

## TOP LEGISLATIVE ISSUES

### PRESIDENT OBAMA SEEKS JOBS CREATION BILL

In this "Jobs Creation Bill" bill, President Obama is asking for additional funding for transportation and other infrastructure projects (at least \$50 billion). State transportation departments nationwide have reported nearly 10,000 infrastructure projects totaling about \$80 billion that could be started within 120 days, once federal funding is provided.

The House version, **H.R. 2847: Jobs for Main Street Act of 2010** (introduced by Senators Baucus [D-MT] and Grassley [R-IA]), whose total package includes \$150 billion, aims to create jobs by rebuilding infrastructure (e.g., \$37 billion in transportation funding), by increasing credit for small businesses, and by retaining police, firefighters, and teachers. It appears that most of the spending would be through existing programs, as with the earlier stimulus package, with a portion reserved for loans and grants to help fund some merit-based projects. However, the House Ways and Means Committee is still examining the potential offsets for the bill in an effort to assuage the concerns of the Democratic Blue Dog Coalition (i.e., currently a group of 54 fiscally conservative Democratic Party members of the House) that views the bill as violating "pay-as-you-go" rules. This legislation will apply Davis-Bacon Act prevailing wage rules to state and tribal infrastructure grants and construction bond programs.

### SENATE DEMOCRATS SCALE BACK SECOND JOBS CREATION BILL

Senate Majority Leader Harry Reid (D-NV) introduced a more simplified, focused jobs bill, as a substitute amendment to the similar House-passed package. This scaled-down package, which contains only four provisions of the earlier H.R.2847 proposal, includes \$13 billion in tax incentives for businesses to hire unemployed workers in 2010 who have been unemployed for at least 60 days. Unlike the earlier bill, however, it would not renew extended unemployment benefits and health care subsidies for jobless workers, which are scheduled to expire soon. This bill also has an extension of Build America Bonds used by state and local governments to cut financing costs for infrastructure projects, an extension for a depreciation break for capital-goods purchases, and a cash infusion (\$19.5 billion) for the depleted Highway Trust Fund that reimburses states for transportation projects, but that doesn't increase federal infrastructure spending beyond current levels. It will take a bipartisan effort to reconcile differences and pass a bill both parties can accept. While the Senate debates a new jobs bill, the states are turning more American Recovery and Reinvestment Act (ARRA) aid into project starts. As of December 31, 2009, 9,240 highway and transit projects worth \$20.6 billion were under construction. Senator Reid said to expect further activity, including an extension of \$31 billion in expired tax cuts.

### DEMOCRATS CITE SUCCESS OF FIRST INFRASTRUCTURE SPENDING IN PUSH FOR SECOND STIMULUS BILL

Congressional Democrats used the recent House Transportation and Infrastructure Committee report concerning the success of the \$64 billion of highway, transit, airport, and rail money in distributing the money and creating jobs to push for a second stimulus package. According to the report, work has begun on projects accounting for 60 percent of the stimulus's \$34 billion in total highway and transit spending. In addition, about 77 percent of the funded projects have been put out for public bidding. These projects have created more than 280,000 direct jobs, and nearly 890,000 total jobs, resulting in \$1.4 billion in new payroll spending, in turn causing nearly \$291 million in federal tax payments.

Another report, "Projects and Paychecks: a One-Year Report on State Transportation Successes under ARRA," has prompted the American Association of State Highway and Transportation Officials to call for additional infrastructure spending in a second stimulus package. The House-passed bill (H.R.2847) includes the same highway and transit funding levels as last year's stimulus package (\$27.5 billion for highway/bridge projects and \$8.4 billion for transit work), and half of the highway money must be spent within 90 days.

## **GAO BLAMES DAVIS-BACON AND BUY AMERICAN REQUIREMENTS FOR SLOWING DOWN STIMULUS PROJECT DELIVERY**

The Government Accounting Office (GAO) has blamed prevailing wage and Buy American requirements under ARRA as the cause of delays in implementing stimulus projects. Other delay causes were identified as challenges associated with starting entirely new programs, state/local budgeting issues, insufficient staff capacity, seasonal issues/weather, and a lack of clarity on the meaning of “shovel-ready projects.”

## **PRESIDENT OBAMA UNVEILS REVISED \$950 BILLION HEALTH PLAN – RECONCILIATION**

Based mostly on the original Senate bill, President Obama proposed a \$950 billion, 10-year compromise that would allow the government to deny or roll back egregious insurance premium increases. The proposal was released three days before the White House summit with Congressional Democrats and Republicans—a summit called to find common ground on health care. Obama’s plan would be paid for by a mix of Medicare cuts, tax increases, and new fees on health care industries. In the days leading up to the summit, however, Republicans said the proposal simply mirrors those provisions already approved by Congress. With this view of “we’ve seen and heard it all before,” they appeared virtually unanimous in their opposition to it, and even some Democrats who previously supported a health care remake are also having second thoughts in an election year.

