



*Week of 5-1-23
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Congressional Overview

This week, the House was not in session, and the Senate held nomination votes. Additionally, on Tuesday, the Senate Judiciary Committee held a hearing to examine ethic rules governing the Supreme Court and the Senate HELP Committee held a hearing on legislation to lower drug prices.

FCA International Opposes Save Local Business Act

FCA International opposes the Save Local Business Act (S.1261), which would amend the “joint employment” standard under both the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA). It would place law-abiding employers competing on quality services, efficient execution, worker training, and innovation, at a competitive disadvantage to businesses that thrive at the expense of honest job creators, American workers, and the nation’s taxpayers. In today’s economy, honest contractors increasingly find themselves competing with companies that seek to reduce costs by dissociating themselves from the traditional obligations of being an employer.

Over the past several years, the COVID-19 pandemic accelerated the push for contractors to reduce costs by structuring operations to evade paying minimum wage, overtime, unemployment insurance, and other significant expenses in a labor-intensive industry. This legislation seeks to provide a safe harbor for proponents of this race-to-the-bottom business model built on a cadre of labor brokers providing an entire workforce of subcontractors on job after job. It is a workforce that gets no benefits and for whom every tier of a construction contracting chain claims to have no responsibility for paying overtime, workers’ compensation, employment taxes, or unemployment insurance.

Even under the law as it exists today, general contractors and higher-tier subcontractors find it worth the risk to claim that the workforces provided by such labor brokers are either independent contractors or just the workforce of the labor broker. FCA is therefore concerned that in redefining “joint employer” under the NLRA and FLSA, this legislation would make it even less likely that the fictions upon which this business model rests will ever be challenged.

Finally, this legislation is ostensibly a response to the NLRB’s 2015 decision in the *Browning-Ferris Industries of California, Inc.* case and the Labor Department’s (DOL) recent rescission of the prior Administration’s joint employer guidance at the Department of Labor. But it is far more radical than a mere attempt to undo *Browning-Ferris* and to reinstate the recently rescinded DOL interpretation. Instead, the bill’s narrow definition of joint employment under both the NLRA and FLSA would provide complete safety for business models built upon the misclassification of construction workers as independent contractors.

As such, this legislation is not about protecting companies making hard calls applying unclear law to vague facts. It represents an effort to advantage one business model over another and an endorsement of a model promoting profits over the interests of America’s workers, taxpayers, and construction companies working hard to create middle class jobs and train the next generation of skilled construction craft workers. In sum, this legislation exemplifies the wrong choices as our nation continues to recover from the economic hardships of the COVID-19 pandemic.

White House Debt Ceiling Meeting Set for Next Week

Next week, President Biden plans to meet with Speaker Kevin McCarthy (R-CA), Senate Majority Leader Chuck Schumer (D-NY), House Minority Leader Hakeem Jeffries (D-CA), and Senate Minority Leader Mitch McConnell (R-KY) to discuss the debt ceiling.

On Monday, May 1, 2023, Treasury Secretary Janet Yellen warned that Congress must come together to raise or suspend the \$31.4 trillion debt limit by June 1. After that date, the Treasury Department estimates there's a real risk of running out of cash and accounting maneuvers to continue paying bondholders and other U.S. financial obligations on time. Sen. Schumer took a procedural step by putting the House-passed GOP debt package and the Senate Democrats' alternative bill suspending the debt limit through 2024 (S 1395) on the Senate calendar.

FCA International Drafts Procurement Legislative Package

FCA International, along with the Construction Industry Procurement Coalition (CIPC), are drafting a legislative package that would address change order reform, the bidding process, material price escalation, strengthening qualifications based selection, a Government Accountability Office (GAO) study and report on statute of repose, protecting public-private partnership projects, and obtaining a sense of Congress on the accuracy of small business, design professional licensure, and utilization of the private sector. Stay tuned to this publication for updates on the package.

FCA International Supports Strengthening WIFIA Funding on Water Infrastructure Projects

FCA International supports Rep. Mike Bost (R-IL)'s legislation (H.R. 1740) that would amend the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014 to establish payment and performance security requirements for projects. This legislation would protect taxpayer funding, ensure project completion, support economic growth, and assist local small business subcontractors and workers.

Public private partnership (P3s) projects benefiting from WIFIA assistance need adequate bonding requirements. State P3 laws often do not provide the same level of protections required for all other public infrastructure projects. Congress supported the need to close a similar loophole for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program by including a policy fix, by a unanimous 97-0 Senate vote, in the Infrastructure Investment and Jobs Act (IIJA). The WIFIA should require similar bonding practices as the TIFIA.

This proposed legislation would ensure construction projects receiving WIFIA assistance use appropriate payment and performance security protections. Additionally, the EPA Administrator and/or the Army Secretary must accept state bonding requirements if bonding is required at 50 percent of the construction costs, the industry minimum standard for security for large water projects and setting a minimum floor for bonding WIFIA-financed projects.

Finally, bonding does not add to bureaucratic processes of delays in infrastructure development. Contractors who bid on these large projects already have longstanding bonding programs in place.

Commerce Department – GDP Rose at 1.1 Percent Annual Rate in 2023 Q1

The Commerce Department announced that the gross domestic product, adjusted for inflation, rose at a 1.1 percent annual rate in the first quarter, which was down from a 2.6 percent rate in the last three months of 2022, but nonetheless represented a third straight quarter of growth after output contracted in the first half of last year.

The figures are preliminary and will be revised at least twice as more complete data becomes available. Growth in the first quarter was dragged down by weakness in housing and business investment, both of which are heavily influenced by interest rates. The Federal Reserve has raised rates by nearly five percentage points since early last year to tamp down inflation.