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# Oil Pipeline Delay Bad for U.S.

*By Rep. Ed Royce (R-CA)*

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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 [Rep. Ed Royce](), who is serving his 10th term representing California's 40th Congressional District. He serves on the House Financial Services Committee and House Foreign Relations Committee, where he is chairman of the Subcommittee on Terrorism, Nonproliferation, and Trade. The views expressed by Rep. Royce do not necessarily reflect those of ACPPA.*

Talk about a self-inflicted wound. With U.S. unemployment hovering at about 9 percent, with the U.S. sending hundreds of billions of petrodollars every year to hostile regimes, and with our growing economic rivalry with China, the Obama administration's decision to further postpone the Keystone XL Pipeline Project is simply maddening.

The proposed Keystone pipeline would move the abundant, proven crude-oil reserves in Alberta, Canada – the third-largest in the world – to U.S. refineries on the Gulf Coast. Its construction is still awaiting an Obama administration OK, three years after the request was filed, longer than the typical process. But the administration announced last week that the process would be delayed again, until after the November 2012 election.

The economic benefits of this project are great. By one estimate, over 20,000 U.S. jobs involved in constructing and servicing the pipeline will be created. That is a conservative jobs estimate. Many of these are good-paying manufacturing jobs, building pipe, earth movers and other construction equipment. Passing up any number of jobs is unacceptable.

So while the administration has futilely spent hundreds of billions of U.S. taxpayer dollars trying to create jobs, the Keystone jobs wouldn't cost a federal dime. While President Barack Obama continues to talk about jobs, his Keystone delay is scotching tens of thousands of them.

Politics drove the administration to kick the can down the road. Both business and labor organizations strongly back Keystone. The pipeline has undergone three stages of detailed, public economic and national security review. Still, some environmental groups have protested. Even though this project has been judged as environmentally safe by U.S. government agencies, the White House chose not to alienate a very small minority that opposes all oil development.



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But Canada will develop and export its energy, pipeline or not. It wants to work with us, but it has options. Prime Minister Stephen Harper met this month with Chinese President Hu Jintao at the Asian-Pacific Economic Cooperation forum. With the Obama decision just days old, it's no surprise that the Canadian leader stressed his country's need to enter Asian energy markets.

China already has energy projects in western Canada. It is locking up energy resources in Africa and Latin America and elsewhere. China has a voracious energy appetite and is looking ahead, extending its energy development reach worldwide. If we snub our neighbor to the north, there will be a Canadian pipeline to the Pacific to service Asia, mainly China.

It bothers me greatly that China is playing in our North American back yard, and the administration doesn't seem to care. Where is our sense of rivalry? Where is our urgency? If we don't renew the American spirit of enterprise, if we kibosh critical projects like this pipeline, our economic future is dim.

So at least for now, we will turn from Canada and continue to import oil from unstable and hostile producers, including Venezuela and Middle Eastern countries, at a higher cost. Forgoing Canada has another economic cost. Dollars spent on Canadian energy return to the U.S. at a higher rate than from other energy-producing countries. Again, this decision means fewer American jobs.

Our energy challenges are significant. We need to develop a range of options. We need nuclear and renewable energy, including wind and solar. But oil and pipeline infrastructure are critical.

The Keystone decision means American jobs not created and less energy security. It is also emblematic of the political challenge we face. When key economic decisions are made based upon election schedules, we all lose.

I look forward to working with ACPPA members to make the Keystone XL Pipeline Project a reality.

## Senate EPW Committee Holds Hearing on Water Infrastructure

The Senate Environment & Public Works' Subcommittee on Water & Wildlife held a hearing on Dec. 13 entitled, "Our Nation's Water Infrastructure: Challenges and Opportunities." The hearing focused on the urgent need for water infrastructure investment.

Committee members expressed their support for reauthorization of the Drinking Water and Clean Water State Revolving Fund (SRF) programs and eliminating the cap on private activity bonds (PABs) for water infrastructure projects. Word on the Hill is that EPW Committee leaders will unveil SRF reauthorization legislation sometime next year.

