

May 27, 2011 – VOLUME 8, ISSUE 5

## Protect American Jobs By Sen. Lamar Alexander (R-TN)



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*Editor's Note: ACPPA periodically invites leading members of Congress to write columns for Actionline on legislative topics to allow our readers to hear directly from people making decisions on Capitol Hill. This month's guest columnist is [Sen. Lamar Alexander](#) who is serving his second term representing Tennessee in the United States Senate. He is chairman of the Senate Republican Conference and also serves on the Senate Appropriations; Environment & Public Works; Health, Education, Labor & Pensions; and Rules Committees. The views expressed by Sen. Alexander do not necessarily reflect those of ACPPA.*

On May 12, I joined with South Carolina Senators Lindsey Graham and Jim DeMint, along with 31 additional Republican senators, to introduce the Job Protection Act, a bill to preserve the federal law's current protection of state right-to-work laws.

This bill is a response to a complaint filed by the acting general counsel of the National Labor Relations Board (NLRB) to stop the Boeing Company from building airplanes at a nonunion plant in South Carolina, suggesting that a unionized American company cannot expand its operations into one of 22 states with a right-to-work law. (A right-to-work law protects a worker's right to join or not join a union when he or she applies for a job anywhere in that state.)

Specifically, the Job Protection Act would, first, explicitly clarify that the NLRB cannot order an employer to relocate jobs from one location to another; two, guarantee an employer the right to decide where to do business within the United States; and, three, protect an employer's free speech regarding the costs associated with having a unionized workforce without fear of such communication being used as evidence in an anti-union discrimination suit.

Let me explain why this issue has such breathtaking scope. Up until the NLRB filing of the complaint, one would assume that a manufacturing company such as Boeing, or a smaller company, that wanted to open a new plant to create new jobs could make its own decision about where to do that. Then in doing so, it could take into account such factors as the cost of labor, the labor relations within a state, as well as the geographical location of the state.

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The reason the decision by the NLRB's acting general counsel has attracted so much attention is it basically says -- or at least it suggests -- to any company manufacturing a product in a state which is not a right-to-work state, such as Washington, that you better think twice before you open a new production line in one of the right-to-work states.

This should concern every middle-class family in America, and here's why: Thirty years ago, I was Governor of Tennessee when we were the third poorest state. My goal was to raise family incomes by creating an environment in which they could be raised.

At a White House dinner with the nation's governors, President Jimmy Carter said to us: "Governors, go to Japan. Persuade them to make in the United States what they sell in the United States."

Off I went to Japan, where I met with the Nissan officials in the fall of 1979. At that time, Japanese companies were not making here what they sold here— Nissan was making the cars and trucks it sold here in Japan.

But Nissan was also making a decision about where to locate in our country. I took with me a photograph of the United States at night taken from a satellite. They asked: "Where is Tennessee?" I said: "It is right in the middle of the lights." Being in the center of the country meant reduced shipping and transportation costs.

Then the next decision was: Where in the center did they want to go? The states north of us did not have right-to-work laws. Tennessee and the states around us did. Nissan chose Tennessee, and their plant and the General Motors plant that came later and the Volkswagen plant and thousands of suppliers have helped our middle class earn higher incomes over the last 30 years.

### *ACPPA Government Affairs Teleconference:*

## **Water Infrastructure Investment in the New Budget Environment**

*Thursday, June 2  
3:00pm to 3:30pm ET*

*Special Guest:  
Eben Wyman*

*Vice President of Government Affairs  
National Utility Contractors Association*

ACPPA Government Affairs Counsel Christian Klein will moderate a discussion with one of Washington, D.C.'s leading experts on water infrastructure about the impact of the budget crisis on water infrastructure investments. Wyman will discuss recent cuts to the State Revolving Fund (SRF) programs and exempt facility bond legislation that could attract \$5 billion per year in private investment.

The teleconference will serve as the official launch of a stepped-up ACPPA lobbying effort to build support for the legislation on Capitol Hill. Members will receive specific instructions about what they can do to help NUCA and our other allies move the ball forward. The call will last no more than 30 minutes.

Feel free to invite others in your company or the industry to listen in. Formal registration is not required, but if you plan to participate, please send Christian a quick note ([caklein@potomac-law.com](mailto:caklein@potomac-law.com)) so we know how many callers to expect. To join the call, dial +1-800-977-8002 and when prompted, enter 618739#.

