

LEGISLATIVE BURST



JUNE, 2018

WCOE Legislative Burst

Issue Highlights

- SBA Releases 2017 Small Business Procurement Scorecard
- Illinois Ratifies ERA—Now What?
- Legislative Policies Adopted by WCOE Nat'l Board

Letters to the Hill

Senate

Urges passage of FAA Authorization Bill with amendment for prompt pay

House

Urges support of bill for payment for Change Orders

You Might Want to Know

- Rep. Gwen Moore Prompt Payment Amendment in House FAA Reauthorization
- Four Small Business Bills Included in NDAA Bill

The Inside Story

- McConnell Cancels August Recess

Midterm Elections

- Election Outlook—Another Look at the Midterms

Save the Date

- 2019 WCOE Washington Conference – March 3 - 5

2017 SMALL BUSINESS PROCUREMENT SCORECARD Report States WOSB Prime Contracts Went Down Shows WSOB Subcontractor 5% Goal Met

In May 2018, the Small Business Administration (SBA) released its Procurement [Scorecard](#) in which the SBA summarizes federal small business contracting efforts for Fiscal Year 2017 (FY17). The agency awarded 21 agencies a grade of “A” for their small business contracting and subcontracting efforts. Two agencies received a “B” and only one agency received a “C”. Overall, the federal government surpassed its statutory goal of awarding 23% of contracts to small businesses.

The federal government failed to meet its threshold for Women-Owned prime contracts in 2016 (4.79 percent) and again in 2017 (4.71 percent). With respect to WOSB *subcontracting* goals, the report shows the government exceeded its 5 percent goal in 2017 (reaching 6.2 percent).

In a statement Sen. Cardin (D-MD) noted the percentage of small business prime contracts awarded to women-owned small businesses, *declined* from 2016. “The federal government is the world’s largest buyer of goods and services, but we clearly have work to do when it comes to ensuring more small businesses in Maryland and across the country are competing for - and winning - federal contracts,” said Senator Cardin.

The report gives WCOE the opportunity to ask the SBA to dig a little deeper into the methodology used, to ask for some industry-related data and to ask if the 5% goal is high enough. WCOE is not alone in its view.

In a May 22 [article](#), Steven Koprince, Managing Partner Koprince Law, says the SBA report, “makes it seem as though the government is doing fantastically across the board when it comes to small business contracting.” He asks the question, “Does any small contractor really think that *21 out of 24* agencies truly are doing “A” level work when it comes to promoting small business?”

ILLINOIS RATIFIES ERA Illinois Becomes 37th State to Ratify ERA

On May 30, 2018, the Illinois legislature passed the Equal Rights Amendment (ERA), following Nevada’s approval in 2017. Although the two states are 36- and 35-years, respectively, past the deadline, proponents believe this gives the ERA the momentum it needs to finally become law.

The proposed amendment reads: “*Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.*” Ratification of the ERA is one of WCOE’s top legislative priorities.

After first being introduced in 1923, the ERA passed with the required two-thirds majority in both the U.S. Senate and House in 1972. The process then required ratification by three-quarters of the state legislatures. The Congress placed a 1979 deadline on the ratification process but as the 1979 deadline approached, with 35 states having ratified, the deadline was extended to 1982. No additional states ratified it and the ERA fell three short of the required 38 states.

The recent actions by Nevada and Illinois bring the total to 37. Some legal analysts believe that once another state ratifies the ERA, the process could withstand legal challenge and accomplish ratification of the ERA.

It should be noted that five states — Idaho, Kentucky, Nebraska, Tennessee, and South Dakota — have attempted to withdraw their ratification of the ERA. Many believe, though, that legal precedent and statutory language establish that withdrawal of ratification is not accepted as valid.

