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ASM CEO message: Recapping a year of uncertainty - by Michael McDonagh

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Michael McDonagh

It was supposed to be the year that brought everything back to normal. That certainly didn't happen in construction or in virtually any other industry. COVID exhaustion certainly set in toward the end of the year. Commercial construction continued at a strong pace. The Associated Subcontractors of Massachusetts (ASM) continued supporting subcontractor rights and protecting our industry. Although our State House building remained closed for 2021, the issues that we care about continued and we were at the table – testifying at public hearings, submitting letters to the legislature, attending virtual meetings, and collaborating with our industry partners. Here is a look back at some of the key issues on the table in 2021.

American Rescue Plan Act (ARPA) Spending Bill Signed into Law

In December, governor Baker signed a spending bill negotiated between the House and Senate laying out a plan to spend approximately \$4 billion in federal ARPA aid and surplus tax revenue. This massive once-in-a-generation spending bill contains a tremendous amount of new spending. Highlights for the construction industry include \$500 million for the UI Trust Fund, spending for the Career Technical Institute Program and other workforce development programs, housing production, and premium pay for front-line workers. \$2.3 billion in federal ARPA aid remain unspent for future use so expect the Legislature to revise this topic soon.

Unemployment Insurance Trust Fund Improved

Discussions on the UI Trust Fund felt like a roller coaster ride in 2021. Independent reporting showed in 2020 the Fund paid out nearly seven times the total paid in 2018 and 2019 combined. This left the fund in the red with early estimates showing a deficit as high as \$7 billion, however, a recent audit shows only a \$115 million deficit. \$500 million was allocated from the ARPA bill passed in December. The bottom line is that UI payments by employers are expected to increase, and a legislative working group is likely to soon make recommendations to address the long-term health of the fund.

Wage Theft Stakeholder meetings

In June, ASM testified in opposition to several bills addressing wage theft while supporting efforts to eliminate the practice from the construction industry. Later in the summer and into the fall, ASM participated in a series of stakeholder meetings on the issue in an effort to reach a consensus on legislation. Those discussions will continue into 2022 and ASM will continue to oppose unfair provisions holding innocent companies liable while bringing fresh ideas to the table to help stop wage theft in all industries, including construction.

ASM Provided Testimony on 15 bills

Aside from the issues above, we remained very engaged on a host of other issues including our

own indemnity fairness legislation; a bill addressing prompt pay for public construction; a variety of bills targeting assistance to minority and women owned business enterprises in public construction, apprenticeship bills, workforce development programs, climate adaptation legislation, insurance bills impacting construction.

Prompt Pay Statute Upheld

In Tocci Building Corp v. IRIV Partners, LLC et al, the Superior Court held that the law means what it unambiguously says. The court stated that failure to reject the requisitions according to the requirements of the Act makes those sums due and owing; the Act voids any contractual provision that conflicts with it; and the owner waived all defenses to payment by not failing to properly reject the requisitions. The case is currently pending appeal before the Massachusetts Appeals Court.

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