



FEBRUARY 2011

UNITED STATES

THE QUALITY CONSTRUCTION ALLIANCE NATIONAL ISSUES CONFERENCE

The Quality Construction Alliance (QCA) – a coalition of five specialty union contractor associations, including National FCA – will hold its 2011 National Issues Conference May 9-11, at the Renaissance Hotel in Washington, D.C. The annual conference is a great opportunity for contractors and Association Executives to meet and discuss the legislative issues that affect our industry today and help guide the legislative efforts that will influence it tomorrow, as well as, network with policy experts and engage in face-to-face meetings with members of Congress and/or their staffs. Speakers at this year's event include:

- Phyllis C. Borzi, Assistant Secretary of Labor of the Employee Benefits Security Administration
- Anirban Basu, Economist, Chairman & CEO, Sage Policy Group
- Randy DeFrehn, Executive Director of the National Coordinating Committee for Multiemployer Plans

Visit National FCA online to download a PDF file of the complete conference program.

The QCA is made up of National FCA, The Association of Union Constructors, the Mechanical Contractors Association of America, the International Council of Employers of Bricklayers and Allied Craftworkers and the Sheet Metal and Air Conditioning Contractors' National Association.

The 112th congress started with a reading of the U.S. Constitution. Since then several new bill have been introduced to address several issues important to our industry including Three Percent Withholding, 1099 additional information reporting found in healthcare law, E-verify, Misclassified Workers, Prevailing Wage, and Davis-Bacon.

THREE PERCENT WITHHOLDING REPEAL

Two bills have been introduced in the Senate that seek to repeal the three percent withholding tax on nearly all contract payments. Both propose wiping the tax code clean of the withholding "as if such amendment had never been enacted." The tax, which was enacted in May 2006, by the Tax Increase Prevention and Reconciliation Act, requires the government to withhold three percent of nearly all of companies' contract payments. It goes into effect in 2012. However, the bills' sponsors want to end the tax before then. A member of the Small Business Committee, along with the committee's ranking member, introduced Withholding Tax Relief Act (S. 164) on Jan. 25th. Its bill would rescind \$39 billion in appropriated discretionary funds. Other Republican senators introduced a Withholding Tax Relief Act (S. 89) on Jan. 25th that would simply eliminate the tax. While National FCA will support any relief under this legislation, we continue to support full repeal.

REPEAL OF 1099 PROVISION IN HEALTHCARE LAW

The Senate is moving closer to a repeal of the widely opposed 1099 language in last year's healthcare law. Sen. Mike Johanns re-introduced repeal language as an amendment to the Federal Aviation Administration (FAA) authorization bill. His amendment would repeal the 1099 requirement to file tax forms for transactions worth \$600 or more each year with a company, and ask the Office of Management and Budget to rescind \$39 billion in discretionary funds in order to offset the cost of repeal.

Sen. Debbie Stabenow proposed 1099 repeal language that is nearly identical to the Johanns language. The Johanns bill exempts the departments of Defense and Veterans' Affairs from being cut in order to offset the \$39 billion, and the Stabenow amendment adds just a few words to also exempt the Social Security Administration from cuts. National FCA continues to support full repeal of the additional 1099 reporting required in the healthcare law.

DAVIS-BACON/PREVAILING WAGE

The House may target the Davis-Bacon Act by pushing to have prevailing wage protections omitted from infrastructure bills and Federal construction projects. Many Washington insiders expect to see incremental and piecemeal efforts to limit or

block the application of prevailing wages as required by the Davis-Bacon Act. Others say Congress is inching toward reform of the wage determination system used by the Labor Department to set the prevailing wage. However, there are several studies that show that repeal of Davis-Bacon ends up costing taxpayers more because of shoddy work that requires future repair, maintenance, and rebuilding costs. Americans understand that when it comes to construction, you get what you pay for. National FCA and our Coalition partners support the current prevailing wage system and will continue to work on your behalf to counter any efforts to eliminate prevailing wages.