**Stop the EPA's Overreach! Protect Fly Ash for Concrete Production.**

As reported in prior issues of *Actionline*, the Environmental Protection Agency's (EPA) is seeking to reclassify fly ash and other coal combustion residuals as a hazardous waste. Regulating coal ash would have a number of unintended consequences with no public health benefit.

Rep. David McKinley (R-WV) has introduced the Recycling Coal Combustion Residuals Accessibility Act (H.R. 1391) to prevent the EPA from proceeding.

Tell your representatives to co-sponsor this bipartisan legislation today!

Visit [www.ACPPA-Action.org](http://www.ACPPA-Action.org) to send a quick note to the Hill.

Today, a third of our manufacturing jobs are auto jobs because we provided an environment in Tennessee where automakers could compete in the world marketplace. Nissan says that soon it will be making in the United States 85 percent of what it sells in the United States, which makes Nissan a very "American" company.

This is what we want.

But the decision by the NLRB's acting counsel throws a big wet blanket over all the auto suppliers and manufacturers who might be thinking about moving into Tennessee or opening new plants in Tennessee, or suppliers who might be wishing to follow Boeing to South Carolina, because it signals to these companies that they cannot make that decision. And it would send American jobs overseas in pursuit of an environment where they can build and manufacture competitively.

This is a matter that I hope attracts Democratic as well as Republican support. The bill I introduced with Senators DeMint and Graham preserves right-to-work laws across the country. It preserves the choices of employees. It preserves the right of American businesses to make their own decisions about where to locate.

### **ACPPA Joins Canadian Chamber of Commerce**

As part of ACPPA's ongoing efforts to better serve the interests of our Canadian members, the association recently joined the [Canadian Chamber of Commerce](#). As Canada's largest and most influential business association, ACPPA's Chamber membership gives the association a vital connection between business and the federal government.

"Joining the Canadian Chamber will provide ACPPA access to a broader range of resources in representing the interests of our Canadian members," said ACPPA President Richard Lawhun. "This partnership will elevate our industry's visibility in Ottawa and the association looks forward to partnering with the Chamber in the years ahead."

The association has rapidly been building its relationships with members of the Canadian Chamber. ACPPA Government Affairs Counsel Christian Klein has been traveling to Canada to learn more about Canadian policy issues and meet with officials and association members.

Representing more than 420 chambers of commerce and boards of trade comprising 192,000 companies in all sectors of the economy, the Canadian Chamber of Commerce works to impact public policy and decision-making to the benefit of Canadian businesses, communities, and families.

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### **EPA, Army Corps Issue Draft Guidance on Waters Protected by the Clean Water Act**

On April 27, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) proposed draft guidance to clarify how the agencies will identify "Waters of the United States" for protection under the Clean Water Act (CWA)

The [Draft Guidance on Identifying Waters Protected by the Clean Water Act](#) addresses the scope of the CWA following two Supreme Court decisions, which, according to environmental groups, greatly reduced the application of the law to far fewer bodies of water than Congress originally intended when enacting the CWA.

Supreme Court decisions in 2001 and 2006 held that CWA protections only applied to "navigable waters," which according to the Court, does not include rivers that are completely within one state's borders, seasonally dry lakes and creeks, and other bodies of water not connected to larger water systems.

According to the guidance, the following waters are protected by the Clean Water Act:

- Traditional navigable waters;
- Interstate waters;
- Wetlands adjacent to either traditional navigable waters or interstate waters;
- Non-navigable tributaries to traditional navigable waters that are relatively permanent, meaning they contain water at least seasonally; and,
- Wetlands that directly abut relatively permanent waters.

In addition, the following waters are protected by the Clean Water Act if a fact-specific analysis determines they have a "significant nexus" to a traditional navigable water or interstate water:

- Tributaries to traditional navigable waters or interstate waters;
- Wetlands adjacent to jurisdictional tributaries to traditional navigable waters or interstate waters; and,
- Waters that fall under the "other waters" category of the regulations. The guidance divides these waters into two categories, those that are physically proximate to other jurisdictional waters and those that are not, and discusses how each category should be evaluated.

The draft guidance was met with praise from environmental groups and opposition from the business community. Industry groups assert the policy will increase the regulatory burden on businesses and raise the cost of development without a proven benefit to the environment.

The guidance, which does not carry the force of law, was published [May 2 in the Federal Register](#) and is [open for a 60-day comment period](#). The EPA and the Corps is expected to go through the rulemaking process to formalize the policy.

