



March 17, 2020

Governor Ralph Northam
P.O. Box 1475
Richmond, VA 23218

RE: Veto Legislation Promoting Government-Mandated Project Labor Agreements (SB 182/HB 358) and Prevailing Wage (SB 8/HB 833) Requirements on Public Works Construction Projects

Dear Gov. Northam,

The National Black Chamber of Commerce is the largest black organization addressing African American economic issues and policies throughout the world. We were incorporated May 23, 1993, and will celebrate our 28th anniversary this July.

NBCC is extremely disappointed that the Virginia General Assembly has passed legislation rescinding section § 2.2-4321.2 of the Code of Virginia,¹ which currently requires taxpayer-funded public works construction contracts procured by state agencies² to use a competitive bidding process that is open to all qualified businesses, regardless of whether they are willing to sign union agreements as a condition of performing taxpayer-funded construction projects.

We are concerned that rescinding this statute and replacing it with policies permitting government-mandated project labor agreements, which are controversial union agreements unique to the construction industry, on public works projects procured by the Commonwealth's state³ and/or local⁴ governments will have a negative impact on Virginia's taxpayers and African American businesses and construction employees.

Government-mandated PLAs typically require companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all workers, obtain apprentices exclusively from union apprenticeship programs, follow union work rules and pay into union benefit and multi-employer pension plans that any nonunion employees permitted on the project will be unlikely to access unless they join a union and vest in these plans. This forces employers

¹ <https://law.lis.virginia.gov/vacode/2.2-4321.2/>.

² From statute: "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

³ See Sen. Richard Saslaw's SB 182; <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB182>

⁴ See Del. Alfonso Lopez's HB 358: <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB358>. Please note, a NBCC-opposed bill introduced by Sen. Ebbin (SB 839) permitting local governments to require developers to enter into agreements with unions similar to PLAs as a condition of receiving zoning approval for certain private projects failed this session. We hope that it will fail in future sessions as it would have drastically reshaped Virginia's ability to attract large employers and developers needed to advance economic development.

of nonunion workers to pay “double benefits” into existing plans and union plans, and places firms opposed to these costly provisions at a significant competitive disadvantage.⁵

Government-mandated PLAs harm the few, if any, nonunion construction workers allowed to work on a PLA jobsite. Research has found that employees of nonunion contractors who are forced to perform under government-mandated PLAs and contribute into union benefits plans suffer a reduction in their take-home pay that is conservatively estimated at 20%.⁶ In addition, nonunion construction workers are forced to pay union dues and/or join a union if they want to work on the project and receive union benefits earned during the project. This is wage theft, which will harm the families of Virginians working in the construction industry.

The effect of government-mandated PLAs is that they discourage competition from Virginia’s qualified contractors and the 97.8% of Virginia’s construction workforce⁷ that chooses not to join a union to rebuild their communities. Government-mandated PLAs are opposed by the NBCC because almost all minority-owned contracting firms are not affiliated with unions. African American-owned contracting firms are typically small businesses and employ their own core workforce of skilled construction workers who are not unionized and are generally more diverse than construction workers coming from union hiring halls.

Despite efforts of various construction trade unions to diversify their membership over the years, they simply are not recruiting enough African American members into the trades. In addition, claims that a PLA can be a tool to ensure minority construction workers and businesses are used on a public project is a farce. These goals can be achieved via contracting and workforce requirements independent of a discriminatory PLA mandate.

Government neutrality toward whether a construction contractor has an agreement with a labor organization is the best way to ensure fair and open competition on taxpayer-funded public works projects.⁸ This inclusive policy also benefits taxpayers, as research has shown government-mandated PLAs can increase the cost of taxpayer-funded school construction by 12% to 20%.⁹

Finally, the NBCC is also deeply concerned the General Assembly passed legislation requiring government-determined prevailing wage mandates on all construction projects exceeding \$250,000 procured by state entities and allowing local governments to require prevailing wages on local public works projects like schools, hospitals and affordable housing.¹⁰ The NBCC opposes the practice of

⁵ An October 2009 report by Dr. John R. McGowan, *The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements*, finds that employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 25% in benefit costs above and beyond existing prevailing wage laws as a result of “double payment” of benefit costs. See [New Report Finds PLA Pension Requirements Steal from Employee Paychecks, Harm Employers and Taxpayers](#), Oct. 24, 2009.

