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DAVIS-BACON

The unionized sector within the construction industry often seeks [Davis-Bacon prevailing wage provisions](#) in proposed legislation, which helps to level the playing field. This provision, however, becomes meaningless unless the contractors comply with the law and pay their employees the required wage. That's why the FCA supports bills such as those introduced by [Senator Hillary Clinton and Representative Robert Andrews S.2524 and H.R.4851: Davis-Bacon Enforcement Act of 2007](#). Due to the factions within the industry as well as between the two political parties, this legislation most likely will not move, especially during this Presidential election year.

That being said, however, impetus for such legislation is being generated by the [Building Construction Trades Department or BCTD](#), and its management partners. A campaign is underway to educate Congress on the benefits of prevailing wages for federally assisted construction projects and on dispelling the misinformation being spread by the non-unionized segment of the construction industry concerning how prevailing wages drive up the costs paid for by the Nation's taxpayers.

FCA POSITION: *The FCA supports legislation that seeks to improve prevailing wage compliance on federal projects through stricter enforcement of Davis-Bacon Act provisions.*

IMMIGRATION REFORM

We will continue to hear saber rattling over the immigration reform legislation, particularly by both parties and their presidential candidates. We have already witnessed how the party candidates try to sidestep the issue during the primary debates. All candidates want to appear that they are protecting our borders from illegal immigration, yet at the same time they do not want to risk rancor from within the Hispanic community as they are reaching out for their votes. Because of the volatility of this controversial issue, we should look for the states to generate more activity to protect their own borders, with a standoff by party candidates at the national level as they seek political office.

FCA POSITION: *FCA supports legislation that seeks to:*

- Pursue the aggressive enforcement of existing laws and that provides a cost-effective, reliable system that verifies immigrants are legally eligible for employment.
- Offers a safe harbor for employers who use this system to ensure compliance with those laws.

That's why the FCA supports [Representative Heath Schuler's H.R.4088: the Secure America through Verification and Enforcement, or SAVE Act of 2007](#).

[More Information](#)

MANDATORY THREE PERCENT WITHHOLDING TAX

Our challenges in seeking repeal of [Section 511 of the Tax Reconciliation Act, P.L. 109-222](#) are largely twofold:

- Congress has already planned for the windfall budgetary projection, \$6 billion plus, in their future budgets and
- The ease of simply mandating that all contractors pay the three percent tax upfront, rather than waiting for them to file their taxes voluntarily at the year's end.
- Since Congress already has coveted that projected income, we have to provide income alternatives and educate Congress on how they would not have to give up their pot of gold.



According to the new Congressional budgetary rules, to drop \$6 billion plus from its projected budget, Congress must provide a revenue loss offset such as an alternative revenue source and an explanation of how that money is going to be recouped. The Alliance recognizes that identifying alternative sources of recouping any projected lost revenue would have to be on the table before Congress would simply walk away from the \$ billion plus already projected for their coffers. To date, our efforts have been threefold:

- To seek aggressive enforcement of current tax laws and go after contractors who fail to pay their taxes
- To stop contractors from misclassifying their employees as independent contractors, and
- To seek suspensions and debarments from future Federal contracts for unscrupulous contractors, especially for tax evasion.

FCA POSITION: *Congress should support Senator Larry Craig's S.777: [Withholding Tax Relief Act of 2007](#) and Representative Kendrick Meek's H.R.1023: [Repeal three percent Withholding Tax Provisions](#), both bills introduced to repeal Section 511 that contains the three percent withholding tax requirement.*

FCA ACTIVITIES

The FCA, along with its industry Alliance partners, will continue to visit Congressional offices in a lobbying effort to convince Members of Congress to repeal the three percent withholding tax and to identify potential budgetary offsets. To achieve these objectives, Congress must:

- I. **INTRODUCE AND/OR COSPONSOR LEGISLATION TO REPEAL THE THREE PERCENT TAX**—our Capitol Hill visits were instrumental in having [Representative Charles Rangel introduce H.R.3056: Tax Collection Responsibility Act of 2007](#) that would delay until 2012 the requirement for federal, state, and local agencies to withhold the three percent and require the Secretary of Treasury to report to Congress the impact of this tax, as well as in picking up additional cosponsors of the three percent repeal legislation.

