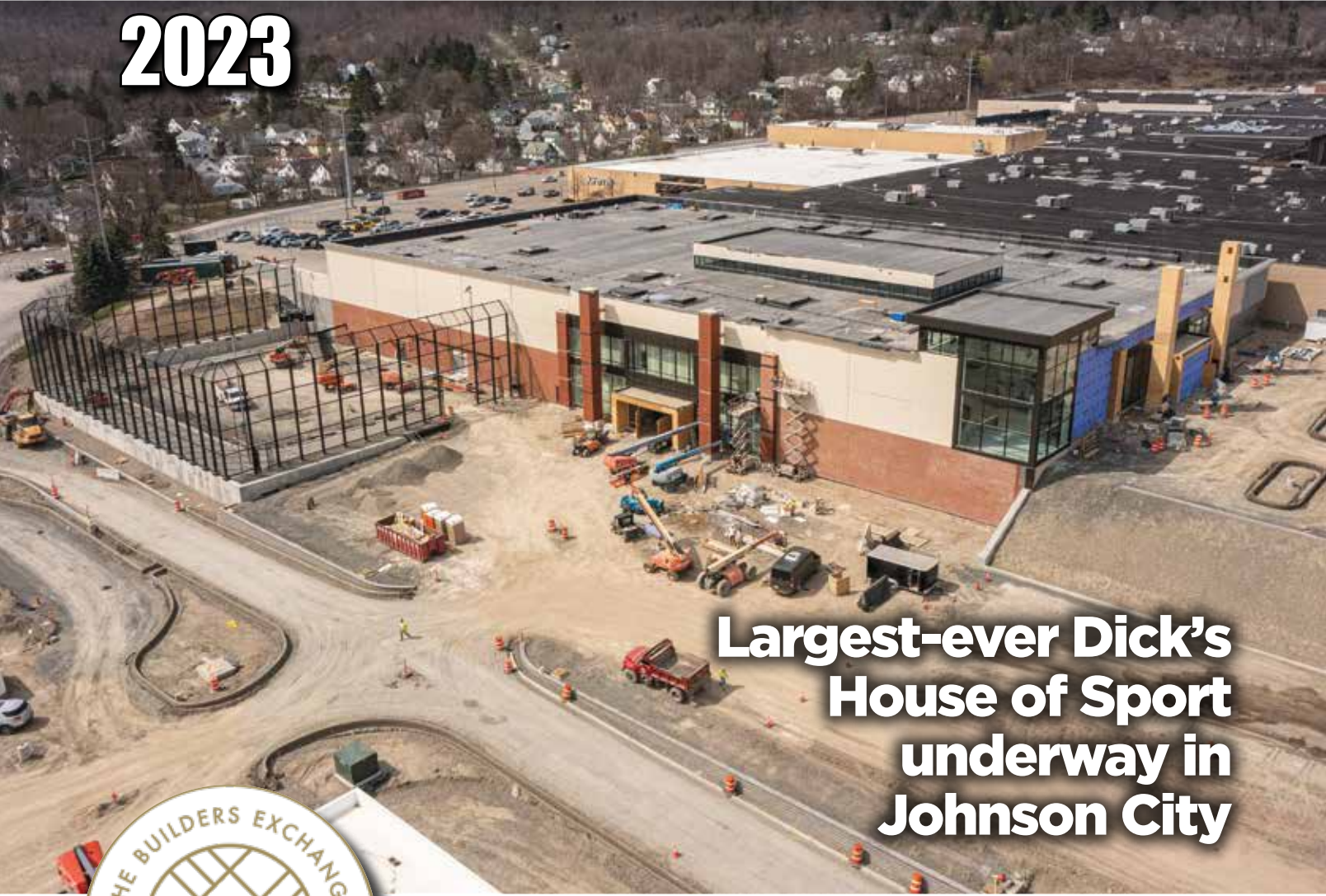


# BUILDING

## *the* Southern Tier

*Official Publication of the Builders Exchange of the Southern Tier*

**2023**



**Largest-ever Dick's  
House of Sport  
underway in  
Johnson City**



**A Year of Success at Alfred State College**

**NY State Planning for a Carbon-free Economy**

**New DOL Contractor and Subcontractor