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## LEGISLATIVE UPDATE

By Roy Littlefield

### MOTOR VEHICLE SAFETY ACT OF 2014 CLARIFYING SSDA-AT'S POSITION

Last week I reported on the introduction of the Motor Vehicle Safety Act of 2014 in both the House and the Senate.

I was not clear on SSDA-AT's position, so I wanted to better explain:

A recent ABC News expose discussed the problems associated with voluntary tire registration and tire recalls. As part of the effort in the early 1980s to move from a mandatory tire registration program to a voluntary tire registration program, I am sensitive to the fact that NHTSA is under pressure to get the registration rates up. We do not want to return to a mandatory system.

We saw the Motor Vehicle Safety Act as a possible vehicle to tell Congress what we as an association and as an industry are doing to increase public awareness in this area; and to express to Congress our frustration with NHTSA that the tire consumer education program required by law in the Energy Act of 2007 has stalled in the bureaucracy. In-

creasing public awareness of the voluntary tire regulation system should be a piece of the consumer awareness program dictated by the 2007 Energy Act.

SSDA-AT wants to come out in support of public transparency for voluntary tire registration and recalls; wants to work to raise the level of tire registration; and wants to make the case to Congress that this effort belongs in the Consumer Education program that is already a signed law.



There are parts of the Motor Vehicle Safety Act that puts unfair and unrealistic burdens on the tire manufacturers; and on those sections of the bills SSDA-AT will stand united with

the tire manufacturers and with other industry associations in opposition to the bills as introduced.

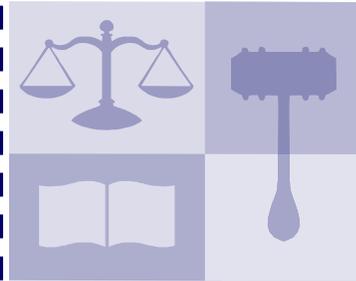
### SECTION-BY-SECTION SUMMARY OF THE MOTOR VEHICLE SAFETY ACT OF 2014 COMMITTEE ON ENERGY AND COMMERCE

#### TITLE I -

#### Transparency and Accountability

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# GENERAL COUNSEL CORNER



## *Second Immigration Alert: They Can Get You Coming Or Going*

By Peter H. Gunst, Esquire  
pgunst@lawyers.com

**“The small employer finds itself caught between Scylla and Charybdis.”**

Some months ago, we warned of the penalties that small employers could incur when employees fail to properly fill out Form I-9's, or the employers fail to obtain adequate documentation authenticating employees' work status. We recounted the experience of Ketchikan Drywall Services, Inc., a small Washington state contractor that incurred a fine of \$173,250 for its sloppy hiring practices.

Now, the Department of Justice is going against small employers for being too demanding by requesting specific documentation from new hires to verify their employment eligibility.

In the last two months alone, the Department of Justice has issued four press releases concerning settlements entered into with small employers who were accused of violating the Immigration and Nationality Act (“INA”), either by demanding from foreign employees specific documentation issued by the Department of Homeland Security in order to verify their employment eligibility, or by requiring permanent residents to present new eligibility documentation when their Permanent Resident cards expired.

The penalties that the employers paid to settle the complaints lodged against them were substantial, ranging from \$40,500 to \$115,000.

The small employer finds itself caught between Scylla and Charybdis. If it is too lax

in obtaining documentation, it faces the risk of substantial penalties. If it is too demanding in the documentation that it requires, it also faces the risk of substantial penalties.

The Department of Justice has defined the line that employers must walk between being too lax or too demanding:

The anti-discrimination provision of the Immigration and Nationality Act (INA) prohibits unfair documentary practices during the employment eligibility verification (Form I-9) process. In general, employers may not request more or different documents than are required to establish a worker's identity and eligibility to work in the United States or reject documents that appear to be reasonably genuine upon their face. They must accept all documents that are sufficient to complete the form as long as they appear reasonably genuine on their face and relate to the employee. For example, all individuals who possess a driver's license and unrestricted Social Security card may present those documents to satisfy Form I-9 requirements. Similarly, employers may not require aliens to produce “green cards” or United States citizens who appear “foreign” to produce birth certificates. Instead, it is the employee's choice which of the acceptable Form I-9 documents

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# Are You Providing Registration For Every Tire You Sell? Or Paying the \$10,000 Fine per Tire?

By: Roy Littlefield IV

Did you know that every tire that is sold at your repair shop must be accompanied by a completed registration for every customer?

In fact, registration of tires has been a federal mandate of The National Highway Traffic Safety Administration (NHTSA) since the 1970s. And recently enforcement has increased. If you are not currently complying with this law, you could be fined up to \$10,000 per tire, up to \$400,000 per location.

As a repair shop owner you are required to provide the customer with: A tire registration form to document the brand of tire, Department of Transportation (DOT) tire identification numbers (TIN), and the selling dealer's name and address, or the dealer must register the tires electronically providing the same information as above.

The registration form must be pre-addressed for the customer and given to them free of charge. Some tires also have online registration available as an option.

Tire registration is seen as a top priority for the safety of the customer. When tires are registered, it is easier for a consumer to find out if their tire is facing a recall. Tire registration at the time of purchase is the only realistic way for a manufacturer to notify the buyer of the tire recall.

The full law is as follows:

## § 574.8 Information requirements—Tire Distributors and Dealers

### (a) Independent distributors and dealers.

(1) Each independent distributor and each independent dealer selling or leasing new tires to tire purchasers or lessors (hereinafter referred to in this section as "tire purchasers") shall comply with paragraph (a)(1)(i), (a)(1)(ii) or (a)(1)(iii) of this section:

(i) At the time of sale or lease of the tire, provide

each tire purchaser with a paper tire registration form on which the distributor or dealer has recorded the following information:

(A) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and  
(B) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(ii) Record the following information on a paper tire registration form and return it to the tire manufacturer, or its designee, on behalf of the tire purchaser, at no charge to the tire purchaser and within 30 days of the date of sale or lease:

(A) The purchaser's name and address,  
(B) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and  
(C) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(iii) Electronically transmit the following information on the tire registration form by any means listed on the form by the tire manufacturer, or by such other means as may be authorized by the tire manufacturer, to the tire manufacturer or its designee, using secure means (e.g., https on the Web), at no charge to the tire purchaser and within 30 days of the date of sale or lease:

(A) The purchaser's name and address,  
(B) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and  
(C) The distributor's or dealer's name and street address. In lieu of the street address, and if one is

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## Louisiana DOTD Reopens Bridge Damaged by Barge Strike Well Ahead of Schedule

On May 17, the Louisiana Department of Transportation and Development reopened a vital bridge for Iberville Parish residents a month and a half ahead of schedule, allowing citizens to get back to their driving routines sooner than expected.