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### **Lawmakers Introduce ACPPA-Supported Alternative Infrastructure Financing Bills**

With reauthorization of the federal highway and clean and drinking water state revolving fund (SRF) programs stalled for lack of funding, lawmakers are looking for alternative means to invest in our nation's deteriorating infrastructure. Early this May, two bills were introduced that could provide substantial infrastructure investment.

#### ***Sustainable Water Infrastructure Investment Act***

On May 10, Sens. Robert Menendez (D-NJ) and Mike Crapo (R-ID), and Reps. Geoff Davis (R-KY) and Bill Pascrell (D-NJ), introduced the Sustainable Water Infrastructure Investment Act ([S. 939/H.R. 1802](#)). The bipartisan bills lift the state volume cap on exempt facility bonds (or private activity bonds) for water infrastructure projects.

A top ACPPA priority, the legislation is expected to generate \$50 billion in private capital investment while costing the federal government only \$354 million in lost tax revenue over ten years. Last Congress, provisions to lift the cap on private activity bonds for water infrastructure projects were included in two separate bills that passed the House and were included in several Senate proposals.

Now is the time to contact your lawmakers to urge them to cosponsor S. 939 and H.R. 1802. Visit [www.ACPPA-Action.org](http://www.ACPPA-Action.org) to weigh-in with your representative and senators.

#### ***Infrastructure Jobs & Energy Independence Act***

On May 12, Reps. Tim Murphy (R-PA), Bill Shuster (R-PA), Jim Costa (D-CA), and Tim Walz (D-MN), leaders of the Bipartisan Energy Working Group, introduced the Infrastructure Jobs & Energy Independence Act ([H.R. 1861](#)).

The legislation dedicates revenues from offshore oil and gas exploration leases and royalties to slash the deficit, build clean-coal and nuclear power plants, clean up our air and water, and rebuild our crumbling highways and bridges. The bill is estimated to create 1.2 million new jobs annually and \$8 trillion in economic output without raising taxes.

The bill's estimated \$2.2 trillion to \$3.7 trillion in generated federal revenue will be distributed as follows:

- ***Infrastructure Renewal*** will receive **20 percent (\$440 billion)** to offset the \$2.2 trillion in repairs needed for America's locks, dams, bridges, roads, and highways. The funds will be used for federal and state highway and highway safety construction programs, water resources development construction projects through the Army Corps of Engineers, mass transit programs, freight rail, and passenger rail construction.
- ***Renewable Energy and Energy Efficiency*** will receive **15 percent (\$330 billion)** to offset the costs of extending and creating the alternative energy and conservation tax incentives.
- ***Clean Coal Technology Deployment Carbon Capture and Sequestration*** will receive **8 percent (\$220 billion)** to develop dedicated funding for the research, development, and

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construction of coal fired power plants that utilize the most advanced pollution controls to prevent the release of greenhouse gasses.

- ***Environmental Restoration*** will receive **4 percent (\$88 billion)**, which will provide dedicated funding for the overall health of the national ecosystem, primarily or entirely within wildlife refuges, national parks, lakes, bays, rivers and streams.
- ***Conservation efforts*** will receive **3 percent (\$66 billion)**, which will provide dedicated funding for efforts to conserve America's natural resources and increase energy efficiency in buildings and transportation.
- ***Carbon Free Technology Deployment and Nuclear Energy*** will receive **5 percent (\$110 billion)** which will be dedicated to carbon free technology encouraging America's commercial nuclear renaissance.
- ***Clean Water and Wastewater Infrastructure*** will receive **3 percent (\$66 billion)**, which will provide dedicated funding to modernize and rebuild America's water and wastewater infrastructure to ensure clean water and protect the environment.
- ***Low Income Home Energy Assistance Program*** will receive **2 percent (\$44 billion)** to provide energy assistance to the elderly and poor.
- ***Producing states*** will receive **30 percent (\$660 billion)** to help expedite the process of exploration and production of off-shore resources.
- ***Federal Treasury*** will receive **10 percent (\$220 billion)** to help pay down debt or shrink the deficit.

H.R. 1861 has been referred to the appropriate House committees for consideration. [Click here](#) to urge your lawmakers to support the bill.

### Government Contractor Withholding Tax Delayed

The Internal Revenue Service (IRS) has delayed the effective date of the three percent government contractor withholding tax by one year.

