


Texas MERIT+SHOP Journal

July 2010

Defending the Rights of Merit Shop Contractors



**State Representative Tim Kleinschmidt
Discusses his Freshman Year as a
State Representative and His Priorities
● For Texas in The Coming Session**

ALSO IN THIS ISSUE:

**Union PLAs Find Their Way Into
Multi-Billion Dollar South Texas Job**

Texas Construction Jobs Under Attack

Retainage Claims - It's Time For A Change

ABC of Texas Legislative Priorities

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MERIT SHOP
Journal**

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Letter From the Chairman



KOEBEL

The dog days of summer are upon us, and it is a busy time for your ABC of Texas organization. With the general elections less than five months away, and the Texas Legislative session less than six months away, ABC of Texas and the various ABC chapters across the state are gearing up as it appears this will be one of the more contentious elections and legislative sessions in recent memory. ABC of Texas will play a significant role.

Based on what we have been hearing, the State's priorities will be the budget, sunset review of various state agencies, and of course, redistricting. Even though these issues will require most of the legislature's attention and time, other issues and legislation will need to be addressed. Your state board met earlier this year to develop a list of legislative priorities. These priorities were the result of significant input from the individual chapters and discussions by your state board. I want to thank each of the chapters for their input. The input, suggestions, concerns and views are extremely important in helping make ABC a leader for the construction industry, demonstrating that ABC of Texas is truly a grassroots association. I would also like to thank the various board members for their involvement. They serve the various chapters admirably, representing your respective views and priorities.

The various chapters and ABC of Texas are working together to make the most effective use of our PAC resources for the elections. It is important that we identify and help elect those individuals that will help us protect the American free enterprise system. Once again, the chapters and state board members have come through like gang busters. As a state organization, we rely on the individual chapters for PAC contributions that allow us to support candidates and officeholders not covered by an individual chapter as well as candidates for statewide positions. I want to thank you for your PAC support, as this is helping take ABC of Texas to the next level.

I can't express my appreciation enough to you, the ABC members, the various chapters, and the individual board members for your input, support and guidance. This is truly a memorable experience, and I would encourage all members to consider getting involved at the chapter, state, and national levels. You prove daily that we can make a difference.

Thank you,

A handwritten signature in black ink that reads "Andy Koebel". The signature is written in a cursive, flowing style.

Andy Koebel

Kunz Construction Co., Inc.
2009-2011 ABC of Texas Chairman

For more information about ABC of Texas visit www.abctexas.org.

Letter From the President



FISHER

elsewhere in this magazine, so please read on to learn more.

Recently, we in Texas have been facing challenges brought on by the change in administrations in Washington. It is obvious that some do not like the way we do things in Texas, for example, open competition and flexibility in meeting standards.

Not only has the Obama administration ordered federal agencies to consider Project Labor Agreements (PLA) on large federal projects, it appears there is at least the perception that bowing to organized labor will result in favorable decisions on federal loan guarantees. Thus, we are facing the South Texas Project (STP) PLA which has given me the opportunity to work more closely with ABC National (and eat my words about PLAs not happening in Texas!).

The attacks do not stop there. The federal Environmental Protection Agency has recently acted to take over a successful state permitting program that has resulted in environmental progress that leads the nation. Undeterred by facts, this administration seems intent on wrecking Texas, and I'm sure this is just the beginning.

Now, it is even more important that we met our state PAC goals and begin coordinating our state and chapter efforts to gain efficiency. We need to protect those officeholders who protect free enterprise and elect those who advocate protecting free enterprise. By the time you get this magazine, we will have begun our coordination efforts with the local chapters. We just accomplished our first step by defining our budget through chapter commitments to meet allocations. I thank all of you for your help. This is one of the more critical elements of our Strategic Plan for the next two years.

Thank you for giving me the opportunity to work for you!

Jon Fisher
ABC of Texas
President

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Project Labor Agreements: Recent Activity at South Texas Project & What It Means For Texas

by April Brown, ABC Region III Manager

During the 2008 election cycle, organized labor spent over \$200 billion to elect President Obama and a Democratic majority in Congress. Given their recent activities in Washington, D.C., it is not beyond the realm of possibility to conclude that the current administration may be using their influence to give Big Labor an advantage when bidding on construction projects here in Texas.

Days after taking office, President Obama signed Executive Order 13502, radically changing federal contracting rules to favor his largest political supporters. The order encourages federal agencies to award federal construction contracts to contractors

“Days after taking office, President Obama signed Executive Order 13502, radically changing federal contracting rules to favor his largest political supporters. The order encourages federal agencies to award federal construction contracts to contractors – not on price and quality – but on their political affiliation with big labor.”

– not on price and quality – but on their political affiliation with big labor. This order denies the vast majority of construction workers – over 85 percent nationally and more than 96 percent in Texas – the opportunity to work on public work projects unless they agree upon wasteful and discriminatory conditions contained within project labor agreements (PLAs).