The La. 77 bridge over the Intracoastal Canal closed to traffic at the end of February after experiencing severe damage from a barge strike. Needing to get the bridge back up and running for the roughly 1,400 drivers who use the bridge each day, DOTD worked up an emergency contract with C.E.C. Contractors to fix the bridge. Work began on the \$900,000 in repairs on March 12, and was scheduled to be completed in late June. In the meantime, DOTD, the Louisiana Department of Wildlife and Fisheries, and Iberville Parish partnered to get people over the canal via



pontoon boat—a service that attracted 15,000 people during the bridge closure.

In working together through that partnership, DOTD was able to reopen the roadway 45 days ahead of schedule, allowing not just people but their vehicles across the Intracoastal Canal once again.

"I am pleased that we are reopening this important bridge to traffic much earlier than expected," DOTD Secretary Sherri

LeBas said in a statement. "I'd like to thank the contractor, the Louisiana Department of Wildlife and Fisheries and Iberville Parish officials for working with DOTD over the past few months to minimize the impacts this bridge closure had on local residents."

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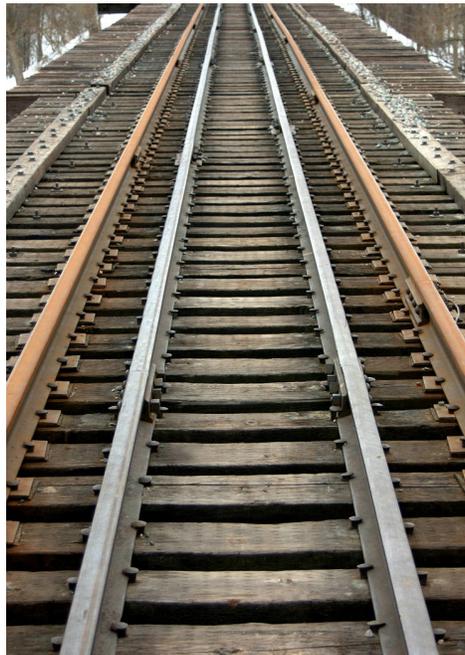
## House Appropriations Committee Passes Transportation FY 2015 Funding Measure

The House Appropriations Committee approved its fiscal year 2015 budget for Transportation, Housing and Urban Development, a proposal that includes \$71 billion in funding for the U.S. Department of Transportation. That level is \$1.1 billion below the FY 2014 enacted level and \$19.5 billion less than President Obama's FY 2015 transportation request. The measure was passed through committee by a 28-21 vote.

The bill provides \$40.3 billion for the Federal-aid Highway Program (provided Congress passes a bill reauthorizing the surface transportation programs and ensures the solvency of the Highway Trust Fund), equal to the FY 2014 level. The measure also includes \$15.7 billion for the Federal Aviation Administration (\$7.3 million less than the FY 2014 enacted level), which provides funding for FAA's Next Generation Air Transportation Systems and Contract Towers. In this measure, \$1.4 billion goes to the Federal Railroad Administration, a cut of \$193 million from the FY 2014 enacted level, and \$10.5 billion for the Federal Transit Administration (\$253 million under the FY 2014 enacted level). Transit formula grants would be funded at the FY 2014 level of \$8.6 billion, while New Starts funding would be reduced by \$252 million to \$1.7 billion in FY 2015. The bill provides \$824 million to the National Highway Traffic Safety Administration (up \$5 million from FY 2014 levels) and \$572 million for the Federal Motor Carrier Safety Administration. The bill would cut Transportation Investment Generating Economic Recovery (TIGER) grants from the enacted FY 2014 level of \$500 million to \$100 million and also stipulates that the grants be used for roadway, bridge, port, and rail/intermodal

improvements only.

Amendments were offered to do away with the bill's restrictions on the TIGER grants (to allow transit and alternative transportation projects) and another to increase TIGER funding. Another amendment sought to add funds for Amtrak, while a funding increase for FTA's New Starts Program was also proposed. None of those amendments passed.



## IRS Adopts "Taxpayer Bill of Rights"

The Internal Revenue Service announced the adoption of a "Taxpayer Bill of Rights" that will become a cornerstone document to provide the nation's taxpayers with a better understanding of their rights.

The Taxpayer Bill of Rights takes the multiple existing rights embedded in the tax code and groups them into 10 broad categories, making them more visible and easier for taxpayers to find on IRS.gov.

Publication 1, "Your Rights as a Taxpayer," has been updated with the 10 rights and will be sent to millions of taxpayers this year when they receive IRS notices on issues ranging from audits to collection. The rights will also be publicly visible in all IRS facilities for taxpayers and employees to see.

"The Taxpayer Bill of Rights contains fundamental information to help taxpayers," said IRS Commissioner John A. Koskinen. "These are core concepts about which taxpayers should be aware. Respecting taxpayer rights continues to be a top priority for IRS employees, and the new Taxpayer Bill of Rights summarizes these important protections in a clearer, more understandable format than ever before."

The IRS released the Taxpayer Bill of Rights following extensive discussions with the Taxpayer Advocate Service, an independent office inside the IRS that represents the interests of U.S. taxpayers. Since 2007, adopting a Taxpayer Bill of Rights has been a goal of National Taxpayer Advocate Nina E. Olson, and it was listed as the Advocate's top priority in her most recent An-

nual Report to Congress.

