



# Memo

**To: MCAA Government Affairs Committee**

**From: Jim Gaffney, Chair**

**CC:**

**Date: December 22, 2020 with correction of December 29, 2020**

**Re: Summary of H.R. 133 Consolidated Appropriations Act, 2021**

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Following is a thumbnail summary of the COVID Relief/Omnibus Government spending bill for Fiscal Year 2021. The President is asking for greater individual stimulus checks (\$2,000, up from \$600) so there may be an amendment or veto, but this summary will stand for most of what will be the final result, we hope, eventually.

The \$2.3 trillion measure passed the House by a vote of 359 to 53 and cleared the Senate 96 to 6 on December 21, 2020. The COVID relief provisions total roughly \$900 billion, and the FY 2021 omnibus spending measure comes in at \$1.4 trillion.

The items in this summary digest are a select few of the many contained in the legislation – based on their impact on MCAA members and the MCAA policy agenda. There are many more of keen interest broadly – tax credits for employee retention, green and sustainable energy incentives including incentives for combined heat/power/waste heat recovery projects, and national infrastructure incentives. All in all, amounting to a substantial green energy economic incentive initiative.

There is some reference to issues omitted that will affect MCAA's legislative and regulatory policy agenda in 2021.

**HR 133, Division M, Coronavirus Response and Relief Supplemental Appropriations Act, 2021**

- **School Facility Spending** – The act allocates \$54.3 billion to the Department of Education for the Elementary/Secondary School Emergency Relief Fund to be used for formula funding grants to state and local school districts. The funds are to be used for

school repairs and improvements relative to the coronavirus, including HVAC system projects to improve indoor air quality, and for other education learning loss programs.

- **Extended Federal Unemployment Insurance Supplements** – Federal Pandemic Unemployment Assistance was extended. Rather than expiring on December 26, 2020, it now expires on March 14, 2021. The amount of the supplement was reduced from \$600/month to \$300/month in the extended period, and eligibility was extended from 39 weeks to 50 weeks. Federal reimbursement to states for waiving the one-week waiting period for unemployment benefits was extended to March 14, 2021 with reimbursement set at 50% for the extended period after December 26, 2020. (Thirty days after enactment, states must have procedures to address claimants who refuse to accept return to work or other offers of suitable employment without good cause while receiving unemployment compensation (UC) benefits.)
- **Tax Credit Assistance to Individuals and Families** – The measure provides a \$600 refundable tax credit to individuals and family members in households reporting a 2019 adjusted gross income of \$75,000 or less on their 2019 tax return, with \$1,200 for married couples filing jointly. The amounts diminish by \$5 per \$100 of additional income, with no checks provided for heads of households with \$112,500 in income and married couples filing jointly at the \$150,000 income level.
- **Correction: Paid Sick and Family Leave Tax Credit Extended to the End of March** – The latest COVID relief measure signed into law Sunday does not extend the requirement that employers offer paid sick and family leave as required under the Families First Coronavirus Relief Act passed last March as erroneously reported in the MCAA summary published in the Weekly Update on December 28, 2020. The latest COVID bill extends only the availability of the refundable tax credit as under the FFCRA until the end of March 2021 for those employers voluntarily providing such paid leave after December 31, 2020. MCAA regrets the error.
- **Paycheck Protection Program Loan Changes** – The new law provides an additional \$284.45 billion for the extended PPP loan program. The new measure lists additional eligible expenses to be payable with PPP loans, including: operating expenses relating to computer software, cloud computing, human resources and accounting expenses; property damage losses due to public disturbances in 2020 not covered by insurance; personal protective equipment (PPE) expenses incurred to comply with Federal, state and local work requirements from March 1, 2020 through the end of the Federal emergency declaration; and other group employee benefits including group life insurance and disability, vision, and dental benefits. The 60/40 payroll/non-payroll expense ratio is unchanged.
- **PPP Second Draw** – The new COVID measure establishes a new PPP “second draw” loan extension for small, hard-hit businesses, including independent contractors, sole proprietorships, and some non-profits. The maximum amount is \$2 million for applicants with fewer than 300 employees that have expended all of their first PPP draw. Eligibility is based on a minimum 25% reduction in gross receipts in consecutive quarters of 2020 relative to 2019, and a loan amount equal to 2.5 times average monthly payroll as of one year prior to the date of application. IRS 501(c)(6) business leagues are eligible for second draw loans, with limitations on the amount of lobbying expenditures (no more

than 15% of the budget) by the tax exempt organization. Publicly traded companies are not eligible for PPP loans.

- **Federal Contractor Relief** – The new COVID measure has a sole measure pertaining to Federal contractor relief – a provision providing reimbursement to Federal contractors that provide paid leave to employees unable to work because their Federal facility workplace was closed.