PROJECT LABOR AGREEMENTS

In January, Iowa Governor Branstad issued an executive order prohibiting the use of project labor agreements on public works projects in the state. Executive Order No. 69 immediately repeals an executive order that Gov. Culver had issued last year. Culver's order did not require the state and its political subdivisions to use PLAs. Rather, the language of the former governor's executive order was permissive, only allowing state agencies, cities, and counties to consider using the agreements. Under Branstad's order, state agencies and political subdivisions in the state cannot use PLAs on any public works projects that receive state or federal funds. The order stated that while it will not affect public works projects that already have contracts, it requires projects where the lowest, responsible bidder was not selected and contracts have not been entered into to try as best they can to follow the guidelines mandated by it.

MISCLASSIFICATION OF WORKERS

In January, the Governor of Maine abolished a task force designed to investigate misclassification. Governor LePage, who has stressed the need to free business from excess regulation, called the task force an extra layer of bureaucracy that may be negated or altered by forthcoming legislation. The state AFL-CIO says it expects legislative efforts to go after prevailing wages and project labor agreements and weaken workers' compensation. Lawmakers likely will seek to reduce benefits for public workers and introduce right-to-work legislation, it added.

Conversely, The Utah Senate approved a bill on Jan. 31st that takes aim at construction companies that classify employees as owners in order to avoid paying workers' compensation insurance premiums, contributing to unemployment insurance, and withholding taxes.

The bill, Construction Licensees Related Amendments, would require an estimated 5,000 construction owners to file an annual ownership status report. Under the bill, individuals would be classified as owners if they own 20 percent or more of a company and as employees if they own 19 percent or less.

Nationally, government enforcement efforts are placing employers on notice that there has been an increase in the likelihood and costs associated with getting caught for misclassifying and underreporting workers in construction and other industries. Employers do so to circumvent their liability for payroll taxes, Social Security, and workers compensation premiums. National FCA continues to support legislation to abolish the misclassification of workers.

OSHA WITHDRAWS PROPOSED REINTERPRETATION OF NOISE STANDARD

The Labor Department's Occupational Safety and Health Administration announced Jan. 19th it is withdrawing its proposed reinterpretation of the occupational noise exposure standard, a proposal that has drawn criticism from industry groups because of its potential cost and are looking at other avenues to address noise in the workplace.

Under the proposal, an employer would have to reduce noise exposure in its workplace by using administrative or engineering controls, rather than by providing personal protective equipment, as long as the cost of doing so does not threaten the employer's ability to stay in business.

In explaining its decision to rescind the proposal, OSHA said it would review the comments submitted in response to the *Federal Register* notice announcing the reinterpretation, hold a stakeholder meeting within the next several months on preventing workplace hearing loss, consult with the National Institute for Occupational Safety and Health and the National Academy of Engineering on the issue, and initiate a "robust" outreach and compliance assistance effort to provide information and guidance "on the many inexpensive, effective engineering controls for dangerous noise levels.

E-VERIFY

Two bills that would mandate the use of E-Verify by federal contractors were introduced in January. The bills would slightly broaden the current federal contractor E-Verify mandate, which took effect in 2009. The first bill, H.R. 282, would require all federal contractors and subcontractors to participate in E-Verify, the federal government's electronic employment verification program, if they have been awarded but not completed the performance of a contract with the federal government in an amount exceeding the simplified acquisition threshold. Under the bill, federal contractors would be required to verify the work authorization of all of their employees, not just the employees performing work on the federal contract or subcontract.

The second bill, the Secure the Capitol Act (H.R. 280), was also introduced in January. Under the bill, offices of the legislative branch would be prohibited from entering into a contract for the provision of goods or services within the Capitol Complex with any contractor who does not use E-Verify. Under the bill, legislative branch offices would require contractors to participate in E-Verify and certify that each of its subcontractors providing goods or services under the contract also participates in the verification program. The bill defines the "Capitol Complex" as including the U.S. Capitol, all House and Senate office buildings, the House and Senate child care centers, the U.S. Botanic Gardens, the Library of Congress, the Capitol Power Plant, and the Capitol Police headquarters.

NEW FORM I-9 INSTRUCTION MANUAL

The Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) Jan. 11th released a revised "Handbook for Employers," or M-274, that helps employers better understand the Form I-9 process.