"Congress has passed multiple pieces of legislation with the title of 'Taxpayer Bill of Rights,'" Olson said. "However, taxpayer surveys conducted by my office have found that most taxpayers do not believe they have rights before the IRS and even fewer can name their rights. I believe the list of core taxpayer rights the IRS is announcing it will help taxpayers better understand their rights in dealing with the tax system."

The tax code includes numerous taxpayer rights, but they are scattered throughout the code, making it difficult for people to track and understand. Similar to the U.S. Constitution's Bill of Rights, the Taxpayer Bill of Rights contains 10 provisions. They are:

1. The Right to Be Informed
2. The Right to Quality Service
3. The Right to Pay No More than the Correct Amount of Tax
4. The Right to Challenge the IRS's Position and Be Heard
5. The Right to Appeal an IRS Decision in an Independent Forum
6. The Right to Finality
7. The Right to Privacy
8. The Right to Confidentiality
9. The Right to Retain Representation
10. The Right to a Fair and Just Tax System

The rights have been incorporated into a redesigned version of Publication 1, a document that is routinely included in IRS correspondence with taxpayers. Millions of these mailings go out each year. The new version

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## IRS Adopts "Taxpayer Bill of Rights"

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has been added to IRS.gov, and print copies will start being included in IRS correspondence in the near future.

The timing of the updated Publication 1 with the Taxpayer Bill of Rights is critical because the IRS is in the peak of its correspondence mailing season as taxpayers start to receive follow-up correspondence from the 2014 filing season. The publication initially will be available in English and Spanish, and updated versions will soon be available in Chinese, Korean, Russian and Vietnamese.

The IRS has also created a special section of IRS.gov to highlight the 10 rights. The web site will continue to be updated with information as it becomes available, and taxpayers will be able to easily find the Bill of Rights from the front page. The IRS internal web site for employees is adding a special section so people inside the IRS have easy access as well.

As part of this effort, the IRS will add posters and signs in coming months to its public offices so taxpayers visiting the IRS can easily see and read the information.

"This information is critically important for taxpayers to read and understand," Koskinen said. "We encourage people to take a moment to read the Taxpayer Bill of Rights, especially when they are interacting with the IRS. While these rights have always been there for taxpayers, we think the time is right to highlight and showcase these rights for people to plainly see."

"I also want to emphasize that the concept

of taxpayer rights is not a new one for IRS employees; they embrace it in their work every day," Koskinen added. "But our establishment of the Taxpayer Bill of Rights is also a clear reminder that all of the IRS takes seriously our responsibility to treat taxpayers fairly.

Koskinen added, "The Taxpayer Bill of Rights will serve as an important education tool, and we plan to highlight it in many different forums and venues."



## Improve America's Infrastructure Quickly? Yes, We Can

The list of stalled or over-budget infrastructure projects in the U.S. is long. In its most recent evaluation, the American Society of Civil Engineers gave the U.S. a D+ grade for the quality of its infrastructure and estimated that a failure to address these issues will hurt the country's global competitiveness; costing \$1.1 trillion in U.S. trade value and 3.5 million jobs over the next five to ten years. Obviously, infrastructure matters. So how can the U.S. do better?

That was the question we set out to research through meetings with government leaders, private investors, and private operators in the field of infrastructure. These meetings highlighted that while money for infrastructure is important, it is not the main issue, as many would have us believe.

More important, the experts said, was that regulatory and political issues stall the process, prolonging construction and development. Some of this is inevitable and positive, such as improved environmental planning and better safety standards. But in too many cases, projects undergo death by a thousand meetings. Most solutions to these process problems have tended to be legislative in nature (e.g., PPP frameworks, new infrastructure delivery organizations, creative tax or financing structures) and generally fail to get implemented or get implemented in a sub-optimal manner.

There are short-term tactical actions to quickly unlock the infrastructure bottleneck while long-term legislative solutions are undertaken. The experts we spoke with agreed on a few principles to accomplish this.



**Shorten the planning process:** A big chunk of the cost of US infrastructure projects is incurred before a shovel is put in the ground, chiefly in the form of myriad hearings and negotiations across multiple agencies. Waiting for lawmakers to remove the inertia and complexities in the current approach is likely to take a long time. Nevertheless, some regions are making progress in streamlining planning and permitting processes without introducing new legislation.

Louisiana's Transportation Infrastructure Model for Economic Development (TIMED), a multi-billion-dollar road and bridge construction program funded by a gasoline tax, has made the planning process much more efficient. The agency got permission from the state Department of Transportation (DoT) to hire a program manager to acquire access rights and negotiate deals with utilities all along the route, rather than parcel by parcel. Then the manager returned the files to the DoT for execution (as the law required), but with a pre-negotiated outcome in almost 80 percent of the cases. Analysts say this approach saved years of planning.

Moreover, there is no reason that different agencies cannot find new ways to cooperate to streamline environmental reviews, while still fulfilling their duties. Through a program offered by the Federal Highway Administration, for example, the Utah Department of Transportation used a cloud-based distribution system to share digital

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## Improve America's Infrastructure Quickly? Yes, We Can

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maps of proposed transportation systems with the state Division of Wildlife Resources. Both departments could now access, review, and collaborate almost instantaneously. The process enabled Utah to cut the cost of some reviews by as much as 98 percent.

Shift risk toward the private sector: The consensus of the 50 experts was that private companies would accept more risk in exchange for more profit potential and less complication in development. Under the current paradigm ("design-bid-build"), agencies put out one proposal for design and one for building. Not only does the agency sponsoring the project have to manage multiple rounds of proposals, but builders have to interpret what the designers had in mind. The process is costly, both in time and money for all involved.

An alternative approach is "design-build", in which the agency structures the process for participating bidders to both design and build the project. This can, in the right circumstances, save time and create greater accountability for project completion.

Texas adopted this system with its recent extension of the George Bush Turnpike, a 52-mile, six-lane toll road in that included more than 40 bridges. It was completed under budget and within an aggressive, 32-month schedule while maintaining a strong safety record.