### **Significant Omissions in the New COVID Measure Relative to the HEROES Act Passed in May and October**

- **Dropped Federal Contracting Provisions** – The new COVID measure omits two elements of the Federal Contracting Title of the HEROES Acts that would have benefitted MCAA Federal contractor members. The first element that was dropped was an accelerated 15-day payment to Federal prime contractors that would have accelerated pay to subcontractors under the Federal Prompt Payment Act. The other was a ban on negative past performance ratings on Federal contracts relating to COVID performance issues and delays. The MCAA-proposed direct Federal construction contract COVID impact cost recovery fund to be administered separately from the project budget and claims process was not adopted into the latest measure.
- **Multiemployer Pension Plan Reforms Dropped at the Last Minute** – The HEROES Acts included comprehensive multiemployer pension reforms centered on public funding for Pension Benefit Guaranty Corporation (PBGC) partition of orphan participants in critical and declining plans and the adoption of the new Composite Plan design long-pending since the initial **Solutions Not Bailouts** proposal and the Multiemployer Plan Reforms adopted by Congress in 2014. In the final week before the adoption of the recent COVID measure, Senate negotiations to pare down the cost of the HEROES proposal to impose total cost sharing on plans for the PBGC partition costs stalled and eventually broke the negotiations, as Senators Grassley and Alexander called off negotiations a week before COVID law adoption for lack of time to score and negotiate the final deal.

Both the Federal contracting provisions and the multiemployer pension plan reforms will most definitely be on the agenda for the next COVID bill in the 117<sup>th</sup> Congress next year, even as the Senate elections in Georgia on January 5, 2021 will clearly affect the legislative course next year fundamentally.

### **HR 133, Authorization Matters**

- **Construction Consensus Procurement Improvement Act** – The authorizing sections of the omnibus law contain a ban on the use of internet reverse auctions for awarding Federal construction contracts for complex, specialized or substantial construction and design services. Reverse auctions are defined as a selection method in which there are multiple sellers lowering their bids to win service or supply contracts.

This provision is similar – but not the same – as recent General Services Administration Proposed Guidance on Reverse Auctions that MCAA’s Government Affairs Committee (GAC) is considering. The MCAA GAC will work to reconcile the two measures next year in the regulatory process.

- **Commercial Building Energy Efficiency Tax Credits Made Permanent** – The \$1.80 per square foot tax credit for commercial building energy efficiency retrofits to the building envelope, lighting, heating, cooling, ventilation, and hot water systems are made permanent. The provision updates the ASHRAE Reference Standard 90.1 from the 2007 edition of the ASHRAE standard in effect two years before project inception. The provision also indexes the \$1.80 per square foot tax credit to inflation.
- **Labor Department Appropriations** – DoL gained \$12.5 billion in FY 2021 discretionary funding, up \$122 million from FY 2020, and \$1.4 billion above the Administration’s budget request. The DoL Employment and Training Administration allocation was \$9.4 billion, with \$185 million for Registered Apprenticeship, up \$10 million from FY 2020. **The measure provided no funding for the Administration’s relatively new Industry Recognized Apprenticeship Programs – IRAPs. Also, there are new requirements in authorization requiring IRAP participation by parties’ “equity intermediaries” and business and labor intermediaries.** DoL worker protection agencies also gained funding of \$1.7 billion, up \$15.3 million from FY 2020, with \$246 million of that going to the Wage and Hour Administration (prevailing wage enforcers) up \$4 million from FY 2020, and OSHA taking \$592 million, up \$10 million from FY 2020.
- **Other Agency Construction Program Funding**
  - **Agriculture Department** – \$3.9 billion for rural development grants for water/wastewater loans and grants, rural electric and telephone infrastructure grants, and rural housing loans.
  - **Defense Department** – \$116 million for upgrades to military base childcare facilities, and \$284 million for school infrastructure on military bases.
  - **U.S. Army Corps of Engineers** – \$3.85 billion for operations and maintenance projects and \$2.69 billion for construction projects.
  - **General Services Administration** – \$230 million for courthouses in Hartford, Connecticut and Chattanooga, Tennessee, \$372.7 million for basic facility repairs, and \$203.9 million for major repairs and alterations.
  - **U.S. Coast Guard** – \$363 million for shore facilities and infrastructure and base housing.
  - **Military Construction and Veterans Administration** – \$8.6 billion for military construction, with \$1.3 billion of that for military family housing construction, operations and maintenance. An additional \$596 million for construction and alteration of Guard and Reserve facilities in states and territories.
  - **Department of Veterans Affairs** – \$1.7 billion for major and minor construction projects.

**In summary**, the COVID/Omnibus spending law provides some badly needed COVID economic relief, some construction market stimulus compared with FY 2020 and a forward-looking prospect for market recovery in public sector infrastructure investments as the pandemic recedes. There are some positive procurement reforms, and some administrative and regulatory

opportunities and challenges going into 2021. In Congress, again in 2021, multiemployer pension reform and Composite Plans will be top of the line for MCAA early in the first session of the 117<sup>th</sup> Congress.