Project labor agreements typically require all contractors on a covered project to execute a union agreement, hire only union workers, pay into union pension and benefit funds and

operate under union work rules. In non-Right to Work states, PLAs also require that workers pay union dues as well. These agreements were established in the early twentieth century, when a significant portion of the private construction workforce was unionized, as a means to help trade unions get along and work together. PLAs put the demands of one special interest group ahead of the public by restricting the bidding process to only contractors who are willing to participate in these anti-competitive schemes, with little regard to work quality and price as determining metrics for awarding a bid.

Requirements that nonunion contractors contribute to Big Labor’s multi-employer pension programs are one of the most problematic aspects of PLAs. These provisions ensure that nonunion contractors are at an extreme competitive disadvantage because these stipulations typically force nonunion contractors to pay pension benefits twice. These employers are forced to pay into the union pension plans in addition to contributions made on behalf of workers to existing 401(k) company plans. These provisions not only unnecessarily increase labor costs for nonunion employers, but also provide no additional benefit to workers because the contributions that their employers make on their behalf into the union pension funds are not accessible unless they join the union and become vested in their pension program.

One of the primary objectives of PLAs is to increase the amount of money contributed into Big Labor’s multi-employer pension funds. According to the Pension Benefit Guarantee Corporation,

the average union pension program has the resources to cover 62% of what is owed to its participants. Given that the number of members who join a union has been on the decline for decades, and that many union members are nearing retirement age, the need to replenish these pension funds is paramount. The introduction of federal legislation designed to bailout these pension programs, such as the Create Jobs and Save Benefits Act of 2010, demonstrates this argument.

Regardless of the political motives for encouraging their usage, PLAs stifle competition and increase costs, not just for nonunion contractors and employees, but also taxpayers. In fact, studies demonstrate that PLAs increase costs by as much as 18 percent when compared to non-PLA projects, even when both types of projects are subject to prevailing wage laws.

Texas' Right to Work status does not protect local workers from these types of handouts to organized labor. PLAs can occur in Right to Work states, though they are less common. Although right to work laws prevent unionized employers from forcing their employees to pay dues to the union, employees of a union contractor in both right to work and non-Right to Work states are still required to work under terms and conditions exclusively negotiated by the union under PLAs.

Here in Texas, at the presumed behest of construction labor union demands, all contractors that want to work on the South Texas Project (STP) nuclear energy facility expansion will be forced to sign a PLA. Although this project is privately owned, the negative impacts of PLA's still apply.

Statistics show that less than 4 percent of the Texas construction workforce is unionized. The PLA on the STP site expansion project

will mean that 9 out of every 10 local construction workers will be strongly discouraged from competing for these jobs. It is estimated that because of the PLA on the STP facility the cost of construction will increase by 18% or \$2 billion. This cost increase will likely be passed onto consumers in the form of higher energy rates for years to come.

It is imperative that Texans stand up against Big Labor handouts, and the STP PLA scheme in particular, and advocate for the principles of free enterprise and market competition. Texas needs to tell Washington, D.C. loudly and clearly, that favoring one group of workers over another because of their political affiliation will not be tolerated.



BROWN

ABOUT THE AUTHOR:

April Brown is the ABC National Region III Manager. Ms. Brown provides legislative and membership services for ABC chapters in Texas, Louisiana, Arkansas and Oklahoma. To reach April Brown, please email brown@abc.org.

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One on One With...

TEXAS STATE REPRESENTATIVE TIM KLEINSCHMIDT

A Lee County native and rancher, Texas Representative Tim Kleinschmidt, has a history of service as a citizen, local attorney, church member, husband and father. Representative Kleinschmidt has been a longtime City Attorney for the cities of Giddings and Lexington. He and his family live on their family ranch in Lee County, where they run a cow-calf beef operation. The Representative has 28 years of experience practicing law in the central Texas area. He is a member of the law firm of Schneider, Krugler, Kleinschmidt, and Placke, P.C. Kleinschmidt has legal experience in the areas of real estate, banking, commercial, asset protection planning, local government, school, environmental, family, oil and gas, probate and estate, and creation of business entities law.

Elected to the Texas House of Representatives in 2009, the Representative is a member of the Agricultural and Livestock; Culture, Recreation and Tourism; Rules and Resolutions; and the Government Efficiency and Accountability Legislative Committees. He is also a member of the Republican, Rural and Tourism Legislative Caucuses.

In his personal time, Kleinschmidt is actively involved in numerous organizations including the First Baptist Church of Lexington, Texas Farm Bureau, Texas and Southwest Cattle Raisers Association, Lee County Farmers Co-Op, 4H Member/FFA Member, Texas State Guard, Lion's Club, Lee County Airport Board, Lee County Bar Association, Texas Wildlife Association, Lee County Wildlife Association, National Rifle Association, Texas State Rifle Association, Ducks Unlimited and the Rocky Mountain Elk Foundation.

What is your business background?

I was raised in a ranching family. From the time my twin brother and I were big enough to open the barbed wire gates on the family ranch, our father had us on the ranch daily. As I grew up, I was involved in all aspects of the ranch, which is a cow-calf beef operation, including checking and working the cattle, planting winter grass, fertilizing, feeding, and clearing land. I currently live on the ranch and manage it in a partnership with one of my brothers.

