

# Government Affairs Report

## House passes stimulus package

On January 28, 2009, the US House of Representatives passed the American Recovery and Reinvestment Act of 2009, better known as the “Stimulus Package,” by a vote of 244 to 188. The bill now heads to the Senate, which is expected to debate on its version next week. The package includes significant funding for all major construction markets, with a final “price tag” close to \$820 billion.

Highlights of the stimulus package include approximately \$55 billion for building infrastructure projects. Specifically, \$20 billion for K-12 schools and higher education construction, \$8.5 billion for military construction and \$6.7 billion for government owned and operated buildings. Over \$43 billion will be dedicated to funding transportation infrastructure, including: \$30 billion for highway and bridge funding, \$9 billion for transit funding and \$3 billion for airport improvement grants. Water infrastructure is also a focus in the stimulus bill, with \$4.5 billion going to water resources construction.

Other provisions in the bill create a permanent repeal of the 3% withholding tax on contractors engaging in government projects, a 5-year carry-back of net operating losses, tax credit bond options for state and local governments along with several bonding provisions for energy savings and schools. The House also includes a “Buy American” provision that mandates use of US-produced iron and steel on construction projects funded through the stimulus package.

Also, E-Verify has become a variable in the legislation within both houses of Congress. The House bill mandates the use of E-Verify electronic verification system for all businesses working on projects that receive funds from the stimulus. However, AGC of America reports there is a movement to have this provision removed from the final bill. The Senate is considering an amendment that could create a more expansive E-Verify requirement for businesses. *BCANJ will continue to track this unprecedented piece of legislation, and update members as final details are made available.*

## Governor calls for one-year moratorium on COAH fees

Governor Corzine in his annual “State of the State” address in mid-January called for a one-year moratorium on the 2.5% non-residential development fee, and further called for an exemption from such a fee for projects that were in the pipeline before the fee was instituted. BCANJ engaged in discussions with legislative leaders regarding the negative impacts of such a fee, and the possible ramifications of the continued imposition of development fees.

The moratorium will most likely be accomplished through legislation (S-2485) introduced last week at a Senate Economic Growth Committee meeting. Provisions in the bill would repeal the non-residential development fee for 18 months, exempt projects that have received site plan approval or referred to a planning board and provide a reimbursement mechanism for developers and contractors who have already paid a fee. *BCANJ will update members as this legislation moves through Trenton.*

## **Legal News...**

### Court ruling on "Pay to Play" upheld

The New Jersey Supreme Court Appellate Division recently upheld the constitutionality of the Campaign Contribution and Expenditure Reporting Act, which prohibits any state agency from awarding a contract with a value over \$17,500 to a business entity that has contributed more than \$300 during the preceding 18 months to the Governor, a candidate for Governor or any State or county political party.

A New Jersey-based asphalt company challenged the Act, arguing that it violates the constitutional rights of free speech and association, after the company was disqualified from award of an NJDOT contract because of political contributions.

The Appellate Division found that the \$300 limitation on contributions to political committees by businesses who enter into substantial state contracts constitutes a "means" of protecting this interest that is "closely drawn to avoid unnecessary abridgement of association freedoms." *For a copy of the judgment or summary of the events, please contact the Association office.*

### **BCANJ holds special inspector program**

In early January, BCANJ hosted a presentation from the NJ Department of Community Affairs (DCA) on special inspector certifications. DCA's new rule requires that individuals be certified if they are performing inspections as per the State's Uniform Construction Code.

To date, less than 100 inspectors have obtained certification. Since both

periodic and continuous special inspections are required on a project, this small number of special inspectors is inadequate to meet the needs of New Jersey's owners and contractors. *BCANJ has real concerns about the rule and will continue to monitor its ramifications.*

### **Philadelphia announces new crane legislation**

The City of Philadelphia, by way of ordinance, amended Title 9 of the Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by adding a new chapter regulating the erection, use and inspection of tower cranes. The newly signed law will help ensure the highest level of safety during the installation and operation of tower cranes.

The legislation came in response to the recent escalation in national crane tragedies. The City of Philadelphia joined with industry representatives to pioneer legislation to regulate the individuals who install, inspect and operate these tower cranes.

Specifically, the newly signed law mandates that operators, riggers and signalers are certified by 2010. In regard to crane maintenance, another provision in the law mandates cranes must be inspected twice a year by an independent, certified inspector. Finally, owners and manufacturers of tower cranes must disclose all equipment ages and current status of original equipment from the manufacturer. The legislation was fully supported by government, business, management and labor. *For a copy of the law, please contact the Association office.*

## **E-Verify suspended until February 20, 2009**

On November 15, 2008, the Federal Acquisition Regulation Council issued a final rule to require contractors and sub-contractors engaged in federal contracts to use the US Citizenship and Immigration Services (USCIS) "E-Verify" system as the tool to verify that their employees are eligible to work in the United States.

The final rule was originally applied to solicitations issued and contracts awarded after January 15, 2009. However, a legal challenge to the rule led the federal government to suspend the applicability of the rule until February 20, 2009. *BCANJ will continue to monitor this issue.*

## **DCA proposes fee hikes to sustain staff levels**

The Department of Community Affairs (DCA) has proposed a 26% increase in fees related to construction code enforcement, lead-hazard abatement certification and planned real estate development. DCA has stated in the rule proposal that the logic behind the fee hikes is to "provide the funds needed to ensure that needed services will be maintained despite any temporary fall-off in the volume of new construction."

Simply put, while the need for DCA's services may decline drastically during this economic recession, under this rule proposal the Department will rely on those who continue to build to supplement losses in fees and assist in keeping DCA staff employed.

*BCANJ has voiced strong opposition to this rule proposal, and commented through the regulatory process. For a*

*copy of the rule proposal, please contact the Association office.*

## **Energy savings contract bill signed into law**

On January 21, 2009, Governor Corzine signed S-1537 / A-1185 into law. The measure permits public utilities to engage in energy-savings contracts, which may include construction services, via RFP. These contracts require the energy savings to exceed the capital construction costs in order to achieve those savings. BCANJ successfully amended language in the bill so that construction services are subject to low bidding, and include a bid allowance for the use of proprietary items in bid specifications, and also to ensure the contracts and those working on them are subject to public contracting laws.

The newly signed law will allow public entities to make much-needed energy-efficiency upgrades, and gives the public entity the ability to contract with an energy-savings company for the implementation of energy conservation measures through a modified lease-purchase agreement. The duration of that agreement will not last more than 15-20 years, and helps the public entity finance the cost of improvements through the agreement with projected energy savings.

*For a copy of the law, please contact the Association office.*

*For more detailed information on federal and state government affairs initiatives, please contact Michael Travostino, Government Affairs Director at the BCANJ office:  
732-225-2265*

