



November 2, 2021

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The Honorable Tom Hucker  
Council President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

**Subject: Opposition to Bill 35-21 by the Metropolitan Washington Chapter, Associated Builders and Contractors**

Dear Council President Hucker,

The Metropolitan Washington Chapter, Associated Builders and Contractors ("ABC") respectfully submits this opposition to Bill 35-21 (Prevailing Wage Requirements – Construction Contracts – Amendments).

ABC submits this opposition to challenge the Bill's new requirement that "51% of the new jobs to complete" applicable county-financed construction projects must be filled by Montgomery County residents (the "Local Source Requirement"). Bill, 11B-33C(d)(3). ABC urges the Council to strike the Bill's proposed new Local Source Requirement for several reasons.

First, the Local Source Requirements will be counter-productive and harmful to the County for policy reasons. The construction industry, like many industries in the post-COVID-19 era, is experiencing a labor shortage. See Exhibit A. ABC Chief Economist Anirban Basu recently noted that "[t]he ongoing labor shortage puts continued upward pressure on the price of delivering construction services." Id. Based on ABC's Construction Backlog Indicator, a growing chorus of project owners are choosing to delay projects and, in some instances, cancel them altogether. Id. Contractors simply cannot find enough workers to build the projects in demand. This labor shortage is driving prices higher and leading to the delay or cancellation of projects. Passing the Local Source requirement would only exacerbate this labor shortage and impose delays and cost increases on County construction projects.

On the other hand, ABC and its members believe the best way to promote local construction hiring is to devote resources to increasing the construction labor pool through training, internships and recruitment. For example, ABC member companies are heavily involved in Montgomery County Public School's Construction Trades Foundation. This program promotes construction vocational training of Montgomery County's high school students. Additionally, the ABC Work Force Development committee also promotes expanding and hiring among the construction workforce through programs such as ABC CraftMasters. The County and its residents would be better served by investing in programs such as these which actively promote construction hiring in the County, rather than further handcuffing contractors by decreasing their available labor resources and increasing the cost of County-financed projects.

Second, the Local Source Requirement may be unconstitutional and is likely vulnerable to legal challenge under the Privileges and Immunities Clause of the U.S. Constitution. Quotas on local hiring have previously been struck down by both federal and state courts. *Metro Washington Chapter v. D.C.*, 57 F. Supp. 3d 1, 24 (D.D.C. 2014)

(denying motion to dismiss challenge to D.C. "First Source" local hiring requirements); *W.C.M. Window Co., Inc. v. Bernardi*, 730 F.2d 486 (7th Cir. 1984) (held that an Illinois residence based classification violated the Privileges and Immunities Clause); *Util. Contractors Ass'n of New England, Inc. v. City of Worcester*, 236 F.Supp.2d 113 (D.Mass.2002) (Massachusetts law that required all contractors on public projects to allocate 50 percent of all employee work hours to city residents were granted a preliminary injunction against enforcement of the law); see also, *United Bldg. & Const. Trades Council of Camden Cty. & Vicinity v. Mayor & Council of City of Camden*, 465 U.S. 208, 221-22, 104 S.Ct.1020 1027 (1984) ("[t]he opportunity to seek employment with such private employers is sufficiently basic to the livelihood of the Nation as to fall within the purview of the Privileges and Immunities Clause even though the contractors and subcontractors themselves are engaged in projects funded in whole or in part by the city."). The County would not be well-served by endangering the entire Bill because it includes a constitutionally infirm local-hiring requirement.

Accordingly, ABC opposes the Bill because: (1) it would exacerbate the effects of the current labor shortage and lead to delays and cost increases on County projects; and (2) is legally infirm.