There are two Congressional strategies to win the fight to make the ERA the law of the land, the three-state strategy and a traditional strategy. One, extend the deadline for ratification -- ([S.J. Res. 5](#)) **by Sen. Cardin (D-MD) and (H.J. Res. 53) by Rep. Speier (D-CA)** and, two, the other more traditional “start-over strategy” ([S.J. Res. 16/H.J. Res. 52](#)), advanced by **Sen. Menendez (D-NJ) and Rep. Carolyn Maloney (D-NY)**. That process would offer the text of the ERA as a new amendment to the U.S. Constitution that would then need to go through the full state ratification process.

States that have yet to ratify the ERA are: Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

WCOE BOARD ADOPTS TWO NEW POLICY POSITIONS

Change Order Payment on Federal Construction

WCOE supports changes to the Anti-Deficiency Act to help ensure small businesses get paid in a timely manner for change orders requested by federal government agencies on federal government construction projects.

Prompt Pay on Federal Construction Projects

WCOE supports improved compliance with the 1988 amendments to the Prompt Payment Act, “pay when paid” rules and supports more agency transparency about violations of these rules, emphasizing there is no expectation that prime contractors’ obligations to pay subcontractors falls to the federal government.

A list of all WCOE legislative policies can be found on the WCOE website. Policy positions which have been approved according to the procedures established by the WCOE Board are intended to serve as guidance to be used as support for or opposition to individual legislative proposals in order to further the interests of WCOE members and to give WCOE a higher profile on Capitol Hill.

WCOE 2018 LETTERS TO THE HILL

June 2018 –

Letter to House - in support of H.R. 2594, The Small Business Payment for Performance Act of 2017 to ensure that small business federal contractors get paid in a timely manner for change orders.

Letter to Senate - in support of passage of the FAA Authorization with prompt pay provisions included by the House

YOU MIGHT WANT TO KNOW

You might want to know... **Congresswoman Gwen Moore** (WI-04) won approval of a [prompt payment amendment](#) that was included in the FAA Reauthorization Act, H.R. 4. which would help ensure prompt payment to contractors, takes an important step forward in removing an obstacle affecting all businesses, especially those that have historically faced discrimination.

You might want to know...**The House Passed the National Defense Authorization Act NDAA with Small Business Reforms.** The next step is for the Senate to pass its version, after which any differences between the Senate and House bill must be worked out in conference before it can go to the President for signature. Versions of the following bills were included in the House passed NDAA bill.

- [H.R. 2056](#), the Microloan Modernization Act
- [H.R. 4754](#), the Change Order Transparency for Federal Contractors
- [H.R. 2333](#), the Small Business Investment Opportunity Act
- [H.R. 2364](#), the Investing in Main Street America Act
- [H.R. 5337](#), as amended to apply only to the Department of Defense, the Accelerated Payments for Small Businesses Act
- Significant portions of [H.R. 2763](#), the Small Business Innovation Research and Small Business Technology Transfer Improvements Act, were also included

THE MIDTERM ELECTIONS *(As of June 8)*

Senate Update

California: Sen. Dianne Feinstein (D) advances into the general election with a fellow Democrat, state Senator and former Senate President Kevin de Leon (D-Los Angeles). In a field of 35 candidates, Sen. Feinstein received 44% of the vote, while Mr. de Leon attracted 11% to secure second place and a general election qualifying position. Sen. Feinstein is now a heavy favorite to win re-election in November.

Mississippi: In Tuesday's primary, Democrats David Baria, the state House Minority Leader, and venture capitalist Howard Sherman advanced to a June 26th run-off election. The winner will face Sen. Roger Wicker (R) in November.

Montana: State Auditor Matt Rosendale overcame three other Republicans to win the party primary earlier in the week. Mr. Rosendale now faces an uphill challenge against Sen. Jon Tester (D) in the general election.

New Jersey: Sen. Bob Menendez (D) captured only 62% in his Democratic primary against an opponent who did nothing more than put her name on the ballot. Former Celgene pharmaceutical company CEO Bob Hugin was an easy winner in the Republican primary. This expensive general election pairing may yield more competition than originally forecast.

