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ACPPA urges rapid action on highway bill

Association encourages conferees to approve PABs, protect fly-ash

On May 21, ACPPA [wrote](#) congressional conferees working to resolve differences between the House and Senate-passed surface transportation bills to express the concrete pressure pipe industry's strong support for a bipartisan conference report before the current highway extension expires on June 30.

"Now is the time to enact legislation providing substantial, sustained, and fiscally responsible investments in our nation's crumbling infrastructure in order to lay a solid foundation for our country's economic growth, national security, a cleaner environment, and a better quality of life for all American," ACPPA President Richard Lawhun told lawmakers on behalf of the association.

Lawhun's letter also urged lawmakers to include specific ACPPA legislative priorities in a final conference report.

Up for consideration is a bipartisan provision included in the Senate's surface transportation bill, MAP-21 ([S. 1813](#)), that would temporarily lift the cap on private activity bonds (PABs) for drinking water and wastewater projects. The measure could generate up to \$5 billion annually in private capital investment in water infrastructure projects, with a minimal cost to the federal government.

ACPPA encouraged lawmakers to ensure the preservation of this important measure in the final report. "Removing the PAB volume cap will increase private investment in water infrastructure, create jobs, and address years of underfunding in one of our nation's greatest resources-clean water," said Lawhun. PABs have been a priority issue for ACPPA in Washington and at the National Utility Contractors Association's recent Washington Fly-In, ACPPA was recognized as one of four groups that have led lobbying efforts.

Come to Washington and meet your representatives!

An exciting opportunity is on the horizon for ACPPA members to make their voice heard in Washington.

A construction coalition with which ACPPA often partners is hosting its annual fly-in. ACPPA members are welcome to join members of other leading construction associations in the nation's capital to call on Congress to support viable long-term infrastructure programs and a pro-growth legislative agenda.

The [Transportation Construction Coalition Fly-In](#) is taking place May 30 -31. Contact [Christian Klein](#) for more information

The ACPPA letter to highway conferees also encouraged them to work toward common ground regarding the Environmental Protection Agency's plans to classify fly ash as a hazardous material. A provision to

prevent the agency from rendering such a classification was included in the House's highway measure ([H.R. 4248](#)). The association warned Congress that allowing such a plan to proceed would have an adverse impact on the construction industry while driving up project costs. The association also expressed its concerns with language that would expand "Buy American" requirements for transportation infrastructure projects.

Act Now!

On May 8, the conference committee began negotiations to reconcile the Senate's surface transportation bill, MAP-21, with the extension measure approved by the House ([H.R. 4248](#)) for conference purposes.

Though the talks have thus far been bipartisan in nature, some feel the more contentious differences in the bills, such as how to pay for the legislation, could ultimately drive progress to a halt.

Approval of the Keystone XL pipeline in a conference report remains one of the most debated issues. While many Democrats view the project as an impediment to the success of the conference report, several Republicans have indicated their optimism.

While it is important that all lawmakers hear about the importance of the bill to keep the momentum going, it is essential that the House and Senate conferees hear from their constituents about the measure's significance.

If you are from any of the states below, your support is urgently needed. Reach out to these conferees using [ACPPA-Action.org](#) or call your lawmakers at (202) 224-3121 and tell them, as a business owner and employer in their state, what a new highway bill means to your ability to put America back to work.

Senate Conferees

Alabama

Sen. Richard Shelby (R)

California

Sen. Barbara Boxer (D)

Florida

Sen. Bill Nelson (D)

Illinois

Sen. Dick Durbin (D)

Louisiana

Sen. David Vitter (R)

Montana

Sen. Max Baucus (D)

New Jersey

Sen. Robert Menendez (D)

New York

Sen. Chuck Schumer (D)

North Dakota

Sen. John Hoeven (R)

Oklahoma

Sen. Jim Inhofe (R)

South Dakota

Sen. Tim Johnson (D)

Texas

Sen. Kay Bailey Hutchison (R)

Utah

Sen. Orrin Hatch (R)

West Virginia

Sen. Jay Rockefeller (D)

House Conferees

Alaska

Rep. Don Young (R)

Arkansas

Rep. Rick Crawford (R)

California

Rep. Henry Waxman (D)

District of Columbia

Rep. Eleanor Holmes Norton (D)

Florida

Rep. Corrine Brown (D)

Rep. John Mica (R)

Rep. Steve Southerland (R)

Illinois

Rep. Jerry Costello (D)

Indiana

Rep. Larry Buschon (R)

Iowa

Rep. Leonard Boswell (D)

Kentucky

Rep. Ed Whitfield (R.)