Like the Senate bill, the White House plan does not impose a mandate on employers to provide coverage, but it does require them to help defray the cost if workers go into the health insurance exchange established by the proposal. Under the proposal, small businesses would receive \$40 billion in tax credits to support coverage for their workers beginning in 2010, and like the Senate bill, employers with fewer than 50 workers would be exempt from any employer responsibility policies. The President’s proposal also would increase the threshold for the excise tax on the most expensive, so-called “Cadillac” health plans from \$23,000 for a family to \$27,500 and would push back the implementation of the tax until 2018 for all plans. The President said that his plan would provide coverage to more than 31 million Americans now uninsured without adding to the federal deficit. Also, the plan conspicuously omits a government insurance plan sought by liberals but viewed as a nonstarter by conservatives and some Congressional moderates. The new plan would give the federal government the power to regulate the health insurance industry much like a public utility.

**Health Care Summit:** Though there was much talk of bipartisan agreement, each side held onto long-entrenched positions that still left them far apart. In essence, it was essentially a condensed, one-day version of the entire past year of debate over the nation’s health care crisis, with all its heat, complexity and detail, and a crash course in partisan politics. If a compromise plan could have been reached, it could have included ideas Democrats and Republicans have both supported (e.g., federal funding for high-risk pools that would extend coverage to people denied because of medical problems, and a new insurance marketplace for small employers and individuals buying their own policies). That being said, without Republican support, it appears that Democratic lawmakers now would have to use the budget reconciliation process in the Senate, under which changes to that bill could be made with a simple majority vote, rather than the 60 votes needed to stop GOP parliamentary delay tactics.

The consensus of opinion sees the renewed approach (i.e., passing a “corrections bill” through the budget reconciliation process to make the Senate legislation more acceptable to the House) as the one the Democrats will adopt. This process would require the Senate to pass a bill through a parliamentary move requiring a simple majority (only 51 votes), one which resolves any issues in its earlier version of the legislation that have prompted objections from the House Democrats. That would allow the House to then approve the Senate’s measure, thus avoiding another vote on the entire bill in the Senate, where it would almost certainly face a successful 41-vote Republican filibuster.

## **MULTIEMPLOYER PENSION FUNDS: DOL FINAL RULES IMPOSE \$1,100 DAILY PENALTY**

The DOL released a final rule that establishes a civil penalty of up to \$1,100/day against multiemployer plans in endangered or critical funding status that fail to establish mandatory funding improvement and rehabilitation plans. The regulation makes clear; however, that the penalty can be reduced or waived based on mitigating circumstances, in particular the severity or willingness of the violation. This rule becomes effective March 29, 2010, for plan years beginning on or after January 1, 2008.

### **SENATOR SCHUMER INTRODUCES PENSION FUND LEGISLATION TO HELP MULTIEMPLOYER PLANS**

Senator Charles Schumer (D-NY) introduced **S.3006**, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow multiemployer plans to amortize losses from certain fraudulent investment schemes over a 40-year period. Rep. Daniel Maffei (D-NY) introduced companion legislation (**H.R.4608**). For example, these bills would give multiemployer plans 40 years, instead of 15 years under the current law, to amortize plan losses from Madoff's investment scheme. (NOTE: In the Senate jobs creation bill, the proposed Hiring Incentives to Restore Employment Act, Section 711, would have 30 years to amortize the losses.)

### **AMENDMENT INTRODUCED TO ELIMINATE PREVAILING WAGES**

Senator John Thune (R-SD) has introduced an amendment to a tax extenders bill (H.R.4213: Tax Extenders Act of 2009) that would eliminate prevailing wage requirements from any projects funded by money authorized under ARRA. He commented that "eliminating prevailing wage requirements would lower construction costs [on average 22 percent higher than market rates] and allow for the hiring of more workers."

### **BILL INTRODUCED TO INCREASE PENALTIES FOR HIRING ILLEGAL WORKERS**

Rep. Frank Kratovil (D-MD) introduced a bill (**H.R.4627: the Criminal Penalties for Unauthorized Employment Act of 2010**) to expand the criminal and civil penalties against employers who knowingly hire unauthorized immigrants. The bill would replace the current "pattern or practice" violation requirement and instead authorize imprisonment for any individual with direct hiring authority who knowingly hires an unauthorized alien. If passed, the bill would increase the maximum terms of imprisonment, criminal fines, and civil fines.

### **TOP REGULATORY ISSUES**

#### **OSHA'S ENFORCEMENT POSTURE: CONSTRUCTION FIRMS SHOULD REVIEW SAFETY**

In light of OSHA's tougher enforcement on construction company safety, because the construction companies are being targeted, they need to ensure their internal safety compliance systems are current, comprehensive, and effective. OSHA's priority will be centered on more inspections, more citations, and larger penalties when violations are determined. If the Protecting America's Workers Act (**S.1580/H.R.2067** [introduced by Senate Majority Leader Harry Reid/Rep. Lynn Woolsey [D-CA], respectively) is passed, this enforcement effort could rapidly accelerate. Therefore, OSHA recommends that employers need to ensure all "written" programs are effective and current; compliance with all frequently cited standards, especially fall protection and scaffolding; all training programs are completed and current; and documentation is current for all employees.

#### **IRS ON TRACK TO AUDIT EMPLOYERS**

The bulk of the employment tax audit program will impact small businesses, and it will focus on payroll withholding and fringe benefits, as well as employee/independent contractor status and executive or officer compensation. Some 6,000 audits are planned over a three-year period. One of the main purposes of this audit is to measure the extent of the tax gap as it relates to employment taxes. These statistics will replace the data collected in the mid-1980s on employment taxes that is still being used as a base for figuring the employment tax end of the tax gap.

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