Ohio: With Sen. Sherrod Brown (D) and Rep. Jim Renacci (R-Wadsworth) both winning their Democratic and Republican primaries on May 8th, Fallon Research conducted a new general election survey (5/21-25; 800 OH likely voters) that finds the incumbent holding a comfortable lead. According to Fallon, Sen. Brown records a 48-34% lead over Rep. Renacci.

Wisconsin: According to a new Tarrance Group poll, state Sen. Leah Vukmir (R-Brookfield) has taken the lead in the US Senate Republican primary. Sen. Vukmir enjoys backing from the conservative flank of the Wisconsin party, and the survey released late this week (800 WI likely Republican primary voters), projects that she has pulled ahead of businessman and former Democrat Kevin Nicholson, 36-29%. Earlier, an American Viewpoint survey (5/29-31; 500 WI likely Republican primary voters) found Mr. Nicholson clinging to a 32-30% edge.

House Update

AL-5: Rep. Martha Roby (R-Montgomery) was forced into a July 17th run-off election with former Democratic Congressman Bobby Bright, who is now a Republican. In a crowded field, Ms. Roby secured only 39% of the

vote on June 5th, meaning she has vulnerability in a run-off.

California: All seven of the competitive US House races in the top two primary format produced a Republican and a Democrat advancing into the general election. The race that is still uncalled resides in Orange County's 48th District, where Democrats Hans Keirstead and Harley Rouda are only 129 votes apart with mail ballots still arriving. The election authorities will accept votes through midnight on Friday, June 8th. The two Democrats are vying for second place and the right to oppose Rep. Dana Rohrabacher (R-Costa Mesa) in the general election.

HI-1: Democrat Ed Case represented Hawaii's 2nd District for two terms, winning his first election in 2002 and leaving Congress at the beginning of 2007. He has since twice run for US Senate, once for Governor, and once in the most recent special election in the 1st District. As the candidate filing deadline expired on Tuesday, Mr. Case again has become a candidate. At the last minute, he filed for the open 1st Congressional District. He joins Lt. Gov. Doug Chin, state Sen. Donna Mercado Kim, state Reps. Beth Fukumoto, and Kaniela Ing, and Honolulu City Councilman Ernie Martin in the open August 11th Democratic primary.

Iowa: As expected, state Rep. Abby Finkenauer (D-Dubuque) easily won Tuesday's Democratic primary and now opposes two-term Rep. Rod Blum (R-Dubuque) in what will be a toss-up general election. In the 3rd District, high tech firm owner Cindy Axne easily won the Democratic primary and advances into an underdog challenge against two-term Rep. David Young (R-Van Meter/Des Moines).

MI-13: Two weeks ago, John Conyers III, son of resigned Rep. John Conyers (D-Detroit), was disqualified from the regular election ballot to succeed his father in the House because he failed to submit 1,000 valid registered voter petition signatures. Late this week, it was reported that Mr. Conyers' legal challenge to the administrative ruling was denied meaning that he will not be a candidate in the November election. Nine Democrats are on the ballot for the full term including Mr. Conyers cousin, state Sen. Ian Conyers (D-Detroit). The Democrats will hold the seat, and the crowded primary results will determine who succeeds the former Dean of the US House. John Conyers was first elected in 1964 and served until the end of last year when he resigned from office.

MN-5: In a flurry of political activity surrounding the Democratic endorsing convention and Tuesday's candidate filing deadline, Rep. Keith Ellison (D-Minneapolis) jumped into what is now an open Attorney General's race after incumbent Lori Swanson (D) was denied the party endorsement. In response, Ms. Swanson abandoned her re-election bid and instead joined the Governor's primary where she will oppose endorsed candidate Erin Murphy, a St. Paul state Representative, and US Rep. Tim Walz (D-Mankato).