Sincerely,



Marcus D. Jackson, Director  
Government Affairs

# Nonresidential Construction Employment Rises Slightly in September, Says ABC

Posted @ Friday, October 8, 2021 9:36 AM by Erika Walter | Files in **Construction Economic Update, Employment, News Release 2021**

**WASHINGTON**, Oct. 8—The construction industry added 22,000 jobs on net in September, according to an Associated Builders and Contractors analysis of data released today by the U.S. Bureau of Labor Statistics. Overall, the industry has recovered 912,000 (81.9%) of the jobs lost during earlier stages of the pandemic.

Nonresidential construction employment increased by 18,600 positions on net, with all three subcategories showing gains for the month. Nonresidential specialty trade contractors added 11,400 jobs, while nonresidential building and heavy and civil engineering employment rose by 4,100 and 3,100 positions, respectively.

The construction unemployment rate dropped slightly to 4.5% in September. Unemployment across all industries fell from 5.2% in August to 4.8% last month.

"The economy added fewer than 200,000 jobs in September, well below the consensus forecast of 500,000 new jobs, making it clear that August's disappointing employment performance was not an aberration," said ABC Chief Economist Anirban Basu. "Earlier during the summer, the U.S. economy had been adding jobs at a rapid pace. The last few weeks suggest the final stages of labor market recovery will prove extremely challenging.

"Theories abound regarding why employers are struggling to fill available jobs, including fear of infection and vaccination, previously received federal assistance and changed values during the pandemic," said Basu. "Recent data suggest that many job seekers are actively looking for opportunities to continue to work from home much of the time. Construction generally does not supply many opportunities for telework.

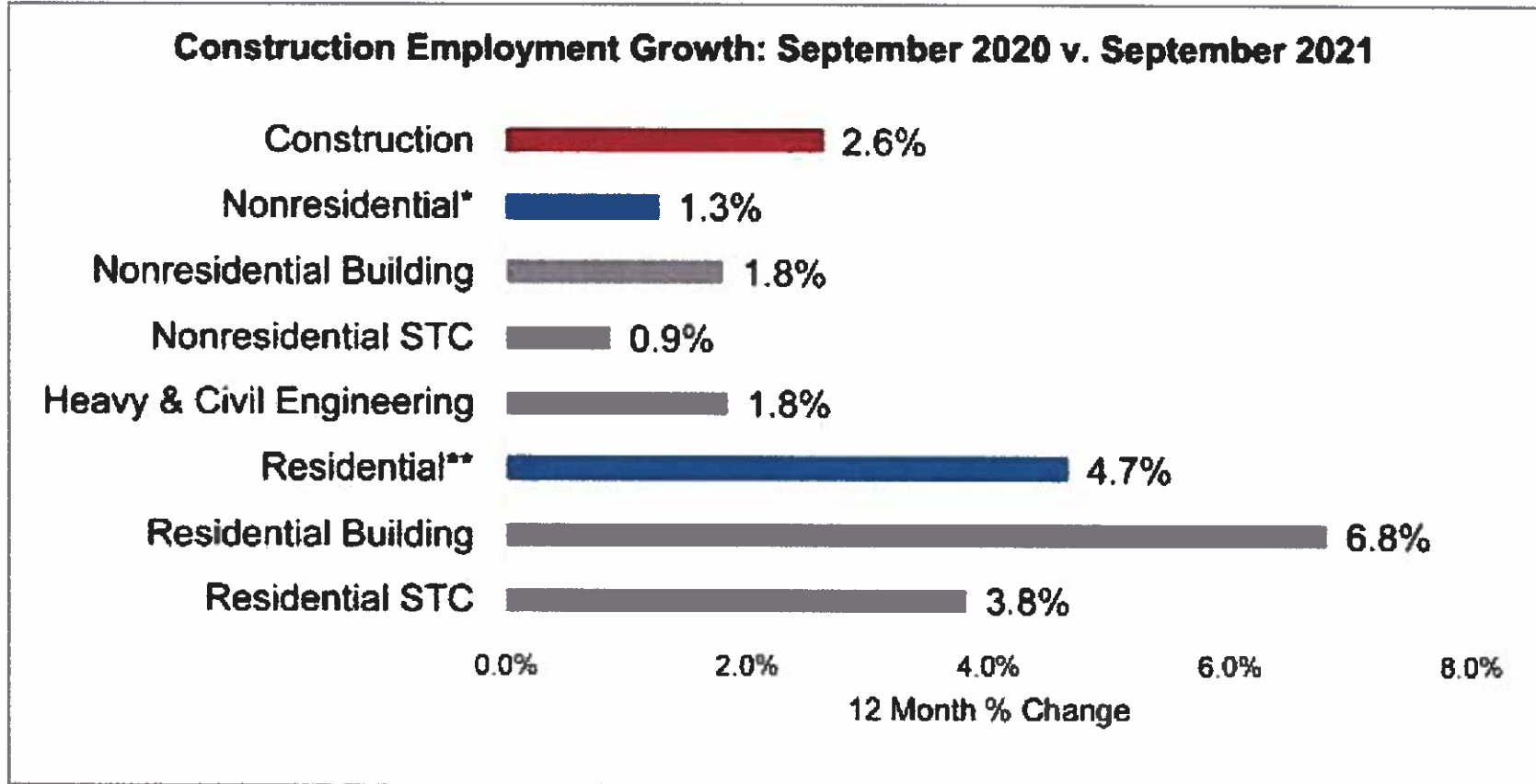
"The ongoing labor shortage puts continued upward pressure on the price of delivering construction services," said Basu. "Along with input shortages and rising materials prices, this is placing the recovery of nonresidential construction spending at risk. Based on ABC's **Construction Backlog Indicator**, a growing chorus of project owners are choosing to delay projects and, in some instances, cancel them altogether. The primary issue is that bids are coming in too high to justify the deployment of capital under many circumstances.