ACPPA is pleased to see the Senate focusing on such a critical need and appreciates the level of support that committee members expressed at the hearing. But, as news of our nation's crumbling water infrastructure continues to make headlines every day, our country needs more than platitudes.

As a member of the Sustainable Water Infrastructure Investment Coalition's (SWIC) steering committee, the Clean Water Council, and the Water Infrastructure Network, ACPPA has been a leader in advocating for substantial and sustained investment in water infrastructure.

Encourage your lawmakers to invest in our nation's water networks by visiting ACPPA-Action.org.

*The Consequences of Inaction*
On Dec. 15, two days after the Senate hearing, the American Society of Civil Engineers (ASCE) released a new report, *Failure to Act: The Economic Impact of Current Investment Trends in Water and Wastewater Infrastructure*, which takes a closer look at the economic impacts of our country's failing water infrastructure.

While the ASCE has already noted the deplorable condition of our water networks by giving it a D- in the association's *2009 Report Card for America's Infrastructure*, the new report addresses questions of how this neglect will affect America's economic future. The report finds that by 2020, the costs of poor water delivery and wastewater treatment may lead to an additional $206 billion in out of pocket expenses for American businesses and households. Additionally, in a worst case scenario, the U.S. will lose nearly 700,000 jobs by 2020 as a consequence of inaction.

## House Passes Three Bills to Rein in Out of Control Bureaucracy

The House recently approved three bills that contain significant reforms to the federal regulatory process to reduce burdens on job creators.

Approved Dec. 1, 263-169, the Regulatory Flexibility Improvements Act of 2011 (H.R. 527) is intended to strengthen the Regulatory Flexibility Act (RFA), the law that requires federal agencies to consider the impact of regulations during the rulemaking process. H.R. 527 would fortify the RFA by mandating that federal agencies consider both direct and indirect economic impacts of regulation while also making it easier for companies to improve RFA compliance.

On Dec. 2, the House also approved the Regulatory Accountability Act of 2011 (H.R. 3010), 253-167. The bill attempts to restore the need for narrowly tailored regulations by increasing public participation and restricting the use of interim final regulations that don't go through the traditional rulemaking process. ACPPA joined a diverse coalition of more than 100 business and organizations calling for passage of H.R. 3010 to hold regulators accountable and ensure that rules are narrowly tailored, supported by strong evidence, and impose the lowest possible burden.

Lawmakers have introduced companion measures in the Senate. However, it is unclear when (or if) the upper chamber will consider the bills.

*REINS Act Moves Forward*
Additionally, the House also passed the Regulations from the Executive in Needs of Scrutiny (REINS) Act (H.R. 10) on Dec. 7, 241-184. The REINS Act would check the power of the executive branch, requiring congressional approval before implementing any regulation with an economic impact of more than $100

million. An amendment to the bill offered by Rep. Pete Sessions (R-TX) would also require federal agencies to consider the potential employment effects of any rule submitted to Congress under the act.

Having now passed the House, the measure will await action in the Senate where Sen. Rand Paul (R-KY) has introduced a companion measure (S. 299). However, Senate Majority Leader Harry Reid (D-NV) indicated that the Senate will not consider the legislation and the Obama administration pledged to veto the REINS Act if approved by the upper chamber.

## Depreciation Bonus, Keystone Caught up in Payroll Tax Cut Bill Imbroglio

Two important issues are caught up in end-of-session wrangling on Capitol Hill. In addition to extending the payroll tax cut and jobless benefits, the Middle Class Tax Relief & Job Creation Act of 2011 (H.R. 3630) passed by the House on Dec. 13 would extend 100 bonus deprecation for one year (see related article, below) and force the Obama administration's hand on Keystone XL.

