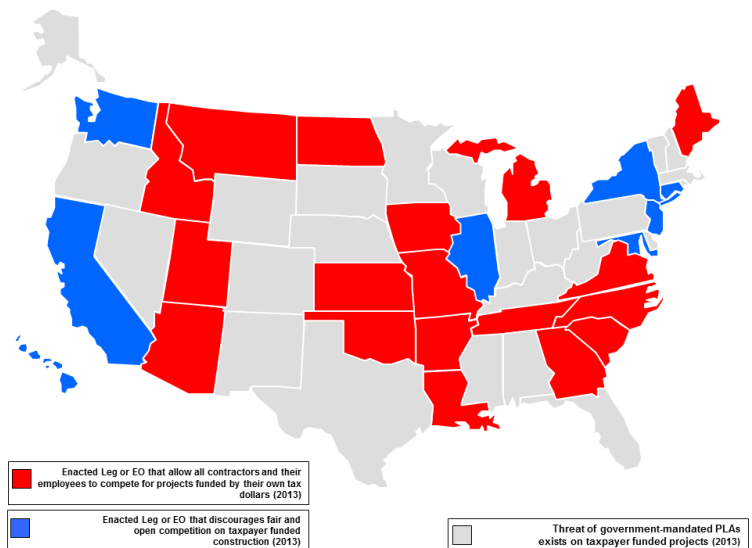
### **Project Labor Agreement Mandate Reform**

In response to the Obama administration's effort to promote the use of PLA mandates on large-scale federal construction projects, state leaders are coming together to take a stand against union favoritism on taxpayer-funded construction projects.

ABC continued its effort to ban government-mandated PLAs at the state level in 2013. Four more states adopted ABC's model legislation, bringing the total number of states that have taken action to 18.

Success has followed in courtrooms as well. In response to ABC's PLA reform campaign, representatives for the construction unions filed complaints against government neutrality laws in four states. While ABC and other advocates of the laws believe the National Labor Relations Act (NLRA) permits state-level PLA reform, the union complaints allege that federal law preempts the states from enacting PLA reform.

In 2013, the U.S. Circuit Court of Appeals for the 6th Circuit found that the Michigan PLA reform statute is permitted under the NLRA and upheld the statute. This is the second circuit court of appeals to consider this issue and uphold the law or executive order. Although federal court cases in response to government neutrality laws are still pending in Idaho and Louisiana, ABC



believes the precedent set in the Michigan case is more evidence that federal law permits states to ban government-mandated PLAs.

### Prevailing Wage Reform

Leaders in a number of states considered reforms to state prevailing wage requirements in 2013. Lawmakers around the country introduced hundreds of bills to alter or change the way states administer prevailing wage requirements.

The most significant reform happened in Tennessee, where lawmakers repealed prevailing wage requirements on all vertical construction projects. Lawmakers left prevailing wage requirements in place for most road and bridge projects.

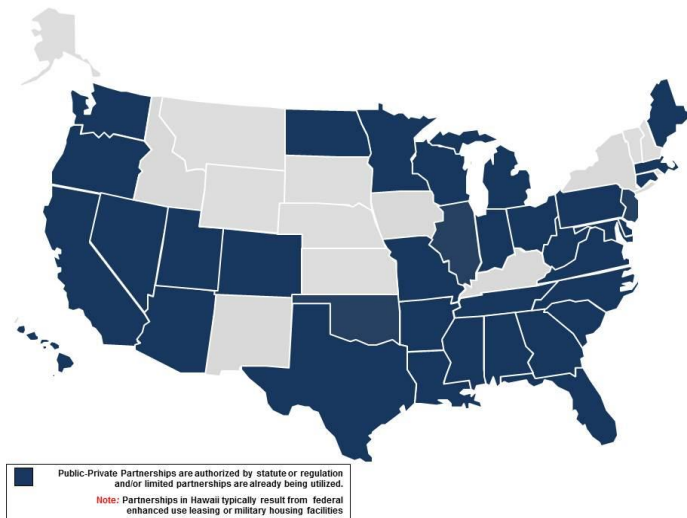
Lawmakers in several states discussed changes to prevailing wage requirements in the context of legislative negotiations during 2013. In Pennsylvania, lawmakers increased the threshold of public funding that triggers the prevailing wage requirement on transportation construction projects from \$25,000 to \$100,000.

### Public-Private Partnerships

In 2013, 27 states and Congress introduced a total of 90 bills germane to public-private partnerships (P3). Eleven states passed 18 bills that were signed into law.

Florida's H.B. 85 and Maryland's H.B. 560 are the most significant pieces of P3 legislation enacted into law in 2013. (ABC and NCP3P held joint educational conferences on both measures this year).

ABC already has been in discussions with stakeholders from New York, New Mexico, Tennessee, Kentucky and Georgia about P3 bills for upcoming 2014 sessions.



### Workforce Development and Education

Career and Technical Education (CTE) and workforce development have become high-priority policy issues on many state legislative agendas. Many governors and legislative leaders have found that focusing on education opportunities outside the traditional four-year college pathway can address the gap between industry workforce needs and available skills while lowering dropout rates and growing economic development.

While many states already offer specific diplomas for CTE or endorsements to traditional diplomas, 2013 saw a number of states expand their diploma options to include career

readiness options. State lawmakers also made efforts to expand graduation requirements to include courses that prepare students for in-demand career fields or industry-approved post-secondary credentials. Texas alone signed 10 different measures into law that address career preparedness and industry workforce needs.

Workforce development legislation also came in the form of greater alignment among industry, government and education. A number of successful pieces of state legislation improved collaboration between schools and local industry to match education and skills training with local workforce needs. The best example is the creation of regionally focused Indiana Works Councils, which will develop regionally focused, hands-on, CTE programs that provide students with industry certifications, credits toward an associate degree and a pathway to high-wage, high-demand jobs.

# State Legislative Monitoring Overview

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# STATESCAPE

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## POLICY TRACKING AND ANALYSIS

### Services

#### **StateScape Tracking – The Basics**

##### Quick and Accurate

At StateScape, we know that our clients' ability to respond effectively to legislative developments depends critically on the speed and accuracy of our information. We have used this knowledge to develop systems and procedures that maximize speed while preserving accuracy.

##### Customized

Each client is different. As obvious as this may seem, some tracking systems take a "one size fits all" approach to serving their clients. Not StateScape. At StateScape, we will listen to ABC's perspective and tailor our system to meet its needs. In addition, each ABC user will find numerous ways to customize the StateScape system to suit his or her preferences.

##### Easy-to-Use

StateScape is designed to be used by people who work at different times, from different locations, and with different levels of computer comfort. Because StateScape makes information gathered for a client available online, it is accessible from any location and at any time. In addition, those who log in to StateScape.com can access legislative and regulatory information either through the feature-rich LegisTrack page or through a slimmed down QuickSearch page. And for those who would prefer to sit back and have StateScape push new and updated information to them, we offer a fully customizable e-mail alert system.

##### Superior Customer Service

StateScape prides itself on offering superior customer service. In a 2005 client survey, clients awarded StateScape 4.87 out of 5 possible points for customer service (5 being "excellent"). ABC will be provided a single point of contact who will respond expeditiously to questions and comments. ABC's contact at StateScape will be backed up by a team of analysts, who will step in if he or she is temporarily unavailable. Finally, StateScape offers to train ABC's users, so they know how to use our system to maximum benefit. StateScape would be willing to conduct such training sessions via teleconference or in person at ABC meetings and forums.

### **ABC-Specific Tracking**

##### Analyst Filtering

For ABC, bills under the following subjects will be identified and categorized by an experienced team of StateScape analysts according to custom criteria already agreed to by ABC:

- Apprenticeship
- General Procurement
- Green
- Immigration
- Independent Contracting Reform
- Prevailing Wage
- Project Labor Agreements (PLAs)

# STATESCAPE

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## POLICY TRACKING AND ANALYSIS

Analyst filtering is superior to automated keyword filtering (see below) for two reasons:

- *It saves time.* If bills are identified strictly on the basis of keywords, ABC can expect to receive a substantial number that are irrelevant, but happen to contain relevant words and phrases. Though the StateScape system makes it possible for designated users to delete irrelevant bills, doing so takes time.
- With automated keyword filtering, it is possible to miss bills that are relevant, but do not contain the keywords envisioned. *Analyst filtering avoids this pitfall because each bill will be reviewed by an analyst who knows ABC's issues, regardless of whether the bill contains relevant keywords.* However, despite the clear advantages of analyst filtering, automated keyword filtering is also available from StateScape as an alternative. If the total cost of this proposal exceeds ABC's budgetary requirements, ABC may wish to consider keyword filtering for some subjects.

### Keyword Filtering

For the subjects outlined below, bills will be identified and categorized automatically via keyword filtering (based on agreed-upon search strings):

- Contractor Licensing
- Job Targeting
- Right to Secret Ballot Election
- Salting

*Keyword filtering is the most cost-effective method of bill identification, but ABC may expect to receive some bills that are irrelevant.* In many instances, keywords may appear in a measure, but not in a section changing current law, or may be used in such a way that their meaning is not representative of ABC's concerns.

### Using BillFinder

With StateScape's powerful BillFinder search engine, you can find any bill or resolution introduced at the state or federal level using either keywords and phrases or the bill number and state. ABC users may conduct an unlimited number of searches using the BillFinder search engine. Searches may be run using either keywords and phrases or bill and resolution numbers. Jurisdictions covered include all 50 states, the District of Columbia, and the U.S. Congress. Bills and resolutions considered in previous years (since 2002) also may be searched.

ABC may add an unlimited number of bills falling within the issue and/or geographic scope defined for LegisTrack and up to 50 bills falling outside that issue and/or geographic scope. If ABC wishes to add more bills for tracking outside of scope, blocks of 100 bills are available for an additional cost.

ABC will have access to a subject titled "Misc. – ABC." This subject may be populated by ABC users who utilize BillFinder as a means of categorizing any legislation that may impact ABC's constituency, but does not fit into any other subject (as listed above).

# Apprenticeship

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1. ABC Model State Apprenticeship Law
2. Pennsylvania 29.29 Compliance Bill

# ASSOCIATED BUILDERS & CONTRACTORS

## Model State Apprenticeship Law

### TITLE I

#### Sub-Chapter I General Provisions, Definitions, and Rules

##### Section 1 Statement of Policy

It is recognized that there is a continuing need to increase the opportunities for voluntary apprenticeship and training so as to increase the number of skilled employees available to perform much needed services in a variety of industries and to increase the earning opportunities that increased skills allow. It shall therefore be the policy of this State to increase such voluntary apprenticeship and training opportunities, and to remove arbitrary barriers to the approval and operation of such programs, without regard to race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof, *inter alia*, as follows:

(a) open to individuals in the State the opportunity to obtain training that will equip them for profitable employment and citizenship, and as a means to this end, encourage and approve programs of voluntary apprenticeship and training under approved apprenticeship and training standards for their training and guidance in the arts and crafts of industry and trade;

(b) promote the voluntary cooperation of industry in providing employment opportunities for citizens under conditions providing adequate training;

(c) establish and specify consistency, non-discrimination, and due process in the operating procedures of the Apprenticeship and Training Council ("ATC") intended to facilitate approval of apprenticeship programs meeting specified standards while protecting the welfare of apprentices;

(d) establish standards for apprenticeship and training programs no more restrictive than those standards established by the U.S. Department of Labor;

(e) establish standards and procedures for fair and expeditious resolution of controversies regarding apprenticeship programs;

(f) encourage the establishment and utilization of apprenticeship and training programs regardless of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof.

## **Section 2 Definitions**

For the purposes of this title, the term:

(1) "Apprentice" means an individual who is at least sixteen (16) years of age who has entered into a written agreement, hereinafter referred to as an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for at least two thousand (2,000) hours of reasonably continuous employment for such person and for his participation in a program of training approved under the provisions of this chapter. Any apprentice who has entered into an apprenticeship agreement approved by the U.S. Department of Labor or by any registration agency recognized by the U.S. Department of Labor shall be deemed to be an apprentice within the meaning of this definition.

(2) "Apprenticeable occupation" means a skilled trade(s) or craft(s) which is customarily learned in a practical way through supervised training; is identified and recognized within an industry; involves manual, mechanical, or technical skills and knowledge; and involves skill sufficient to establish career sustaining employment.

(3) "Apprenticeship agreement" means a written agreement approved under this chapter between an apprentice and either the apprentice's employer(s), or a program sponsor recognized by the Apprenticeship and Training Council, containing the terms and conditions of the employment and training of the apprentice and referencing the approved apprenticeship program standards.

(4) "Apprenticeship program" means a plan for administering an apprenticeship agreement(s). The plan must contain all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

(5) "Cancellation" means the termination of the registration or approval status of an apprenticeship program or an apprenticeship agreement.

(6) "Certificate of completion" means a record of the successful completion of a term of apprenticeship.

(7) "Certification" means written approval by the ATC of: (a) a set of apprenticeship standards established by an apprenticeship program sponsor and substantially conforming to the standards established by the ATC; and (b) an individual as eligible for employment as an apprentice under a registered apprenticeship program.

(8) "Competent instructor" means an instructor who has demonstrated a satisfactory employment performance in his/her occupation or trade.

(9) "Current instruction" means the related/supplemental instructional content is and remains reasonably consistent with the latest trade practices, improvements, and technical advances.

(10) "Distance learning forums" means courses or techniques of instructional learning presented through written correspondence, video teleconferencing, on-line/internet communications, or other two-way inter-active media (including computer-based training).

(11) "Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice, irrespective of labor affiliation.

(12) "Executive Director" means the individual appointed by the ATC under this Act.

(13) "Journey level" means an individual who has sufficient skills and knowledge of a trade, craft, or occupation, either through formal apprenticeship training or through practical on-the-job work experience, to be recognized by the State and/or an industry as being fully qualified to perform the work of the trade, craft, or occupation.

(14) "Registration" means maintaining the records of apprenticeship and training agreements and of training standards.

(15) "Related/supplemental instruction" means an instruction as described in this Act, approved by the program sponsor, and taught by an instructor approved by the program sponsor. Instructors must be competent in his/her trade or occupation.

(16) "Sponsor" means any person, firm, association, or organization operating an apprenticeship and training program and in whose name the program is registered or is to be registered.

(17) "Sponsored applicant" means one who is gainfully employed by a subscribing employer who applies as an applicant into an approved apprenticeship program having already met the minimum qualifications for apprenticeship as enumerated in this Act, thereby qualifying for immediate registration into the apprenticeship program.

(18) "Standards" means specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as described in this Act.

(18) "Supervision" means the necessary education, assistance, and control provided by a journey-level employee that is on the same job site at least seventy-five percent of each working day.

### **Section 3 Rule Development and Adoption**

(a) In developing and adopting rules, the ATC will:

(1) seek the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.

(2) promote the operation of apprenticeship and training programs to satisfy the needs of employers and employees for high quality training.

(3) recognize that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.

(4) seek to assure that all apprenticeship standards are entitled to approval without discrimination on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof.

(5) recognize that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are provided by registered apprenticeship programs.

(6) assure that such rules are not more restrictive than the rules for approval of apprenticeship programs as established by the U.S. Department of Labor at Part 29 of Title 29 of the Code of Federal Regulations

(b) All rules and/or regulations under this Chapter must be promulgated in accordance with the State's Administrative Procedure Act ("Administrative Procedure Act").

### **Sub-Chapter II Duties of Apprenticeship and Training Council And Executive Director**

### **Section 4 Apprenticeship and Training Council Composition**

The ATC will be composed of twelve (12) members appointed by the Governor for staggered four year terms, plus the Secretary of Education or his/her designee as an *ex officio* voting member. The 12 appointed ATC members will be drawn from employer representatives (4); employee representatives (4); and public members who are not member of employer or employee organizations (4). The Governor shall designate the Chairperson from among the public members. Representation from union or non-union organizations (whether employer or employee) shall be proportional to percentages of workers represented by unions according to the U.S. Department of Labor.

## **Section 5 Executive Director**

The ATC will appoint the Executive Director ("E.D.") for a four (4) year term. The E.D. will encourage and promote apprenticeship; act as secretary to the ATC; when authorized by the ATC, register apprenticeship agreements; maintain records of apprenticeship agreements; take appropriate informal steps to resolve controversies about apprenticeship agreements; and recommend termination or cancellation of apprenticeship agreements. The E.D. will also review apprenticeship programs and recommend cancellation of such programs when appropriate; consult with the private and public sectors on apprenticeship and training; conduct systematic review of all programs and agreements and investigate discrepancies between actual and required operations; and recommend sanctions for non-compliance to the ATC.

## **Section 6 Meetings**

The ATC will meet once a month, and advance notice of the meeting will be published in the official State register. All meetings must conform to the State's open-meeting law. The following actions may only take place during a regular meeting: (1) any approval, disapproval, de-registration or reinstatement of an apprenticeship or training program (2) action on a complaint regarding an apprenticeship agreement (3) action on an apprenticeship program compliance review and (4) punitive action under any provision of this Chapter.

Special meetings of the ATC may be called by the chairperson or by a majority of the members. Written notice must be given to each member individually, published at least once in a local newspaper of general circulation; and delivered or mailed to each individual or entity which is the subject of the special meeting. The written notice must list the date, time, and location of the meeting and specify the business to be conducted; and must conform to the State's open-meeting law. All notices of special meetings must be given at least three (3) business days before the meeting.

## **Section 7 Voting**

All valid action of the ATC must take place by majority vote when a quorum is present. A quorum is two-thirds of ATC members entitled to vote.



### **Sub-Chapter III Apprenticeship and Training Programs**

#### **Section 8 Approval of Apprenticeship and Training Programs**

The following apprenticeship programs may be approved by the ATC: (1) group-joint or area-joint (programs jointly sponsored by a group of employers and a labor organization) (2) individual-joint (programs jointly sponsored by an individual employer and a labor organization) (3) group nonjoint or area group (programs where there is no labor organization) (4) individual nonjoint (programs sponsored by an individual employer without a labor organization) (5) plant (program sponsored for a single physical location or group of physical locations owned by the sponsor). Other on-the-job training programs may be authorized by the ATC, consistent with the provisions of the Act.

Apprenticeship or training program proposals must be submitted to the ATC for approval at least fifteen (15) days before any regular ATC meeting and the ATC must take action with thirty (30) days of submission. ATC shall approve programs that meet the standards set forth in the Act. If ATC does not act on a request for approval within thirty (30) days of submission, then the requesting program is deemed approved. Disapproval of a program proposal by the ATC must be by written order with specific and rational reasons for the disapproval, and may be appealed to State Court. The Court may affirm, reverse, vacate, or modify such order or take any other action deemed necessary or appropriate. Disapproval shall not bar any party from submitting an apprenticeship or training program proposal at any time in the future.

In ruling on requests for approval of apprenticeship and training programs, ATC shall not discriminate on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof. ATC shall also not base any approval decisions on perceptions of the "need" for additional apprenticeship programs, but shall make all such approval decisions in accordance with the Policy underlying this Act, that there is a continuing need for increased opportunities for apprenticeship training.

## **Section 10 Apprenticeship Program Standards**

The ATC will develop, administer, and enforce program standards for apprenticeship and training programs in a manner consistent with those standards established by the U.S. Department of Labor, including the following:

- (a) a statement of the trade or craft to be taught and the required hours for completion of the apprenticeship
- (b) a statement identifying the program sponsor and describing the sponsor's duties and responsibilities.
- (c) an Equal Employment Opportunity Pledge
- (d) only when applicable, an affirmative action plan and selection procedures consistent with the Code of Federal Regulations.
- (e) a numeric ratio of apprentices to journey-level workers consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any, provided that any ratio that has been approved within a craft or trade by the U.S. Department of Labor or any registration agency recognized by the U.S. Department of Labor shall be considered acceptable in this State. [A ratio of a one apprentice to no more than one journey person shall be approved].
- (f) a statement regarding the content, format, hours of study per year in connection with related/supplemental instruction (if any)
- (g) an attendance policy
- (h) a provision for instruction of the apprentice in safe and healthful work practices in compliance with applicable State laws and federal laws and regulations.
- (i) a provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the ATC.
- (j) a provision for the timely notice to the ATC of all requests for disposition or modification of apprenticeship agreements
- (k) a provision for advancing an apprentice's standing based on previous experience in the skilled trade or in some other related capacity and performance-based measures.
- (l) a provision for the transfer of an apprentice from one training agent to another in order to provide to the extent possible continuous employment and diversity of training experiences for apprentices.
- (m) a provision for the amendment of the standards or de-registration of the program consistent with the provisions of this Chapter.
- (n) an apprenticeship complaint procedure in compliance with the Act

(o) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(p) a statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction (if any), provided that advancement of an apprentice may be accelerated or extended based upon demonstrated achievement of skills and knowledge or lack thereof, in a manner consistent with the requirements of Title 29 of the Code of Federal Regulations.

(q) a statement of the minimum qualifications for persons entering the apprenticeship program

(r) a provision that the services of the Executive Director and the ATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement.

(s) disciplinary procedures and criteria for apprentices. The procedures may include disciplinary probation during which (A) periodic wage advancements may be withheld; (B) the apprenticeship agreement may be suspended or canceled (C) further disciplinary action may be taken; and (D) the disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file a complaint of the disciplinary action under the provisions of this chapter

(t) a provision for an initial probation during which the ATC may terminate an apprenticeship agreement at the written request by any affected party.

(u) provisions prohibiting discrimination on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof, or as otherwise specified by law during all phases of apprenticeship.

(v) provisions to ensure adequate records of the selection process are maintained.

(w) provisions to ensure any proposed standards for apprenticeship and training are reasonably consistent with any standards for apprenticeship and training already approved by the ATC for the industry, craft or trade in question.

(x) a provision to ensure the progressively increasing wage scales based on specified percentages of journey-level wage, provided that the arithmetic average of each individual contractor's journeyperson rates will become the journeyperson rate upon which the apprentice wage schedules shall be applied for apprentices employed by that contractor and in no event shall the State's prevailing wage laws be applied so as to cause apprentices to be paid by individual employers at rates higher than those paid to journeypersons by such employers.

(y) a provision to ensure the confidentiality of the personal information of individual apprentices such as residential addresses, telephone numbers, and social security numbers.

(z) such additional standards as may be prescribed in accordance with the provisions of this Chapter.

### **Section 11 Related/Supplemental Instruction.**

The ATC may approve supplemental instruction for trades and occupations as necessary or appropriate. The ATC shall not disapprove any supplemental instruction activity (if any is required) on the grounds that such supplemental instruction will take place on the site of construction or at any other location (including distance learning forums) provided that resident apprentices have a reasonable opportunity to attend the supplemental instruction activities.

### **Section 12 Records Required by the ATC.**

Each sponsor must keep adequate records including, but not limited to selection of applicants; operation of the apprenticeship program; affirmative action plans; documentation as may be necessary to establish a sponsor's good faith effort in implementing its affirmative action plan; qualification standards and evidence that the sponsor's qualification standards meet the requirements of the Act. Such records shall be kept for the time period prescribed by the Code of Federal Regulations.

### **Section 13 Registration of Apprenticeship Agreement.**

All individual agreements are subject to the approval of the ATC and must be registered with the ATC. Personal information contained in such agreements shall not be subject to public disclosure under the State's public records law.

### **Section 14. Comment by Unions and Other Third Parties.**

When apprenticeship programs allowing for substantive union participation are proposed for registration by an employer or employers' association and the union is in fact actively participating in the proposed program, the proposal must be accompanied by a written statement from the union supporting the registration. Nothing in this provision shall entitle a union or any other third party to object to approval of or file a complaint

regarding any apprenticeship program in which the union or other third party does not actively participate.

### **Section 15 Reciprocity.**

The ATC shall recognize and approve apprenticeship agreements and apprenticeship programs approved or recognized by the U.S. Department of Labor pursuant to the Code of Federal Regulations, or by any registration agency recognized by the U.S. Department of Labor. The ATC may enter into such additional agreements with other state apprenticeship and training councils for reciprocal approval of apprenticeship programs under such terms and conditions as the ATC deems appropriate and consistent with the purposes and intent of this chapter.

### **Section 16 Apprentice Complaint Review**

Any party to an apprenticeship agreement may, after taking informal action to reach resolution, submit a complaint to the Apprenticeship and Training Council for final review and decision. The submission must be in writing, must specify the reasons supporting the complaint, and a copy of the submission must be provided to all parties involved in the controversy. The Executive Director will promptly make an initial review of the complaint and determine whether reasonable cause exists to believe that a violation of the agreement has taken place. If the Executive Director determines that reasonable cause does not exist, the complaint will be dismissed, subject to final order of the ATC after notice and opportunity for a hearing as hereinafter provided. If the Executive Director determines that reasonable cause has been presented, the complaint will be transmitted to the ATC for action. The ATC will conduct a hearing to consider the complaint, and will issue an order with written findings of fact and conclusions of law within ninety (90) days from the date of submission of the complaint.

### **Section 17 Apprenticeship Program Compliance Review.**

The sponsor shall be notified in writing if a compliance review is undertaken by the ATC. A compliance review may be required (1) for all existing programs on a regular and comprehensive basis; (2) when the ATC receives a complaint from an apprentice participating in the program; (3) when a sponsor seeks to register a new program; or (4) at such other time and under such circumstances as the ATC deems appropriate, provided that the ATC shall not discriminate in the instigation or conduct of compliance reviews on the basis of race, sex, color, religion, national origin, age, disability, union affiliation or lack thereof.

If a compliance review indicates that the sponsor is not operating as required by this Act, the ATC must notify the sponsor in writing of the preliminary results of the review and permit the sponsor to comment in writing prior to issuing final results. The ATC must (1) make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before imposition of penalties authorized in the Act; and (2) provide recommendations to the sponsor to assist in achieving compliance.

### **Section 18 Sanctions for Non-Compliance.**

When the ATC concludes that an apprenticeship program is not in compliance with the requirements of this chapter and that the sponsor has not taken or refuses to take voluntary corrective action, the ATC may, after notice and opportunity for a hearing, cancel or revoke the program registration, order modification of the program, or take such other action as may be appropriate and authorized under this chapter. Proceedings under this section will be contested cases under the State's Administrative Procedure Act. Sanctions by the ATC must be by written order with specific and rational reasons for the disapproval, and may be appealed to State Court. The Court may affirm, reverse, vacate, or modify such order or take any other action deemed necessary or appropriate. No program shall be cancelled under this provision without prior consideration of intermediate sanctions.

185934

PRINTER'S NO. 1552

THE GENERAL ASSEMBLY OF PENNSYLVANIA  
SENATE BILL

No.

1248

Session of

2011

INTRODUCED BY FOLMER, RAFFERTY, D. WHITE, WAUGH, PICCOLA, BROWNE  
AND WASHINGTON, SEPTEMBER 20, 2011

REFERRED TO LABOR AND INDUSTRY, SEPTEMBER 20, 2011

AN ACT

1 Establishing the State Apprenticeship and Training Commission;  
2 transferring functions of the State Apprenticeship and  
3 Training Council; providing for an Executive Director of  
4 Apprenticeship and Training and for subjects of transfer; and  
5 making repeals.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the State  
10 Apprenticeship and Training Commission Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Advisory council." The State Apprenticeship Advisory  
16 Council.

17 "Commission." The State Apprenticeship and Training  
18 Commission.

19 "Executive director." The Executive Director of

1

1 Apprenticeship and Training and the Administrator of the State  
2 Apprenticeship and Training Commission.

3 "Subjects of transfer." Powers, duties, personnel,  
4 appropriations, allocations, documents, files, records,  
5 contracts, agreements, equipment, materials, orders and rights  
6 and obligations utilized or accruing in connection with  
7 functions transferred from one entity to another under this act.  
8 Section 3. State Apprenticeship and Training Commission.

9 (a) Establishment.--The State Apprenticeship and Training  
10 Commission is established and shall be fully implemented and  
11 operational one year from the effective date of this section.

12 (b) Transferred powers and duties.--The following functions  
13 of the State Apprenticeship and Training Council are transferred  
14 to the commission:

15 (1) Overseeing apprenticeship and training programs in  
16 this Commonwealth.

17 (2) Establishing standards for apprenticeship in  
18 conformity with the provisions of this act and applicable  
19 statutes and regulations of the Federal Government, including  
20 a description of the standards, criteria and requirements for  
21 apprenticeship program registration or approval.

22 (3) Where deemed appropriate, according reciprocal  
23 approval for Federal purposes to apprentices, apprenticeship  
24 programs and standards that are registered in other states by  
25 the Federal Office of Apprenticeship or a federally approved  
26 state registration agency if reciprocity is requested by the  
27 apprenticeship program sponsor, provided that the state's  
28 registration agency grants reciprocity to Pennsylvania  
29 programs.

30 (4) Providing for the cancellation or deregistration of



1 programs and for temporary suspension, cancellation or  
2 deregistration of apprenticeship agreements.

3 (5) Establishing policies, procedures and plans that  
4 demonstrate how the State's economic development strategies  
5 and public work force investment system integrate registered  
6 apprenticeship as a critical work-based learning,  
7 postsecondary education, training and employment option  
8 available through the One-Stop Career Center System.

9 (6) Establishing a State plan for equal employment  
10 opportunity in apprenticeship, incorporating policies and  
11 procedures to promote equality of opportunity in  
12 apprenticeship programs.

13 (7) Establishing apprentice-to-journeyperson ratios that  
14 are uniform and indiscriminate between joint and nonjoint  
15 programs. In no instance shall the ratio be stricter than two  
16 apprentices to one journeyperson.

17 (8) Acting as and allocating sufficient staff and budget  
18 to carry out the functions of a State registration agency,  
19 including outreach and education, registration of programs  
20 and apprentices, provision of technical assistance and  
21 monitoring.

22 (9) Establishing a unique civil service classification  
23 encompassing all the powers and duties enumerated in this  
24 section for the purpose of staffing the commission's  
25 professional level positions.

26 (10) Serving as a single point of contact for the United  
27 States Department of Labor with respect to the National

28 Apprenticeship System.

29 (11) Maintaining close liaison and serving as the single  
30 point of contact for apprenticeship and training for all

3

1 agencies that carry on work force development programs, work-  
2 based learning and other activities closely related to the  
3 purpose of this act.

4 (12) Conducting studies, surveys and investigations of  
5 the special problems or the training of unemployed or  
6 employed persons in order to improve or modernize work skills  
7 and making recommendations to the cooperating entities  
8 represented on the advisory council, local community  
9 organizations and local school boards, among others.

10 (13) Acting as a convening agency in local communities  
11 to bring together local representatives of employers,  
12 employees, educational agencies and industrial development  
13 entities in order to promote closer local cooperation in  
14 establishing better apprenticeship, work-based learning and  
15 other occupational training programs, including programs for  
16 employed persons who wish to improve and modernize their work  
17 skills.

18 (14) Using all appropriate mediums of information and  
19 education to acquaint employers, employees and the public at  
20 large with the advantages of apprenticeship and other work-  
21 based learning and occupational training programs.

22 (15) Studying the effectiveness of apprenticeship  
23 agreements and making recommendations for their improvement.

24 (16) Report to the General Assembly on or before

25 February 15 of each year, indicating:

26 (i) the extent of apprenticeship and other  
27 occupational programs during the previous year;

28 (ii) trends in employment requiring adjustments in  
29 apprenticeship training, work-based learning and other  
30 occupational training programs;

4

1 (iii) the need for expansion of apprenticeship,  
2 work-based learning and other occupational training  
3 programs; and

4 (iv) activities of the commission and such  
5 recommendations as are in accord with the purposes of  
6 this act.

7 (17) Serving as the recognized State apprenticeship  
8 registration entity and register apprenticeship programs and  
9 apprentices and provide technical assistance and conduct  
10 reviews for compliance and quality assurance assessments.

11 (18) Performing such other duties as may be necessary to  
12 give full effect to the provisions of this act.

13 Section 4. Executive Director of Apprenticeship and Training.

14 The Governor shall appoint an Executive Director of  
15 Apprenticeship and Training who shall be confirmed by the Senate  
16 and responsible to the General Assembly in carrying out the  
17 provisions of this act. The commission shall appoint, hire and  
18 otherwise make available to the executive director the clerical,  
19 technical and professional services necessary to the performance  
20 of the executive director's duties, including, but not limited  
21 to, appointments to the advisory council.

22 Section 5. Powers and duties of executive director.

23 The executive director shall carry out the purposes of this  
24 act and shall have the following powers and duties:

25 (1) Oversight of the advisory council.

26 (2) Encouragement and promotion of the standards  
27 established in accordance with this act and with the basic  
28 standards of the Federal Committee on Registered  
29 Apprenticeship.

30 (3) Settlement of differences arising out of

5

1 apprenticeship agreements.

2 (4) Supervision of the execution of apprenticeship  
3 agreements and maintenance of standards.

4 (5) Registration of such apprenticeship agreements as  
5 the commission shall authorize as conforming to the  
6 established standards.

7 (6) Participation in and utilizing the Federal  
8 Registered Apprenticeship Information System Database.

9 (7) Establishment and maintenance of Statewide database  
10 for the purpose of keeping a record of the following:

11 (i) Apprenticeship agreements.

12 (ii) Statistics and demographics about apprentices  
13 and programs.

14 (iii) Issuance of interim, competence and completion  
15 certificates.

16 (iv) Transfers.

17 (v) Program sponsors.

18 (8) Execution of the actions of the commission in all of

19 its powers and duties under section 3.

20 (9) Encouragement of liaison and cooperation among all  
21 Federal, State and other public and private agencies  
22 concerned with apprenticeship work-based learning and  
23 occupational training in industries that have not  
24 traditionally used the registered apprenticeship model as a  
25 viable option for work force development and work force  
26 education.

27 (10) Promotion of employer, employee, student, parent  
28 and public awareness of apprenticeship, the apprenticeship  
29 model, work-based learning and other occupational training.

30 (11) Expanding apprenticeship opportunities for workers

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1 in industries that have not traditionally used the registered  
2 apprenticeship model, including, but not limited to, new and  
3 emerging occupations and high-technology and green  
4 industries.

5 Section 6. State Apprenticeship Advisory Council.

6 (a) Composition.--The advisory council shall be comprised  
7 of:

8 (1) Four representatives of employees, two of whom shall  
9 represent industries other than construction trade  
10 industries. Collective bargaining units and open-shop  
11 employees shall be equally represented.

12 (2) Four representatives of employers, two of whom shall  
13 represent industries other than construction trades  
14 industries. Collective bargaining units and open-shop  
15 employees shall be equally represented.

16 (3) Two representatives of community colleges.

17 (4) One representative of the general public.

18 (5) The Deputy Secretary for Workforce Development in  
19 the Department of Labor and Industry.

20 (6) The Executive Director of the Pennsylvania Workforce  
21 Investment Board.

22 (7) One work force development representative from each  
23 of the following: Department of Aging, Department of  
24 Education, Department of Community and Economic Development,  
25 Department of Public Welfare, Department of Military and  
26 Veterans Affairs and the Pennsylvania Council of Chief  
27 Juvenile Probation Officers.

28 (b) Term of membership.--

29 (1) Employer, employee and public members shall be  
30 appointed by the Governor with the advice and consent of the

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1 Senate. Members shall be citizens of the United States and  
2 residents of this Commonwealth.

3 (2) Members shall serve a term of four years or until a  
4 successor has been appointed and qualified, but in no event  
5 longer than six months beyond the four-year period.

6 (3) In the event that a member dies or resigns or is  
7 otherwise disqualified during the term of office, a successor  
8 shall be appointed in the same way and with the same  
9 qualifications and shall hold office for the remainder of the  
10 unexpired term.

11 (4) An employer, employee or public member shall not be  
12 eligible to hold more than two consecutive terms.

13 (c) Appointments.--For employer, employee and public members  
14 initially appointed to the board pursuant to this act, the term  
15 of office shall be as follows:

16 (1) Five members shall serve for a term of four years.

17 (2) Two members shall serve for a term of three years.

18 (3) Two members shall serve for a term of two years.

19 (d) Officers.--The advisory council shall organize  
20 immediately upon appointment and annually thereafter by the  
21 election of one of its members as chairman, one as vice chairman  
22 and one as recording secretary.

23 (e) Meetings.--The advisory council shall conduct meetings  
24 quarterly unless otherwise scheduled by the executive director.

25 (f) Expenses.--Each member of the advisory advisory council  
26 shall receive actual traveling expenses and per diem at the rate  
27 of \$25 each day for time spent attending advisory council  
28 meetings.

29 (g) Status.--The advisory council shall be ineligible for  
30 recognition as the State's registration entity and shall provide

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1 recommended advice and guidance to the commission on the  
2 operation of the State's apprenticeship system. The advisory  
3 council operates at the direction and discretion of the  
4 commission.

5 Section 7. Limitation.

6 This act shall apply only to persons, partnerships,  
7 associations, corporations, political subdivisions, employer  
8 associations or organizations or associations of employees that  
9 voluntarily elect to conform with the provisions of this act.

10 Section 8. Subjects of transfer.

11 (a) General rule.--The subjects of transfer from the council  
12 are transferred to the commission with the same force and effect  
13 as if those subjects of transfer had originally belonged or had  
14 been incurred or entered into by the commission.

15 (b) Employees.--The transfer made under this act shall not  
16 affect the civil service status of affected employees of the  
17 council with the exception that employees without civil service  
18 status shall, if qualified, be granted civil service status in  
19 their classifications.

20 Section 9. Repeals.

21 (a) Intent.--The General Assembly declares that the repeal  
22 under subsection (b) is necessary to effectuate the purposes of  
23 this act.

24 (b) Absolute.--The act of July 14, 1961 (P.L.604 No.304),  
25 known as The Apprenticeship and Training Act, is repealed.

26 (c) General.--All acts or parts of acts are repealed insofar  
27 as they are inconsistent with this act.

28 Section 20. Effective date.

29 This act shall take effect in 60 days.



# Best Value

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1. Delaware Best Value Sample Legislation
2. Pennsylvania “Stop Best Buddy” Legislation

# BEST VALUE-SAMPLE LEGISLATION FROM DELAWARE

DELAWARE STATE SENATE  
140<sup>TH</sup> GENERAL ASSEMBLY  
SENATE BILL NO. 204  
AS AMENDED BY  
SENATE AMENDMENT NO.5

AN ACT TO AMEND CHAPTER 69, TITLE 29 OF THE DELAWARE CODE  
RELATING TO STATE PROCUREMENT

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

## **Section 1.**

This legislation shall be known as “The Quality Construction Improvement Act of 1999.”

## **Section 2.**

Amend 6902, Title 29, Delaware Code by renumbering current 6902 (10) through (18) as 6902 (11) through (19) and insert the following as new 6902 (10):

- (10) “Labor supply ratio means the number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor pursuant to Chapter 2 of Title 19 of the Delaware Code or has otherwise documented 8 years of experience in a particular craft, shall be deemed a skilled crafts person for the purposes of this definition.”

## **Section 3.**

Amend 6962(c), Title 29, Delaware Code by deleting it in its entirety and substituting in lieu thereof the following:

“Bidder prequalification requirements

(1) An agency may require any potential contractor proposing to bid on a public works contract to complete a questionnaire containing any or all of the following information for the purposes of pre-qualification:

- (a) The most recent audited financial statement and/or financial statement review, as provided by a Certified Public Accountant, containing a complete statement of that proposing contractor’s financial ability and standing to complete the work specified in the invitation to bid;
- (b) The proposing contractor’s experience on other public works or private projects, including but not limited to, the size, complexity and scope of the firm’s prior projects;
- (c) The supply of labor available to the proposing contractor to complete the project including but not limited to, the labor supply ratio as defined by 6902(10)

- (d) Performance reviews of the proposing contractor on previously awarded public works or private construction projects within the last 10 years;
  - (e) Civil judgments and/or criminal history of the proposing contractor's principals;
  - (f) Any debarment or suspension by any government agency;
  - (g) Any revocation or suspension of a license; or
  - (h) Any bankruptcy filings or proceedings.
- (2) Based upon the proposing contractor's answers to the pre-qualification questionnaire, the agency may deny pre-qualification for any one of the following specified reasons;
- (a) Insufficient financial ability to perform the contract
  - (b) Inadequate experience to undertake the project;
  - (c) Documented failure to perform on prior public or private construction contracts, including but not limited to, final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;
  - (d) Prior judgments for breach of contract that indicate the proposing contractor may not be capable of performing the work or completing the project;
  - (e) Criminal convictions for fraud, misrepresentation or theft relating to contract procurement
  - (f) Inadequate labor supply available to complete the project in a timely manner;
  - (g) Previous debarment or suspension of the contractor by any government agency that indicate the proposing contractor may not be capable of performing the work or completing the project;
  - (h) Previous revocation or suspension of a license that indicate the proposing contractor may not be capable of performing the work or completing the project
  - (i) Previous bankruptcy proceedings that indicate the proposing contractor may not be capable of performing the work or completing the project; or
  - (j) Failure to provide pre-qualification information.
- (3) Denial of pre-qualification shall be in writing and shall be sent to the contractor within five (5) working days of such decision. The agency may refuse to provide to provide any contractor disqualified under this section the plans and specifications for the project. Any agency receiving a bid from a contractor disqualified under this section shall not consider such bid.
- (4) Any contractor disqualified pursuant to subsections ( c )(1)(2) and (3) of this section may review such decision with the Agency Head. No action in law or equity shall lie against any agency or its employees if the contractor does not first review the decision with the Agency Head. To the extent the contractor brings an action challenging a decision pursuant to subsections ( c )(1)(2) and (3) after such review by the Agency Head, the Court shall afford great weight to the decision of the Agency Head and shall not overturn such decision unless the contractor proves by clear and convincing evidence that such decision was arbitrary and capricious.

**Section 4.**

Amend 6962 (d)(5) a, Title 29, Delaware Code by inserting an additional paragraph at the conclusion thereof after the words "under the contract except for amount retained." as follows:

“The agency may at the beginning of each public works contract establish a time schedule for the completion of the project. If the project is delayed beyond the completion date due to the contractor’s failure to meet his or her responsibilities, the agency may forfeit all or part of retainage at its discretion.”

