
## In This Issue



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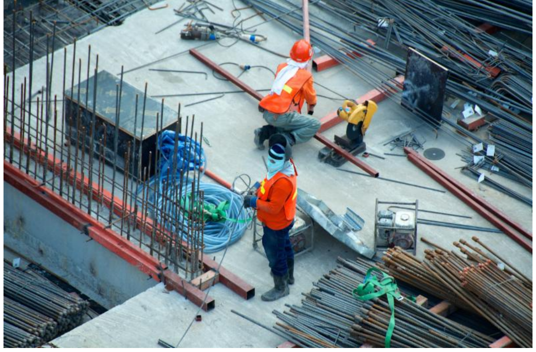
## A New Wrinkle in Missouri

## Bonding Legislation



SFAA and APCIA are seeking legislation in Missouri to clarify bonding requirements after the Brentwood case. The Missouri Supreme Court held in the case that the bonding requirements of the Little Miller Act are not applicable when a public owner hires a consultant or other third party to help develop public property on its behalf, even when the public entity is paying the consultant for construction services. The court found that since the consultant did not "provide" construction services, but merely "arranged" for them, bonding is not required.

SFAA drafted an amendment that addressed the "provides vs arranges" issue. The local contractors and subcontractors, however, wanted a broader fix that identifies the parties that might be arranging construction services and addresses whether the construction services provided were for a governmental purpose or not.

Last week, we agreed in principal to a legislative fix that all interested parties could support. We now have the support of the local general contractors and subcontractors, which will significantly help move this bill towards enactment.

The local subcontractors, however, now want this bill to require the payment bond to cover claims of suppliers at any tier. The reason given was that there are an increasing number of tiers of suppliers on public projects because:

- the requirements to use small, emerging and minority contractors create new tiers; and
- the corporate structure of suppliers includes a growing number of suppliers on a job that are all owned or operated by the same corporate parent or otherwise related to each other.

SFAA is seeking guidance from our Government Affairs Advisory Committee on how to respond to this expansion of the payment bond.

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## Ohio Targets Regulatory Restrictions with Metrics

Late last year, Ohio enacted a new law, based on the ALEC models, to review all state occupational licensing laws. SB 1 has been introduced this year to review the regulatory requirements for occupational licensing. All state agencies would be required to compile an inventory of regulatory restrictions. The bill defines "regulatory restriction" as provisions that require or prohibit actions. Regulatory restrictions contain the words "shall," "must," "require," "shall not," "may not," or "prohibit." As a practical matter, it appears that the inventory is aimed at requirements that are not in the laws or that expand/implement the law. The initial inventory is due on December 31, 2019.

In the following three years—2020 to 2022—the state agencies must reduce regulatory restrictions by 30%, which is at the rate of 10% per year. If the required reductions have not been achieved according to the schedule, the state agency may not adopt any new regulatory restrictions unless it simultaneously removes two other regulatory restrictions.

Effective January 1, 2023, the number of regulatory restrictions that can be in place in Ohio will be 70% of the total identified by all state agencies in the first inventory.

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## States Increasingly Look to Gas Tax to Fund Infrastructure

States continue to examine gas tax increases to address infrastructure needs. Alabama's Governor and the legislature's leadership are expected to push for an increase in the state’s 18-cent gas tax, but details are not yet available. Pending legislation in Arizona would increase the gas tax by 25-cents over three years, bringing the gas tax up to 43 cents per gallon, as well as a 26-cent increase on the diesel tax, bringing it up to 51 cents per gallon. Minnesota’s Governor is considering an increase to the gas tax for infrastructure, despite starting the legislative session with a $1.5 billion surplus, because he views the surplus as a one-time event.

Missouri voters rejected a ballot measure to increase the gas tax by 10 cents in November 2018, but legislators again are considering incremental gas tax increases over time as well as fees for electric and hybrid vehicles. To date, 20 states have implemented annual fees for electric and hybrid vehicles. Ohio is experiencing a $1.5 billion shortfall in transportation funding and is looking at gas tax increases to address it, but a proposed increase has not been put forward. Illinois officials recently have suggested a 30-cent increase to the state’s 19-cent gas tax.

Some states are implementing existing laws to increase gas taxes in 2019. South Carolina’s gas tax is increasing by two cents each year through 2022, resulting in an overall 12-cent increase. Tennessee’s gas tax will increase by six cents over the next three years. Nebraska implemented a 1.6 cent increase to the gas tax for 2019. North Carolina adjusted its gas tax by a 1.1-cent increase for inflation. Florida, Georgia, Indiana, Iowa, New York, Utah, and West Virginia will experience slight increases of less than one cent due to automatic adjustments required by law.

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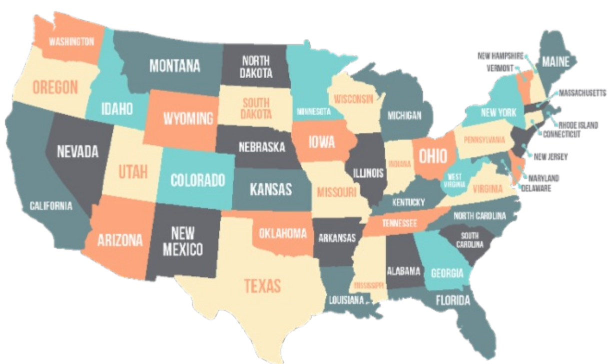


## Other State Actions This Week

The North Dakota legislature resurrected and passed a bill to increase the state bonding threshold from $150,000 to $250,000. SFAA and APCIA opposed the bill, and it initially failed in the House. We will fight the bill in the Senate.

Legislation that would amend all three of the state’s public-private partnership (P3) laws to require a 100% payment bond and a 50% performance bond passed the House on a 93-2 vote.

Legislation headed to the Governor’s desk in Virginia would add a sunrise process for review on occupational licensing regulations.

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