

**LEGISLATIVE/REGULATORY UPDATE
(JANUARY 2006)**

LEGISLATIVE ALERT!

MULTIEMPLOYER PENSION FUND RELIEF—we have been fighting a 3-year, battle with Congress, trying to educate the Members on the need to pass a multiemployer pension fund bill that provides employers' relief and strives to ensure employees receive their pension benefits. In the past, we have asked for your support, and this year is no exception. Only this year we have two bills that have already passed in the Senate (S.1783) and the House (H.R.2830), and are now waiting for conference committee actions to iron out their differences and to produce a final bill for the vote of the overall Congress.

FLY-IN FOR CAPITOL HILL VISITS (FEBRUARY 28 [FLY IN] AND MARCH 1 [HILL VISITS])—we need for you to participate in a mass fly-

in to inundate Capitol Hill in support of a multiemployer pension fund relief bill, like the ones passed in the Senate and the House, but one that includes the three provisions identified below. This fly-in will involve the five associations of the Campaign for Quality Construction Alliance (i.e., FCA, NEA, NECA, MCAA, and SMACNA).



In addition, since all Members of Congress will be in their Congressional districts in January (*Senate returns 1/18/06 and House returns 1/31/06*), please visit their offices and tell them how critical passage of this legislation is for both employers and employees. Also, tell them how we need to have the three provisions added during the conference committee actions to make this legislation even more effective. Finally, please follow-up your visit with a letter to your Members of Congress (see draft on p. 2), thanking them for meeting with you and reiterating your complete support for multiemployer pension fund relief legislation.

THREE ADDITIONAL PROVISIONS—we support a combination of the provisions contained within the two passed bills, but it must have the following three provisions added to really make a difference, especially for pension funds that fall within the critical zones:

- (1) The trustees and parties of a multiemployer plan in critical status must be provided with the necessary tools to correct the plan's financial situation. Specifically, the legislation must include the authority for critical status plans to protect normal retirement benefits at normal retirement age by permitting the reduction of certain ancillary, non-core benefits and requiring employer surcharges. Failure to do so could ultimately result in normal retirement benefits being slashed by the PBGC when it absorbs these liabilities;
- (2) Contributing employers to a multiemployer plan in critical status that are complying with a rehabilitation plan must be protected from potentially devastating, extra-contractual contribution requirements and excise taxes that could trigger bankruptcies and, eventually, plan failures, the transfer of liabilities to the PBGC, and drastic benefit in participant reductions; and
- (3) Grandfathering protection should be provided with respect to amortization extensions in effect prior to the date of enactment and to preserve agreements to restore benefit cuts made by plans that already took these unpopular, yet responsible, actions in conjunction with contribution increases prior to enactment to address the funding crisis.

WHAT'S OUR ALTERNATIVE?—we can do nothing and, should pension funds reach critical unfunded levels, allow the IRS to levy “potentially devastating, extra-contractual contribution requirements and excise taxes on us that could trigger bankruptcies and, eventually, pension plan failures, the transfer of liabilities to the PBGC, and drastic reductions in participant benefits”—a “lose-lose” for both the employers and employees alike, so there is no alternative but to **ACT NOW!**

DRAFT LETTER

Member of Congress (complete address)

Dear :

On behalf of the Finishing Contractors Association (*your association/company name here*), we urge you to support legislation designed to strengthen multiemployer pension plans and protect the retirement security of current and future retirees in our industry. As part of the broad, multiemployer community-wide “Multiemployer Pension Plan Coalition,” we are unified in support of changes to existing law that will accomplish this goal, while also protecting taxpayers in preventing our pension plans from becoming a liability of the Pension Benefit Guaranty Corporation (PBGC).

Much of what the coalition has put forward has been incorporated into two bills: H.R. 2830, approved by the House, and S.1973, approved by the Senate and now awaiting Conference Committee actions. These bills contain important provisions that are a part of the whole prescription needed to allow under-funded plans to reach healthy levels. However, to make the remedy effective for multiemployer plans and warrant our ultimate support of a bill’s final passage, three necessary provisions need to be added:

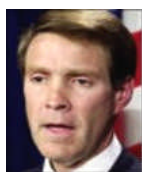
- The trustees and parties of a multiemployer plan in critical status must be provided with the necessary tools to correct the plan’s financial situation. Specifically, the legislation must include the authority for critical status plans to protect normal retirement benefits at normal retirement age by permitting the reduction of certain ancillary, non-core benefits and requiring employer surcharges. Failure to do so could ultimately result in normal retirement benefits being slashed by the PBGC when it absorbs these liabilities;
- Contributing employers to a multiemployer plan in critical status that have adopted and are complying with a rehabilitation plan must be protected from potentially devastating, extra-contractual contribution requirements and excise taxes that could trigger bankruptcies and, eventually, plan failures, the transfer of liabilities to the PBGC, and drastic reductions in participant benefits; and
- Grandfathering protection should be provided with respect to amortization extensions in effect prior to the date of enactment and to preserve agreements to restore benefit cuts made by plans that took these unpopular, yet responsible, actions in conjunction with contribution increases prior to enactment to address the funding crisis.

