

Why You Should Care About the Inflation Reduction Act of 2022

By Robb Kahl, CBG Executive Director



There is no shortage of headlines about recently enacted federal laws with titles so long and convoluted most people have no idea what the law is about. Recently, the Inflation Reduction Act of 2022 (“the Act”) was passed, and most people probably skipped over the articles and posts about what sounds like a law that has no impact on the

construction industry.

Despite the name, the Act will have a substantial, positive impact on the construction industry. The long explanation of the Act follows, but in general, the Act incentivizes:

1. The construction of utility-scale renewable energy projects.
2. The use of union labor on these construction projects.
3. The use of American-produced steel, iron, and manufactured products for these construction projects.

In other words, the Act’s goal is to build energy infrastructure using local union labor with American-made materials.

INCENTIVIZING CONSTRUCTION

The Act incentivizes the construction of utility-scale renewable energy projects by extending and expanding two key tax credits. Generally, tax credits are dollar-for-dollar reductions in tax liability. A Production Tax Credit (PTC) gives energy producers a credit for every kilowatt hour (kWh) of renewable energy produced. The Act provides for a PTC that is 100% of 1.5 cents per kWh.¹ The rate is adjusted annually for inflation and was 2.6 cents per kWh in 2022. The Act expands the types of renewable energy facilities that qualify for the PTC. The PTC is now available for: wind, solar, closed- and open-looped biomass, landfill gas, municipal solid waste, hydropower, marine and hydrokinetic energy, and geothermal electric. The PTC is available for any facility placed in service after December 31, 2021, or for which construction has *commenced* before December 31, 2024.

The second type of tax credit is the Investment Tax Credit (ITC). ITCs give a direct tax credit of the cost in a qualified project. The

Act provides a 30% ITC for certain renewable energy projects for ten years.¹¹ The Act expands the type of renewable energy projects that qualify for the ITC to include: wind, solar, fiber-optic solar photovoltaic, qualified fuel cell, qualified small wind, waste energy recovery, geothermal (electric), energy storage technology, qualified biogas, microgrid controllers, combined heat and power system, geothermal (heating and cooling), qualified microturbine, and certain interconnection property. With a few exceptions, the ITC is available for qualifying projects placed in service after December 31, 2022, or for which construction has *commenced* before December 31, 2024.

PTCs and ITCs have traditionally only been available to entities with tax liability. The Act expands PTCs and ITCs to tax-exempt organizations, municipalities, and political subdivisions by giving them a direct pay option for facilities or projects that meet the requirements. However, tax-exempt organizations, municipalities, and political subdivisions are subject to phasedowns, meaning the amount of the direct payment is reduced over time.

ENCOURAGING USE OF UNION LABOR

Under the Act, to get the full amount of the PTCs or ITCs described above, the taxpayer claiming the tax credits must meet prevailing wage and apprenticeship requirements. The Act requires laborers and mechanics employed by the taxpayer, contractors, and subcontractors be paid federal Davis-Bacon prevailing wages during the construction of the project and, in some cases, during the alteration and repair of a project.

The Act also requires that specified percentages of the total labor hours worked on a project be performed by qualified apprentices. The applicable percentage is 10% for projects that begin construction before 2023, 12.5% for projects that begin construction in 2023, and 15% thereafter. Additionally, each contractor or subcontractor that employs four or more individuals to perform construction on a project must employ at least one qualified apprentice to perform the work.

If a project does not satisfy the prevailing wage and apprenticeship requirements, the taxpayer is only eligible for 20% of the applicable PTC or ITC rate. HOWEVER, an important loophole exists. A project will not be subject to the prevailing wage and apprenticeship requirements described above if construction was commenced before the date that is 60 days after the Secretary of the Department of Labor publishes guidance on these labor standards.

We do not know when the Secretary of the Department of Labor will publish this guidance, so some owners/developers may rush to commence construction on projects prior to the guidance being released. In fact, we already see commentary by lawyers encouraging developers to rush to commence construction to avoid having to comply with these requirements.¹¹¹ The

practical effect is that projects placed in service in 2022 or that commence construction in 2022 and possibly part of 2023 will qualify for the full PTC or ITC without meeting the prevailing wage and apprenticeship requirements.

Because most union contractors already pay at or above Davis-Bacon prevailing wage rates and participate in joint labor-management apprenticeship programs, union contractors and union labor are uniquely positioned to help project owners and developers meet the requirements to capture the maximum tax credits offered under the Act. This is a win for Operating Engineers and a win for signatory contractors.