Be a pioneer: Pilot projects can test the rules governing planning and development processes; they can show legislators and regulators that new development approaches can work while still protecting the public's interests. The Federal Highway Ad-

ministration's Special Experimental Project Number 15 (SEP-15) and the federal government's Moving Ahead for Progress in the 21st Century Act (MAP-21) are forcing re-evaluation of the status quo and enabling greater efficiency in the review process. Agencies can take advantage of these programs to not only develop projects faster by assigning them pilot status, but they can also shed light on the burdens of existing rules and improve the planning and development processes for future projects.

Think about how not to build: The most cost-effective project is the one that does not have to be built; that means getting more out of existing infrastructure. Technologies like smart traffic signals, dynamic pricing, smart grids, and bridge sensors increase capacity without bricks and mortar. The I-95 highway in Miami, infamously the most crowded road in South Florida, uses camera and sensor-based technology to assess congestion, then imposes different toll rates on that basis. This "variable demand pricing" allows both the free and toll roads to operate at maximum efficiency, reducing the need to build more, and has helped to boost demand for buses, which have become more reliable.

New infrastructure projects typically generate a lot of enthusiasm. As the new roads, bridges, and mass transit is built, there is genuine excitement to see its beauty begin to emerge. But commuters and taxpayers have every right to ask: Why couldn't these solutions have happened decades ago? That's a fair question. The U.S. has spent decades to get into this infrastructure muddle, and it will not get untangled quickly. But these relatively simple fixes can help address the country's infrastructure needs in a faster and more effective manner.

## Another WOTC Update

Last month, we informed you of Ways and Means Chairman Dave Camp's plan to review each tax extender one-by-one, followed by an up or down vote on a bill to permanently extend or repeal the extender.

This process includes WOTC, which Chairman Camp opposes renewal of, so we launched a lobbying campaign with a goal of winning a super majority of Ways and Means Republicans for permanent WOTC when the decisive vote is taken. That vote will determine the policy of the Republican House in next year's tax reform bill, and if the vote is against WOTC, it will be next to impossible to reverse in the House. We could go into a Senate-House conference on tax reform with the House opposed to renewal and, should Republicans capture the Senate in November, our Democratic support there neutralized.

Till now, Chairman Camp has followed his game plan. Of seven tax extenders the Chairman and Republican majority of the Committee have decided to make permanent, the research and experimentation tax credit (R&E) heads the list. The Ways and Means bill extending this credit was passed by the House after two days of debate a week ago.

Afterward, the White House threatened to veto the R&E bill because, it said, permanent R&E should be realized only in corporate tax reform, when money will be available to fund R&E and similar extenders to be made permanent by cutting other credits and deductions, mainly international; as corporate tax reform isn't on the table now, enacting a costly R&E bill at this time isn't in order, says the White House.

Chairman Camp still wants to move a bill mak-

ing Section 179 expensing increases permanent, but perhaps because of the bruising two-day battle on R&E in the House last week when the Republican coalition split, or because of the President's veto threat, or because members would be forced to vote once again on a bill that adds to the deficit, House leaders have decided to change course and not vote on the six remaining bills to make particular extenders permanent.

This can happen in June or July-time is growing short for our lobbying Ways and Means Republicans so it's urgent we re-double our efforts. Everyone must do their part; this cannot be left to Washington people alone-Ways and Means Republicans must hear from their states or districts. To assure WOTC survives, it's imperative we go the extra mile-company CEO's and heads of disability, veterans, and community organizations should meet with Ways and Means Republicans in states where they operate, and explain how nearly a million targeted workers a year are finding jobs, earning wages, and paying taxes-raising them and their families out of poverty and off welfare and food stamps, saving government money-while employers' extra cash flow from the credits gets plowed back into state and local economies and boosts their well-being.

Meetings should be followed up by more contacts as the day of voting draws near, until the congressperson makes a decision whether to be for WOTC or against it. So far only two Ways and Means Republicans are WOTC supporters, Congressman Aaron Schock of Illinois and Congresswoman Lynn Jenkins of Kansas; they need not be contacted. Chairman Camp is against WOTC, and remaining Committee Republicans are uncommitted.

## Eric Cantor's Loss: A Stunning Upset

No one thought Eric Cantor, the House majority leader, could actually lose. His primary challenge in his suburban Richmond district, from a local economics professor named David Brat, was thought to be nominal. No sitting majority leader has lost a primary since the position was invented in 1899. Cantor, though unloved by many in his party and in Congress, was seen as the speaker-in-waiting whenever John Boehner decided, or was forced, to hang it up.

But all those assumptions went out the window Tuesday night, when Cantor shockingly lost—and by a wide margin. With 97 percent of the vote counted, Brat had 56 percent of the vote to Cantor's 44 percent.

In retrospect, there were signs Cantor felt endangered. As the *Washington Post* reported, in a dispatch that seemed far-fetched at the time but now appears prescient, Cantor was booed at a local Republican gathering last month, and his hand-picked candidate for district GOP chair was defeated. His campaign aired TV ads and sent mailers crediting him for blocking immigration reform—signs he had begun to sense a threat. Meanwhile, Brat, a Tea Party activist, was championed by national conservatives like Ann Coulter and Mark Levin. (According to Virginia's "sore-loser" law, Cantor can't run against Brat as an independent in the general election, though he might be allowed to mount a write-in bid.)

Cantor's loss will prompt the reexamination of some other pieces of conventional wisdom: One, that the Tea Party is dead—clearly, at least in one restive precinct, anti-Washington anger is alive and well. And two, that supporting immigration reform doesn't necessarily hurt Republicans in primaries—Cantor's supposed support for "amnesty" was

Brat's chief line of attack. Supporters of immigration reform fear that Republican members of Congress, leery of touching the issue before, now will never be persuaded that it is not politically toxic. As one immigration-reform-supporting conservative operative emailed me mournfully: "I can't vote for Democrats because I am pro-life, but my party seems beyond repair."

