

## LEGISLATIVE/REGULATORY UPDATE (JUNE 2006)

### BUSINESS ISSUES



- **Senate Passes Bill on Immigration (S.2611: Comprehensive Immigration Reform Act of 2006)**—the Senate passed an immigration bill containing provisions in three areas: border security/workplace enforcement, guest-worker program, and a three-tiered system for dealing with the 11-12M illegal immigrants already in the U.S. The House version, passed last year, deals only with border security and workplace enforcement, so obstacles remain in reaching accord between the Senate and the House.



- **States Setting Own Undocumented Worker Standards**—not waiting for the U.S. Congress to act, some states, particularly in the Southeast and Southwest, are aggressively setting their own restrictions/penalties for employers using undocumented workers, even though Congress may pass national legislation.
- **Senator Kyl Pushes Employment Verification System**—Senator Jon Kyl (R-AZ) wants Congress to create an expanded employment verification system, even if they do not agree on a comprehensive immigration bill. The Department of Homeland Security and the Social Security Administration would be required to implement this electronic system.
- **Small Business Health Bill (S.1955: Health Insurance Marketplace Modernization and Affordability Act of 2005) Fails in the Senate**—by a vote of 55-43, the Senate failed to approve S.1955 that would have enabled small business health plans to purchase health insurance coverage that deviated from state insurance requirements, saying that the bill would have curtailed critical health benefits for millions of Americans, particularly older and sicker workers.
- **Senate to Address Pending Estate Tax Legislation (S.420: Permanent Estate Tax Repeal Act)**—the Senate is scheduled to address S.420 early in June that would permanently repeal the estate tax.
- **Senators Introduce Revised Asbestos Bill (S.852: Asbestos Claims Bill)**—as a “last chance effort” to seek approval, Senators Arlen Specter (R-PA)/Patrick Leahy (D-VT) revised the bill to expedite payments to victims of asbestos-related injuries, establish more stringent medical criteria to determine payment eligibility from the \$140B trust fund, and preserve already-existing trust funds now paying asbestos claims.

### LABOR ISSUES



- **Davis Bacon Act Still Affects Legislation**—a Congressional Research Service report indicates that applying the Davis Bacon Act to specific program statutes is still a subject of Congressional debate, as well as the extent to which wages and benefits on all federally assisted projects should be governed by the federal prevailing wage statute.



- **Laborers Leave AFL-CIO Federation**—President Terrence O’Sullivan of the Laborers’ International Union notified the AFL-CIO that the Laborers would leave the AFL-CIO, effective June 1.
- **Building Trades Record Second Highest Win Rate in Unit Elections**—during 2005, the win rate in union representation elections sought by leading building trades unions in the construction industry was the second highest of any industry (74% of 368 elections, increasing 3.1% since 2004).
- **Construction Industry’s Unemployment Rate Drops**—according to the Bureau of Labor Statistics, the construction industry’s unemployment rate dropped from 8.5% in March to 6.9% in April (employing about 146,000 more workers).
- **Canadian Budget Initiatives Promote Expanding Apprenticeship Programs**—Canada’s federal government has intervened in its skilled trades’ shortage, particularly construction, with 2006 budget initiatives worth more than C\$655M (\$583M) to encourage more Canadians to enroll in apprenticeship programs.

**109<sup>TH</sup> CONGRESS: 2<sup>ND</sup> SESSION**  
**SUMMARY OF BUSINESS & LABOR ISSUES (2006)**  
 (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

**BILLS SIGNED INTO PUBLIC LAW**

- **Deficit Reduction Act of 2005 (S.1932/Gregg [R-NH] and H.R.4241/Nussle [R-IA])**—included 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/H.R.4241—Signed by the President and became Public Law 109-171. **FCA Position:** FCA supported this legislation.