Since the Employee Retirement Income Security Act (ERISA) and the Multiemployer Pension Act (MEPA) were passed in 1974 and 1980, respectively, our pension funds have experienced wide-ranging market forces that have tested our system and our ability to preserve the retirement benefits for workers in our industry, who need a multiemployer structure due to the large number of individual employers who hire them during their working lives. We feel strongly that the incorporation of these additional provisions in the final bill will provide these workers with the retirement security they have earned.

We thank you in advance for your support of this critical legislation on behalf of our industry, and we urge you to pass legislation with these three additional provisions.

Sincerely,

109TH CONGRESS: 1ST SESSION
SUMMARY OF BUSINESS & LABOR ISSUES (2005)
 (ALPHABETICALLY ARRANGED BY TITLE WITH BILL NUMBER/SPONSOR NAME AND PARTY)



Bill Frist
Senate
Majority
Leader



Harry Reid
Senate
Minority
Leader



Mitch McConnell
Senate
Majority
Whip



Richard Durbin
Senate
Minority
Whip

BUSINESS ISSUES

- **America’s Better Classroom Act of 2005 (H.R.1742/Rangel [D-NY])**—would expand incentives for public school construction/renovation (i.e., a credit toward public school modernization bonds, which are qualified zone academy bonds and qualified school construction bonds). **Status:** (5 cosponsors) 4/20/05—Referred to the following House Committees: Ways and Means/Education and the Workforce; and 5/9/05—Referred to the following Subcommittees: Workforce Protections/21st Century Competitiveness/Education Reform. **FCA Position:** FCA supports legislation that offers school construction incentives.
- **Class Action Fairness Act of 2005 (S.5/Grassley [R-IA] and H.R.516/Goodlatte [R-VA])**—would amend the procedures that apply to interstate class action cases to assure fairer outcomes for class members/defendants (i.e., two major provisions: funnel class action lawsuits with plaintiffs from multiple states out of state courts and into the federal system, as well as rein in the multimillion dollar payments that lawyers receive). **Status:** S.5 (33 cosponsors) 2/10/05—Passed in the Senate (72-26); 2/17/05—Passed in the House (279-149); and **2/18/05—Signed by the President (Public Law No.109-2); H.R.516** (73 cosponsors) 2/2/05—Referred to the House Judiciary Committee. **FCA Position:** FCA supported the need for this tort reform legislation.
- **Construction Quality Assurance Act of 2005 (H.R.2834/Kanjorski [D-PA])**—would assure quality and best value with respect to Federal construction projects by prohibiting the practice known as bid shopping. **Status:** (15 cosponsors) 6/9/05—Referred to the House Committee on Government Reform. **FCA Position:** FCA favors legislation that prohibits bid shopping.
- **Davis-Bacon Enforcement Act of 2005 (H.R.4329/Andrews [D-NJ])**—would amend the Davis-Bacon Act to provide that a contractor under that Act who has repeated violations shall have its contract with the United States cancelled and be ineligible for other government contracts for 10 years. **Status:** (0 cosponsors) 11/15/05—Referred to the Committees on Government Reform and Education and the Workforce. **FCA Position:** FCA supports this legislation.
- **Deficit Reduction Act of 2005 (S.1932/Gregg [R-NH] and H.R.4241/Nussle [R-IA])**—includes provisions that would increase employers’ premiums to the Pension Benefit Guaranty Corporation (PBGC). The Senate’s proposal would increase premiums for multiemployer insurance programs from \$2.60 per participant to \$8.00. Premiums would be indexed to wage inflation. S.1932 does not provide the PBGC with discretion to raise premiums; however, H.R.4241 provides discretionary authority to increase premiums up to 20%/year. **Status:** S.1932 (0 cosponsors) 11/16/05—Passed in the Senate (vote: 52-47) and **H.R.4241** (0 cosponsors) 11/18/05—Passed in the House (vote: 217-215). **FCA Position:** FCA supports this legislation.
- **Equal Access to Justice Reform Act of 2005 (H.R.435/Manzullo [R-IL] and Blumenauer [D-OR])**—would remove current barriers against recovering attorney fees/costs when small businesses prevail in cases against the federal government. If enacted, it would help to level the playing field between small business employers and federal agencies. Simply stated, the federal government has enormous taxpayer-funded resources to prosecute employers. The practical result is that small entities, far “outgunned” by the agencies, are under unfair and intense pressure to settle cases, regardless of the merits, simply to end financially crushing litigation. These common sense and long overdue changes to the laws regarding attorney fee recovery will provide some relief to small business owners, so that if they successfully defend themselves, they can at least recoup their expenses. **Status:** (1 cosponsor) 2/1/05—Referred to the House Judiciary/Small Business Committees. **FCA Position:** FCA supports legislation that helps small business contractors.