In truth, it's not quite so simple. The Tea Party has come up short in most of the big races where it played this year, and other, unapologetic Republican supporters of immigration reform, like North Carolina Representative Renee Ellmers and South Carolina Senator Lindsey Graham, have held on in the face of primary challenges. Cantor may have suffered more for his role as part of the unpopular House leadership than for any particular issue. After Republicans took the House in 2010, Cantor positioned himself as conservatives' voice in leadership, a role in which he was blamed for scuttling the 2011 debt-limit deal that led to the nation's credit being downgraded. But he had since patched things up with Boehner, a turnaround that led many House Republicans in both camps—the hard right and the establishment—to be unsure they could trust him. Cantor was ambitious, perpetually billed as a "rising star" despite his seven terms in Congress, but his ideas, like his "Making Life Work" reform agenda, never seemed to gain traction within his party.

There are few real surprises in politics. Tuesday's result in Richmond was a rare exception. The political world now must get to know an obscure Randolph-Macon College professor named David Brat; his Democratic opponent, an even more obscure professor at the same college named Jack Trammell; and a new world order in the House of Representatives.

## Route 35 Road Work to Stop for Summer in New Jersey

Business owners convinced state transportation officials on Monday to stop all Route 35 road construction for the summer.

State Department of Transportation officials were considering whether to continue construction on a 1.7 mile section of Route 35 south in Brick during the summer. But after hearing from Lavallette merchants on Monday, including Crab's Claw Inn owner Sam Hammer, transportation Commissioner James Simpson made his decision to halt that work while standing in the restaurant.



"Is it imperative to have to do this?"

Hammer asked, expressing concern for other businesses. "Some of these businesses don't know what's going to happen, there are so many rumors. Some are not going to make it."

Simpson, who spoke to two other business owners, the leader of the Lavallette Business Association and borough officials before talking to Hammer, announced his decision in the restaurant. There are 75 businesses in the business district on Route 35 north, said Mark Speaker, the business association president.

"Your concerns are the same as the governor's. We'll leave it alone," Simpson told Hammer. "You've got it; it's done."

Hammer called the decision to have two lanes open for traffic in both directions of Route 35 "tremendous."

"That's wonderful. You know how that will help us?" he said to Simpson. "I'll never forget you." The decision, however, does come with a price. Not working on that section of Route 35 south will add time to the project, Simpson said. But

he said Gov. Chris Christie expressed concern the road project would affect businesses this summer.

This is the second summer of the massive \$265 million project to rebuild more than 12 miles of Route 35, which was severely damaged by superstorm Sandy. The project will replace pavement and the underground structure, which supports the highway and drainage to prevent flooding.

Plans called for shutting down construction for Memorial Day weekend on Thursday and halting all work by DOT contractors from June 13 to Sept. 3. Simpson said officials had planned to decide Wednesday whether to keep working on the 1.7 mile section of Route 35, which would have reduced it to one lane.

Andrea Schosser, president of Schlosser Real Estate, said she hopes the news will help rent summer houses.

"We have a lot of availabilities left. I'm (a rental property) owner and I have three weeks open on my rental unit," she said. "This will help with last-minute rentals."

She also feared traffic on Route 35 and bad publicity would scare away visitors this summer.

"I'm glad to hear they're not doing that section (of Route 35). I could just see the back-ups," she said.

Simpson toured Lavallette businesses on Route 35 to ask owners about their concerns about the ongoing reconstruction project. Some business owners told Simpson that summer is the critical time when their businesses make money

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## New Hampshire Gov. Signs Off on Gas Tax Increase, DOT Creates Website of New Projects

New Hampshire Governor Maggie Hassan signed a bill passed last month by the New Hampshire House to raise the state's gas tax 4.2 cents in order to raise revenue for the state's roads and bridges. The measure, formally titled SB 367, is expected to add \$32 million in transportation revenue each year.

"Our bipartisan transportation funding bill is the most significant state-level investment in transportation infrastructure in 23 years," Hassan said in a statement upon signing the bill. "This legislation is an important step toward addressing our transportation needs, keeping New Hampshire's economy moving forward by advancing critical road and bridge projects, finishing the long-overdue expansion of I-93 and improving commutes for our workers and visitors."

On the heels of these developments, the

NHDOT this week announced a new website that features all the road and bridge improvements that will be supported from the new funding. The site provides "transparent and location-specific information on transportation infrastructure investments funded through SB 367."

"The passage of Senate Bill 367 is an important start toward funding the critical needs in repairing New Hampshire's roads and bridges," said NHDOT Commissioner Chris Clement in a statement. "Our work on behalf of the citizens of New Hampshire has only just started and the New Hampshire Department of Transportation is committed to continued diligence and focus on our mission, vision and purpose."



## Route 35 Road Work to Stop for Summer in New Jersey

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for the rest of the year.

"There is a small window for people to make a living. It's hard enough with nature," said Tyler Mesanko, owner of Share Vision and Share Kids on Route 35. "Thank you for taking a weight off my shoulders."

Lori Hesslein told Simpson the biggest question she's heard from other merchants is whether construction would stop until September.

"So we're stopping this until September?" she asked Simpson. "Everybody is asking me and a number of people have heard different stories."

Whether the business district had two lanes in both directions is a bigger concern, she said.

"If it rains, it means people do a little more shopping, but we've got to get them here," Hesslein said.

DOT officials said that work is completed on the interchange between routes 35 and 37. Recently, crews were stripping lanes at that interchange.



## Have you Been Convicted of a Crime?

by Greg Mazzella, Mazzella Investigative Solutions

Screening job applicants to find the most qualified for the job is becoming more difficult. In addition to skills and qualifications, employers are under pressure to also consider safety for their current employees by not introducing a potentially violent person to the work environment. Employers conduct pre employment screenings, which include criminal records, to provide them with the information necessary to make those decisions. However, most employers fall into the trap of making decisions based on the findings of the screening, and not the qualifications or character of the applicant. This type of hiring practice can open the employer to litigation and sanctions from Federal authorities.

Law enforcement strategies of the past twenty years has gone through different variants of zero tolerance policing and stricter enforcement of quality of life crimes. Then there is the ongoing war on drugs. These strategies have increased the chance that employers will encounter an applicant with some sort of criminal record. It is becoming the rarity, rather than the norm, that applicants would have no involvement in the criminal justice system.