ENCOURAGING USE OF PARTS MADE IN AMERICA

The Act provides for even larger PTCs and ITCs for projects and facilities that use American-produced steel, iron, and manufactured products. Manufactured products that are components of a facility or project meet the requirement if not less than 40% (or 20% for offshore wind facilities) of the total costs of all such manufactured products of the facility or project are attributable to manufactured products that are mined, produced, or manufactured in America. If the prevailing wage and apprenticeship requirements described above are met, the PTC increase is 10% of the inflation-adjusted credit

amount, meaning the credit goes from 100% to 110%. The ITC increase is 10%, meaning the credit goes from 30% to 40%.^{1V} Even if prevailing wage and apprenticeship requirements are not met, domestic content enhancement is still available, albeit on a smaller scale.

The Act has many other provisions, but the above are the significant portions relating to the construction of renewable energy projects. Wisconsin already sees a boom in the construction of utility-scale renewable energy projects, although we have seen some troubling use of out-of-state contractors and workers by many third-party developers. As a result of the Act, we are hopeful that third-party developers will see the benefit of using local Wisconsin contractors and local union labor to construct their renewable energy projects.

^I An energy producer is only entitled to take the full PTC if it meets the wage standards described in the next section.

^{II} An energy producer is only entitled to take the full ITC if it meets the wage standards described in the next section.

^{III} Inflation Reduction Act: Overview of Energy-Related Tax Provisions – An Energy Transition “Game Changer” (Aug. 18, 2022), avail. at <https://www.sidley.com/en/insights/newsupdates/2022/08/inflation-reduction-act-an-energy-transition-game-changer>.

^{IV} It appears that the domestic content requirement for the ITC is applied on a project-wide level, while the domestic content requirement for the PTC is applied on a facility-by-facility basis (e.g., turbine-by-turbine for a wind project). Guidance from the IRS will likely clarify the domestic content requirement.

We've Come a Long Way

By Joseph Davis, Sr., CBG DBE Development Director

As CBG celebrates the first anniversary of the Disadvantaged Business Enterprise Development Initiative (DBEDI), there is no doubt we have made an impact on the road-building industry. The DBEDI vision was set 12 months ago to support the development of ready, willing, and able DBEs for federally-funded projects. This was critical, as there was a growing concern that signatory contractors struggled to meet the requirements of the federal mandate for DBE participation.

Once the vision was set, there has been: solid support from businesses with referrals; organizers who have sought to identify potential business owners; and the training center at the forefront of telling the Local 139 story and the impact it has historically positioned itself in the road building industry. Once the initiative was launched, we were pleased that the interest of Local 139 members grew from focusing primarily on increasing DBE capacity in established businesses to encouraging the creation of new businesses seeking DBE certification.

Highlights of CBG's accomplishments during the first year of the DBEDI include:

- Strengthening CBG's relationship with WisDOT's DBE Program Office. This is crucial due to our signatory contractors' concerns over the years regarding the number of qualified DBEs available to perform on awarded contracts.
- Providing detailed documentation and information to businesses regarding the DBE certification process, including how to apply with all of the necessary information.
- Collaborating with the Small Business Development Centers (SBDC) throughout Wisconsin and their Capital Access Center to provide DBEs with detailed financial projections and business plans to further their roadmap to success.
- Hosting the DBE Roundtable introduced by CBG Executive Director Robb Kahl at CBG's 2022 Annual Conference to provide information about industry trends and ►

opportunities for DBEs who seek to enter the heavy and highway industry.

- Based on the success of the initial roundtable, hosting the DBE Roundtable 2.0 Conference in partnership with WisDOT’s DBE Program office. This was a stand-alone networking event on September 29, 2022, in Wisconsin Dells. This gathering of prime contractors, certified DBEs, and companies aspiring to obtain DBE certification provided an opportunity to bring key stakeholders to the table with WisDOT to share collective experiences and best practices for working on federally-funded state projects.
- And, the most exciting accomplishment, launching the Master Class. The Master Class for contractors was created to expand small business owners’ awareness of the complexities associated with running a construction business. The structure of the Master Class is an online learning management system (LMS) featuring encrypted access to content. Each participant is given a user ID

allowing them to create a unique password for access. Once the participant gains access to the online LMS, they have access to the nine initial modules, including content created to increase their business knowledge. Each module includes passing a knowledge test periodically to ensure the participant comprehends the content. All Master Class module presenters are industry and subject matter experts providing up-to-date strategies for class participants.

So, yes, we have been busy, and there have been many early “wins” for this initiative. However, this could not have happened without the trust and leadership of the Local 139 visionaries, who adopted an attitude of seeking solutions rather than complaining in response to federal regulatory requirements. We will continue to place our best foot forward, offering ingenuity and leading from the front as we have always done. It is in this spirit that CBG will continue providing technical assistance and facilitating meaningful business relationships.

One contractor at a time, we are Building Wisconsin Together!

