

## **LEGISLATIVE/REGULATORY UPDATE (APRIL 2007)**

### **FCA'S TOP LEGISLATIVE AND REGULATORY ISSUES**

#### **IMMIGRATION**

**Immigration Reform Bills**—Senate Majority Leader Harry Reid (D-NV) pledged to bring comprehensive immigration reform legislation to the Senate floor before the August recess, and House Speaker Nancy Pelosi (D-CA) has placed the legislation on a similar timetable. Senator Edward Kennedy (D-MA), who is currently working on introducing a bill along with Senator John McCain (R-AZ), said that he expects their bill to get to the Senate floor for discussions by early spring. Senate Judiciary Committee Ranking Member Arlen Specter (R-PA) has continued his meetings with Administration officials and others in the Senate to try and gain consensus on immigration reform. Reps. Luis Gutierrez (D-IL) and Jeff Flake (R-AZ) introduced companion immigration legislation (H.R.1645) in the House. Both parties agree that a common ground can be reached, but only with the Administration's support. A major controversy surrounds the perceived path towards citizenship (i.e., earned citizenship v. amnesty).

#### **LEGISLATIVE BILLS/ACTIONS**

**H.R.1645: Security through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007 (Rep. Luis Gutierrez [D-IL] and Jeff Flake [R-AZ])**—would overhaul the Nation's immigration laws in part through an employment verification system and a "new worker" program. Specifically, this act would provide for border security, stronger "interior enforcement" (e.g., penalties for immigrants who violate the law), an employment verification system, and a "new worker" program for future immigrant workers (i.e., initially up to 400,000 new workers with yearly adjustments based on market demands). **Status:** Referred to the House Homeland Security Committee. **FCA Position:** .

It would overhaul the visa system and allow qualified, undocumented immigrants already in the country to earn legal status. The bill would create a new visa program valid for 6 years that would provide work and travel authorization and protection from removal. To be granted this status, an individual would have to have had a continuous presence in the country on or before June 1, 2006, show employment before that date and since that date, complete background checks, and pay a \$500 fine/application fees. Before earning citizenship, these undocumented individuals would go to the back of the line for permanent visas, with current immigration backlogs being cleared first. To earn citizenship, individuals would meet employment requirements during the 6-year period prior to the application, pay a \$1,500 fine/application fees, complete background checks, learn English, pay taxes, and satisfy a "legal re-entry" requirement—the requirement to leave the United States and re-enter through a port of entry into the country during set time frames.

Under this bill a new worker visa program would also be created with a new H-2C visa which would be valid for 3 years and could be renewed for another 3 years. Immigrants applying for the H-2C visa would have to show their qualifications and proof of a job offer from a U.S. employer, would have to undergo background checks, and would pay \$500 fine/application fees. The bill would prohibit employers from hiring new immigrant workers if they are located in an area with an unemployment rate higher than 9 percent for workers whose education level is at or below a high school diploma. The bill would provide H-2C workers with a number of protections, including fair/competitive wages, the right to travel outside the country, whistleblower protections, portability or the right to change employers, an opportunity to apply for conditional and permanent residence after working for 5 years, and eventual citizenship.

**Guestworker Program Not Workable for Immigration Reform Bill because of Workplace Abuses**—the Southern Poverty Law Center's Immigrant Justice Project in its report, "Close to Slavery: Guestworker Programs in the United States," has declared that workers are systematically abused in the current U.S. guestworker program. They claim that guestworkers cannot rely on the federal government for help, are short-changed wages, and are often held captive to employers or labor brokers who seize their documentation, thereby taking away their ability to change jobs. They also claim that they are forced to live in squalid

conditions and do not receive medical benefits for injuries that occur on the job. Their recommendation is to ensure that any reform bill introduced must contain labor protections, provisions to address recruitment abuses or systematic wage discrimination, and a mechanism for workers to use that would enforce their rights.

**BCTD Presidents Approve Policy Goals for Immigration Reform**—The BCTD has announced its immigration policy: the 12 affiliated unions oppose a new temporary worker program as being unnecessary for the construction industry, but they do support a path to earned legal status for workers now in the U.S. illegally. The BCTD's reform proposals include a mandatory, electronic system (with a 99% accuracy rate) to verify eligibility to work in the U.S.; employers being responsible for compliance with immigration law, as well as federal and state labor and employment law; and a refinement of the H-2B Program to accommodate the construction industry's short-term needs.