Registration Law**

**Major Retirement Plan Changes in the SECURE 2.0 Act of 2022**

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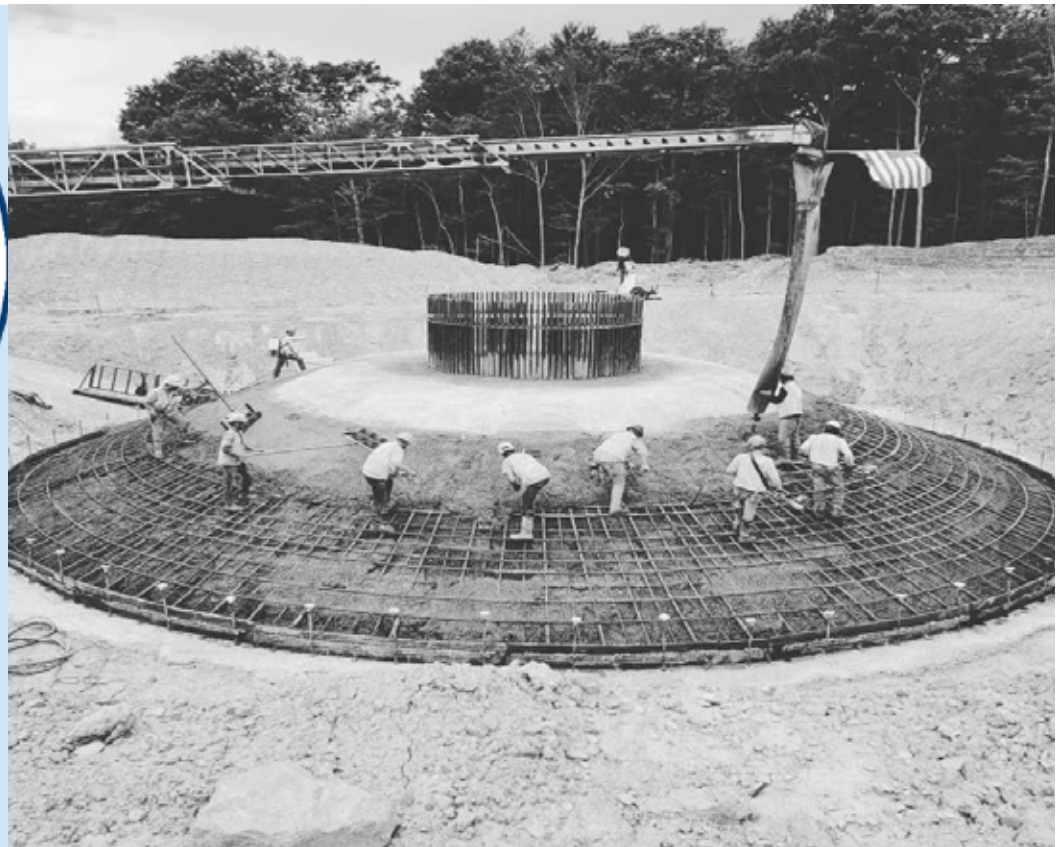
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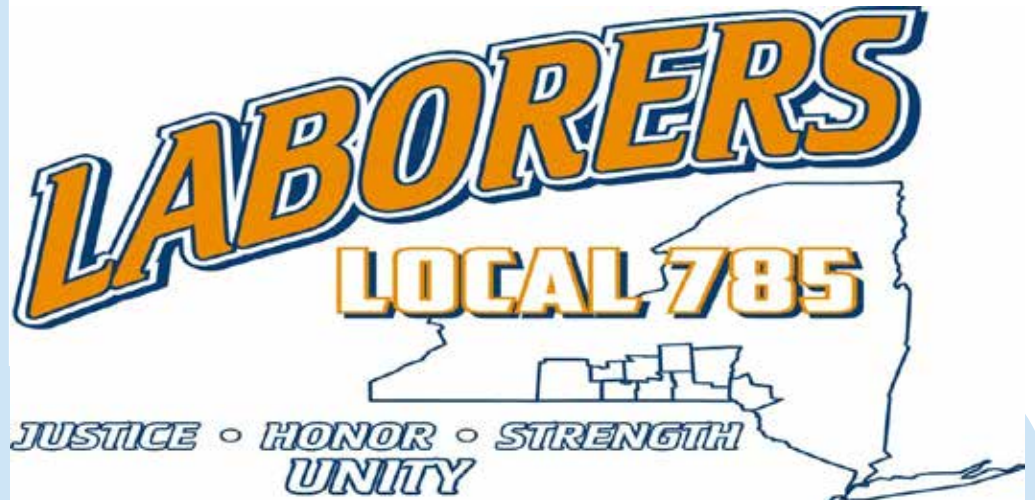
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## A Message from the BEST Executive Director