**Section 5.**

Amend 6962(d)(13), Title 29, Delaware Code by deleting 6962(13)a, in its entirety and substituting in lieu thereof the following:

- (A) The contracting agency shall award any public works contract within thirty (30) days of the bid opening to the lowest responsive and responsible bidder, unless the agency elects to award on the basis of best value, in which case the election to award on the basis of best value shall be stated in the invitation to bid. Any public school district and its board shall award public works contracts in accordance with this section’s requirements except it shall award the contract within sixty (60) days of the bid opening.
- (B) Each bid on any public works contract must be deemed responsible by the agency to be considered for award. A responsive bid shall conform in all material respects to the requirements and criteria set forth in the contract plans and specifications.
- (C) An agency shall determine that each bidder on any public works contract is responsible before awarding the contract. Factors to be considered in determining the responsibility of a bidder include:
  - (1) The bidder’s financial, physical, personnel or other resources including subcontracts;
  - (2) The bidder’s record of performance on past public or private construction projects, including, but not limited to, defaults and/or final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;
  - (3) The bidder’s written safety plan;
  - (4) Whether the bidder is qualified legally to contract with the State;
  - (5) Whether the bidder supplied all necessary information concerning in responsibility; and
  - (6) Any other specific criteria for a particular procurement, which an agency may establish; provided however, that the criteria shall be set forth in the invitation to bid and is otherwise in conformity with State and/or federal law.

If an agency determines that a bidder is nonresponsive and/or nonresponsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be sent to the affected bidder within five (%) working days of said determination. The final determination shall be made part of the procurement file. If the agency elects to award on the basis of best value, the agency must determine that the successful bidder is responsive and responsible, as defined in this subsection. The determination of best value shall be based upon objective criteria that have been communicated to the bidders in the invitation to bid. The following objective criteria shall be assigned a weight consistent with the following;

- (1) Price-must be at least seventy percent (70%) but no more than ninety percent (90%); and
- (2) Schedule-must be at least ten percent (10%) but no more than thirty percent (30%); and

A weighted average stated in the invitation to bid shall be applied to each criterion according to its importance to each project. The agency shall rank the bidder according to the established criteria and award to the highest ranked bidder.

**Section 6.**

Amend 6962, Title 29, Delaware Code by inserting as new 6962(14) the following:

“(14) Suspension and Debarment-Any contractor who fails to perform a public works contract or complete a public works project within the time schedule established by the agency in the invitation to bid, may be subject to suspension or debarment for one or more of the following reasons: 1) failure to supply the adequate labor supply ratio for the project; 2) inadequate financial resources; or, 3) poor performance on the project.

Upon such failure for any of the above stated reasons, the agency that contracted for the public works project may petition the Secretary of the Department of Administrative Services for suspension or debarment of the contractor. The agency shall send a copy of the petition to the contractor within three (3) working days of filing with the Secretary. If the Secretary concludes that the petition has merit, the Secretary shall schedule and hold a hearing to determine whether to suspend the contractor, debar the contractor or deny the petition. The agency shall have the burden of proving, by a preponderance of the evidence, that the contractor failed to perform or complete the public works project within the time schedule established by the agency and failed to do so for one or more of the following reasons;

- (1) failure to supply the adequate labor supply ratio for the project;
- (2) inadequate financial resources; or
- (3) poor performance on the project

Upon a finding in favor of the agency, the Secretary may suspend a contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the contractor for a third offense. The Secretary shall issue a written decision and shall send a copy to the contractor and the agency. Such decision may be appealed to the Superior Court within thirty (30) days for a review on the record.”

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1996** Session of  
2005

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INTRODUCED BY PETRI, CLYMER, ARMSTRONG, CALTAGIRONE, FAIRCHILD,  
HENNESSEY, HERSHEY, KILLION, NAILOR, REICHLEY, SATHER,  
TURZAI, WATSON, WILT AND YOUNGBLOOD, SEPTEMBER 28, 2005

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, SEPTEMBER 28, 2005

---

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, further providing for competitive sealed proposals.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Section 513(a) of Title 62 of the Pennsylvania  
6 Consolidated Statutes is amended to read:

7 § 513. Competitive sealed proposals.

8 (a) Conditions for use.--When the contracting officer  
9 determines in writing that the use of competitive sealed bidding  
10 is either not practicable or advantageous to the Commonwealth, a  
11 contract for services or supplies, but not for construction, may  
12 be entered into by competitive sealed proposals.

13 \* \* \*

14 Section 2. This act shall take effect immediately.

# Contractor Licensing

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1. Model Elevator Contractor Licensing Legislation

# **Associated Builders and Contractors (ABC) Model Act: Elevator and Escalator Mechanic Licensing and Contractor Certification**

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**SECTION 1. SHORT TITLE.** THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "ELEVATOR AND ESCALATOR CERTIFICATION ACT."

**SECTION 2. DEFINITIONS.** AS USED IN THIS ACT, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCREDITED NATIONAL CONVEYANCE ASSOCIATION" MEANS A CONVEYANCE ASSOCIATION THAT IS ACCREDITED TO CERTIFY CONVEYANCE INSPECTORS BY A NATIONALLY RECOGNIZED STANDARDS ASSOCIATION, INCLUDING, WITHOUT LIMITATION, AMERICAN SOCIETY OF MECHANICAL ENGINEERS.

(2) "ADMINISTRATOR" MEANS A DIRECTOR WITHIN THE DEPARTMENT OF LABOR OR THE DIRECTOR'S DESIGNEE.

(3) "ASME" MEANS THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS OR ITS SUCCESSOR.

(4) "ASME A17.1" MEANS THE SAFETY CODE FOR ELEVATORS AND ESCALATORS PUBLISHED AS "A17.1 SAFETY CODE FOR ELEVATORS AND ESCALATORS" AS AMENDED BY ASME INTERNATIONAL.

(5) "ASME A17.3" MEANS THE SAFETY CODE FOR ELEVATORS AND ESCALATORS PUBLISHED AS "A17.3 SAFETY CODE FOR EXISTING ELEVATORS AND ESCALATORS" AS AMENDED BY ASME INTERNATIONAL.

(6) "ASME A18.1" MEANS THE SAFETY CODE FOR ELEVATORS AND ESCALATORS PUBLISHED AS "A18.1 SAFETY STANDARD FOR PLATFORM LIFTS AND STAIRWAY CHAIRLIFTS" AS AMENDED BY ASME INTERNATIONAL.

(7) "CONVEYANCE" MEANS A MECHANICAL DEVICE TO WHICH THIS ACT APPLIES PURSUANT TO SECTION 3 OF THIS ACT.

(8) "CONVEYANCE CONTRACTOR" MEANS A PERSON WHO ENGAGES IN THE BUSINESS OF ERECTING, CONSTRUCTING, INSTALLING, ALTERING, SERVICING, REPAIRING, OR MAINTAINING CONVEYANCES.

(9) "CONVEYANCE APPRENTICE" MEANS A PERSON WHO WORKS UNDER THE GENERAL DIRECTION OF A CERTIFIED CONVEYANCE MECHANIC.

(10) "CONVEYANCE MECHANIC" MEANS A PERSON WHO ERECTS, CONSTRUCTS, INSTALLS, ALTERS, SERVICES, REPAIRS, OR MAINTAINS CONVEYANCES.



(11) "DORMANT CONVEYANCE" MEANS A CONVEYANCE THAT HAS BEEN TEMPORARILY PLACED OUT OF SERVICE.

(12) "LICENSEE" MEANS A PERSON WHO IS LICENSED AS A CONVEYANCE MECHANIC OR CONVEYANCE INSPECTOR PURSUANT TO THIS ACT.

(13) "LOCAL JURISDICTION" MEANS A CITY, COUNTY, OR CITY AND COUNTY OR ANY AGENT THEREOF.

(14) "PRIVATE RESIDENCE" MEANS A SEPARATE DWELLING, OR A SEPARATE APARTMENT IN A MULTIPLE-APARTMENT DWELLING, THAT IS OCCUPIED BY MEMBERS OF A SINGLE-FAMILY UNIT.

(15) "SINGLE-FAMILY RESIDENCE" MEANS A PRIVATE RESIDENCE THAT IS A SEPARATE BUILDING OR AN INDIVIDUAL RESIDENCE THAT IS PART OF A ROW OF RESIDENCES JOINED BY COMMON SIDEWALLS.

(16) "THIRD-PARTY CONVEYANCE INSPECTOR" MEANS A DISINTERESTED CONVEYANCE INSPECTOR WHO IS RETAINED TO INSPECT A CONVEYANCE BUT IS NOT EMPLOYED BY OR AFFILIATED WITH THE OWNER OF THE CONVEYANCE NOR THE CONVEYANCE MECHANIC WHOSE REPAIR, ALTERATION, OR INSTALLATION IS BEING INSPECTED.

(17) "SUPERVISION" MEANS EMPLOYED BY A CERTIFIED CONVEYANCE CONTRACTOR FOR THE PURPOSE OF THIS ACT.

**SECTION 3. SCOPE.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS ACT SHALL APPLY TO THE DESIGN, CONSTRUCTION, OPERATION, INSPECTION, TESTING, MAINTENANCE, ALTERATION, AND REPAIR OF THE FOLLOWING EQUIPMENT:

(a) HOISTING AND LOWERING MECHANISMS EQUIPPED WITH A CAR OR PLATFORM THAT MOVES BETWEEN TWO OR MORE LANDINGS. SUCH EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, ELEVATORS AND PLATFORM LIFTS, PERSONNEL HOISTS, STAIRWAY CHAIR LIFTS, AND DUMBWAITERS.

(b) POWER-DRIVEN STAIRWAYS AND WALKWAYS FOR CARRYING PERSONS BETWEEN LANDINGS. SUCH EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, ESCALATORS AND MOVING WALKS.

(c) AUTOMATED PEOPLE MOVERS AS DEFINED IN ASCE 21.

(2) THIS ACT SHALL NOT APPLY TO ANY OF THE FOLLOWING:

(a) MATERIAL HOISTS;

(b) MOBILE SCAFFOLDS, TOWERS, AND PLATFORMS;

(c) POWERED PLATFORMS AND EQUIPMENT FOR EXTERIOR AND INTERIOR MAINTENANCE;

- (d) CRANES, DERRICKS, HOISTS, HOOKS, JACKS, AND SLINGS;
- (e) INDUSTRIAL TRUCKS WITHIN THE SCOPE OF ASME PUBLICATION B56;
- (f) ITEMS OF PORTABLE EQUIPMENT THAT ARE NOT PORTABLE ESCALATORS;
- (g) TIERING OR PILING MACHINES USED TO MOVE MATERIALS BETWEEN STORAGE LOCATIONS THAT OPERATE ENTIRELY WITHIN ONE STORY;
- (h) EQUIPMENT FOR FEEDING OR POSITIONING MATERIALS AT MACHINE TOOLS, PRINTING PRESSES, AND OTHER SIMILAR EQUIPMENT;
- (i) SKIP OR FURNACE HOISTS;
- (j) WHARF RAMPS;
- (k) RAILROAD CAR LIFTS OR DUMPERS;
- (l) LINE JACKS, FALSE CARS, SHAFTERS, MOVING PLATFORMS, AND SIMILAR EQUIPMENT USED BY A CERTIFIED CONVEYANCE CONTRACTOR FOR INSTALLING A CONVEYANCE;
- (m) A PASSENGER TRAMWAY DEFINED IN SECTION 25-5-702, C.R.S.;
- (n) CONVEYANCES IN OR AT A PRIVATE OR SINGLE-FAMILY RESIDENCE.

(3) THIS ACT SHALL NOT BE CONSTRUED TO PROHIBIT A LOCAL JURISDICTION FROM REGULATING CONVEYANCES IF THE LOCAL JURISDICTION HAS STANDARDS THAT MEET OR EXCEED THE STANDARDS ESTABLISHED BY THIS ACT.

**SECTION 4. LICENSE REQUIRED.** (1) (a) NO PERSON SHALL ERECT, CONSTRUCT, ALTER, REPLACE, MAINTAIN, REMOVE, OR DISMANTLE A CONVEYANCE WITHIN A BUILDING OR STRUCTURE UNLESS THE PERSON IS LICENSED AS A CONVEYANCE MECHANIC AND IS WORKING UNDER THE SUPERVISION AS DEFINED IN SECTION 2 OF THIS ACT OF A CERTIFIED CONVEYANCE CONTRACTOR. NO PERSON SHALL WIRE A CONVEYANCE UNLESS THE PERSON IS LICENSED AS A CONVEYANCE MECHANIC AND IS WORKING UNDER THE SUPERVISION OF A CERTIFIED CONVEYANCE CONTRACTOR. NO OTHER LICENSE SHALL BE REQUIRED TO PERFORM THE WORK DESCRIBED IN THIS PARAGRAPH (a).

(b) NO PERSON SHALL BE REQUIRED TO BE A CERTIFIED CONVEYANCE CONTRACTOR OR LICENSED CONVEYANCE MECHANIC TO REMOVE OR DISMANTLE CONVEYANCES THAT ARE DESTROYED AS A RESULT OF A COMPLETE DEMOLITION OF A SECURED BUILDING OR STRUCTURE OR WHERE THE HOISTWAY OR WELLWAY IS DEMOLISHED BACK TO THE BASIC SUPPORT STRUCTURE AND NO ACCESS THAT ENDANGERS THE SAFETY OF A PERSON IS PERMITTED.

(c) A CONVEYANCE APPRENTICE SHALL BE EXEMPTED FROM THE LICENSING REQUIREMENTS ESTABLISHED UNDER THIS ACT, BUT SHALL BE REQUIRED TO ADHERE TO ALL GUIDELINES WITHIN THE STATE APPRENTICESHIP STANDARDS.

(2) NO INSPECTION OF A CONVEYANCE SHALL BE CONDUCTED FOR PURPOSES OF THE ISSUANCE OF A CERTIFICATE OF OPERATION UNLESS CONDUCTED BY AN INSPECTOR LICENSED IN ACCORDANCE WITH THIS ARTICLE.

**SECTION 5. LICENSE QUALIFICATIONS - MECHANIC - INSPECTOR.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO APPLICANT SHALL BE LICENSED AS A CONVEYANCE MECHANIC UNLESS THE APPLICANT SATISFIES ONE OF THE FOLLOWING CRITERIA:

(a) POSSESSES A CERTIFICATE OF COMPLETION FROM A NATIONALLY RECOGNIZED CONVEYANCE ASSOCIATION MECHANIC TRAINING PROGRAM, SUCH AS THE NATIONALELEVATOR INDUSTRY EDUCATION PROGRAM OR THE NATIONAL ASSOCIATION OF ELEVATOR CONTRACTORS' CERTIFIED ELEVATOR TECHNICIAN PROGRAM;

(b) POSSESSES A CERTIFICATE OF COMPLETION OF AN APPRENTICESHIP PROGRAM FOR ELEVATOR MECHANICS, PROVIDED THE PROGRAM HAS STANDARDS SUBSTANTIALLY EQUIVALENT TO THOSE OF THIS ACT, AS DETERMINED BY THE ADMINISTRATOR, AND IS PROPERLY REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR OR THE APPROPRIATE STATE APPRENTICESHIP AGENCY;

(c) HOLDS A VALID LICENSE FROM ANOTHER STATE WITH QUALIFICATION STANDARDS THAT, AT A MINIMUM, ARE SUBSTANTIALLY EQUIVALENT TO THOSE OF THIS ACT, AS DETERMINED BY THE ADMINISTRATOR;

(d) HAS SUCCESSFULLY COMPLETED A COMPUTER-GENERATED EXAMINATION APPROVED BY THE ADMINISTRATOR ON THE APPLICABLE STATE CODES AND STANDARDS THAT APPLY TO CONVEYANCES; AND FURNISHES EVIDENCE ACCEPTABLE TO THE ADMINISTRATOR THAT THE APPLICANT HAS WORKED AS A CONVEYANCE MECHANIC FOR AT LEAST THE THREE PRIOR YEARS WITHOUT DIRECT SUPERVISION;

(e) HAS AT LEAST THREE YEARS EXPERIENCE IN MAINTAINING OR INSTALLING HYDRAULIC, ELECTRICAL OR MECHANICAL EQUIPMENT WHICH IS DEEMED ACCEPTABLE BY THE ADMINISTRATOR OF THE DEPARTMENT, AN ASSOCIATES OR BACHELORS DEGREE IN ELECTRONICS OR ENGINEERING AND HAS SUCCESSFULLY COMPLETED A COMPUTER-GENERATED EXAMINATION APPROVED BY THE ADMINISTRATOR ON THE APPLICABLE STATE CODES AND STANDARDS THAT APPLY TO CONVEYANCES; OR

(f) FURNISHES EVIDENCE ACCEPTABLE TO THE ADMINISTRATOR THAT THE APPLICANT WORKED AS A CONVEYANCE MECHANIC FOR THE THREE YEARS PRIOR TO JANUARY 1, 20XX, WITHOUT DIRECT SUPERVISION; HOWEVER, NO APPLICANT MAY QUALIFY UNDER THIS SUBPARAGRAPH OF THIS ACT ON OR AFTER JULY 1, 20XX.

(2) (a) AN APPLICANT SHALL NOT BE LICENSED AS A CONVEYANCE INSPECTOR UNLESS THE APPLICANT IS CERTIFIED TO INSPECT CONVEYANCES BY ASME OR ANOTHER NATIONALLY RECOGNIZED ELEVATOR SAFETY ASSOCIATION,

(b) (I) IN LIEU OF QUALIFYING PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), AN APPLICANT SHALL QUALIFY IF THE APPLICANT WAS APPOINTED OR DESIGNATED AS A CONVEYANCE INSPECTOR FOR A CITY OR CITY AND COUNTY BEFORE JANUARY 1, 2008. AN APPLICANT WHO QUALIFIES AS A CONVEYANCE INSPECTOR PURSUANT TO THIS PARAGRAPH (b) SHALL NOT REMAIN LICENSED AFTER JULY 1, 2010, UNLESS THE APPLICANT QUALIFIES TO BE LICENSED UNDER PARAGRAPH (a) OF THIS SUBSECTION (2). A LICENSE ISSUED PURSUANT THIS SUBPARAGRAPH (I) SHALL EXPIRE UPON THE LICENSEE TERMINATING EMPLOYMENT WITH THE LOCAL JURISDICTION.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2011.

**SECTION 6. CERTIFICATION - QUALIFICATIONS - CONTRACTOR** (1) A PERSON WHO IS NOT QUALIFIED TO BE A CONVEYANCE CONTRACTOR SHALL NOT BE CERTIFIED AS A CONVEYANCE CONTRACTOR.

(2) TO BE A CERTIFIED CONVEYANCE CONTRACTOR, AN APPLICANT SHALL DEMONSTRATE THE FOLLOWING QUALIFICATIONS:

(a) THE APPLICANT SHALL EMPLOY AT LEAST ONE LICENSED CONVEYANCE MECHANIC; AND IS IN COMPLIANCE OR WILL COMPLY WITH THE INSURANCE REQUIREMENTS IN SECTION 9 OF THIS ACT.

(b) IN LIEU OF QUALIFYING UNDER PARAGRAPH (a) OF THIS SUBSECTION (2), AN APPLICANT SHALL QUALIFY IF THE APPLICANT POSSESSES A VALID LICENSE OR CERTIFICATE ISSUED BY A STATE HAVING STANDARDS SUBSTANTIALLY EQUIVALENT TO THOSE OF THIS ACT.

**SECTION 7. LICENSE AND CERTIFICATION - RULES - ISSUANCE - RENEWAL - FEE.** (1) (a) UPON THE ADMINISTRATOR'S APPROVAL OF AN APPLICATION, THE ADMINISTRATOR SHALL CERTIFY OR LICENSE THE CONVEYANCE CONTRACTOR, CONVEYANCE MECHANIC, OR CONVEYANCE INSPECTOR.

(b) THE ADMINISTRATOR SHALL PROMULGATE RULES REQUIRING A LICENSED CONVEYANCE MECHANIC AND A CONVEYANCE INSPECTOR TO OBTAIN AT LEAST TEN HOURS OF CONTINUING EDUCATION EVERY YEAR.

(2) (a) WHEN AN EMERGENCY HAS BEEN DECLARED BY THE GOVERNOR TO EXIST IN THIS STATE DUE TO A DISASTER, ACT OF GOD, OR WORK STOPPAGE AND THE NUMBER OF LICENSED CONVEYANCE MECHANICS IN THE STATE IS INSUFFICIENT TO DEAL WITH THE EMERGENCY WITHOUT ALTERING THEIR STANDARD HIRING PRACTICES, AN UNLICENSED CONVEYANCE MECHANIC MAY RESPOND AS NECESSARY TO ASSURE THE SAFETY OF THE PUBLIC, PROVIDED THAT (1) THE PERSON HAS IN THE JUDGMENT OF A CERTIFIED CONVEYANCE CONTRACTOR, AN ACCEPTABLE COMBINATION OF DOCUMENTED EXPERIENCE AND EDUCATION TO PERFORM THE CONVEYANCE WORK REQUIRED DURING THE EMERGENCY, AND

(2) IN THE EVENT THAT THE PERIOD OF EMERGENCY IS ANTICIPATED TO LAST FIVE (5) OR MORE DAYS, THE PERSON SHALL SEEK AN EMERGENCY CONVEYANCE MECHANIC LICENSE FROM THE ADMINISTRATOR WITHIN FIVE BUSINESS DAYS AFTER COMMENCING WORK FOR WHICH A CONVEYANCE MECHANIC LICENSE IS REQUIRED.

(b) THE ADMINISTRATOR SHALL ISSUE EMERGENCY CONVEYANCE MECHANIC LICENSES PURSUANT TO PARAGRAPH (2)(a) OF THIS SECTION IN A TIMELY MANNER.

(3) (a) IN ADDITION TO EMERGENCY LICENSES ISSUED PURSUANT TO SUBSECTION (2) OF THIS SECTION, A CERTIFIED CONVEYANCE CONTRACTOR MAY, WHEN THERE ARE NO CERTIFIED CONVEYANCE MECHANICS AVAILABLE TO PERFORM CONVEYANCE WORK WITHOUT ALTERING THEIR STANDARD HIRING PRACTICES, REQUEST THE ADMINISTRATOR TO ISSUE A TEMPORARY CONVEYANCE MECHANIC LICENSE TO A PERSON WHO, IN THE JUDGMENT OF THE CERTIFIED CONVEYANCE CONTRACTOR, HAS AN ACCEPTABLE COMBINATION OF DOCUMENTED EXPERIENCE AND EDUCATION TO PERFORM CONVEYANCE WORK WITHOUT DIRECT SUPERVISION, WITHOUT NEED FOR THE PERSON TO COMPLY WITH THE LICENSING REQUIREMENTS OF SECTION 5 OF THIS ACT, PROVIDED SUCH PERSON APPLIES FOR A TEMPORARY CONVEYANCE MECHANIC LICENSE AND PAYS SUCH FEE AS THE ADMINISTRATOR SHALL DETERMINE.

(b) EACH SUCH TEMPORARY LICENSE ISSUED UNDER THIS SUBSECTION SHALL BE, AND SHALL STATE THAT IT IS, VALID FOR SIXTY DAYS AFTER THE DATE OF ISSUANCE, PROVIDED THAT SUCH PERSON REMAINS EMPLOYED BY THE CERTIFIED CONVEYANCE CONTRACTOR WHO CERTIFIED THE INDIVIDUAL AS QUALIFIED. THE CERTIFICATION SHALL BE RENEWABLE AS LONG AS THERE IS A SHORTAGE OF LICENSED CONVEYANCE MECHANICS.

(4) THE ADMINISTRATOR SHALL ESTABLISH AND COLLECT ANNUAL FEES FOR LICENSES ISSUED PURSUANT TO THIS SECTION. THE FEES SHALL BE IN AN AMOUNT NECESSARY TO OFFSET THE DIRECT COSTS OF ADMINISTERING THIS ACT.

**SECTION 8. LICENSE AND CERTIFICATION DISCIPLINE.** (1) LICENSES AND CERTIFICATIONS ISSUED PURSUANT TO THIS ACT MAY BE SUSPENDED OR REVOKED UPON A FINAL DETERMINATION BY THE ADMINISTRATOR OF ANY OF THE FOLLOWING, FOLLOWING A FULL AND FAIR OPPORTUNITY FOR A PERSON WHOSE LICENSE OR CERTIFICATION IS BEING SUSPENDED OR REVOKED TO CONTEST THE SUSPENSION OR REVOCATION:

(a) A FALSE STATEMENT IN THE APPLICATION CONCERNING A MATERIAL MATTER;

(b) FRAUD, MISREPRESENTATION OR BRIBERY IN THE COMMISSION OF APPLYING FOR A LICENSE OR CERTIFICATION;

(c) A VIOLATION OF ANY PROVISION OF THIS ACT OR OF ANY RULE ADOPTED PURSUANT TO THIS ACT.

(2) THE ADMINISTRATOR SHALL NOT ISSUE A LICENSE OR CERTIFICATION TO A PERSON WHOSE LICENSE HAS BEEN REVOKED WITHIN THE LAST TWO YEARS.

**SECTION 9. CONVEYANCE - INSTALLATION AND REPAIR.** A CONVEYANCE SHALL NOT BE ERECTED, CONSTRUCTED, INSTALLED, OR ALTERED WITHIN A BUILDING OR STRUCTURE UNLESS IT CONFORMS TO THE APPLICABLE STATE AND/OR LOCAL BUILDING AND CONSTRUCTION REQUIREMENTS AND THE WORK IS PERFORMED BY A CERTIFIED CONVEYANCE CONTRACTOR.

**SECTION 10. INSURANCE.** (1) EACH CONVEYANCE CONTRACTOR SHALL SUBMIT TO THE ADMINISTRATOR AN INSURANCE POLICY, CERTIFICATE OF INSURANCE, OR CERTIFIED COPY OF EITHER ISSUED BY AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE. SUCH POLICY SHALL PROVIDE GENERAL LIABILITY COVERAGE OF AT LEAST ONE MILLION DOLLARS FOR THE INJURY OR DEATH OF EACH PERSON IN EACH OCCURRENCE AND COVERAGE FOR AT LEAST FIVE HUNDRED THOUSAND DOLLARS FOR PROPERTY DAMAGE IN EACH OCCURRENCE. IN ADDITION, A CONVEYANCE CONTRACTOR SHALL SUBMIT EVIDENCE OF THE INSURANCE MANDATED BY STATE WORKER'S COMPENSATION LAWS.

(2) LICENSED CONVEYANCE INSPECTORS SHALL SUBMIT TO THE ADMINISTRATOR AN INSURANCE POLICY, CERTIFICATE OF INSURANCE, OR CERTIFIED COPY OF EITHER ISSUED BY AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE. SUCH POLICY SHALL PROVIDE GENERAL LIABILITY COVERAGE OF AT LEAST ONE MILLION DOLLARS FOR THE INJURY OR DEATH OF EACH PERSON IN EACH OCCURRENCE AND COVERAGE FOR AT LEAST FIVE HUNDRED THOUSAND DOLLARS FOR PROPERTY DAMAGE IN EACH OCCURRENCE.

(3) THE ADMINISTRATOR SHALL NOT CERTIFY A CONVEYANCE CONTRACTOR OR LICENSE A CONVEYANCE INSPECTOR UNLESS THE APPLICANT HAS DELIVERED THE POLICY, CERTIFIED COPY, OR CERTIFICATE OF INSURANCE REQUIRED BY THIS SECTION IN A FORM APPROVED BY THE ADMINISTRATOR. CERTIFIED CONVEYANCE CONTRACTORS AND LICENSED CONVEYANCE INSPECTORS SHALL NOTIFY THE ADMINISTRATOR AT LEAST TEN DAYS BEFORE A MATERIAL ALTERATION, AMENDMENT, OR CANCELLATION OF A POLICY IS MADE.

**SECTION 11. ENFORCEMENT - RULES.** (1) THE ADMINISTRATOR SHALL ADOPT RULES TO ADMINISTER AND ENFORCE THIS ACT.

(2) THE ADMINISTRATOR SHALL APPOINT A CONVEYANCE ADVISORY BOARD TO ASSIST IN THE FORMULATION AND ENFORCEMENT OF RULES AUTHORIZED BY THIS SECTION, INCLUDING THE APPEAL PROCESS. THE CONVEYANCE ADVISORY BOARD SHALL CONSIST OF (5) FIVE MEMBERS, ONE OF WHOM SHALL BE THE ADMINISTRATOR OR THEIR DESIGNEE. THE FOUR REMAINING MEMBERS SHALL BE APPOINTED BY THE GOVERNOR AND SERVE FOUR YEAR TERMS.

(3) THE BOARD SHALL CONSIST OF:

(a) ONE MEMBER WHO IS AN OWNER OF A BUILDING THAT CONTAINS A CONVEYANCE AS DEFINED BY SUBSECTIONS 4-6 OF SECTION 2 OF THIS ACT;

(b) ONE CERTIFIED CONVEYANCE CONTRACTOR UTILIZING A NATIONAL ELEVATOR INDUSTRY EDUCATIONAL PROGRAM CURRICULUM OR ITS SUCCESSOR;

(c) ONE CERTIFIED CONVEYANCE CONTRACTOR UTILIZING THE NATIONAL ASSOCIATION OF ELEVATOR CONTRACTORS' CERTIFIED ELEVATOR TECHNICIAN PROGRAM OR ITS SUCCESSOR; and

(d) ONE REPRESENTATIVE OF THE RIDING PUBLIC AT LARGE

(2) A PERSON MAY REQUEST AN INVESTIGATION INTO AN ALLEGED VIOLATION OF THE RULES OR THIS ACT BY GIVING NOTICE TO THE ADMINISTRATOR OF SUCH VIOLATION. SUCH NOTICE SHALL BE IN WRITING, SHALL SET FORTH WITH REASONABLE PARTICULARITY THE GROUNDS FOR THE NOTICE, AND SHALL BE SIGNED BY THE PERSON MAKING THE REQUEST. UPON THE REQUEST OF A PERSON SIGNING THE NOTICE, SUCH PERSON'S NAME SHALL NOT APPEAR ON ANY COPY OF SUCH NOTICE OR ANY RECORD PUBLISHED, RELEASED, OR MADE AVAILABLE.

(3) UPON RECEIPT OF SUCH NOTIFICATION, IF THE ADMINISTRATOR DETERMINES THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT SUCH VIOLATION EXISTS, THE ADMINISTRATOR SHALL INVESTIGATE IN ACCORDANCE WITH THIS ACT TO DETERMINE IF SUCH VIOLATION EXISTS. IF THE ADMINISTRATOR DETERMINES THAT THERE ARE NO REASONABLE GROUNDS TO BELIEVE THAT A VIOLATION EXISTS, THE ADMINISTRATOR SHALL NOTIFY THE PARTY IN WRITING OF SUCH DETERMINATION.

(4) IF THE ADMINISTRATOR DETERMINES THAT THERE IS REASONABLE EVIDENCE TO BELIEVE A VIOLATION OCCURRED, THE ADMINISTRATOR SHALL REFER THE COMPLAINT AND GROUNDS FOR THE COMPLAINT TO THE [STATE NAME] CONVEYANCE ADVISORY BOARD FOR AN ADMINISTRATIVE HEARING WITHIN TEN DAYS.

**SECTION 12. LIABILITY.** THIS ACT SHALL NOT BE CONSTRUED TO RELIEVE OR LESSEN THE RESPONSIBILITY OR LIABILITY OF A PERSON OWNING, OPERATING, CONTROLLING, MAINTAINING, ERECTING, CONSTRUCTING, INSTALLING, ALTERING, INSPECTING, TESTING, OR REPAIRING A CONVEYANCE FOR DAMAGES TO PERSON OR PROPERTY CAUSED BY A DEFECT, NOR DOES THE STATE ASSUME ANY SUCH LIABILITY OR RESPONSIBILITY BY THE ADOPTION OR ENFORCEMENT OF THIS ACT.

**SECTION 13. REPEAL OF THIS ACT.** THIS ACT IS REPEALED, EFFECTIVE JULY 1, 2020. PRIOR TO SUCH REPEAL, THE FUNCTIONS OF THE ADMINISTRATOR SHALL BE SUBJECT TO LEGISLATIVE REAUTHORIZATION

# Green Training Incentives

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1. Model Green Training Incentive Legislation
2. Michigan Green Construction/Renovation Incentive Legislation



**Summary:**

This model legislation would provide construction employers with a tax credit of up to \$2,000 for each of their employees who either becomes a Leadership in Energy and Environmental Design (LEED) Accredited Professional or successfully completes an industry-recognized craft training program affiliated with an accredited university, such as the National Center for Construction Education and Research's green module, "Your Role in the Green Environment."

**Model Legislation Text:**

(1) As used in this section:

(a) "USGBC" means the United States Green Building Council, which measures and evaluates the energy and environmental performance of a building according to its own Leadership in Energy and Environmental Design (LEED) rating system and administers the LEED Accredited Professional program.

(b) "Qualified expenses" means all of the following training and related expenses paid by the taxpayer during the tax year for their employees' LEED accreditation or other training authorized under this section:

- (i) salary and wages attributable to those employees;
- (ii) fringe benefits and other payroll expenses attributable to those employees; and
- (iii) costs of classroom instruction, training, and other related expenses identified as costs for which the taxpayer is responsible.

(2) For tax years beginning on and after January 1, 2008, a taxpayer that is included in the Standard Industrial Classification Code Major Groups 15, 16, or 17 as compiled by the U.S. Department of Labor or Sector 23 of the North American Industry Classification System may claim a credit against the taxpayer's revenue taxes imposed under this [section/provision of the state tax code] equal to the lesser of either the sum of 50 percent of the qualified expenses defined in subsection (1)(b)(i) and (ii) of this section and 100 percent of the qualified expenses defined in subsection (1)(b)(iii) of this section paid by the taxpayer during that tax year, or a tax credit of \$2,000 for each employee of the taxpayer who becomes a LEED Accredited Professional or who successfully completes an industry-recognized craft training program affiliated with an accredited university during the tax year.

(3) If the credit allowed under this section exceeds the tax liability of the taxpayer under this act for the tax year, that portion of the credit that exceeds the tax liability shall be refunded [or taken as a carry-over for the next tax year].

# HOUSE BILL No. 6178

May 22, 2008, Introduced by Reps. Bieda, Angerer, Sheltroun, Byrnes, Opsommer, Valentine, Condino, Marleau, Moolenaar, McDowell, Mayes, Lahti, Young, Stahl, Calley, Corriveau, Kathleen Law, Simpson, LeBlanc, Knollenberg, Byrum and Meisner and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
(MCL 208.1101 to 208.1601) by adding sections 461 and 462.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 461. (1) FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,  
2           2008, A TAXPAYER THAT CONSTRUCTS OR RENOVATES AN INDUSTRIAL GREEN  
3           BUILDING OR COMMERCIAL GREEN BUILDING MAY CLAIM A CREDIT AGAINST  
4           THE TAX IMPOSED BY THIS ACT EQUAL TO \$10,000.00 FOR EACH INDUSTRIAL  
5           GREEN BUILDING AND COMMERCIAL GREEN BUILDING OR AN AMOUNT EQUAL TO  
6           THE COST OF LEED CERTIFICATION AS REQUIRED UNDER THIS SECTION PER  
7           BUILDING, WHICHEVER IS GREATER, BUT NOT MORE THAN \$22,500.00 PER  
8           BUILDING.

9           (2) A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION FOR

1 AN INDUSTRIAL GREEN BUILDING OR COMMERCIAL GREEN BUILDING UNLESS  
2 THAT GREEN BUILDING HAS RECEIVED LEED CERTIFICATION. THE TAXPAYER  
3 SHALL ATTACH THE CERTIFICATE TO THE ANNUAL RETURN FILED UNDER THIS  
4 ACT ON WHICH THE CREDIT UNDER THIS SECTION IS CLAIMED. FOR AN  
5 INDUSTRIAL GREEN BUILDING OR COMMERCIAL GREEN BUILDING, THE  
6 CERTIFICATE REQUIRED UNDER THIS SUBSECTION SHALL STATE, AT A  
7 MINIMUM, THAT THE INDUSTRIAL OR COMMERCIAL BUILDING MEETS OR  
8 EXCEEDS THE SILVER LEVEL LEED CERTIFICATION STANDARDS FOR HUMAN AND  
9 ENVIRONMENTAL HEALTH; SUSTAINABLE SITE DEVELOPMENT; WATER SAVINGS;  
10 ENERGY EFFICIENCY; MATERIALS SELECTION; AND INDOOR ENVIRONMENTAL  
11 QUALITY WITHIN 365 DAYS OF COMPLETION OF THE CONSTRUCTION OR  
12 RENOVATION.

13 (3) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX YEAR  
14 AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED BY THIS SECTION  
15 EXCEED THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR, THAT PORTION  
16 THAT EXCEEDS THE TAX LIABILITY FOR THE TAX YEAR SHALL NOT BE  
17 REFUNDED BUT MAY BE CARRIED FORWARD TO OFFSET TAX LIABILITY IN  
18 SUBSEQUENT TAX YEARS FOR 4 YEARS OR UNTIL USED UP, WHICHEVER OCCURS  
19 FIRST.

20 (4) AS USED IN THIS SECTION:

21 (A) "COMMERCIAL GREEN BUILDING" MEANS A GREEN BUILDING THAT IS  
22 NOT A RESIDENTIAL GREEN BUILDING OR INDUSTRIAL GREEN BUILDING BUT  
23 IS A PLACE WHERE A BUSINESS IS LOCATED AND IS FREQUENTED BY THE  
24 PUBLIC.

25 (B) "GREEN BUILDING" MEANS A RESOURCE-EFFICIENT,  
26 ENVIRONMENTALLY SENSITIVE STRUCTURE THAT IS DESIGNED TO SAVE MONEY,  
27 REDUCE WASTE, WATER, AND ENERGY USAGE, INCREASE WORKER

1 PRODUCTIVITY, AND CREATE HEALTHIER ENVIRONMENTS FOR PEOPLE TO LIVE  
2 AND WORK IN.

3 (C) "INDUSTRIAL GREEN BUILDING" MEANS ANY GREEN BUILDING THAT  
4 IS SUITABLE FOR, AND INTENDED FOR OR INCIDENTAL TO, USE AS A  
5 FACTORY, MILL, SHOP, PROCESSING PLANT, ASSEMBLY PLANT, FABRICATING  
6 PLANT, WAREHOUSE, RESEARCH AND DEVELOPMENT FACILITY, AN  
7 ENGINEERING, ARCHITECTURAL, OR DESIGN FACILITY, OR A TOURIST AND  
8 RESORT FACILITY.

9 (D) "LEED CERTIFICATION" MEANS THE CERTIFICATION AWARDED BY  
10 THE USGBC BASED ON THE MOST CURRENT LEADERSHIP IN ENERGY AND  
11 ENVIRONMENTAL DESIGN GREEN BUILDING RATING SYSTEM DEVELOPED AND  
12 ADOPTED BY THE USGBC FOR NEW BUILDINGS AND MAJOR RENOVATIONS.

13 (E) "RESIDENTIAL GREEN BUILDING" MEANS ANY GREEN BUILDING THAT  
14 IS A DETACHED 1- AND 2-FAMILY DWELLING, TOWNHOUSE, OR ACCESSORY  
15 STRUCTURE REGULATED BY THE MICHIGAN RESIDENTIAL CODE PROMULGATED  
16 PURSUANT TO THE STILLE-DEROSSETT-HALE SINGLE STATE CONSTRUCTION  
17 CODE ACT, 1972 PA 230, MCL 125.1501 TO 125.1531.

18 (F) "USGBC" MEANS THE UNITED STATES GREEN BUILDING COUNCIL,  
19 WHICH MEASURES AND EVALUATES THE ENERGY AND ENVIRONMENTAL  
20 PERFORMANCE OF A BUILDING ACCORDING TO ITS OWN LEADERSHIP IN ENERGY  
21 AND ENVIRONMENTAL DESIGN (LEED) RATING SYSTEM.

22 SEC. 462. (1) FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,  
23 2008, A TAXPAYER THAT IS INCLUDED IN MAJOR GROUPS 15, 16, OR 17  
24 UNDER THE STANDARD INDUSTRIAL CLASSIFICATION CODE AS COMPILED BY  
25 THE UNITED STATES DEPARTMENT OF LABOR MAY CLAIM A CREDIT AGAINST  
26 THE TAX IMPOSED BY THIS ACT EQUAL TO THE SUM OF 50% OF THE  
27 QUALIFIED EXPENSES DEFINED IN SUBSECTION (3) (B) (i) AND (ii) AND 100%

1 OF THE QUALIFIED EXPENSES DEFINED IN SUBSECTION (3) (B) (iii) PAID BY  
2 THE TAXPAYER DURING THE TAX YEAR OR \$2,000.00 FOR EACH EMPLOYEE  
3 THAT BECOMES A LEED ACCREDITED PROFESSIONAL DURING THE TAX YEAR,  
4 WHICHEVER IS LESS.

5 (2) IF THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS THE TAX  
6 LIABILITY OF THE TAXPAYER UNDER THIS ACT FOR THE TAX YEAR, THAT  
7 PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY SHALL BE  
8 REFUNDED.

9 (3) AS USED IN THIS SECTION:

10 (A) "LEED CERTIFICATION" MEANS THE CERTIFICATION AWARDED BY  
11 THE USGBC BASED ON THE MOST CURRENT LEADERSHIP IN ENERGY AND  
12 ENVIRONMENTAL DESIGN GREEN BUILDING RATING SYSTEM DEVELOPED AND  
13 ADOPTED BY THE USGBC FOR NEW BUILDINGS AND MAJOR RENOVATIONS.

14 (B) "QUALIFIED EXPENSES" MEANS ALL OF THE FOLLOWING EXPENSES  
15 PAID BY THE TAXPAYER DURING THE TAX YEAR FOR TRAINING AND LEED  
16 ACCREDITATION OF ITS EMPLOYEES:

17 (i) SALARY AND WAGES ATTRIBUTABLE TO THOSE EMPLOYEES SEEKING  
18 LEED PROFESSIONAL ACCREDITATION.

19 (ii) FRINGE BENEFITS AND OTHER PAYROLL EXPENSES ATTRIBUTABLE TO  
20 THOSE EMPLOYEES SEEKING LEED PROFESSIONAL ACCREDITATION.

21 (iii) COSTS OF CLASSROOM INSTRUCTION, TRAINING, AND OTHER  
22 RELATED EXPENSES IDENTIFIED AS COSTS FOR WHICH THE TAXPAYER IS  
23 RESPONSIBLE UNDER AN AGREEMENT TO ASSIST THE EMPLOYEE IN OBTAINING  
24 LEED PROFESSIONAL ACCREDITATION.

