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Mass. state government looking friendlier to ABC

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Things are coming back to life on Beacon Hill after an extended election break. With a new governor, attorney general and a host of new legislators, state government is looking a lot friendlier to ABC member companies than it did before November's election.

To continue building the momentum we've established, ABC has put forth an ambitious agenda of priority legislation aimed at curbing abuses in public construction, as well as protecting the rights of open shop contractors. I'd like to focus on four bills that have been filed on our behalf.

One bill, sponsored by Rep. Peter Kocot (D-Northampton), would curb the use of so-called force accounts, under which an agency can award no-bid contracts for small jobs. Several press stories have revealed that various public housing authorities awarded millions in no-bid contracts using force accounts. The U.S. Inspector General's office also found many a number of force account violations by housing authorities. This legislation would require housing authorities and all others public entities using force accounts to comply with the state bidding laws.

Another piece of legislation, this one sponsored by senator Michael Rodrigues (D-Westport), would make the collective bargaining agreements used to establish prevailing wages for the commonwealth publicly available online. These agreements are not only the basis for establishing wage rates on public jobs, but are also used to set apprentice ratios and work jurisdictions. Yet they are not currently available to non-signatory contractors or other affected or interested parties.

Senator Eileen Donoghue (D-Lowell) has filed legislation clarifying that the common law definition of fraud should apply to the state's bid laws. It is consistent with the recent Massachusetts Supreme Judicial Court (SJC) decision in *Fordyce v. Town of Hanover*, which held that to constitute fraud, a false misrepresentation must be relied upon to the detriment of the allegedly injured party. In response to *Fordyce*, competing union-backed legislation has been filed which would overrule the SJC and allow for a finding of fraud even if the misrepresentation was not intentional and not relied upon by the awarding authority.

Finally, House Republican leader Rep. Brad Jones of North Reading and Senate minority leader Bruce Tarr of Gloucester have filed a bill that would require awarding authorities using a project labor agreement to report to the legislature and state Inspector General that the construction project is of such size, duration, timing and complexity that a PLA is required and to provide a comparative analysis of any benefits that led the awarding authority to conclude a PLA was required.

Thanks to years of hard work, the era of ABC just trying to stop bad things from happening on Beacon Hill are over. As a trusted voice on construction issues, we are now taking the offensive to advocate for legislation that is beneficial to open shop contractors and the Massachusetts construction industry as a whole.

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