Rep. Ellison vacating his safe Democratic Minneapolis congressional district gave potential candidates only hours to decide if they would run for the House. In response, eight Democrats filed to run including Rep. Ellison's ex-wife, a former state House Speaker, three sitting state legislators, and one ex-state Senator. Three Republicans are also in the race, but the August 14th Democratic primary will determine who wins the general election. Mr. Ellison's departure now means 63 House seats are open (42 Republican-held; 20 Democratic; with one new seat created through Pennsylvania redistricting).

MS-3: Local District Attorney Michael Guest and hospital system company executive Whit Hughes advance to a June 26th Republican run-off election in the open the 3rd District. Mr. Guest is favored to win the party nomination and replace retiring Rep. Gregg Harper (R-Pearl/Jackson) in November.

Montana: Ex-state Representative Kathleen Williams won a crowded and close Democratic primary and now advances to face freshman Rep. Greg Gianforte (R-Bozeman) in the state's at-large general election. The Congressman is a clear favorite for re-election.

[New Jersey:](#) Three key congressional primaries were decided on Tuesday. State Sen. Jeff Van Drew (D) is now heavily favored to convert the open 2nd District for the Democrats in November. In the competitive 7th District, former State Department official Tom Malinowski won the Democratic primary and advances to challenge five-term Rep. Leonard Lance (R-Clinton Township) in the fall. In the open toss-up 11th District, state Assemblyman Jay Webber (R-Morristown) and attorney Mikie Sherrill will square off in an expensive general election.

[New Mexico:](#) Former state Democratic Party chair and Tribal Administrator Deb Haaland captured the Democratic congressional primary and is now heavily favored to defeat Republican Janice Arnold-Jones in the open 1st District general election. In the open 2nd District, Republican state Rep. Yvette Harrell (R-Alamogordo) advances into the general election against attorney Xochitl Torres-Small who easily won the Democratic primary. Ms. Harrell begins the general election as a slight favorite.

[NY-11:](#) A new Siena College survey (5/29-6/3; 513 NY-11 likely Republican primary voters) turns in a surprising result. Their data projects that former US Rep. Michael Grimm (R-Staten Island) is leading incumbent Rep. Dan Donovan (R-Staten Island) by a substantial 47-37% margin. Mr. Grimm was elected to three terms in the House, resigning at the beginning of his third because of a federal tax fraud conviction. Mr. Grimm would then serve eight months in federal prison. After his release, he began campaigning to regain the seat he was forced to relinquish. Rep. Donovan, a former Staten Island District Attorney, won the special election to replace Mr. Grimm in 2015, and then clinched a 57-34% general election victory for the full term. The New York federal primary is June 26th.

[NY-18:](#) New York is the only state in the country that has two separate primaries, one for federal offices (June 26), and another for state (September 13) elected positions. With the Attorney General's race now open when Eric Schneiderman (D) resigned, a battle is ensuing in the state Democratic primary. Yesterday, Rep. Sean Patrick Maloney (D-Cold Spring/West Point) said he is going to enter both primaries. In June, he will seek re-nomination for his US House seat. Come September, he will run for the statewide Democratic Attorney General's nomination. Should he win both, Mr. Maloney says he will withdraw from the congressional race. This would force the local party to name a replacement with only about seven weeks to go in the general election.

[South Dakota:](#) Former state Public Utilities Commissioner Dusty Johnson won the at-large US House Republican primary, and now becomes the prohibitive favorite to win the open seat in the fall. Mr. Johnson is now heavily favored to defeat Democratic nominee Tim Bjorkman, a retired Circuit Court judge.

[VA-5:](#) The 5th District Republican Party committee met last weekend to nominate a replacement for incumbent Rep. Tom Garrett (R-Scottsville/Charlottesville) who is not seeking a second term. With a scant one-vote margin, the committee chose local businessman Denver Rigglesman as the party nominee. He will face Democrat Leslie Cockburn in the general election. This will be a competitive campaign, but Mr. Rigglesman will benefit from the district's Republican voting history.

THE INSIDE STORY

[Senate Majority Leader Mitch McConnell announces the Senate will skip much of its August recess.](#)