Professionally, I have been an attorney for almost thirty years. Early in my law practice in Central Texas, centered in Giddings, I dealt with most aspects of a rural practice, from estate planning for the local business people, farmers and ranchers, to oil and gas, real estate, banking, and some criminal defense, as well as city and school representation. The municipal representation covered all aspects of city work, from city council representation, drafting ordinances, budget matters, to prosecuting for the municipal court. Today, I am primarily a business attorney, dealing with entity creations, estate planning, probate, oil and gas, contracts, real estate and banking.

I served as the Chairman of the Giddings-Lee County Airport Board for a number of years, dealing with the operation of the local airport, as well as the past major expansion of the airport facilities. I have served on numerous committees of my church from budget to personnel committees.

What made you want to be a state representative?

My decision to be a state representative involved a desire to serve. After having been a family man and attorney for many years, my children were older, my wife was in a successful business situation, and I was at the point and in the position to become a state representative in order to give something back to the society that had helped me so much socially, educationally and professionally. I truly have a desire to help keep Texas a great state and to work to improve the quality of life for the people of my district and Texas.

You were a freshman in 2009, is there anything you intend to do differently when the Legislature meets in 2011?

Yes, there will be some differences in my approach to the House of Representatives in 2011. As a freshman, you are constantly advised to listen much more than you speak in order to learn the legislative process, to become a contributing member of the House that the other members

are willing to trust and depend upon, and to get the State's business done in an effective, efficient and honorable manner. There is still a learning curve to deal with, but I intend to take a more visible and active role in the future in the House. I have learned to more effectively move necessary legislation through the process and will apply those lessons learned as a freshman.

In 2009, when the Entergy Bill was debated before the Texas House, you took an active role defending the decision (The bill would have reversed a Supreme Court decision eliminating third party lawsuits in some circumstances where the site owner covered all on the site with workers' compensation insurance). What led you to deciding that you should be actively involved in this debate?

The Entergy issue is one that I had significant and active involvement with the last session. As a businessman, I have long believed in the need for tort reform in the State of Texas. If my clients were involved in litigation, they were losing productivity, regardless of the outcome. Even when you win in court, the lost time, effort and productivity may result in a business loss and increased stress to your client. Also, I believe that our social structure should encourage people and businesses to obtain insurance to cover the possibility of property damage, personal injury and loss of life. Such insurance coverage is a sound business practice and beneficial to both the business and those at risk. I believed my fellow representatives needed to take into account such principals in dealing with the Entergy bill.

What are your legislative priorities for 2011?

My two main legislative priorities in 2011 will be to help control the State budget to keep spending in line with available revenues, without raising taxes, and to help with the redistricting requirements. It is vital to our Texas economy that our legislature keep state spending in check and limit the growth of our state government (something our federal government should do). Texas has continued to maintain its leading economic position in the United States and the world, due to our constitutional requirement for a balanced budget and our dependency upon private businesses to create jobs and grow our economy.

There will be several major private development projects in my legislative district that will increase private spending and job creation and deserve my support. Transportation

matters will continue to be an issue in the State, and I will continue to support those projects that benefit our lives and make traveling safer and more enjoyable in Texas but do not unreasonably affect the high quality of life we enjoy in our rural areas.

Education will continue to be at the forefront of my legislative concerns, as businesses in Texas face increased competition from abroad and we deal with the need to develop an increasingly skilled and capable workforce.

Finally, I believe there will be continued federal interference with matters that fall within the province of the state under the 10th Amendment to the U.S. Constitution, as well as federal measures that will harm our energy industry in Texas. I will fight to protect the interests of the citizens of Texas to protect them from undue federal interference and to protect our energy industry.



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Is It Time For A Change In Retainage Claims?

by R. Wes Johnson, Managing Director, The Gardner Law Firm

Retainage is an interesting concept in the construction industry. On the one hand, those holding retainage believe it is necessary to insure that the one from whom retainage is held completes his or her work in accordance with the terms agreed. The one from whom retainage is withheld believes withholding retainage unnecessarily increases the cost of the work and some believe it is used unfairly by those withholding the retainage to get warranty or other work performed that is outside the scope of the original agreement. However, both agree that owners are currently statutorily required to withhold 10% retainage on the prime contract amount until 30 days after the contract is completed.

There are three areas of concern that proponents of change want to address through a legislative solution in the upcoming 2011 Texas legislative session including:

- 1) the time within which a lien for retainage must be filed;
- 2) the date which should be used to begin the lien filing deadline; and
- 3) the required notices of retainage clauses to the owner.

Filing of the Retainage Lien

The state-mandated requirement to withhold retainage only 30 days after the prime contract is completed requires claimants to file liens within this 30 day period and before payment is actually

“Proponents of legislative change want to fix a reasonably ascertainable date certain by requiring the owner to determine, in good faith, the date the work is complete and file an affidavit of completion in the property records with copies to the general contractor and all others who make a written request for such a notice.”

due. Proponents of change to this rule believe that it results in unnecessary lien filings to protect lien rights. Filing liens, even though necessary, can create hard feelings with the general contractor because it may delay payment from the owner or other owner related problems.