# **BRAD WALTERS**

---

**N**ow that the pandemic is “officially” behind us and things are slowly getting back to normal, it looks like 2023 and a few years beyond will be record-breaking seasons for construction, provided we can avoid a deep recession or – God forbid – a depression. A new Bills stadium, the Great Lakes Cheese project, and the new chip plant in Syracuse are certain to suck all the skilled labor out of the market. Those projects – combined with the infrastructure work being planned with the American Rescue Plan Act (ARPA) – is going to deplete the workforce early and quickly. We have already heard of long-time employees leaving 20-year employers just for the chance to work on the new Buffalo Bills stadium. The only good news is the two biggest projects – the Bills’ stadium and the chip factory in Syracuse – will have two to three years between them, which will lessen the load somewhat. Nonetheless, the labor market will be very tight for the next five to six years, which will mean rising costs coupled with the already rising inflation rates and supply chain problems. That said, it will be a good number of years for those who can cope with the problems. There’s a lot of money flying around, and those with a solid workforce only stand to profit from the current situation.

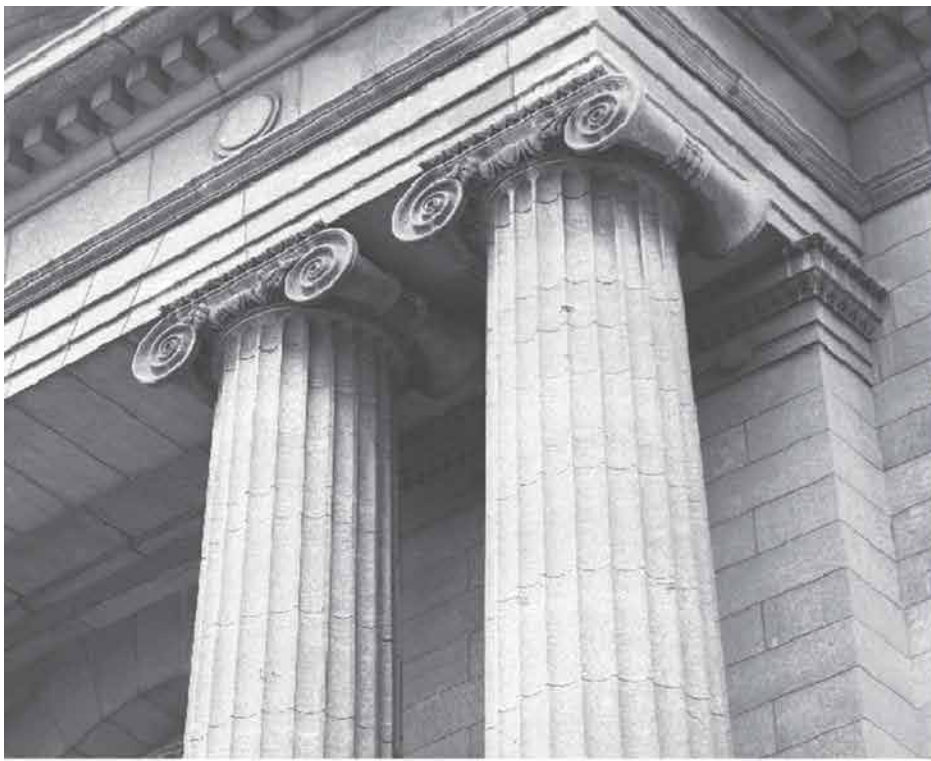
Our association is doing well too. We appreciate our members and their loyalty to us. By the time this has been published, we will have added online safety training to our website. As of the end of April, we were within two weeks of launching the new services available. Classes will include forklift licensing, OSHA 10 and 30, crane rigging, confined space, HAZWOPER & Refresher course, mold and asbestos, telescopic booms, man