A recent study published in the journal Crime and Punishment addressed the number of young people who have some sort of arrest record, other than traffic. The findings were based on an annual Bureau of labor Statistics survey of 7000 young people who answered questions between 1997 and 2008. The authors found that 49% of African American men, 44% of Hispanic men, and 38% of

Caucasian men have been arrested by the age of 23. For women the numbers were slightly lower-20% African American, 18% Caucasian, and 18% Hispanic.

### Ban the Box

The “Ban the Box” movement advocates the removal of the employment application question, “Have you ever been convicted of a crime”. Advocates would rather the applicant have the opportunity for a face-to-face interview before the discussion of criminal records or background checks take place. Twelve states, including Maryland, currently have state-wide “ban the box” laws for public employment applications. Of these twelve states, Hawaii, Massachusetts, Minnesota, and Rhode Island have banned the box for private employers as well.

There are currently sixty jurisdictions in twenty-seven states that have enacted ban the box laws. This number is growing annually, in November 2012 there were forty-six. These jurisdictions in the Mid-Atlantic region have enacted laws: Maryland, Delaware, Baltimore, Wilmington, DE, Washington, D.C., Philadelphia, Newport News, Norfolk, Portsmouth, Richmond.

Corporations are beginning to catch on also. In October 2013, Minnesota based Target Corporation enacted policy that removes the criminal question from their application.

The Equal Opportunity Employment Commission (EEOC) has endorsed the idea of

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## Have you Been Convicted of a Crime?

by Greg Mazzella, Mazzella Investigative Solutions

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“banning the box”. The EEOC is clear in its position on employers’ use of criminal background checks for employee hiring and retention, stating, “Using such records as an absolute measure to prevent an individual from being hired could limit the employment opportunities of some protected groups and thus cannot be used in this way.” The EEOC specifically addresses the consideration of criminal records in its updated Enforcement Guidance published in 2012. The guidelines suggest that employers consider the nature of the job, the seriousness of the offense, and the length of time since the offense occurred. Also, employers should include an individualized assessment that allows the applicant to speak to the circumstances of the record. The EEOC is specific that criminal records only be used as they pertain to the job be-

ing sought and cannot be used against an individual without the consideration of other factors.

Banning is a strong word and does not mean that employers cannot view criminal records during the hiring process. Employers do have to be educated on how the records are used. Realizing the difference between an arrest and conviction and understanding the EEOC guidelines and Fair Credit Reporting Act as they apply to hiring will keep employers from incorrect use of records.

The evolving school of thought is that criminal records be discussed after the personal interview and review of qualifications. An established hiring process and detailed documentation as to the decisions made all go a long way in supporting the employer’s final assessments.

## FCRA Violation

by Greg Mazzella, Mazzella Investigative Solutions

Last month a New Jersey Federal court awarded a \$870,500 class settlement to a group of truckers who claimed that a trucking company denied them employment after conducting background and driver history checks **without their consent**.

This is not a rare case as every year there are numerous class action suits against employers for failing to comply with the Fair Credit Reporting Act (FCRA). Most companies do not set out to violate an applicants rights. They simply are not familiar with the FCRA and do not know the procedures.

The FCRA requires a signed authorization and disclosure from the applicant, sometimes referred to as a

“Consent” form. No matter what it is called, the form must consist solely of the required authorization and disclosure and no extraneous information can be attached or included. The authorization and disclosure form(s) must be executed and signed by the applicant prior to requesting or conducting a background check. If the decision is made not to hire based on information received in the background check, the applicant must be notified through a pre adverse action notice. This notice gives the applicant a chance to respond tot the findings.

You should always consult your attorney on FCRA and human resource issues.

## Are You Providing Registration For Every Tire You Sell? Or Paying the \$10,000 Fine per Tire?

By: Roy Littlefield IV

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available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(2) Each independent distributor or dealer that complies with paragraph (a)(1)(i) or (ii) of this section shall use either the tire registration forms provided by the tire manufacturers pursuant to § 574.7(a) or registration forms obtained from another source. Paper forms obtained from other sources must comply with the requirements specified in § 574.7(a) for forms provided by tire manufacturers to independent distributors and dealers.

(3) Multiple tire sales or leases by the same tire purchaser may be recorded on a single paper registration form or in a single Web site transaction.

(4) Each independent distributor or dealer that is complying with paragraph (a)(1)(iii) with respect to a sale or lease shall include a statement to that effect on the invoice for that sale or lease and provide the invoice to the tire purchaser.

(b) Other distributors and dealers.

(1) Each distributor and each dealer, other than an independent distributor or dealer, selling new tires to tire purchasers:

(i) shall submit, using paper registration forms or, if authorized by the tire manufacturer, secure electronic means, the information specified in § 574.7(a)(4) to the manufacturer of the tires sold, or to the manufacturer's designee.

(ii) shall submit the information specified in § 574.7(a)(4) to the tire manufacturer or the manufacturer's designee, not less often than every 30

days. A distributor or dealer selling fewer than 40 tires of all makes, types and sizes during a 30 day period may wait until a total of 40 new tires is sold. In no event may more than six months elapse before the § 574.7(a)(4) information is forwarded to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling new tires to other tire distributors or dealers shall supply to the distributor or dealer a means to record the information specified in § 574.7(a)(4), unless such means has been provided to that distributor or dealer by another person or by a manufacturer.

(d) Each distributor and each dealer shall immediately stop selling any group of tires when so directed by a notification issued pursuant to 49 U.S.C. 30118, Notification of defects and non-compliance.

It is very important that provide registration forms if you are not doing so already! Avoid the fines and show your customers that their safety is a top priority in your shop. By registering the tires, consumers will get a direct notification in the event of a safety recall. Many tire manufacturers and distributors have links directly on their websites for registration. Forms are also available through the Department of Transportation.

