



MEMORANDUM

May 25, 2012

To: Hon. Jeff Flake
Attention: Colleen M. Donnelly

From: Brian T. Yeh
Legislative Attorney, American Law Division
7-5182

Subject: **Effect of the Flake Amendment to the FY 2013 Military Construction/VA Appropriations Bill on Project Labor Agreements**

This memorandum is in response to your request for an assessment of whether the text of an amendment offered by Representative Flake to the Military Construction and Veterans Affairs and Related Agencies Appropriations Act for Fiscal Year 2013 (H.R. 5854) would disallow the use of project labor agreements for military construction projects. As explained below, it appears it would not have such an effect.

The National Labor Relations Act of 1935 (NLRA) gives most private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and working conditions. The NLRA allows workers in the construction industry to enter into a collective bargaining agreement (CBA) before a project begins. A project labor agreement (PLA) is a CBA that applies to a specific construction project and lasts only for the duration of the project.¹ In February 2009, President Obama signed Executive Order (EO) 13502, which encourages federal agencies “to consider requiring” the use of PLAs on publicly funded large-scale construction projects (where the total cost of the project to the federal government is \$25 million or more) “in order to promote economy and efficiency in [f]ederal procurement.”² However, the EO states that it “does not require an executive agency to use” a PLA on any construction project.³

The amendment offered by Representative Flake to H.R. 5854 states as follows:

Sec. __. None of the funds made available by this Act may be used by any Government authority or agent thereof awarding a construction contract on behalf of the Government, in any solicitations, bid specifications, project agreements, or other controlling documents, to require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations; nor shall such funds be used to discriminate against or give preference to such bidders, offerors, contractors, or subcontractors based on their entering or refusing to enter into such agreements. The previous sentence does not apply to construction contracts awarded before the date of the enactment of this Act.

¹ For more information about PLAs, see CRS Report R41310, *Project Labor Agreements*, by Gerald Mayer.

² Executive Order 13502, § 1(b), 74 Fed. Reg. 6985 (February 11, 2009); see also 48 C.F.R. §§22.501-22.505.

³ Executive Order 13502, § 5.

Based on the plain language of the amendment's text, PLAs for military construction projects would not be forbidden, as it expressly provides that "[n]one of the funds made available by this Act may be used by any Government authority ...to require **or prohibit** ... bidders ... to enter into ... agreements with one or more labor organizations..." (emphasis added). However, the amendment would have the effect of:

(1) preventing federal agencies from mandating the use of PLAs (as Executive Order 13502 encourages) and (2) prohibiting federal agencies from giving preference to a bidder/contractor based on the signing of a PLA.