lifts, Lock out/Tag out, and much more at a very affordable price. We hope you take advantage of them; it’s a great tool for those short-notice situations where training is needed now! Soon after that launch, we will be adding blueprint reading, construction management and many other college accredited construction-related classes. You can check all of them out on our website [www.bxstier.com](http://www.bxstier.com).

The association has also delved into workforce development recently. Since the pandemic, the single biggest complaint we’ve heard is the difficulty in hiring good people. We have been talking to BOCES about the matter and have offered financial support in Binghamton. We are also in the running to manage a half a million-dollar grant through the City of Jamestown for workforce development in the construction industry funded by ARPA. Both programs seek to educate middle school, high school, and unemployed adults on the opportunities in the construction industry. Further announcements on these programs will be made available as information permits.

The Build New York Online Plan Room has also had another successful year. Last year yielded almost 5,000 bidding opportunities for our members. The plan room allows members to see plans and specs for jobs that are bidding in NY and Northern PA before they decide to invest in the non-refundable deposits and associated shipping costs of bidding public projects. If you do not currently subscribe, ask us for a two-week free trial.

Thank you,  
***Brad Walters***



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My name is Kolton Gardner, and I am the recipient of the Builders Exchange of the Southern Tier, Inc. Scholarship.

Thank you so much for the award. I appreciate being selected for this award because the money will help me with tuition, books, and other expenses associated with attending college. As you know, the cost of pursuing an education is not cheap these days, so I greatly appreciate the financial help.

Three things to know about me would be that I love cars. I have had an interest in cars since a young age and would love to end up in a factory that produces cars. I love to ski. Although I have only been skiing for 3 years now, it is the most exciting activity I have tried.

The last thing is that I plan to attend Penn State after SUNY Broome. Even before I knew what I wanted to do when I got older, I knew that I wanted to attend Penn State.

Sincerely,  
**Kolton**

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My name is Ashley Kenyon, and I am the recipient of the Builders Exchange of the Southern Tier, Inc. Scholarship.

I am honored to be selected to receive this scholarship this year. This scholarship will help make it possible for me to move on to a four-year college and obtain a bachelor's degree in mechanical engineering. I believe that continued education is a wonderful experience, and not everyone is lucky enough to experience it, but because of donors like you, many people can continue their education.

Some things about me are that I love to cook, bake, and just experiment in the kitchen. I am also very passionate about reducing the amount of waste that is put out into the environment.

Lastly, I am a collector of plants and enjoy growing my own produce and flowers when I can. I do not necessarily have the "greenest thumb," but I try to!

Once again, thank you for selecting me to be the recipient of your scholarship.

Sincerely,  
**Ashley**

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My name is Gottlieb Teoli, and I am the recipient of the Builders Exchange of the Southern Tier, Inc. Scholarship.

I am completing my associate degree in engineering science here at SUNY Broome this spring. I am transferring to BU in the fall to continue my studies in mechanical engineering. I really enjoy school and have loved studying at SUNY Broome.

I play the violin and the electric bass, do weight training, fix and work with engines, and go snowboarding in the winter. I also really enjoy reading books and listening to audiobooks.

I am so grateful for this award! It really helps me out with my college expenses and allows me to continue studying and pursuing my dreams.