- **Gulf Opportunity Zone Public Finance Relief Act of 2005 (H.R.4337/Jefferson [D-LA])**—would amend the Internal Revenue Code of 1986 to provide for Gulf tax credit bonds and advance refunding of certain tax-exempt bonds, as well as to provide a Federal guarantee of certain State bonds. These bonds would allow municipalities to keep their governments functioning, make payments on existing bonds, and begin the rebuilding process. **Status:** (6 cosponsors) 11/16/05—Passed in the House; 11/17/05—Received in the Senate. **FCA Position:** FCA supports this legislation.
- **Health Insurance Marketplace Modernization and Affordability Act of 2005 (S.1955/Enzi [R-WY])**—would amend Title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs by creating small business health plans and modernizing the health insurance marketplace, but *with state oversight*. **Status:** (2 cosponsors) 11/2/05—Referred to Committee on Health, Education, Labor, and Pensions. **FCA Position:** FCA favors legislation that helps small businesses.
- **Hurricane Katrina and Hurricane Rita Fairness in Contracting Act of 2005 (S.1844/Vitter [R-LA])**— would severely restrict FEMA’s ability to award no-bid contracts in the areas devastated by Hurricanes’ Katrina and Rita with the following exceptions: (1) only one responsible source exists; (2) a situation involving “unusual and compelling urgency”; (3) a noncompetitive bidding process is authorized or required by statute; and (4) a noncompetitive bidding process is required due to national security concerns. The bill provides that any exceptions can be made only with the written approval of the President or the President’s designee and the head of the executive agency awarding the contract. **Status:** (0 cosponsors) 10/6/05—Referred to the Committee on Homeland Security and Governmental Affairs. **FCA Position:** FCA supports this legislation.
- **Junk Fax Prevention Act of 2005 (S.714/Smith [R-OR])**—amends the Communications Act of 1934 to pro-hibit a person from using any telephone facsimile (fax) machine, computer, or other device to send an unso-licited advertisement to a person who has requested that such advertisements not be sent or to any other person unless: (1) the sender has an established business relationship with the person and (2) the advertisement con-tains a conspicuous notice on its first page that the recipient may request not to be sent any further unsolicited advertisements and includes a domestic telephone/fax number for such a request. **Status:** (9 cosponsors) 7/9/05—Signed by the President (Public Law No. 109-21). **FCA Position:** FCA supported this legislation.
- **Lawsuit Abuse Reduction Act of 2005 (H.R.420/Smith [R-TX])**—would amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability. This bill aims to reduce frivolous lawsuits/forum shopping of injury claims by imposing sanctions on attorneys filing lawsuits that do not meet case qualifica-tions. **Status:** (57 cosponsors) 1/26/05—Referred to the House Judiciary Committee; 6/14/05—Placed on the Union Calendar (No. 69); 10/27/05—Passed in the House (vote: 228-184); 10/31/05—Received in the Senate and referred to the Judiciary Committee. **FCA Position:** FCA supports legislation that is favorable to tort reform involving contractor liability insurance claims.
- **Leasehold Improvement Depreciation (S.621/Conrad [D-NC])**—would amend the Internal Revenue Code of 1986 to permanently extend the 15-year recovery period to depreciate certain leasehold improvements. **Status:** (4 cosponsor) 3/15/05—Referred to the Committee on Finance. **FCA Position:** FCA supports legislation that is favorable to our contractors’ business operations.
- **Louisiana Recovery Corporation Act (H.R.4100/Baker [R-LA])**—would create a federal corporation to issue debt to finance the recovery/redevelopment of land in Louisiana following devastation from Hurricanes Katrina and Rita. **Status:** (6 cosponsors) 10/20/05—Referred to the Committee on Financial Services; 12/15/05— Ordered to be reported (amended) by voice vote. **FCA Position:** FCA supports this legislation.
- **Multiemployer Plan Funding and Deduction Reform Act of 2005 (S.1825/Santorum [R-PA])**—would amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to revise the funding and deduction rules for multiemployer defined benefit plans. Santorum’s bill would impose funding disciplines on multiemployer pension plans while giving them more tools to reach targeted funding level goals under a reasonable timetable. Provisions would increase the deductibility limit from 130% to 140% of plans’ unfunded current liability and would include additional withdrawal liability reform. **Status:** (1 cosponsor) 10/5/05—Referred to the Finance Committee. **FCA Position:** FCA supports this legislation either as a stand-alone bill or as an amendment to S.1783, bringing it more in line with the Coalition’s proposal.