**Companies Banned for Hiring Illegal Aliens under H.R.2**—The Senate by a 94-0 vote slipped a federal contracting ban for businesses that violate immigration laws into **H.R.2: Fair Minimum Wage Act of 2007**, which would raise the federal floor on hourly pay from \$5.15 to \$7.25 over two years. Under this added provision, introduced by Senator Jeff Sessions (R-AL), companies caught hiring illegal workers while on a federal contract would be **banned from government work for 10 years**; other companies discovered using illegal workers would be prohibited from federal contracts for 7 years. This ban would not be subject to court appeal, but the federal government could waive it for national security reasons. However, *companies using the pilot electronic employment verification system would be exempt from these sanctions*. Critics objected that the provision does not give businesses the opportunity to appeal the ban. (NOTE: According to the Pew Hispanic Center, Hispanic workers landed two out of three new construction jobs in 2006, with the bulk of these jobs in the South and West. Hispanic employment increased by almost 1 million between 2005 and 2006.)



## LEGISLATIVE BILLS/ACTIONS

**H.R.2: Fair Minimum Wage Act of 2007 (rep. George Miller [D-CA])**—amends the Fair Labor Standards Act of 1938 to increase the federal minimum wage to: (1) \$5.85 an hour, beginning on the 60<sup>th</sup> day after enactment of this act; (2) \$6.55 an hour, beginning 12 months after that 60<sup>th</sup> day; and (3) \$7.25 an hour, beginning 24 months after that 60<sup>th</sup> day. **Status:** Passed in the House and the Senate. **FCA Position:**

## TAXES

**Repeal Section 511—3% Withholding Tax on Government Projects**—The Construction Organizations for Sensible Taxation (COST) Coalition, consisting of 17 trade associations, acknowledges Senator Craig (R-ID), along with Reps. Wally Herger (R-CA) and Kendrick Meek (D-FL), for their leadership in introducing **S.777 and H.R.1023** that would repeal Section 511 of P.L.109-222: the Tax Increase Prevention and Reconciliation Act of 2005. This sweeping new requirement mandates a 3% withholding tax on payments to contractors for goods/services provided to federal, state, and local governments. With your help, we need to educate Congress that 3% is larger than the profit margins permitted under many government contracts and that such withholding will significantly impede cash flow, jeopardizing a contractor's ability to compete for business or complete projects. The bills have been referred to the Senate Finance Committee and the House Committee on Ways and Means.



## LEGISLATIVE BILLS/ACTIONS

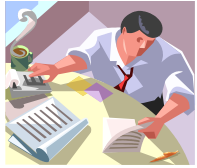
**S.777: Repeal 3% Withholding (Sen. Craig [R-ID])**—would repeal provisions of the Tax Increase Prevention and Reconciliation Act of 2005 (Section 511) requiring federal, state, and local government entities to withhold 3% of payments due to vendors providing goods and services to such entities. **Status:** Referred to the Senate Finance Committee. **FCA Position:** The FCA favors repeal of this tax.

**H.R.1023: Repeal 3% Withholding (Reps. Herger [R-CA] and Meek [D-FL])**—would repeal provisions of the Tax Increase Prevention and Reconciliation Act of 2005 (Section 511) requiring federal, state, and local

government entities to withhold 3% of payments due to vendors providing goods and services to such entities. **Status:** Referred to the House Ways and Means Committee. **FCA Position:** The FCA favors repeal of this tax.

**Congressional Testimony to the House Small Business Committee**—on March 22, 2007, Mr. Lonnie Coleman of Coleman-Spohn Corporation, Cleveland, OH, testified on behalf of the Campaign for Quality Construction Alliance, the COST Coalition, and MCAA concerning Congresses' need to repeal this ill-conceived withholding provision.

## ACCOUNTING STANDARDS



**FASB Requirements for Single-Employer Plans Raise Multiemployer Concerns**—During Phase I of the Financial Accountability Standards Board's (FASB's) two-phased project to revise pension accounting standards, FASB 158 requires that employers of single-employer pension plans post their share of a defined benefit pension plan liability on their company balance sheets (effective for fiscal years ending after December 15, 2008). FASB may soon begin Phase II, so there is growing concern that this phase will look at multiemployer defined benefit pension plans. Phase II is expected to be issued in 2010 with the actual effective date in 2011. FASB does not expect to issue a preliminary views document until 2008 and an exposure draft in 2009.