25 (C) "USGBC" MEANS THE UNITED STATES GREEN BUILDING COUNCIL,  
26 WHICH MEASURES AND EVALUATES THE ENERGY AND ENVIRONMENTAL  
27 PERFORMANCE OF A BUILDING ACCORDING TO ITS OWN LEADERSHIP IN ENERGY

1 AND ENVIRONMENTAL DESIGN (LEED) RATING SYSTEM.

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# Job Targeting

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1. Missouri Fairness in Public Construction Act of 2007
2. Amend State Prevailing Wage Laws to Prohibit Job Targeting
3. Idaho S.B.1007 of 2011



FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 339

94TH GENERAL ASSEMBLY

2007

1248S.06T

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## AN ACT

To repeal section 290.250, RSMo, and to enact in lieu thereof eight new sections relating to public contracts, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 290.250, RSMo, is repealed and eight new sections  
2 enacted in lieu thereof, to be known as sections 34.203, 34.206, 34.209, 34.212,  
3 34.216, 290.095, 290.250, and 1, to read as follows:

**34.203. The provisions of sections 34.203 to 34.216 shall be known  
2 and may be cited as the "Fairness in Public Construction Act".**

**34.206. The purpose of sections 34.203 to 34.216 is to fulfill the  
2 state's proprietary objectives in maintaining and promoting the  
3 economical, nondiscriminatory, and efficient expenditures of public  
4 funds in connection with publicly funded or assisted construction  
5 projects. Nothing in sections 34.203 to 34.216 shall prohibit employers  
6 or other parties covered by the National Labor Relations Act from  
7 entering into agreements or engaging in any other activity arguably  
8 protected by law, nor shall any aspect of sections 34.203 to 34.216 be  
9 interpreted in such a way as to interfere with the labor relations of  
10 parties covered by the National Labor Relations Act.**

**34.209. The state, any agency of the state, or any instrumentality  
2 thereof, when engaged in procuring or letting contracts for  
3 construction of a project that is funded by greater than fifty percent of  
4 state funds, shall ensure that bid specification, project agreements, and  
5 other controlling documents entered into, required, or subject to  
6 approval by the state, agency, or instrumentality do not:**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

7           **(1) Require or prohibit bidders, offerors, contractors, or**  
8 **subcontractors to enter into or adhere to agreements with one or more**  
9 **labor organizations on the same or related projects; or**

10           **(2) Discriminate against bidders, offerors, contractors, or**  
11 **subcontractors for entering or refusing to enter or to remain signatory**  
12 **or otherwise adhere to agreements with one or more labor**  
13 **organizations on the same or related construction projects.**

**34.212. 1. The state, any agency of the state, or any**  
2 **instrumentality thereof shall not issue grants or enter into cooperative**  
3 **agreements for construction projects, a condition of which requires**  
4 **that bid specifications, project agreements, or other controlling**  
5 **documents pertaining to the grant or cooperative agreement contain**  
6 **any of the elements specified in section 34.209.**

7           **2. The state, any agency of the state, or any instrumentality**  
8 **thereof shall exercise such authority as may be required to preclude a**  
9 **grant recipient or party to a cooperative agreement from imposing any**  
10 **of the elements specified in section 34.209 in connection with any grant**  
11 **or cooperative agreement awarded or entered into. Nothing in sections**  
12 **34.203 to 34.216 shall prohibit contractors or subcontractors from**  
13 **voluntarily entering into agreements described in section 34.209.**

**34.216. 1. For purposes of this section, the term "project labor**  
2 **agreement" shall be defined as a multi-employer, multi-union pre-hire**  
3 **agreement designed to systemize labor relations at a construction site**  
4 **that is required by the state or a political subdivision of the state as a**  
5 **condition of a bid specification for a construction project, thereby**  
6 **insuring that all contractors and subcontractors on a project comply**  
7 **with the terms of a union-only agreement.**

8           **2. The state or a political subdivision of the state may enter into**  
9 **a union-only project labor agreement for the procurement of**  
10 **construction services, except as provided in section 34.209, on a project-**  
11 **by-project basis only if the project is funded fifty percent or less with**  
12 **state funds and only on the condition that:**

13           **(1) The state or political subdivision must analyze the impact of**  
14 **a union-only project labor agreement and consider:**

15           **(a) Whether the union-only project labor agreement advances the**  
16 **interests of the public entity and its citizens;**

17           **(b) Whether the union-only project labor agreement is**  
18 **appropriate considering the complexity, size, cost impact, and need for**

19 efficiency on the project;

20 (c) Whether the union-only project labor agreement impacts the  
21 availability of a qualified work force; and

22 (d) Whether the scope of the union-only project labor agreement  
23 has a business justification for the project as bid;

24 (2) The state or political subdivision shall publish the findings  
25 of subdivision (1) of this subsection in a document titled "Intent to  
26 Enter Into a Union Project Labor Agreement". The document shall  
27 establish a rational basis upon which the state or political subdivision  
28 bases its intent to require a union-only project labor agreement for the  
29 project;

30 (3) No fewer than fourteen days but not more than thirty days  
31 following publication of the notice of a public hearing, the state or  
32 political subdivision shall conduct a public hearing on whether to  
33 proceed with its intent to require a union-only project labor agreement;

34 (4) Within thirty days of the public hearing set forth in  
35 subdivision (3) of this subsection, the state or political subdivision shall  
36 publish its determination on whether or not to require a union-only  
37 project labor agreement.

38 3. (1) Any interested party may, within thirty days of the  
39 determination of the state or political subdivision as set forth in  
40 subdivision (4) of subsection 2 of this section, appeal to the labor and  
41 industrial relations commission for a determination as to whether the  
42 state or political subdivision complied with subsection 2 of this section  
43 for a union-only project labor agreement as defined in subsection 1 of  
44 this section.

45 (2) The labor and industrial relations commission shall consider  
46 the appeal in subdivision (1) of this section under a rational basis  
47 standard of review.

48 (3) The labor and industrial relations commission shall hold a  
49 hearing on the appeal within sixty days of the filing of the appeal. The  
50 commission shall issue its decision within ninety days of the filing date  
51 of the appeal.

52 (4) Any aggrieved party from the labor and industrial relations  
53 commission decision set forth in subdivision (3) of this subsection may  
54 file an appeal with the circuit court of Cole County within thirty days  
55 of the commission's decision.

290.095. 1. No contractor or subcontractor may directly or

2 indirectly receive a wage subsidy, bid supplement, or rebate for  
3 employment on a public works project if such wage subsidy, bid  
4 supplement, or rebate has the effect of reducing the wage rate paid by  
5 the employer on a given occupational title below the prevailing wage  
6 rate as provided in section 290.262.

7 2. In the event a wage subsidy, bid supplement, or rebate is  
8 lawfully provided or received under subsections 1 or 2 of this section,  
9 the entity receiving such subsidy, supplement, or rebate shall report  
10 the date and amount of such subsidy, supplement, or rebate to the  
11 public body within thirty days of receipt of payment. This disclosure  
12 report shall be a matter of public record under chapter 610, RSMo.

13 3. Any employer in violation of this section shall owe to the  
14 public body double the dollar amount per hour that the wage subsidy,  
15 bid supplement, or rebate has reduced the wage rate paid by the  
16 employer below the prevailing wage rate as provided in section 290.262  
17 for each hour that work was performed. It shall be the duty of the  
18 department to calculate the dollar amount owed to the public body  
19 under this section.

290.250. 1. Every public body authorized to contract for or construct  
2 public works, before advertising for bids or undertaking such construction shall  
3 request the department to determine the prevailing rates of wages for workmen  
4 for the class or type of work called for by the public works, in the locality where  
5 the work is to be performed. The department shall determine the prevailing  
6 hourly rate of wages in the locality in which the work is to be performed for each  
7 type of workman required to execute the contemplated contract and such  
8 determination or schedule of the prevailing hourly rate of wages shall be attached  
9 to and made a part of the specifications for the work. The public body shall then  
10 specify in the resolution or ordinance and in the call for bids for the contract,  
11 what is the prevailing hourly rate of wages in the locality for each type of  
12 workman needed to execute the contract and also the general prevailing rate for  
13 legal holiday and overtime work. It shall be mandatory upon the contractor to  
14 whom the contract is awarded and upon any subcontractor under him, to pay not  
15 less than the specified rates to all workmen employed by them in the execution  
16 of the contract. The public body awarding the contract shall cause to be inserted  
17 in the contract a stipulation to the effect that not less than the prevailing hourly  
18 rate of wages shall be paid to all workmen performing work under the contract.  
19 [It shall also require in all contractor's bonds that the contractor include such  
20 provisions as will guarantee the faithful performance of the prevailing hourly

21 wage clause as provided by contract.] The [contractor] **employer** shall forfeit as  
22 a penalty to the state, county, city and county, city, town, district or other  
23 political subdivision on whose behalf the contract is made or awarded [ten] **one**  
24 **hundred** dollars for each workman employed, for each calendar day, or portion  
25 thereof, such workman is paid less than the said stipulated rates for any work  
26 done under said contract, by him or by any subcontractor under him, and the said  
27 public body awarding the contract shall cause to be inserted in the contract a  
28 stipulation to this effect. It shall be the duty of such public body awarding the  
29 contract, and its agents and officers, to take cognizance of all complaints of all  
30 violations of the provisions of sections 290.210 to 290.340 committed in the course  
31 of the execution of the contract, and, when making payments to the contractor  
32 becoming due under said contract, to withhold and retain therefrom all sums and  
33 amounts due and owing as a result of any violation of sections 290.210 to 290.340.  
34 It shall be lawful for any contractor to withhold from any subcontractor under  
35 him sufficient sums to cover any penalties withheld from him by the awarding  
36 body on account of said subcontractor's failure to comply with the terms of  
37 sections 290.210 to 290.340, and if payment has already been made to him, the  
38 contractor may recover from him the amount of the penalty in a suit at law.

39 **2. In determining whether a violation of sections 290.210 to**  
40 **290.340 has occurred, and whether the penalty under subsection 1 of**  
41 **this section shall be imposed, it shall be the duty of the department to**  
42 **investigate any claim of violation. Upon completing such investigation,**  
43 **the department shall notify the employer of its findings. If the**  
44 **department concludes that a violation of sections 290.210 to 290.340 has**  
45 **occurred and a penalty may be due, the department shall notify the**  
46 **employer of such finding by providing a notice of penalty to the**  
47 **employer. Such penalty shall not be due until forty-five days after the**  
48 **date of the notice of the penalty.**

49 **3. The employer shall have the right to dispute such notice of**  
50 **penalty in writing to the department within forty-five days of the date**  
51 **of the notice. Upon receipt of this written notice of dispute, the**  
52 **department shall notify the employer of the right to resolve such**  
53 **dispute through arbitration. The state and the employer shall submit**  
54 **to an arbitration process to be established by the department by rule,**  
55 **and in conformance with the guidelines and rules of the American**  
56 **Arbitration Association or other arbitration process mutually agreed**  
57 **upon by the employer and the state. If at any time prior to the**  
58 **department pursuing an enforcement action to enforce the monetary**

59 penalty provisions of subsection 1 of this section against the employer,  
60 the employer pays the backwages as determined by either the  
61 department or the arbitrator, the department shall be precluded from  
62 initiating any enforcement action to impose the monetary penalty  
63 provisions of subsection 1 of this section.

64 4. If the employer fails to pay all wages due as determined by the  
65 arbitrator within forty-five days following the conclusion of the  
66 arbitration process, or if the employer fails to exercise the right to seek  
67 arbitration, the department may then pursue an enforcement action to  
68 enforce the monetary penalty provisions of subsection 1 of this section  
69 against the employer. If the court orders payment of the penalties as  
70 prescribed in subsection 1 of this section, the department shall be  
71 entitled to recover its actual cost of enforcement from such penalty  
72 amount.

73 5. Nothing in this section shall be interpreted as precluding an  
74 action for enforcement filed by an aggrieved employee as otherwise  
75 provided in law.

Section 1. Notwithstanding the provisions of section 1.140, RSMo,  
2 the provisions of sections 290.095 and 290.250, RSMo, and sections  
3 34.203 to 34.216, RSMo, of this act shall not be severable. In the event  
4 a court of competent jurisdiction rules that any part of this act is  
5 unenforceable, the entire act shall be rendered null and void.

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President of the Senate

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Speaker of the House of Representatives

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Governor

## **JOB TARGETING MODEL LEGISLATION FOR AMENDING STATE PREVAILING WAGE LAWS**

### **Summary:**

This legislation would prohibit the collection of job targeting or market recovery fees from workers on state-funded projects.

### **Section \_\_\_:**

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the (state), to give up any part of the compensation to which he is entitled under his contract of employment, including any amounts collected by or on behalf of labor organizations, whether or not labeled as dues or assessments, where the purpose of such collections is to fund in whole or in part any payments to one or more employers, shall be fined under this title not less than \$\_\_\_\_\_, or imprisoned not more than five years, or both.

### **Section \_\_\_:**

"The Secretary of (agency of jurisdiction) shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. No amounts of said wages shall be collected by or on behalf of labor organizations, whether or not labeled as dues or assessments, where the purpose of such collections is to fund in whole or in part any payments to one or more employers.

### **Any appropriations bill could include a "stand alone" provision to the same effect as follows:**

No amounts of wages paid by contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States shall be collected by or on behalf of labor organizations, whether or not labeled as dues or assessments, where the purpose of such collections is to fund in whole or in part any payments to one or more employers.

IN THE SENATE

SENATE BILL NO. 1007

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO LABOR ORGANIZATIONS; AMENDING CHAPTER 20, TITLE 44, IDAHO CODE,  
2 BY THE ADDITION OF A NEW SECTION 44-2012, IDAHO CODE, TO PROVIDE A SHORT  
3 TITLE, TO PROVIDE FOR INTENT, TO PROHIBIT CERTAIN ACTIVITIES RELATING  
4 TO LABOR ORGANIZATIONS, TO PROVIDE FOR VIOLATIONS AND PENALTIES AND  
5 TO PROVIDE FOR CHALLENGES BY INTERESTED PARTIES; AND AMENDING SECTION  
6 44-2012, IDAHO CODE, TO REDESIGNATE THE SECTION.  
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Chapter 20, Title 44, Idaho Code, be, and the same is  
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11 ignated as Section 44-2012, Idaho Code, and to read as follows:

12 44-2012. PROHIBITED ACTIVITY. (1) The provisions of this act shall be  
13 known as the "Fairness in Contracting Act." The intent of this act is to pro-  
14 mote fairness in bidding and contracting.

15 (2) No contractor or subcontractor may directly or indirectly receive a  
16 wage subsidy, bid supplement or rebate on behalf of its employees, or provide  
17 the same to its employees, the source of which is wages, dues or assessments  
18 collected by or on behalf of any labor organization(s), whether or not la-  
19 beled as dues or assessments.

20 (3) No labor organization may directly or indirectly pay a wage subsidy  
21 or wage rebate to its members in order to directly or indirectly subsidize a  
22 contractor or subcontractor, the source of which is wages, dues or assess-  
23 ments collected by or on behalf of its members, whether or not labeled as dues  
24 or assessments.

25 (4) It is illegal to use any fund financed by wages collected by or on  
26 behalf of any labor organization(s), whether or not labeled as dues or as-  
27 sements, to subsidize a contractor or subcontractor doing business in the  
28 state of Idaho.

29 (5) Any contractor, subcontractor or labor organization that violates  
30 the provisions of this section shall be guilty of a misdemeanor and fined  
31 an amount not to exceed ten thousand dollars (\$10,000) for a first offense,  
32 twenty-five thousand dollars (\$25,000) for a second offense, and one hundred  
33 thousand dollars (\$100,000) for each and every additional offense.

34 (6) Any interested party, which shall include a bidder, offeror, con-  
35 tractor, subcontractor or taxpayer, shall have standing to challenge any bid  
36 award, specification, project agreement, controlling document, grant or co-  
37 operative agreement in violation of the provisions of this section, and such  
38 interested party shall be awarded costs and attorney's fees in the event that  
39 such challenge prevails.

40 SECTION 2. That Section 44-2012, Idaho Code, be, and the same is hereby  
41 amended to read as follows:



1           44-20123. SEVERABILITY. The provisions of this chapter are hereby de-  
2   clared to be severable, and if any provision is declared void, invalid, or  
3   unenforceable in whole or in part, such declaration shall not affect the re-  
4   maining provisions of this chapter.

# Neutrality Agreements

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1. The Labor Peace Agreement Preemption Act

# THE LABOR PEACE AGREEMENT PREEMPTION ACT

## Summary

Local governments are under constant pressure from labor unions to require employers to adopt "labor peace" agreements as a condition for granting business licenses, zoning variances, waivers, and the like. These agreements force employers to waive their ability to express views in opposition to unionization, to forfeit their employees' rights to vote in a secret ballot election conducted by the National Labor Relations Board (NLRB), and to forfeit procedural protections of NLRB decisions regarding appropriate bargaining units and other related issues. This legislation declares this a matter of statewide concern and prohibits local governments from establishing such ordinances.

## Section 1. The Labor-Peace Agreement Preemption Act

### Section 2. {Statement of Purpose}

The purpose of this legislation is to ensure that employers cannot be compelled by local governments to forfeit rights guaranteed them under the Labor Management Relations Act, the National Labor Relations Act and the Railway Labor Act (the "Acts") in order to obtain zoning variances, waivers, and business licenses.

### Section 3. {Definitions}

For the purposes of this Section:

(1) "Employer" means a person, association, legal, or commercial entity receiving services from an employee and, in return, giving compensation of any kind to such employee.

(2) "Federal labor laws" means the National Labor Relations Act, the Labor Management Relations Act and the Railway Labor Act, hereinafter collectively referred to as "the Acts", Presidential Executive Orders issued relating to labor/management or employee/employer issues and the United States Constitution as amended and as construed by the federal courts. The rights protected under the federal labor laws include but are not limited to:

(a) An employer's or employee's right to express views on unionization and any other labor relations issues to the full extent allowed by the First Amendment of the United States Constitution and Section 8(c) of the National Labor Relations Act.

(b) An employer's right to demand, and an employee's right to participate in, a secret ballot election under the Acts, including without limitation, the full procedural protections afforded by the Acts for defining the unit, conducting the election campaign and election, and making any challenges or objections thereto.

(c) An employer's right not to release employee information and an employee's right to maintain the confidentiality of his or her information to the maximum extent allowed by the Acts.

(d) An employer's right to restrict access to its property or business to the maximum extent allowed by the Acts.

(e) An employer's right to negotiate over all mandatory and permissive issues of collective bargaining to the maximum extent allowed by the Acts.

(3) "Governmental body" means any local government or its subdivision, including but not limited to cities, parishes, municipalities, and any public body, agency, board, commission or other governmental, quasi governmental, or quasi public body or any body that acts or purports to act in a commercial, business, economic development, or like capacity of local government or its subdivision.

#### **Section 4. {Legislation}**

A. Any agreement, contract, understanding or practice, written or oral, implied or expressed, between any employer and any labor organization in violation of the provisions of this Part is hereby declared to be unlawful, null and void, and of no legal effect.

B. No governmental body may pass any law, ordinance, or regulation, or impose any contractual, zoning, permitting, licensing, or other condition on, with employers' or employees' full freedom to act under the federal labor laws. Such prohibited actions shall include but not be limited to:

(1) Conditioning any purchase, sale, lease, loan or other business or commercial transaction with any employer on waiver or limitation of any right the employer may have under the federal labor laws.

(2) Conditioning any regulatory, zoning, permitting, licensing, or any other governmental requirement, or any tax or free abatement, with any employer on waiver or limitation of any right the employer may have under the federal labor laws.

(3) Enacting any ordinance, regulation, or other action that waives or limits any right the employer may have under the federal labor laws.

(4) Conditioning or requiring any employer to not deal with another employer on waiver or limitation of any right either employer may have under the federal labor laws.

C. An employer or employee is entitled to and shall receive injunctive relief necessary to prevent any violations of this Section.

#### **Section 5. {Limitations}**

Nothing in this legislation should be construed as limiting the regulatory, legal or preemptive operation of the National Labor Relations Act, the Labor management Relations Act, or the Railway Labor Act.

**Section 6.** {Effective Date}

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# Paycheck Protection

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1. Employee Rights Reform Act
2. Labor Organization Deductions Act
3. Political Funding Reform Act

# LABOR ORGANIZATIONS DEDUCTIONS ACT

## Summary

The Labor Organizations Deductions Act requires labor organizations to establish separate funds for political purposes, establishes registration and disclosure requirements for each political fund, establishes certain criminal provisions governing a labor organization's political activities, and prohibits employees from authorizing automatic payroll deductions for contributions to a labor organization's political committee or fund except through an explicit, signed statement.

## Model Legislation

**Section 1. {Short Title.}** This Act shall be known as the Labor Organizations Deductions Act.

**Section 2. {Legislative Declarations.}** This legislature finds and declares that:

(A) Some unions spend nearly 90 percent of total dues income on political activities.

(B) The Supreme Court's *Communications Workers of America v. Beck*, 487 U.S. 735, 108 S. Ct. 2641 (1988) decision held that unions cannot use fees collected from nonunion employees, if the employee objects, on activities other than collective bargaining.

(C) However, few union members are aware of this right, and formal procedures for receiving refunds are not in place.

(D) As a result, unions should be prevented from collecting funds for political purposes unless members expressly give employers permission to deduct such fees from their wages.

## Section 3. {Definitions.}

(A) "Fund" means the separate segregated fund established by a labor organization for political purposes according to the procedures and requirements of this part.

(B) (1) "Labor organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) "Labor organization" includes employee associations and unions for public employees, including both the National Education Association and American Federation of Teachers, and each local education association or affiliate of a national education association.

**Section 4. {Limits on labor organization contributions.}**

(A) Except as provided in subsection (B), a labor organization may not expend money for lobbying, electoral, and political activities not bearing upon the ratification or implementation of a collective bargaining agreement. This includes, but is not limited to, independent expenditures or contributions to any candidate, political party, voter registration campaign or any other political cause.

(B) (1) A labor organization may only expend money for lobbying, electoral, and political activities not bearing upon the ratification or implementation of a collective bargaining agreement if the labor organization establishes a separate segregated fund to be used for political purposes.

(2) The labor organization shall ensure that:

(a) contributions to the fund are solicited independently from any other solicitations by the labor organization;

(b) dues or other fees for membership in the labor organization are not used for political purposes, transferred to the segregated fund, or intermingled in any way with fund monies; and

(c) the cost of administering the fund is paid from fund contributions and not from dues or other fees for membership in the labor organization.

**Section 5. {Criminal acts -- penalties.}**

(A) (1) It is unlawful for a labor organization to make a contribution by using money or anything of value:

(a) secured by physical force, job discrimination, membership discrimination, or financial reprisals, or threat of force, job discrimination, membership discrimination, or financial reprisals; or

(b) from dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment;  
or



(c) obtained in any commercial transaction.

(2) At the time the labor organization is soliciting money for the fund from an employee, it is unlawful for a labor organization to fail to:

(a) inform an employee of the fund's political purpose; and

(b) inform an employee of the employee's right to refuse to contribute without fear of reprisal.

(3) It is unlawful for a labor organization to solicit monies for the fund from any person other than its members and their immediate families.

(4) It is unlawful for a labor organization to pay a member for a contribution to the fund by providing a bonus, expense account, rebate of dues or other membership fees, or any other form of direct or indirect compensation.

(B) Any person violating this section is guilty of a misdemeanor.

#### **Section 6. {Registration -- Disclosure.}**

Each fund established by a labor organization under this part shall:

(A) register as a political action committee as required by law; and

(B) file the financial reports for political action committees required by law.

#### **Section 7. {Assignments to labor unions -- Effect}**

(A) Except as provided in subsection (D), an employee of any person, firm, school district, or private or municipal corporation within the State/Commonwealth of (insert state) may sign and deliver to his employer a written instrument directing the employer to:

(1) deduct a specified sum from his monthly wages; and

(2) pay the deduction to a labor organization or union or any other organization of employees as assignee.

(B) An employer who receives a written instrument assigning a specified sum from the employee's wages shall:

(1) keep the instrument on file;

(2) deduct the specified sum from the employee's salary; and

(3) pay the deducted amount to the organization or union designated by the employee.

(C) The employer shall continue to make and pay the deduction as directed by the employee until the employee revokes or modifies the deduction in writing.

(D)(1) Notwithstanding subsection (A), an employee may not direct an employer to deduct monies from his wages and pay them to:

(a) a registered political action committee;

(b) a fund defined by section 3; or

(c) any intermediary that contributes to a regional political committee or fund as defined by section 3.

(2) Nothing in this section prohibits an individual from making personal contributions to a registered political action committee or to a fund as defined by section 1. Section 8. {Severability Clause.}

**Section 9. {Repealer Clause.}**

**Section 10. {Effective Date.}**

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# POLITICAL FUNDING REFORM ACT

## Summary

This model bill prohibits the payroll deduction of monies used for political purposes. It also establishes penalties for a violation of this section.

## Model Legislation

### Section 1. {Short Title}

This Act shall be known as the Political Funding Reform Act.

### Section 2. {Legislative Declaration}

This legislature finds and declares:

A. That it is in the interest of this State's citizens to ensure that government resources, including public employee time, public property or equipment, and supplies be used exclusively for activities that are essential to carrying out the necessary functions of government;

B. That necessary governmental functions do not include using government resources to confer a political benefit or advantage on any private individual or organization, including, but not limited to, public employee unions and their members;

C. That using government resources in any way to promote, support, or enhance the political activities of any private individual or organization, above that of other citizens or private organizations, is not a necessary or desirable function of government; and

D. Therefore, it is the public policy of this State to prohibit the use of any government resources to collect or assist in the collection of political funds or to promote or assist in the political activity on behalf of any private individual or organization.

### Section 3. {Definitions}

A. For the purposes of this Act, "public employer" means any state or local government, government agency, government instrumentality, special district, joint powers authority, school board or special purpose organization that employs one or more persons in any capacity.

B. For purposes of this act, all money shall be deemed to be "political funds" if any portion thereof is expended upon, or commingled with funds used for political activity, including, but not limited to:

- i. independent expenditures for communications advocating the election or defeat of clearly identified candidates for public office;
- ii. participating in, or intervening in (including the publication or distribution of

statements), any political campaign on behalf of (or in opposition to) any candidate for public office, or any political party or committee;

iii. supporting or opposing any pending or proposed ballot measure, including but not limited to efforts to collect signatures to place a measure on the ballot, and any efforts, including but not limited to direct mail and media campaigns, to solicit signatures for initiative petitions or to discourage voters from signing initiative petitions;

iv. contributions to, and/or the operations or expenses of, a Political Action Committee; or

v. communications or other activities of organizations where a substantial part of their activity which involves carrying on propaganda, or otherwise attempting to influence voters or legislation or ballot issues.

C. The terms used in this subsection shall have the same meaning as under Section 501(c)(3) of Title 26, United States Code, and regulations promulgated by the Secretary of the Treasury thereunder.

D. This section shall not apply to activities that are necessary to fulfill statutory obligations to inform the electorate and/or the public about the candidates or issues to be voted upon in a forthcoming election.

#### **Section 4. {Prohibitions}**

A. A public employer is prohibited from collecting or deducting or transmitting political funds within the meaning of this section.

#### **Section 5. {Penalties}**

A. For a period of two years, no public employer shall collect, deduct, or assist in the collection or deduction of funds for any purpose for a person or organization if, in violation of this article, the person or organization has:

i. used as political funds, as defined in section 3(A) or (B), any of the funds collected or deducted for it by any public employer, or

ii. commingled funds collected or deducted by any public employer with political funds.

iii. whenever funds for multiple levels of an organization (local, regional, state, and/or national) are deducted, collected, and/or transmitted to a single recipient for all affiliates that receive funds from the recipient organization.

B. Any employee whose wages have been deducted in violation of the provisions of this article may bring suit in a court of competent jurisdiction to obtain injunctive relief against the violator or person or public employer threatening violation. If the state enjoys sovereign immunity, nothing in this section shall be considered or otherwise construed to waive, or in any way abrogate such immunity.

An employee whose wages have been deducted in violation of this article may bring suit in a court of competent jurisdiction to recover damages equal to:

i. from a public employer violating the provisions of this article, or failing to take appropriate action when informed of the violation, any amounts actually deducted

from the public employee's wages; and

ii. from any individual or organization acting separately or in league with a public employer to violate the provisions of this article, twice any amounts actually received by said individual or organization from the injured public employee

iii. The remedies in i. and ii. above shall not preempt any other causes of action and damage awards which may be available to public employees injured as a result of violations of this act.

C. In any judgement for the plaintiff intended to enforce of this article the court may award reasonable attorneys' fees as part of the court costs.

**Section 6. {Void Agreements}**

Any written or oral agreement, understanding, or practice between a public employer and any individual or organization that is in violation of the provisions of this article shall be deemed void on the effective date of this legislation, or ninety (90) days after its passage, whichever is later.

**Section 7. {Severability Clause}**

If any phrase, clause, or part of this article is found to be unconstitutional by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

**Section 8. {Effective Date}**

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Approved 01/11/99 by ALEC Board

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# Public-Private Partnerships

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1. Texas Public-Private Partnerships Authorizing Statute

1 AN ACT

2 relating to the creation of public and private facilities and  
3 infrastructure.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle F, Title 10, Government Code, is  
6 amended by adding Chapters 2267 and 2268 to read as follows:

7 CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 2267.001. DEFINITIONS. In this chapter:

10 (1) "Affected jurisdiction" means any county or  
11 municipality in which all or a portion of a qualifying project is  
12 located.

13 (2) "Comprehensive agreement" means the comprehensive  
14 agreement authorized by Section 2267.058 between the contracting  
15 person and the responsible governmental entity.

16 (3) "Contracting person" means a person who enters  
17 into a comprehensive or interim agreement with a responsible  
18 governmental entity under this chapter.

19 (4) "Develop" means to plan, design, develop, finance,  
20 lease, acquire, install, construct, or expand a qualifying project.

21 (5) "Governmental entity" means:

22 (A) a board, commission, department, or other  
23 agency of this state, including an institution of higher education  
24 as defined by Section 61.003, Education Code, that elects to

1 operate under this chapter through the adoption of a resolution by  
2 the institution's board of regents; and

3 (B) a political subdivision of this state that  
4 elects to operate under this chapter by the adoption of a resolution  
5 by the governing body of the political subdivision.

6 (6) "Interim agreement" means an agreement authorized  
7 by Section 2267.059 between a contracting person and a responsible  
8 governmental entity that proposes the development or operation of  
9 the qualifying project.

10 (7) "Lease payment" means any form of payment,  
11 including a land lease, by a governmental entity to the contracting  
12 person for the use of a qualifying project.

13 (8) "Material default" means any default by a  
14 contracting person in the performance of duties imposed under  
15 Section 2267.057(f) that jeopardizes adequate service to the public  
16 from a qualifying project.

17 (9) "Operate" means to finance, maintain, improve,  
18 equip, modify, repair, or operate a qualifying project.

19 (10) "Qualifying project" means:

20 (A) any ferry, mass transit facility, vehicle  
21 parking facility, port facility, power generation facility, fuel  
22 supply facility, oil or gas pipeline, water supply facility, public  
23 work, waste treatment facility, hospital, school, medical or  
24 nursing care facility, recreational facility, public building, or  
25 other similar facility currently available or to be made available  
26 to a governmental entity for public use, including any structure,  
27 parking area, appurtenance, and other property required to operate



1 the structure or facility and any technology infrastructure  
2 installed in the structure or facility that is essential to the  
3 project's purpose; or

4 (B) any improvements necessary or desirable to  
5 unimproved real estate owned by a governmental entity.

6 (11) "Responsible governmental entity" means a  
7 governmental entity that has the power to develop or operate an  
8 applicable qualifying project.

9 (12) "Revenue" means all revenue, income, earnings,  
10 user fees, lease payments, or other service payments that support  
11 the development or operation of a qualifying project, including  
12 money received as a grant or otherwise from the federal government,  
13 a governmental entity, or any agency or instrumentality of the  
14 federal government or governmental entity in aid of the project.

15 (13) "Service contract" means a contract between a  
16 governmental entity and a contracting person under Section  
17 2267.054.

18 (14) "Service payment" means a payment to a  
19 contracting person of a qualifying project under a service  
20 contract.

21 (15) "User fee" means a rate, fee, or other charge  
22 imposed by a contracting person for the use of all or part of a  
23 qualifying project under a comprehensive agreement.

24 Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION  
25 OF CHAPTER. (a) The legislature finds that:

26 (1) there is a public need for timely acquisition,  
27 design, construction, improvement, renovation, expansion,

1 equipping, maintenance, operation, implementation, and  
2 installation of education facilities, technology and other public  
3 infrastructure, and government facilities in this state that serve  
4 a public need and purpose;

5 (2) the public need may not be wholly satisfied by  
6 existing methods of procurement in which qualifying projects are  
7 acquired, designed, constructed, improved, renovated, expanded,  
8 equipped, maintained, operated, implemented, or installed;

9 (3) there are inadequate resources to develop new  
10 education facilities, technology and other public infrastructure,  
11 and government facilities for the benefit of the citizens of this  
12 state, and there is demonstrated evidence that partnerships between  
13 public entities and private entities or other persons can meet  
14 these needs by improving the schedule for delivery, lowering the  
15 cost, and providing other benefits to the public;

16 (4) financial incentives exist under state and federal  
17 tax provisions that encourage public entities to enter into  
18 partnerships with private entities or other persons to develop  
19 qualifying projects; and

20 (5) authorizing private entities or other persons to  
21 develop or operate one or more qualifying projects may serve the  
22 public safety, benefit, and welfare by making the projects  
23 available to the public in a more timely or less costly fashion.

24 (b) An action authorized under Section 2267.053 serves the  
25 public purpose of this chapter if the action facilitates the timely  
26 development or operation of a qualifying project.

27 (c) The purposes of this chapter include:

1           (1) encouraging investment in this state by private  
2 entities and other persons;

3           (2) facilitating bond financing or other similar  
4 financing mechanisms, private capital, and other funding sources  
5 that support the development or operation of qualifying projects in  
6 order to expand and accelerate financing for qualifying projects  
7 that improve and add to the convenience of the public; and

8           (3) providing governmental entities with the greatest  
9 possible flexibility in contracting with private entities or other  
10 persons to provide public services through qualifying projects  
11 subject to this chapter.

12           (d) This chapter shall be liberally construed in conformity  
13 with the purposes of this section.

14           (e) The procedures in this chapter are not exclusive. This  
15 chapter does not prohibit a responsible governmental entity from  
16 entering into an agreement for or procuring public and private  
17 facilities and infrastructure under other statutory authority.

18           Sec. 2267.003. APPLICABILITY. This chapter does not apply  
19 to:

20           (1) the financing, design, construction, maintenance,  
21 or operation of a highway in the state highway system;

22           (2) a transportation authority created under Chapter  
23 451, 452, 453, or 460, Transportation Code; or

24           (3) any telecommunications, cable television, video  
25 service, or broadband infrastructure other than technology  
26 installed as part of a qualifying project that is essential to the  
27 project.

1 Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This  
2 chapter does not alter the eminent domain laws of this state or  
3 grant the power of eminent domain to any person who is not expressly  
4 granted that power under other state law.

5 [Sections 2267.005-2267.050 reserved for expansion]

6 SUBCHAPTER B. QUALIFYING PROJECTS

7 Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL  
8 FOR QUALIFYING PROJECT. (a) A person may not develop or operate a  
9 qualifying project unless the person obtains the approval of and  
10 contracts with the responsible governmental entity under this  
11 chapter. The person may initiate the approval process by  
12 submitting a proposal requesting approval under Section  
13 2267.053(a), or the responsible governmental entity may request  
14 proposals or invite bids under Section 2267.053(b).

15 (b) A person submitting a proposal requesting approval of a  
16 qualifying project shall specifically and conceptually identify  
17 any facility, building, infrastructure, or improvement included in  
18 the proposal as a part of the qualifying project.

19 (c) On receipt of a proposal submitted by a person  
20 initiating the approval process under Section 2267.053(a), the  
21 responsible governmental entity shall determine whether to accept  
22 the proposal for consideration in accordance with Sections 2267.052  
23 and 2267.065 and the guidelines adopted under those sections. A  
24 responsible governmental entity that determines not to accept the  
25 proposal for consideration shall return the proposal, all fees, and  
26 the accompanying documentation to the person submitting the  
27 proposal.

1       (d) The responsible governmental entity may at any time  
2 reject a proposal initiated by a person under Section 2267.053(a).

3       Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE  
4 GOVERNMENTAL ENTITIES. (a) Before requesting or considering a  
5 proposal for a qualifying project, a responsible governmental  
6 entity must adopt and make publicly available guidelines that  
7 enable the governmental entity to comply with this chapter. The  
8 guidelines must be reasonable, encourage competition, and guide the  
9 selection of projects under the purview of the responsible  
10 governmental entity.

11       (b) The guidelines for a responsible governmental entity  
12 described by Section 2267.001(5)(A) must:

13               (1) require the responsible governmental entity to:

14                       (A) make a representative of the entity available  
15 to meet with persons who are considering submitting a proposal; and

16                       (B) provide notice of the representative's  
17 availability;

18               (2) provide reasonable criteria for choosing among  
19 competing proposals;

20               (3) contain suggested timelines for selecting  
21 proposals and negotiating an interim or comprehensive agreement;

22               (4) allow the responsible governmental entity to  
23 accelerate the selection, review, and documentation timelines for  
24 proposals involving a qualifying project considered a priority by  
25 the entity;

26               (5) include financial review and analysis procedures  
27 that at a minimum consist of:

- 1           (A) a cost-benefit analysis;  
2           (B) an assessment of opportunity cost;  
3           (C) consideration of the degree to which  
4 functionality and services similar to the functionality and  
5 services to be provided by the proposed project are already  
6 available in the private market; and  
7           (D) consideration of the results of all studies  
8 and analyses related to the proposed qualifying project;  
9           (6) allow the responsible governmental entity to  
10 consider the nonfinancial benefits of a proposed qualifying  
11 project;  
12           (7) include criteria for:  
13           (A) the qualifying project, including the scope,  
14 costs, and duration of the project and the involvement or impact of  
15 the project on multiple public entities;  
16           (B) the creation of and the responsibilities of  
17 an oversight committee, with members representing the responsible  
18 governmental entity, that acts as an advisory committee to review  
19 the terms of any proposed interim or comprehensive agreement; and  
20           (C) compliance with the requirements of Chapter  
21 2268;  
22           (8) require the responsible governmental entity to  
23 analyze the adequacy of the information to be released by the entity  
24 when seeking competing proposals and require that the entity  
25 provide more detailed information, if the entity determines  
26 necessary, to encourage competition, subject to Section  
27 2267.053(g);

1           (9) establish criteria, key decision points, and  
2 approvals required to ensure that the responsible governmental  
3 entity considers the extent of competition before selecting  
4 proposals and negotiating an interim or comprehensive agreement;  
5 and

6           (10) require the posting and publishing of public  
7 notice of a proposal requesting approval of a qualifying project,  
8 including:

9                   (A) specific information and documentation  
10 regarding the nature, timing, and scope of the qualifying project,  
11 as required under Section 2267.053(a);

12                   (B) a reasonable period of not less than 45 days,  
13 as determined by the responsible governmental entity, to encourage  
14 competition and partnerships with private entities and other  
15 persons in accordance with the goals of this chapter, during which  
16 the responsible governmental entity must accept submission of  
17 competing proposals for the qualifying project; and

18                   (C) a requirement for advertising the notice on  
19 the governmental entity's Internet website and on TexasOnline or  
20 the state's official Internet website.

21           (c) The guidelines of a responsible governmental entity  
22 described by Section 2267.001(5)(B):

23                   (1) may include the provisions required under  
24 Subsection (b); and

25                   (2) must include a requirement that the governmental  
26 entity engage the services of qualified professionals, including an  
27 architect, professional engineer, or certified public accountant,

1 not otherwise employed by the governmental entity, to provide  
2 independent analyses regarding the specifics, advantages,  
3 disadvantages, and long-term and short-term costs of any proposal  
4 requesting approval of a qualifying project unless the governing  
5 body of the governmental entity determines that the analysis of the  
6 proposal is to be performed by employees of the governmental  
7 entity.

8 Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY  
9 RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other  
10 person may submit a proposal requesting approval of a qualifying  
11 project by the responsible governmental entity. The proposal must  
12 be accompanied by the following, unless waived by the responsible  
13 governmental entity:

14 (1) a topographic map, with a 1:2,000 or other  
15 appropriate scale, indicating the location of the qualifying  
16 project;

17 (2) a description of the qualifying project,  
18 including:

19 (A) the conceptual design of any facility or a  
20 conceptual plan for the provision of services or technology  
21 infrastructure; and

22 (B) a schedule for the initiation of and  
23 completion of the qualifying project that includes the proposed  
24 major responsibilities and timeline for activities to be performed  
25 by the governmental entity and the person;

26 (3) a statement of the method the person proposes for  
27 securing necessary property interests required for the qualifying



1 project;

2 (4) information relating to any current plans for the  
3 development of facilities or technology infrastructure to be used  
4 by a governmental entity that are similar to the qualifying project  
5 being proposed by the person for each affected jurisdiction;

6 (5) a list of all permits and approvals required for  
7 the development and completion of the qualifying project from  
8 local, state, or federal agencies and a projected schedule for  
9 obtaining the permits and approvals;

10 (6) a list of any facilities that will be affected by  
11 the qualifying project and a statement of the person's plans to  
12 accommodate the affected facilities;

13 (7) a statement on the person's general plans for  
14 financing the qualifying project, including the sources of the  
15 person's funds and identification of any dedicated revenue source  
16 or proposed debt or equity investment for the person;

17 (8) the name and address of each individual who may be  
18 contacted for further information concerning the request;

19 (9) user fees, lease payments, and other service  
20 payments over the term of any applicable interim or comprehensive  
21 agreement and the methodology and circumstances for changes to the  
22 user fees, lease payments, and other service payments over time;  
23 and

24 (10) any additional material and information the  
25 responsible governmental entity reasonably requests.

