

## TOP LEGISLATIVE ISSUES

### STIMULUS FUNDING CONTINUES SLOW DISBURSEMENTS

Several studies indicate that the ARRA funds are merely trickling out of the federal and state coffers. For example, according to a recent AGC survey, “outside of the transportation arena, much of the construction funding authorized in the stimulus has yet to result in actual contracts that will allow contractors to begin work,” with only 22 percent of AGC’s contractors having been awarded stimulus-funded projects. Two-thirds of these contractors have actually started work, while 60 percent said they have retained or saved jobs because of the stimulus work. Competition has considerably increased for these projects, and bids have been submitted 10-40 percent below estimates.

AGC’s survey also identifies that the following agencies have barely opened their purse strings: the Army Corps of Engineers has obligated \$716 million of the \$4.6 billion ARRA money (paying out only \$84 million), and GSA has obligated \$656 million of its \$5.9 billion (paying out merely \$12 million). Overall, federal agencies have made available \$204,055,938, but only \$80,898,055 has been paid.

### MEMBERS OF CONGRESS HEAR EARFUL FROM THEIR CONSTITUENTS ON HEALTH CARE REFORM PROPOSALS

While at home during the August recess period, Members of Congress at various town hall meetings were bombarded with their constituents’ feedback concerning health care reform proposals, particularly reacting adversely to the public health care option to be run by the federal government. In an effort to lessen the criticism against this option, President Obama addressed Congress and the American people to lay out a more specific vision for health care reform; particularly what he would like to see in any proposed health care bill. In future discussions, he plans on providing more specific principles and legislative language that he wants in the final bill that crosses his desk for signature. It appears he is trying to preempt the Senate Finance Committee’s legislative process, one that should have been done before the recess and is now due for completion by mid-September.

### E-VERIFY SYSTEM MANDATORY ON FEDERAL CONSTRUCTION PROJECTS

**REMINDER:** As mentioned previously and barring any emergency injunctions to stop E-Verify implementation, contractors who work on federal construction projects will have to use the E-Verify system to verify employment eligibility.

### IMMIGRATION BILL TO BE INTRODUCED

President Obama said that he expects a comprehensive immigration bill to be introduced in 2009, but he predicts that it will not move through Congress until 2010. He knows that such legislation will be a challenging undertaking. Senator Schumer (D-NY) indicated he plans to introduce such legislation.

### IMPACT OF IMMIGRANT LABOR ON NATIVE WORKERS

(Information Only) According to a recent report by the Center for Immigration Studies, of the construction industry occupations examined, the following percentages of immigrant labor were unveiled: drywall installers, ceiling tile installers, and tapers (47 percent); painters (37 percent); carpet, floor, and tile installers/finishers (37 percent); paperhangers (13 percent); and glaziers (13 percent).

### SENATOR WILL SUPPORT CLOTURE VOTE ON MODIFIED EMPLOYEE FREE CHOICE ACT (EFCA)

Senator Arlen Specter (D-PA) says he will support a cloture vote on a modified version of the EFCA legislation. A successful cloture vote of 60 votes would allow the debate to begin on the Senate floor. While not identifying what a modified version would look like, the senator is opposed to the bill’s card check provision, a major staple of the original piece of legislation. In addition, concerning the initial CBA’s arbitration provision, he has suggested that this provision

could be modified to a “last best offer” proposal, where both parties present contract proposals to an arbitrator. The bill is currently undergoing compromise proposals to jump start its current stalemate.

#### **LABOR GROUPS AND THE ABA SPAR OVER THE NEED FOR EFCA**

The AFL-CIO continues to voice its support of the legislation commenting that the bill has strong White House support, while the American Bar Association and other opposition groups have expressed their concern over the need for such legislation. Right now the legislation seems to be in a “hold pattern,” until a compromise bill with negotiated alternative measures can be worked out. That being said, so far both sides have refused to accept any compromise.

#### **LABOR PLANS TO STEP UP MOBILIZATION EFFORTS DURING RECESS PERIOD**

While Members of Congress were at home during their recess period, the AFL-CIO pushed a number of Democratic senators to support EFCA passage upon their return. Running the largest grassroots mobilization campaign in its history, labor tried to convince them through aggressive pro-active lobbying efforts, particularly in those states where Democratic senators have not yet committed to support the legislation.

