

## OABA Sets its 2021 Legislative Priorities

By John Ariale, Husch Blackwell Strategies – OABA's Government Relations Team

OABA began working on setting their legislative priorities in the new Congress well before Members were sworn in back in January. Issues on the agenda in 2021 include addressing OABA's identifying a permanent legislative fix to our H-2B Cap Relief issue, exploring opportunities to expand the eligibility of COVID-19 related relief efforts to apply to the industry, seeking legislative vehicles to modify the heavy highway vehicle use tax and assisting our H-2B employers with cap relief.



The new Congress has a distinctly new look. The control of the U.S House remained in the hands of the Democratic Majority with a 222-213 party breakdown; however, House Democrats did lose 11 seats. House Republicans gained 14 seats. The U.S. Senate of course has a historic 50-50 split in the 117<sup>th</sup> Congress, which is a dramatic change from the 53-47 majority the Republicans held in the 116<sup>th</sup> Congress.

This shift does dramatically change our strategy in moving the OABA agenda forward. Finding any common ground in the middle of some of the most toxic partisan rhetoric in Washington will be even more difficult over the next two years than the last four. For instance, despite repeated calls for bipartisanship, big legislative initiatives thus far have been passed under special rules designed to pass controversial spending measures by circumventing the filibuster rules in the Senate. Measures like the American Rescue Act – the \$2 trillion Biden COVID-19 relief bill – was passed on a party line vote without any GOP support.

Over the last few weeks, our team has been working with OABA's Government Affairs Committee to design and implement our 2021 strategy and despite the political forecast mentioned above, our collective hard work in educating Members and being engaged on the Hill continues to allow for legislative victories. For the fifth legislative cycle in a row, thanks to the work of many of you contacting your representatives, Congress once again included some form of H-2B cap relief in the last fiscal year package. While this is a success, the number of additional visas created under the measure is nowhere close to the need of H-2B employers. As a result, we are intensely working with Congress to once again convince them to permanently fix this issue in 2021.

Here is an overview of OABA's 2021 Government Relations Plan:

### ***I. Permanent H-2B Cap Relief***

With the filibuster rule in the Senate, it is extremely unlikely that Congress will be able to pass a standalone H-2B fix bill. In this environment, it may even be the case where no single H-2B cap relief or reform measure is introduced. However, while our champions understand our issues and have pledged to work with us again this year to try to achieve our goal of comprehensive H-2B cap relief, the process we use in 2021 may look different than past years.

For instance, President Joe Biden proposed expansive immigration legislation to Congress shortly after being inaugurated, setting the stage for a new round of debate on the subject. The president has announced his intention to address the Dreamers issue and other legal immigration visa programs. We expect that Congress will attempt to tackle a major immigration reform and if they do so, we will work with our champions to attempt to add H-2B cap relief language to the final product as it winds its way through the legislative process.

## ***II. H-2B Cap Relief via the Appropriations Process***

Until a permanent fix is secured, we will once again focus our efforts on securing continued temporary relief via the annual appropriations process. As you may recall, we have worked to ensure that the House of Representatives includes H-2B Cap Relief language in the Department of Homeland Security bill over the last several years. Last year, the House Appropriations Committee passed the Pingree-Harris-Cuellar H-2B amendment by voice vote. The Amendment added the same H-2B discretionary language on cap relief that has been included in the DHS bill for the last three fiscal years.

## ***III. H-2B Labor Provisions via the Appropriations Process***

Most of the conversation around H-2B reform annually centers around the annual cap. However, some of the most important provisions that have been adopted annually are found in the Labor provisions of the annual appropriations bill and have a profound impact on the industry. These provisions, like the annual cap relief noted above, have been added to the legislation annually since FY16. They include provisions that: allow the use of private wage surveys; clearly define seasonal as ten months, as opposed to the nine months in the 2015 interim final H-2B comprehensive rule; and prevent DOL from implementing the provisions of the interim final rule related to corresponding employment and the  $\frac{3}{4}$  guarantee. This will remain one of our priorities in 2021.