Proposed legislation is currently being written to eliminate the requirement of filing the lien affidavit within this 30 day period. Instead, filing the lien affidavit would be required only in the event of non-payment of retainage and by the 15th day of the 4th month after the prime contract is completed. Proponents believe this would allow adequate time for payment and reduce or eliminate most of the retainage lien filings.

The Date From Which the Lien Filing Deadline Should be Determined

Current Texas law begins the 30 day count on the day after the work is complete. The rub is, when is the work complete? In general, the current law is that the work is complete when all work under the contract scope is complete. This does not include warranty or repair work. There is no statutory requirement that this date be filed or agreed upon, or for that matter, who determines the date. Further, claimants not directly involved at the end of the project, and even those that are, many times have great difficulty in determining when the work is complete.

Proponents of legislative change want to fix a reasonably ascertainable date certain by requiring the owner to determine, in good faith, the date the work is complete and file an affidavit of completion in the property records with copies to the general contractor and all others who make a written request for such a notice. If the owner does not file an affidavit of completion, the deadline never begins to run on filing a lien for retainage.

Retainage Notice Requirement

Claims must give notice to the owner on or before the 15th day of the second month after they first begin work on the project and



subsequent to signing the subcontract containing the retainage clause. The notice must state that the subcontractor has a retainage clause and the amount that the general contractor will withhold for retainage.

Proponents who want to change this statutory notice requirement argue that these notices unnecessarily inform the owner of the subcontract amount and do not require the owner to do anything more than they are statutorily required to do (i.e. withhold 10% of the prime contract amount). Many subcontractors believe this notice requirement is a “gotcha” requirement for the unwary subcontractor which, if not complied with, could prevent the subcontractor from obtaining a valid lien for retainage.

The solution proposed is to eliminate the early notice requirement and require only that a notice be provided within 30 days after the work is completed. The notice would not state the amount of retainage owed, but will simply alert the owner that retainage is owed triggering knowledge by the owner that a release for the retainage claim is required from the subcontractor giving the notice. The proponents of this change argue this notice is much more valuable to the owner in that it informs the owner that a release is required without unnecessarily divulging to the owner the amount of the original subcontract.

Conclusion

Proponents believe that the end result of these changes will be to simplify retainage notice requirements without any detriment to the owners, prevent owners from being exposed to subcontractor lien claims, and reduce or eliminate the unnecessary filing of retainage lien affidavits.



JOHNSON

ABOUT THE AUTHOR:

R. Wes Johnson is the Managing Director for the Gardner Law Firm in San Antonio, Texas. He is Board Certified in Consumer and Commercial Law by the Texas Board of Legal Specialization, AV Peer Review Rated (highest rating) for ethical standards and legal ability by Martindale-Hubbell, a Fellow of the Texas Bar Foundation, and a member of the College of the State Bar. He is a Board Member of the Greater San Antonio Chamber of Commerce, a Board Member of the Associated Builders and Contractors of Texas and a Board Member of the Associated Builders and Contractors – South Texas Chapter where he was named Industry Professional Member of the Year for 2006 and 2009. Wes can be reached via email at rwj@tgf.com.

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ABC of Texas Legislative Priorities

by Jon Fisher, ABC of Texas President

At the ABC of Texas Board meeting held in Austin on April 14, priorities were set for the 82nd Texas Legislature meeting in 2011. The following is a summary of those priorities. More details about the priorities will be provided in the next two issues of Texas Merit Shop Journal.

Regardless, it is where your ABC of Texas Board wants resources targeted.

The Workers' Compensation issue is likely going to be managed through a broad business coalition coordinated by Texans for Lawsuit Reform and working closely with the Texas Civil Justice League. Aside from ABC of Texas, other associations working on this represent chemical companies, general business, oil and gas companies, general contractors, subcontractors, restaurants, homebuilders, electric utilities, manufacturers and others. We are going to have to work particularly hard to demonstrate our commitment to safety by showing what our industry is doing and how it is paying off in improving safety. Since both the Texas Department of Insurance and its Division of Workers' Compensation are both slated for Sunset Review, this will be very active.

Lawsuits, Sovereign Immunity & Electrical Licensing

The Board picked another group of three issues with a lower priority including Frivolous Lawsuits, State Sovereign Immunity, and Exempting Industrial Contractors from Electrical Licensing. The Frivolous Lawsuit issue will evolve based on actions of civil justice groups. ABC of Texas will await an opportunity to be helpful. The State Sovereign Immunity issue is dependent on mustering the support of other construction interests, specifically Associated General Contractors-Texas Building Branch. ABC will most likely be in a supportive role, but this is a very important issue to the State Chapter. Exempting Industrial Contractors from Electrical Licensing will be a contentious issue, particularly with the Independent Electrical Contractors who have traditionally supported licensing with few, if any, exemptions. ABC has to make a strong case. Expect an update in the next magazine.

These are the ABC of Texas Legislative Priorities in a nutshell. But, as explained to the Board, sometimes the actions of others cause the priorities to change. Whether it is allies coming up with good ideas, or adversaries coming up with bad ideas, the next session promises to be a significant challenge.