**BILLS STILL AWAITING CONGRESSIONAL ACTION: ISSUES**

**BID-SHOPPING**

- **Construction Quality Assurance Act of 2005 (H.R.2834/Kanjorski [D-PA])**—would assure quality and best value on Federal construction projects by prohibiting the practice known as bid shopping. **Status:** Referred to House Committee on Government Reform. **FCA Position:** FCA favors anti-bid shopping legislation.

**DAVIS-BACON/PREVAILING WAGES**

- **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:** Referred to the Committee on Health, Education, Labor, and Pensions. **FCA Position:** The FCA opposes this legislation.
- **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:** Referred to the Committees on Government Reform/Education and the Workforce. **FCA Position:** FCA supports this bill.

**HEALTH CARE**

**Asbestos**

- **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:** 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.

- **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. **S.852 Status:** Motion to waive the Budget Act with respect to measure made in the Senate defeated; and **H.R.1360 Status:** Referred to numerous committees and subcommittees. **FCA Position:** FCA favors legislation that compensates employees for on-the-job bodily injury/illness, but only if the legislation claim’s criteria are fair to both employers/employees and the funding source is sufficient to handle all claims submitted by the victims.

### Small Business Health Plans

- **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:** Cloture motion rejected on 5/11/06. **FCA Position:** FCA favors legislation that helps small businesses.
- **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*. **S.406 Status:** Referred to the Senate Health, Education, Labor, and Pensions Committee and **H.R.525 Status:** Passed in the House and received in the Senate. **FCA Position:** FCA withholds its position pending further investigation into AHPs and their governance under state laws.

### IMMIGRATION

- **Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R.4437/Sensenbrenner [R-WI])**—would amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws and to enhance border security. This act would require employers to electronically verify the work eligibility of all their workers within six years and would more than double employers’ penalties for hiring undocumented workers. This bill does not include a guest-worker provision. **Status:** Passed in the House, received in the Senate, and referred to the Judiciary Committee. **FCA Position:** FCA appreciates the efforts to strengthen border security and enforce immigration laws, but this bill with no guestworker program does not address the construction industry’s current and future economic and labor needs. Also, requiring employers to perform a blanket review of every single employee is unnecessarily cumbersome, particularly on small businesses, and with the threat of uncapped and increased penalties.
- **Comprehensive Enforcement and Immigration Reform Act of 2005 (S.1438/Cornyn [R-TX])**—would tighten enforcement of immigration law and create a new guestworker program. **Status:** Referred to the Senate Judiciary Committee. **FCA Position:** FCA favors legislation that not only addresses border security and immigration issues, but also the construction industry’s current and future economic and labor needs.
- **Comprehensive Immigration Reform Act of 2006 (S.2611/Specter [R-PA])**—would provide border security and workplace enforcement, a guest-worker program, and a three-tiered system for dealing with the 11-12M illegal immigrants already in the U.S. **Status:** Passed in the Senate and will undergo Senate/House Conference Report action. **FCA Position:** FCA favors legislation that not only addresses border security and immigration issues, but also the construction industry’s current and future economic and labor needs.
- **Secure America and Orderly Immigration Act (S.1033/McCain [R-AZ] and H.R.2330/Kolbe [R-AZ])**—undocumented workers seeking permanent legal status would be required to pay a \$2,000 fine and wait 6 years to apply for green cards. It also would require future guest workers to return to their home countries when work visas expire. **Status:** **S.1033**—Referred to the Senate Judiciary Committee and **H.R.2330**—Referred to several House committees/subcommittees. **FCA Position:** FCA favors legislation that not only addresses border security and immigration issues, but also the construction industry’s current and future economic and labor needs.
- **Securing America’s Borders Act (S.2454/Frist [R-TN])**—would amend the Immigration and Nationality Act to provide for comprehensive reform. It would provide for increases in the number of federal immigration enforcement-related positions and technological assets for use along the borders, as well as provide for border

control facilities construction, land border port of entry construction and improvements, border patrol checkpoints, and fencing, barrier, and road construction and improvements in the Yuma and Tucson sectors. **Status:** Considered by the Senate for floor action. **FCA Position:** FCA favors legislation that not only addresses border security and immigration issues, but also the construction industry's current and future economic and labor needs.

