

## Government Affairs Report

### Unemployment Insurance Trust Fund

Over the last year, the Governor and the New Jersey Legislature have taken steps to improve the State's Unemployment Insurance (UI) benefits program. These BCANJ-supported improvements have helped sustain New Jersey's Unemployment Insurance Trust Fund, which supplements the unemployment payments of New Jersey residents with vital financial assistance. In partnership with the Legislature, Governor Corzine deposited state funds into the UI Trust Fund, which will minimize the magnitude of the required increase in employer wage taxes that is triggered automatically under state law when the UI Fund falls below statutorily designated balances.

The New Jersey UI Trust Fund was established and designed to build up surpluses during strong economic times to carry the Fund through difficult and strenuous economic times. Our current economic downturn, combined with low UI Fund balances due to fund diversions by past Administrations, has led New Jersey to borrow from the US Unemployment Insurance Account in order to continue to pay UI benefits to New Jersey residents.

In 2008-2009, the Governor and the NJ Legislature worked diligently to transfer a total of \$380 million in State funds from the General Fund into the UI Fund. Those deposits, in conjunction with federal legislation, enabled New Jersey to qualify for a \$207 million deposit of federal funds into the State UI Trust Fund through the Unemployment Insurance Modernization provisions of President Obama's federal Recovery Act. This helped the State control the next fiscal year's tax rates, reducing the overall size of an automatically triggered increase in employer wage taxes.

Without the above-mentioned actions, employer wage taxes would have jumped by \$886 million beginning July 1, 2009. However, since the UI Fund has been drastically depleted, an employer wage tax totaling \$340 million will take effect this year. This amounts to roughly \$87 per employee, per year. As we begin to rebound from this economic downturn, New Jersey plans to restore the UI Trust Fund to solvency. This will ultimately trigger higher employer payroll taxes for the next several years followed by automatic wage tax cuts once the Fund has recovered. Although the employer wage tax is highly visible, the Governor and Legislature's efforts have shielded employers from an additional \$546 million increase this year. *For questions or concerns, please do not hesitate to contact the Association office.*

### Lawmakers Debate FY2010 Budget in Trenton

Governor Corzine unveiled a proposed budget of approximately \$30 billion before a joint session of the Legislature in March. The budget includes key components such as a cut in the operational cost of state government by nearly \$380 million. To balance the severe cuts, other key elements include \$25 million to fund pre-school expansion, increasing aid for K-12 education, and increasing funding for schools to support programs that expand early childhood education programs. The Legislature is currently debating the overall \$4 billion in baseline spending cuts compared to the previous year's budget, and formulating which state programs will remain funded. *BCANJ will continue to monitor the process, and update members as budget details are made available.*

## Legal News...

"Pay-if-Paid" Provision Upheld by NJ Federal District Court

**A general contractor was absolved from any liability to a subcontractor when the owner failed to pay to the GC, based on the "pay-if-paid" language provision in the subcontract.**

The subcontract stated, "Subcontractor agrees that Contractor shall never be obligated to pay Subcontractor under any circumstances, unless funds are in hand received by Contractor in full, covering the work or material for which Subcontractor has submitted an application for payment."

The GC was constructing a housing project. The GC subcontracted with a plumbing subcontractor to complete the necessary work for the plumbing systems. There was no dispute that the owner had not paid the GC for its monthly retainage, or the plumbing subcontractor's work to date.

The court ruled that the "pay-if-paid" provision in the subcontract clearly shifted the risk of owner non-payment to the subcontractor, and did not create a timing clause for payment.

## Development Fee Update

As previously reported, S-2485, which spawned from the Governor's one-year moratorium on COAH's 2.5% non-residential development impact fee, is corrective legislation that will accomplish three important measures:

- 1) delinking, not deferring, new non-residential development from the growth share obligation incurred by towns;
- 2) grandfathering non-residential projects approved prior to July 1, 2010, under the 2.5% development fee moratorium; and

- 3) reimbursing monies collected under A-500 for those non-residential projects that were impacted.

In light of the economic downturn and its horrific impact on the commercial real estate industry, BCANJ, along with NAIOP and our trade partners, is aggressively appealing to our legislative leaders to pass legislation that will accomplish these three important objectives.

## DPMC's New Trade Classification

The Governor recently signed into law legislation involving energy-savings improvement projects. The law requires general contractors and energy service companies engaging in public work activities under an energy-savings improvement program to be classified with the NJ Division of Property Management and Construction (DPMC). Therefore, DPMC has added the "Energy Services" class code (CO36) to its listing of construction classification trades.

This new energy-savings law will enable school districts, higher-education institutions, counties and municipalities to implement energy-savings programs for their facilities. An energy audit will be required and performed by an independent energy-auditing consultant, who is also required to prequalify with DPMC.

Firms currently classified with DPMC may submit to add this new class code. The submission for the new trade requires an addendum to the firm's DPMC Form 27, which determines classification approval.

## NJ DOL's Wage and Hour Law Enforcement

In 2008, the New Jersey Department of Labor and Workforce Development's Wage and Hour Division recovered approximately \$6.3 million in back wages and overtime pay owed to more than 9,200 workers in New Jersey. These enforcement efforts depend on sanctions, including penalties and fines to maximize effectiveness.

Specifically, the Wage and Hour Division enforces the New Jersey Prevailing Wage Act and Public Works Contractor Registration Act for contractors engaging in work on publicly funded projects. The enforcement of these vital laws will become more critical in coming months as more public work gets underway through the Federal Recovery Act funding.

In total, the Department conducted more than 1,500 Prevailing Wage inspections in 2008. While debarment is the Department's last available recourse in efforts to bring a contractor into compliance, the Department debarred 75 companies and 93 individual owners last year alone. The Department also revoked the Public Works Contractor Registrations of 39 contractors who violated New Jersey's laws in an immoral attempt to gain an unfair advantage over legitimate, law-abiding contractors who follow the laws, rules and regulations of our State.

In addition to these compliance issues, the Department identified more than 21,000 workers who were misclassified or whose wages went unreported. The Department continues to bring enforcement actions against unscrupulous contractors to ensure workers are paid the wages they are due. *For further details on NJ DOL Wage and Hour Division's efforts please contact the Association office.*

## Bills signed

Governor Corzine has signed the following laws with the potential to affect construction businesses.

A2438 / S717 (McKeon, Huttle, Diegnan, Evans, Smith, Turner) – Increases cap for underground storage tank remediation grants to independent colleges.

A3819 / S2678 (Greenwald, Diegnan, Buono, Sweeney) – Requires the Director of the Division of Taxation to establish a 45-day State tax amnesty period that ends no later than June 15, 2009.

A3818 / S2640 (Pou, Huttle, Gusciora, Madden, T. Kean) – Eliminates off trigger for additional unemployment benefits during job training program.

A2507 / S1932 (Chivukula, Egan, Ruiz, Gordon) – Authorizes BPU to use Retail Margin Fund monies to provide grants for combined heat and power production, energy-efficiency projects and programs promoting renewable energy and energy efficiency.

A2550 / S1299 (Lampitt, Wagner, Pou, B. Smith) – Permits location of certain wind and solar facilities in industrial zones.

*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, or [mtravostino@bcanj.com](mailto:mtravostino@bcanj.com)*