- **National Defense Authorization Act for Fiscal Year 2006 (H.R.1815/Hunter [R-CA] and S.1042/Warner [R-VA])**—would authorize appropriations for FY2006 for the DOD’s military activities, military construction, and the DOE’s defense activities. Section 812 of H.R.1815: Use of Commercially Available On-Line Services for Federal Procurement of Commercial Items excludes reverse auction bidding for construction-related services. However, the Senate bill does not contain this provision. **Status:** S.1042 (0 cosponsors) 11/15/05—Passed in the Senate (vote: 98-0) with the Senate substituting language of S.1042, as amended, in H.R.1815, and **H.R.1815** (1 cosponsor) 5/25/05—Passed in the House (vote: 390-39). The Coalition will push to have the H.R.1815 Section 812 included in the final version of the bill agreed upon in Conference Committee. 12/21/05—Conference report agreed to and cleared for the White House without our version of Section 812. The following statement appears: As a compromise, the Conference Report includes report language directing, “...the administrator for Federal Procurement Policy, in consultation with the Federal Acquisition Regulatory Council established pursuant to Section 25 of the Office of Federal Procurement Policy Act 41 U.S.C. 421, to review the use of online procurement services, such as reverse auction services, and identify: 1) types of commercial items procurements that are suitable for the use of such services; and, 2) features that should be provided by online procurement services that are used by Federal agencies.” **FCA Position:** FCA supported the language of H.R.1815 Section 812 that regulates the Federal Government’s use of the internet to purchase commercial items through the reverse bid auction process.
- **OSH Independent Review of OSHA Citations Act (H.R.741/Norwood [R-GA])**—would clarify that the Occupational Safety and Health Review Commission (OSHRC) is an independent entity that is given deference by courts reviewing OSHA issues. **Status:** (23 cosponsors) 2/10/05—Referred to the House Education and the Workforce Committee; 4/12/05—Placed on Union Calendar No. 29; 7/12/05—Passed in the House (vote: 226-197). **FCA Position:** FCA supports legislation that provides economic relief to small businesses when dealing with actions taken by OSHA under the Occupational Safety and Health (OSH) Act of 1970.
- **OSH Review Commission Efficiency Act (H.R.740/Norwood [R-GA])**—would increase the membership of the OSHRC from three to five members to ensure that cases are reviewed in a timely fashion. **Status:** (22 cosponsors) 2/10/05—Referred to the House Education and the Workforce Committee; 4/12/05—Placed on Union Calendar No. 27; 7/12/05—Passed in the House (vote: 234-185). **FCA Position:** FCA supports legislation that provides economic relief to small businesses when dealing with actions taken by OSHA under the OSH Act of 1970.
- **OSH Small Business Day in Court Act (H.R.739/Norwood [R-GA])**—would give the OSHRC additional flexibility to make exceptions when a small business misses the 15-day deadline for filing a response to OSHA citations. **Status:** (23 cosponsors) 2/10/05—Referred to the House Education and the Workforce Committee; 4/18/05—Placed on Union Calendar No. 26; 7/12/05—Passed in the House (vote: 256-164); 7/13/05—Received in the Senate (referred to the Health, Education, Labor, and Pensions Committee). **FCA Position:** FCA supports legislation that provides economic relief to small businesses when dealing with actions taken by OSHA under the OSH Act of 1970.
- **OSH Small Employer Access to Justice Act (H.R.742/Norwood [R-GA])**—would allow small employers to be awarded attorneys’ fees and court costs when they contest OSHA citations and prevail in court. **Status:** (23 cosponsors) 2/10/05—Referred to the House Education and the Workforce Committee; 4/27/05—Referred to the House Judiciary Committee; and 5/20/05—Placed on Union Calendar No. 46; 7/123/05—Passed in the House (vote: 235-187). **FCA Position:** FCA supports legislation that provides economic relief to small businesses when dealing with actions taken by OSHA under the OSH Act of 1970.
- **Pension Protection Act of 2005 (H.R.2830/Boehner [R-OH])**—would amend the Employer Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 to reform the pension funding rules. **Provisions:** The bill would change the amortization schedule for multiemployer plan benefit amendments from 30 to 15 years and increase the maximum deductible limit to 140% of current liability, providing additional funding flexibility for plans each year. Under the bill’s multiemployer provisions, a structure would be established for identifying troubled plans that would provide appropriate triggers for determining when plans are underfunded, and quantifiable benchmarks for measuring a plan’s funding improvement. The bill would also provide a mechanism to assess the financial health of certain multiemployer pension plans and separate them into two categories: plans between 65-80% funded would be “yellow zone” plans in immediate financial