Find out more about this issue in addition to tire aging, Stage II, periodic inspections, electronic inspections, and more at the 2014 SSDA-AT/WMDA Convention and Mega Trade Show where we will be hosting a free "Industry Issues Forum" on Friday September 26<sup>th</sup> at 1pm in the Convention Center. We hope to see you there!

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### **Section 101. Additional Early Warning Requirements**

Requires manufacturers to include additional information on fatal incidents in their quarterly submissions to NHTSA's Early Warning Reporting system. Changes the presumption of disclosure under the TREAD Act to require that information submitted to NHTSA by manufacturers through the Early Warning Reporting system be disclosed unless it is exempt from disclosure under the Freedom of Information Act. Requires NHTSA to rewrite the rule on "Confidential Business Information" with a presumption in favor of maximum public availability of Early Warning information.

### **Section 102. Public Notice of Inspection and Investigation Activities**

Requires NHTSA to provide public notice of all inspection and investigation activities by the agency. Ensures that any such notice, and notice of any enforcement actions resulting from inspection and investigation activities, are immediately made available on NHTSA's website and are readily searchable.

### **Section 103. Improved Access to NHTSA Vehicle Safety Information**

Requires NHTSA to improve public accessibility of data posted to its website, including by ensuring that all vehicle safety information is searchable, and can be aggregated and downloaded.

### **Section 104. Corporate Responsibility for NHTSA Reports**

Requires that a manufacturer have a senior executive in the United States certify the accuracy and completeness of all responses to NHTSA's requests for information relating to safety investigations.

### **Section 105. Appeal of Defect Petition Rejection**

Allows individuals to appeal the denial of a petition by filing an action in the appropriate court of appeals.

### **Section 106. Deadlines for Rulemaking**

Establishes procedures for NHTSA if it cannot meet the deadlines for rulemakings provided in the bill.

### **Section 107. Reports to Congress**

Directs the Secretary to prepare reports to Congress regarding the use of Early Warning data. Directs the Inspector General to report to Congress on the operations of the Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies.

### **Section 108. Restriction on Covered Vehicle Safety Officials**

Limits the revolving door between NHTSA and the auto industry by restricting NHTSA employees responsible for vehicle safety from certain post-employment activities.

## **TITLE II - Funding**

### **Section 201. Vehicle Safety User Fee**

Establishes a vehicle safety user fee paid by the vehicle manufacturer for each U.S. vehicle certified to meet federal motor vehicle safety standards. This fee begins at \$3 per vehicle and increases to \$9 per vehicle after three years. The fee would supplement existing appropriations and support NHTSA's vehicle safety programs.

### **Section 202. Authorization of Appropriations**

Authorizes appropriations for NHTSA's vehicle safety programs. The authorization would be for \$200 million in FY 2015, \$240 million in FY 2016, and \$280 million in FY 2017.

## **TITLE III - Enhanced Safety Authorities**

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### **Section 301. Civil Penalties**

Increases the civil penalties NHTSA can seek per violation and sets maximum civil penalties of \$200,000,000.

### **Section 302. Imminent Hazard Authority**

Provides NHTSA with the authority to expedite a recall order in the case of a substantial likelihood of death or serious injury to the public.

### **TITLE IV - Additional Provisions**

#### **Section 401. Preemption of State Law**

Overturns preemption provisions in Bush-era NHTSA regulations and prevents NHTSA from explicitly preempting state tort law without congressional direction.

### **IT WON'T BE EASY**

The Finance Committee has adjourned markup of the Highway bill, subject to call of the chair.

The Committee won't meet again until after July 7—intervening time will be used by Senator Wyden and Senator Hatch to try to reach bi-partisan agreement on a final measure.

Chairman Wyden said he's in touch with Ways and Means Chairman Camp on what the House approach will be on any measure sent to them by the Senate.

In view of Senate Democrats announcing their intention via the Wyden Amendment to include EXPIRE in the Highway bill, the odds are high EXPIRE will be in the bill that comes before the Senate.

We will have to continue working hard to win the support of Republican senators because Senator McConnell could make excluding the extenders a condition for his support of the bill. Senator

McConnell has spoken in favor of the extenders, but we cannot take for granted what will come out of negotiations between himself and Senator Reid on the bill they'll send to the House.

### **NLRB POSTER RULE DEAD**

Over two years ago, the National Labor Relations Board (NLRB) issued a final rule that would have required all private employers subject to the National Labor Relations Act to display a poster about employees' rights under the Act. The NLRB announced earlier this year that it would not seek Supreme Court review of two Circuit Court of Appeals decisions invalidating the agency's Notice Posting Rule.

Initially, this posting rule was met with much resistance from groups like SSDA-AT and from employers, in part because of its controversial content that some believed was pro-union as the poster failed to mention employees' rights to decertify a union, not to pay union dues in right-to-work states and to object to dues unrelated to representation. The proposed regulation was quickly challenged in court.

The NLRB poster remains available on the agency website and it may be viewed, displayed and disseminated voluntarily. However, businesses that have already displayed this controversial poster have been free to remove it as a result of the legal appeals...and now permanently.

### **OSHA'S PROPOSED RULE**

The Occupational Safety and Health Administration (OSHA) issued a proposed rule to improve workplace safety and health through improved tracking of workplace injuries and illnesses. The announcement followed the Bureau of Labor Sta-

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tistics' release of its annual Occupational Injuries and Illnesses report, which estimated that three million workers were injured on the job in 2012. OSHA is claiming that with the changes being proposed in this rule, employers, employees, the government and researchers will have better access to data that will encourage earlier abatement of hazards and result in improved programs to reduce workplace hazards and prevent injuries, illnesses and fatalities. The proposal does not add any new requirements to keep records; it only modifies an employer's obligation to transmit these records to OSHA to later be posted in a public domain. On January 9, 2014, SSDA-AT sent representatives to attend the OSHA public meeting on the proposed rule in Washington, D.C.

The first proposed new requirement is for establishments with more than 250 employees (and who are already required to keep records) to electronically submit the records on a quarterly basis to OSHA. OSHA is also proposing that establishments with 20 or more employees, in certain industries with high injury and illness rates, be required to submit electronically only their summary of work-related injuries and illnesses to OSHA once a year. Currently, many such firms report this information to OSHA under OSHA's Data Initiative.