## LABOR

- **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 Status:** Referred to the Committee on Health, Education, Labor, and Pensions, and **H.R.1696 Status:** Referred to the Subcommittee on Employer-Employee Relations. **FCA Position:** FCA supports this legislation.
- **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:** Referred to the House Education and the Workforce Committee. **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:** Referred to the Committee on Government Reform. **FCA Position:** FCA opposes legislation that attempts to eliminate project labor agreements.
- **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). **S.370 Status:** Referred to the Committee on Health, Education, Labor, and Pensions; and **H.R.500 Status:** Referred to the House Education and the Workforce Committee. **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. **S.944 Status:** Referred to the Committee on Health, Education, Labor, and Pensions and **H.R.2004 Status:** 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. **S.983 Status:** Referred to the Senate Committee on Health, Education, Labor, and Pensions and **H.R.1816 Status:** Referred to the House Education and the Workforce Committee. **FCA Position:** FCA opposes this legislation.

## MULTIEMPLOYER PENSION FUNDS

- **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:** 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.

- **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:** Passed in the House, received in the Senate, and placed on Senate Legislative Calendar under General Order Calendar #357—undergoing Senate/House Conference Report action. **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 and benefit restrictions for plans in “yellow zone”; additional employer contributions/tools for the trustees and bargaining parties of plans in the “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 and 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:** Passed in the Senate and message on Senate action sent to the House; undergoing Senate/House Conference Report action. **FCA Position:** FCA supports this legislation.

## **SAFETY**

- **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:** Passed in the House. **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:** Passed in the House. **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:** Passed in the House and received in the Senate. **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:** Passed in the House. **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.

## SMALL BUSINESS

- **Minority-Owned Venture Empowerment (MOVE) Act of 2005 (H.R.4474/Barrow [D-GA])**—would enhance the section 8(a) program of the Small Business Act by increasing the size of federal construction contracts for which participants will be eligible. The act would raise the dollar limit for 8(a) sole-source contracts for minority businesses from \$3M to \$6M, and would increase the dollar limit on competitive contracts for program participants from \$5M to \$10M. **Status:** Referred to the House Small Business Committee. **FCA Position:** FCA supports this legislation.
- **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:** Referred to House Ways and Means Committee. **FCA Position:** FCA supports legislation that is favorable to our contractors' business operations.

## TAXES

- **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:** Referred to the Committee on Finance. **FCA Position:** FCA supports legislation that is favorable to our contractors' business operations.
- **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. **S.420 Status:** Referred to the Senate Finance Committee; **H.R.8 Status:** Passed in the House, received in the Senate, and placed on the Senate Legislative Calendar #84; **H.R.64 Status:** Referred to House Ways and Means Committee; and **H.R.183 Status:** Referred to the House Ways and Means Committee. **FCA Position:** FCA favors permanent estate tax repeal.

## TORT REFORM

- **Equal Access to Justice Reform Act (EAJA) of 2005 (S.2017/Feingold [D-WI] and Snowe [R-ME] and 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 bills would raise the threshold for a qualifying small business from \$7M net worth to \$10M, remove EAJA's \$125 per hour cap on legal fees, allow qualifying parties who settle out of court to recover legal fees, and require most agencies who lose lawsuits to pay the legal fees out of their own budgets. 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. **S.2017 Status:** 11/16/05—Referred to the Judiciary Committee and **H.R.435 Status:** 2/1/05—Referred to the House Judiciary/Small Business Committees. **FCA Position:** FCA supports legislation that helps small businesses.
- **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 qualifications. **Status:** Passed in the House, 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.



**John Boehner**  
House  
Majority  
Leader



**Nancy Pelosi**  
House  
Minority  
Leader



**Steny Hoyer**  
House  
Minority  
Whip