

State And Local Governments Get Infrastructure Funding Boost



We have all read about and witnessed firsthand the devastating impact of COVID on businesses across the state and nation. In April 2020, the national unemployment rate reached a 70-year high. While businesses are trying to get back to normal, as of April 2021, there were still 8.2 million fewer jobs than before the pandemic.

It was not only the private industry that was affected. State and local governments faced the daunting task of increasing services due to COVID, including testing, contact tracing, expansions to health care systems, increased demand for housing and food assistance, and creating alternative teaching models at public schools. Simultaneously, state and local governments saw a sharp decline in revenue due to the economic downturn. The federal government has made assisting state and local governments a priority in 2021.

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law. Among other things, ARPA established the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (“Fiscal Recovery Funds”). The Fiscal Recovery Funds are intended to provide support to state and local governments impacted by COVID. What was initially unclear, however, was whether state and local governments would have flexibility to use Fiscal Recovery Funds for infrastructure projects.

The U.S. Department of the Treasury recently issued draft interim final rules that more clearly define use of Fiscal

Recovery Funds. The interim rules provide that ARPA gave “broad latitude” to state and local governments to use Fiscal Recovery Funds “for the provision of **government services**” to the extent that COVID caused revenue loss. More importantly, the interim rules provide that government services “can include, but are not limited to, maintenance or pay-go funded building of **infrastructure, including roads...**”¹ Water and broadband projects are also specifically mentioned in the interim rules with no limit on use of the funds being tied to revenue loss.²

While the interim final rules are still subject to change, it is expected that infrastructure will remain an eligible use of Fiscal Recovery Funds by state and local governments. This is a huge win for the construction industry, which saw \$12 billion in public infrastructure projects delayed or canceled due to a lack of revenue caused by COVID.³



Robb Kahl,
CBG Executive Director

¹ U.S. Depart. of the Treasury, 31 CFR Part 35, Interim Final Rule, at p. 60, avail. at <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>.

² Interim Final Rule, at pp. 61-63 & 143-44.

³ U.S. Treasury Issues Interim Rule on \$350 Billion Relief Uses, ARTBA Washington Newsline (May 11, 2021), avail. at <https://newsline.artba.org/2021/05/11/u-s-treasury-issues-interim-rule-on-350-billion-relief-uses/>.

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Payroll Fraud Task Force Issued Its Second Report

By Cindy Buchko, General Counsel

Payroll fraud is an illegal business model that is slowly eroding the construction industry in Wisconsin. Employers misclassify employees as independent contractors or pay employees cash off the books, which means they are not paying payroll tax, unemployment insurance tax or the correct workers' compensation premiums on its employees. This illegal practice cheats all taxpayers, gives the unscrupulous contractors a 30% competitive advantage over law abiding contractors, and leaves employees without proper legal protections.

In the Spring of 2019, Governor Evers signed Executive Order #20 that aimed to streamline enforcement of payroll fraud and protect the taxpayers of Wisconsin. The Executive Order created the Joint Enforcement Task Force on Worker Misclassification, which must report annually on its work and make recommendations to the Governor and Legislature. The Task Force members include a representative from Construction Business Group and three contractors.

The Task Force's first report was issued in March 2020. Importantly, the report quantified the economic impact to Wisconsin resulting from payroll fraud. The Task Force concluded that there is a \$200 million loss of tax revenue annually.¹ The \$200 million consists of income, payroll, unemployment insurance and other taxes not being paid, and much of this tax fraud is occurring in the construction industry. The 2020 report also made several recommendations, many of which were already implemented by state agencies.

The Task Force recently issued its 2021 report.² The 2021 report made seven specific recommendations. The recommendations are:

1. Amend the existing worker's compensation fraud law, Wis. Stat. § 102.125, to clarify that application and premium fraud by employers is covered and within

DWD's jurisdiction to investigate.

2. Create a statutory requirement for insurers to report worker's compensation premium and application fraud to the DWD, so that in the future, we will have data to better quantify insurance fraud in Wisconsin.
3. Following the examples of our neighboring states, create a statutory Insurance Fraud Bureau of Investigations, targeting not only claim fraud but also premium and application fraud.
4. Request the Wisconsin Compensation Rating Bureau (WCRB) make modifications to its audit manual to help insurers identify and curb insurance premium and application fraud.
5. Require the Department of Justice and the DWD to review the criminal unemployment insurance tax fraud laws to determine whether changes should be made to better enable worker misclassification prosecutions.
6. Engage relevant stakeholders to explore whether a statutory requirement of upstream liability, including upstream liability for wage theft, should be adopted in Wisconsin.
7. Create a law that requires the Equal Rights Division at the DWD to investigate and adjudicate misclassification within the concept of labor standards.

The work of the Task Force is expected to continue throughout 2021 and early 2022. The Task Force's work is an important step to curbing payroll fraud in the construction industry and other high-violator industries.

¹ *Task Force on Payroll Fraud and Worker Misclassification, 2020 Report*, at p. 2, avail at <https://dwd.wisconsin.gov/misclassification/pdf/2019-2020-misclassification-task-force-report.pdf>.

² *Task Force on Payroll Fraud and Worker Misclassification, 2021 Report*, at pp. 9-11, avail at <https://dwd.wisconsin.gov/misclassification/pdf/2021-misclassification-task-force-report.pdf>.

Youth Apprenticeship Modernization: Thank You For Representing Our Industry!

By Laura Cataldo, Senior Manager, Construction & Real Estate Services, Baker Tilly US



In the Fall of 2020, DWD and the Wisconsin Operating Engineers launched a pilot for an Operating Engineers Youth Apprenticeship (YA) program. Youth apprenticeship is a blend of classroom instruction (provided by the online courses through Destinations Career Academy) and 450 hours of paid work experience.

In 2021, DWD began the process of modernizing all youth apprenticeship programs to ensure the programs align with

industry needs. Even though the Operating Engineers' program is new, they are required to complete the review.

Thank you to the following individuals that committed time this spring to meet with DWD and review the Youth Apprenticeship framework:

- Brad Diener, Walbec Group
- Tracey Griffith, Payne & Dolan, Inc. (Walbec Group)
- Robert J. Hackel, Buteyn-Peterson Construction Co.
- Danielle Hertel, RiverView Construction, Inc.
- Erin Salm, Miron Construction
- Dan Sperberg, Local 139 Training Director

If you are interested in learning more about YA or employing a Youth Apprentice for the summer or fall, please contact Laura Cataldo at laura.cataldo@bakertilly.com or (608) 616-2835.

SAVE THE DATES! EXTERNSHIP DAY RETURNS THIS FALL! JOIN US NOVEMBER 8 & 9 | 9:00 a.m. – 2:00 p.m.

The Wisconsin Operating Engineers Externship Day is an opportunity for students, parents and educators to:

- Tour the training center, including the indoor training arena
- Test their skills on equipment simulators
- Gain hands-on experience with mini-excavators
- Learn about apprenticeship opportunities
- Interact with current apprentices and Operators
- Hear from employers about opportunities that exist and what they are seeking in employees

Visit buildingwisconsinstogether.com for more information.

"I wanted to let you know that we had a fantastic day in Coloma today. I commend you and the entire team for the organization of the event with the large turnout... awesome! I am pretty sure my son Jacob will be pursuing this apprenticeship. He is already taking one course at Cambridge High School and will take a couple more his second semester this spring."

— Father of a Cambridge High School student enrolled in the online pre-apprenticeship program



ADVANCE REGISTRATION REQUIRED
For more questions or to RSVP, contact
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