#### **UNDERFUNDED MULTIEMPLOYER PENSION PLANS FACE LIABILITY WITHDRAWAL ISSUES AND NEED LONG-TERM RELIEF**

For the past two years, the declining equity markets have resulted in steep asset losses for multiemployer pension plans, thereby making it difficult for employers to maintain their contributions and threatening the viability of these plans. For labor and management, this decline has caused them to sacrifice employee wage increases in favor of pension contributions.

Under the **Worker, Retiree, and Employer Recovery Act of 2008**, some poorly funded plans chose to freeze their 2009 funding at the 2008 level. Even though such a decision carries risk (i.e., the risk of the plans becoming worse off after the freeze ends), by the end of April 2009, about 74 percent of the eligible plans froze their status. According to a survey by the Segal Company, 68 percent of red zone and 80 percent of yellow zone plans elected the funding freeze.

To ensure the long-term viability of these plans, long-term relief measures need to be implemented. To this end the FCA is partnering with the Multiemployer Plans Coalition, a broad-based, labor-management group of multiemployer pension plan stakeholders. Under the leadership of the National Coordinating Committee for Multiemployer Plans (NCCMP), this Coalition is working hard to recommend alternative ways to the Congress for these plans to survive (e.g., one recommendation is to merge stable plans with weaker ones).

Recognizing the challenges, Rep. George Miller (D-CA) introduced **H.R.2989, 401(K) Fair Disclosure and Pension Security Act of 2009**, to address funding these plans through a 5-year automatic amortization extension period.

#### **BILL INTRODUCED TO CLARIFY INDEPENDENT CONTRACTOR CLASSIFICATION**

Rep. Jim McDermott (D-WA) introduced **H.R.3408: Taxpayer Responsibility, Accountability, and Consistency Act** to clarify the rules classifying workers as independent contractors vs. employees to ensure proper tax filing. Without specific rules, workers lose benefits to which they are entitled, unscrupulous contractors gain an unfair advantage, and the U.S. Treasury loses billions of dollars in tax revenue every year.

#### **COMMENTS ON PRESIDENT OBAMA’S PLA EXECUTIVE ORDER EXTENDED 30 DAYS**

The comment period on the proposed rule (Federal Acquisition Regulation [FAR] Case 2009-005) was reopened with a new deadline of September 23. This proposal, written to implement **E.O.13502** relating to PLAs, would amend the FAR to encourage federal departments and agencies to consider requiring the use of PLAs for federal construction projects that total more than \$25 million on a project-by-project basis. During this extended time period, labor organizations and signatory contractor groups intend to review all submitted comments (particularly those of the non-union sector) and revise their own, if deemed warranted.

#### **OSHA TO REQUIRE SAFETY LOCKS ON UNATTENDED MOTORIZED EQUIPMENT**

Rep. Donna Edwards (D-MO) introduced **H.R.3094: the Alexander L. Booker Child Protection Construction Site Safety Act** which would revise OSHA’s construction regulations to protect workers and bystanders from hazards posed by unattended motorized vehicles and other construction equipment. This bill would require the prominent display of

signs and symbols indicating a hazard, even when work is not being performed, to prevent access to construction equipment left unattended at night, and to require construction vehicles to be equipped with safety locks.

**TOP REGULATORY ISSUE**

**OSHA'S SAFETY AND HEALTH ACCIDENT RATES – CONSTRUCTION DEATHS AND FALLS DECLINE IN 2008**

According to the DOL's Bureau of Labor Statistics, fatal work injuries and falls in the private construction sector declined by 20 percent from 2007. Of that number, 20 percent of all fatalities in 2008 were in the construction and extraction industries, although the number of fatal work injuries among 16 to 17-year-old workers was higher in 2008.

*For government relations information, please contact FCA  
Vice President, Jay Weaver [jweaver@finishingcontractors.org](mailto:jweaver@finishingcontractors.org).*

Published by the Finishing Contractors Association as a benefit to its members.  
8120 Woodmont Avenue, Suite 520 Bethesda, MD 20814 Phone 301.215.7026 Fax 301.215.7027  
Copyright 2009©. All rights reserved.