Maryland

Rep. Elijah Cummings (D)

Massachusetts

Rep. Ed Markey (D)

Michigan

Rep. Fred Upton (R)

Rep. Dave Camp (R)

Minnesota

Rep. Chip Cravaak (R)

New York

Rep. Tim Bishop (D)

Rep. Richard Hanna (R)

Rep. Jerrold Nadler (D)

Ohio

Rep. Patrick Tiberi (R)

Oregon

Rep. Earl Blumenauer (D)

Rep. Peter DeFazio (D)

Pennsylvania

Rep. Bill Shuster (R)

Tennessee

Rep. John Duncan (R)

Texas

Rep. Ralph Hall (R)

Rep. Eddie Bernice Johnson (D)

Utah

Rep. Rob Bishop (R)

Washington

Rep. Jaime Herrera Beueler (R)

Rep. Doc Hastings (R)

West Virginia

Rep. Shelley Moore Capito (R)

Rep. Nick Rahall (D)

As we enter the homestretch of this reauthorization debate your support remains as critical as ever. Be sure to [take action today!](#)

Federal Court tosses NLRB election rule

The National Labor Relations Board (NLRB) did not have the legal authority to issue its [rule](#) that would speed the process of unionization elections according to a ruling from the United States District Court for the District of Columbia. The [court's opinion](#), issued May 15, did not weigh the merits of the rule itself, but rather looked to the process by which the NLRB adopted the rule and concluded that its behavior was impermissible for its failure to satisfy the Board's quorum requirement.

“According to Woody Allen, eighty percent of life is just showing up. When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters,” the court stated.

Only two of the three NLRB members serving voted in favor of adopting the rule. A third member did not cast a vote or show up for adoption of the final rule, though he had previously voted against allowing the rulemaking to proceed. The court ruled that his past participation was irrelevant, and did not satisfy the legal requirement to have a quorum of at least three Board members in approving rules.

“Two members of the Board participated in the decision to adopt the final rule, and two is simply not enough,” wrote the court.

The fact that two of the Board’s seats were unfilled at the time, leaving it with only three actual members, did not change the legal requirement for three members to constitute a quorum to promulgate new rules.

The court’s decision is an important check on the Obama administration’s activist labor board, and a significant victory for employers. The suit against the NLRB was led by ACPPA’s partners, the [Coalition for a Democratic Workplace](#) and the [U.S. Chamber of Commerce](#).

Bill introduced to streamline environmental permits

On May 7, ACPPA signed onto a [letter](#) to House Judiciary Committee Chairman Lamar Smith (R-Texas) and Ranking Member John Conyers (D-Mich.) in support of the Responsibly & Professionally Invigorating Development (RAPID) Act of 2012 ([H.R. 4377](#)).

Introduced by Rep. Dennis Ross (R-Fla.), the RAPID Act would provide a streamlined process for developers to obtain environmental permits and approvals for their projects, spurring job creation and economic growth.

The letter points to a 2010 study indicating that more than 350 energy projects were stalled because of a dysfunctional permitting process—a total economic value of more than \$1 trillion and 1.9 million American jobs that were not created.

ACPPA will continue to monitor and keep you informed on the progress of the RAPID Act as it makes its way through the legislative process.

FTC approves final order settling charges that Star Pipe Products, Ltd. acted anticompetitively in market for municipal water system iron pipe fittings

Following a public comment period, the Federal Trade Commission (FTC) this month approved a final order settling charges that Star Pipe Products, Ltd. engaged in illegal anticompetitive practices to protect its share of the market for ductile iron pipe fittings used in municipal water systems nationwide. In settling the FTC’s charges, Star has agreed not to use similar anticompetitive tactics in the future.

The FTC previously settled similar charges against Sigma Corporation, and has also charged another industry competitor, McWane, Inc. with acting anticompetitively in the market for iron pipe fittings. The complaint against McWane is scheduled to be heard by an administrative law judge at the Commission later this year.

The text of the Star Pipe Products order is at <http://www.ftc.gov/os/adjpro/d9351/120511starpipedo.pdf>.

More information about the case against McWane is at <http://www.ftc.gov/opa/2012/01/mcwane.shtm>.