OSHA plans to eventually post the data online, as encouraged by President Obama's Open Government Initiative. The Agency believes that timely, establishment-specific injury and illness data will help OSHA target its compliance assistance and enforcement resources more effectively by identifying workplaces where workers are at greater risk, and enable employers to compare their injury rates with others in the same industry.

SSDA-AT has a variety of concerns with the pro-

posed rule. Specifically, the unreliability of injury and illness records, without proper context, as a measure of an employer's safety record; the expectation of how this information will be used once available to the public; the potential chilling effect such a rule will have on injury reporting and illness reporting; the privacy concerns with public availability of information other than employee names; the impact on employers, particularly small employers, of not allowing paper submission; and the estimated costs and benefits of the proposed rule. SSDA-AT submitted comments on the proposed rulemaking in opposition to both the new reporting requirements and the publication of establishment-specific injury and illness data.

### **RIGHT TO REPAIR**

Automotive groups will be banding together to ensure consumers have choices in post-warranty auto repair. The national agreement, which ends the prolonged "Right to Repair" debate within the industry, is based on a recent law finalized in the Commonwealth of Massachusetts.

Congratulations to SSDA-AT members nationwide who fought long and hard to secure this major victory for the independent automotive repair aftermarket. The signed Memorandum of Understanding (MOU) extends the essential provisions for all light vehicles negotiated in the Massachusetts law nationwide. It impacts all companies and organizations that are currently members of the signatory associations.

The national agreement ensures that automotive aftermarket associations will stand down in their fight on "Right to Repair" and work collectively to actively oppose individual state legislation while the respective groups work to implement the MOU. In

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the meantime, the parties agree that further state legislation is not needed and could serve to weaken the effectiveness and clarity of the MOU.

The “Right to Repair” act required automobile manufacturers to provide the same information to independent repair shops as they do for dealerships, and has been a point of contention for independent shops and consumers. Since the first Right to Repair Act was introduced in Congress in 2001, the automotive aftermarket has worked to ensure our customers continue to have the right to choose where they buy their parts and have their vehicles serviced. This agreement will ensure vehicle owners will have competitive and quality choices in their repairs while strengthening the auto repair industry nationwide.

### **ADDING EXPIRE TO HIGHWAY BILL WILL ADVANTAGE WOTC**

A realistic option for Senator Reid and Senator Wyden is to add all the tax extenders of the EXPIRE bill to the pending measure to reauthorize the Highway Trust Fund.

SSDA-AT’s goal is to get WOTC extended but we are having to fight to attach it to the Highway bill, whereas it’s been demonstrated the extenders have greater support as a package than singly. The White House supports the package and the Senate voted for it 95-3. WOTC may have a better chance going on the Highway bill as part of EXPIRE than alone as things stand at the moment.

While pushing to get WOTC added to the Highway bill, we can argue that attaching the entire EXPIRE package that’s already been approved by the Senate makes eminent sense.

The case for winning WOTC by attaching EXPIRE is impressive. Senate Democrats and Republicans agree no revenue offset is required to fund EXPIRE, so the \$90 billion cost of the extenders won’t hold back the bill.

This applies in the House as well. Led by Ways and Means Chairman Dave Camp, the House has recently passed ten tax extenders without revenue offsets. Passing tax relief without revenue offsets has become policy in the House even though some members continue to object.

Currently, the EXPIRE bill is in limbo over amendments and could stay that way till after the election. But Highway Trust Fund authority must be passed in July because the fund is nearly empty and delay will disrupt States’ plans for summer construction. The two Leaders will have to come to some agreement on amendments for the bill to pass in July, so that logjam will be broken.

As we reach out to Finance Committee senators on behalf of WOTC, let’s make the case that attaching the entire EXPIRE package to the Highway bill makes eminent sense because both Leaders have said publicly they want EXPIRE passed, the Senate has voted overwhelmingly for EXPIRE, no revenue offset is required for the tax extenders in EXPIRE, and tax saving pumped into the economy in July will boost jobs and growth.

# GENERAL COUNSEL CORNER

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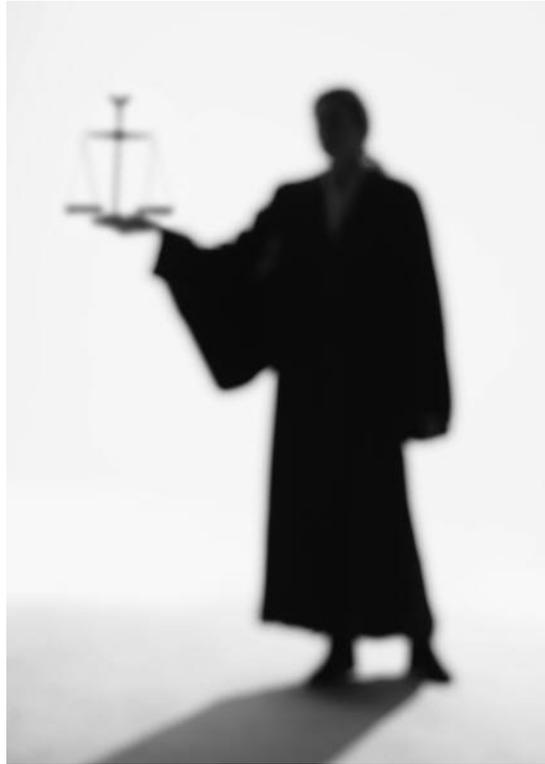
to present.

For more information, an employer should consult the “Handbook for Employers” that the U.S. Citizenship and Immigration Services has placed on the internet.

The bottom line is that the Form I-9 process must be completed carefully. Otherwise, the government may get you one way or the other.

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To access more articles by the Service Station Dealers’ legal counsel, please visit the “Service Station Dealers: Legal Issues” section of the Astrachan Gunst Thomas, P.C. website at: <http://www.agtlawyers.com/resources/petroleum.html>





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