⁶ The McGowan report found employees of nonunion contractors who are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20%. In addition, PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. See [TheTruthAboutPLAs.com, New Report Finds PLA Pension Requirements Steal from Employee Paychecks, Harm Employers and Taxpayers](#), Oct. 24, 2009.

⁷ Just 2.2% of Virginia’s construction workforce belonged to a union in 2018. See [UnionStats.com, Table II, State: Union Membership, Coverage, Density, and Employment by State and Sector, 1983-2018](#), Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity University), accessed Jan. 20, 2020.

⁸ A total of 25 states, including Virginia, North Carolina, Tennessee, Kentucky and West Virginia, have enacted similar NBCC-supported fair and open competition policies restricting government-mandated PLAs.

⁹ See research about the impact of government-mandated PLAs on school construction costs at: <http://beaconhill.org/labor-economics/>.

¹⁰ See bills introduced by Sen. Richard Saslaw (SB 8) <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB8> and Del. Jennifer Carroll Foy (HB 833) <http://lis.virginia.gov/cgi-bin/legp604.exe?201+bil+HB0833>.

forcing contractors to pay wages and benefits at rates determined by the U.S. Department of Labor via the federal Davis-Bacon Act. The NBCC opposes the Davis-Bacon Act and prevailing wage laws enacted in 27 states because these federal and state laws remain one of the last vestiges of Jim Crow.

The true history of the Davis-Bacon Act was that it was originally enacted as protectionist measure for white northern workers against southern black labor. Today, Davis-Bacon continues to discriminate against nonunion firms, many of which are minority-owned while few minority firms are signatory to unions. The truth is the Davis-Bacon Act drives up construction costs and leads to less construction industry job creation for African American businesses and fewer schools, roads and bridges for our community.

In addition, the U.S. Government Accountability Office and the DOL's Office of Inspector General have concluded the U.S. DOL's wage determination process is unscientific and fundamentally flawed, because it typically sets rates that are anything but local, prevailing, timely or accurate.¹¹

Eliminating burdensome regulations like prevailing wage laws and allowing employers to pay wages and benefits determined by the free market is a win-win for taxpayers and minority businesses. The solution to underemployment and unemployment in the African American community is free enterprise and entrepreneurship. Government-mandated PLAs and prevailing wage laws undermine both cornerstones and harm nonunion African American firms and construction workers disproportionately and will lead to less economic development and prosperity in the Commonwealth.

If you are serious about fulfilling your commitment to creating contracting opportunities for Virginia's small, women, and minority-owned (SWaM) businesses,¹² you must veto PLA (SB 182/HB 358) and prevailing wage (SB 8/HB 833) mandate legislation.

We look forward to continuing a dialogue on government-mandated PLAs, prevailing wage and other issues that affect NBCC members. Please have your staff contact this office if we can be of service.

Sincerely,

Harry C. Alford
President/CEO

cc: NBCC Board Members
Virginia Senate Leader Saslaw and Senate Leadership
Virginia Speaker Filler-Corn and House of Delegates Leadership

¹¹ See page 6 of U.S. Government Accountability Office, *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey*, April 6, 2011, <http://www.gao.gov/new.items/d11152.pdf>, and page 10 of U.S. Department of Labor, Office of Inspector General, *Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations*, Audit Report No. 04-04-003-04-420, March 30, 2004, <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf> and "Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately," James Sherk, Jan. 21, 2017, <http://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>.

¹² We commend your administration for signing [Executive Order 35](#) and conducting a [recently announced disparity study](#), to push Virginia's agencies and institutions to award at least 42% of discretionary procurement spending to certified small-, women-, and minority-owned (SWaM) businesses. However, PLA and PW requirements will make it impossible to meet these goals for the construction industry