FISHER

ABOUT THE AUTHOR:

Jon Fisher has been President of ABC of Texas since mid-2008. Prior to that he was senior vice president at Texas Chemical Council. He has led ABC of Texas in preparing plans for legislative sessions and participation in the Texas elections. Most recently, he helped ABC of Texas prepare a Strategic Plan for the next 4 years with emphasis on the next 2 years. To contact Jon, email jon@abctexas.org.

Lien Law / Retainage

The number one priority for ABC of Texas deals with resolving some concerns about deadlines in the lien laws that create problems when dealing with retainage, referred to in this issue as Lien Law/Retainage. There is another article in this magazine written by Wes Johnson, who participated in the work group convened by the Texas Construction Association to deal with this issue.

Alternative Delivery Systems

ABC of Texas' number two issue will be familiar to many—Alternative Delivery Systems. An Alternative Delivery Systems bill was passed in both 2005 and 2007, but they were vetoed because of concerns with parts of the bill that dealt with procurement of certain professional services. ABC had those issues worked out in 2009, but the bill got set on the House Calendar after Voter ID, resulting in complications. When the "chubbing" (meaningless debate intended to stall) began on the Local and Consent Calendar close to the deadline for the House to consider Senate bills, the bill died along with many others. It had been set on the Major State Calendar, which usually ensures consideration. But, what happened late last session was far from usual. Maybe the 4th time's a charm!

Workers' Compensation

Also high on the priority list were the issues of Workers' Compensation (including third party liability and consolidated insurance programs) and Indemnification. ABC listed this as one issue in 2009, but it was split up for 2011. Basically, that is because one is a defensive issue, and one is an issue that may be an initiative. But, even that is up in the air because there are some dissenting opinions on Indemnification dealing with the need for provisions on consolidated defense. Since ABC of Texas had two chapters voting "no" last time, Indemnification may end up being a defensive issue. We will have to let the process work.

Lien Law: Are you Protected?

Texas lien law is among the most complicated in the nation and in today's uncertain economic climate, it's critical for owners and contractors to understand the legal rights that apply to a project. **Andrews Myers Coulter & Hayes, P.C.** has a team of lawyers dedicated to protecting your rights to payment while also meeting the strict technical requirements and deadlines involved in the lien process.



“Liens are a powerful tool to enforce a contractor’s right to payment when used correctly,” said **Jason Walker**, shareholder at Andrews Myers Coulter & Hayes. “Our attorneys have the experience and industry knowledge to offer solutions that can result in favorable outcomes for our clients.”

With over a decade of experience handling these cases, Walker has a proven history of guiding clients through the complexities of lien laws. In a previous matter where the bank’s lien was filed first, he argued the “removables doctrine” under Texas law which allowed his client’s lien to trump the bank’s prior recorded deed of trust—and ultimately recover payment.

For more than 20 years, **Andrews Myers Coulter & Hayes** has helped our clients find real-world solutions to today’s complex construction and development challenges.

Our team also includes attorneys who are highly skilled in real estate, corporate and employment law, making us the efficient choice for the legal services our clients need for every aspect of a project.

Whether we’re handling complex contracts or disputes, **Andrews Myers Coulter & Hayes** has the legal experience you need, when you need it.



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Texas Construction Jobs Under Attack!

by Tim Ricketts, V.P. Houston Operations,
Cajun Constructors, Inc

Far and away the best prize that life has to offer is the chance to work hard at work worth doing.

- Theodore Roosevelt

Texas construction workers have pursued the chance to work hard at work worth doing for many years, and in recent years, have been blessed with many opportunities to do so. It is no accident that Texas has had a thriving construction economy, considering the elements that make this possible. We have enjoyed a business friendly environment with low taxes, less regulation, relatively low utility rates, and a highly trained construction workforce. As a result of the return on investment and the free enterprise model, businesses move to Texas and begin growing and expanding their operations. This environment is now in jeopardy.

The South Texas Nuclear Project owners, NRG, have been planning and are now in the process of expanding the plant by two new reactors. Although this expansion will be good for Texas, the execution strategy for the expansion will not. In order to secure Federal Loan Guarantees for the project, NRG has apparently forced its General Contractors to sign a Union Only Project Labor Agreement (PLA) with the AFL/CIO. This decision has many negative ramifications to our local construction companies, construction workers, and consumers.

Many local construction companies have worked over the past year to provide estimates and front end loading to the project as well as providing bid pricing for various phases, only to find out late in the process that becoming signatory to the PLA is compulsory. As a very small minority of local construction companies are signatory to agreements with trades unions, participation in the project

would require these companies to completely change their business models. Most will say “no”, which means that much of this work will go to companies operating outside the state.

The estimates for the project suggest that the project will require approximately 6,000 craft workers for an estimated 25 million work hours. Once again, a very small minority of local construction workers are unionized (approximately 4%), which means that workers will have to unionize or surrender those jobs to out of state workers. If workers choose to unionize to secure these jobs, with the prevailing wages published for the project versus the heavy industrial local pay scales, most will not see significant increases in take home pay once union dues are deducted from their paychecks.