- II. **PROPOSE ALTERNATIVE REVENUE SOURCES**

The FCA and its Alliance partners continue to press Congress to enforce existing IRS tax laws, stop contractors from misusing the independent contractor classification, and create a contractor accountability verification system that would suspend and/or debar unscrupulous contractors from federal contracts as alternatives to still receive their projected revenue:

- A. **ADDRESS THE MISCLASSIFICATION OF INDEPENDENT CONTRACTORS**—the [GAO](#) has reported that it estimates at least 10 million workers in the U.S. are classified as independent contractors, with as many as 30 percent of employers misclassifying their workers. [Senator Barack Obama has introduced S.2044: The Independent Contractor Proper Classification Act of 2007](#) to rein in rampant worker misclassification abuses that plague the construction industry. This bill would allow the federal government to collect the taxes employers owe, address the serious need for more enforcement of federal tax and employment laws to identify those employers who wrongfully classify their workers as independent contractors, and require greater cooperation between the [IRS](#) and the [DOL](#) in enforcing the law. Such legislation would significantly narrow the tax gap by collecting billions of dollars in unpaid federal taxes due to such misclassification.
- B. **SEEK SUSPENSIONS/DEBARMENTS FOR UNSCRUPULOUS CONTRACTORS**—the U.S. is the largest consumer in the world, investing over \$419 billion in goods and services annually and another \$400 billion in grants. Yet the federal government's suspension and debarment officials currently lack the information they need to protect our business interests. While the government has a number of separate information systems, there is currently no centralized comprehensive government database for contracting officers or debarment officials to access to track the record of contractors



before purchases and awards are made. This flawed system allows federal contractors to repeatedly violate federal law, yet still receive millions of Federal dollars.

[Representative Carolyn Maloney, an avid supporter of our efforts, has introduced H.R.3033: Contractors and Federal Spending Accountability Act of 2007](#) that would try to rid the system of these contractors who give a

black eye to our industry and cheat the taxpayers without impunity. Her proposed legislation calls for the General Services Administration to establish and maintain a centralized database of information regarding the integrity and performance of federal contracts and assistance recipients for use by federal contracting officers and debarment officials who deal with federal contracts or assistance.

On the Senate side, [Senator Norm Coleman introduced S.2394: the Good Government Contractor Act of 2007](#) which would repeal the 3 percent withholding tax provision and keep all prospective federal contractors from procuring Federal contracts if they have any tax debts.

[More Information](#)
[FCA Watch List & Issues Backgrounders](#)

FCA'S TOP REGULATORY ISSUES

TELL OSHA WHAT YOU THINK OF THE PROPOSED CONFINED SPACE RULE: OSHA recently published a proposed rule to enhance the protection provided to construction employees working in confined spaces. OSHA has indicated that it will accept our comments on the proposed standard until **February 28, 2008**. To date we have received only one response. You can comment by sending me an email: jweaver@finishingcontractors.org.

[More Information](#)

EARLY CONTRACTOR FEEDBACK: To date, various association contractors have commented that the proposed rule will make it more costly and will add confusion to work in confined spaces. For example, items in the rule will expand recordkeeping requirements and result in additional costs to all employers. In some instances a standby rescue team is also required that will create additional costs for most contractors. The proposed rule changes the general industry rule, currently being used by the industry, to additional classifications which now create uncertainty as to what classification should be used at which site.

OSHA WORK-RELATED INJURIES/ILLNESSES SUMMARY POSTING OF FORM 300A

FEBRUARY 1 – APRIL 30: employers are required to post the summary OSHA Form 300A and not the OSHA 300 Log in a common area. The summary must list the total number of job-related injuries and illnesses that occurred in the past year that were logged on the OSHA 300 form. Employment information about the annual average number of employees and total hours worked during the calendar year also is required to assist in calculating incidence rates. Companies with no recordable injuries or illnesses in the previous year must post the form with zeros on the total line. A company executive must certify all summaries.

NOTE: *Employers must make a copy of the summary available to employees who move from worksite to worksite. For example, construction workers and employees who do not regularly report to any fixed establishment.*

LINKS

[Research U.S. Legislation](#)
[Research Canadian Federal Legislation](#)
[Contact Your Representative-US](#)
[Contact Your Representative-Canada](#)
[Canadian Labour Congress – labor union coalition](#)