danger, and plans that are less than 65% funded would be critical “red zone” plans that require trustees to develop a rehabilitation proposal to exit the red zone within 10 years. In addition, plans would have to provide sufficient and timely notice to workers, contributing employers, unions, employer bargaining representatives, as well as the PBGC, IRS, and DOL that the plan is in reorganization. **Status:** (16 cosponsors) 6/9/05—Referred to two House Committees: Ways and Means/Education and the Workforce; 6/30/05—passed by the Education and the Workforce Committee and awaiting Ways and Means Committee action; 12/15/05—Passed in the House (vote: 294-132); and 12/16/05—Received in the Senate. **FCA Position:** FCA’s position is *broadly* consistent with H.R.2830, but recommends essential changes to some of its multiemployer plan provisions. As written, this bill simply levies too many stringent, inflexible, and costly requirements on “yellow zone” under-funded plans and does not allow trustees to go far enough in restructuring severely under-funded plans. Many concerns must be addressed during the Congressional markup sessions for the FCA to fully support it: faster funding of benefit increases; elimination of funding barriers created by current law deduction limits; greater funding discipline/benefit restrictions for plans in “yellow zone”; additional employer contributions/tools for the trustees/bargaining parties of plans in “red zone” to allow them to bring assets and liabilities into balance, while temporarily protecting employers from potentially devastating, extra-contractual contributions/excise taxes that could trigger bankruptcies and, eventually, plan terminations, transferring liabilities to the PBGC, and drastic reductions in participant benefits; true access to existing IRS relief procedures; increased disclosure requirements; and provisions to modernize/streamline withdrawal liability rules.

- **Pension Security and Transparency Act of 2005 (S.1783/Grassley [R-IA])**—would amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules. **Status:** (3 cosponsors) 9/28/05—Placed on the Senate Legislative Calendar (No. 231); 11/16/05—Passed in the Senate (vote: 58-41), and 12/23/05—Message on Senate action sent to the House. **FCA Position:** FCA supports this legislation.
- **Permanent Estate Tax Repeal Act (S.420/Kyl [R-AZ]; H.R.8 (Hulshof [R-MO]); H.R.64 (Cox [R-CA]; and H.R.183 (Pitts [R-PA])**—would permanently repeal the estate tax. A 2001 law phases out the tax in 2010, but if Congress does not act by then, the levy would return. **Status:** **S.420** (21 cosponsors) 2/17/05—Referred to the Senate Finance Committee; **H.R.8** (206 cosponsors) 2/17/05—Introduced in the House; 4/13/05—Passed in the House (vote: 272-162); 4/14/05—Received in the Senate; and 4/20/05—Placed on the Senate Legislative Calendar (No. 84); **H.R.64** (161 cosponsors) 1/4/05—Referred to House Ways and Means Committee; and **H.R.183** (1 cosponsor) 1/4/05—Referred to the House Ways and Means Committee. **FCA Position:** FCA favors permanent estate tax repeal.
- **Rebuild with Respect Act (S.1925/Kennedy [D-MA])**—would require Katrina contractors to fulfill affirmative action requirements, require recipients of hurricane relief funds to employ individuals displaced from their jobs or homes, ensure that federal contracts go to local businesses in the Gulf Coast region, guarantee that small and disadvantaged businesses receive a share of hurricane-related contracts, make it easier for dislocated workers to file for federal disaster unemployment assistance benefits, and require the establishment of a medical monitoring program for workers/volunteers exposed to hazardous substances during the relief efforts. **Status:** (13 cosponsors) 10/26/05—Referred to the Committee on Health, Education, Labor, and Pensions. **FCA Position:** FCA supports this legislation.
- **Safe, Accountable, Flexible, and Efficient Transportation Equity Act (H.R.3/Young [R-AK])**—would authorize funds for Federal-aid highways, highway safety programs, and transit programs. **Status:** (79 cosponsors) 2/10/05—Referred to the House Committee on Transportation and Infrastructure (Subcommittee on Highways, Transit, and Pipelines) 3/10/05—Passed in House (vote: 417-9); 3/20/05—Received in Senate (amended); 5/17/05—Passed in the Senate (vote: 89-11); 5/25/05—Sent to House; and 6/9/05—Senate/House Conference held; 7/29/05—Conference Report approved in the House (vote: 412-8) and in the Senate (vote: 91-4); and **8/8/05—Signed by the President into Public Law 109-59.** **FCA Position:** FCA supported the reauthorization bill which would increase work opportunities for industrial painters.
- **Small Business Expensing Permanency Act of 2005 (H.R.1388/Herger [R-CA])**—would amend the Internal Revenue Code of 1986 to make permanent the increase in expensing allowance (\$100,000) of certain depreciable business assets enacted by the Jobs and Growth Tax Relief Reconciliation Act of 2003 and extended by the American Jobs Creation Act of 2004. **Status:** (3 cosponsors) 3/17/05—Referred to House Ways and Means Committee. **FCA Position:** FCA supports legislation that is favorable to our contractors’ business operations.