All U.S. employers are required to complete a Form I-9 to verify the employment of each new hire. The forms are used as part of audits to curb illegal immigration.

The updated instruction manual is a "guide for employers in the Form I-9 process," and has been updated with new information about regulations regarding electronic storage and retention of I-9 forms and how to process an employee with complicated immigration status, USCIS said.

The manual was last updated in July 2009, USCIS said. The updated handbook, with a revision date of Jan. 5th, includes new visual aids for completing the Form I-9, examples of new USCIS documents, expanded guidance on the processing of employees in H-1B or H-2A status, and expanded guidance on extensions of stay for employees with temporary employment authorization.

CANADA

CONFINED SPACES CONSOLIDATION PROPOSAL

The confined spaces requirements, made under Occupational Health and Safety Act (OHSA), are found in the following five regulations:

- Reg.851 Regulation for Industrial Establishments
- O. Reg. 213/91 Regulation for Construction Projects
- O. Reg. 67/93 Regulation for Health Care and Residential Facilities
- Reg. 854 Regulation for Mines and Mining Plants
- O. Reg. 632/05 Regulation for Confined Spaces

Confined spaces requirements in these five regulations are similar; however, they vary a little for construction projects. The Ministry of Labour proposes that all of the regulatory requirements respecting confined spaces appear in one regulation, specifically O. Reg. 632/05 (Confined Spaces). This would involve amendments to the application section of O. Reg. 632/05 to include industrial establishments, construction projects, health care and residential facilities, and mines and mining plants. Simultaneously, the proposal is to revoke the provisions that apply with respect to confined spaces in the other four regulations listed above.

In addition, the Ministry proposes that the O. Reg. 632/05 maintain the key differences between the current confined spaces regulations that apply to construction projects and those that apply to other workplaces.

These proposed changes should not affect worker protections or employer obligations regarding confined spaces. The Ministry of Labour proposes that the amendments be implemented in 2011.

DRAFT GOVERNMENT REGULATIONS NOW ONLINE IN NEW BRUNSWICK

Draft versions of government regulations are now being posted online as part of an ongoing process to increase transparency and involve the people of New Brunswick in the decision making process by providing feedback on regulations before they are finalized.

The first regulation posted was the draft regulation on the changes made to the *Assessment Act* during the fall legislative session. The second draft regulation posted was under the *Potato Disease Eradication Act*. The drafts can be viewed at the following link, www.gnb.ca/consultations.

\$30 MILLION FOR SCHOOL CAPITAL IMPROVEMENT PROJECTS

The provincial government of New Brunswick announced how it plans to invest a record \$30 million in capital improvements in schools in 2011-12. The \$30 million capital improvement budget includes \$3 million to address issues that could arise from structural review of more than 200 schools built before 1980.

2011-12 School Capital Improvement Projects Listed Below:

Anglophone Sector

District 2 – \$1,828,000

- Edith Cavell School and Marshview Middle School: \$588,000 – roof replacement
- Bessborough School, Hillcrest School and Sunny Brae Middle School: \$550,000 – fire integrity
- Riverview High School: \$350,000 – thermostats and controls
- Bernice MacNaughton High School and Harrison Trimble High School: \$340,000 – heating and ventilation maintenance

District 6 – \$1,830,000

- Sussex Regional High School: \$770,000 – ventilation system, washroom upgrade and building security
- Quispamsis Elementary School and Sussex Middle School: \$390,000 – roof replacement
- Lakefield Elementary School and Rothesay High School: \$200,000 – siding
- Kennebecasis Valley High School: \$160,000 – flooring, masonry, brick repainting, and site improvement
- Belleisle Regional High School: \$150,000 – washroom upgrade
- Hampton Middle School: \$70,000 – electric service entrance
- Hammond River Valley Elementary School: \$50,000 – building access
- Harry Miller Middle School: \$40,000 – exterior windows