Sec. 1002 of the bill is a direct response to President Obama's decision to put off a final determination about whether to issue a permit for the Keystone XL project until after the 2012 elections. In an effort to get the project underway, H.R. 3630 would automatically grant a permit for the Keystone XL pipeline 60 days after the legislation's enactment unless the president determines that the project is not in the national interest. Given the impact on jobs, energy independence, and the construction sector in U.S. and Canada, ACPPA has been advocating for the pipeline, working with the American Petroleum Institute, and others to get the project approved.

Sec. 1201 of the payroll tax cut bill would extend the 100 percent depreciation bonus through the end of 2012. Under current law, the depreciation bonus is set to drop to 50 percent next year. The bill would also hold the depreciation bonus harmless from percentage of completion (thereby letting contractors on long-term projects more easily to take advantage of the investment incentive) and allow companies to claim Alternative Minimum Tax (AMT) credits in lieu of bonus depreciation. ACPPA is a member of an ad hoc coalition seeking to get the depreciation bonus extended for one more year.

*Senate Strips Bonus Depreciation*
On Dec. 17, the Senate rejected the House legislation, in favor of a two-month extension of the payroll tax cut without 100 percent bonus depreciation for 2012. However, the Senate bill did include the Keystone XL provision. As *Actionline* went to press, the House was poised to reject the Senate bill due to House GOP objections to the short-duration of the payroll tax cut extension. It was also uncertain whether 100 percent bonus depreciation might be reinserted in the House package. Stay tuned as details unfold.

## Reminder: Clock is Ticking to Cut Your Company's 2011 Tax Bill

As 2011 draws to a close, companies are running out of time to take advantage of a temporary capital investment incentive. If your company purchased equipment this year, you can dramatically reduce your 2011 tax bill.

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (TRJA) extended and expanded the depreciation bonus created in 2008. For 2011, it's an unprecedented 100 percent; for

2012, it's 50 percent. By lowering your taxable income, bonus depreciation can significantly cut your 2011 and 2012 federal tax bills, freeing up cash in the near term.

Assume you buy and place in service in 2011 a new piece of equipment costing $100,000. Using bonus depreciation, you can "write off" the full amount this year, reducing your taxable income by $100,000. If you're in the 35 percent tax bracket, that can reduce your 2011 tax bill by $35,000.

ACPPA is supporting lobbying efforts to extend 100 percent depreciation for one more year. If that doesn't happen, in 2012 things get a little more complicated: the depreciation bonus will fall to 50 percent. You'll be able to write off half the purchase cost plus the percentage of the remaining basis you'd ordinarily write off in the first year. For a $100,000 machine with a five-year MACRS life you'll be able to write off $60,000 ($50,000 with bonus depreciation plus one-fifth of the remaining $50,000 in basis).

There are some important nuances to keep in mind:

First, to qualify for bonus depreciation, the equipment must be new. That means the "first use" must occur with the taxpayer who claims the benefit. Used equipment that doesn't qualify for bonus depreciation might still qualify for Sec. 179 expensing (see below).

The equipment has to be placed in service in the year in which you claim the bonus (2011 for 100 percent and 2012 for 50 percent). In other words, if what you're buying takes a long time to deliver, don't wait until December to place your order.

Next, the property must fit into one of the categories for which bonus depreciation is allowed: property depreciable under the Modified Accelerated Cost Recovery System (MACRS) with a recovery period of 20 years or less (most tangible property used in a business will fall into this category), as well as select water utility property, computer software, and leasehold improvements.

Bonus depreciation is elective, not mandatory. You don't have to use it if you don't want to. And it applies for both regular and alternative minimum tax purposes.

But there are some potential downsides. The more you depreciate now, the less you'll be able to depreciate later. In other words, your tax bill in future years may be higher because you'll have less to deduct. Also, if you depreciate 100 percent now and sell the asset before the end of the asset's MACRS recovery period, it may increase your tax bill in the year you sell. (Like-kind exchange (LKE) can help mitigate some of that potential depreciation bonus "hangover".) And some states don't recognize the depreciation bonus, which may result in additional tax complexity.