- **Small Business Health Fairness Act (S.406/Snowe [R-ME] and H.R.525/Johnson [R-TX])**—would amend Title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees (i.e., federally certified association health plans), *exempted from state regulation*. **Status:** **S.406** (15 cosponsors) 2/16/05—Referred to the Senate Health, Education, Labor, and Pensions Committee; **H.R.525** (135 cosponsors) 2/2/05—Referred to the House Education and the Workforce Committee; 4/13/05—Placed on Union Calendar No. 22; 7/26/05—passed in the House (vote: 263-165); 7/27/05—Received in the Senate and referred to the Health, Education, Labor, and Pensions Committee. **FCA Position:** FCA withholds its position pending further investigation into AHPs and their governance under state insurance requirements.
- **Small Business Hurricane Relief and Reconstruction Act of 2005 (S.1807/Snowe [R-ME])**— would require the awards to small businesses be taken into account by the heads of the Small Business Administration and any federal agencies making procurements: no less than 30% of the amount spent on prime contracts and no less than 40% of amounts expended for subcontracts. **Status:** (8 cosponsors) 9/30/05—Referred to the Committee on Small Business and Entrepreneurship. **FCA Position:** FCA supports this legislation.
- **Terrorism Risk Insurance Act of 2005 (S.467/Dodd [D-CT], H.R.1153/Capuano [D-MA], and H.R.4314/Baker [R-LA])**—would extend the Terrorism Risk Insurance Act of 2002 for two more years (from 2005 through 2007), where-by the federal government (i.e., the taxpayer) agreed to cover 90 percent of future terrorism-related insurance claims once the costs rose above \$10B (with a cap of \$100B in losses annually). This legislation once again is necessary to continue to ensure that commercial loans and developments to build/renovate properties are not being held up or offered at a lower capacity with very high insurance premiums. For construction, in the past the insurance projections were for premium increases for “safe” (i.e., loss-responsive) contractors in the amounts of 25-30% for workers’ compensation, 20-30% for commercial general liability, more than 20% for builder’s risk insurance, and 50-200% for umbrella coverage. As a result, general contractors, subcontractors, and specialty contractors were all affected by the unavailability of or high costs of terrorism insurance and the risks involved with new construction/renovation of commercial buildings. Recognizing that the federal government cannot continue to cover these claims beyond 2007, however, this bill also instructs the Presidential Working Group on Financial Markets to report to Congress its recommendations for legislation to address the long-term availability and affordability of insurance for terrorism risk. **Status:** **S.467** (33 cosponsors) 2/18/05—Referred to the Senate Banking, Housing, and Urban Affairs Committee; 11/18/05—Passed in the Senate and received in the House; 12/7/05—Passed in the House (vote: 371-49) and conferees appointed; and **12/22/05—Signed by the President into Public Law 109-144** extending the terrorism risk insurance program from 2005-2007. **H.R.1153** (32 cosponsors) 3/8/05—Referred to House Committee on Financial Services; 4/7/05—Referred to the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises; and **H.R.4314** (9 cosponsors) 11/14/05—Referred to the Committee on Financial Services and placed on the Union Calendar No. 180. **FCA Position:** FCA supports legislation that continues to address the need for insurance companies to offer reasonable terrorism-related insurance premiums to cover the contractors’ risks.