District 8 – \$1,909,000

- Bayside Middle School, Bayview School and St. John the Baptist/King Edward School: \$455,000 – exterior walls
- Harbour View High School: \$315,000 – site improvement, water supply and distribution
- Loch Lomond School and Prince Charles School: \$294,000 – roof replacement
- Princess Elizabeth School: \$185,000 – exterior windows
- Westfield School: \$160,000 – site improvements
- Barnhill Memorial School: \$150,000 – other
- Simonds High School: \$140,000 – roof and site replacement
- Forest Hills Elementary School: \$130,000 – site improvement, water supply and distribution
- Centennial School: \$80,000 – water supply and distribution

District 10 – \$1,254,000

- Sir James Dunn Academy: \$300,000 – washroom upgrade
- St. Stephen Elementary School: \$300,000 – heating system upgrade
- Back Bay Elementary School and Campobello Island Consolidated School: \$264,000 – roof replacement
- Grand Manan Community School: \$200,000 – exterior walls

- St. George Elementary School, Vincent Massey Elementary School, St. Stephen Middle School and St. Stephen High School, \$190,000 – caulking and weatherizing

District 14 – \$1,372,000

- Southern Victoria High School: \$990,000 – lift, ramps and ventilation system
- Andover Elementary School: \$120,000 – fire integrity and roof replacement
- Keswick Valley Memorial School: \$154,000 – roof replacement
- Bath Elementary School and Tobique Valley High School: \$79,000 – fire integrity
- Florenceville Elementary School: \$29,000 – exterior doors

District 15 – \$1,220,000

- Bathurst High School: \$450,000 – thermostat and controls
- Jacquet River School: \$150,000 – exhaust and site access
- Superior Middle School: \$145,000 – building security and roof replacement
- Dalhousie Regional High School: \$120,000 – exterior doors and roof replacement
- Lord Beaverbrook School: \$95,000 – building access and exterior window
- L.E. Reinsborough School: \$90,000 – building access and ventilation
- Campbellton Middle School: \$70,000 – interior renovation
- Janeville Elementary School: \$60,000 – gym floor
- Parkwood Elementary School: \$40,000 – communication

District 16 – \$1,370,000

- Bonar Law Memorial School, Dr. Losier Middle School, Rexton Elementary School and Harkins Middle School: \$495,000 – roof replacement
- Miramichi Valley High School: \$270,000 – exterior window and washroom upgrade
- James M. Hill Memorial High School: \$205,000 – exterior window, flooring and lighting
- St. Andrews Elementary School: \$170,000 – exterior walls
- Blackville School: \$150,000 – exterior window
- North and South Esk Elementary School: \$80,000 – exterior doors

District 17 – \$1,404,000

- Gagetown School, Hubbard Avenue Elementary School and Oromocto High School: \$438,000 – roof replacement
- Minto Memorial High School: \$305,000 – exterior window and washroom upgrade
- Ridgeview Middle School: \$234,000 – heating system
- Burton Elementary School: \$154,000 – sewage system
- Harold Peterson Middle School: \$138,000 – site improvement and washroom upgrade
- Chipman Elementary School: \$105,000 – exterior window
- Chipman Forest Avenue School: \$30,000 – water supply and distribution

District 18 – \$1,846,000

- Harvey Elementary School, Harvey High School, Liverpool Street School, McAdam Avenue School, Montgomery Street School and Royal Road School: \$716,000 – roof replacement
- Fredericton High School: \$365,000 – fire integrity and roof replacement
- Nashwaaksis Middle School: \$181,000 – heating system upgrade
- George Street Middle School: \$180,000 – interior renovation
- Douglas School: \$175,000 – sewage system
- McAdam High School: \$109,000 – ventilation system
- Stanley Regional High School: \$80,000 – lift
- Connaught Street School: \$40,000 – gym floor

Francophone Sector

District 1 – \$1 million

- École Abbey Landry and École Mathieu-Martin: \$625,000 – ventilation system
- École Samuel-de-Champlain: \$250,000 – site access
- École Champlain: \$75,000 – interior walls