## UNION ORGANIZING

**Union Card Check Bill Introduced in House**—Labor unions could have an easier time organizing workers under **H.R.800:** The Employee Free Choice Act (sponsored by Rep. George Miller [D-CA]) which would allow unions to bypass the lengthy, secret ballot elections. Under this bill the unions could attempt to represent workers by simply getting a majority of workers to sign union authorization cards. A Senate version of the bill is expected to be introduced soon by Senator Ted Kennedy (D-MA). The bill is backed by labor unions and a range of other groups who rationalize that employers often illegally fire, intimidate, or retaliate against workers attempting to form a union. Conversely, the bill is opposed by business groups as a way for union leaders to coerce workers into signing cards in support of union representation in front of their co-workers and union organizers. (NOTE: The bill has not directly ruled out the option for workers to seek a secret-ballot election supervised by the National Labor Relations Board.)

The House passed this bill (vote: 241-185) setting the stage for a showdown in the Senate and with President Bush. Secretary of Labor Elaine Chao already rejected this legislation saying: "The right of a worker to a private ballot election is a fundamental right in our democracy that should not be negotiated away by either management or labor, nor legislated away at the behest of special interest groups."

## LEGISLATIVE BILLS/ACTIONS

**H.R.800: The Employee Free Choice Act (Rep. Miller [D-CA])**—would amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes. **Status:** passed in the House and placed on the Senate legislative Calendar. **FCA Position:**

## SAFETY AND HEALTH ISSUES

**Asbestos Ban Bill**—a bill has been introduced that would amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products and for other purposes.

## LEGISLATIVE BILLS/ACTIONS

**S.742: Ban Asbestos in America Act of 2007 (Sen. Murray [D-WA])**—would ban the importation, manufacture, and distribution of products containing asbestos and take steps to help those already exposed. It would create a \$50M asbestos-related disease research and treatment network of ten centers around the country designed to find treatment options and to seek early detection of asbestos-related diseases and prevention strategies. **Status:** Referred

to the Senate Environment and Public Works Committee. **FCA Position:** The FCA favors legislation that seeks to protect the health and safety of our contractors' employees.

The Senate adopted an amendment, introduced by Senate Judiciary Committee Ranking Member Arlen Specter (R-PA) as part of the FY2008 budget resolution (S. Con. Res. 21) that would make it easier for legislation setting up a trust fund for victims of asbestos exposure to clear budget hurdles in the Senate. His amendment would eliminate the point of order under Section 302 of the Congressional Budget Act which resulted in the defeat of asbestos compensation legislation last year. The Senator said that Members of Congress would now be considering establishing a reduced trust fund and are looking to deal with victims of mesothelioma (i.e., an award of \$1, 100,000, without a showing of liability)—a deadly ailment associated with exposure to asbestos while deferring action on individuals not having “tangible damages.”

**Employer Payment for Personal Protective Equipment (PPE)**—the Bush Administration, in response to a lawsuit filed by the AFL-CIO and the United Food and Commercial Workers, has agreed to issue a long-awaited final ruling by November 2007 on employer payment for PPE. Labor favors employer payment, while the U.S. Chamber of Congress and other industry employer groups oppose the lawsuit.

### **LEGISLATIVE BILLS/ACTIONS**

**H.R.1327: Protective Equipment for America's Workers Act (Rep. Roybal-Allard [D-CA])**—would direct OSHA to complete its rulemaking on Employer Payment for PPE for workers. **Status:** Referred to the House Education and Labor Committee. **FCA Position:** .

### **CONTRACTOR/SUBCONTRACTOR BID STANDARDS**

**Pilot Program Will Require Contractors to Report Subcontractor Awards**—Federal contractors with contracts valued at \$500M or more soon could be required to report their awards of subcontracts exceeding \$1M to the public database recently launched by the Office of Management and Budget under the Federal Funding Accountability and Transparency Act. The pilot project would begin no later than July 1, 2007, and end no later than January 1, 2009. Before the pilot program is completed, a separate FAR Council rule-making process will be used to establish the requirements for the final subcontract reporting database.