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$1.9 TRILLION AMERICAN RESCUE PLAN ACT OF 2021
AN ANALYSIS FOR THE CONSTRUCTION INDUSTRY

On March 10, 2021, Congress passed a $1.9 trillion COVID-relief bill entitled the American Rescue Plan Act of 2021. The president signed it into law on March 11. The Associated General Contractors of America's (AGC) government relations team worked to ensure the best possible outcome for the construction industry in this bill. Although not everything AGC fought for made it into the package or in the best possible form, there are construction industry priorities that AGC secured, including but not limited the items below.

- ✓ **Securing $350 billion for state and local governments** that, at a minimum, should help prevent public owners from delaying or canceling construction projects;
- ✓ **Ensuring that some of the $168 billion for K-12 schools and higher education is eligible to be used for construction** like improvements to ventilation systems and measures to reduce class sizes to maintain social distance;
- ✓ **Enabling contractors to claim tax credits up to $7,000 per employee per quarter in 2021** by extending the Employee Retention Tax Credit;
- ✓ **Extending the federal tax credits for paid leave**, but not the federal mandates for paid leave, through Sept. 30;
- ✓ **Obtaining multiemployer pension plan relief** for many plans, and, in turn, their contributing employers, active participants, and retirees

That stated, AGC is concerned with several provisions in and missed opportunities for this legislation and its impact on the economy. For example:

- AGC is disappointed that Congress and the Administration **failed to provide a dedicated capital construction investment down-payment** on a future infrastructure package that could help jump-start economic recovery;
- The association is worried that **a provision to prohibit states that accept funds in this bill from enacting tax cuts.** This could have significant negative consequences, including some states balking at accepting the funds and other states having problems with conforming their state tax treatment of PPP loans with federal tax treatment; and
- AGC is disappointed the multiemployer pension relief in this bill did **not include authorization of composite plan design**, which incorporates the best features of defined-benefit and defined-contribution plans by offering voluntary options to share risks, funding stability, lifetime income to participants, and limiting employer obligations to negotiated contributions only, without cost to the taxpayer.

This document provides a broad, non-exhaustive overview of the many provisions within the package and categorizes the as follows:

- **Policies impacting public and private construction markets;**
- **Tax and fiscal policies impacting construction firms; and**
- **Policies impacting the construction workforce.**

AGC staff will provide further updates as it continues to analyze the contents of the bill.

POLICIES IMPACTING PUBLIC & PRIVATE CONSTRUCTION MARKETS

The bill provides $350 billion for state and local governments, $168 billion for K-12 schools and higher education, $30.5 billion for public transit, $8 billion for airports and $10 billion for a Coronavirus Capital Projects Fund. **Little, if any, funding is solely dedicated to new public or private construction investment projects—infrastructure or buildings.** Generally speaking, the entities receiving these funds have broad discretion to use them based on limited or vague parameters, which could allow them to use some funds for construction.

It is unclear, consequently, how the vast majority of these funds will be specifically used, and those debates will undoubtedly occur in ongoing or special state, county, or municipal government legislative sessions. **At a minimum, this funding should help prevent public owners from delaying or canceling construction projects.**

It is also critical to note that federal funding—including the emergency federal funding this bill provides—come with federal requirements. Some owners that receive these funds may not be knowledge about the use of federal funds for investments like construction (i.e., local K-12 public or private schools).

Construction firms should inquire during the bidding process if a particular project will be funded by federal funds. If federal funds are included, construction firms should inquire about which federal requirements specifically apply to the project so that they can bid accordingly and avoid any federal government audit issues that could arise later. Other owners, like state departments of transportation, understand how to effectively manage state and federal resources and articulate applicable requirements.

State and Local Funding ($350B)

- *Funding Distribution*
    - Provides $219.8 billion for states, territories, and tribal governments
    - Provides $130.2 billion to local governments
        - $65.1 billion to counties
        - $45.6 billion to metropolitan cities
        - $19.5 billion for towns with fewer than 50,000 people
    - To see state-by-state and county-by-county estimations of how these funds will be allocated, **click here**.