But when considering the downsides, consider this: Would you rather take the tax break now and invest the money in your company, or would you rather let the U.S. government hold onto it for you for the next several years?

From a tax standpoint, there's never been a better time to invest in your company's future. <u>Of course, this article doesn't constitute specific tax or legal advice, so be sure to check with your accountant or</u>

tax professional if you want to take advantage of the law. But don't wait … the clock is ticking! More info is at http://www.depreciationbonus.org.

## Despite Politically Challenging Environment, ACPPA Chalks Up Victories in 2011

2011 was a busy year for ACPPA in Washington. While there was a lot of activity on Capitol Hill, Congress actually accomplished very little. However, here and there, we were able to eke out important victories on long-standing ACPPA policy priorities. We're expecting to be busy on Capitol Hill next year, continuing to educate lawmakers about the importance of sustainable, long-term infrastructure investments.

Here's a look at the year in review:

At the beginning of 2011, Congress was invaded by many new faces eager to change the way things are done in Washington.

ACPPA's first challenge was educating these new lawmakers about our industry and the importance of infrastructure investment. This was not an easy task, as most new GOP lawmakers came to Washington with a disdain for any and all federal spending. However, indications are that ACPPA and our construction industry partners have been successful in pushing the ball forward.

Thanks to the leadership of Sens. Barbara Boxer (D-CA) and James Inhofe (R-OK), the Senate made substantial progress on highway reauthorization. In fact, the two-year Moving Ahead for Progress in the 21st Century (MAP-21) (S. 1813) was approved by the Environment & Public Works Committee by a unanimous, vote and is poised for floor consideration early next year. Nonetheless, there is still the issue of how to fund the $13 billion shortfall between Highway Trust Fund (HTF) revenues and MAP-21's investment levels.

In the House, the situation is a little trickier. After passing a budget resolution that locked in funding for road and bridges at levels equal to Highway Trust Fund (HTF) revenues, House Transportation & Infrastructure Committee Chairman John Mica (R-FL) was forced into pushing a surface transportation proposal that could have resulted in at least a 30 percent cut to the federal highway program.

More recently, House GOP leaders backed off their proposal and are now advocating for a three to five year highway bill with stable funding. House Speaker John Boehner (R-OH) promised action on highway reauthorization legislation prior to the end of the year, but had to change direction when it became clear that proposals to expand domestic oil production to pay for increased infrastructure investments were not going to generate enough revenue. However, the House Republican leadership has committed to finalizing a highway bill early next year.

While bipartisan consensus is building around highway reauthorization, 2011 saw other issues become far more divisive. The Clean Water and Drinking Water State Revolving Fund programs saw drastic cuts. However, ACPPA has been an integral part of bipartisan efforts to close the water infrastructure funding shortfall by lifting the volume cap on private activity bonds for water infrastructure projects (the Sustainable Water Infrastructure Investment Act (S. 939/H.R. 1802)). Estimates are that this legislation can generate

$5 billion of private investment in water projects annually and our hope is that the provision will become law next year.

The Obama administration's National Labor Relations Board, Environmental Protection Agency (EPA), and Department of Labor spent the year circumventing Congress to implement the agenda of big labor and environmentalists. ACPPA helped lead the charge to urge lawmakers to rein in the agencies, including pairing with the National Mining Association to attract bipartisan support for House passage of the Clean Water Cooperative Federalism Act (H.R. 2018). H.R. 2018 prevents the EPA from second-guessing or delaying a state's Clean Water Act permitting and water quality certification decisions, while restoring the long-standing balance between federal and state partners in regulating the nation's waters. Unfortunately, like many of ACPPA's top priorities, the Senate is unlikely to act on this legislation.

In spite of the challenging political environment, ACPPA did score some important victories, particularly on tax issues that directly impact our members' costs of doing business.