26 (b) A responsible governmental entity may request proposals  
27 or invite bids from persons for the development or operation of a

1 qualifying project. A responsible governmental entity shall  
2 consider the total project cost as one factor in evaluating the  
3 proposals received, but is not required to select the proposal that  
4 offers the lowest total project cost. The responsible governmental  
5 entity may consider the following factors:

6 (1) the proposed cost of the qualifying project;

7 (2) the general reputation, industry experience, and  
8 financial capacity of the person submitting a proposal;

9 (3) the proposed design of the qualifying project;

10 (4) the eligibility of the project for accelerated  
11 selection, review, and documentation timelines under the  
12 responsible governmental entity's guidelines;

13 (5) comments from local citizens and affected  
14 jurisdictions;

15 (6) benefits to the public;

16 (7) the person's good faith effort to comply with the  
17 goals of a historically underutilized business plan;

18 (8) the person's plans to employ local contractors and  
19 residents;

20 (9) for a qualifying project that involves a  
21 continuing role beyond design and construction, the person's  
22 proposed rate of return and opportunities for revenue sharing; and

23 (10) other criteria that the responsible governmental  
24 entity considers appropriate.

25 (c) The responsible governmental entity may approve as a  
26 qualifying project the development or operation of a facility  
27 needed by the governmental entity, or the design or equipping of a

1 qualifying project, if the responsible governmental entity  
2 determines that the project serves the public purpose of this  
3 chapter. The responsible governmental entity may determine that  
4 the development or operation of the project as a qualifying project  
5 serves the public purpose if:

6 (1) there is a public need for or benefit derived from  
7 the project of the type the person proposes as a qualifying project;

8 (2) the estimated cost of the project is reasonable in  
9 relation to similar facilities; and

10 (3) the person's plans will result in the timely  
11 development or operation of the qualifying project.

12 (d) The responsible governmental entity may charge a  
13 reasonable fee to cover the costs of processing, reviewing, and  
14 evaluating the proposal, including reasonable legal fees and fees  
15 for financial, technical, and other necessary advisors or  
16 consultants.

17 (e) The approval of a responsible governmental entity  
18 described by Section 2267.001(5)(A) is subject to the private  
19 entity or other person entering into an interim or comprehensive  
20 agreement with the responsible governmental entity.

21 (f) On approval of the qualifying project, the responsible  
22 governmental entity shall establish a date by which activities  
23 related to the qualifying project must begin. The responsible  
24 governmental entity may extend the date.

25 (g) The responsible governmental entity shall take action  
26 appropriate under Section 552.153 to protect confidential and  
27 proprietary information provided by the contracting person under an

1 agreement.

2 (h) Before entering into the negotiation of an interim or  
3 comprehensive agreement, each responsible governmental entity  
4 described by Section 2267.001(5)(A) must submit copies of detailed  
5 proposals to the Partnership Advisory Commission in accordance with  
6 Chapter 2268.

7 (i) This chapter and an interim or comprehensive agreement  
8 entered into under this chapter do not enlarge, diminish, or affect  
9 any authority a responsible governmental entity has to take action  
10 that would impact the debt capacity of this state.

11 Sec. 2267.054. SERVICE CONTRACTS. A responsible  
12 governmental entity may contract with a contracting person for the  
13 delivery of services to be provided as part of a qualifying project  
14 in exchange for service payments and other consideration as the  
15 governmental entity considers appropriate.

16 Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A person  
17 submitting a proposal to a responsible governmental entity under  
18 Section 2267.053 shall notify each affected jurisdiction by  
19 providing a copy of its proposal to the affected jurisdiction.

20 (b) Not later than the 60th day after the date an affected  
21 jurisdiction receives the notice required by Subsection (a), the  
22 affected jurisdiction that is not the responsible governmental  
23 entity for the respective qualifying project shall submit in  
24 writing to the responsible governmental entity any comments the  
25 affected jurisdiction has on the proposed qualifying project and  
26 indicate whether the facility or project is compatible with the  
27 local comprehensive plan, local infrastructure development plans,

1 the capital improvements budget, or other government spending plan.  
2 The responsible governmental entity shall consider the submitted  
3 comments before entering into a comprehensive agreement with a  
4 contracting person.

5 Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC  
6 PROPERTY. (a) After obtaining any appraisal of the property  
7 interest that is required under other law in connection with the  
8 conveyance, a governmental entity may dedicate any property  
9 interest, including land, improvements, and tangible personal  
10 property, for public use in a qualifying project if the  
11 governmental entity finds that the dedication will serve the public  
12 purpose of this chapter by minimizing the cost of a qualifying  
13 project to the governmental entity or reducing the delivery time of  
14 a qualifying project.

15 (b) In connection with a dedication under Subsection (a), a  
16 governmental entity may convey any property interest, including a  
17 license, franchise, easement, or another right or interest the  
18 governmental entity considers appropriate, subject to the  
19 conditions imposed by general law governing such conveyance and  
20 subject to the rights of an existing utility under a license,  
21 franchise, easement, or other right under law, to the contracting  
22 person for the consideration determined by the governmental entity.  
23 The consideration may include the agreement of the contracting  
24 person to develop or operate the qualifying project.

25 Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON.

26 (a) The contracting person has:

27 (1) the power granted by:

1           (A) general law to a person that has the same form  
2 of organization as the contracting person; and

3           (B) a statute governing the business or activity  
4 of the contracting person; and

5           (2) the power to:

6           (A) develop or operate the qualifying project;  
7 and

8           (B) collect lease payments, impose user fees  
9 subject to Subsection (b), or enter into service contracts in  
10 connection with the use of the project.

11          (b) The contracting person may not impose a user fee or  
12 increase the amount of a user fee until the fee or increase is  
13 approved by the responsible governmental entity.

14          (c) The contracting person may own, lease, or acquire any  
15 other right to use or operate the qualifying project.

16          (d) The contracting person may finance a qualifying project  
17 in the amounts and on the terms determined by the contracting  
18 person. The contracting person may issue debt, equity, or other  
19 securities or obligations, enter into sale and leaseback  
20 transactions, and secure any financing with a pledge of, security  
21 interest in, or lien on any or all of its property, including all of  
22 its property interests in the qualifying project.

23          (e) In operating the qualifying project, the contracting  
24 person may:

25           (1) establish classifications according to reasonable  
26 categories for assessment of user fees; and

27           (2) with the consent of the responsible governmental

1 entity, adopt and enforce reasonable rules for the qualifying  
2 project to the same extent as the responsible governmental entity.

3 (f) The contracting person shall:

4 (1) develop or operate the qualifying project in a  
5 manner that is acceptable to the responsible governmental entity  
6 and in accordance with any applicable interim or comprehensive  
7 agreement;

8 (2) subject to Subsection (g), keep the qualifying  
9 project open for use by the public at all times, or as appropriate  
10 based on the use of the project, after its initial opening on  
11 payment of the applicable user fees, lease payments, or service  
12 payments;

13 (3) maintain, or provide by contract for the  
14 maintenance or upgrade of, the qualifying project, if required by  
15 any applicable interim or comprehensive agreement;

16 (4) cooperate with the responsible governmental  
17 entity to establish any interconnection with the qualifying project  
18 requested by the responsible governmental entity; and

19 (5) comply with any applicable interim or  
20 comprehensive agreement and any lease or service contract.

21 (g) The qualifying project may be temporarily closed  
22 because of emergencies or, with the consent of the responsible  
23 governmental entity, to protect public safety or for reasonable  
24 construction or maintenance activities.

25 (h) This chapter does not prohibit a contracting person of a  
26 qualifying project from providing additional services for the  
27 qualifying project to the public or persons other than the

1 responsible governmental entity, provided that the provision of  
2 additional service does not impair the contracting person's ability  
3 to meet the person's commitments to the responsible governmental  
4 entity under any applicable interim or comprehensive agreement.

5 Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before  
6 developing or operating the qualifying project, the contracting  
7 person must enter into a comprehensive agreement with a responsible  
8 governmental entity. The comprehensive agreement shall provide  
9 for:

10 (1) delivery of letters of credit or other security in  
11 connection with the development or operation of the qualifying  
12 project, in the forms and amounts satisfactory to the responsible  
13 governmental entity, and delivery of performance and payment bonds  
14 in compliance with Chapter 2253 for all construction activities;

15 (2) review of plans and specifications for the  
16 qualifying project by the responsible governmental entity and  
17 approval by the responsible governmental entity if the plans and  
18 specifications conform to standards acceptable to the responsible  
19 governmental entity, except that the contracting person may not be  
20 required to complete the design of a qualifying project before the  
21 execution of a comprehensive agreement;

22 (3) inspection of the qualifying project by the  
23 responsible governmental entity to ensure that the contracting  
24 person's activities are acceptable to the responsible governmental  
25 entity in accordance with the comprehensive agreement;

26 (4) maintenance of a public liability insurance  
27 policy, copies of which must be filed with the responsible



1 governmental entity accompanied by proofs of coverage, or  
2 self-insurance, each in the form and amount satisfactory to the  
3 responsible governmental entity and reasonably sufficient to  
4 ensure coverage of tort liability to the public and project  
5 employees and to enable the continued operation of the qualifying  
6 project;

7 (5) monitoring of the practices of the contracting  
8 person by the responsible governmental entity to ensure that the  
9 qualifying project is properly maintained;

10 (6) reimbursement to be paid to the responsible  
11 governmental entity for services provided by the responsible  
12 governmental entity;

13 (7) filing of appropriate financial statements on a  
14 periodic basis; and

15 (8) policies and procedures governing the rights and  
16 responsibilities of the responsible governmental entity and the  
17 contracting person if the comprehensive agreement is terminated or  
18 there is a material default by the contracting person, including  
19 conditions governing:

20 (A) assumption of the duties and  
21 responsibilities of the contracting person by the responsible  
22 governmental entity; and

23 (B) the transfer or purchase of property or other  
24 interests of the contracting person to the responsible governmental  
25 entity.

26 (b) The comprehensive agreement shall provide for any user  
27 fee, lease payment, or service payment established by agreement of

1 the parties. In negotiating a user fee under this section, the  
2 parties shall establish a payment or fee that is the same for  
3 persons using a facility of the qualifying project under like  
4 conditions and that will not materially discourage use of the  
5 qualifying project. The execution of the comprehensive agreement  
6 or an amendment to the agreement is conclusive evidence that the  
7 user fee, lease payment, or service payment complies with this  
8 chapter. A user fee or lease payment established in the  
9 comprehensive agreement as a source of revenue may be in addition  
10 to, or in lieu of, a service payment.

11 (c) A comprehensive agreement may include a provision that  
12 authorizes the responsible governmental entity to make grants or  
13 loans to the contracting person from money received from the  
14 federal, state, or local government or any agency or  
15 instrumentality of the government.

16 (d) The comprehensive agreement must incorporate the duties  
17 of the contracting person under this chapter and may contain terms  
18 the responsible governmental entity determines serve the public  
19 purpose of this chapter. The comprehensive agreement may contain:

20 (1) provisions that require the responsible  
21 governmental entity to provide notice of default and cure rights  
22 for the benefit of the contracting person and the persons specified  
23 in the agreement as providing financing for the qualifying project;

24 (2) other lawful terms to which the contracting person  
25 and the responsible governmental entity mutually agree, including  
26 provisions regarding unavoidable delays or providing for a loan of  
27 public money to the contracting person to develop or operate one or

1 more qualifying projects; and

2 (3) provisions in which the authority and duties of  
3 the contracting person under this chapter cease and the qualifying  
4 project is dedicated for public use to the responsible governmental  
5 entity or, if the qualifying project was initially dedicated by an  
6 affected jurisdiction, to the affected jurisdiction.

7 (e) Any change in the terms of the comprehensive agreement  
8 that the parties agree to must be added to the comprehensive  
9 agreement by written amendment.

10 (f) The comprehensive agreement may provide for the  
11 development or operation of phases or segments of the qualifying  
12 project.

13 Sec. 2267.059. INTERIM AGREEMENT. Before or in connection  
14 with the negotiation of the comprehensive agreement, the  
15 responsible governmental entity may enter into an interim agreement  
16 with the contracting person proposing the development or operation  
17 of the qualifying project. The interim agreement may:

18 (1) authorize the contracting person to begin project  
19 phases or activities for which the contracting person may be  
20 compensated relating to the proposed qualifying project, including  
21 project planning and development, design, engineering,  
22 environmental analysis and mitigation, surveying, and financial  
23 and revenue analysis, including ascertaining the availability of  
24 financing for the proposed facility or facilities of the qualifying  
25 project;

26 (2) establish the process and timing of the  
27 negotiation of the comprehensive agreement; and

1           (3) contain any other provision related to any aspect  
2 of the development or operation of a qualifying project that the  
3 parties consider appropriate.

4           Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE.

5           (a) The contracting person and the responsible governmental  
6 entity may use any funding resources that are available to the  
7 parties, including:

8                   (1) accessing any designated trust funds; and

9                   (2) borrowing or accepting grants from any state  
10 infrastructure bank.

11           (b) The responsible governmental entity may take any action  
12 to obtain federal, state, or local assistance for a qualifying  
13 project that serves the public purpose of this chapter and may enter  
14 into any contracts required to receive the assistance.

15           (c) If the responsible governmental entity is a state  
16 agency, any money received from the state or federal government or  
17 any agency or instrumentality of the state or federal government is  
18 subject to appropriation by the legislature.

19           (d) The responsible governmental entity may determine that  
20 it serves the public purpose of this chapter for all or part of the  
21 costs of a qualifying project to be directly or indirectly paid from  
22 the proceeds of a grant or loan made by the local, state, or federal  
23 government or any agency or instrumentality of the government.

24           Sec. 2267.0605. PERFORMANCE AND PAYMENT BONDS REQUIRED.

25           (a) The construction, remodel, or repair of a qualifying project  
26 may be performed only after performance and payment bonds for the  
27 construction, remodel, or repair have been executed in compliance

1 with Chapter 2253 regardless of whether the qualifying project is  
2 on public or private property or is publicly or privately owned.

3 (b) For purposes of this section, a qualifying project is  
4 considered a public work under Chapter 2253 and the responsible  
5 governmental entity shall assume the obligations and duties of a  
6 governmental entity under that chapter. The obligee under a  
7 performance bond under this section may be a public entity, a  
8 private person, or an entity consisting of both a public entity and  
9 a private person.

10 Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the  
11 contracting person commits a material default, the responsible  
12 governmental entity may assume the responsibilities and duties of  
13 the contracting person of the qualifying project. If the  
14 responsible governmental entity assumes the responsibilities and  
15 duties of the contracting person, the responsible governmental  
16 entity has all the rights, title, and interest in the qualifying  
17 project, subject to any liens on revenue previously granted by the  
18 contracting person to any person providing financing for the  
19 project.

20 (b) A responsible governmental entity that has the power of  
21 eminent domain under state law may exercise that power to acquire  
22 the qualifying project in the event of a material default by the  
23 contracting person. Any person who has provided financing for the  
24 qualifying project, and the contracting person to the extent of its  
25 capital investment, may participate in the eminent domain  
26 proceedings with the standing of a property owner.

27 (c) The responsible governmental entity may terminate, with

1 cause, any applicable interim or comprehensive agreement and  
2 exercise any other rights and remedies available to the  
3 governmental entity at law or in equity.

4 (d) The responsible governmental entity may make any  
5 appropriate claim under the letters of credit or other security or  
6 the performance and payment bonds required by Section  
7 2267.058(a)(1).

8 (e) If the responsible governmental entity elects to assume  
9 the responsibilities and duties for a qualifying project under  
10 Subsection (a), the responsible governmental entity may:

11 (1) develop or operate the qualifying project;

12 (2) impose user fees;

13 (3) impose and collect lease payments for the use of  
14 the project; and

15 (4) comply with any applicable contract to provide  
16 services.

17 (f) The responsible governmental entity shall collect and  
18 pay to secured parties any revenue subject to a lien to the extent  
19 necessary to satisfy the contracting person's obligations to  
20 secured parties, including the maintenance of reserves. The liens  
21 shall be correspondingly reduced and, when paid off, released.

22 (g) Before any payment is made to or for the benefit of a  
23 secured party, the responsible governmental entity may use revenue  
24 to pay the current operation and maintenance costs of the  
25 qualifying project, including compensation to the responsible  
26 governmental entity for its services in operating and maintaining  
27 the qualifying project. The right to receive any payment is

1 considered just compensation for the qualifying project.

2 (h) The full faith and credit of the responsible  
3 governmental entity may not be pledged to secure any financing of  
4 the contracting person that was assumed by the governmental entity  
5 when the governmental entity assumed responsibility for the  
6 qualifying project.

7 Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the  
8 contracting person, the responsible governmental entity may  
9 exercise any power of eminent domain that it has under law to  
10 acquire any land or property interest to the extent that the  
11 responsible governmental entity dedicates the land or property  
12 interest to public use and finds that the action serves the public  
13 purpose of this chapter.

14 (b) Any amounts to be paid in any eminent domain proceeding  
15 shall be paid by the contracting person.

16 Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The  
17 contracting person and each facility owner, including a public  
18 utility, a public service company, or a cable television provider,  
19 whose facilities will be affected by a qualifying project shall  
20 cooperate fully in planning and arranging the manner in which the  
21 facilities will be affected.

22 (b) The contracting person and responsible governmental  
23 entity shall ensure that a facility owner whose facility will be  
24 affected by a qualifying project does not suffer a disruption of  
25 service as a result of the construction or improvement of the  
26 qualifying project.

27 (c) A governmental entity possessing the power of eminent

1 domain may exercise that power in connection with the relocation of  
2 facilities affected by the qualifying project or facilities that  
3 must be relocated to the extent that the relocation is necessary or  
4 desirable by construction of, renovation to, or improvements to the  
5 qualifying project, which includes construction of, renovation to,  
6 or improvements to temporary facilities to provide service during  
7 the period of construction or improvement. The governmental entity  
8 shall exercise its power of eminent domain to the extent required to  
9 ensure an affected facility owner does not suffer a disruption of  
10 service as a result of the construction or improvement of the  
11 qualifying project during the construction or improvement or after  
12 the qualifying project is completed or improved.

13 (d) The contracting person shall pay any amount owed for the  
14 crossing, constructing, or relocating of facilities.

15 Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace  
16 officer of this state or of any affected jurisdiction has the same  
17 powers and jurisdiction within the area of the qualifying project  
18 as the officer has in the officer's area of jurisdiction. The  
19 officer may access the qualifying project at any time to exercise  
20 the officer's powers and jurisdiction.

21 Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters  
22 2155, 2156, and 2166, any interpretations, rules, or guidelines of  
23 the comptroller and the Texas Facilities Commission, and  
24 interpretations, rules, or guidelines developed under Chapter 2262  
25 do not apply to a qualifying project under this chapter.

26 (b) A responsible governmental entity may enter into a  
27 comprehensive agreement only in accordance with guidelines that



1 require the contracting person to design and construct the  
2 qualifying project in accordance with procedures that do not  
3 materially conflict with those specified in:

- 4 (1) Section 2166.2531;
- 5 (2) Section 44.036, Education Code;
- 6 (3) Section 51.780, Education Code;
- 7 (4) Section 271.119, Local Government Code; or
- 8 (5) Subchapter J, Chapter 271, Local Government Code,  
9 for civil works projects as defined by Section 271.181(2), Local  
10 Government Code.

11 (c) This chapter does not authorize a responsible  
12 governmental entity or a contracting person to obtain professional  
13 services through any process except in accordance with Subchapter  
14 A, Chapter 2254.

15 (d) Identified team members, including the architect,  
16 engineer, or builder, may not be substituted or replaced once a  
17 project is approved and an interim or comprehensive agreement is  
18 executed without the written approval of the responsible  
19 governmental entity.

20 Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC  
21 ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day  
22 after the date a responsible governmental entity accepts a proposal  
23 submitted in accordance with Section 2267.053(a) or (b), the  
24 responsible governmental entity shall provide notice of the  
25 proposal as follows:

- 26 (1) for a responsible governmental entity described by  
27 Section 2267.001(5)(A), by posting the proposal on the entity's

1 Internet website; and

2 (2) for a responsible governmental entity described by  
3 Section 2267.001(5)(B), by:

4 (A) posting a copy of the proposal on the  
5 entity's Internet website; or

6 (B) publishing in a newspaper of general  
7 circulation in the area in which the qualifying project is to be  
8 performed a summary of the proposal and the location where copies of  
9 the proposal are available for public inspection.

10 (b) The responsible governmental entity shall make  
11 available for public inspection at least one copy of the proposal.  
12 This section does not prohibit the responsible governmental entity  
13 from posting the proposal in another manner considered appropriate  
14 by the responsible governmental entity to provide maximum notice to  
15 the public of the opportunity to inspect the proposal.

16 (c) Trade secrets, financial records, or other records of  
17 the contracting person excluded from disclosure under Section  
18 552.101 may not be posted or made available for public inspection  
19 except as otherwise agreed to by the responsible governmental  
20 entity and the contracting person.

21 (d) The responsible governmental entity shall hold a public  
22 hearing on the proposal during the proposal review process not  
23 later than the 30th day before the date the entity enters into an  
24 interim or comprehensive agreement.

25 (e) On completion of the negotiation phase for the  
26 development of an interim or comprehensive agreement and before an  
27 interim agreement or comprehensive agreement is entered into, a

1 responsible governmental entity must make available the proposed  
2 agreement in a manner provided by Subsection (a) or (b).

3 (f) A responsible governmental entity that has entered into  
4 an interim agreement or comprehensive agreement shall make  
5 procurement records available for public inspection on request.  
6 For purposes of this subsection, procurement records do not include  
7 the trade secrets of the contracting person or financial records,  
8 including balance sheets or financial statements of the contracting  
9 person, that are not generally available to the public through  
10 regulatory disclosure or other means.

11 (g) Cost estimates relating to a proposed procurement  
12 transaction prepared by or for a responsible governmental entity  
13 are not open to public inspection.

14 (h) Any inspection of procurement transaction records under  
15 this section is subject to reasonable restrictions to ensure the  
16 security and integrity of the records.

17 (i) This section applies to any accepted proposal  
18 regardless of whether the process of bargaining results in an  
19 interim or comprehensive agreement.

20 CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 2268.001. DEFINITIONS. In this chapter:

23 (1) "Commission" means the Partnership Advisory  
24 Commission.

25 (2) "Comprehensive agreement" has the meaning  
26 assigned by Section 2267.001.

27 (3) "Detailed proposal" means a proposal for a

1 qualifying project accepted by a responsible governmental entity  
2 beyond a conceptual level of review that defines and establishes  
3 periods related to fixing costs, payment schedules, financing,  
4 deliverables, and project schedule.

5 (4) "Interim agreement" has the meaning assigned by  
6 Section 2267.001.

7 (5) "Qualifying project" has the meaning assigned by  
8 Section 2267.001.

9 (6) "Responsible governmental entity" has the meaning  
10 assigned by Section 2267.001.

11 Sec. 2268.002. APPLICABILITY. This chapter applies only to  
12 responsible governmental entities described by Section  
13 2267.001(5)(A).

14 [Sections 2268.003-2268.050 reserved for expansion]

15 SUBCHAPTER B. COMMISSION

16 Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The  
17 Partnership Advisory Commission is an advisory commission in the  
18 legislative branch that advises responsible governmental entities  
19 described by Section 2267.001(5)(A) on proposals received under  
20 Chapter 2267.

21 Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission  
22 consists of the following 11 members:

23 (1) the chair of the House Appropriations Committee or  
24 the chair's designee;

25 (2) three representatives appointed by the speaker of  
26 the house of representatives;

27 (3) the chair of the Senate Finance Committee or the

1 chair's designee;

2 (4) three senators appointed by the lieutenant  
3 governor; and

4 (5) three representatives of the executive branch,  
5 appointed by the governor.

6 (b) The legislative members serve on the commission until  
7 the expiration of their terms of office or until their successors  
8 qualify.

9 (c) The members appointed by the governor serve at the will  
10 of the governor.

11 Sec. 2268.053. PRESIDING OFFICER. The members of the  
12 commission shall elect from among the legislative members a  
13 presiding officer and an assistant presiding officer to serve  
14 two-year terms.

15 Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of  
16 the commission is not entitled to compensation for service on the  
17 commission but is entitled to reimbursement for all reasonable and  
18 necessary expenses incurred in performing duties as a member.

19 Sec. 2268.055. MEETINGS. The commission shall hold  
20 meetings quarterly or on the call of the presiding officer.

21 Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL,  
22 AND OTHER SUPPORT. (a) The legislative body that the presiding  
23 officer serves shall provide administrative staff support for the  
24 commission.

25 (b) The Texas Legislative Council shall provide legal,  
26 research, and policy analysis services to the commission.

27 (c) The staffs of the House Appropriations Committee,

1 Senate Finance Committee, and comptroller shall provide technical  
2 assistance.

3 (d) The comptroller or a state agency shall provide  
4 additional assistance as needed.

5 Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the  
6 proceedings of the commission shall be filed with the legislative  
7 body that the presiding officer serves.

8 Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR  
9 QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before  
10 beginning to negotiate an interim or comprehensive agreement, each  
11 responsible governmental entity receiving a detailed proposal for a  
12 qualifying project must provide copies of the proposal to:

- 13 (1) the presiding officer of the commission; and  
14 (2) the chairs of the House Appropriations Committee  
15 and Senate Finance Committee or their designees.

16 (b) The following qualifying projects are not subject to  
17 review by the commission:

18 (1) any proposed qualifying project with a total cost  
19 of less than \$5 million; and

20 (2) any proposed qualifying project with a total cost  
21 of more than \$5 million but less than \$50 million for which money  
22 has been specifically appropriated as a public-private partnership  
23 in the General Appropriations Act.

24 (c) The commission may undertake additional reviews of any  
25 qualifying project that will be completed in phases and for which an  
26 appropriation has not been made for any phase other than the current  
27 phase of the project.

1       (d) Not later than the 10th day after the date the  
2 commission receives a complete copy of the detailed proposal for a  
3 qualifying project, the commission shall determine whether to  
4 accept or decline the proposal for review and notify the  
5 responsible governmental entity of the commission's decision.

6       (e) If the commission accepts a proposal for review, the  
7 commission shall provide its findings and recommendations to the  
8 responsible governmental entity not later than the 45th day after  
9 the date the commission receives complete copies of the detailed  
10 proposal. If the commission does not provide its findings or  
11 recommendations to the responsible governmental entity by that  
12 date, the commission is considered to have declined review of the  
13 proposal and to not have made any findings or recommendations on the  
14 proposal.

15       (f) The responsible governmental entity on request of the  
16 commission shall provide any additional information regarding a  
17 qualifying project reviewed by the commission if the information is  
18 available to or can be obtained by the responsible governmental  
19 entity.

20       (g) The commission shall review accepted detailed proposals  
21 and provide findings and recommendations to the responsible  
22 governmental entity that include:

23               (1) a determination on whether the terms of the  
24 proposal and proposed qualifying project create state  
25 tax-supported debt, taking into consideration the specific  
26 findings of the comptroller with respect to the recommendation;

27               (2) an analysis of the potential financial impact of

1 the qualifying project;

2 (3) a review of the policy aspects of the detailed  
3 proposal and the qualifying project; and

4 (4) proposed general business terms.

5 (h) Review by the commission does not constitute approval of  
6 any appropriations necessary to implement a subsequent interim or  
7 comprehensive agreement.

8 (i) Except as provided by Subsection (e), the responsible  
9 governmental entity may not begin negotiation of an interim or  
10 comprehensive agreement until the commission has submitted its  
11 recommendations or declined to accept the detailed proposals for  
12 review.

13 (j) Not later than the 30th day before the date a  
14 comprehensive or interim agreement is executed, the responsible  
15 governmental entity shall submit to the commission and the chairs  
16 of the House Appropriations Committee and Senate Finance Committee  
17 or their designees:

18 (1) a copy of the proposed interim or comprehensive  
19 agreement; and

20 (2) a report describing the extent to which the  
21 commission's recommendations were addressed in the proposed  
22 interim or comprehensive agreement.

23 Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS  
24 SUBMITTED TO COMMISSION. Records and information afforded  
25 protection under Section 552.153 that are provided by a responsible  
26 governmental entity to the commission shall continue to be  
27 protected from disclosure when in the possession of the commission.



1 SECTION 2. Subchapter C, Chapter 552, Government Code, is  
2 amended by adding Section 552.153 to read as follows:

3 Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS  
4 INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section, "affected  
5 jurisdiction," "comprehensive agreement," "contracting person,"  
6 "interim agreement," "qualifying project," and "responsible  
7 governmental entity" have the meanings assigned those terms by  
8 Section 2267.001.

9 (b) Information in the custody of a responsible  
10 governmental entity that relates to a proposal for a qualifying  
11 project authorized under Chapter 2267 is excepted from the  
12 requirements of Section 552.021 if:

13 (1) the information consists of memoranda, staff  
14 evaluations, or other records prepared by the responsible  
15 governmental entity, its staff, outside advisors, or consultants  
16 exclusively for the evaluation and negotiation of proposals filed  
17 under Chapter 2267 for which:

18 (A) disclosure to the public before or after the  
19 execution of an interim or comprehensive agreement would adversely  
20 affect the financial interest or bargaining position of the  
21 responsible governmental entity; and

22 (B) the basis for the determination under  
23 Paragraph (A) is documented in writing by the responsible  
24 governmental entity; or

25 (2) the records are provided by a contracting person  
26 to a responsible governmental entity or affected jurisdiction under  
27 Chapter 2267 and contain:

1                   (A) trade secrets of the contracting person;

2                   (B) financial records of the contracting person,  
3 including balance sheets and financial statements, that are not  
4 generally available to the public through regulatory disclosure or  
5 other means; or

6                   (C) other information submitted by the  
7 contracting person that, if made public before the execution of an  
8 interim or comprehensive agreement, would adversely affect the  
9 financial interest or bargaining position of the responsible  
10 governmental entity or the person.

11           (c) Except as specifically provided by Subsection (b), this  
12 section does not authorize the withholding of information  
13 concerning:

14                   (1) the terms of any interim or comprehensive  
15 agreement, service contract, lease, partnership, or agreement of  
16 any kind entered into by the responsible governmental entity and  
17 the contracting person or the terms of any financing arrangement  
18 that involves the use of any public money; or

19                   (2) the performance of any person developing or  
20 operating a qualifying project under Chapter 2267.

21           SECTION 3. This Act takes effect September 1, 2011.

# Prevailing Wage

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1. Prevailing Wage Repeal Act
2. Maryland Legislation to Increase the Prevailing Wage Threshold

# PREVAILING WAGE REPEAL ACT

## Summary

This act repeals all laws which require administratively determined employee compensation rates, including wages, salaries and benefits.

## Model Legislation

**Section 1. {Short Title.}** This Act shall be known as the Prevailing Wage Repeal Act.

## Section 2. {Legislative Declarations.}

The legislature finds and declares that:

(A) Prevailing wage laws increase the costs of government and business and diminish the number of jobs generated by the economy.

(B) Prevailing wage laws raise the wages and benefits for the few at the expense of taxpayers.

(C) Prevailing wage laws add as much as 30 percent to the cost of public construction, renovation, and other public services.

(D) Prevailing wage laws are most harmful to the young, minorities, and to other new or would-be entrants to the work force.

(E) Repeal of prevailing wage laws will increase the efficiency of public investments, reduce the cost of government, and eliminate government's preferential treatment for the politically powerful few.

**Section 3. {Definition}** Prevailing wage means any administratively determined employee compensation rate, including wages, salary, and benefits.

**Section 4. {Repeal of State Law.}** Any and all prevailing wage laws are repealed.

**Section 5. {Severability clause.}**

**Section 6. {Repealer clause.}**

**Section 7. {Effective date.}**

**SENATE BILL 660**

Unofficial Copy 2004 Regular Session

P2 4lr2676

CF HB 425

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By: **Senator Hooper**

Introduced and read first time: February 6, 2004

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

**2 Prevailing Wage Rates - Public Works Contracts – Exclusions**

3 FOR the purpose of altering the threshold contract amount to which certain

4 provisions regarding prevailing wage rates apply; providing that a certain

5 threshold contract amount shall be adjusted annually in accordance with a

6 certain Consumer Price Index; and generally relating to the prevailing wage

7 rates for public works contracts.

8 BY repealing and reenacting, with amendments,

9 Article - State Finance and Procurement

10 Section 17-202

11 Annotated Code of Maryland

12 (2001 Replacement Volume and 2003 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

14 MARYLAND, That the Laws of Maryland read as follows:

**15 Article - State Finance and Procurement**

16 17-202.

17 (a) This subtitle does not limit:

18 (1) the hours of work an employee may work in a particular period of  
19 time; or

20 (2) the right of a contractor to pay an employee under a public work  
21 contract more than the prevailing wage rate.

22 (b) This subtitle does not apply to:

23 (1) a public work contract of less than [~~\$500,000~~] \$2,500,000, WHICH  
24 SHALL BE ADJUSTED ANNUALLY IN ACCORDANCE WITH THE APPLICABLE  
25 CONSUMER PRICE INDEX, AS SELECTED BY THE COMMISSIONER; or

1                   (2) the part of a public work contract for which the federal government  
2 provides money if, as to that part, the contractor is required to pay the prevailing  
3 wage rate as determined by the United States Secretary of Labor.

4           (c) If this subtitle and the federal Davis-Bacon Act apply and the federal act is  
5 suspended, the Governor may declare this subtitle suspended for the same period for:

6                   (1) the part of that public work contract for which the United States  
7 Secretary of Labor would have been required to make a determination of a prevailing  
8 wage rate; or

9 (2) that entire public work contract.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1685 Session of 2011

INTRODUCED BY BEAR, TURZAI, SAYLOR, MILLER, AUMENT, BLOOM, BOYD, CAUSER, COX, CREIGHTON, CUTLER, DELOZIER, DENLINGER, EVERETT, GILLESPIE, GINGRICH, GRELL, GROVE, HELM, HENNESSEY, HICKERNELL, KAUFFMAN, MARSICO, METCALFE, MILNE, MOUL, PERRY, PICKETT, RAPP, ROAE, ROCK, ROSS, SCHRODER, SWANGER, TALLMAN, TOEPEL AND VULAKOVICH, JUNE 17, 2011

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 3, 2011

AN ACT

1 Amending the act of August 15, 1961 (P.L.987, No.442), entitled
2 "An act relating to public works contracts; providing for
3 prevailing wages; imposing duties upon the Secretary of Labor
4 and Industry; providing remedies, penalties and repealing
5 existing laws," further providing for definitions and for
6 administration; AND PROVIDING FOR DUTIES OF DEPARTMENT.



7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 2 and 7 of the act of August 15, 1961
10 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage
11 Act, amended August 9, 1963 (P.L.653, No.342), are amended to
12 read:



13 SECTION 1. SECTION 2 OF THE ACT OF AUGUST 15, 1961 (P.L.987,
14 NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE ACT, AMENDED
15 AUGUST 9, 1963 (P.L.653, NO.342), IS AMENDED TO READ:



16 Section 2. Definitions.--As used in this act--

17 "Advisory Board" means the board created by section 2.1 of

1 this act.

2 "Appeals Board" means the board created by section 2.2 of  
3 this act.

4 [(1)] "Department" means Department of Labor and Industry of  
5 the Commonwealth of Pennsylvania.

6 "Federal occupational classifications" means the Occupational  
7 Outlook Handbook of the Federal Bureau of Labor Statistics,  
8 published under 40 U.S.C § 3142(b) (relating to rate of wages  
9 for laborers and mechanics).

10 [(2)] "Locality" means any political subdivision, or  
11 combination of the same, within the county in which the public  
12 work is to be performed. When no workmen for which a prevailing  
13 minimum wage is to be determined hereunder are employed in the  
14 locality, the locality may be extended to include adjoining  
15 political subdivisions where such workmen are employed in those  
16 crafts or trades for which there are no workmen employed in the  
17 locality as otherwise herein defined.

18 [(3)] "Maintenance work" means the repair of existing  
19 facilities when the size, type or extent of such facilities is  
20 not thereby changed or increased.

21 [(4)] "Public body" means the Commonwealth of Pennsylvania,  
22 any of its political subdivisions, any authority created by the  
23 General Assembly of the Commonwealth of Pennsylvania and any  
24 instrumentality or agency of the Commonwealth of Pennsylvania.

25 [(5)] "Public work" means construction, reconstruction,  
26 demolition, alteration and/or repair work other than maintenance  
27 work, done under contract and paid for in whole or in part out  
28 of the funds of a public body where the estimated cost of the  
29 total project is in excess of twenty-five thousand dollars  
30 (\$25,000), but shall not include work performed under a



1 rehabilitation or manpower training program.

2 [(6)] "Secretary" means the Secretary of Labor and Industry  
3 or his duly authorized deputy or representative.

4 [(7)] "Workman" includes laborer, mechanic, skilled and  
5 semi-skilled laborer and apprentices employed by any contractor  
6 or subcontractor and engaged in the performance of services  
7 directly upon the public work project, regardless of whether  
8 their work becomes a component part thereof, but does not  
9 include material suppliers or their employes who do not perform  
10 services at the job site.

11 [(8)] "Work performed under a rehabilitation program," means  
12 work arranged by and at a State institution primarily for  
13 teaching and upgrading the skills and employment opportunities  
14 of the inmates of such institutions.

15 [(9)] "Advisory Board" means the board created by section 2.1  
16 of this act.

17 (10) "Appeals Board" means the board created by section 2.2  
18 of this act.]

19 ~~Section 7. Duty of Secretary. The secretary shall, after~~ ←  
20 ~~consultation with the advisory board, determine the general~~  
21 ~~prevailing minimum wage rate in the locality in which the public~~  
22 ~~work is to be performed for each craft or classification of all~~  
23 ~~workmen needed to perform public work contracts during the~~  
24 ~~anticipated term thereof: Provided, however, That employer and~~  
25 ~~employe contributions for employe benefits pursuant to a bona~~  
26 ~~fide collective bargaining agreement shall be considered an~~  
27 ~~integral part of the wage rate for the purpose of determining~~  
28 ~~the minimum wage rate under this act. Nothing in this act,~~  
29 ~~however, shall prohibit the payment of more than the general~~  
30 ~~prevailing minimum wage rate to any workman employed on public~~

1 ~~work. The secretary shall forthwith give notice by mail of all~~  
2 ~~determinations of general prevailing minimum wage rates made~~  
3 ~~pursuant to this section to any representative of any craft, any~~  
4 ~~employer or any representative of any group of employers, who~~  
5 ~~shall in writing request the secretary so to do. Unless~~  
6 ~~otherwise authorized by statute, the secretary shall base the~~  
7 ~~scope of a craft or classification of workmen under this section~~  
8 ~~on the most recent version of the Federal occupational~~  
9 ~~classifications, utilizing the description of the craft or~~  
10 ~~classification in the "nature of work" subsection for each rate~~  
11 ~~category.~~

12 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ: ←

13 SECTION 7.1. DUTIES OF DEPARTMENT.-- (A) THE DEPARTMENT  
14 SHALL DEVELOP OR ADOPT A COMPLETE LISTING OF WORKER  
15 CLASSIFICATIONS AND THEIR RESPECTIVE DEFINITIONS, AND SHALL MAKE  
16 THE LISTINGS AVAILABLE TO THE PUBLIC IN A CONSPICUOUS LOCATION  
17 ON THE DEPARTMENT'S INTERNET WEBSITE. THE LISTING SHALL, AT ALL  
18 TIMES, BE AVAILABLE FOR PUBLIC VIEWING, AND SHALL BE MAINTAINED  
19 ON A STATEWIDE BASIS FOR EACH WORKER CLASSIFICATION. IN  
20 DEVELOPING THE LIST, THE DEPARTMENT MAY CONSIDER THE FOLLOWING  
21 SOURCES:

- 22 (1) COLLECTIVE BARGAINING AGREEMENTS;  
23 (2) FEDERAL OCCUPATIONAL CLASSIFICATIONS;  
24 (3) INPUT FROM THE ADVISORY BOARD;  
25 (4) OPINIONS OF REPRESENTATIVES FROM ORGANIZED LABOR AND THE  
26 OPINIONS OF CONTRACTORS AND CONTRACTOR ASSOCIATIONS AS THEY  
27 RELATE TO THE CUSTOM AND USAGE APPLICABLE TO THE CONSTRUCTION  
28 INDUSTRY IN THIS COMMONWEALTH; AND  
29 (5) ANY OTHER INFORMATION THAT THE DEPARTMENT DEEMS  
30 PERTINENT.

1 THE DEFINITIONS FOR EACH CLASSIFICATION IN THIS SUBSECTION SHALL  
2 BE UNIFORM THROUGHOUT THIS COMMONWEALTH.

3 (B) WORKER CLASSIFICATIONS AS DEFINED BY THE DEPARTMENT AT  
4 THE TIME OF THE BEGINNING OF A PROJECT SHALL BE USED THROUGHOUT  
5 COMPLETION OF THAT PROJECT, AND SHALL BE CONTROLLING FOR  
6 PURPOSES OF ANY DISPUTE. FOR PURPOSES OF THIS SUBSECTION, THE  
7 BEGINNING OF A PROJECT SHALL BE DEEMED TO BE THE EARLIER OF THE  
8 ACCEPTANCE OF BIDS OR OFFERS OR THE EXECUTION OF A CONTRACT.

9 (C) THE DEPARTMENT SHALL PUBLISH THE COMPLETE LISTING OF  
10 WORKER CLASSIFICATIONS AND THEIR RESPECTIVE DEFINITIONS, AS  
11 REQUIRED IN SUBSECTION (A) WITHIN ONE HUNDRED EIGHTY DAYS AFTER  
12 THE EFFECTIVE DATE OF THIS SECTION, PROVIDED THAT AFTER THE  
13 INITIAL WORK DESCRIPTIONS ARE PUBLISHED, THE DEPARTMENT MAY  
14 CHANGE THE DESCRIPTIONS FROM TIME TO TIME IN ACCORDANCE WITH THE  
15 CRITERIA IN SUBSECTION (A).