- *Allowable Uses for Funds*
    - Respond to the COVID-19 public health emergency or its negative economic impacts:
        - Including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; and
        - Including premium pay to eligible workers of the state, territory, or tribal government.
    - Provide government services affected by a revenue reduction resulting from COVID-19.
    - Make investments in water, sewer, and broadband infrastructure.
        - NOTE: Governments are not required to spend any portion of these funds on these infrastructure investments. Instead, they may choose to do so. Similarly, it will be hard to argue against the need for any form of infrastructure or public building investment under the criterion of being able to respond the negative economic impact of COVID-19. Again, however, these determinations will be made by the government entities receiving them and they need not spend any of the funds on infrastructure investments under the requirements in the bill.

- *Prohibited Uses for Funds*
    - Restricts funding to be used towards pensions or to offset a tax cut enacted since March 3, 2021.
    - State and local governments can transfer funds to private nonprofit groups, public benefit corporations involved in passenger or cargo transportation, and special purpose units of state or local governments.

<u>Education Funding ($168B)</u>

- *Funding Distribution & Uses for Funds*
  - Provides $122.7 billion in funding for K-12 education.
    - Ninety percent of the K-12 funding will be distributed to local education agencies (LEAs) using the Title IA formula from the Elementary and Secondary Education Act (ESEA), which, generally, distributes funding based on the number of low-income students in the school.
      - LEAs must reserve 20 percent of their funding to address "learning loss" but the remaining funding is flexible, and <u>**can be used** to address upgrading ventilation systems, or measures to reduce class sizes to meet social distancing requirements.</u> It could be argued that an existing school would need to construct an addition to add more classrooms or that new schools must be constructed to do so.
    - The remaining ten percent of funding is reserved for State Education Agencies (SEAs) and they are required to spend those funds within one year.
      - Much of this funding is also reserved for learning loss, after school programs, or summer learning programs, but states will have similar flexibility to spend the remaining funding, which could be directed to capital improvements if they choose.
  - Provides $40 billion for higher education
    - $36 billion will be distributed to public and private non-profit institutions of higher learning through September 30, 2023, with institutions receiving more funding based on the percentage of their student population that are Pell Grant recipients. Fifty percent of the funding is reserved for financial aid grants for students. The remaining 50 percent of funding is reserved for the institutions themselves to spend on things such as lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll.
    - An additional $3 billion is allocated to historically Black colleges and universities, tribal colleges and minority-serving institutions.
  - The remaining funds are provided through other grant programs.
  - For information on how these funds may be broken down at a state-by-state level, **<u>click here</u>**.

<u>Public Transit Funding ($30.5B)</u>

- *Funding Distribution and Uses for Funds*
  - Provides $30.5 billion in funding for grants to transit agencies for use for operating expenses, including payroll and personal protective equipment costs with a bulk of the funding going to urbanized areas.
    - While most of the funding is for operating assistance, it does provide $1.7 billion for Capital Investment Grants. However, it is mostly limited to project sponsors that have an existing Full Funding Grant Agreement and received a FY2019 or FY2020 allocation. There is very little funding dedicated for capital construction and what is will be for existing projects.

<u>Airport Funding ($8B)</u>

- *Funding Distribution and Uses for Funds*
  - Provides $8 billion in funding for airports and airport concessions, however, $6.4 billion of that is distributed for costs related to operations, personnel, and combating the spread of COVID-19 at airports.

<u>Coronavirus Capital Projects Fund ($10B)</u>

- *Funding Distribution and Uses for Funds*
  - Provides $10 billion funding to states, territories, and tribal governments to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to COVID-19.
  - NOTE: This funding <u>could be used</u> for capital construction projects. However, it is important to note that it could be used for any type of capital project—not just construction—such as computer technology upgrades.

TAX & FISCAL POLICIES IMPACTING CONSTRUCTION FIRMS

Employee Retention Tax Credit (ERTC)

- *Extension of ERTC:* Extends the ERTC through December 2021, as it would otherwise expire after June 2021. This extended credit provides employers with a tax credit equal to 70 percent of an employee's eligible wages, up to $10,000 per employee per quarter (or $7,000). This extension of the ERTC was modified to apply the credit against Medicare payroll taxes (as opposed to Social Security).