Finally, the consumer of the power from this plant will feel the negative impact of the PLA. It has been estimated that the PLA will increase the cost of the project by as much as \$2 billion,

“In order to secure Federal Loan Guarantees for the [STP] project, NRG has apparently forced its General Contractors to sign a Union Only Project Labor Agreement (PLA) with the AFL/CIO. This decision has many negative ramifications to our local construction companies, construction workers, and consumers.”

which is consistent with studies that the Cato Institute and others have conducted on similar projects. This has less to do with wage increases than it does fringe benefit packages paid directly to the unions (these range from 24% to 64% of the workers bare wages) and productivity losses. These costs will be passed down directly to the consumer.

This is a crisis for the Texas construction industry as well as the citizenry of the state. We cannot allow Washington D.C. to dictate our culture and turn our state into one like those that are now suffering due to high taxes, high construction costs, low productivity, high unemployment, and low standard of living. It is time to say NO to PLA's in our state and reward our workers with the "the best prize life has to offer".



RICKETTS

ABOUT THE AUTHOR:

Tim Ricketts is the Vice President of Houston Operations for Cajun Constructors, Inc. Tim is a very active member of Associated Builders and Contractors. He currently serves on the ABC Greater Houston Board. He is also Chairman of the ABC Greater Houston PAC. To reach Tim, email timr@cajunusa.com.



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Ms. Sanders Goes to Washington

By Chelsea Sanders, ABC Greater Houston Political Affairs Coordinator



Many things have changed yet remain the same since the 1939 classic film, "Mr. Smith Goes to Washington". Though I'm no Miss Saunders, a character from the movie, our group took this opportunity to exercise their freedom to think and speak candidly with our federal delegation.

The ABC of Texas delegation included 37 supporters of Free Enterprise and the Merit Shop philosophy. Each chapter had the opportunity to sit down and speak with their local elected officials to gauge their opinions on ABC-specific issues. We were fortunate to meet with Texas Junior Senator and rising star for ABC issues, Senator John Cornyn. In all, our elected officials shared our frustrations and voiced their eagerness to get construction back to work!

During our meetings, we discussed the main legislative action items: promoting the protection of employees' right to a secret ballot, end of government-mandated project labor agreements (PLAs), need for a comprehensive energy policy, and immediate need for increasing access to capital. These critical items will ensure efficiency of projects and allow one of the nation's largest

employers, construction firms, to build a path toward the future.

First, the carefully crafted Employee Free Choice Act threatens to rob millions of Americans their right to a fair election in the workplace, as well as any compromise legislation. All ABC chapters continue to urge our elected officials to support and cosponsor the Secret Ballot Protection Act of 2009 (H.R. 1176).

Second, government-mandated PLAs on construction contracts limit the number of bidders to union contractors or those that are willing to become signatory to a union agreement. PLAs discriminate against the vast majority (85.5 percent) of the construction workforce that chooses not to join a union, denying them an opportunity to work on federal projects being paid for by their own tax dollars.

Third, ABC believes America needs a comprehensive national energy policy that reduces the country's dependence on foreign sources of energy by increasing domestic production while putting in place standards that will help conserve domestic natural resources and lessen the detrimental impact domestic energy production has on the environment. All ABC chapters promoted the end of any legislative proposals that aim to impose "cap and trade" provisions that will destroy American jobs while dramatically increasing the cost of energy for every person and business in the United States.

Lastly, ABC of Texas chapters strongly encourages the unfreezing of lending for private sector construction projects so ABC members with viable, low risk projects/contracts can commence work. Actions by financial institutions attempting to cosmetically improve their balance sheets by unnecessarily restricting, reducing or "calling in" lines of credit to contractors, subcontractors and suppliers would be met with strong opposition.

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ABOUT THE AUTHOR:

Chelsea Sanders serves as Government Affairs Coordinator for the Greater Houston Chapter. She is a graduate of Texas A&M University and has a bachelor of arts in International Politics and Diplomacy, with minors in Sociology and Spanish. Before joining the ABC staff, Chelsea worked at the U.S. Department of Education in Press/ Communications and on Capitol Hill as a Special Assistant.

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taken on the task of researching and developing curriculum for continuing education requirements for LEED-APs. Also, a coalition of committee chairs, partnered with members of the board, strategize efforts to maintain and promote Merit Shop and Free Enterprise ideals in response the South Texas Project's PLA.

The Houston Chapter is proud to announce that John Marshall, of Satterfield and Pontikes Construction, Inc., will now represent the chapter as a member of the ABC National Political Action Committee's (PAC) Region 3 delegation. His former experience as a Capitol Hill staffer and extensive construction knowledge will undoubtedly prove him to be a valuable addition to legislative efforts.

ABC continues to promote dialogue between the membership and local government officials, including meetings with Houston City Council Members Al Hoang and Jarvis Johnson. The Greater Houston PAC continues to look toward November's Election Day and adds Harris County Judge Ed Emmett, State Representative Dwayne Bohac, Jim Murphy for State Representative, and Jack O'Connor for State Representative to their list of endorsed candidates. In April, the Greater Houston PAC's Spring Clay Shoot relished in fundraising success for the National PAC. The event exceeded the initial goal and served as a platform for political dialogue.