Capital Gains tax hike will hurt state coffers

By Margo Thorning



Dr. Margo Thorning

Editor's Note: ACPPA periodically invites lawmakers and leading policy experts to write columns for Actionline to allow our readers to hear directly from those involved in the policy process. This month's columnist is Dr. Margo Thorning, senior vice president and chief economist of the [American Council for Capital Formation](#), a nonprofit, nonpartisan organization promoting pro-capital formation policies and cost-effective regulatory policies. The views expressed by Dr. Thorning do not necessarily reflect those of ACPPA.

In January, the president gave his State of the Union address to a joint session of Congress. The speech is a constitutional requirement on the presidency and has become a way for the president to announce his agenda for the coming year.

The Buffett Rule, a measure to raise income tax rates on individuals and capital gains of top-earning Americans, recently received its first close up in the U.S. Senate and failed. Nevertheless, President Obama, Senate leaders and others have pledged to continue to raise the Buffett Rule again and again this campaign season in the name of tax "fairness."

Many arguments against the Buffett Rule have been made, but perhaps a very compelling reason is the unintended consequences this war on savings and investment could have on our economic recovery, particularly in states whose budget receipts are dependent on collection of capital gains taxes.

Investors already face high federal and state tax rates on capital gains. A new analysis released by the American Council for Capital Formation based on a survey conducted by Ernst & Young shows that currently, investors face state-level capital gains taxes in 41 states with an average top individual capital gains tax rate on corporate equities of 5.2 percent in 2012. Combined with the federal rate, these taxes substantially increase the separation between what an investment yields and what an individual actually receives (known as the "tax wedge"). The higher the tax wedge, the fewer investments that will be worth an investor's time and risk, resulting ultimately in fewer investments being undertaken and longer holding periods as investors delay selling assets. Both of those outcomes will ultimately further pressure tax receipts.

Consider the perspective of a potential investor who sees the tax wedge growing larger and larger on the horizon. The ACCF paper examined three scenarios: first, the current 2012 rates; second, the current federal capital gains rate of 15 percent along with the 3.8 percent Medicare surcharge on filers making \$200,000 and above individually or 250,000 and above as a couple; and third, the increased capital gains rate of 20 percent along with the Medicare surcharge. Ask yourself: How excited am I to take a risk in this environment?

Under the third and entirely plausible scenario, Californians and Hawaiians will pay more than 31 percent of their long term capital gains directly to various governments, with 39 other states feeling various forms of pain, including Vermont, Maine, and D.C. residents, who will pay 30 percent. If the Buffett Rule means a 30 percent tax rate on all income over \$1 million is enacted, the combined federal and state tax capital gains rate will rise even further.

These consequences should not be taken lightly. Investment is a key factor in creating and growing jobs. To wit, in recent years, each \$1 billion increase in investment is associated with an additional 15,000 jobs. Conversely, decreasing the amount individuals and firms will invest due to federal and state capital gains taxes form a direct impediment to entrepreneurship and economic growth.

Recent research by Dr. Allen Sinai, an internationally highly regarded economist, has already predicted a decrease in jobs simply from moving from the current 15 percent tax rate on long-term capital gains to 20 percent. Real economic growth falls by an average of 0.05 percentage points and jobs will decline by an average of 231,000 per year.

A hike in the federal rate will be bad for states and those trying to govern them, as well—especially in those areas that rely on individual capital gains taxes to pay for services. The ACCF report shows that in 2009 New York was the most dependent state on capital gains taxes with seven percent of its individual taxable income. Four states (Georgia, Virginia, Pennsylvania, and New Jersey) counted on such taxes for three percent of their taxable income; three states (California, Massachusetts, and Illinois) tallied four percent; and one each at five percent (Connecticut) and six percent (Colorado).

Perhaps vocal proponents of the Buffett Rule may be unaware of the importance of capital gains taxes for state fiscal integrity but this is cold comfort to states feeling the pinch today and tomorrow. Raising taxes on capital gains will surely hurt these states' budget receipts, especially when one considers that between 2007 and 2010 individual income tax receipts went down by 14 percent in California, 15 percent in Colorado and Virginia, and 20 percent in Georgia.

Taken at their word, politicians and pundits looking to the Buffett Rule for its economic benefits (rather than political attractiveness) would do well to keep looking for solutions that boost investment. That is the steadfast and reliable "rule" that will lead to more jobs and fuller state and federal coffers.