Just last month, Congress permanently repealed the three percent government contractor withholding tax that was scheduled to take effect in 2013. Repealing the tax has been a top priority for half a decade and ACPPA members played a significant role in raising the visibility of the issue with their elected representatives. The association was also successful working with a broad coalition to repeal the onerous 1099 reporting requirement from the 2010 health care law, which would require companies to report every transaction with an outside vendor totaling more than $600 on an IRS Form 1099 beginning in 2012. ACPPA continues to be an active member of an ad-hoc coalition of industry groups urging Congress to extend 100 percent bonus depreciation through 2012.

ACPPA supported House passage of several bills that would reduce the industry's regulatory burden. In October, the House approved the Coal Residuals Reuse & Management Act (H.R. 2273), which establishes a federal baseline for the state regulation of coal ash. A Senate version of the legislation (S. 1751) was introduced shortly afterward. The Cement Sector Regulatory Relief Act of 2011 (H.R. 2681), also passed by the House in October, requires the EPA to rewrite proposed regulations governing the Portland cement industry. The association also urged approval of several broader regulatory relief measures in the House, which included the Regulatory Flexibility Improvements Act (H.R. 527), the Regulatory Accountability Act (H.R. 3010), and the Regulations from the Executive in Needs of Scrutiny (REINS) Act (H.R. 10).

ACPPA also established itself as a voice in support of the Keystone XL pipeline project.

Our successes in 2011 would not have been possible without the active participation of our members. If you hosted a lawmaker for a facility visit, sent a letter to Congress, logged onto ACPPA-Action.org, or met with your elected representatives to advocate on the industry's behalf, we thank you.

With control of Congress and the White House at stake, highway reauthorization pending, and comprehensive tax reform on the agenda, next year will not be any easier. We look forward to building on our achievements from the past year and working with you for a successful 2012!

## Buy America Strikes Back

Under the guise of a "major proposal to create American jobs", the Democratic leadership of the House Transportation & Infrastructure (T&I) Committee rolled out new Buy America legislation on Dec. 1. Among other things, the Invest in American Jobs Act (HR 3533) would:

- Strengthen existing Buy America requirements for highways, bridges, public transit, rail, and aviation infrastructure and equipment to ensure that all of the steel, iron, and manufactured goods used "for" these projects are produced in the United States
- Apply Buy America requirements to other transportation and infrastructure investment, including rail infrastructure grants, loans, and loan guarantees, Clean Water State Revolving Fund grants, and Economic Development Administration (EDA) grants

Federal agencies could waive Buy America requirements if the secretary or administrator of the appropriate department or agency finds

- The requirements would be inconsistent with the public interest
- The steel, iron, or manufactured goods is not produced in the United States in sufficient and reasonably available quantities or to a satisfactory quality
- The use of steel, iron, and manufactured goods produced in the United States for the project will increase the total cost of the project by more than 25 percent.

However, federal agencies would be required to justify any proposed waiver of the Buy America requirements and allow public comment on any proposed waiver prior to it taking effect. The bill also requires that Buy America requirements be applied in a manner that is consistent with United States obligations under international agreements.

House Highways & Transit Subcommittee Ranking Member Peter DeFazio (D-OR) said, "This is a challenge to the Republicans. Adopt our Buy America requirements as part of the surface reauthorization bill."

Buy America legislation will unnecessarily drive up project costs and make public construction less efficient. Given that Republicans control the House, the Buy America language is unlikely to have legs in the current Congress. However, as long as the unemployment rate remains high, lawmakers will look to score political points by advocating policy positions that, however irresponsible, appeal to certain constituencies. In the months ahead, ACPPA will engage members of Congress in both parties to help them understand why, in the 21st century, protectionist legislation like Buy America simply doesn't make sense.

## NLRB Blocked, Withdrawn, and Still Imposing

On Nov. 30, the House approved the Workforce Democracy & Fairness Act (H.R. 3094), by a vote of 235-188. H.R. 3094 addresses recent actions by the National Labor Relations Board (NLRB). Specifically, the bill would block the Board from moving forward with its ambush election proposal that would shorten the timeline of organizing elections, denying employees' access to critical information about unions, and stripping employers of free speech and due process rights.