Roy Blunt
Acting
House
Majority
Leader



Nancy Pelosi
House
Minority
Leader



Steny Hoyer
House
Minority
Whip

LABOR ISSUES

- **Asbestos Compensation Fairness Act of 2005 (H.R.1957/Cannon [R-UT])**—would provide for the fair and efficient judicial consideration of personal injury and wrongful death claims arising out of asbestos or silica exposure to ensure that individuals who suffer impairment, now or in the future, from illnesses caused by exposure to asbestos or silica receive compensation for their injuries. This bill requires as an essential element of a nonmalignant asbestos or silica claim that there be evidence of a physical impairment to which asbestos or silica exposure was a substantial contributing factor. It also requires that the evidence relating to physical impairment comply with the AMA Guides to the Evaluation of Permanent Impairment. **Status:** (60 cosponsors) 4/28/05—Referred to the House Judiciary Committee. **FCA Position:** FCA views this legislation as limited in its scope to the application of medical criteria only and supports the more comprehensive asbestos claims legislation (S.852 and H.R.1360) pending in Congress.

- **Cleanup and Reconstruction Enhancement (CARE) Act (S.1817/DeMint [R-SC])**—would automatically suspend for one year federal prevailing wage rules under the Davis-Bacon Act in national disaster areas. **Status:** (5 cosponsors) 10/4/05—Referred to the Committee on Health, Education, Labor, and Pensions. **FCA Position:** The FCA opposes this legislation.
- **Employee Free Choice Act (S.842/Kennedy [D-MA] and H.R.1696/Miller [D-CA])**—would require the National Labor Relations Board to certify a union when a majority of workers have signed authorization cards naming the union as their bargaining representative. The bill would also provide for first contract mediation and arbitration, if a contract is not reached (90 days), and increase penalties for employers who violate the law when employees attempt to organize or obtain a first contract. **S.842** (41 cosponsors) 4/19/05—Referred to the Committee on Health, Education, Labor, and Pensions, and **H.R.1696** (207 cosponsors) 5/9/05—Referred to the Subcommittee on Employer-Employee Relations. **FCA Position:** FCA supports this legislation.
- **FAIR Act of 2005: Asbestos Claims Bill (S.852/Specter [PA-R] and H.R.1360/Kirk [R-IL])**—would create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure. **Status:** **S.852** (19 cosponsors) 4/19/05—Referred to the Judiciary Committee and 6/16/05—Placed on Senate Legislative Calendar under General Orders (No. 131). **H.R.1360** (8 cosponsors) 3/17/05—Referred to these Committees: Education and the Workforce/Energy and Commerce/Financial Services/Judiciary/Ways and Means; 5/19—Referred to the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises. **FCA Position:** FCA favors legislation that compensates employees for on-the-job bodily injury and illness, but only if the legislation claim’s criteria are fair to both employers and employees and the funding source is sufficient to handle all claims submitted by the victims.
- **Government Labor Neutrality Act of 2005 (H.R.1248/Johnson [R-TX])**—would amend the National Labor Relations Act (NLRA) to prevent government agencies from requiring or prohibiting construction industry employers to enter into agreements with labor organizations. The language would cover construction, painting, alteration, or repair work. **Status:** (14 cosponsors) 3/10/05—Referred to the Committee on Education and the Workforce; 4/18/05—Referred to the Employer-Employee Relations Subcommittee. **FCA Position:** FCA opposes legislation that attempts to eliminate project labor agreements.
- **Government Neutrality in Contracting Act (H.R.1449/Sullivan [R-OK])**—would codify Executive Order 13202, issued by President Bush on 2/17/01, restricting the use of project labor agreements on federally assisted construction projects. **Status:** (25 cosponsors) 3/17/05—Referred to the Committee on Government Reform. **FCA Position:** FCA opposes legislation that attempts to eliminate project labor agreements.
- **Hurricane Katrina Bills: Fair Wages for Hurricane Katrina Recovery Workers Act (S.1749/Kennedy [D-MA]; H.R.3763/Miller [D-CA]); and H.R.3834/Pallone [D-NJ])**—would reinstate the application of the wage requirements of the Davis-Bacon Act to federal contracts in the areas affected by Hurricane Katrina. H.R.3834 also calls for the repeal of the President’s authority to suspend the prevailing wage requirements of the Davis-Bacon Act during times of national emergency. **Status:** **S.1749** (36 cosponsors) 9/21/05—Referred to the Committee on Health, Education, Labor, and Pensions; **H.R.3763** (204 cosponsors) 9/14/05—Referred to the Committee on Education and the Workforce; and **H.R.3834** (0 cosponsors) 9/20/05—Referred to the Committee on Education and the Workforce. **Gulf Coast Recovery Act (S.1761/Thune [R-SD])**—would clarify the liability of government contractors assisting in rescue, recovery, repair, and reconstruction work in the Gulf Coast region of the United States affected by Hurricane Katrina or other major disasters. **Status:** (8 cosponsors) 9/22/05—Placed on the Senate Legislative Calendar under G.O. No. 222. **Hurricane Katrina Reconstruction and Displaced Worker Assistance Act of 2005 (S.1644 and 1763/Boxer [D-CA])**—would promote the employment of workers displaced by Hurricane Katrina in connection with reconstruction efforts. **Status:** **S.1644** (2 cosponsors) 9/8/05—Referred to the Committee on Homeland Security and Governmental Affairs; **S.1763**—also would ensure that these workers are paid prevailing wages (0 cosponsors) 9/22/05—Referred to Committee on Health, Education, Labor, and Pensions. **FCA Position:** FCA supports the above legislation. **Cleanup and Reconstruction Enhancement Act (H.R.3684/Flake [R-AZ])**—would suspend the Davis-Bacon prevailing wage rate requirements for Federal contracts in areas declared national disasters for a one-year period after such declaration. **Status:** (38 cosponsors) 9/7/05—Referred to the Committee on Education and the Workforce. On 10/26/05 the White House agreed to reinstate Davis-Bacon provisions. **FCA Position:** FCA does not support legislation that suspends Davis-Bacon prevailing wage rate requirements.