Paid Leave Tax & Fiscal Policies

- *FFCRA Paid Leave Tax Credit:* The Families First Coronavirus Response Act (FFCRA) paid-sick and paid-family leave mandates expired on Dec. 31, 2020 and are NOT extended under this bill. However, the bill extends the related refundable payroll tax credits through Sept. 30, 2021. These credits would have otherwise expired on March 31.
- *Section 3610 of CARES Act*: Extends through Sept. 30, 2021 this provision that authorizes (but does not require) agencies to reimburse Department of Defense contractors for the cost of paid leave incurred to keep contractor or subcontractor personnel in a "ready state" to the extent that the personnel were (i) unable to access a government-approved facility, and (ii) unable to telework because their jobs could not be performed remotely. The provision would have otherwise expired on March 31.

Multiemployer Pension Relief

- *COVID-Related Pension Provisions:* provides relief to plans that were impacted by COVID-19 with investment losses or contribution losses.
- *Special Financial Assistance Program:* provides a one-time lump sum payment to eligible plans to pay all benefits through 2051 (30 years) with no expectation of repayment. It is estimated there are about 100 critical and declining plans, some critical plans and a few endangered plans in the construction industry that could be eligible for some relief. Starting in 2031 PBGC premiums would be increased to $52/year and indexed for inflation every year after for all plans and participants. Premiums are currently scheduled to be about $43 in 2031 because of indexing.
- For more information on multiemployer pensions, **click here**.

Other Tax and Fiscal Policies Impacting Construction Firms

- *No State Tax Cuts through 2024*.
  - A provision in the bill restricts any state that receives the aforementioned state government funds from enacting any "change in law, regulation, or administrative interpretation" that would result "either directly *or indirectly*" (emphasis added) in a reduction of net tax revenue to the state during the "covered period." Under the legislation, the "covered period" began on March 3, 2021, and will run through the end of 2024.
  - The ramifications of this provision could be profound. **Any state that elects to receive a portion of the $219.8 billion in relief contained in the bill is essentially handcuffed from enacting any tax relief (via legislative/regulatory action or otherwise) to their residents for almost the next 4 years.**
  - For example, AGC fought to ensure that business expenses associated with PPP loan forgiveness were fully tax deductible. Some states have passed legislation to ensure that this change conforms with their state tax code. It is unclear if this new restriction would prohibit a state from passing conforming legislation (which would result in revenue reduction) without also passing a corresponding tax increase.
  - **It is also possible that some states might view this constraint as too restrictive, and thus refuse the aid, leaving billions of dollars either unspent or redistributed to other states.** It is also unclear if this would survive a legal challenge in light of the Supreme Court's decision that Congress could not compel states to expand Medicaid under the Affordable Care Act.
- *Extension of "Loss Limitation Rule*:" Also on the negative side, the legislation extends the "loss limitation rule" for pass-through businesses by a year. The Tax Cuts and Jobs Act (TCJA) limited the amount that a pass-through business could claim in net operating losses to $500,000 per year. This provision was scheduled to expire in 2025 (along with a host of other expiring provisions), and COVID relief bill extends this provision through 2026

<u>POLICIES IMPACTING THE CONSTRUCTION WORKFORCE</u>

<u>Unemployment Insurance</u>

- *Extension of Benefits*
    - The bill includes provisions to extend the three pandemic programs: Pandemic Emergency Unemployment Compensation (PEUC), Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC)/Mixed Earners Unemployment Compensation (MEUC).
        - PEUC and PUA benefits will be paid through the week ending September 6, 2021, and end after that with no grace period.
        - The maximum duration of PEUC benefits have been increased from 24 to 53 weeks. PEUC benefits are paid to those who were initially eligible for state benefits but exhausted them before finding a job.
        - The maximum duration of PUA benefits were increased from 50 to 79 weeks. Those in high unemployment states could receive up to 86 weeks of benefits. PUA benefits are paid to those who are ineligible for state benefits, including the self-employed, but can demonstrate they lost their job for a specific COVID-related reason
    - While President Biden and the House of Representatives proposed increasing the additional FPUC benefits from $300 to $400 per week, the Senate reduced that amount down to its current level of $300 per week. Any individual receiving federal or state unemployment benefits, including through special programs, receives the $300 per week supplement. FPUC is available through September 6.
    - The bill also exempts the first $10,200 of unemployment insurance benefits from federal income taxes, as long as those benefits were received in 2020 and as long as your household adjusted gross income is less than $150,000
    - AGC is concerned that the extension of these benefits through the peak construction season will serve as artificial barriers to bring people back to work when workers in the industry a most needed.