Attorney General Greg Abbott (bottom row, center) is pictured here with Jeff Hagar of Rogers O' Brien Construction (bottom right), Jon Fisher (bottom left), Andy Koebel (top left) and David Ford (top right). Central Texas Chapter representatives accompanied ABC of Texas Chair Koebel and President Fisher in presenting a contribution from the ABC of Texas PAC.

ABC CENTRAL TEXAS CHAPTER UPDATE

Members of the ABC Central Texas Chapter recently met with Attorney General Greg Abbott who was presented with a PAC contribution. Members had the opportunity to visit with Abbott and discuss issues that affect Texas and the Construction industry.

The Central Texas chapter also hosted a successful PAC Clay Shoot on June 18th. Held at the Capitol City Trap and Skeet Club in a picturesque setting above the Walter E. Long Lake, the event drew members who practiced their aim while raising money for the Chapter's Political Action Committee. Teams competed at ten stations, receiving fifty targets. Donations from the event will be combined with other donations to help support candidates in favor of the free enterprise, merit shop agenda.

ABC GREATER HOUSTON CHAPTER UPDATE

The momentum of 2010 continues to fuel the membership's initiatives in retention, seeking new members, and improving the best parts of ABC membership.

This quarter, the 2010 GC Expo continued the tradition of fostering networking amongst ABC members, prospects and owner groups. ABC of Greater Houston also proudly supports and cultivates professional development through partnerships with local universities to acclimatize tomorrow's industry leaders to the industry. In fall 2010, we will welcome Sam Houston State University as a new student chapter. They will join Texas A&M University's and University of Houston's already active student chapters.

The Industrial Committee continues to tweak the Craft Training Evaluation Program (CTEP) and strives to rival the success of the Safety Training Evaluation Program (STEP). Through this initiative, the chapter seeks to recognize the demonstrated excellence of in-house training programs by ABC member companies. The Commercial Committee's LEED Green-Building detail has



S&B Engineers and Constructors team members are recognized for their first place win at the ABC Greater Houston 2010 Spring PAC Clay Shoot.

The Greater Houston Chapter's 400 strong membership continues to move forward and increase innovation within the Commercial and Industrial construction sector to maintain the high standards of excellence enjoyed within the area.

ABC TEXAS COASTAL BEND CHAPTER UPDATE

The ABC Texas Coastal Bend Chapter continues to bring hot topics to the stage at their General Membership Luncheons. In late March, the Mayor of Corpus Christi, Joe Adame, was the guest speaker. Mayor Adame recapped his annual "State of the City" presentation highlighting many of Corpus Christi's current events and upcoming projects. His presentation included a video entitled,

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Corpus Christi Mayor Joe Adame (right) addressed the ABC Texas Coastal Bend Chapter at their Membership Luncheon. Also pictured is ABC Texas Coastal Bend Board of Director Mark Roach with Dealers Electrical Supply.

“Shift Happens”, (<http://youtube.com/watch?v=pMcfLYDm2U>), showing just how the shift of progress happens in today’s world. The Mayor expressed the importance of getting the public involved with all aspects of “their” community and getting involved with the City’s new mentoring program, “Be the piece to the puzzle.”

Also in March, the Craft Training Center hosted the 62nd Annual Skills USA State Championships. The CTC hosted the welding, masonry, electrical, and plumbing competitions with over 600 students competing each day. Among attendance were a number of exhibitors, hands-on activities, seminars as well as several company BBQ teams that cooked for the competitors and guests.

The upcoming \$3 billion project coming to Corpus Christi, Las Brisas Energy Center, was the focus of the April membership luncheon. The Las Brisas Energy Center is a 1320 gross megawatt (MW) state-of-the-art petroleum coke-fired power plant in Corpus Christi, Texas. This circulating fluidized-bed (CFB) facility will be designed to minimize environmental impacts, and be clean and efficient. In the presence of over 175 ABC members, John Upchurch, and his colleagues Dolores Guajardo and Carlos De La Garza, gave an incredibly comprehensive project update which has an expected completion date of 2013. Mr. Upchurch continued to express his desire to work with local contractors and the community throughout this project.

The Texas Coastal Bend chapter continues to excel in the number of scholarships awarded to local students. To date, the chapter has awarded over 50 scholarships to students studying instrumentation fitting, pipefitting, crane operating, design/architecture and welding, totaling approximately \$20,000.

Finally, the Texas Coastal Bend chapter just completed their 22nd Annual Golf Tournament. With 38 teams made up of ABC and non-ABC member companies from the commercial and industrial industry, the tournament was a huge success! Currently, the chapter is preparing for their 2nd Annual Grillin’ on the Playa

Bar-B-Q Cook Off set for mid July benefiting the Corpus Christi Harbor Playhouse.

ABC SOUTH TEXAS CHAPTER UPDATE

At the 2010 Planning Retreat, four Board Task Forces were created to address opportunities for chapter growth. These Task Forces include Facilities/Financing, Marketing, Strategic Planning and Future Leaders. Each group was assigned a series of objectives and deadlines. These efforts are separate and above the chapter’s annual goals and action plans.

