



March 9, 2021

Dear Representative:

As the nation works toward economic recovery, improving the nation's transportation infrastructure can lead the way by creating jobs, building capital assets, and enabling a better quality of life for all Americans. However, enactment of H.R. 842, the Protecting the Right to Organize (PRO) Act, could dilute the economic benefits of such investment by mandating a one-size-fits-all approach to workforce development and labor relations. Therefore, the American Road & Transportation Builders Association (ARTBA) urges a NO vote on H.R. 842.

#### *Increased Likelihood of Cost Increases and Delays*

The old saying that "time is money" fully applies to a transportation improvement project. Any disruptions in availability of personnel, delivery of materials, or other critical factors can lead to delays and cost increases. A 2016 analysis by the Texas A&M Transportation Institute quantified these delays as potentially costing \$87,000 to \$1.3 million per month, depending on the size of the project.

We are particularly concerned that job delays could be exacerbated by the PRO Act's provisions that would ease the utilization and impact of job site protests, or pickets. The National Labor Relations Act has long established the need to protect a union's right to picket and maintain productivity on a job site. In contrast, the PRO Act could disrupt job sites by ending restrictions on secondary pickets and removing the requirement for protected entrances to job sites. Protests by one union would be permitted to halt the activity of all union and non-union workers, adversely affecting the entire project.

This same dynamic could apply to a project's supply chain, including the manufacture and delivery of construction materials and equipment to a job site. The COVID-19 pandemic has already highlighted the fragility of these essential operations.

#### *Conflicting Policy Objectives*

Congress has underscored the importance of job creation and opportunities for small and disadvantaged businesses in the structure and policies of the federal-aid transportation programs. Specifically, the award of contracts to the lowest responsible bidder assures open competition, and the Disadvantaged Business Enterprise (DBE) program seeks to create opportunities for under-represented communities.

The PRO Act conflicts with these objectives in numerous ways. For example:

- The measure adopts the strict "ABC test" for determining independent contractor status. Thus, DBE firms in the transportation construction sector—which are small and often fledgling entities—would have far less flexibility in their business choices, including operating as an independent contractor or union firm.
- The PRO Act would add personal liability sanctions and expand and increase penalties for unfair labor practices by employers, which would be especially challenging for small



businesses to weather. The additional compliance costs associated with these changes would come at a time when firms are already struggling due to uncertain revenues caused by the COVID-19 pandemic.

- Transportation construction employers often invest significantly in worker training. Firms can use this to attract and retain talent. However, by compelling certain industry professionals to work in a union environment, the PRO Act would limit their training opportunities to those chosen by the union.

#### *Disrupting Existing Industry-Labor Relationships*

Numerous transportation construction firms operate under collective bargaining agreements—some going back more than a century. The PRO Act would preempt many carefully negotiated terms in these agreements, including compelling parties to use arbitration in resolving disputes. Such non-negotiable requirements would likely increase operating costs, again leading to higher price tags for projects and less work for industry professionals.

While we are committed to continuously improving the delivery of transportation improvements, the PRO Act would assert a federal approach where local solutions work best. We urge you to vote NO on this legislation, and instead, focus on passing a job-creating, economy-boosting surface transportation reauthorization bill that creates benefits and opportunities for all Americans.

Thank you for considering these views.

Sincerely,

A handwritten signature in black ink that reads 'David Bauer'. The signature is written in a cursive, flowing style.

David Bauer  
President & CEO