## ***IV. Heavy Highway Vehicle Use Tax Amendment***

President Biden released a sweeping plan to pump money into transportation, renewable energy, manufacturing and efforts to combat climate change -- funded by undoing some of the tax breaks that corporations received during the Trump administration.

The Americans Jobs Plan is a \$2.25 trillion, eight-year proposal is a follow-up to the \$1.9 trillion economic relief bill passed earlier this month. To cover the costs, Biden wants to raise corporate taxes to 28% from 21%. The plan also seeks a minimum tax on profits U.S. corporations earn overseas, increasing the rate to 21% from roughly 13%.

In addition to this infrastructure package, the White House plans a second major package, which could cost \$1 trillion or more, later in April to focus on social measures, including expanding health care and paid-leave access and extending the child tax credit --offset by tax increases on wealthy individuals. We have explored an option to create a tax break for the industry with respect to the Heavy Vehicle Use Tax (HVUT) amendment. It is highly unlikely that this proposal would gain traction as a stand-alone bill; however, if we are able to identify appropriate champions on the Hill, proposals such as a HVUT fix could be included in a major

infrastructure package. This is the first time in several years that an option might present itself for us to use for this OABA priority.

## ***V. Additional Legislative Opportunities***

In addition to the government relations priorities listed above, together with OABA's Government Relations Committee, we identified at least two additional legislative initiatives or strategies to assist OABA members and venues.

### **Reintroduce the Agricultural Fairs Rescue Act**

Last year, Representatives Panetta (D-CA) and Billy Long (R-MO) introduced H.R. 7883, the Agricultural Fairs Rescue Act, which will provide \$500 million in grant funding to support fairs. We worked with these offices to develop the initiative assisting in developing supporters for the proposal. The initiative was well received and quickly garnered strong bipartisan support with 33 Democrats and 22 Republican supporters. We are working with supporters to re-introduce this legislation in the 117<sup>th</sup> Congress.

### **Modify Eligibility Requirements Under Shuttered Operator Venue Grants and other COVID-Recovery Programs**

We know that the Shuttered Venue Operator Grants and similar programs are better suited to the size and type of losses that mobile outdoor entertainment operators experienced than Paycheck Protection Program loans (PPP Loans) and have been working with those crafting regulations to implement the program to allow our industry to fully participate in the program. Congress – through the major COVID-19 Relief and Recovery measures enacted – intended to provide relief from pandemic lockdowns and closures to the live entertainment industry. Such relief should apply to all such professionally organized live entertainment, including fairs and carnivals.

We will continue to try to influence regulations and other COVID-Recovery packages that are introduced during this Congress to ensure that they (or any new programs passed by Congress) include broad interpretations of eligibility to have the greatest impact possible in providing aid to businesses - particularly small businesses - that were seriously damaged by government lockdowns due to the pandemic.

In conclusion, our messages are generally well received on Capitol Hill. In a COVID environment, reaching Members in Washington may be difficult, but reaching out to congressional offices back home is critical to our efforts and is part of OABA's overall strategy. As we begin to emerge from the pandemic, we need to keep doing all the things that have brought us success thus far. That includes telling your personal story to those who represent you.

Explaining the real impacts that H-2B caps have on your business, including the detrimental impact on your American workforce, is a story that we must tell over and over. During our previous engagements with Members of Congress, what resonated well was walking elected officials and staff through the dramatic impact not having a reliable legal workforce has on your community – from decisions not to purchase new rides and the effect that has on

manufacturers, to reducing or eliminating venues that you play and the resulting reduction in revenues to local charities or tax revenues to local governments. The added negative impact of COVID on this industry is immense and that struggle must also be conveyed to our decision-makers to ensure the equitable application and eligibility of any new COVID-Recovery programs for all OABA members.

Ours is an important story to share and your efforts have had a measurable positive influence on the way Member offices engage us in conversation on these important issues. As we begin to socialize our 2021 agenda on Capitol Hill, that is more important now than ever before.

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