The Facilities/Financing Task Force is responsible for securing a financing plan for the purchase of a new home for the South Texas Chapter. It appears that financing is now in place; the next step is to find a facility that will meet the needs of a growing professional association. The Marketing Task Force reviewed chapter marketing materials and developed a series of suggestions to help increase member involvement, increase attendance at the monthly events, and create an informal process to continually monitor and provide recommendations. The Strategic Planning Task Force is in the process of developing a simple one page five year plan, with annual reviews and updates. This effort should be completed later this summer.

The most exciting group is the Future Leaders Task Force, as it is comprised of young professionals who will be the future leaders in the construction industry. The group was organized in February and meets monthly for lunch to hear from various speakers all designed to help develop their full potential. Topics presented to date included an orientation on ABC at the national, state and local levels, an introduction to the political process by ABC-National PAC Chair, Michelle Seward Davis and RPM, April Brown, “Motivating the Unmotivated & Inspiring the Uninspired”, and “Public Relations and the Local Media.” In addition to educational presentations, the group also plans to undertake a community service project and hold a few task force happy hours.

On the “fun front”, over 220 golfers participated in the annual Spring Golf Tournament and over 350 industry representatives attended the annual Parking Lot Party, an event cosponsored by ABC, ASA and VBX. The upcoming “fun events” include the Burgers and Beer Mixer at the historic Luxello Dance Hall and the Sporting Clays Shoot & Barbeque Cook-off in August.

While it is only summer the board is already in the process of preparing for 2011, with the annual board retreat set for October, board breakout sessions in August, and the Nominating Committee preparing their report for the August Board meeting.

ABC TEXAS GULF COAST CHAPTER UPDATE

The Texas Gulf Coast Chapter’s commitment to craft training is at the forefront of many spring activities. The 34th Annual Craft Training Program Graduation took place June 8, 2010 at Brazosport College, our partners in training for more than 30 years. This year’s 44 graduates included trainees from several

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and expertise so that students could see and practice first hand under the guidance of a certified rigger. John East, an NCCER Certified Instructor and Rigger and an employee of Dow, spent a day working with students in four classes at Brazosport HS to ensure that they could do such things as identify and describe use of slings and common rigging hardware, as well as techniques and rejection criteria for the same. Students also saw and participated in demonstrations of load-handling safety practices and hand signals.

Finally, ABC member Cooper Ford of The Infinity Group, spent a number of volunteer hours tutoring two local high school students who had yet to pass their state-mandated TAKS exam in math. All were rewarded with news that his efforts had not been in vain as the students he tutored passed the TAKS exam.

Spring membership events and luncheons included presentations of STEP Awards to twenty-one local contractor members, including 1 silver, 6 gold and 14 platinum awards. This chapter is proud of the many accomplishments and commitments to safety demonstrated by these members.

At a recent event, guest speaker Jan Hargrave of Hargrave and Associates brought valuable information to our members about body language as it relates to dealing with people in the workplace. The same event raised over \$200 and 50 pounds of food donations to a local food pantry with the "Give Us 5!" campaign; a donation of 5 pounds or \$5 placed the donors name in a drawing for several door prizes given away at that meeting. Another charity event, the 7th Annual Inshore Fishing Tournament, was held June 4-6 with close to 200 participants. Money raised at this event by the Public Relations Committee is designated for several charities.



Over 350 industry representatives attended the annual ABC South Texas Chapter Parking Lot Party. This year's event was cosponsored by Associated Builders and Contractors (ABC), American Subcontractors Association (ASA), and the Virtual Builders Exchange (VBX).

trades, including Electrical, Engineering Graphics and Design, Instrument Fitter, Millwright, Safety, Health and Environmental Management, Scaffolding, and Construction Management.

In recognition of the great need for workforce development, the chapter awarded two scholarships to local high school seniors whose goals are focused on a career in the construction industry. The recipients will continue their studies at Brazosport College where both hope to complete their training in welding and perhaps one day earn their credentials as welding inspectors. The scholarship committee was particularly impressed with the project these two young men completed this spring in preparation for the state competition at SkillsUSA. Of special note is the fact that while most students will take home their projects at the end of the year and be able to use them for a life-time, the students who built the artificial reef must take pleasure in knowing that they are helping to improve the environment for fish and other creatures in the Gulf of Mexico. These young men recently boarded a boat to accompany their project to a point slightly less than 10 miles off shore where it was sunk as part of the Vancouver Project. This project, sponsored by the Texas Parks & Wildlife Artificial Reef Program, aims to increase snapper and other marine life by creating a ½ mile by ½ mile artificial reef with man-made structures such as these (pictured right).

Also this spring, ABC Texas Gulf Coast partnered with Dow Chemical, Texas Operations to provide assistance in helping students learn some basic skills for the construction trades. Students in the welding program at Brazosport High School have been studying introductory skills for the construction industry as well as for welding in particular. Classes use the NCCER Contren Learning Series for Core and Welding-Level I. To earn NCCER Certificates of Completion in these areas, students must meet national standards on a variety of concepts and skills, basic rigging being one of many. To facilitate this, Dow provided both materials



This artificial reef, built by two local high school ABC Gulf Coast Scholarship winners who are studying welding, will become part of the Vancouver Project. The structure will help support and increase marine life.

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There's enough on your schedule. You deserve the best-in-class insurance and benefits, turn to ABC Merit Choice.

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