- **Hurricane Regulatory Relief Act of 2005 (H.R.3975/Jindal [R-LA])**—would allow one-stop career centers to transfer money among three different programs for adult dislocated workers’ job training. These “One-Stop Career Centers” are intended to help businesses find qualified workers and help job-seekers and workers get jobs and training services which include career counseling, skills and aptitude assessments, unemployment insurance help, and other Wagner-Peyser Act-funded services, such as state-run labor exchanges. **Status:** (11 cosponsors) 10/6/05—Referred to the Committee on Education and the Workforce; 11/16/05—Passed in the House, received in the Senate, and referred to the Health, Education, Labor, and Pensions Committee. **FCA Position:** FCA supports this legislation.
- **Katrina Worker Safety and Filing Flexibility Act of 2005 (S.1771/Enzi [R-WY])**—would require the Secretary of Labor to audit all DOL programs that involve the safety of workers in the response and recovery activities related to Hurricane Katrina, as well as provide written reports to Congress every six months on those investigations. For unions and employers in the disaster area, the bill would also extend the filing deadline for labor-management financial reporting forms to March 31, 2006. **Status:** (1 cosponsor) 9/27/05—Placed on the Senate Legislative Calendar (No. 223). **FCA Position:** FCA supports this legislation.
- **National Right-To-Work Act (S.370/Lott [R-MS] and H.R. 500/Wilson [R-SC])**—would preserve/protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities (S.370) and would repeal provisions of the NLRA that allow employers to require union membership and dues payment as an employment condition (H.R.500). **Status:** **S.370** (18 cosponsors) 2/14/05—Referred to the Committee on Health, Education, Labor, and Pensions; and **H.R.500** (98 cosponsors) 2/1/05—Referred to the Education and the Workforce Committee; 3/24/05—Referred to the Employer-Employee Relations Subcommittee. **FCA Position:** FCA opposes this legislation.
- **Protecting America’s Workers Act (S.944/Kennedy [D-MA] and H.R.2004/Owens [D-NY])**—would amend the Occupational Safety and Health (OSH) Act of 1970 to expand coverage to increase protections for whistleblowers and increased penalties for certain violators. **Status:** **S.944** (10 cosponsors) 4/28/05—Referred to the Committee on Health, Education, Labor, and Pensions; **H.R.2004** (5 cosponsors) 4/28/05—Referred to the Committee on Education and the Workforce. **FCA Position:** FCA supports this legislation.
- **The Truth in Employment Act of 2005 (S.983/DeMint [R-SC] and H.R.1816/King [R-IA])**—would relieve employers of any legal obligation to hire paid union organizers, called salts. **Status:** **S.983** (0 cosponsors) 5/9/05—Referred to the Senate Committee on Health, Education, Labor, and Pensions; **H.R.1816** (30 cosponsors) 4/26/05—Referred to the House Committee on Education and the Workforce; 6/22/05—Referred to the Subcommittee on Employer-Employee Relations. **FCA Position:** FCA opposes this legislation.
- **Worker Recovery Act of 2005 (H.R.3976/Boustany [R-LA])**—would accelerate the reemployment and employment of individuals affected by Hurricanes Katrina and Rita by establishing job training grants worth \$5,000 to eligible entities to provide worker recovery accounts to eligible individuals. **Status:** (9 cosponsors) 10/6/05—Referred to the House Committee on Education and the Workforce, and 11/17/05—Referred to the 21st Century Competitiveness Subcommittee. **FCA Position:** FCA supports this legislation.