Created by Sec. 511 of the 2006 [Tax Increase Prevention Reconciliation Act](#), the tax requires that, federal, state and local governmental entities whose annual expenditures exceed \$100 million withhold three percent of all payments made to any individual or company that has provided goods or services to the government. This amount is then sent to the IRS and credited against a government contractors' future tax liability. The law effectively forces contractors to make interest free loans to the federal government. In some cases, the amount will exceed a business' profit margin. The tax was originally set to go into effect at the end of 2011.

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The IRS [final regulations](#) on the matter delayed implementation until January 2013. The delay notwithstanding, this levy will hurt small companies' cash flow and individuals doing business with the government, drive up contract administration costs, and have little positive impact on the federal budget.

While the delay comes as welcome news to businesses planning for the law's burdensome requirements, ACPPA still believes that the ultimate goal should be complete repeal of this odious law.

Three bills introduced this Congress will scrap the onerous tax once and for all. A bipartisan House measure ([H.R. 674](#)) and a Republican Senate proposal ([S. 89](#)) would simply repeal Section 511. An alternative bipartisan measure in the Senate ([S. 164](#)) would repeal the three percent tax, but offset the cost of scrapping the law using unobligated stimulus funds. ACPPA supports any of these proposals as a reasonable means to repeal the impending tax.

Visit [www.ACPPA-Action.org](http://www.ACPPA-Action.org) today to weigh in with your lawmakers about the need to take this law off the books once and for all.

### **Senators Seek to Reign in Labor Board**

A group of senators has introduced the Job Protection Act ([S. 964](#)) (see related piece from Sen. Lamar Alexander (R-TN) in this issue of *Actionline*) to clarify that the National Labor Relations Board (NLRB) cannot order an employer to relocate jobs from one location to another.

S. 964 guarantees an employer's right to decide where to do business in the United States and protects an employer's free speech regarding the costs associated with having a unionized workforce without fear of such communication being used as evidence in an anti-union discrimination claim.

The legislation is in response to a NLRB complaint issued against Boeing for opening a new production line at a non-union facility in Charleston, South Carolina. The plant would allow Boeing to meet an increased market demand for its 787 aircraft.

The NLRB claims the company violated the National Labor Relations Act because it allegedly made statements indicating the expansion in a "right-to-work" state was motivated by a desire to retaliate for past strikes and chill future strike activity. Despite Boeing's \$2 billion investment in South Carolina and the potential loss of 1,000 jobs there, NLRB is seeking to force Boeing to put the second production line in Washington. The case is scheduled for a hearing before an NLRB administrative law judge in Seattle on June 14.

The Job Protection Act seeks to reign in President Obama's activist Labor Board and restore basic employee and employer protections. To urge your senators to support S. 964 visit [www.ACPPA-Action.org](http://www.ACPPA-Action.org).

Unfortunately, the Boeing complaint is the most recent in a long-line of attempts by President Obama's NLRB to dramatically expand labor laws at the expense of employers and employees. As a leading member of the [Coalition for a Democratic Workplace](#) (CDW), ACPPA is fighting against the NLRB's attempt

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to scrap years of labor law precedent. For a detailed timeline of the NLRB's recent actions since the Obama administration took over, visit [here](#).

### **Legislation Introduced to Spur New Housing Projects**

On May 5, Reps. Gary Miller (R-CA) and Brad Miller (D-NC) introduced the Home Construction Lending Regulatory Improvement Act ([H.R. 1755](#)) to facilitate viable home building projects and discourage lenders from curtailing or calling construction loans where payments are current.

Specifically, the legislation requires bank regulators to follow their existing rules and not obstruct financial institutions' lending to our nation's small builders.

The bill directs bank regulators to cease implementing the 100 percent capital bank lending limit for land acquisition, development, and construction (AD&C) loans as a hard limit. Additionally, bank regulators would be required to utilize "as-completed" values rather than "liquidation" values when assessing the collateral on residential AD&C loans they intend to fund to completion. The use of "liquidation" value rather than "as completed" value often discourages banks from maintaining funding for loans in good standing and often results in inappropriate equity calls.

H.R. 1755 also directs bank regulators to abstain from compelling a lender to call or curtail AD&C loans where the home builder is making payments in accordance with the original loan documents. Regulators would be required to permit financial institutions to work with such borrowers for a period of 24 months to realize the maximum current market value for such loans. Lenders often cite regulatory requirements or pressure from bank examiners to reduce AD&C loan exposure as justification for their actions.

Be sure to encourage your representative to sign on as a co-sponsor to the Home Construction Lending Regulatory Improvement Act by visiting [www.ACPPA-Action.org](http://www.ACPPA-Action.org) today.