- École Sainte-Anne: \$50,000 – parent and bus drop-off zone

District 3 – \$980,000

- Polyvalente Thomas-Albert: \$250,000 – fire integrity, lift and roof replacement
- École Ernest-Lang: \$220,000 – fire integrity and roof replacement
- Polyvalente A.-J.-Savoie: \$200,000 – lift and roof replacement
- École Régionale Sainte-Anne: \$130,000 – roof replacement
- Centre d'apprentissage du haut-Madawaska, École Grande-Rivière and École Mgr-Mathieu-Mazerolle: \$60,000 – fire integrity
- École Mgr-Lang: \$40,000 – lift and fire integrity
- Carrefour de la Jeunesse, École Régionale de Saint-André and École Notre-Dame: \$50,000 – lift
- Cité-des-Jeunes A.-M.-Sormany: \$30,000 – fire integrity and lift

District 5 – \$1,140,000

- École François-Xavier-Daigle: \$350,000 – demolition
- École secondaire Népisiguit: \$345,000 – roof replacement and interior renovations
- École Apollo-XI and École Cité-de-l'Amitié: \$220,000 – roof replacement
- École Aux quatre vents: \$120,000 – roof replacement and ventilation system
- Académie Notre-Dame: \$105,000 – exterior windows

District 9 – \$971,000

- Polyvalente W.-A.-Losier: \$350,000 – site improvement and ventilation
- Polyvalente Louis-Mailloux: \$236,000 – roof replacement and roof drains
- École Léandre-LeGresley: \$200,000 – roof replacement
- Centre La Fontaine: \$160,000 – site drainage and roof replacement
- École La Source: \$25,000 – flooring

District 11 – \$985,000

- École Notre-Dame: \$310,000 – roof replacement, foundation walls and slabs
- Polyvalente Louis-J.-Robichaud: \$305,000 – gym flooring and exterior walls
- École Régionale de Baie-Sainte-Anne: \$300,000 – site drainage and roof replacement
- École Donat-Robichaud: \$70,000 – exterior windows

NEW RULING IN QUÉBEC ON TAX CREDIT FOR CHILDCARE COSTS

It is now possible to receive payment of the tax credit for childcare costs on a monthly basis rather than quarterly. The qualifying parent does not need to wait to complete an income tax declaration to request this tax credit and may receive a payment by direct deposit by the 15th day of each month. The tax credit for childcare costs is overseen by Revenu Québec. For further information, visit www.revenu.gouv.qc.ca.

SASKATCHEWAN POSTS 12TH STRAIGHT MONTH OF EMPLOYMENT GROWTH

Saskatchewan has seen year-over-year employment growth for each of the past 12 months. There were 517,400 people working in Saskatchewan in January, an increase of 7,400 over January of 2010, and a record for the month of January. Saskatchewan's seasonally adjusted unemployment rate of 5.4 percent ranks second lowest in Canada (behind Manitoba), well below the national average of 7.8 percent.

REGULATIONS AGAINST PSYCHOLOGICAL HARASSMENT IN WORKPLACE

A new Workplace Safety and Health regulation providing protection for workers against psychological harassment took effect Feb. 1st in Manitoba.

The new provisions will address psychological harassment such as intimidation, bullying and humiliation. Employers will be required to ensure that workplaces are free of harassment by developing and implementing policies to prevent and address harassment if it occurs.

Policies, developed in consultation with the safety and health committee or representative at the workplace, must provide a

process to receive and investigate complaints of harassment and take corrective action. Normal and reasonable management actions, including discipline, are not defined as psychological harassment.

Resources are available at the Workplace Safety and Health Division to assist employers and workers in meeting these new requirements. These resources may be found by visiting the Safe Manitoba website, www.safemanitoba.com.

INDEPENDENT PANEL TO REPORT ON HST REFERENDUM OPTIONS IN BRITISH COLUMBIA

A newly appointed independent panel will report to British Columbians on a fact-based analysis of the implications of keeping the HST or returning to the PST and GST sales tax system. The panel will be chaired by Jim Dinning, former finance minister of Alberta. British Columbian voters deserve to have all the facts about the two options so they can make an informed decision on whether to support the HST or to return to the PST and GST sales tax systems. Members of the panel understand how important this referendum decision is for British Columbians and the future of the province. People need to understand the choices and what they mean before they go to vote. The panel will do all that it can to deliver to British Columbians a plain-speaking, straightforward set of facts that will help them choose. The panel has 10 weeks to complete its work and will deliver a final report to the public by the first week of April 2011.

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