16 Section 2 3. This act shall take effect in 60 days.



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# Project Labor Agreements

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1. ABC National Model Government Neutrality Legislation–Michigan S.B. 1085
2. Federal Executive Order 13202
3. Connecticut Legislation Concerning Public Hearings for PLAs on State Funded School Construction (Sunshine)
4. Resolution Opposing Frivolous Complaints and Permit Extortion (Anti-Greenmail Resolution)

**STATE OF MICHIGAN**  
**96TH LEGISLATURE**  
**REGULAR SESSION OF 2012**

**Introduced by Senators Moolenaar, Jones, Hildenbrand, Robertson, Proos, Brandenburg, Walker, Meekhof, Pavlov, Booher, Hansen, Casperson, Kahn, Pappageorge, Colbeck, Green, Nofs, Jansen, Emmons, Hune, Caswell, Kowall, Richardville, Schuitmaker and Marleau**

# **ENROLLED SENATE BILL No. 1085**

AN ACT to amend 2011 PA 98, entitled "An act to provide for fair and open competition in governmental construction contracts, grants, tax abatements, and tax credits; to prohibit requirements for certain terms in government contracts and contracts supported through government grants and tax subsidies and abatements; to prohibit expenditure of public funds under certain conditions; to prohibit certain terms in procurement documents for certain expenditures involving public facilities; and to provide for powers and duties of certain public officers, employees, and contractors," by amending the title and sections 5, 7, 9, and 13 (MCL 408.875, 408.877, 408.879, and 408.883) and by adding sections 2 and 8.

*The People of the State of Michigan enact:*

## TITLE

An act to provide for fair and open competition in governmental construction contracts, grants, tax abatements, and tax credits; to prohibit requirements for certain terms in government contracts; to prohibit certain terms in procurement documents for certain expenditures involving public facilities; and to provide for powers and duties of certain public officers, employees, and contractors.

Sec. 2. The legislature intends this act to provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related goods and services by this state and political subdivisions of this state as market participants, and providing for fair and open competition best effectuates this intent.

Sec. 5. Subject to section 8, a governmental unit awarding a contract on or after the effective date of the amendatory act that added section 2 for the construction, repair, remodeling, or demolition of a facility and any construction manager acting on its behalf shall not, in any bid specifications, project agreements, or other controlling documents:

(a) Require or prohibit a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with 1 or more labor organizations in regard to that project or a related construction project.

(b) Otherwise discriminate against a bidder, offeror, contractor, or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with 1 or more labor organizations in regard to that project or a related construction project.

Sec. 7. Subject to section 8, a governmental unit shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in section 5(a) or (b) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

Sec. 8. (1) This act does not prohibit a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(2) This act does not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with 1 or more labor organizations in regard to a contract with a governmental unit or funded in whole or in part from a grant, tax abatement, or tax credit from the governmental unit.

Sec. 9. The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of section 5 or 7 if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section shall not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with 1 or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

Sec. 13. This act does not do either of the following:

(a) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the national labor relations act, 29 USC 151 to 169.

(b) Interfere with labor relations of parties that are left unregulated under the national labor relations act, 29 USC 151 to 169.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

.....  
Governor

## Presidential Documents

Executive Order 13202 of February 17, 2001

### Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, and in order to (1) promote and ensure open competition on Federal and federally funded or assisted construction projects; (2) maintain Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal Government and to the taxpayers; (4) expand job opportunities, especially for small and disadvantaged businesses; and (5) prevent discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects, it is hereby ordered that:

**Section 1.** To the extent permitted by law, any executive agency awarding any construction contract after the date of this order, or obligating funds pursuant to such a contract, shall ensure that neither the awarding Government authority nor any construction manager acting on behalf of the Government shall, in its bid specifications, project agreements, or other controlling documents:

(a) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

(b) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

(c) Nothing in this section shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subsection (a).

**Sec. 2.** Contracts awarded before the date of this order, and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this order.

**Sec. 3.** To the extent permitted by law, any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects, shall ensure that neither the bid specifications, project agreements, nor other controlling documents for construction contracts awarded after the date of this order by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on their behalf, shall contain any of the requirements or prohibitions set forth in section 1(a) or (b) of this order.

**Sec. 4.** In the event that an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of the foregoing, performs in a manner contrary to the provisions of sections 1 or 3 of this order, the executive agency awarding the contract, grant, or assistance shall take such action, consistent with law and regulation, as the agency determines may be appropriate.



**Sec. 5.** (a) The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of any or all of the provisions of sections 1 and 3 of this order, if the agency head finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(b) A finding of "special circumstances" under section 5(a) may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

**Sec. 6.** (a) The term "construction contract" as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The term "executive agency" as used in this order shall have the same meaning it has in 5 U.S.C. 105, excluding the General Accounting Office.

(c) The term "labor organization" as used in this order shall have the same meaning it has in 42 U.S.C. 2000e(d).

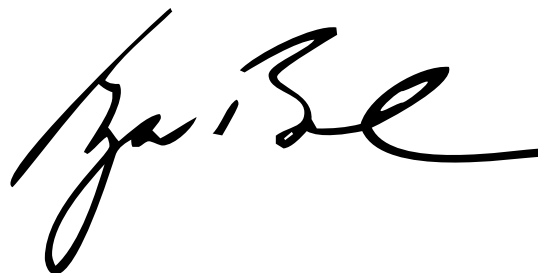
**Sec. 7.** With respect to Federal contracts, within 60 days of the issuance of this order, the Federal Acquisition Regulatory Council shall take whatever action is required to amend the Federal Acquisition Regulation in order to implement the provisions of this order.

**Sec. 8.** As it relates to project agreements, Executive Order 12836 of February 1, 1993, which, among other things, revoked Executive Order 12818 of October 23, 1992, is revoked.

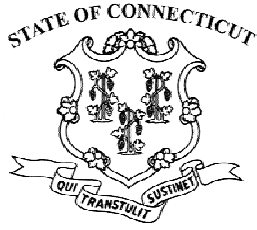
**Sec. 9.** The Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects" (the "Memorandum"), is also revoked.

**Sec. 10.** The heads of executive departments and agencies shall revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing the Memorandum or Executive Order 12836 of February 1, 1993, as it relates to project agreements, to the extent consistent with law.

**Sec. 11.** This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,  
February 17, 2001



General Assembly

January Session, 2005

**Raised Bill No. 1202**

LCO No. 3936

\*03936\_\_\_\_\_PD\_\*

Referred to Committee on Planning and Development

Introduced by:  
(PD)

**AN ACT CONCERNING LOCAL APPROVAL OF SCHOOL BUILDING PROJECTS AND LABOR AGREEMENTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2005*) No school building project  
2 for which state assistance is sought under chapter 173 of the general  
3 statutes shall be approved by the Department of Education unless the  
4 town or regional board of education submits documentation to the  
5 department that any labor agreement for the project was approved,  
6 after a public hearing, by a written resolution of such board of  
7 education adopted at a public meeting. Notice of the time and place of  
8 any such hearing or meeting shall be published in a newspaper having  
9 a substantial circulation in the town or, in the case of a regional board  
10 of education, in each town that is a member of the district, not less than  
11 thirty days before such hearing or meeting. For the purposes of this  
12 section, "labor agreement" means a hiring agreement that establishes  
13 wages, uniform work schedules and rules for dispute resolution to  
14 manage construction projects and includes, but is not limited to,  
15 provisions for payment of union dues or fees to a labor organization or  
16 membership in or affiliation with a labor organization.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2005</i>	New section

***Statement of Purpose:***

To require local boards of education to hold a public hearing on and approve by resolution at a public meeting any project labor agreement relating to a school building project.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

# **RESOLUTION IN OPPOSITION TO FRIVOLOUS COMPLAINTS AND PERMIT EXTORTION**

## **Summary**

The Resolution in Opposition to Frivolous Complaints and Permit Extortion recognizes that some unions have engaged in questionable pressure tactics to put open shop companies out of business or force them to join a union. These harassment and intimidation tactics have come in the form of frivolous and unwarranted complaints and environmental permit delays that are contrary to good public policy. This Resolution urges governments at all levels to enforce appropriate laws and to pass legislation to deter such tactics. The costs associated with defending frivolous complaints in legal and administrative actions have literally put some companies out of business. In the construction trades, such tactics can cause major delays, which can impose millions of dollars in additional costs. Often, when open shops concede to union demands, the complaints mysteriously disappear.

## **Model Resolution**

**WHEREAS**, regulatory agencies; limited resources are being squandered for harassment purposes, in pursuit of non-life threatening complaints against employers; and

**WHEREAS**, complaints about Hazard Communication Standards (record keeping) and many other classifications that are “non-serious” violations have become a useful tool to harass employers by escalating the citation to “willful”, “repeat”, or “egregious” and thus increase the penalty exposure exponentially; and

**WHEREAS**, regulators should focus on leading hazards, and should not subject “non-serious” violations to reclassification and/or multiple fines; and

**WHEREAS**, it is a criminal act to knowingly fine a false claim with the NLRB, although the NLRB virtually never prosecutes; and

**WHEREAS**, it does not cost harassing parties anything to file frivolous claims, whereas companies are often subjected to large attorney fees to defend such claims;

**NOW THEREFORE BE IT RESOLVED**, that the State/Commonwealth of (insert state) affirms the principle that harassment and intimidation tactics in the form of frivolous and unwarranted complaints and environmental permit delays are contrary to good public policy and urges governments at all levels to enforce current mechanisms and to pass legislation to deter such tactics.

# Right to Work

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1. Michigan Right to Work Act
2. Michigan Right to Work Zone Authorization
3. Indiana Right to Work Act

Act No. 348  
Public Acts of 2012  
Approved by the Governor  
December 11, 2012  
Filed with the Secretary of State  
December 11, 2012

EFFECTIVE DATE: 91st day after final adjournment of 2012 Regular Session

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Senator Meekhof

# ENROLLED SENATE BILL No. 116

AN ACT to amend 1939 PA 176, entitled "An act to create a commission relative to labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; and to prescribe means of enforcement and penalties for violations of this act," by amending the title and sections 1, 2, 8, 14, 17, and 22 (MCL 423.1, 423.2, 423.8, 423.14, 423.17, and 423.22).

*The People of the State of Michigan enact:*

## TITLE

An act to create a commission relative to labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; to make appropriations; and to prescribe means of enforcement and penalties for violations of this act.

Sec. 1. It is hereby declared as the public policy of this state that the best interests of the people of the state are served by protecting their right to work in a manner consistent with section 14(b) of the national labor relations act, 29 USC 164(b), and preventing or promptly settling labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state.

Sec. 2. As used in this act:

(a) "Company union" includes any employee association, committee, agency, or representation plan, formed or existing for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment, which in any manner or to any extent, and by any form of participation, interference, or assistance, financial or otherwise, either in its organization, operation, or administration, is dominated or controlled, sponsored or supervised, maintained, directed, or financed by the employer.

(b) "Dispute" and "labor dispute" include but are not restricted to any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of employees in negotiating, fixing, maintaining, or changing terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(c) "Commission" means the employment relations commission created by section 3.

(d) "Person" includes an individual, partnership, association, corporation, business trust, labor organization, or any other private entity.

(e) "Employee" includes any employee, and is not limited to the employees of a particular employer, unless the act explicitly provides otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any act that is illegal under this act, and who has not obtained any other regular and substantially equivalent employment, but does not include any individual employed as an agricultural laborer, or in the domestic service of any family or any person at his home, or any individual employed by his parent or spouse, or any individual employed as an executive or supervisor, or any individual employed by an employer subject to the railway labor act, 45 USC 151 to 188, or by any other person who is not an employer as defined in this act.

(f) "Employer" means a person and includes any person acting as an agent of an employer, but does not include the United States or any corporation wholly owned by the United States; any federal reserve bank; any employer subject to the railway labor act, 45 USC 151 to 188; the state or any political subdivision thereof; any labor organization, or anyone acting in the capacity of officer or agent of such labor organization, other than when acting as an employer; or any entity subject to 1947 PA 336, MCL 423.201 to 423.217.

(g) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 8. Employees may do any of the following:

(a) Organize together or form, join, or assist in labor organization; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their employers through representatives of their own free choice.

(b) Refrain from any or all of the activities identified in subdivision (a).

Sec. 14. (1) An individual shall not be required as a condition of obtaining or continuing employment to do any of the following:

(a) Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.

(b) Become or remain a member of a labor organization.

(c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount or provide anything of value to a labor organization.

(d) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or employees represented by a labor organization.

(2) An agreement, contract, understanding, or practice between or involving an employer and a labor organization that violates subsection (1) is unlawful and unenforceable. This subsection applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date of the 2012 amendatory act that amended this section.

(3) Subsections (1) and (2) shall be implemented to the maximum extent permitted by the United States constitution and federal law.

(4) The court of appeals has exclusive original jurisdiction over any action challenging the validity of subsection (1), (2), or (3). The court of appeals shall hear the action in an expedited manner.

(5) A person, employer, or labor organization that violates subsection (1) is liable for a civil fine of not more than \$500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

(6) Except for actions required to be brought under subsection (4), a person who suffers an injury as a result of a violation or threatened violation of subsection (1) may bring a civil action for damages, injunctive relief, or both. In addition, a court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection. Remedies provided for in this subsection are independent of and in addition to other penalties and remedies prescribed by this act.

(7) For fiscal year 2012-2013, \$1,000,000.00 is appropriated to the department of licensing and regulatory affairs to be expended to do all of the following regarding the amendatory act that added this subsection:

(a) Respond to public inquiries regarding the amendatory act.

(b) Provide the commission with sufficient staff and other resources to implement the amendatory act.

(c) Inform employers, employees, and labor organizations concerning their rights and responsibilities under the amendatory act.

(d) Any other purposes that the director of the department of licensing and regulatory affairs determines in his or her discretion are necessary to implement the amendatory act.

Sec. 17. (1) An employee or other person shall not by force, intimidation, or unlawful threats compel or attempt to compel any person to do any of the following:

(a) Become or remain a member of a labor organization or otherwise affiliate with or financially support a labor organization.

(b) Refrain from engaging in employment or refrain from joining a labor organization or otherwise affiliating with or financially supporting a labor organization.

(c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or employees represented by a labor organization.

(2) A person who violates this section is liable for a civil fine of not more than \$500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

Sec. 22. (1) It shall be unlawful for an employer to engage in a lockout or for a labor organization to engage in or instigate a strike without first having served notice as required in section 9.

(2) It shall be unlawful for any individual to instigate a lockout or strike that is unlawful under this section.

(3) Any person may pursue any appropriate legal or equitable remedy or other relief in any circuit court having jurisdiction with respect to any act or conduct in violation of any of the provisions of this act, except subsection (1) and sections 14(4), 16, and 17a. The existence of a criminal penalty with respect to any such act or conduct does not preclude appropriate equitable relief.

Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

.....  
Governor



# SENATE BILL No. 1457

September 9, 2008, Introduced by Senator CASSIS and referred to the Committee on Commerce and Tourism.

A bill to amend 1939 PA 176, entitled

"An act to create a commission relative to labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; and to prescribe means of enforcement and penalties for violations of this act,"

by amending section 14 (MCL 423.14) and by adding section 14a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 14. ~~Nothing~~ **EXCEPT AS PROVIDED IN SECTION 14A, NOTHING** in  
2 this act shall be construed to interfere with the right of an  
3 employer to enter into an all-union agreement with 1 labor  
4 organization if it is the only organization established among his  
5 ~~employees~~ **OR HER EMPLOYEES** and recognized by him **OR HER**, by consent,

1 as the representative of a majority of his ~~employees~~ **OR HER**  
2 **EMPLOYEES**; nor shall anything in this act be construed to interfere  
3 with the right of the employer to make an all-union agreement with  
4 more than 1 labor organization established among his ~~employees~~ **OR**  
5 **HER EMPLOYEES** if ~~such~~ **THE** organizations are recognized by him **OR**  
6 **HER**, by consent, as the representatives of a majority of his  
7 ~~employees~~ **OR HER EMPLOYEES**.

8         **SEC. 14A. A CITY, COUNTY, TOWNSHIP, OR VILLAGE MAY AUTHORIZE A**  
9 **RIGHT-TO-WORK ZONE WITHIN ITS BOUNDARIES BY A VOTE OF ITS GOVERNING**  
10 **BODY OR BY ADOPTION OF A MEASURE INITIATED BY THE PEOPLE. THE**  
11 **COMMISSION SHALL NOT ENFORCE AN ALL-UNION SHOP AGREEMENT COVERING**  
12 **EMPLOYEES IN A RIGHT-TO-WORK ZONE IF THE EMPLOYER ENTERED INTO OR**  
13 **RENEWED THE AGREEMENT AFTER THE DATE OF ADOPTION OF THE MEASURE**  
14 **CREATING THE RIGHT-TO-WORK ZONE.**

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1001

AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-6-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

### **Chapter 6. Right to Work**

#### **Sec. 1. This chapter does not apply to the following:**

- (1) An employee of the United States or a wholly owned corporation of the United States.
- (2) An:
  - (A) employee; and
  - (B) employer;subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.).
- (3) An employee employed on property over which the United States government has exclusive jurisdiction for the purpose of labor relations.
- (4) An employee of the state.
- (5) An employee of a political subdivision (as defined in IC 36-1-2-13).

#### **Sec. 2. This chapter does not apply to the extent that it:**

- (1) conflicts with; or
- (2) is preempted by;

federal law.

#### **Sec. 3. Nothing in this chapter is intended, or should be**

HEA 1001+



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construed, to change or affect any law concerning collective bargaining or collective bargaining agreements in the building and construction industry other than:

- (1) a law that permits agreements that would require membership in a labor organization;
  - (2) a law that permits agreements that would require the payment of dues, fees, assessments, or other charges of any kind or amount to a labor organization; or
  - (3) a law that permits agreements that would require the payment to a charity or a third party of an amount that is equivalent to or a pro rata part of dues, fees, assessment, or other charges required of members of a labor organization;
- as a condition of employment.

Sec. 4. As used in this chapter, "employer" means:

- (1) a person employing at least one (1) individual in Indiana; or
- (2) an agent of an employer described in subdivision (1).

Sec. 5. As used in this chapter, "labor organization" means:

- (1) an organization;
  - (2) an agency;
  - (3) a union; or
  - (4) an employee representation committee;
- that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

Sec. 6. As used in this chapter, "person" means:

- (1) an individual;
- (2) a proprietorship;
- (3) a partnership;
- (4) a firm;
- (5) an association;
- (6) a corporation;
- (7) a labor organization; or
- (8) another legal entity.

Sec. 7. As used in this chapter, "the state" includes:

- (1) a board;
- (2) a branch;
- (3) a commission;
- (4) a department;
- (5) a division;
- (6) a bureau;
- (7) a committee;

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- (8) an agency;**
  - (9) an institution (including a state educational institution as defined in IC 21-7-13-32);**
  - (10) an authority; or**
  - (11) another instrumentality;**
- of the state.

**Sec. 8. A person may not require an individual to:**

- (1) become or remain a member of a labor organization;**
  - (2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or**
  - (3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization;**
- as a condition of employment or continuation of employment.

**Sec. 9. A contract, agreement, understanding, or practice, written or oral, express or implied, between:**

- (1) a labor organization; and**
- (2) an employer;**

that violates section 8 of this chapter is unlawful and void.

**Sec. 10. A person that knowingly or intentionally, directly or indirectly, violates section 8 of this chapter commits a Class A misdemeanor.**

**Sec. 11. An individual who is employed by an employer may file a complaint that alleges a violation or threatened violation of this chapter with the attorney general, the department of labor, or the prosecuting attorney of the county in which the individual is employed. Upon receiving a complaint under this section, the attorney general, department of labor, or prosecuting attorney may:**

- (1) investigate the complaint; and**
- (2) enforce compliance if a violation of this chapter is found.**

In addition to any other remedy available under this chapter, if the department of labor determines that a violation or a threatened violation of this chapter has occurred, the department of labor may issue an administrative order providing for any of the civil remedies described in section 12 of this chapter. The department of labor may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to carry out its responsibilities under this chapter.

**Sec. 12. (a) If an individual suffers an injury:**

- (1) as the result of any act or practice that violates this chapter; or**

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**(2) from a threatened violation of this chapter;  
the individual may bring a civil action.**

**(b) A court may order an award of any or all of the following to  
an individual who prevails in an action under subsection (a):**

**(1) The greater of:**

**(A) actual and consequential damages resulting from the  
violation or threatened violation; or**

**(B) liquidated damages of not more than one thousand  
dollars (\$1,000).**

**(2) Reasonable attorney's fees, litigation expenses, and costs.**

**(3) Declaratory or equitable relief, including injunctive relief.**

**(4) Other relief the court considers proper.**

**(c) The remedies and penalties set forth in subsection (b) are:**

**(1) cumulative; and**

**(2) in addition to other remedies and penalties imposed for a  
violation of this chapter.**

**Sec. 13. Sections 8 through 12 of this chapter:**

**(1) apply to a written or oral contract or agreement entered  
into, modified, renewed, or extended after March 14, 2012;  
and**

**(2) do not apply to or abrogate a written or oral contract or  
agreement in effect on March 14, 2012.**

**SECTION 2. An emergency is declared for this act.**

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# Salting

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1. Resolution Opposing Salting
2. Resolution Opposing Violence in Labor Disputes
3. Miscellaneous Anti-Salting Language for State Legislation

# **RESOLUTION IN OPPOSITION TO SALTING (HARASSING OR DISRUPTIVE UNION ORGANIZING)**

## **Summary**

Salting abuse is the placing of trained union professional organizers and agents in a nonunion facility to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business. The objectives of the union agents are accomplished through filing frivolous and unfair labor procedure complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC). Salting campaigns have been used successfully in the construction industry and are quickly expanding into other industries across the country. The Resolution in Opposition to Salting (Harassing or Disruptive Union Organizing) affirms the principle that salting activities are contrary to good public policy and urges Congress to pass legislation so that employers are not required to employ any employee or agent of any other person, where the employee or agent seeks access to the employer's workplace in furtherance of their other employment or agency status.

## **Model Resolution**

**WHEREAS**, the unions' avowed purpose in these salting campaigns is to harass the company, its employees, and to disrupt the workplace until the company is financially devastated or its employees agree to join the union; and

**WHEREAS**, in defending themselves against these frivolous charges, employers must incur thousands of dollars in legal expenses, delays and lost hours of productivity in time spent fighting the charges, and risk jeopardizing their business through excessive problems they may not endure; and

**WHEREAS**, unions have trained their members to use state and federal regulatory agencies, including, but not limited to the NLRB, OSHA, and EEOC as offensive weapons against nonunion employers; and

**WHEREAS**, such agencies wasted limited resources investigating frivolous complaints and several small companies have literally been driven out of business defending against such complaints; and

**WHEREAS**, a manager who finds a particular employee to be disruptive in the workplace, regardless of labor affiliation, should be free to exclude that disruptive employee from the workplace without fear of receiving an unfair labor practice charge; and



**WHEREAS**, in the recently decided Town & Country case, the U.S. Supreme Court held that paid professional union organizers are “bona fide” employees, and therefore, protected under the National Labor Relations Act (NLRA); and

**WHEREAS**, union’s salting tactics frequently result in an abuse of the hiring process and the harassment of employees without serving the interests of any bona fide employees;

**NOW THEREFORE BE IT RESOLVED**, that the State/Commonwealth of (insert state) affirms the principle that salting activities are contrary to good public policy and urges Congress to pass legislation so that employers are not required to employ an employee or agent of any other person, where the employee or agent seeks access to the employer’s workplace in furtherance of their other employment or agency status.

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# **RESOLUTION IN OPPOSITION TO VIOLENCE IN LABOR DISPUTES**

## **Summary**

The Anti-Racketeering Act of 1934 (The Copeland Act) marked the beginning of federal authority to prosecute and punish criminal acts of extortion affecting commerce. In response to union fears that the law could be applied to non-violent forms of protest, the bill was amended to read “(T)hat no court of the United States shall construe or apply any of the provisions of this Act in such a manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objectives thereof, as such rights are expressed in existing statutes of the United States.” The Act was later amended by the Hobbs Act which provided that violent acts could be prosecuted under the Copeland Act, even where the acts were carried out in the name of legitimate objectives of bona-fide labor organizations. The Hobbs Act was not meant to preempt state and local laws already in place to combat violence, but rather to supplement such laws. However, the corrections made to the Copeland Act by the Hobbs Act were nullified by the Supreme Court’s ruling in *United States v. Enmons*, which held that the Hobbs Act is not applicable to violence that takes place in “an effort to promote appropriate collective bargaining demands.” The Resolution in Opposition to Violence in Labor Disputes affirms the principle that violence in labor disputes is contrary to good public policy and urges governments at all levels to enforce current mechanisms and pass further legislation to deter such violence.

## **Model Resolution**

**WHEREAS**, the National Labor Relations Board (NLRB) and the courts have generally held that federal labor laws do not preempt local laws with respect to tortious and criminal conduct by union members; and

**WHEREAS**, the NLRB generally does not protect employees who engage in such conduct; and

**WHEREAS**, some cases have been vague as to what constitutes protected union conduct, with the NLRB observing in one case that “the emotional tension of a strike almost inevitably gives rise to a certain amount of disorder and . . .conduct on a picket line cannot be expected to approach the etiquette of the drawing room or breakfast table;” and

**WHEREAS**, many court decisions on the state and federal level have created vague standards with respect to the applicability of criminal laws to union violence; and

**WHEREAS**, union officials should not be immune from prosecution under federal, state and local law for violence committed in furtherance of union objectives; and

**WHEREAS**, disputes arising in the labor-management arena are best resolved through open discussion of ideas, and never through senseless violence directed at persons or property; and

**WHEREAS**, the use of violence is ultimately detrimental to all parties involved, often creating permanent animosities that forever color the working environment and lower productivity;

**NOW THEREFORE BE IT RESOLVED**, that the State/Commonwealth of (insert state) affirms the principle that violence in labor disputes is contrary to good public policy and urges governments at all levels to enforce current mechanisms and pass further legislation to deter such violence.

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## **SALTING MISC.**

### **FALSIFICATION OF EMPLOYMENT INFORMATION**

It shall be a violation of state law for any person to knowingly submit false employment applications or resumes to an employer for purposes of obtaining employment or for any person to conspire with or direct another person to do so. An employer to whom such false applications or resumes have been submitted shall be authorized to bring a civil action to recover compensatory and punitive damages.

### **SABOTAGE**

It shall be a violation of state law for any person to engage in sabotage of work or property of an employer or the employer's customer, or for any person to conspire with or direct another person to do so. An employer whose work or property has been sabotaged shall be authorized to bring a civil action to recover compensatory and punitive damages.

### **DAMAGING OR INTERFERING WITH EMPLOYER'S BUSINESS**

It shall be a violation of state law for any person to seek or obtain employment with an employer for the purpose of damaging or interfering with the employer's business, or for any person to conspire with or direct another person to do so. An employer whose business has been damaged or interfered with shall be authorized to bring a civil action to recover compensatory and punitive damages.

### **INTERFERENCE WITH EMPLOYMENT**

It shall be a violation of state law for any person to seek or obtain employment with an employer for the purpose of persuading or attempting to persuade other employees to quit their employment, or for conspiring with or directing another employee to do so. An employer who has been the subject of such a violation shall be authorized to bring a civil action to recover compensatory and punitive damages.

# Small Business Regulatory Flexibility

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1. Small Business Regulatory  
Flexibility Model Legislation

# Model Legislation

## A BILL

To improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

## Findings

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens;
- (3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;
- (4) When adopting regulations to protect the health, safety, and economic welfare of [State], state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;
- (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses with limited resources;
- (6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;
- (7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- (8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;
- (9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;
- (10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

## Section 1. Short Title

This act may be cited as the Regulatory Flexibility Act of [2006].

## Section 2. Definitions

(a) As used in this section:

(1) “Agency” means each state board, commission, department, or officer authorized by law to make regulations or to determine contested cases;

(2) “Proposed regulation” means a proposal by an agency for a new regulation or for a change in, addition to, or repeal of an existing regulation;

(3) “Regulation” means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings, or (C) intra-agency or interagency memoranda;

(4) “Small business” means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than [five hundred] full-time employees or has gross annual sales of less than [six] million dollars.

## Section 3. Economic Impact Statements

(a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of the small businesses subject to the proposed regulation;

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(3) A statement of the probable effect on impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

## Section 4. Regulatory Flexibility Analysis

(a) Prior to the adoption of any proposed regulation on and after [January 1, 2007], each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the [Department of Economic and Community Development or similar state department or council that exists to review regulations] of its intent to adopt the proposed regulation. The [Department of Economic and Community Development or similar state department or council that exists to review regulations] shall advise and assist agencies in complying with the provisions of this section.

## Section 5. Judicial Review

(a) For any regulation subject to this section, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section.

(b) A small business may seek such review during the period beginning on the date of final agency action and ending one year later.



## Section 6. Periodic Review of Rules

(a) Within four years of the enactment of this law, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this law should be reviewed every five years of the publication of such rules as the final rule to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

# Key Elements of Advocacy's Model Bill

Every state has some form of administrative procedure law that governs the agency rulemaking process, and many states currently have provisions that pertain to regulations affecting small businesses and provide for regulatory flexibility. However, recognizing that some laws are missing key components that give regulatory flexibility its effectiveness, legislators continue to introduce legislation to strengthen their current systems.

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*“I think that our passage of a law requiring all South Dakota governmental agencies to complete and file small business impact statements whenever they promulgate new rules is one of the best things we have ever done for small business.”*

*—Jerry Wheeler, Executive Director, South Dakota Retailers Association*

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Advocacy's model legislation is patterned after the federal regulatory flexibility law and contains the following five key elements: 1) a small business definition; 2) an economic impact analysis; 3) a regulatory flexibility analysis; 4) periodic review of existing regulations; and 5) judicial review.

## Small Business Definition

It is important for “small business” to be defined by statute and for the definition to be consistent with how other laws and/or permitting authorities within the state characterize “small.” If there is no such definition currently provided by statute, states generally use the number of employees and/or the gross annual sales of the entity to define “small business.”

## Economic Impact Analysis

Pursuant to most state administrative procedure laws, agencies are already required to prepare some form of economic impact analysis to determine

how the proposed regulation will affect the entities being regulated. Segmenting out the impact on small business is a necessary additional step in the analysis because small businesses bear a disproportionate share of regulatory costs and burdens. By recognizing the cost of a regulation to small businesses and the differences in scale and resources of regulated businesses, agencies are able to craft regulations that consider the uniqueness of small businesses. As a result, small businesses are better able to comply with agency rules and to survive in a competitive marketplace.

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*“This in turn will mean that agencies specified in the bill will have to consider the adverse impacts to small business before promulgating regulations. I am encouraged by this move to help return common sense to the regulatory process affecting this very important sector of our economy.”—Alaska Governor Frank Murkowski*

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## Regulatory Flexibility Analysis

Sometimes, because of their size, the aggregate importance of small businesses in the economy is overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them. The intent of Advocacy's model legislation is to require regulatory agencies to consider small businesses when regulations are developed and particularly to consider whether there are alternative regulatory solutions that do not unduly burden small business but still accomplish the agency goal.

Tailoring regulatory proposals to the unique needs of small business saves small employers money that is better used to hire additional employees, provide health care, train existing staff, and upgrade their facilities and equipment. This can be accomplished without sacrificing health, safety, and welfare issues of major importance to state governments.

## Judicial Review

The federal regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996.

The effect of the 1996 law was to give the RFA some “teeth” and to focus the heightened attention of regulatory officials on small business issues. Approximately 4,000 regulations are finalized in any given year. Only 12 to 13 lawsuits that cite noncompliance with the RFA have been filed per year since federal judicial review was enacted in 1996. Allowing small businesses to challenge state agencies for failure to adequately consider their impact on small business during the regulatory process is critical, as it provides an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis.

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***“Adding judicial review is an important step forward for our state’s small businesses. Now the law has some teeth, and that will help small business and state agencies work together to produce good regulations that get the job done without causing serious harm. It means a better business and job-creating climate for Missouri.”—Scott George, President and CEO of Mid American Dental and Hearing Center, Mt. Vernon, MO***

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## Periodic Review

Existing regulations may also unduly burden small businesses because the rule may no longer serve its purpose, may be duplicated by newer federal or state legislation, or may have been promulgated without consideration of the effects on small businesses. Also, given the length of time that may have passed since the rule was promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rule. Therefore, it is critical that agencies review rules periodically to determine whether they should be continued without change, amended, or rescinded to minimize the economic impact of the rule on small businesses.

A clear example of how benefits can be derived from efforts to periodically review existing regulations comes from the Massachusetts Office of Consumer Affairs and Business Regulation

(OCABR). OCABR has implemented a comprehensive 10-month review of every regulation promulgated by OCABR agencies to identify those that have become outdated or irrelevant. After publishing the proposed revisions, OCABR held a series of public hearings that gave affected small entities the opportunity to voice concerns about existing regulations and the proposed changes. OCABR was then able to refine the proposed changes based on this input.

The review is still in progress; however, approximately 50 pages of regulations have already been eliminated. Also as a result of this review process, the remaining rules are more precisely tailored, easier for regulated entities to understand, and less difficult for agency personnel to apply. OCABR also recognized that because the review process is now in place, future analyses should take considerably less time.

## Exemptions

Even the strongest regulatory flexibility law has little value if most agencies and/or certain rules are exempt from it. Therefore, legislation should provide exemptions only to agencies or rules when it is absolutely necessary.

## Fiscal Notes

During a time of tight state budgets, a common question is how much it will cost a state to implement regulatory flexibility for small businesses. The answer is that implementing a regulatory flexibility system can be accomplished at minimal to no additional cost to the state. In fact, the state saves money by getting input on costly or unnecessary regulation prior to implementation. Requiring small business analysis, input, and consideration of less burdensome alternatives ensures that state agencies make good final decisions. On the other hand, if regulations are poorly written and do not consider small businesses, they may need to be rewritten, which is more costly to state government than doing a thorough analysis the first time.

\*Trained in FY 2003

Implementing regulatory flexibility for small businesses also does not require state agencies to incur excessive compliance costs for the preparation of the economic impact and regulatory flexibility analyses. Many states already conduct a general regulatory flexibility analysis. Segmenting out the impact on small business is a necessary additional step in the analysis. Moreover, rules that are finalized without adequate impact analysis run the risk of being more costly to both citizens and state agencies. And it is not in the interest of state agencies to propose and finalize a rule that small businesses cannot comply with and that causes widespread industry burdens resulting in layoffs and business closures.

## Regulatory Flexibility Implementation

In states that have passed regulatory flexibility laws, the Office of Advocacy works with the small business community, state legislators, and state government agencies (usually the department of economic development) to assist with implementation and to ensure its effectiveness. Small business owners are the greatest resource that agencies can use to understand how regulations affect small businesses and what alternatives may be less burdensome.

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*“Our regulatory flexibility laws help to ensure a level playing field for South Carolina’s small business.”—Monty Felix, Alaglass Pools, Saint Matthews, SC, and chairman of the South Carolina Small Business Regulatory Review Committee*

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One of the most successful tools in communicating with small businesses and facilitating the implementation of regulatory flexibility legislation has been use of a free email regulatory alert system. A regulatory alert system allows interested parties to sign up and receive automatic regulatory alerts

when agencies file a notice for a proposed rule that may affect their small business. Creating a user-friendly Internet-based tool allows small business owners, trade associations, chambers of commerce and/or other interested parties to stay on top of agency activities that may have an impact on small businesses. It also provides an avenue through which stakeholders can voice their concerns about the adverse impact of a proposed rule and suggest regulatory alternatives that are less burdensome.

Advocacy’s state model legislation has been successful because policymakers across the country are realizing that regulatory flexibility is an economic development tool. More than 23.7 million small businesses in the United States create between 60 and 80 percent of the net new jobs in the U.S. economy. There is also no question that small businesses are the driving force of the economy in each state across the country.

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*“Giving small business owners a seat at the table when regulatory decisions are made allows for their voices to be heard and ensures that better decisions are made. This means more jobs and growth at the state and local levels.”—Thomas M. Sullivan, Chief Counsel for Advocacy*

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# Vocational/Technical Education Expansion

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1. Michigan Vocational/Technical Education Expansion

# HOUSE BILL No. 4410

February 24, 2009, Introduced by Reps. Sheltrown, Hansen, Ball, Mayes, Bauer, Nerat, Lindberg, Cushingberry, Constan, Neumann, Lemmons, Geiss, Slezak, Haase, Young, Calley and Dean and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled "The revised school code," by amending sections 1278a, 1278b, and 1280 (MCL 380.1278a, 380.1278b, and 380.1280), section 1278a as amended by 2008 PA 316, section 1278b as amended by 2007 PA 141, and section 1280 as amended by 2006 PA 123, and by adding section 1278c.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1278a. (1) Except as otherwise provided in this section,  
2 ~~ex~~-section 1278b, **OR SECTION 1278C**, beginning with pupils entering  
3 grade 8 in 2006, the board of a school district or board of  
4 directors of a public school academy shall not award a high school  
5 diploma to a pupil unless the pupil meets all of the following:

6           (a) Has successfully completed all of the following credit  
7 requirements of the Michigan merit standard before graduating from

1 district or public school academy making satisfactory progress  
2 toward full implementation of the requirements of this section and  
3 section 1278a. If the department disapproves a proposed phase-in  
4 plan, the department shall work with the school district or public  
5 school academy to develop a satisfactory plan that may be approved.  
6 However, if legislation is enacted that adds section 1290 to allow  
7 school districts and public school academies to apply for a  
8 contract that waives certain state or federal requirements, then  
9 this subsection does not apply but a school district or public  
10 school academy may take action as described in subsection (13).  
11 This subsection does not apply to a high school that is designated  
12 as a specialty school under section 1278a(5) and that is exempt  
13 under that section from the English language arts requirement under  
14 subsection (1)(a) and the social science credit requirement under  
15 section 1278a(1)(a)(ii).

16 (13) If a school district or public school academy does not  
17 offer all of the required credits or provide options to have access  
18 to the required credits as provided under subsection (8) and if  
19 legislation is enacted that adds section 1290 to allow school  
20 districts and public school academies to apply for a contract that  
21 waives certain state or federal requirements, then the school  
22 district or public school academy is encouraged to apply for a  
23 contract under section 1290. The purpose of a contract described in  
24 this subsection is to improve pupil performance.

25 (14) This section, ~~and~~ section 1278a, **AND SECTION 1278C** do not  
26 prohibit a pupil from satisfying or exceeding the credit  
27 requirements of the Michigan merit standard under this section and

1 section 1278a **OR THE GENERAL DIPLOMA CURRICULUM UNDER SECTION 1278C**  
2 through advanced studies such as accelerated course placement,  
3 advanced placement, dual enrollment in a postsecondary institution,  
4 or participation in the international baccalaureate program or an  
5 early college/middle college program.

6 (15) Not later than April 1 of each year, the department shall  
7 submit an annual report to the legislature that evaluates the  
8 overall success of the curriculum required under this section and  
9 section 1278a **AND OF THE GENERAL DIPLOMA CURRICULUM REQUIRED UNDER**  
10 **SECTION 1278C**, the rigor and relevance of the course work required  
11 by ~~the curriculum~~ **THOSE CURRICULA**, the ability of public schools to  
12 implement the ~~curriculum~~ **CURRICULA** and the required course work,  
13 and the impact of the ~~curriculum~~ **CURRICULA** on pupil success, and  
14 that details any activities the department has undertaken to  
15 implement this section, ~~and~~ section 1278a, **AND SECTION 1278C** or to  
16 assist public schools in implementing the requirements of this  
17 section, ~~and~~ section 1278a, **AND SECTION 1278C**.

18 **SEC. 1278C. (1) BEGINNING WITH PUPILS ENTERING GRADE 8 IN**  
19 **2006, THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A**  
20 **PUBLIC SCHOOL ACADEMY SHALL NOT AWARD A HIGH SCHOOL DIPLOMA TO A**  
21 **PUPIL UNLESS THE PUPIL EITHER MEETS THE REQUIREMENTS FOR THE**  
22 **MICHIGAN MERIT STANDARD UNDER SECTIONS 1278A AND 1278B OR MEETS THE**  
23 **REQUIREMENTS UNDER THIS SECTION FOR A GENERAL DIPLOMA. THE**  
24 **REQUIREMENTS FOR A GENERAL DIPLOMA ARE AS FOLLOWS:**

25 (A) HAS SUCCESSFULLY COMPLETED ALL OF THE FOLLOWING CREDIT  
26 REQUIREMENTS BEFORE GRADUATING FROM HIGH SCHOOL:

27 (i) AT LEAST 3 CREDITS IN MATHEMATICS THAT ARE ALIGNED WITH



1 SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND  
2 APPROVED BY THE STATE BOARD UNDER SECTION 1278B, INCLUDING  
3 COMPLETION OF AT LEAST ALGEBRA I OR THE INTEGRATED EQUIVALENT IN A  
4 CAREER AND TECHNICAL PREPARATION COURSE, GEOMETRY OR THE INTEGRATED  
5 EQUIVALENT IN A CAREER AND TECHNICAL PREPARATION COURSE, AND AN  
6 ADDITIONAL MATHEMATICS CREDIT.

7 (ii) AT LEAST 4 CREDITS IN ENGLISH LANGUAGE ARTS THAT ARE  
8 ALIGNED WITH SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE  
9 DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

10 (iii) AT LEAST 2 CREDITS IN SCIENCE THAT ARE ALIGNED WITH  
11 SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND  
12 APPROVED BY THE STATE BOARD UNDER SECTION 1278B, INCLUDING  
13 COMPLETION OF AT LEAST BIOLOGY AND AN ADDITIONAL SCIENCE CREDIT.

14 (iv) AT LEAST 2 CREDITS IN SOCIAL SCIENCE THAT ARE ALIGNED WITH  
15 SUBJECT AREA CONTENT EXPECTATIONS DEVELOPED BY THE DEPARTMENT AND  
16 APPROVED BY THE STATE BOARD UNDER SECTION 1278B, INCLUDING  
17 COMPLETION OF AT LEAST THE CIVICS COURSE DESCRIBED IN SECTION  
18 1166(2).

19 (v) AT LEAST 1 CREDIT IN SUBJECT MATTER THAT INCLUDES BOTH  
20 HEALTH AND PHYSICAL EDUCATION ALIGNED WITH GUIDELINES DEVELOPED BY  
21 THE DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

22 (vi) AT LEAST 3 CREDITS IN A CAREER AND TECHNICAL PREPARATION  
23 ACADEMIC SEQUENCE, ALIGNED WITH GUIDELINES DEVELOPED BY THE  
24 DEPARTMENT AND APPROVED BY THE STATE BOARD UNDER SECTION 1278B.

25 (vii) AT LEAST 1 ADDITIONAL CREDIT THAT IS ALIGNED WITH  
26 GUIDELINES DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE STATE  
27 BOARD UNDER SECTION 1278B.