The bill also would reverse the Board's recent decision in *Specialty Healthcare*, which changed a long-standing precedent on how to determine which group, or "unit" of employees will vote in the union election. The new standard makes it almost impossible for anyone to challenge the bargaining unit chosen by the union and will result in the formation of "micro-unions".

ACPPA joined our partners at the Coalition for a Democratic Workplace (CDW) on a letter strongly supporting H.R. 3094.

Meanwhile, on the same day, the NLRB voted in favor of considering the ambush election rule in the near future. In a 2-1 vote, the Board adopted a resolution that will serve as the basis for a final rule.

*NLRB withdraws Boeing case*
On Dec. 9, NLRB dropped a complaint against Boeing after the company reached an agreement with the labor union International Association of Machinists and Aerospace Workers (IAMAW).

IAMAW filed the complaint to prevent Boeing from opening a new manufacturing facility in South Carolina, a right to work state, rather than adding new manufacturing capacity in Washington. The union and NLRB alleged that Boeing was retaliating for past labor actions, while the business community decried the NLRB case as an unprecedented example of government overreach.

To many, the deal made between Boeing and IAMAW looks like political blackmail and there are worries that the NLRB will now be a willing pawn to help unions get the upper hand in labor negotiations.

*NLRB Causing Confusion with Posting Requirement*
In August, the National Labor Relations Board (NLRB) issued a final rule requiring employers to post a notice describing employee's collective bargaining rights

In October, the NLRB responded to several legal challenges, (including one from ACPPA's partners at the CDW) by delaying the rule until Jan. 31, 2012.

Despite the delay, the NLRB Office of the General Counsel is now directing regional NLRB offices to "carry out this important Agency initiative." ACPPA is reminding its members that there is no requirement to post the notice until, at the very earliest, Jan. 31. There is still a possibility that the court may reject the rule or push the effective date back further.

As the association has previously reported, the poster is available from the NLRB website and regional offices.

For a list of frequently asked questions about the rule, click here.

## House Delays Highway Action Until 2012

House Transportation & Infrastructure Chair John Mica (R-FL) announced this month that House action on a new multi-year highway bill would be delayed until early 2012 as lawmakers struggle to find offsets to pay for the bill.

House leaders hoped to move swiftly on legislation reauthorizing the federal highway program, but a packed legislative schedule will not permit the House enough time to complete work before adjourning for the holidays. Instead, Mica announced that he plans to unveil a bill early next year and affirmed the House leadership's commitment to pass a new multiyear highway bill before the latest extension expires on March 31, 2012.

Word on the Hill is that some GOP House members have been pushing Mica to retreat from his commitment to produce a five or six year highway bill, arguing that that a shorter, better funded bill is preferable to a longer bill with inadequate investment levels. Stay tuned for further updates.

*Senate Committees of Jurisdiction Move Forward*
Meanwhile, the Senate committees with jurisdiction over surface transportation legislation are following the Environment & Public Works (EPW) Committee's lead and completing their portion of the highway bill. Last month, the EPW Committee unanimously approved Moving Ahead for Progress in the 21st Century (MAP-21) (S. 1813).

On Dec. 14, the Commerce, Science & Transportation Committee, which has responsibility for the safety components of the highway bill, approved several pieces of legislation comprising most of the panel's contribution to surface transportation reauthorization legislation. The Senate Banking, Housing & Urban Affairs Committee was expected to endorse the transit component of a highway bill before leaving for Christmas; however, as *Actionline* went to press it didn't appear the panel was going to act before the recess. Unfortunately, it doesn't appear that the Finance Committee has found the revenue to make up for the $13 billion shortfall between the projected Highway Trust Fund revenues and the investment levels in MAP-21. Word on the Hill is that the Finance Committee will not act until the beginning of February at the earliest.

The additional delay reinforces how important it is that Congress hears from the "folks back home" about the critical need for a new transportation bill. Be sure to visit ACPPA-Action.org to urge your lawmakers to support critical investments to our nation's infrastructure.