"Despite adding jobs on net in September, construction industry employment remains below March 2021 levels, and recent economic data suggest that some fraction of the **confidence** contractors have been expressing in recent months is unjustified," said Basu. "Inflationary pressures are slowing the pace of recovery in nonresidential construction, and with global supply chains in disarray and employers suffering ongoing difficulty filling openings, industry challenges will persist into 2022. At some point, however, the labor market should begin to normalize as people experience growing difficulty paying their bills and global supply chain dynamics eventually improve."

**Construction Employment Statistics: September 2021**

	September 2021	August 2021	September 2020	1-Month Net Change	12-Month Net Change	12-Month % Change
<b>Employment</b>						
<b>Construction</b>	7,447,000	7,425,000	7,256,000	22,000	191,000	2.6%
Nonresidential	4,385,900	4,367,300	4,331,000	18,600	54,900	1.3%
Nonresidential Building	814,600	810,500	800,200	4,100	14,400	1.8%
Nonresidential Specialty Trade Contractors	2,534,800	2,523,400	2,513,000	11,400	21,800	0.9%
Heavy & Civil Engineering	1,036,500	1,033,400	1,017,800	3,100	18,700	1.8%
Residential	3,060,800	3,057,400	2,924,500	3,400	136,300	4.7%
Residential Building	882,300	880,100	826,100	2,200	56,200	6.8%
Residential Specialty Trade Contractors	2,178,500	2,177,300	2,098,400	1,200	80,100	3.8%
<b>Average Hourly Earnings</b>						
All Private Industries	\$30.85	\$30.66	\$29.50	\$0.19	\$1.35	4.6%
Construction	\$33.25	\$33.08	\$31.82	\$0.17	\$1.43	4.5%
<b>Average Weekly Hours</b>						
All Private Industries	34.8	34.6	34.8	0.2	0.0	0.0%
Construction	40.0	38.8	39.0	1.2	1.0	2.6%

Source: Bureau of Labor Statistics



Source: Bureau of Labor Statistics

\*Includes Nonresidential Building, Nonresidential STC, and Heavy and Civil Engineering

\*\*Includes Residential Building and Residential STC