1 (B) MEETS THE ONLINE COURSE OR LEARNING EXPERIENCE REQUIREMENT  
2 OF SECTION 1278A(1) (B) .

3 (2) IN ADDITION TO THE REQUIREMENTS UNDER SUBSECTION (1) ,  
4 BEGINNING WITH PUPILS ENTERING GRADE 3 IN 2006, THE BOARD OF A  
5 SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY  
6 SHALL NOT AWARD A HIGH SCHOOL DIPLOMA TO A PUPIL UNLESS THE PUPIL  
7 HAS SUCCESSFULLY COMPLETED DURING GRADES 9 TO 12 AT LEAST 2  
8 CREDITS, AS DETERMINED BY THE DEPARTMENT, IN A LANGUAGE OTHER THAN  
9 ENGLISH, OR THE PUPIL HAS SUCCESSFULLY COMPLETED AT ANY TIME DURING  
10 GRADES K TO 12 COURSE WORK OR OTHER LEARNING EXPERIENCES THAT ARE  
11 SUBSTANTIALLY EQUIVALENT TO 2 CREDITS IN A LANGUAGE OTHER THAN  
12 ENGLISH, BASED ON GUIDELINES DEVELOPED BY THE DEPARTMENT. FOR THE  
13 PURPOSES OF THIS SUBSECTION, ALL OF THE FOLLOWING APPLY:

14 (A) AMERICAN SIGN LANGUAGE IS CONSIDERED TO BE A LANGUAGE  
15 OTHER THAN ENGLISH.

16 (B) THE PUPIL MAY MEET ALL OR PART OF THIS REQUIREMENT WITH  
17 ONLINE COURSE WORK.

18 (3) THE REQUIREMENTS UNDER THIS SECTION FOR A GENERAL DIPLOMA  
19 ARE IN ADDITION TO ANY LOCAL REQUIREMENTS IMPOSED BY THE BOARD OF A  
20 SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY.  
21 THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC  
22 SCHOOL ACADEMY, AS A LOCAL REQUIREMENT FOR A GENERAL DIPLOMA UNDER  
23 THIS SECTION, MAY REQUIRE A PUPIL TO COMPLETE SOME OR ALL OF THE  
24 SUBJECT AREA ASSESSMENTS UNDER SECTION 1279 OR THE MICHIGAN MERIT  
25 EXAMINATION UNDER SECTION 1279G, AS APPLICABLE TO THE PUPIL UNDER  
26 SECTION 1279G, OR MAY REQUIRE A PUPIL TO PARTICIPATE IN THE  
27 MIACCESS ASSESSMENTS IF APPROPRIATE FOR THE PUPIL.

1 (4) FOR THE PURPOSES OF THIS SECTION, ALL OF THE FOLLOWING  
2 APPLY:

3 (A) A PUPIL IS CONSIDERED TO HAVE COMPLETED A CREDIT IF THE  
4 PUPIL SUCCESSFULLY COMPLETES THE SUBJECT AREA CONTENT EXPECTATIONS  
5 OR GUIDELINES DEVELOPED BY THE DEPARTMENT THAT APPLY TO THE CREDIT.

6 (B) A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY SHALL BASE ITS  
7 DETERMINATION OF WHETHER A PUPIL HAS SUCCESSFULLY COMPLETED THE  
8 SUBJECT AREA CONTENT EXPECTATIONS OR GUIDELINES DEVELOPED BY THE  
9 DEPARTMENT THAT APPLY TO A CREDIT AT LEAST IN PART ON THE PUPIL'S  
10 PERFORMANCE ON THE ASSESSMENTS DEVELOPED OR SELECTED BY THE  
11 DEPARTMENT UNDER SECTION 1278B OR ON 1 OR MORE ASSESSMENTS  
12 DEVELOPED OR SELECTED BY THE SCHOOL DISTRICT OR PUBLIC SCHOOL  
13 ACADEMY THAT MEASURE A PUPIL'S UNDERSTANDING OF THE SUBJECT AREA  
14 CONTENT EXPECTATIONS OR GUIDELINES THAT APPLY TO THE CREDIT.

15 (C) A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY SHALL ALSO  
16 GRANT A PUPIL A CREDIT IF THE PUPIL EARNS A QUALIFYING SCORE, AS  
17 DETERMINED BY THE DEPARTMENT, ON THE ASSESSMENTS DEVELOPED OR  
18 SELECTED FOR THE SUBJECT AREA BY THE DEPARTMENT UNDER SECTION 1278B  
19 OR THE PUPIL EARNS A QUALIFYING SCORE, AS DETERMINED BY THE SCHOOL  
20 DISTRICT OR PUBLIC SCHOOL ACADEMY, ON 1 OR MORE ASSESSMENTS  
21 DEVELOPED OR SELECTED BY THE SCHOOL DISTRICT OR PUBLIC SCHOOL  
22 ACADEMY THAT MEASURE A PUPIL'S UNDERSTANDING OF THE SUBJECT AREA  
23 CONTENT EXPECTATIONS OR GUIDELINES THAT APPLY TO THE CREDIT.

24 (5) IF A HIGH SCHOOL IS DESIGNATED BY THE SUPERINTENDENT OF  
25 PUBLIC INSTRUCTION AS A SPECIALTY SCHOOL AND THE HIGH SCHOOL MEETS  
26 THE REQUIREMENTS OF SUBSECTION (6), THEN THE PUPILS OF THE HIGH  
27 SCHOOL ARE NOT REQUIRED TO SUCCESSFULLY COMPLETE THE 4 CREDITS IN

1 ENGLISH LANGUAGE ARTS OR THE 2 CREDITS IN SOCIAL SCIENCE REQUIRED  
2 UNDER SUBSECTION (1) (A) AND THE SCHOOL DISTRICT OR PUBLIC SCHOOL  
3 ACADEMY IS NOT REQUIRED TO ENSURE THAT EACH PUPIL IS OFFERED THE  
4 CURRICULUM NECESSARY FOR MEETING THOSE ENGLISH LANGUAGE ARTS OR  
5 SOCIAL SCIENCE CREDIT REQUIREMENTS. THE SUPERINTENDENT OF PUBLIC  
6 INSTRUCTION MAY DESIGNATE UP TO 15 HIGH SCHOOLS THAT MEET THE  
7 REQUIREMENTS OF THIS SUBSECTION AS SPECIALTY SCHOOLS. SUBJECT TO  
8 THIS MAXIMUM NUMBER, THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL  
9 DESIGNATE A HIGH SCHOOL AS A SPECIALTY SCHOOL IF THE SUPERINTENDENT  
10 OF PUBLIC INSTRUCTION FINDS THAT THE HIGH SCHOOL MEETS ALL OF THE  
11 FOLLOWING CRITERIA:

12 (A) THE HIGH SCHOOL INCORPORATES A SIGNIFICANT READING AND  
13 WRITING COMPONENT THROUGHOUT ITS CURRICULUM.

14 (B) THE HIGH SCHOOL USES A SPECIALIZED, INNOVATIVE, AND  
15 RIGOROUS CURRICULUM IN SUCH AREAS AS PERFORMING ARTS, FOREIGN  
16 LANGUAGE, EXTENSIVE USE OF INTERNSHIPS, OR OTHER LEARNING  
17 INNOVATIONS THAT CONFORM TO PIONEERING INNOVATIONS AMONG OTHER  
18 LEADING NATIONAL OR INTERNATIONAL HIGH SCHOOLS.

19 (6) A HIGH SCHOOL THAT IS DESIGNATED BY THE SUPERINTENDENT OF  
20 PUBLIC INSTRUCTION AS A SPECIALTY SCHOOL UNDER SUBSECTION (5) IS  
21 ONLY EXEMPT FROM REQUIREMENTS AS DESCRIBED UNDER SUBSECTION (5) AS  
22 LONG AS THE SUPERINTENDENT OF PUBLIC INSTRUCTION FINDS THAT THE  
23 HIGH SCHOOL CONTINUES TO MEET ALL OF THE FOLLOWING REQUIREMENTS:

24 (A) THE HIGH SCHOOL CLEARLY STATES TO PROSPECTIVE PUPILS AND  
25 THEIR PARENTS THAT IT DOES NOT MEET THE REQUIREMENTS OF THE GENERAL  
26 DIPLOMA CURRICULUM UNDER THIS SECTION BUT IS A DESIGNATED SPECIALTY  
27 SCHOOL THAT IS EXEMPT FROM SOME OF THOSE REQUIREMENTS AND THAT A

1 PUPIL WHO ENROLLS IN THE HIGH SCHOOL AND SUBSEQUENTLY TRANSFERS TO  
2 A HIGH SCHOOL THAT IS NOT A SPECIALTY SCHOOL MEETING THE  
3 REQUIREMENTS OF THIS SUBSECTION WILL BE REQUIRED TO COMPLY WITH THE  
4 REQUIREMENTS OF THE MICHIGAN MERIT STANDARD UNDER SECTIONS 1278A  
5 AND 1278B OR OF THE GENERAL DIPLOMA CURRICULUM UNDER THIS SECTION.

6 (B) FOR THE MOST RECENT YEAR FOR WHICH THE DATA ARE AVAILABLE,  
7 THE MEAN SCORES ON BOTH THE MATHEMATICS AND SCIENCE PORTIONS OF THE  
8 ACT EXAMINATION FOR THE PUPILS OF THE HIGH SCHOOL EXCEED BY AT  
9 LEAST 10% THE MEAN SCORES ON THE MATHEMATICS AND SCIENCE PORTIONS  
10 OF THE ACT EXAMINATION FOR THE PUPILS OF THE SCHOOL DISTRICT IN  
11 WHICH THE GREATEST NUMBER OF THE PUPILS OF THE HIGH SCHOOL RESIDE.

12 (C) FOR THE MOST RECENT YEAR FOR WHICH THE DATA ARE AVAILABLE,  
13 THE HIGH SCHOOL HAD A GRADUATION RATE OF AT LEAST 85%, AS  
14 DETERMINED BY THE DEPARTMENT.

15 (D) FOR THE MOST RECENT YEAR FOR WHICH THE DATA ARE AVAILABLE,  
16 AT LEAST 75% OF THE PUPILS WHO GRADUATED FROM THE HIGH SCHOOL THE  
17 PRECEDING YEAR ARE ENROLLED IN A POSTSECONDARY INSTITUTION.

18 (E) ALL PUPILS OF THE HIGH SCHOOL ARE REQUIRED TO MEET THE  
19 MATHEMATICS CREDIT REQUIREMENTS OF SUBSECTION (1) (A), WITH NO  
20 MODIFICATION OF THESE REQUIREMENTS UNDER SUBSECTION (8), AND EACH  
21 PUPIL IS OFFERED THE CURRICULUM NECESSARY TO MEET THIS REQUIREMENT.

22 (F) ALL PUPILS OF THE HIGH SCHOOL ARE REQUIRED TO MEET THE  
23 SCIENCE CREDIT REQUIREMENTS OF SUBSECTION (1) (A) AND ARE ALSO  
24 REQUIRED TO SUCCESSFULLY COMPLETE AT LEAST 2 ADDITIONAL SCIENCE  
25 CREDITS, FOR A TOTAL OF AT LEAST 4 SCIENCE CREDITS, WITH NO  
26 MODIFICATION OF THESE REQUIREMENTS UNDER SUBSECTION (8), AND EACH  
27 PUPIL IS OFFERED THE CURRICULUM NECESSARY TO MEET THIS REQUIREMENT.

1           (7) IF A PUPIL SUCCESSFULLY COMPLETES 1 OR MORE OF THE HIGH  
2 SCHOOL CREDITS REQUIRED UNDER SUBSECTION (1) BEFORE ENTERING HIGH  
3 SCHOOL, THE PUPIL SHALL BE GIVEN HIGH SCHOOL CREDIT FOR THAT  
4 CREDIT.

5           (8) THE PARENT OR LEGAL GUARDIAN OF A PUPIL MAY REQUEST A  
6 PERSONAL CURRICULUM UNDER THIS SUBSECTION FOR THE PUPIL THAT  
7 MODIFIES CERTAIN OF THE GENERAL DIPLOMA CURRICULUM REQUIREMENTS  
8 UNDER SUBSECTION (1). IF ALL OF THE REQUIREMENTS UNDER THIS  
9 SUBSECTION FOR A PERSONAL CURRICULUM ARE MET, THEN THE BOARD OF A  
10 SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY  
11 MAY AWARD A HIGH SCHOOL DIPLOMA TO A PUPIL WHO SUCCESSFULLY  
12 COMPLETES HIS OR HER PERSONAL CURRICULUM EVEN IF IT DOES NOT MEET  
13 THE REQUIREMENTS OF THE GENERAL DIPLOMA CURRICULUM REQUIRED UNDER  
14 SUBSECTION (1). ALL OF THE FOLLOWING APPLY TO A PERSONAL  
15 CURRICULUM:

16           (A) THE PERSONAL CURRICULUM SHALL BE DEVELOPED BY A GROUP THAT  
17 INCLUDES AT LEAST THE PUPIL, AT LEAST 1 OF THE PUPIL'S PARENTS OR  
18 THE PUPIL'S LEGAL GUARDIAN, AND THE PUPIL'S HIGH SCHOOL COUNSELOR  
19 OR ANOTHER DESIGNEE QUALIFIED TO ACT IN A COUNSELING ROLE UNDER  
20 SECTION 1233 OR 1233A SELECTED BY THE HIGH SCHOOL PRINCIPAL. IN  
21 ADDITION, FOR A PUPIL WHO RECEIVES SPECIAL EDUCATION SERVICES, A  
22 SCHOOL PSYCHOLOGIST SHOULD ALSO BE INCLUDED IN THIS GROUP.

23           (B) THE PERSONAL CURRICULUM SHALL INCORPORATE AS MUCH OF THE  
24 SUBJECT AREA CONTENT EXPECTATIONS OF THE GENERAL DIPLOMA CURRICULUM  
25 REQUIRED UNDER SUBSECTION (1) AS IS PRACTICABLE FOR THE PUPIL;  
26 SHALL ESTABLISH MEASURABLE GOALS THAT THE PUPIL MUST ACHIEVE WHILE  
27 ENROLLED IN HIGH SCHOOL AND SHALL PROVIDE A METHOD TO EVALUATE

1 WHETHER THE PUPIL ACHIEVED THESE GOALS; AND SHALL BE ALIGNED WITH  
2 THE PUPIL'S EDUCATIONAL DEVELOPMENT PLAN DEVELOPED UNDER SECTION  
3 1278B(11).

4 (C) BEFORE IT TAKES EFFECT, THE PERSONAL CURRICULUM MUST BE  
5 AGREED TO BY THE PUPIL'S PARENT OR LEGAL GUARDIAN AND BY THE  
6 SUPERINTENDENT OF THE SCHOOL DISTRICT OR CHIEF EXECUTIVE OF THE  
7 PUBLIC SCHOOL ACADEMY OR HIS OR HER DESIGNEE.

8 (D) THE PUPIL'S PARENT OR LEGAL GUARDIAN SHALL BE IN  
9 COMMUNICATION WITH EACH OF THE PUPIL'S TEACHERS AT LEAST ONCE EACH  
10 CALENDAR QUARTER TO MONITOR THE PUPIL'S PROGRESS TOWARD THE GOALS  
11 CONTAINED IN THE PUPIL'S PERSONAL CURRICULUM.

12 (E) REVISIONS MAY BE MADE IN THE PERSONAL CURRICULUM IF THE  
13 REVISIONS ARE DEVELOPED AND AGREED TO IN THE SAME MANNER AS THE  
14 ORIGINAL PERSONAL CURRICULUM.

15 (F) THE ENGLISH LANGUAGE ARTS AND SCIENCE CREDIT REQUIREMENTS  
16 OF SUBSECTION (1) ARE NOT SUBJECT TO MODIFICATION AS PART OF A  
17 PERSONAL CURRICULUM UNDER THIS SUBSECTION.

18 (G) THE MATHEMATICS CREDIT REQUIREMENTS OF SUBSECTION (1) MAY  
19 BE MODIFIED AS PART OF A PERSONAL CURRICULUM ONLY AFTER THE PUPIL  
20 HAS SUCCESSFULLY COMPLETED AT LEAST 1-1/2 CREDITS OF THE  
21 MATHEMATICS CREDITS REQUIRED UNDER THAT SECTION AND ONLY IF THE  
22 PUPIL SUCCESSFULLY COMPLETES AT LEAST 2-1/2 TOTAL CREDITS OF THE  
23 MATHEMATICS CREDITS REQUIRED UNDER THAT SECTION BEFORE COMPLETING  
24 HIGH SCHOOL.

25 (H) THE CIVICS COURSE DESCRIBED IN SECTION 1166(2) IS NOT  
26 SUBJECT TO MODIFICATION AS PART OF A PERSONAL CURRICULUM UNDER THIS  
27 SUBSECTION.

1           (I) THE HEALTH AND PHYSICAL EDUCATION CREDIT REQUIREMENT UNDER  
2 SECTION 1278A(1) (A) (iii) MAY BE MODIFIED AS PART OF A PERSONAL  
3 CURRICULUM ONLY IF THE MODIFICATION REQUIRES THE PUPIL TO COMPLETE  
4 1 ADDITIONAL CREDIT IN ENGLISH LANGUAGE ARTS, MATHEMATICS, OR  
5 SCIENCE OR 1 ADDITIONAL CREDIT IN A LANGUAGE OTHER THAN ENGLISH.  
6 THIS ADDITIONAL CREDIT MUST BE IN ADDITION TO THE NUMBER OF THOSE  
7 CREDITS OTHERWISE REQUIRED UNDER SUBSECTION (1).

8           (J) IF THE PARENT OR LEGAL GUARDIAN OF A PUPIL REQUESTS AS  
9 PART OF THE PUPIL'S PERSONAL CURRICULUM A MODIFICATION OF THE  
10 GENERAL EDUCATION CURRICULUM REQUIREMENTS THAT WOULD NOT OTHERWISE  
11 BE ALLOWED UNDER THIS SECTION AND DEMONSTRATES THAT THE  
12 MODIFICATION IS NECESSARY BECAUSE THE PUPIL IS A CHILD WITH A  
13 DISABILITY, THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY ALLOW  
14 THAT ADDITIONAL MODIFICATION TO THE EXTENT NECESSARY BECAUSE OF THE  
15 PUPIL'S DISABILITY IF THE GROUP UNDER SUBDIVISION (A) DETERMINES  
16 THAT THE MODIFICATION IS CONSISTENT WITH BOTH THE PUPIL'S  
17 EDUCATIONAL DEVELOPMENT PLAN UNDER SECTION 1278B(11) AND THE  
18 PUPIL'S INDIVIDUALIZED EDUCATION PROGRAM. IF THE SUPERINTENDENT OF  
19 PUBLIC INSTRUCTION HAS REASON TO BELIEVE THAT A SCHOOL DISTRICT OR  
20 A PUBLIC SCHOOL ACADEMY IS ALLOWING MODIFICATIONS INCONSISTENT WITH  
21 THE REQUIREMENTS OF THIS SUBDIVISION, THE SUPERINTENDENT OF PUBLIC  
22 INSTRUCTION SHALL MONITOR THE SCHOOL DISTRICT OR PUBLIC SCHOOL  
23 ACADEMY TO ENSURE THAT THE SCHOOL DISTRICT'S OR PUBLIC SCHOOL  
24 ACADEMY'S POLICIES, PROCEDURES, AND PRACTICES ARE IN COMPLIANCE  
25 WITH THE REQUIREMENTS FOR ADDITIONAL MODIFICATIONS UNDER THIS  
26 SUBDIVISION. AS USED IN THIS SUBDIVISION, "CHILD WITH A DISABILITY"  
27 MEANS THAT TERM AS DEFINED IN 20 USC 1401.



1           (K) IF A PUPIL TRANSFERS TO A SCHOOL DISTRICT OR PUBLIC SCHOOL  
2 ACADEMY FROM OUT OF STATE OR FROM A NONPUBLIC SCHOOL, THE PUPIL'S  
3 PARENT OR LEGAL GUARDIAN MAY REQUEST, AS PART OF THE PUPIL'S  
4 PERSONAL CURRICULUM, A MODIFICATION OF THE GENERAL DIPLOMA  
5 CURRICULUM REQUIREMENTS THAT WOULD NOT OTHERWISE BE ALLOWED UNDER  
6 THIS SECTION. THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY  
7 ALLOW THIS ADDITIONAL MODIFICATION FOR A TRANSFER PUPIL IF ALL OF  
8 THE FOLLOWING ARE MET:

9           (i) THE TRANSFER PUPIL HAS SUCCESSFULLY COMPLETED AT LEAST THE  
10 EQUIVALENT OF 2 YEARS OF HIGH SCHOOL CREDIT OUT OF STATE OR AT A  
11 NONPUBLIC SCHOOL. THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY  
12 USE APPROPRIATE ASSESSMENT EXAMINATIONS TO DETERMINE WHAT CREDITS,  
13 IF ANY, THE PUPIL HAS EARNED OUT OF STATE OR AT A NONPUBLIC SCHOOL  
14 THAT MAY BE USED TO SATISFY THE CURRICULAR REQUIREMENTS OF THE  
15 GENERAL DIPLOMA CURRICULUM AND THIS SUBDIVISION.

16           (ii) THE TRANSFER PUPIL'S PERSONAL CURRICULUM INCORPORATES AS  
17 MUCH OF THE SUBJECT AREA CONTENT EXPECTATIONS OF THE GENERAL  
18 DIPLOMA CURRICULUM AS IS PRACTICABLE FOR THE PUPIL.

19           (iii) THE TRANSFER PUPIL'S PERSONAL CURRICULUM REQUIRES THE  
20 PUPIL TO SUCCESSFULLY COMPLETE AT LEAST 1 MATHEMATICS COURSE DURING  
21 HIS OR HER FINAL YEAR OF HIGH SCHOOL ENROLLMENT. IN ADDITION, IF  
22 THE TRANSFER PUPIL IS ENROLLED IN THE SCHOOL DISTRICT OR PUBLIC  
23 SCHOOL ACADEMY FOR AT LEAST 1 FULL SCHOOL YEAR, BOTH OF THE  
24 FOLLOWING APPLY:

25           (A) THE TRANSFER PUPIL'S PERSONAL CURRICULUM SHALL REQUIRE  
26 THAT THIS MATHEMATICS COURSE IS AT LEAST ALGEBRA I.

27           (B) IF THE TRANSFER PUPIL DEMONSTRATES THAT HE OR SHE HAS

1 MASTERED THE CONTENT OF ALGEBRA I, THE TRANSFER PUPIL'S PERSONAL  
2 CURRICULUM SHALL REQUIRE THAT THIS MATHEMATICS COURSE IS A COURSE  
3 NORMALLY TAKEN AFTER COMPLETING ALGEBRA I.

4 (iv) THE TRANSFER PUPIL'S PERSONAL CURRICULUM INCLUDES THE  
5 CIVICS COURSE DESCRIBED IN SECTION 1166(2).

6 (l) IF A PUPIL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR,  
7 THE PUPIL MAY ACT ON HIS OR HER OWN BEHALF UNDER THIS SUBSECTION.

8 (m) THIS SUBSECTION DOES NOT APPLY TO A PUPIL ENROLLED IN A  
9 HIGH SCHOOL THAT IS DESIGNATED AS A SPECIALTY SCHOOL UNDER  
10 SUBSECTION (5) AND THAT IS EXEMPT UNDER THAT SUBSECTION FROM THE  
11 ENGLISH LANGUAGE ARTS AND SOCIAL SCIENCE CREDIT REQUIREMENTS UNDER  
12 SUBSECTION (1) (A).

13 (9) IF A PUPIL RECEIVES SPECIAL EDUCATION SERVICES, THE  
14 PUPIL'S INDIVIDUALIZED EDUCATION PROGRAM, IN ACCORDANCE WITH THE  
15 INDIVIDUALS WITH DISABILITIES EDUCATION ACT, TITLE VI OF PUBLIC LAW  
16 91-230, SHALL IDENTIFY THE APPROPRIATE COURSE OR COURSES OF STUDY  
17 AND IDENTIFY THE SUPPORTS, ACCOMMODATIONS, AND MODIFICATIONS  
18 NECESSARY TO ALLOW THE PUPIL TO PROGRESS IN THE CURRICULAR  
19 REQUIREMENTS OF THIS SECTION, OR IN A PERSONAL CURRICULUM AS  
20 PROVIDED UNDER SUBSECTION (8), AND MEET THE REQUIREMENTS FOR A HIGH  
21 SCHOOL DIPLOMA.

22 (10) THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A  
23 PUBLIC SCHOOL ACADEMY THAT OPERATES A HIGH SCHOOL SHALL ENSURE THAT  
24 EACH PUPIL IS OFFERED THE CURRICULUM NECESSARY FOR THE PUPIL TO  
25 MEET THE CURRICULAR REQUIREMENTS OF THIS SECTION. THE BOARD OR  
26 BOARD OF DIRECTORS MAY PROVIDE THIS CURRICULUM BY PROVIDING THE  
27 CREDITS SPECIFIED IN THIS SECTION, BY USING ALTERNATIVE

1 INSTRUCTIONAL DELIVERY METHODS SUCH AS ALTERNATIVE COURSE WORK,  
2 HUMANITIES COURSE SEQUENCES, CAREER AND TECHNICAL EDUCATION,  
3 INDUSTRIAL TECHNOLOGY COURSES, OR CAREER AND TECHNICAL PREPARATION  
4 EDUCATION, OR BY A COMBINATION OF THESE. SCHOOL DISTRICTS AND  
5 PUBLIC SCHOOL ACADEMIES THAT OPERATE CAREER AND TECHNICAL EDUCATION  
6 PROGRAMS ARE ENCOURAGED TO INTEGRATE THE CREDIT REQUIREMENTS OF  
7 THIS SECTION INTO THOSE PROGRAMS.

8 (11) IF THE BOARD OF A SCHOOL DISTRICT OR BOARD OF DIRECTORS  
9 OF A PUBLIC SCHOOL ACADEMY WANTS ITS HIGH SCHOOL TO BE ACCREDITED  
10 UNDER SECTION 1280, THE BOARD OR BOARD OF DIRECTORS SHALL ENSURE  
11 THAT ALL ELEMENTS OF THE CURRICULUM REQUIRED UNDER THIS SECTION ARE  
12 MADE AVAILABLE TO ALL AFFECTED PUPILS. IF A SCHOOL DISTRICT OR  
13 PUBLIC SCHOOL ACADEMY DOES NOT OFFER ALL OF THE REQUIRED CREDITS,  
14 THE BOARD OF THE SCHOOL DISTRICT OR BOARD OF DIRECTORS OF THE  
15 PUBLIC SCHOOL ACADEMY SHALL ENSURE THAT THE PUPIL HAS ACCESS TO THE  
16 REQUIRED CREDITS BY ANOTHER MEANS, SUCH AS ENROLLMENT IN A  
17 POSTSECONDARY COURSE UNDER THE POSTSECONDARY ENROLLMENT OPTIONS  
18 ACT, 1996 PA 160, MCL 388.511 TO 388.524; ENROLLMENT IN AN ONLINE  
19 COURSE; A COOPERATIVE ARRANGEMENT WITH A NEIGHBORING SCHOOL  
20 DISTRICT OR WITH A PUBLIC SCHOOL ACADEMY; OR GRANTING APPROVAL  
21 UNDER SECTION 6(6) OF THE STATE SCHOOL AID ACT OF 1979, MCL  
22 388.1606, FOR THE PUPIL TO BE COUNTED IN MEMBERSHIP IN ANOTHER  
23 SCHOOL DISTRICT.

24 (12) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF A  
25 SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY IS UNABLE TO IMPLEMENT ALL  
26 OF THE CURRICULAR REQUIREMENTS OF THIS SECTION FOR PUPILS ENTERING  
27 GRADE 9 IN 2007 OR IS UNABLE TO IMPLEMENT ANOTHER REQUIREMENT OF

1 THIS SECTION, THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY  
2 APPLY TO THE DEPARTMENT FOR PERMISSION TO PHASE IN 1 OR MORE OF THE  
3 REQUIREMENTS OF THIS SECTION. TO APPLY, THE SCHOOL DISTRICT OR  
4 PUBLIC SCHOOL ACADEMY SHALL SUBMIT A PROPOSED PHASE-IN PLAN TO THE  
5 DEPARTMENT. THE DEPARTMENT SHALL APPROVE A PHASE-IN PLAN IF THE  
6 DEPARTMENT DETERMINES THAT THE PLAN WILL RESULT IN THE SCHOOL  
7 DISTRICT OR PUBLIC SCHOOL ACADEMY MAKING SATISFACTORY PROGRESS  
8 TOWARD FULL IMPLEMENTATION OF THE REQUIREMENTS OF THIS SECTION. IF  
9 THE DEPARTMENT DISAPPROVES A PROPOSED PHASE-IN PLAN, THE DEPARTMENT  
10 SHALL WORK WITH THE SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY TO  
11 DEVELOP A SATISFACTORY PLAN THAT MAY BE APPROVED. HOWEVER, IF  
12 LEGISLATION IS ENACTED THAT ADDS SECTION 1290 TO ALLOW SCHOOL  
13 DISTRICTS AND PUBLIC SCHOOL ACADEMIES TO APPLY FOR A CONTRACT THAT  
14 WAIVES CERTAIN STATE OR FEDERAL REQUIREMENTS, THEN THIS SUBSECTION  
15 DOES NOT APPLY BUT A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY MAY  
16 TAKE ACTION AS DESCRIBED IN SECTION 1278B(13). THIS SUBSECTION DOES  
17 NOT APPLY TO A HIGH SCHOOL THAT IS DESIGNATED AS A SPECIALTY SCHOOL  
18 UNDER SUBSECTION (5) AND THAT IS EXEMPT UNDER THAT SUBSECTION FROM  
19 THE ENGLISH LANGUAGE ARTS AND SOCIAL SCIENCE REQUIREMENTS UNDER  
20 SUBSECTION (1) (A).

21       Sec. 1280. (1) The board of a school district that does not  
22 want to be subject to the measures described in this section shall  
23 ensure that each public school within the school district is  
24 accredited.

25       (2) As used in subsection (1), and subject to subsection (6),  
26 "accredited" means certified by the superintendent of public  
27 instruction as having met or exceeded standards established under

# Workers' Compensation

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1. Elimination of Double Recoveries Act
2. The Workplace Responsibility Act
3. Workers' Compensation as Exclusive Remedy Resolution

# ELIMINATION OF DOUBLE RECOVERIES ACT

## *Summary*

This Act permits juries to be informed of all sources of compensation an injured party will receive for an injury, such as insurance payments and other settlements. The purpose is to ensure that the jury has complete information regarding the compensation available to the plaintiff. The traditional evidentiary rule preventing juries from learning whether a plaintiff has been compensated for an injury (the Collateral Source Rule) has often led to double and even triple recoveries. This approach has encouraged plaintiffs and their lawyers to view the tort system as a lottery within which windfalls are possible.

ALEC's Elimination of Double Recovery Act allows the admission into evidence of proof of collateral source payments which already have been made or which are substantially certain to be made to the claimant as compensation for the same damages sought in the suit.

## *Model Legislation*

{Title, enacting clause, etc.}

**Section 1.** This Act shall be known and may be cited as the **Elimination of Double Recoveries Act**.

**Section 2.** The following words, as used in this Act, shall have the meaning set forth below, unless the context clearly requires otherwise:

(A) "Collateral source" means a benefit paid or payable to the claimant or on his behalf, under, from, or pursuant to:

(1) the United States Social Security Act;

(2) any state or federal income replacement, disability, workers compensation, or other Act designed to provide partial or full wage or income replacement:

(3) any accident, health or sickness, income or wage replacement insurance, income disability insurance, casualty or property insurance including automobile accident and homeowners' insurance benefits, or any other insurance benefits, except life insurance benefits;

(4) any contract or agreement of any group, organization, partnership, or corporation, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services or provide similar benefits;

(5) any contractual or voluntary wage continuation plan, or payments made pursuant to such a plan, provided by an employer or otherwise, or any other system intended to

provide wages during a period of disability.

(B) "Claimant" means any person who brings a personal injury action, and if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if such an action is brought through or on behalf of a minor, the term includes the claimant's parent or guardian.

(C) "Damages" in this Act refer to economic losses paid or payable by collateral sources for wage loss, medical costs, rehabilitation cost, services, and other out-of-pocket costs incurred by or on behalf of a claimant for which that party is claiming recovery through a tort suit.

### **Section 3. {Admissibility of Evidence.}**

(A) In all tort actions, regardless of the theory of liability under which they are brought, the court shall allow the admission into evidence of proof of collateral source payments which already have been made or which are substantially certain to be made to the claimant as compensation for the same damages sought in the suit. Proof of such payments shall be considered by the trier of fact in arriving at the amount of any award, and shall be considered by the court in reviewing awards made for excessiveness.

(B) The trier of fact shall be informed of the tax implication of all damage awards. The trier of fact may hear evidence of the premiums personally paid by the claimant to obtain any collateral sources paid or payable.

### **Section 4. {Special Damages Findings Required.}**

(A) If liability is found in any tort action, regardless of the theory of liability, then the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:

(1) any past damages for:

(a) medical and other costs of health care;

(b) other economic loss; and

(c) noneconomic loss.

(2) any future damages and the periods over which they will accrue, on an annual basis, for each of the following types of damages:

(a) medical and other costs of health care;

(b) other economic loss; and

(c) noneconomic loss.

(B) The calculation of all future medical care and other costs of health care and future noneconomic loss shall reflect the costs and losses during the period of time the claimant will sustain those costs and losses. The calculation for other economic loss must be based on the losses during the period of time the claimant would have lived but for the injury upon which the claim is based.

**Section 5. {Severability clause.}**

**Section 6. {Repealer clause.}**

**Section 7. {Effective date.}**

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# THE WORKPLACE RESPONSIBILITY ACT

## Summary

The Workplace Responsibility Act requires that employees show that their drug and alcohol use did not cause a workplace accident, and that accidents caused by drug and alcohol use are not compensable by worker's compensation. Currently, the burden is on employers to show that drug and alcohol use caused a workplace accident, which is a nearly impossible standard to prove.

## Model Legislation

### Section 1. {Short Title}

The Workplace Responsibility Act

### Section 2. {Legislative Declarations}

The legislature finds and declares that the burden of proof to prove that a workplace accident was not caused by drug or alcohol use shift from the employer to the employee

A. Because it is estimated that drug and alcohol related injuries substantially drive the costs of worker's compensation up; and

B. Due to the fact that it is nearly impossible for employers to prove that drug and alcohol use substantially contributed to a workplace injury

### Section 3. {Definitions}

A. For purposes of this section "Controlled substance" means any drug proscribed by Title\_\_\_, Chapter\_\_\_ that the employee engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

B. "Incapacitated" means that the employee is physically unable, because of a disability, to testify at the initial compensation hearing.

C. "Initial compensation hearing" means the first formal hearing in front of an administrative law in which the administrative law judge takes formal and recorded testimony.

D. "Refuses to cooperate" means that the employee unjustifiably engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

E. "Proximate cause" means that the injury would not have occurred if the employee had not been under the influence of alcohol per se pursuant to section\_\_ or under the influence of a controlled substance pursuant to 49 code of federal regulations part 40.

#### **Section 4. {Scope}**

A. Every employee coming within the provisions of this chapter who is injured, and the dependents of every such employee who is killed by accident arising out of and in the course of his employment, wherever the injury occurred, unless the injury was purposely self-inflicted, shall be entitled to receive and shall be paid such compensation for loss sustained on account of the injury or death, such medical, nurse and hospital services and medicines, and such amount of funeral expenses in the event of death, as are provided by this chapter.

B. Every employee who is covered by insurance in the state compensation fund and who is injured by accident arising out of and in the course of employment, and the dependents of every such employee who is killed, provided the injury was not purposely self-inflicted, shall be paid such compensation from the state compensation fund for loss sustained on account of the injury and shall receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses in event of death, as provided in this chapter.

#### **Section 5. {Non-Compensable Injuries/Death}**

A. An employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable

Pursuant to this chapter if the impairment of the employee is due to the employee's use of alcohol or the unlawful use of any controlled substance and is proximate cause of the

employee's personal injury or death. This subsection does not apply if the employer had actual knowledge of and permitted, or condoned, the employee's use of alcohol or the unlawful use of the controlled substance.

B. Notwithstanding subsection C of this section, if the employer has established a policy of drug testing or alcohol impairment testing in accordance with chapter \_\_, article \_\_ of this title, is maintaining that policy on an ongoing manner and, before the date of the employee's injury, the employer files the written certification with the industrial commission as required by subsection D of this section, an employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter, if the employee of such an employer fails to pass, refuses to cooperate with or refuses to take a drug test for the unlawful use of any controlled substance or fails to pass, refuses to cooperate with or refuses to take an alcohol impairment test that is administered by or at the request of the employer not more than twenty-four hours after the employer receives actual notice of the injury, unless the employee proves any of the following:

1. The employee's use of alcohol or the employee's use of any unlawful substance proscribed by title \_\_, chapter \_\_ was not the proximate cause of the employee's injury or death.
2. The alcohol impairment test indicates that the employee's alcohol concentration was lower than the alcohol concentration that would constitute a violation of \_\_\_\_, and would not create a presumption that the employee was under the influence of intoxicating liquor pursuant to section \_\_\_\_.
3. The drug test or alcohol impairment test used cutoff levels for the presence of alcohol, drugs or metabolites that were lower than the cutoff levels prescribed at the time of the testing for transportation workplace drug and alcohol testing programs under 49 code of federal regulations part 40.

C. Notwithstanding Subsection B, if an employee dies or becomes incapacitated prior to the initial compensation hearing, the injury shall be compensable pursuant to this chapter unless the employer proves that the employee's use of alcohol or the employee's use of a controlled substance was the proximate cause of the employee's death or injury.

D. Subsection B of this section does not apply if the employer had actual knowledge of and permitted or condoned the employee's use of alcohol or the employee's unlawful use of any controlled substance.

E. An employer that establishes a policy of drug testing or alcohol impairment testing in accordance with chapter \_\_, article \_\_ of this title shall file a written certification to that effect with the industrial commission. On or before January 15 of each year, an employer

that has previously established a policy of drug testing or alcohol impairment testing and is maintaining that policy shall both file a written certification to that effect with the industrial commission and provide notification to its employees in a manner consistent with section \_\_ that the employer is maintaining that policy.

F. Nothing contained in this section shall be construed to enhance or expand the reporting requirements prescribed in section \_\_\_\_.

**Section 6. {Severability}**

**Section 7. {Effective Date}**

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# **WORKERS' COMPENSATION AS EXCLUSIVE REMEDY RESOLUTION**

## **Summary**

ALEC's Workers' Compensation as Exclusive Remedy Resolution reasserts the traditional no-fault principle upon which the system is based.

## **Model Resolution**

**{Title}**

**WHEREAS**, since the early 1900s every state has adopted some type of workers' compensation system that provides workers with medical, wage loss, and other benefits on a no-fault basis for injuries or death arising during the course of employment; and

**WHEREAS**, the system is intended to remove all disputes between the employer and employee from the tort system and to be the exclusive remedy for employees; and

**WHEREAS**, in exchange for employees giving up their right to sue their employer, the employer has agreed to compensate all employees on a no-fault basis; and

**WHEREAS**, tort immunity is thus a fundamental and necessary element of the workers' compensation system; and

**WHEREAS**, new legal theories have been advanced in recent years to permit tort recovery from employers for injuries subject to the workers' compensation system; and

**WHEREAS**, such theories threaten to weaken or destroy the exclusive remedy concept\_ thereby permitting recovery against the employer under both the workers' compensation and the tort system, for the same injury; and

**WHEREAS**, the workers' compensation was intended to remove all disputes between employer and employee from the tort system and to be the exclusive remedy for employees;

**NOW THEREFORE BE IT RESOLVED**, that the State of (insert state) specifically reaffirms the principle of workers' compensation as the exclusive remedy and rejects the rationale for tort liability based on legal theories such as dual capacity/dual persona, intentional injury without proof that the employer acted with deliberate intention to cause the injury, or third party action against employers for work-related injuries.