Youth Apprenticeship – A Critical Link

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

Local 139 has invested heavily in workforce development in recent years to ensure that we have adequate operators prepared to fill the vacancies left by retirement and meet the contractors’ needs. The approach has been simple:



Create opportunities for students, parents, and educators to EXPLORE

Externship Days offered twice a year at the Coloma Training Center expose hundreds of students, parents, and educators to the rewarding career path of being an Operating Engineer.

Leverage partnerships to create new ways to EDUCATE

High school students can begin apprenticeship coursework through a Certified Pre-Apprenticeship offered through Destinations Career Academy, a public online charter school.

Offer meaningful hands-on experiences to ENGAGE

Youth Apprenticeship (YA) is the critical hands-on and paid work experience that links a student’s interest to the career and potential employers.

TESTIMONIAL FROM THE BOLDT COMPANY

In the Spring of 2022, The Boldt Company celebrated ‘Signing Day’ with twenty-six Youth Apprentices. Of that group,



- **11 committed to Registered Apprenticeship** (*Operating Engineers, Carpenters, Millwrights, Ironworkers, Bricklayers*)
- **5 are continuing studies** at Fox Valley Technical College and Michigan Tech
- **10 committed to begin or continue into a 2nd year of Youth Apprenticeship** with The Boldt Company

YOUTH APPRENTICESHIP 101

- Available to high school juniors and seniors
- 450 hours of mentored on-the-job paid training
- 180 hours of technical-related DCA classroom instruction

The Boldt Company has had extraordinary success working with youth because they understand that engaging students with hands-on experience is the best way to help them evaluate all aspects of the industry (trades and office) and a valuable way to identify future talent for their company. We met with Boldt's Director of Campus Engagement & Workforce Development to understand how they implement a valuable YA experience and to gather additional information that is helpful to other contractors considering this opportunity.

How is a contractor matched with a Youth Apprentice?

The first step for a student is to talk with their high school's School-to-Work Coordinator about his/her interest in a Youth Apprenticeship. The Coordinator will reach out to employers or Business Agents in the area to discuss the 450-hour-per-year commitment to employ a student. The contractor can opt to interview candidates before agreeing to Youth Apprenticeship.

How much is a student paid per hour and when do they work?

The average hourly rate for youth apprentices in construction is \$14-16/hour. Student work hours do vary — some have work release during the school year and can work 15-20 hours/week. Most Youth Apprentices work full-time in the summer months or during school holiday breaks.

What work can a Youth Apprentice do?

Local 139 staff and signatory contractors worked with DWD to define the competencies 'taught' over the course of Youth Apprenticeship. Apprentices must complete 14 competencies, including 13 from the list below. Contractors are encouraged to accept a YA with the intention of providing him/her exposure to many different trades — not solely limiting them to a specific trade.

Bailey C. was a 2nd year Youth Apprentice with Boldt this year who started in the paint shop before experiencing the work of



an Operating Engineer, the trade she entered as an apprentice after graduation.

Am I obligated to hire a Youth Apprentice after they graduate from high school?

No, there is no commitment to hire the YA after high school. You are committing to providing them paid work experience of 450 hours per year while in high school. However, this is a great opportunity to evaluate the talent and passion a student has for construction and gives you an advantage over your competitors – you become an employer of choice for the students that complete YA with you.

Will hiring a Youth Apprentice create issues with my insurance coverage?

Youth Apprenticeship is an educational program that is written to comply with child labor law. Boldt worked closely with the School to Work Coordinator at CESA 6 and their insurance agent to ensure that the YA competencies, the company's risk policies and insurance coverage were aligned. Youth Apprentices do have to be at least 16 years of age but be aware that some client sites (ex: manufacturing) do require a minimum age of 18.

We have a Youth Apprentice starting next week – what next?

One of the most important steps is to assign a mentor that is not only skilled at their profession but also willing and able to provide a valuable experience. Schedule a meeting with employees before the student starts to explain YA and discuss how to integrate him/her into work. The mentor needs to understand that it is a priority to provide a valuable experience for the student so he/she should be scheduled for assignments just as any other employee would be. In many cases, the YA is in a role of "assisting with" a task, not working independently. For example, a YA can assist with equipment maintenance, site setup, etc. Youth Apprentices may create opportunities to diversify your workforce (both gender and race) so be intentional with recruiting and try to match the student with a 'like' mentor, if possible.

What advice do you have for companies that have not worked with Youth Apprenticeship in the past?

Make sure that the company leadership is committed and communicates that message throughout the organization. Commit to just one YA in the beginning and grow the program once you have experience and understand which employees are best suited as mentors.

With the 2022-2023 school year upon us, this is the time of year that students are seeking employment. Students that are taking pre-apprenticeship courses through Destinations Career Academy have already demonstrated interest in the industry and frequently reach out looking for employers.

If you have questions about Youth Apprenticeship or are interested in committing to a student this year, please contact Laura Cataldo at laura.cataldo@bakertilly.com.