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# Workforce Development and Career and Technical Education (CTE)

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1. Kansas Career Technical Workforce Grant Program
2. Kansas District Financial Incentive for Graduates of Industry-recognized Credentials
3. Virginia High School Accreditation Credit for Graduates with Certain Industry Certifications
4. Nebraska Career Academy Authorization
5. Virginia High School-to-Work Partnerships
6. Indiana Career Council Authorization
7. Texas CTE Partnerships with Higher Education, Local Business and Community (Bill Excerpt)
8. Texas Dual Credit for Certain CTE Courses toward high school Diplomas and Apprenticeship
9. Texas Authorization for Advanced CTE Courses to Apply to STEM Requirements
10. New Mexico Authorization for High Schools Districts to Provide Apprenticeship Programs
11. South Carolina Apprenticeship Tax Credit

HOUSE BILL No. 2435

AN ACT concerning postsecondary technical education; relating to career technical education programs and workforce grants; amending K.S.A. 72-4460, 72-4461, 72-4462, 72-4463, 72-4464, 72-4465, 74-32,181 and 76-717 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 72-4460 is hereby amended to read as follows: 72-4460. As used in this act:

(a) *“Board of regents” means the state board of regents provided for in the constitution of this state.*

~~(b) “Vocational education scholarship” “Career technical workforce grant” means the award of a financial grant-in-aid by this state under this act to a vocational education scholar an eligible student.~~

~~(b) “Vocational education scholar” means a person who: (1) Is a resident of Kansas; (2) has been graduated from a high school accredited by the state board of education or has received general educational development credentials issued by the board of regents; (3) is enrolled in or has been accepted for admission to a vocational education program operated by a designated educational institution; and (4) has qualified on the basis of a competitive examination of ability and aptitude for the award of a vocational education scholarship or has previously so qualified and remains qualified on the basis of satisfactory performance for the renewal of the award of a vocational education scholarship.~~

(c) *“Designated career technical education program” “Vocational education program” means a vocational education program operated at the postsecondary level by a designated educational institution that has been identified by the Kansas board of regents, working in conjunction with the Kansas department of commerce, as a high cost, high demand or critical industry field program.*

(d) *“Designated educational institution” means an educational institution which qualifies as an eligible institution for the federal guaranteed loan program under the higher education act of 1965 (P.L. 89-320), as amended, that: (1) has been identified by the Kansas board of regents, working in conjunction with the Kansas department of commerce, as delivering programs that are high cost, high demand or in a critical industry field; (2) is eligible to receive federal title IV funding; and (3) has its and the main campus or principal place of operation of which is located in Kansas.*

(e) *“Eligible career technical education program” means a designated career technical education program operated at the postsecondary level by a designated educational institution.*

(f) *“Eligible student” means a person who: (1) Is a resident of Kansas; (2) has graduated from a high school accredited by the state board of education or has received general educational development credentials issued by the board of regents, or has graduated from a home school program or a nonaccredited private secondary school, as defined and authorized pursuant to K.S.A. 72-53,100 et seq.; and (3) is enrolled in or has been accepted for admission to an eligible career technical education program operated by a designated Kansas educational institution.*

~~(e)(g)~~ (g) *“Program term” means 1/2 the duration of the period of time required for completion of a vocational career technical education program when such period of time encompasses more than one school year.*

(h) *“Satisfactory performance” means retaining admission in and meeting the standards established by the Kansas educational institution being attended by the eligible student.*

~~(f)(i)~~ (i) *“School year” means the period of time beginning on July 1 in each calendar year and ending on June 30 in the succeeding calendar year.*

~~(g)~~ *“Board of regents” means the state board of regents provided for in the constitution of this state.*

(j) *“State board of education” means the state board of education provided for in the constitution of this state.*

Sec. 2. K.S.A. 72-4461 is hereby amended to read as follows: 72-4461. ~~(a)~~ Within the limits of appropriations therefor and in accordance with the provisions of this act:

~~(1)(a)~~ (a) The board of regents may: ~~(A)(1)~~ Award a vocational education scholarship to every person who is career technical workforce grant to persons enrolled in or accepted for admission to a vocational education an eligible career technical education program at a designated educational institution and who qualifies on the basis of the results of a competitive

~~examination of vocational education ability and aptitude for designation as a vocational education scholar and for the award of a vocational education scholarship; and (B)(2) renew the award of a vocational education scholarship~~ *career technical workforce grants* to every person who is currently ~~designated as a vocational education scholar~~ *receiving a career technical workforce grant* and who qualifies on the basis of satisfactory performance in a vocational education program at a designated educational institution for the renewal of the award of a vocational education scholarship; and

~~(2)(b) in each school year, the board of regents may designate as vocational education scholars and award vocational education scholarships~~ *award career technical workforce grants* to those applicants who exhibit ~~the greatest ability and aptitude for vocational education~~ *financial need as determined on the basis of criteria under the federal methodology of need analysis, with preference given to those who exhibit the greatest financial need.* An applicant who ~~fails to be designated as a vocational education scholar and to be awarded a vocational education scholarship~~ *is found to be ineligible for a career technical workforce grant* shall not be disqualified from ~~applying therefor in a later school year so long as all requirements for eligibility to apply for such designation and award are met~~ *subsequently applying in later school years.*

~~(3) in each school year, the board of regents may renew the award of vocational education scholarships to all vocational education scholars who remain eligible and qualified.~~

~~(b) A vocational education scholar who is eligible for the award of a state scholarship under the provisions of article 68 of chapter 72 of Kansas Statutes Annotated may be awarded such state scholarship in addition to a vocational education scholarship. The amount received by a vocational education scholar under a vocational education scholarship shall not be considered in determining financial need under the state scholarship program.~~

Sec. 3. K.S.A. 72-4462 is hereby amended to read as follows: 72-4462.

(a) Subject to the other provisions of this section, ~~a vocational education scholarship~~ *a career technical workforce grant* shall provide, upon certification by a designated educational institution that the ~~vocational education scholar is enrolled full time in a vocational education~~ *eligible student is enrolled in an eligible career technical education* program, for payment to the ~~vocational education scholar~~ *eligible student* of an amount not to exceed:

(1) ~~Five hundred~~ *One thousand* dollars when the period of time required for completion of the ~~vocational career technical education~~ program in which the ~~vocational education scholar~~ *eligible student* is enrolled is not more than one school year in duration; or

(2) ~~five hundred one thousand~~ dollars for each program term, not to exceed two program terms, when the duration of the period of time required for completion of the ~~vocational career technical education~~ program in which the ~~vocational education scholar~~ *eligible student* is enrolled encompasses more than one school year.

(b) In no event shall the amount awarded to ~~a vocational education scholar under a vocational education scholarship~~ *an eligible student under a career technical workforce grant* or the total of any amounts awarded thereunder ~~and under a state scholarship~~ exceed an amount equal to the amount of the total tuition and required fees for the ~~vocational career technical education~~ program in which the ~~vocational education scholar~~ *eligible student* is enrolled.

(c) *Eligible students who are enrolled as part-time students in a career technical education program at a designated educational institution may qualify for a career technical workforce grant, but shall receive a proportionate amount of the grant based upon the number of credit hours they are enrolled in per academic period, when compared and computed as a fraction of the total number of credit hours required for full-time enrollment.*

Sec. 4. K.S.A. 72-4463 is hereby amended to read as follows: 72-4463.

(a) The board of regents ~~shall~~ *may* adopt rules and regulations for administration of the provisions of this act and shall:

(1) Publicize procedures for application for ~~vocational education scholarships~~ *career technical workforce grants*;



- (2) provide application forms;
- (3) ~~determine residence, as provided by law, of applicants for vocational education scholarships~~ *establish and prescribe the information and documentation that must be provided by each applicant in order to establish financial need;*
- ~~(4) prescribe examinations of ability and aptitude for vocational education and provide for administration of such examinations to determine qualifications of applicants for vocational education scholarships;~~
- ~~(5)~~(4) notify each person who qualifies for designation as a vocational education scholar and for the award of a vocational education scholarship *career technical workforce grant* and each vocational education scholar *eligible student* who remains eligible and qualified for the renewal of the award of a vocational education scholarship *career technical workforce grant*;
- ~~(6) designate vocational education scholars;~~
- ~~(7)~~(5) approve and award or renew the award of vocational education scholarships *career technical workforce grants*;
- ~~(8)~~(6) determine full-time or part-time enrollment in a vocational *career technical* education program;
- ~~(9)~~(7) provide for apportionment of vocational education scholarships *career technical workforce grants* if appropriations therefor are insufficient for payment in full to all vocational education scholars *eligible students*;
- ~~(10)~~(8) evaluate the vocational education scholarship *career technical workforce grant* program for each school year and make a report thereon to the governor and the legislature;
- ~~(11)~~(9) request any designated educational institution to furnish any information relating to and necessary for administration of this act.

~~(b) In order to comply with the requirements of subsection (a)(4), the board of regents shall prescribe an examination designed to measure the basic ability and aptitude for vocational education of applicants for designation as vocational education scholars and for the award of vocational education scholarships and shall provide for administration and validation of the examination. The examination shall be administered to applicants at least two times each school year, commencing with the 1986-87 school year, at various locations within the state. The board of regents may establish and provide for the charging to and collection from applicants for a vocational education scholarship of a fee to offset, in part or in total, the expense of administration of the examination. The board of regents shall remit all moneys received by or for it from fees collected under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the vocational education scholarship examination fees fund, and shall be used only for the payment of expenses connected with the administration of such examinations. All expenditures from the vocational education scholarship examination fees fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the board of regents or by a person or persons designated by it.~~

*(b) Upon the effective date of this act, the director of accounts and reports is directed to transfer all moneys in the vocational education scholarship examination fees fund to the career technical workforce grant discontinued attendance fund established in K.S.A. 72-4464, and amendments thereto. Upon the effective date of this act, all liabilities of the vocational education scholarship examination fees fund existing prior to such effective date are hereby imposed on the career technical workforce grant discontinued attendance fund established in K.S.A. 72-4464, and amendments thereto. The vocational education scholarship examination fees fund is hereby abolished.*

Sec. 5. K.S.A. 72-4464 is hereby amended to read as follows: 72-4464.

(a) Payments to ~~vocational education scholars of vocational education scholarships~~ *an eligible student of a career technical workforce grant* shall be made at times specified by the board of regents upon vouchers approved by its designated administrative officer and upon warrants of the director of accounts and reports. Payments of ~~vocational education scholarships~~ *a career technical workforce grant* may be made by the issuance

of a single warrant to each designated educational institution at which a ~~vocational education scholar~~ *an eligible student* is enrolled for the total amount of ~~vocational education scholarships~~ *career technical workforce grants* for all ~~vocational education scholars~~ *eligible students* enrolled at that institution. The director of accounts and reports shall cause such warrant to be delivered to the designated educational institution at which the ~~vocational education scholar~~ *or scholars* ~~are~~ *eligible student is* enrolled. Upon receipt of such warrant, the designated educational institution shall credit immediately the account of each ~~vocational education scholar~~ *eligible student* enrolled at that institution by an amount specified by the board of regents for each such ~~scholar~~ *eligible student*.

(b) If a ~~vocational education scholar~~ *an eligible student* discontinues attendance before the end of a ~~vocational~~ *an eligible career technical* education program or program term, after the designated educational institution has received payment under this section, the designated educational institution shall pay to the state: (1) The entire amount which the ~~vocational education scholar~~ *eligible student* would otherwise qualify to have refunded not to exceed the amount of the payment made under the ~~vocational education scholarship~~ *career technical workforce grant*; or (2) if the ~~vocational education scholar~~ *eligible student* has received payments under any federal program of student assistance, the state's *pro rata* share of the entire amount which the ~~vocational education scholar~~ *eligible student* would otherwise qualify to have refunded, not to exceed the amount of the payment made under the ~~vocational education scholarship~~ *career technical workforce grant*.

(c) All amounts paid to the state by a designated educational institution under subsection (b) shall be deposited in the state treasury and credited to the ~~vocational education scholarship~~ *career technical workforce grant* discontinued attendance fund which is hereby established. All expenditures from the ~~vocational education scholarship~~ *career technical workforce grant* discontinued attendance fund shall be for ~~vocational education scholarships~~ *career technical workforce grants*. *On the effective date of this act, the vocational education scholarship discontinued attendance fund is hereby redesignated as the career technical workforce grant discontinued attendance fund.*

Sec. 6. K.S.A. 72-4465 is hereby amended to read as follows: 72-4465. Each applicant for a ~~vocational education scholarship~~ *career technical workforce grant*, in accordance with rules and regulations of the board of regents, shall:

(a) Complete and file an application for the award or renewal of a ~~vocational education scholarship~~ *career technical workforce grant*.

~~(b) Be responsible for the payment of any fee required by the board of regents for administration of the examination on the basis of which qualification for the award of a vocational education scholarship is determined.~~

~~(c)~~ *(b)* Report promptly to the board of regents any information requested relating to the administration of this act.

New Sec. 7. (a) Notwithstanding the provisions of K.S.A. 46-215 through 46-293, and amendments thereto, an employee of a state university may provide significant factual information or advice or recommendations in relation to the negotiated terms of a technology licensing agreement or other research or development agreement between the state university and a company in which the employee has a substantial interest, provided that the employee does not have the authority to negotiate the terms of such agreement, or to approve such agreement on behalf of the state university. Nothing in this section shall allow an employee of a state university, in such employee's capacity as a state university employee, to provide advice or recommendations in relation to the negotiated terms of an agreement, which would directly affect such employee's financial benefit.

(b) For the purposes of this section, the phrase "research or development" means those activities and services relating to the development, transfer or commercialization of technology or other intellectual property.

(c) This section shall be a part of and supplemental to the state governmental ethics law.

Sec. 8. K.S.A. 2011 Supp. 74-32,181 is hereby amended to read as follows: 74-32,181.

(a) The state board shall fix, charge and collect fees not to exceed the following amounts by adopting rules and regulations for such purposes:

(1) For institutions domiciled or having their principal place of business within the state of Kansas:

Initial application fees:	
Non-degree granting institution .....	\$2,000
Degree granting institution .....	\$3,000
Initial evaluation fee (in addition to initial application fees):	
Non-degree level .....	\$750
Associate degree level.....	\$1,000
Baccalaureate degree level.....	\$2,000
Master's degree level.....	\$3,000
Professional or doctoral degree level.....	\$4,000
Renewal application fees:	
Non-degree granting institution .....	2% of gross tuition, but not less than \$800, nor more than \$25,000
Degree granting institution .....	2% of gross tuition, but not less than \$1,600, nor more than \$25,000
New program submission fees, for each new program:	
Non-degree program .....	\$250
Associate degree program.....	\$500
Baccalaureate degree program .....	\$750
Master's degree program .....	\$1,000
Professional or doctoral degree program.....	\$2,000
Program modification fee, for each program .....	\$100
Branch campus site fees, for each branch campus site:	
Initial non-degree granting institution.....	\$1,500
Initial degree granting institution.....	\$2,500
Renewal branch campus site fees, for each branch campus site:	
Non-degree granting institution .....	2% of gross tuition, but not less than \$800, nor more than \$25,000
Degree granting institution .....	2% of gross tuition, but not less than \$1,600, nor more than \$25,000
On-site branch campus review fee, for each site .....	\$250
Representative fees:	
Initial registration .....	\$200
Renewal of registration .....	\$150
Late submission of renewal of application fee.....	\$125
Student transcript copy fee .....	\$10
Returned check fee .....	\$50
Changes in institution profile fees:	
Change of institution name .....	\$100
Change of institution location .....	\$100
Change of ownership only .....	\$100

(2) For institutions domiciled or having their principal place of business outside the state of Kansas:

Initial application fees:	
Non-degree granting institution .....	\$4,000
Degree granting institution .....	\$5,500
Initial evaluation fee (in addition to initial application fees):	
Non-degree level .....	\$1,500
Associate degree level.....	\$2,000
Baccalaureate degree level.....	\$3,000
Master's degree level.....	\$4,000
Professional or doctoral degree level.....	\$5,000
Renewal application fees:	
Non-degree granting institution .....	3% of gross tuition, but not less than \$2,400, nor more than \$25,000
Degree granting institution .....	3% of gross tuition, but not less than \$3,000, nor more than \$25,000
New program submission fees, for each new program:	
Non-degree program .....	\$500
Associate degree program.....	\$750
Baccalaureate degree program .....	\$1,000
Master's degree program .....	\$1,500
Professional or doctoral degree program.....	\$2,500
Program modification fee, for each program .....	\$100
Branch campus site fees, for each branch campus site:	
Initial non-degree granting institution.....	\$4,000
Initial degree granting institution.....	\$5,500
Renewal branch campus site fees, for each branch campus site:	
Non-degree granting institution .....	3% of gross tuition, but not less than \$2,400, nor more than \$25,000
Degree granting institution .....	3% of gross tuition, but not less than \$3,000, nor more than \$25,000
Onsite branch campus review fee, for each site .....	\$500
Representative fees:	
Initial registration .....	\$350
Renewal of registration .....	\$250
Late submission of renewal of application fee.....	\$125

Student transcript copy fee .....	\$10
Returned check fee .....	\$50
Changes in institution profile fees:	
Change of institution name .....	\$100
Change of institution location .....	\$100
Change of ownership only .....	\$100

(b) Fees shall not be refundable.

(c) If there is a change in the ownership of an institution and, if at the same time, there also are changes in the institution’s programs of instruction, location, entrance requirements or other changes, the institution shall be required to submit an application for an initial certificate of approval and shall pay all applicable fees associated with an initial application.

(d) An application for renewal shall be deemed late if the applicant fails to submit a completed application for renewal, or documentation requested by the state board to complete the renewal process, before the expiration date of the current certificate of approval.

(e) The state board shall determine on or before June 1 of each year the amount of revenue which will be required to properly carry out and enforce the provisions of the Kansas private and out-of-state postsecondary educational institution act for the next ensuing fiscal year and shall fix the fees authorized for such year at the sum deemed necessary for such purposes within the limits of this section. Prior to adoption of any such fees, the state board shall afford the advisory commission an opportunity to make recommendations on the proposed fees.

(f) Fees may be charged to conduct onsite reviews for degree granting and non-degree granting institutions or to review curriculum in content areas where the state board does not have expertise.

(g) The provisions of this section shall expire on June 30, ~~2012~~ 2017.

New Sec. 9. The state board of regents shall conduct a study regarding the retention and graduation rates of students who are accepted into state universities through the exceptions to the minimum admissions standards prescribed in K.S.A. 76-717, and amendments thereto, and report the findings of such study to the committee on education of the house of representatives and the committee on education of the senate on or before January 13, 2014.

New Sec. 10. (a) (1) Except as provided in subsection (a)(2), no funds appropriated from the state general fund for any state educational institution shall be expended for the purposes of providing remedial courses.

(2) Funds appropriated from the state general fund for any state educational institution may be expended for a student who is enrolled in a remedial course if the student is: (A) In military service; (B) 21 years of age or older; or (C) an international student enrolled in a remedial course for the purpose of learning English as a second language.

(b) Except for the costs associated with remedial education pursuant to subsection (a)(2), the board of regents, in its budget estimate filed pursuant to K.S.A. 75-3717, and amendments thereto, shall not include any appropriation requests for expenditures related to the provision of remedial courses at state educational institutions.

(c) As used in this section:

(1) The terms “board of regents” and “state educational institution” shall have the same meanings, respectively, as such terms are defined in K.S.A. 76-711, and amendments thereto.

(2) “Remedial course” means any course offered by a state educational institution in the area of mathematics or language arts, which includes expenditures for formally organized or separately budgeted instructional activities that give students the basic knowledge and skills required by the institution before they can undertake formal academic course work leading to a postsecondary degree or certificate.

(d) The provisions of this section shall take effect and be in force from and after August 15, 2015.

(e) This section shall be part of and supplemental to the provisions of article 7 of chapter 76 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 11. K.S.A. 2011 Supp. 76-717 is hereby amended to read as follows: 76-717. (a) The board of regents may adopt rules and regulations for the admission of students at the state educational institutions. Except

as provided by subsection (f), the rules and regulations shall include the following:

(1) Each Kansas resident who has graduated from an accredited Kansas high school and who is seeking admission to a state educational institution shall be admitted if the applicant for admission has achieved at least one of the following:

(A) The applicant has completed the precollege curriculum prescribed by the board of regents with a minimum grade point average of 2.0 on a 4.0 scale or has been recognized by the board of regents as having attained a functionally equivalent level of education; or

(B) the applicant has a composite American college testing program (ACT) score of not less than 21 points; or

(C) the applicant ranks in the top  $\frac{1}{3}$  of the applicant's high school class upon completion of seven or eight semesters.

(2) Each Kansas resident who has graduated from a non-accredited private secondary school, as defined in K.S.A. 72-53,100, and amendments thereto, and who is seeking admission to a state educational institution shall be admitted if the applicant for admission has a composite American college testing program (ACT) score of not less than 21 points.

(3) Admission to all state educational institutions shall be granted to each Kansas resident under 21 years of age who has earned the general educational development (GED) certificate with an overall score of not less than 50 points.

(4) Admission to all state educational institutions shall remain open for each Kansas resident who is 21 years of age or older and who has:

(A) Graduated from an accredited Kansas high school or a non-accredited private secondary school; or

(B) earned the general educational development (GED) certificate with an overall score of not less than 50 points.

(5) Each state educational institution shall establish and maintain a policy permitting the admission of not more than 10% of the total number of freshman class admissions to the state educational institution as exceptions to the minimum admissions standards prescribed by this section. These exceptions shall only be applied to students who are *bona fide* residents of Kansas in accordance with rules and regulations of the board of regents and which rules and regulations are substantially similar to law, rule or regulation relative to the determination of resident status for tuition purposes. *Such policy shall also provide that in determining which students to admit as exceptions to the minimum admissions standards prescribed by this section, the state educational institution shall give preference to persons who are in military service.* The board of regents shall adopt rules and regulations prescribing criteria and guidelines to be applied on a system-wide basis to policies established by the state educational institutions for the purpose of permitting freshman class admissions to the institutions as exceptions to the minimum admissions standards prescribed by this section. On or before January 31 of each year, the board of regents shall submit a report to the legislature containing the number and percentage of freshman class admissions permitted as exceptions to such standards during the preceding academic year. The information contained in the annual report shall be disaggregated by institution.

(6) Each Kansas resident who has earned at least 24 credit hours of transferable course work with a cumulative grade point average of not less than 2.0 on a 4.0 scale at an accredited community college, university or other college shall be admitted as a transfer student to the state educational institutions. Each state educational institution may permit the admission of not more than 10% of the total number of such resident transfer admissions to the state educational institution as exceptions to the minimum admission standards prescribed by this paragraph. *In determining which students to admit as exceptions to the minimum admissions standards prescribed by this paragraph, the state educational institution shall give preference to persons who are in military service.* The board of regents shall adopt rules and regulations prescribing criteria and guidelines to be applied on a system-wide basis for the purpose of admitting students who have earned at least 24 credit hours of transferable course work to state educational institutions as exceptions to the minimum standards prescribed by this paragraph. On or before January 31 of each year, the board of regents shall submit a report to the legislature containing the number and percentage of transfer student admissions

permitted as exceptions to such standards during the preceding academic year. The information contained in the report shall be disaggregated by institution.

(7) Each person who is not a resident of Kansas and who has graduated from an accredited high school may be admitted as a freshman to any of the state educational institutions if the person has achieved at least one of the following:

(A) The person has completed the precollege curriculum prescribed by the board of regents with a minimum grade point average of 2.50 on a 4.0 scale or has been recognized by the board of regents as having attained a functionally equivalent level of education; or

(B) the person has a composite American college testing program (ACT) score of not less than 21 points; or

(C) the person ranks in the top  $\frac{1}{3}$  of the person's high school class upon completion of seven or eight semesters.

(8) Each person who is not a resident of Kansas and who has graduated from a non-accredited private secondary school meeting requirements substantially equivalent to K.S.A. 72-53,100 through 72-53,102, and amendments thereto, may be admitted to any state educational institution if the person has a composite American college testing program (ACT) score of not less than 21 points.

(9) Each person who is not a resident of Kansas and who has earned at least 24 credit hours of transferable course work with a cumulative grade point average of not less than 2.0 on a 4.0 scale at an accredited community college, university or other college may be admitted as a transfer student to any of the state educational institutions. Each state educational institution may permit the admission of not more than 10% of the total number of such non-resident transfer admissions to the state educational institution as exceptions to the minimum admission standards prescribed by this paragraph. *In determining which students to admit as exceptions to the minimum admissions standards prescribed by this paragraph, the state educational institution shall give preference to persons who are in military service.* The board of regents shall adopt rules and regulations prescribing criteria and guidelines to be applied on a system-wide basis for the purpose of admitting students who have earned at least 24 credit hours of transferable course work to state educational institutions as exceptions to the minimum standards prescribed by this paragraph. On or before January 31 of each year, the board of regents shall submit a report to the legislature containing the number and percentage of transfer student admissions permitted as exceptions to such standards during the preceding academic year. The information contained in the report shall be disaggregated by institution.

(10) (A) *For those students admitted under an exception to the minimum admissions standards prescribed by this subsection for academic years 2012-2013 and 2013-2014, each state educational institution may require each such student to adopt an individual plan for success.*

(B) *For those students admitted under an exception to the minimum admissions standards prescribed by this subsection for academic year 2014-2015 and each academic year thereafter, each state educational institution shall require each such student to adopt an individual plan for success prior to enrollment.*

(C) *Any individual plan for success adopted pursuant to this paragraph shall be reviewed by the student and the student's advisor at least once during the 12-month period immediately succeeding the initial adoption of such plan. Upon completion of such review, the plan may be revised as mutually agreed to by the student and the student's advisor. Nothing in this paragraph shall be construed as prohibiting any plan from being reviewed at any other time while the student is attending such state educational institution, or from being reviewed more than once during any academic year.*

(b) The board of regents may prescribe a precollege curriculum which includes, but need not be limited to, four units of English, three units of mathematics, three units of social studies and three units of natural science.

(c) When a Kansas high school is organized in a manner that provides for documentation of a student's performance in terms other than units of credit or grade point averages, or both, the board of regents shall determine for the students of such school a level of education that is

functionally equivalent to the completion of the precollege curriculum with the required grade point average on a 4.0 scale. The determination of a functionally equivalent level of education required under this subsection shall be made by the board of regents after consultation with the state board of education and the board of education or other governing authority having jurisdiction over the students of the affected school.

(d) The board of regents shall determine a level of education that is functionally equivalent to the completion of the precollege curriculum with the required grade point average on a 4.0 scale for persons who are not residents of Kansas.

(e) The board of regents may authorize the chief executive officer of each state educational institution to adopt additional rules and policies relating to admissions of students so long as such rules and policies are not in conflict with the provisions of this section.

(f) The board of regents may adopt rules and regulations establishing standards for the admission of students to state educational institutions that differ from the standards set forth in subsection (a). Rules and regulations adopted pursuant to this subsection that are more rigorous than those set forth in subsection (a) shall not be effective prior to the first day of the fourth academic year following the year in which the rules and regulations are adopted.

(g) Information in reports required to be compiled and submitted to the legislature by this section may be compiled and submitted to the legislature in a single report.

(h) *For purposes of this section:*

(1) *“Individual plan for success” means a written statement for each student admitted under an exception to the minimum admission standards prescribed in subsection (a) that is jointly developed by the student, the student’s advisor and any other employee designated by the state educational institution for the purposes of establishing an individualized plan for such student to assist the student in achieving such student’s academic goals. In addition to academic coursework, such plan may also address such student’s extracurricular activities, financial needs and any other aspect of such student’s life which may have a bearing on the student’s academic success at the state educational institution. Any such plan may be revised after its initial adoption as mutually agreed to by the student and the student’s advisor.*

(2) *“Military service” means: (A) Any active service in any armed service of the United States; or (B) membership in the Kansas army or air national guard.*

Sec. 12. K.S.A. 72-4460, 72-4461, 72-4462, 72-4463, 72-4464, 72-4465, 74-32,181 and 76-717 are hereby repealed.

SENATE BILL No. 128

AN ACT concerning career technical education; amending K.S.A. 2012 Supp. 72-4484 and 72-4489 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2012 Supp. 72-4484 is hereby amended to read as follows: 72-4484. The provisions of K.S.A. 2012 Supp. 72-4481, 72-4482 and 72-4483, and amendments thereto, shall expire on June 30, ~~2014~~ 2017.

Sec. 2. K.S.A. 2012 Supp. 72-4489 is hereby amended to read as follows: 72-4489. (a) The state board of regents shall establish the career technical education incentive program.

(b) (1) Each school year, to the extent there are sufficient moneys appropriated to the career technical education incentive program, the state board of regents shall make an award to those school districts who have at least one pupil who graduates from a high school in the school district having obtained an industry-recognized credential *either prior to graduation from high school or by December 31 immediately following graduation from high school* in an occupation that has been identified by the secretary of labor, in consultation with the state board of regents and the state board of education, as an occupation in highest need of additional skilled employees at the time the pupil entered the career technical education course or program in the school district. Such school districts shall receive an award in an amount equal to \$1,000 for each such pupil graduating from a high school in the school district. Such awards shall be paid at such times as established by the state board of regents. Such awards shall be expended for the expenses incurred by the board of education of the school district under *this* subsection ~~(b)(2)~~, and any moneys remaining after distribution in accordance with *this* subsection ~~(b)(2)~~ may be expended as determined by the board of education of a school district towards operating the school from which the pupils graduated. Upon receipt of such award and application by a pupil who has not attained a high school diploma and is currently or was previously enrolled in a career technical education course or program in the school district, the board of education of each school district shall pay  $\frac{1}{2}$  of the costs of the industry-recognized credential assessment specified in such application in an amount not to exceed \$1,000. Such industry-recognized credential assessment shall be related to the career technical education course or program which such pupil is currently or was previously enrolled as determined by the board of education. No board of education shall be required to pay  $\frac{1}{2}$  of the cost of three or more industry-recognized credential assessments for the same or substantially the same industry-recognized credential for a pupil if such pupil fails to earn the industry-recognized credential within two attempts of taking the industry-recognized credential assessment.

(2) The state board of education shall certify to the state board of regents and the director of accounts and reports the amounts due to each school district pursuant to this subsection. Such certification, and the amount payable, shall be approved by the director of the budget. The director of accounts and reports shall draw warrants on the state treasurer payable to the district treasurer of each school district entitled to payment of such award amount, pursuant to vouchers approved by the state board of regents. Upon receipt of such warrant, each district treasurer shall deposit the amount of such award in the general fund of the school district.

(c) (1) Each school year, to the extent there are sufficient moneys appropriated to the career technical education incentive program, the state board of regents shall make an award to a community college, technical college or institute of technology who has at least one secondary student who is currently or was previously admitted to a career technical education course or program in accordance with subsection (c) of K.S.A. 72-4417, and amendments thereto, and such secondary student is regularly enrolled in and attending a private secondary school. The purpose of such award is to reimburse such community college, technical college or institute of technology for paying  $\frac{1}{2}$  of the costs of an industry-recognized credential assessment in an occupation that has been identified by the secretary of labor, in consultation with the state board of regents and the state board of education, as an occupation in highest need of additional skilled employees at the time the secondary student was ad-



mitted into such career technical education course or program. Upon receipt of such award and application by a secondary student who is currently or was previously enrolled in a career technical education course or program in accordance with subsection (c) of K.S.A. 72-4417, and amendments thereto, and is regularly enrolled in and attending a private secondary school, the governing body of the community college, technical college or the institute of technology which admitted such secondary student shall pay  $\frac{1}{2}$  of the costs of the industry-recognized credential assessment specified in such application in an amount not to exceed \$1,000. Such industry-recognized credential assessment shall be related to the career technical education course or program in which such secondary student is currently or was previously enrolled as determined by such governing body of a community college, technical college or institute of technology. No governing body of a community college, technical college or institute of technology shall be required to pay  $\frac{1}{2}$  of the cost of three or more industry-recognized credential assessments for the same or substantially the same industry-recognized credential for a secondary student if such secondary student fails to earn the industry-recognized credential within two attempts of taking the industry-recognized credential assessment.

(2) Each governing body of a community college, technical college or institute of technology shall certify to the state board of regents the amount of any payments such community college, technical college or institute of technology will pay based on applications submitted by students pursuant to paragraph (1). The certification shall be on a form prescribed and furnished by the state board of regents, shall contain such information as the state board of regents shall require and shall be filed at the time specified by the state board of regents.

(3) In each school year, each governing body of a community college, technical college or institute of technology is entitled to receive from appropriations for the career technical education incentive program an amount which is equal to the amount certified to the state board of regents in accordance with the provisions of paragraph (2). The state board of regents shall certify to the director of accounts and reports the amount due each governing body of a community college, technical college or institute of technology. The director of accounts and reports shall draw warrants on the state treasurer payable to the treasurer of each governing body of a community college, technical college or institute of technology entitled to payment under this subsection upon vouchers approved by the state board of regents.

(4) Moneys received by a state board of regents under this subsection shall be deposited in the postsecondary technical education fund of each community college and at Washburn university for the Washburn institute of technology or the general operating fund in the technical college in accordance with K.S.A. 2012 Supp. 71-1808, and amendments thereto, and shall be considered reimbursements to the community college, technical college or institute of technology.

(d) Each school year, at such time as agreed to by the secretary of labor, the president of the state board of regents and the commissioner of education, the secretary shall provide the state board of regents and the state board of education with a list of those occupations in highest need of additional skilled employees. If the occupations identified in such list are not substantially the same as those occupations identified in the list from the prior year, reasonable notice of such changes shall be provided to school districts, community colleges, technical colleges and the institute of technology.

(e) The state board of regents and the state board of education, jointly, may adopt such rules and regulations necessary to implement and carry out the provisions of this section.

Sec. 3. K.S.A. 2012 Supp. 72-4484 and 72-4489 are hereby repealed.

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to require that the Board of Education adopt regulations that adjust the formula for calculating*  
3 *the high school accreditation by adding points for students obtaining industry certifications, state*  
4 *licensure, or competency credentials.*

5 [H 642]  
6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1.** *§ 1. That the Board of Education shall adopt regulations adjusting the formula for calculating the*  
9 *final high school accreditation status as follows: for schools having met minimal accreditation*  
10 *requirements, a minimum numerical value of three points shall be added to the completion index total*  
11 *points calculation for each student obtaining (i) a diploma and (ii) an industry certification, industry*  
12 *pathway certification, a state licensure, or an occupational competency credential in a career and*  
13 *technical education program, when such certification, licensure, or credential is approved by the Board*  
14 *of Education as student-selected verified credit. The additional points shall not be used to obtain or*  
15 *deny accreditation.*

ENROLLED

HB642ER

## LEGISLATIVE BILL 870

Approved by the Governor April 6, 2012

Introduced by Adams, 24.

FOR AN ACT relating to schools; to amend section 79-828, Reissue Revised Statutes of Nebraska, and sections 79-757 and 79-760.05, Revised Statutes Supplement, 2011; to provide duties for the State Board of Education and the State Department of Education; to provide for an accountability system to measure school performance pursuant to the Quality Education Accountability Act; to change provisions for tracking and reporting on individual student achievement and for evaluation of probationary certificated employees; to provide for establishment of career academies; to eliminate requirements for a prior assessment and reporting system and a joint plan for a learning community; to harmonize provisions; to repeal the original sections; and to outright repeal section 79-760, Reissue Revised Statutes of Nebraska, and section 79-760.04, Revised Statutes Supplement, 2011.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 79-757, Revised Statutes Supplement, 2011, is amended to read:

79-757 Sections 79-757 to 79-762 and section 2 of this act shall be known and may be cited as the Quality Education Accountability Act.

Sec. 2. On or before August 1, 2012, the State Board of Education shall establish an accountability system to be used to measure the performance of individual public schools and school districts. The accountability system shall combine multiple measures, including, but not limited to, graduation rates, student growth and student improvement on the assessment instruments provided in section 79-760.03, and other indicators of the performance of public schools and school districts as established by the board. The measures selected by the board for the accountability system may be combined into a school performance score and district performance score.

The board may establish levels of performance for the indicators used in the accountability system in order to classify the performance of public schools and school districts beginning with school year 2013-14. The State Department of Education shall annually report any performance levels established by the board regarding the performance of individual public schools and school districts as part of the statewide assessment and reporting system.

Sec. 3. Section 79-760.05, Revised Statutes Supplement, 2011, is amended to read:

79-760.05 (1) The State Board of Education shall implement a statewide system for tracking individual student achievement, using the student identifier system of the State Department of Education, that can be aggregated to track student progress by demographic characteristics, including, but not limited to, race, poverty, high mobility, attendance, and limited English proficiency, on available measures of student achievement which include, but need not be limited to, national assessment instruments, and state assessment instruments, and the indicators used in the accountability system required pursuant to section 2 of this act. Such a system shall be designed so as to aggregate student data by available educational input characteristics, which may include class size, teacher education, teacher experience, special education, early childhood programs, federal programs, and other targeted education programs. School districts shall provide the department with individual student achievement data from assessment instruments required pursuant to section 79-760.03 in order to implement the statewide system.

(2) The department shall annually analyze and report on student achievement for the state, each school district, each public school, and each learning community aggregated by the demographic characteristics described in subsection (1) of this section. The department shall report the findings to the Governor, the Legislature, school districts, educational service units, and each learning community. Such analysis shall include aggregated data that would indicate differences in achievement due to available educational input characteristics described in subsection (1) of this section. Such analysis shall include indicators of progress toward state achievement goals for students in poverty, limited English proficient students, and highly mobile students.

Sec. 4. (1) Any school district, with the approval of the State

Department of Education, may establish and operate a career academy. The purpose of a career academy is to provide students with a career-based educational curriculum. A school district may partner with another school district, an educational service unit, a learning community, a postsecondary educational institution, or a private entity in the establishment and operation of a career academy.

(2) A career academy established pursuant to subsection (1) of this section shall:

(a) Recruit students who seek a career-based curriculum, which curriculum shall be based on criteria determined by the department;

(b) Recruit and hire instructors based on their expertise in career-based education; and

(c) Provide a rigorous academic curriculum with a transition component to prepare students for the workforce, including, but not limited to, internships, job training, and skills training.

(3) In addition to funding from the establishing school district or any of the district's partners, a career academy may also receive private donations for operating expenses.

(4) The department shall define standards and criteria for (a) the establishment, evaluation, and continuing approval of career academies, (b) career-based curriculum utilized by career academies, (c) the necessary data elements and collection of data pertaining to career academies, including, but not limited to, the number of students enrolled in a career academy and their grade levels, and (d) the establishment of advisory boards consisting of business and education representatives to provide guidance and direction for the operation of career academies.

(5) The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

Sec. 5. Section 79-828, Reissue Revised Statutes of Nebraska, is amended to read:

79-828 (1) The contract of a probationary certificated employee shall be deemed renewed and remain in full force and effect unless amended or not renewed in accordance with sections 79-824 to 79-842.

(2) The purpose of the probationary period is to allow the employer an opportunity to evaluate, assess, and assist the employee's professional skills and work performance prior to the employee obtaining permanent status.

All probationary certificated employees employed by ~~Class I, II, III, and VI school districts~~ any class of school district shall, during each year of probationary employment, be evaluated at least once each semester, unless the probationary certificated employee is a superintendent, in accordance with the procedures outlined below:

The probationary certificated employee shall be observed and evaluation shall be based upon actual classroom observations for an entire instructional period. If deficiencies are noted in the work performance of any probationary certificated employee, the evaluator shall provide the ~~teacher or administrator~~ probationary certificated employee at the time of the observation with a list of deficiencies, and a list of suggestions for improvement and assistance in overcoming the deficiencies. The evaluator shall also provide the probationary certificated employee with ~~and~~ followup evaluations and assistance when deficiencies remain.

If the probationary certificated employee is a superintendent, he or she shall be evaluated twice during the first year of employment and at least once annually thereafter.

Any certificated employee employed prior to September 1, 1982, by the school board of any Class I, II, III, or VI school district shall serve the probationary period required by law prior to such date and shall not be subject to any extension of probation.

(3) If the school board or the superintendent or superintendent's designee determines that it is appropriate to consider whether the contract of a probationary certificated employee or the superintendent should be amended or not renewed for the next school year, such certificated employee shall be given written notice that the school board will consider the amendment or nonrenewal of such certificated employee's contract for the ensuing school year. Upon request of the certificated employee, notice shall be provided which shall contain the written reasons for such proposed amendment or nonrenewal and shall be sufficiently specific so as to provide such employee the opportunity to prepare a response and the reasons set forth in the notice shall be employment related.

(4) The school board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal is not for constitutionally impermissible reasons, and such nonrenewal shall be in accordance with sections 79-824 to 79-842. Amendment

or nonrenewal for reason of reduction in force shall be subject to sections 79-824 to 79-842 and 79-846 to 79-849.

(5) Within seven calendar days after receipt of the notice, the probationary certificated employee may make a written request to the secretary of the school board or to the superintendent or superintendent's designee for a hearing before the school board.

(6) Prior to scheduling of action or a hearing on the matter, if requested, the notice of possible amendment or nonrenewal and the reasons supporting possible amendment or nonrenewal shall be considered a confidential employment matter as provided in sections 79-539, 79-8,109, and 84-1410 and shall not be released to the public or any news media.

(7) At any time prior to the holding of a hearing or prior to final determination by the school board to amend or not renew the contract involved, the probationary certificated employee may submit a letter of resignation for the ensuing year, which resignation shall be accepted by the school board.

(8) The probationary certificated employee shall be afforded a hearing which shall not be required to meet the requirements of a formal due process hearing as set forth in section 79-832 but shall be subject to section 79-834.

Sec. 6. Original section 79-828, Reissue Revised Statutes of Nebraska, and sections 79-757 and 79-760.05, Revised Statutes Supplement, 2011, are repealed.

Sec. 7. The following sections are outright repealed: Section 79-760, Reissue Revised Statutes of Nebraska, and section 79-760.04, Revised Statutes Supplement, 2011.

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact § 22.1-227.1, as it shall become effective, of the Code of Virginia, relating  
3 to career and technical education; High School to Work Partnerships.

4 [S 1248]  
5 Approved

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 22.1-227.1, as it shall become effective, of the Code of Virginia is amended and  
8 reenacted as follows:

9 § 22.1-227.1. (Effective July 1, 2013) Career and technical education.

10 A. The Board of Education shall incorporate into career and technical education the Standards of  
11 Learning for mathematics, science, English, and social studies, including history, and other subject areas  
12 as may be appropriate. The Board may also authorize, in its regulations for accrediting public schools in  
13 Virginia, the substitution of industry certification and state licensure examinations for Standards of  
14 Learning assessments for the purpose of awarding verified units of credit for career and technical  
15 education courses, where appropriate.

16 B. The Board shall also develop a plan for increasing the number of students receiving industry  
17 certification and state licensure as part of their career and technical education. The plan shall include an  
18 annual goal for school divisions. Where there is an accepted national industry certification for career and  
19 technical education instructional personnel and programs for automotive technology, such certification  
20 shall be mandatory.

21 C. With such funds as may be appropriated for such purpose, there shall be established, within the  
22 Department of Education, a unit of specialists in career and technical education. The unit shall (i) assist  
23 in developing and revising local career and technical curriculum to integrate the Standards of Learning,  
24 (ii) provide professional development for career and technical instructional personnel to improve the  
25 quality of career and technical education, (iii) conduct site visits to the schools providing career and  
26 technical education, and (iv) seek the input of business and industry representatives regarding the content  
27 and direction of career and technical education programs in the public schools of the Commonwealth.

28 D. The Board shall develop guidelines for the establishment of High School to Work Partnerships,  
29 hereafter referred to as "Partnerships," between public high schools and local businesses to create  
30 opportunities for students who may not seek further education after high school to (i) participate in an  
31 apprenticeship, internship, or job shadow program in a variety of trades and skilled labor positions or  
32 (ii) tour local businesses and meet with owners and employees. These guidelines shall include a model  
33 waiver form to be used by high schools and local businesses in connection with Partnership programs  
34 to protect both the students and the businesses from liability.

35 Each local school board may encourage the local school division's career and technical education  
36 administrator or his designee to collaborate with the guidance counselor office of each public high  
37 school in the Commonwealth to establish Partnerships and to educate the student body about available  
38 opportunities.

39 Students who miss a partial or full day of school while participating in Partnership programs shall  
40 not be counted as absent for the purposes of calculating average daily membership, but each local  
41 school board shall develop policies and procedures for students to make up missed work and may  
42 determine the maximum number of school days per academic year that a student may spend  
43 participating in a Partnership program.

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1002

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AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-4.5-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 9. Indiana Career Council**

**Sec. 1.** As used in this chapter, "council" refers to the Indiana career council established by section 3 of this chapter.

**Sec. 2.** As used in this chapter, "system" refers to the Indiana workforce intelligence system established by IC 22-4.5-10-3.

**Sec. 3.** The Indiana career council is established.

**Sec. 4. (a)** The council shall do all of the following:

(1) Provide coordination to align the various participants in the state's education, job skills development, and career training system.

(2) Match the education and skills training provided by the state's education, job skills development, and career training system with the currently existing and future needs of the state's job market.

(3) Provide administrative oversight of the system.

(4) In addition to the department's annual report provided under IC 22-4-18-7, submit, not later than August 1, 2013, and



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not later than August 1 each year thereafter, to the legislative council in an electronic format under IC 5-14-6 an inventory of current job and career training activities conducted by:

- (A) state and local agencies; and
- (B) whenever the information is readily available, private groups, associations, and other participants in the state's education, job skills development, and career training system.

The inventory must provide at least the information listed in IC 22-4-18-7(a)(1) through IC 22-4-18-7(a)(5) for each activity in the inventory.

(5) Submit, not later than July 1, 2014, to the legislative council in an electronic format under IC 5-14-6 a strategic plan to improve the state's education, job skills development, and career training system. The council shall submit, not later than December 1, 2013, to the legislative council in an electronic format under IC 5-14-6 a progress report concerning the development of the strategic plan. The strategic plan developed under this subdivision must include at least the following:

- (A) Proposed changes, including recommended legislation and rules, to increase coordination, data sharing, and communication among the state, local, and private agencies, groups, and associations that are involved in education, job skills development, and career training.
- (B) Proposed changes to make Indiana a leader in employment opportunities related to the fields of science, technology, engineering, and mathematics (commonly known as STEM).
- (C) Proposed changes to address both:
  - (i) the shortage of qualified workers for current employment opportunities; and
  - (ii) the shortage of employment opportunities for individuals with a baccalaureate or more advanced degree.

(6) Coordinate the performance of its duties under this chapter with:

- (A) the education roundtable established by IC 20-19-4-2; and
- (B) the Indiana works councils established under SEA 465-2013.

(b) In performing its duties, the council shall obtain input from

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the following:

- (1) Indiana employers and employer organizations.
- (2) Public and private institutions of higher education.
- (3) Regional and local economic development organizations.
- (4) Indiana labor organizations.
- (5) Individuals with expertise in career and technical education.
- (6) Military and veterans organizations.
- (7) Organizations representing women, African Americans, Latinos, and other significant minority populations and having an interest in issues of particular concern to these populations.
- (8) Individuals and organizations with expertise in the logistics industry.
- (9) Any other person or organization that a majority of the voting members of the council determine has information that is important for the council to consider.

**Sec. 5. (a) The council consists of the following members:**

- (1) The governor.
- (2) The lieutenant governor.
- (3) The commissioner of the department of workforce development.
- (4) The secretary of commerce.
- (5) The state superintendent of public instruction.
- (6) The commissioner of the commission for higher education.
- (7) The secretary of the family and social services administration.
- (8) The president of Ivy Tech Community College.
- (9) One (1) member representing manufacturing in Indiana appointed by the governor.
- (10) One (1) member representing the business community in Indiana appointed by the governor.
- (11) One (1) member representing labor in Indiana appointed by the governor.
- (12) One (1) member representing the life sciences industry appointed by the governor.
- (13) Two (2) members of the house of representatives appointed by the speaker of the house of representatives. The individuals appointed under this subdivision:
  - (A) may not be members of the same political party; and
  - (B) serve as advisory nonvoting members of the council.
- (14) Two (2) members of the senate appointed by the

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president pro tempore of the senate. The individuals appointed under this subdivision:

- (A) may not be members of the same political party; and
- (B) serve as advisory nonvoting members of the council.

(b) If a vacancy on the council occurs, the person who appointed the member whose position is vacant shall appoint an individual to fill the vacancy using the criteria in subsection (a).

(c) A member of the council appointed by the governor, the speaker of the house of representatives, or the president pro tempore of the senate serves at the pleasure of the appointing authority and may be replaced at any time by the appointing authority.

Sec. 6. (a) The governor shall serve as the chair of the council, and the lieutenant governor shall serve as the vice chair of the council.

(b) The council:

- (1) shall meet monthly; and
- (2) may meet more frequently at the call of the chair.

(c) The chair shall establish the agenda for each meeting of the council.

Sec. 7. (a) A majority of the voting members of the council constitutes a quorum for the purpose of conducting business.

(b) The affirmative votes of a majority of the voting members of the council are necessary for the council to take official action.

Sec. 8. (a) Each member of the council who is not a state employee or is not a member of the general assembly is entitled to the following:

- (1) The salary per diem provided under IC 4-10-11-2.1(b).
- (2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.
- (3) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the department of administration and approved by the budget agency.

(b) Each member of the council who is a state employee but not a member of the general assembly is entitled to the following:

- (1) Reimbursement for traveling expenses as provided under IC 4-13-1-4.
- (2) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the department of administration and approved by the budget agency.

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(c) Each member of the council who is a member of the general assembly is entitled to the same:

- (1) per diem;
- (2) mileage; and
- (3) travel allowances;

paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative services agency.

**Sec. 9.** The governor may request the assistance of any state agency, board, commission, committee, department, division, or other entity of the executive department of state government as necessary to provide staff and administrative support to the council and the system.

**Sec. 10.** This chapter expires July 1, 2018.

SECTION 2. IC 22-4.5-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 10. Indiana Workforce Intelligence System**

**Sec. 1.** As used in this chapter, "council" refers to the Indiana career council established by IC 22-4.5-9-3.

**Sec. 2.** As used in this chapter, "system" refers to the Indiana workforce intelligence system established by section 3 of this chapter.

**Sec. 3.** The Indiana workforce intelligence system is established as a statewide longitudinal data system that contains educational and workforce information:

- (1) from educational institutions at all levels; and
- (2) about the state's workforce;

to improve the effect of the state's educational delivery system on the economic opportunities of individuals and the state's workforce, and to guide state and local decision makers.

**Sec. 4.** The system must do the following:

- (1) Effectively organize, manage, break down, and analyze educational and workforce data.
- (2) Generate timely and accurate information about student progress and outcomes over time, including students' preparation for postsecondary education and the workforce.
- (3) Generate timely and accurate information that is available to the public about the effectiveness of the state's job training programs, including at least the following:

- (A) The number of participants in each program.

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**(B) The number of participants who, as a result of the training received in the program:**

- (i) secured employment; or**
- (ii) were retained by an employer.**

**(C) The average wage of the participants who secured employment or were retained by an employer.**

**(4) Support the economic development activities of state and local governments.**

**Sec. 5. The department of education (established by IC 20-19-3-1), the department of workforce development (established by IC 22-4.1-2-1), the commission for higher education (established by IC 21-18-2-1), and other agencies of the state that collect data related to educational and workforce outcomes shall submit that data to the system on a timely basis and shall ensure the following:**

**(1) Routine and ongoing compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and other relevant privacy laws and policies, including the following:**

- (A) The required use of data that cannot be used to identify information relating to a specific individual or entity.**
- (B) The required disposition of information that is no longer needed.**
- (C) The provision of a data security plan, including the performance of regular audits for compliance with data privacy and security standards.**
- (D) The implementation of guidelines and policies to prevent the reporting of other data that may potentially be used to identify information relating to a specific individual or entity.**

**(2) The use of data only in summary form in reports and responses to information requests. Data that may identify specific individuals or entities because of the size or uniqueness of the population involved may not be reported in any form.**

**Sec. 6. (a) The:**

- (1) council, before July 1, 2018; and**
- (2) governor, after June 30, 2018;**

**shall provide administrative oversight to the system.**

**(b) Administrative oversight of the system includes all the following:**

- (1) Provide general oversight and direction for the**

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development and maintenance of the system.

(2) Approve an annual budget for the system.

(3) Hire staff necessary to administer the system.

(4) Develop a detailed data security and safeguarding plan that includes:

(A) access by authenticated authorization;

(B) privacy compliance standards;

(C) notification and other procedures to protect system data if a breach of the system occurs; and

(D) policies for data retention and disposition.

(5) Oversee routine and ongoing compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and other relevant privacy laws and policies.

(6) Review research requirements and establish policies for responding to data requests from the state, local agencies, the general assembly, and the public.

(7) Oversee the development of public access to the system in a manner that:

(A) permits research using the data in aggregated form; and

(B) cannot provide information that allows the identification of a specific individual or entity.

(8) Identify additional sources of data for the system from among state entities and require those entities to submit relevant data to the system.

(c) Funding for the development, maintenance, and use of the system may be obtained from any of the following sources:

(1) Appropriations made by the general assembly for this purpose.

(2) Grants or other assistance from local educational agencies or institutions of higher education.

(3) Federal grants.

(4) User fees.

(5) Grants or amounts received from other public or private entities.

(d) The council (before July 1, 2018) and the governor (after June 30, 2018) may contract with public or private entities for the following purposes:

(1) To develop and maintain the system.

(2) To conduct research in support of the activities and objectives listed in section 4 of this chapter.

(3) To conduct research on topics at the request of the council,

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1 SECTION 8. (a) Section 28.002, Education Code, is amended  
2 by amending Subsection (c) and adding Subsections (g-1), (g-2), and  
3 (o) to read as follows:

4 (c) The State Board of Education, with the direct  
5 participation of educators, parents, business and industry  
6 representatives, and employers shall by rule identify the essential  
7 knowledge and skills of each subject of the required curriculum  
8 that all students should be able to demonstrate and that will be  
9 used in evaluating instructional materials under Chapter 31 and  
10 addressed on the assessment instruments required under Subchapter  
11 B, Chapter 39. As a condition of accreditation, the board shall  
12 require each district to provide instruction in the essential  
13 knowledge and skills at appropriate grade levels and to make  
14 available to each high school student in the district an Algebra II  
15 course.

16 (g-1) A district may also offer a course or other activity,  
17 including an apprenticeship or training hours needed to obtain an  
18 industry-recognized credential or certificate, that is approved by  
19 the board of trustees for credit without obtaining State Board of  
20 Education approval if:

21 (1) the district develops a program under which the  
22 district partners with a public or private institution of higher  
23 education and local business, labor, and community leaders to  
24 develop and provide the courses; and

25 (2) the course or other activity allows students to  
26 enter:

27 (A) a career or technology training program in

1 the district's region of the state;

2 (B) an institution of higher education without  
3 remediation;

4 (C) an apprenticeship training program; or

5 (D) an internship required as part of  
6 accreditation toward an industry-recognized credential or  
7 certificate for course credit.

8 (g-2) Each school district shall annually report to the  
9 agency the names of the courses, programs, institutions of higher  
10 education, and internships in which the district's students have  
11 enrolled under Subsection (g-1). The agency shall make available  
12 information provided under this subsection to other districts.

13 (o) In approving career and technology courses, the State  
14 Board of Education must determine that at least 50 percent of the  
15 approved courses are cost-effective for a school district to  
16 implement.

17 (b) This section applies beginning with the 2014-2015  
18 school year.

19 SECTION 9. Subchapter A, Chapter 28, Education Code, is  
20 amended by adding Section 28.00222 to read as follows:

21 Sec. 28.00222. INCREASE IN ADVANCED TECHNOLOGY AND  
22 CAREER-RELATED COURSES. (a) Not later than September 1, 2014, the  
23 State Board of Education shall ensure that at least six advanced  
24 career and technology education or technology applications  
25 courses, including courses in personal financial literacy  
26 consistent with Section 28.0021 and in statistics, are approved to  
27 satisfy a fourth credit in mathematics.

AN ACT

relating to the provision of certain opportunities to career and technical students by public school districts under the college credit program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 28.009, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A program implemented under this section may provide a student the opportunity to earn credit for a course or activity, including an apprenticeship or training hours:

(1) that:

(A) satisfies a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree; and

(B) is approved by the Texas Higher Education Coordinating Board; and

(2) for which a student may earn credit concurrently toward both the student's high school diploma and postsecondary academic requirements.

SECTION 2. This Act applies beginning with the 2013-2014 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this



1 AN ACT

2 relating to increasing the courses offered in the career and  
3 technology education curriculum.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter A, Chapter 28, Education Code, is  
6 amended by adding Section 28.00222 to read as follows:

7 Sec. 28.00222. INCREASE IN ADVANCED TECHNOLOGY AND  
8 CAREER-RELATED COURSES. (a) Not later than September 1, 2014, the  
9 State Board of Education shall ensure that at least six advanced  
10 career and technology education or technology applications  
11 courses, including a course in personal financial literacy that is  
12 consistent with Section 28.0021, are approved to satisfy a fourth  
13 credit in mathematics required for high school graduation.

14 (b) Not later than January 1, 2015, the commissioner shall  
15 review and report to the governor, the lieutenant governor, the  
16 speaker of the house of representatives, and the presiding officer  
17 of each standing committee of the legislature with primary  
18 responsibility over public primary and secondary education  
19 regarding the progress of increasing the number of courses approved  
20 for the career and technology education or technology applications  
21 curriculum. The commissioner shall include in the report a  
22 detailed description of any new courses, including instructional  
23 materials and required equipment, if any.

24 (c) This section expires September 1, 2015.

1 SECTION 2. Section 28.025(b-2), Education Code, is amended  
2 to read as follows:

3 (b-2) In adopting rules under Subsection (b-1), the State  
4 Board of Education shall allow a student to comply with the  
5 curriculum requirements for the third and fourth [a] mathematics  
6 credits [~~course~~] under Subsection (b-1)(1) [~~taken after the~~  
7 ~~successful completion of Algebra I and geometry and either after~~  
8 ~~the successful completion of or concurrently with Algebra II~~] or  
9 the third and fourth [a] science credits [~~course~~] under Subsection  
10 (b-1)(1) [~~taken after the successful completion of biology and~~  
11 ~~chemistry and either after the successful completion of or~~  
12 ~~concurrently with physics~~] by successfully completing an advanced  
13 career and technical course designated by the State Board of  
14 Education as containing substantively similar and rigorous  
15 academic content. [~~A student may use the option provided by this~~  
16 ~~subsection for not more than two courses.~~]

17 SECTION 3. Section 28.027(b), Education Code, is amended to  
18 read as follows:

19 (b) The State Board of Education shall establish a process  
20 under which an applied STEM course may be reviewed and approved for  
21 purposes of satisfying the mathematics and science curriculum  
22 requirements for the recommended high school program imposed under  
23 Section 28.025(b-1)(1)(A) through substitution of the applied STEM  
24 course for a specific mathematics or science course otherwise  
25 required under the recommended high school program [~~and completed~~  
26 ~~during the student's fourth year of mathematics or science course~~  
27 ~~work~~]. The State Board of Education may only approve a course to

1 substitute for a mathematics course taken after successful  
2 completion of Algebra I and geometry [~~and after successful~~  
3 ~~completion of or concurrently with Algebra II~~]. The State Board of  
4 Education may only approve a course to substitute for a science  
5 course taken after successful completion of biology [~~and chemistry~~  
6 ~~and after successful completion of or concurrently with physics~~].

7 SECTION 4. This Act takes effect September 1, 2013.

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AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING SCHOOL DISTRICTS TO PROVIDE FOR INDUSTRY-TAUGHT OR -GUIDED PRE-APPRENTICESHIP PROGRAMS FOR QUALIFIED HIGH SCHOOL STUDENTS; PROVIDING FOR APPROVAL OF PRE-APPRENTICESHIP PROGRAMS, PROVIDERS AND INDUSTRY INSTRUCTORS; EXEMPTING INDUSTRY INSTRUCTORS FROM LICENSURE PROVISIONS; PROVIDING POWERS AND DUTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's

1 parent and the student's guidance counselor or other school  
2 official charged with coursework planning for the student.

3 C. An individualized education program that meets  
4 the requirements of Subsections A and B of this section and  
5 that meets all applicable transition and procedural  
6 requirements of the federal Individuals with Disabilities  
7 Education Act for a student with a disability shall satisfy  
8 the next-step plan requirements of this section for that  
9 student.

10 D. A local school board shall ensure that each  
11 high school student has the opportunity to develop a  
12 next-step plan based on reports of college and workplace  
13 readiness assessments, as available, and other factors and is  
14 reasonably informed about:

15 (1) curricular and course options, including  
16 honors or advanced placement courses, dual-credit courses,  
17 distance learning courses, career clusters,  
18 pre-apprenticeship programs or remediation programs that the  
19 college and workplace readiness assessments indicate to be  
20 appropriate;

21 (2) opportunities available that lead to  
22 different post-high-school options; and

23 (3) alternative opportunities available if  
24 the student does not finish a planned curriculum.

25 E. The secretary shall:

1 (1) establish specific accountability  
2 standards for administrators, counselors, teachers and school  
3 district staff to ensure that every student has the  
4 opportunity to develop a next-step plan;

5 (2) promulgate rules for accredited private  
6 schools in order to ensure substantial compliance with the  
7 provisions of this section;

8 (3) monitor compliance with the requirements  
9 of this section; and

10 (4) compile such information as is necessary  
11 to evaluate the success of next-step plans and report  
12 annually, by December 15, to the legislative education study  
13 committee and the governor.

14 F. Successful completion of a minimum of  
15 twenty-three units aligned to the state academic content and  
16 performance standards shall be required for graduation.  
17 These units shall be as follows:

18 (1) four units in English, with major  
19 emphasis on grammar and literature;

20 (2) three units in mathematics, at least one  
21 of which is equivalent to the algebra 1 level or higher;

22 (3) two units in science, one of which shall  
23 have a laboratory component; provided, however, that with  
24 students entering the ninth grade beginning in the 2005-2006  
25 school year, three units in science shall be required, one of

1 which shall have a laboratory component;

2 (4) three units in social science, which  
3 shall include United States history and geography, world  
4 history and geography and government and economics;

5 (5) one unit in physical education;

6 (6) one unit in communication skills or  
7 business education, with a major emphasis on writing and  
8 speaking and that may include a language other than English;

9 (7) one-half unit in New Mexico history for  
10 students entering the ninth grade beginning in the 2005-2006  
11 school year; and

12 (8) nine elective units and seven and  
13 one-half elective units for students entering the ninth grade  
14 in the 2005-2006 school year that meet department content and  
15 performance standards. Student service learning shall be  
16 offered as an elective. Financial literacy shall be offered  
17 as an elective. Pre-apprenticeship programs may be offered  
18 as electives.

19 G. For students entering the ninth grade beginning  
20 in the 2009-2010 school year, at least one of the units  
21 required for graduation shall be earned as an advanced  
22 placement or honors course, a dual-credit course offered in  
23 cooperation with an institution of higher education or a  
24 distance learning course.

25 H. The department shall establish a procedure for

1 students to be awarded credit through completion of specified  
2 career technical education courses for certain graduation  
3 requirements.

4 I. Successful completion of the requirements of  
5 the New Mexico diploma of excellence shall be required for  
6 graduation for students entering the ninth grade beginning in  
7 the 2009-2010 school year. Successful completion of a  
8 minimum of twenty-four units aligned to the state academic  
9 content and performance standards shall be required to earn a  
10 New Mexico diploma of excellence. These units shall be as  
11 follows:

12 (1) four units in English, with major  
13 emphasis on grammar, nonfiction writing and literature;

14 (2) four units in mathematics, of which one  
15 shall be the equivalent to or higher than the level of  
16 algebra 2, unless the parent submitted written, signed  
17 permission for the student to complete a lesser mathematics  
18 unit;

19 (3) three units in science, two of which  
20 shall have a laboratory component;

21 (4) three and one-half units in social  
22 science, which shall include United States history and  
23 geography, world history and geography and government and  
24 economics, and one-half unit of New Mexico history;

25 (5) one unit in physical education;



1                   (6) one unit in one of the following:  
2 a career cluster course, workplace readiness or a language  
3 other than English; and

4                   (7) seven and one-half elective units that  
5 meet department content and performance standards. Student  
6 service learning shall be offered as an elective. Financial  
7 literacy shall be offered as an elective. Pre-apprenticeship  
8 programs may be offered as electives.

9                   J. Final examinations shall be administered to all  
10 students in all classes offered for credit.

11                   K. Until July 1, 2010, a student who has not  
12 passed a state graduation examination in the subject areas of  
13 reading, English, mathematics, writing, science and social  
14 science shall not receive a high school diploma. The state  
15 graduation examination on social science shall include a  
16 section on the constitution of the United States and the  
17 constitution of New Mexico. If a student exits from the  
18 school system at the end of grade twelve without having  
19 passed a state graduation examination, the student shall  
20 receive an appropriate state certificate indicating the  
21 number of credits earned and the grade completed. If within  
22 five years after a student exits from the school system the  
23 student takes and passes the state graduation examination,  
24 the student may receive a high school diploma.

25                   L. Beginning with the 2010-2011 school year, a

1 student shall not receive a New Mexico diploma of excellence  
2 if the student has not demonstrated competence in the subject  
3 areas of mathematics, reading and language arts, writing,  
4 social studies and science, including a section on the  
5 constitution of the United States and the constitution of New  
6 Mexico, based on a standards-based assessment or assessments  
7 or a portfolio of standards-based indicators established by  
8 the department by rule. The standards-based assessments  
9 required in Section 22-2C-4 NMSA 1978 may also serve as the  
10 assessment required for high school graduation. If a student  
11 exits from the school system at the end of grade twelve  
12 without having satisfied the requirements of this subsection,  
13 the student shall receive an appropriate state certificate  
14 indicating the number of credits earned and the grade  
15 completed. If within five years after a student exits from  
16 the school system the student satisfies the requirement of  
17 this subsection, the student may receive a New Mexico diploma  
18 of excellence.

19 M. As used in this section:

20 (1) "final next-step plan" means a next-step  
21 plan that shows that the student has committed or intends to  
22 commit in the near future to a four-year college or  
23 university, a two-year college, a trade or vocational  
24 program, an internship or apprenticeship, military service or  
25 a job;

1 (2) "interim next-step plan" means an annual  
2 next-step plan in which the student specifies  
3 post-high-school goals and sets forth the coursework that  
4 will allow the student to achieve those goals; and

5 (3) "next-step plan" means an annual  
6 personal written plan of studies developed by a student in a  
7 public school or other state-supported school or institution  
8 in consultation with the student's parent and school  
9 counselor or other school official charged with coursework  
10 planning for the student that includes one or more of the  
11 following:

12 (a) advanced placement or honors  
13 courses;

14 (b) dual-credit courses offered in  
15 cooperation with an institution of higher education;

16 (c) distance learning courses;

17 (d) career-technical courses; and

18 (e) pre-apprenticeship programs.

19 N. The secretary may establish a policy to provide  
20 for administrative interpretations to clarify curricular and  
21 testing provisions of the Public School Code."

22 Section 2. A new section of Chapter 22, Article 14 NMSA  
23 1978 is enacted to read:

24 "PRE-APPRENTICESHIP PROGRAMS.--

25 A. As used in this section:

1 (1) "apprenticeable trade" means a skilled  
2 trade that possesses the following characteristics:

3 (a) it is customarily learned in a  
4 practical way through a structured, systematic program of  
5 on-the-job supervised training;

6 (b) it is clearly identified and  
7 commonly recognized throughout an industry;

8 (c) it involves manual, mechanical or  
9 technical skills and knowledge that require a minimum of two  
10 thousand hours of on-the-job work experience; and

11 (d) it requires related instruction to  
12 supplement on-the-job training;

13 (2) "apprenticeship" means a formal  
14 educational method for training a person in a skilled trade  
15 that combines supervised employment with classroom study;

16 (3) "course of instruction" means an  
17 organized and systematic program of study designed to provide  
18 the pre-apprentice with knowledge of the theoretical subjects  
19 related to one or more specific apprenticeable trades and  
20 that meets apprenticeship-related instruction requirements;  
21 provided that "course of instruction" may include hands-on  
22 training but does not include on-the-job training;

23 (4) "industry instructor" means a person who  
24 is:

25 (a) working or has worked in an

1 apprenticeable trade for the number of years required by  
2 established industry practices of the particular trade to be  
3 an industry-recognized expert in the trade; or

4 (b) a career-technical faculty member  
5 at a public post-secondary educational institution;

6 (5) "local school board" includes the  
7 governing body of a charter school;

8 (6) "pre-apprentice" means a public school  
9 student who is enrolled in a pre-apprenticeship program;

10 (7) "pre-apprenticeship program" means a  
11 local school board-approved course of instruction offered  
12 through a provider that results, upon satisfactory completion  
13 of the program, in a certificate of completion that is  
14 acceptable to an apprenticeship training program registered  
15 with the apprenticeship council; and

16 (8) "provider" means a registered  
17 apprenticeship program, an employer of an apprenticeable  
18 trade, a union, a trade association, a post-secondary  
19 educational institution or other person approved by the local  
20 school board to provide a pre-apprenticeship program.

21 B. Any school district or charter school may allow  
22 pre-apprenticeship programs to be offered to qualified  
23 eleventh and twelfth grade students. The local school board  
24 shall only approve providers and pre-apprenticeship programs,  
25 including courses of instruction and industry instructors,

1 that meet apprenticeship requirements of the apprenticeship  
2 council or the apprenticeship requirements of an appropriate  
3 nationally recognized trade organization. Pre-apprenticeship  
4 programs shall meet department content and performance  
5 standards and shall be provided at no cost to students.

6 C. A person may apply to the local school board to  
7 become a provider by submitting an application in the form  
8 prescribed by the local school board. The application shall  
9 include:

10 (1) the pre-apprenticeship program to be  
11 offered by the provider, including the course of instruction  
12 and the provision of tools, supplies and textbooks that will  
13 be provided by the pre-apprenticeship program;

14 (2) a description of the way in which a  
15 pre-apprentice's coursework and program participation will be  
16 evaluated and reported as grades to the high school;

17 (3) a description of the qualifications for  
18 pre-apprentices, the way in which students will be recruited  
19 and accepted into the pre-apprenticeship program and the  
20 circumstances under which a pre-apprentice may be dismissed  
21 from the pre-apprenticeship program;

22 (4) the names and qualifications of the  
23 pre-apprenticeship program's industry instructors;

24 (5) a description of the location where the  
25 pre-apprenticeship program will be conducted; and

1                   (6) any other information the local school  
2 board deems necessary to determine the fitness of the  
3 applicant to deliver a pre-apprenticeship program and the  
4 appropriateness of the program in achieving school district  
5 or charter school goals.

6                   D. In approving an application, the local school  
7 board shall include its approvals of the provider, the  
8 pre-apprenticeship program and the industry instructors. If  
9 a single applicant proposes to offer more than one  
10 pre-apprenticeship program, each program and its industry  
11 instructors shall be approved by the local school board.

12                  E. Pre-apprenticeship programs shall be designed  
13 so that pre-apprentices may earn elective credits toward high  
14 school graduation and meet requirements for  
15 apprenticeship-related supplemental instruction or  
16 post-secondary education course credits. Pre-apprenticeship  
17 programs shall be offered during the school day whenever  
18 possible. Programs may be conducted at industry locations,  
19 including union halls or other industry training facilities;  
20 at existing school facilities, if available; or at any other  
21 location approved by the local school board.

22                  F. To qualify for a pre-apprenticeship program, a  
23 student must:

- 24                               (1) be at least sixteen years of age;  
25                               (2) be in the eleventh or twelfth grade;

1                   (3) have at least the number of electives  
2 required for the pre-apprenticeship program applied for and  
3 commit those electives to the program; and

4                   (4) meet other requirements of the  
5 pre-apprenticeship program approved by the local school  
6 board.

7                   G. Once a provider and pre-apprenticeship program  
8 have been approved, the provider shall recruit students and  
9 accept and retain or dismiss them as provided in the  
10 provider's approved application.

11                   H. Once accepted into a pre-apprenticeship  
12 program, a student may withdraw only with the approval of the  
13 high school principal.

14                   I. If a provider wishes to cease its  
15 pre-apprenticeship program, it shall notify the local school  
16 board, the superintendent and the principals of the  
17 pre-apprentices' high schools. The notification shall  
18 include a plan for the continuation of the pre-apprenticeship  
19 program of the pre-apprentices currently enrolled in the  
20 provider's program."

21                   Section 3. A new section of Chapter 22, Article 14 NMSA  
22 1978 is enacted to read:

23                   "LICENSURE NOT REQUIRED--BACKGROUND CHECKS--  
24 SCHOOL-SPONSORED ACTIVITY AND VOLUNTEERS.--

25                   A. The provisions of the School Personnel Act,



1 including licensure requirements, shall not apply to industry  
2 instructors, except that they shall be required to undergo a  
3 background check as provided for licensed school employees in  
4 Section 22-10A-5 NMSA 1978. The school district or charter  
5 school may act on the information received from the  
6 background check and refuse to approve a person as an  
7 industry instructor. An industry instructor shall provide  
8 for the safety of students under the industry instructor's  
9 care in the same manner as required of licensed school  
10 employees and shall not allow persons who have not been  
11 vetted through the background check process to have  
12 unsupervised contact with students.

13 B. For purposes of the public school insurance  
14 authority, each pre-apprenticeship program shall be considered  
15 a school-sponsored activity and each industry instructor shall  
16 be considered a school volunteer." \_\_\_\_\_

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(A94, R134, H3526)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3477 SO AS TO ALLOW AN EMPLOYER A CREDIT AGAINST THE STATE INCOME TAX EQUAL TO ONE THOUSAND DOLLARS IN A TAXABLE YEAR FOR EACH APPRENTICE EMPLOYED IN AN APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR, TO ALLOW UNUSED CREDIT TO CARRY FORWARD TO FIVE SUCCEEDING TAXABLE YEARS, AND TO PROVIDE FOR THE ADMINISTRATION OF THIS CREDIT.**

Be it enacted by the General Assembly of the State of South Carolina:

**Apprentice income tax credit**

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12-6-3477. A taxpayer who employs an apprentice pursuant to an apprentice agreement registered with the Office of Apprenticeship of the Employment and Training Administration of the United States Department of Labor is allowed a credit against an income tax imposed pursuant to this chapter equal to one thousand dollars for each apprentice employed. A credit is not allowed unless the apprentice was in the employ of the taxpayer for at least seven full months of the taxable year and a credit is not allowed for an individual apprentice for more than four taxable years. The department shall prescribe a form to claim this credit that provides information to the department sufficient for the proper administration of this credit.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor and applies for employees beginning apprenticeships after 2007.

Ratified the 8<sup>th</sup> day of June, 2007.

Approved the 14<sup>th</sup> day of June, 2007.

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# 2014 State Policy Talking Points

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## **The ABC Story**

Associated Builders and Contractors (ABC) is a national association with 70 chapters representing 22,000 merit shop construction and construction-related firms. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industry's commercial and industrial sectors.

Through its national office and chapters, ABC's objective is to provide its members with products, programs and services to help make their businesses successful. ABC's activities include government relations, political and legal advocacy, media relations, construction economic analysis, management and employee education and development, extensive online resources, established construction safety program evaluation and recognition, valuable employee benefit services and exclusive business discounts.

ABC serves as the merit shop construction industry's voice with the legislative, executive and judicial branches of the federal government and with state and local governments, as well as the news media. ABC is devoted exclusively to the advancement of the merit shop construction philosophy, which encourages open competition and a free-enterprise approach in which construction contracts are awarded based solely on merit, regardless of labor affiliation.

The dramatic rise of ABC began in 1950 when seven contractors gathered in Baltimore to create an association based on the shared belief that construction projects should be awarded on merit to the most qualified and responsible low bidders. Their courage and dedication to the merit shop philosophy spread rapidly, and within time, ABC became one of the fastest growing associations in the United States. Today, ABC is recognized as one of the leading organizations representing America's business community and the merit shop construction industry.

## **Government-Mandated PLA Talking Points**

### *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 representative 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 87 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.

#### *The Impact of PLAs 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 – 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 – \$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 in 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 response to President Obama's order that encourages federal agencies to mandate PLAs. This report shows 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 the negative impact of PLAs are available at [www.abc.org/plastudies](http://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, 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.

#### *The Impact of PLAs 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 they ensure the use of local workers, but PLA supporters fail to mention the term "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.

#### *PLAs 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.

### **Prevailing Wage Requirements**

As of 2012, 32 states and the District of Columbia are subject to inflationary prevailing wage requirements mirroring the federal Davis-Bacon Act. The Davis-Bacon Act is a 1931 federal law that establishes wage rates and other conditions on construction projects involving more than \$2,000 in federal funds.

- Prevailing wage laws are wage mandates with outdated job restrictions that do not match the needs of today's competitive construction business environment.
- Prevailing wage requirements discourage many qualified small and minority-owned contractors from bidding on public projects because the complex and inefficient wage rate determinations and work restrictions make it nearly impossible for them to compete with better capitalized corporations.

- Studies have shown that prevailing wage laws like the federal Davis-Bacon Act can inflate construction costs up to 38 percent. Eliminating the Davis-Bacon Act's requirements would reduce unnecessary government spending and guarantee more construction per dollar spent on important public projects such as schools, roads, bridges, low-income housing, hospitals and prisons.
- Prevailing wage laws do not improve safety, quality or training. Ensuring jobsite safety is the purview of OSHA and its state equivalents. Prevailing wage laws were not written to address project quality, which is governed by procurement laws, project specifications and bonding requirements. They are not job training laws and do nothing to ensure workers are better trained on public projects.

### **Immigration**

In 2005, the ABC National Board of Directors adopted a policy stating that any successful immigration reform measure must be comprehensive in nature and provide for the enforcement of our laws, the security of our borders and the prosperity of our economy. Immigration reform will fail without a legal channel allowing willing, essential foreign workers the opportunity to work legally in this country.

- ABC supports comprehensively reforming the nation's immigration policy to facilitate a sustainable workforce for the American economy while ensuring national security.
- In the absence of federal comprehensive immigration reform, many states have enacted immigration legislation on their own. Many of these state bills have unnecessarily increased the burden on businesses to verify the employment status of their workers.
- Different states are enacting drastically different standards for employee eligibility verification. While some states now require employers and state contractors to utilize the federal employment eligibility verification pilot program (E-Verify) to screen all potential employees, The Illinois General Assembly has placed restrictions on the use of the E-Verify program. Compliance with these varying standards can be problematic, leaving good actors susceptible to significant penalties.

#### *Immigration – E-Verify*

E-Verify is a system that electronically verifies the employment eligibility of newly hired employees and existing workers. E-Verify allows participating employers to electronically compare employee information taken from the Form I-9 (the paper-based employee eligibility verification form used for all new hires) against more than 425 million records in the Social Security Administration's database and more than 60 million records in the Department of Homeland Security's immigration databases.



- As of September 8, 2009, the federal government now requires the use of E-Verify on all federal solicitations and contract awards. However, Congress has yet to mandate the use of E-Verify for all employers.
- ABC and its members are strongly opposed to the hiring of illegal immigrants, or undocumented workers, and together have been a vocal advocate for comprehensive immigration reform.
- ABC supports the E-Verify program as a voluntary program expressly limited to the verification of Social Security numbers of new employees.
- There are a number of problems with the E-Verify system's current functionality and accuracy that could unnecessarily expose employers – that are acting in good faith – to legal liability.

### **Independent Contractor Reform**

An independent contractor is a person, business or corporation that provides goods or services to another entity under terms specified in a contract or within a verbal agreement. Unlike an employee, an independent contractor does not work regularly for an employer but works as and when required. This arrangement allows independent contractors to choose their own schedule, affords business owners the flexibility to adjust staff demands with seasonal construction volume and provides reasonably priced, quality products and services to the consumer.

- Many businesses in the construction industry cannot afford to maintain specialized trade craftsmen as employees. These specialists may be needed several times throughout the year, but not frequently enough for full-time or even part-time employment. Independent contractors are often the perfect solution to a pressing demand for the unique skills often required for specialized, short-term projects.
- ABC supports stiffer penalties for employers that intentionally classify employees as independent contractors to avoid tax and other consequences. These techniques are employed by dishonest contractors to win jobs against reputable contractors that offer benefits to their workers.
- Various federal and state agencies' tests to determine if a worker is an independent contractor are vague and contradictory. In many cases, three or four different tests can apply to determine the status of a worker. When an employer incorrectly classifies an employee as an independent contractor, the employer can be liable for thousands of dollars in fines, back taxes and benefits.
- Several of the proposed federal and state independent contracting reform measures would severely penalize contractors for mistakenly classifying employees as independent contractors, limit contractors' ability to classify legal workers as independent contractors and eliminate the safe harbor protections in existing federal and state law.

- Independent contractor reform legislation with excessive punitive damages is frequently used as a tool by unions to attack legitimate merit shop businesses. Unions file frivolous claims that frequently require contractors to spend time and resources to defend.
- Several states also included independent contracting reform language in proposed immigration reform bills in 2008. Legislation attempting to reform independent contracting and immigration within the same bill frequently demonstrates a failure to recognize the complexity of the independent contracting issue for both contractors and independent contractors in the current legal environment.
- A July 2006 U.S. Government Accountability Office (GAO) study of misclassification of workers as independent contractors stated that every \$1 increase in enforcement by the IRS results in a \$4 increase in previously unpaid tax revenue. ABC believes that simple measures like requiring informational posters on job sites and creating a hotline to report wrongful classification could help curb the unscrupulous activities of bad actors without increasing complicated and burdensome regulations on the entire business community.
- Section 530 of the Revenue Act of 1978 provides safe harbor protection for employers that have a reasonable basis for classifying a worker as an independent contractor. ABC supports strong safe harbor provisions to protect law-abiding employers trying to navigate complex and often contradictory standards.

### **Job Targeting**

Job targeting, or market recovery programs, collect fees from union members for the purpose of providing wage subsidies to enable union contractors, and in some case nonunion contractors, to compete for projects on which they otherwise would be uncompetitive. A 2008 research study conducted by George Mason University's John M. Olin Institute for Employment Practice and Policy found that from 2000 – 2007, unions in the construction industry spent more than \$1 billion to engage in and support job targeting.

- ABC opposes the illegal collection of job targeting funds on public works projects, and supports full financial disclosure of the collection and disbursement of these funds.
- Job targeting programs increase public construction costs by artificially inflating wages. As a result, the public is unknowingly paying a much higher cost to build fire and police stations, hospitals, schools, roads, libraries and numerous other publicly funded construction projects.
- Taxpayers unknowingly fund job targeting programs. The dollars that union members contribute to fund job targeting programs are not considered “dues” and, therefore, may not be deducted on their tax returns. However, the Olin Report suggests that the money union members pay into job targeting funds are being deducted as dues on tax returns.
- Job targeting programs give unions an unfair advantage. The law currently allows a union to pay money to a company for the purpose of putting another company out of

business and taking jobs away from that other company's workers. If a nonunion construction company engaged in the same conduct as a labor union, it would be prosecuted for violating antitrust laws.

### **Responsible Contracting Policies (RCPs)**

RCPs are bidder pre-qualification requirements that are designed to limit merit shop contractors ability to compete for construction projects. RCPs are state and local guidelines adopted by a government entity that adjust bidding criteria from lowest bidder to lowest "responsible" bidder. The "responsibility" of the bidder is typically defined by a process that varies from locality to locality.

- Many RCPs are problematic because criteria used to define "responsible" contractors are designed to unnecessarily favor contractors that use union labor. For example, RCPs often include requirements that employers participate in "registered apprenticeship programs" and implement union-friendly labor and workforce policies.
- Similar to union-only PLAs, RCPs are typically a vehicle for unions to regain lost market share. RCPs are often not aimed at attracting the best contractors, but are policies aimed at attracting only union contractors.
- More information, including RCP studies and additional talking points, is available at [www.abc.org/rco](http://www.abc.org/rco).

### **Registered Apprenticeship Quotas**

- Registered apprenticeship quotas require that a certain number of registered apprentices work on every public works job within the jurisdiction of the government that enacts the legislation. For example, a registered apprenticeship quota requirement may mandate that a contractor have no fewer than 10 registered apprentices on a specific school construction project at all times as a condition of working on the project.
- In the example cited above, 10 registered apprentices may be too many apprentices for a specific jobsite and will unnecessarily increase construction costs and reduce workplace efficiency. Training may suffer as the apprentices may not have enough journeymen or senior craft professionals supervising their work. In addition, state prevailing wage laws and other procurement laws specify a certain ratio of journeymen to apprentices. Apprenticeship quotas may violate existing apprenticeship ratios and confuse contractors and expose them to unnecessary prevailing wage and procurement law liability.
- The definition of registered apprentices is controversial among many merit shop contractors and its meaning can also differ from state-to-state. Registered apprentices are typically defined as apprentices who must be enrolled in an apprenticeship program registered and approved by the state Bureau of Apprenticeship Training (BAT) or State Apprenticeship Council (SAC), depending on the state where work is performed. In SAC states, the state apprenticeship council has the authority to de-register and approve

apprenticeship programs. Often SAC states with a pro-union board find ways to discriminate against nonunion apprenticeship programs and either refuse to certify, or actively decertify, these competing programs.

- Registered apprenticeship training is based on a recommended 144 hours of classroom training and a total of 2,000 work hours per year. Many apprenticeship programs last three or four years. In an industry where demand for workers is high and supply is low, there is a need to promote proficient workers quickly. It does not make financial or practical sense for a new employee to enroll in a full apprenticeship program when there are so many other advancement opportunities that take less time. New employees participating in most craft training programs can move through the training process more quickly if they possess existing knowledge and skills or if they are fast learners.
- Training and maintaining a skilled workforce is a major industry concern. Training comes in many forms and registered apprenticeship is only one way to train new construction employees. Registered apprentices are a small part of the industry, representing less than four percent of the industry's employees. For example, while precise numbers are not available, less than 50 percent of union construction workers enter the industry via apprenticeship. Promoting this specific type of pro-union training limits the number of entry-level workers and discriminates against alternative forms of training.
- Registration of apprenticeship programs was originally designed by unions to be union friendly, thus is designed to create hardship for those companies following the merit shop model of construction.

### **Union Salting Abuse**

- "Salting" abuse is the intentional placement of trained union professional organizers and agents into an open shop company to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately drive the company out of business.
- The union agents' objectives are accomplished through filing frivolous and unfair labor practice complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), OSHA and the Equal Employment Opportunity Commission (EEOC).
- While unions have the right to attempt to organize workers, open shop companies and their employees have the right to refrain from supporting union activities and be free from unwarranted harassment.



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