Sincerely,  
Gottlieb

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My name is Abbigail Briggs, and I am writing to thank you for your generous \$1,500 scholarship. I was very happy to learn that I was the recipient of the Southern Tier Builders Association Scholarship for the school year 2023-2024.

As I continue my education in the Construction Management program at Alfred State College, I am honored to receive your scholarship. Your thoughtful gift will help to alleviate financial burdens that may come my way throughout my senior year.

Again, thank you for choosing me for this scholarship.

**Abbigail**

# Unfit to be Registered: The New DOL Contractor and Subcontractor Registration Law



By Nell M. Hurley

At the end of 2022, New York amended its Labor Law, adding § 220-I, which creates a new mandatory registration system for public works contractors and subcontractors to be run by the Department of Labor Bureau of Public Works (DOL). Proponents of the law claim that it will better guard the public fisc and workers from unscrupulous contractors who skirt applicable labor and other laws. While everyone supports that laudable goal, most in the construction industry agree that the law as initially passed was unlikely to expand such protections. It would, however, present risks to timely bidding processes, the use of design-build delivery systems, add administrative burden to contractors, subcontractors, public contracting entities, and the DOL, and likely run afoul of state bidding laws by prequalifying subcontractors. Indeed, leading construction

industry groups and others found the scheme so flawed and duplicative that the Governor was strongly, but unsuccessfully, urged to veto the bill. Fortunately, Chapter Amendments were obtained addressing some of the most egregious of the new law's deficiencies.

Even with the significant improvements, the scheme remains troublesome, presenting costs and risks to contractors in meeting uncertain and complex registration processes, and the expansion of DOL's power to prevent contracts and subcontracts based upon a new standard of "unfit to be registered." The good news is that the system will apparently be slow in the making, with compliance deferred until December 2024.

Section 220-i applies to contractors and subcontractors for all New York public works, and for all covered private projects under the recently expanded prevailing wage laws. Each

contractor/bidder must obtain and submit a registration certificate from DOL with its bid for a public project, or prior to commencing work on a covered private project. This requires the contractor to provide DOL with information and documentation regarding: its business entity, owners and officers; tax identification number, unemployment insurance registration number and workers' compensation board employer number; proof of workers' compensation insurance coverage; outstanding wage assessments, debarment history, final determinations as to any violations of labor, employment tax, workers' compensation and workplace safety laws; apprenticeship program participation; and MWBE status. Subcontractors must likewise be registered and approved by DOL prior to commencing any work on such a project. Registration requires a \$200 fee and must be renewed every two years. Failure to comply, including a contractor's knowledge that a subcontractor is not registered before working, may result in a fine of \$1,000. A private owner on a covered project is also obligated to ensure compliance or be similarly subject to the fine.

Under the new law, DOL must review information for every public works/covered project contractor and subcontractor to see if that entity is "unfit to be registered" due to an inability "to law-

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fully adhere to contractual obligations [under Article 8 of the Labor Law].” The statute says the determination must be made based on (1) a clearly documented history, or (2) an official record of past dealings, or (3) a present demonstrable inability to adhere to [Article 8 Labor Laws]. Current debarment, existing bid ineligibility, and failure to satisfy a previous wage violation are explicitly referenced as grounds for an unfit finding, though a contractor cannot be found unfit based solely on a debarment in the prior eight years or solely on the wage violations of subcontractors. Beyond that, the statute appears to allow wide latitude as to the meaning of unfit, likely to be fleshed out by DOL in forthcoming regulations. Notably, the statute is silent on whether DOL can or should make an unfit finding based upon “non-responsibility” grounds (beyond prevailing wage violations) which are currently left to post-bid qualification by the owner/public entity.

There are some procedural protections for registration applicants. Before DOL can find a contractor or subcontractor unfit, it must notify the entity in writing of the reasons for the proposed finding and provide the opportunity to cure or be heard. The contractor/subcontractor has 30 days to request the hearing or the proposed determination becomes final. A DOL proposed finding before bid could prevent contractor bid submission or, on covered private projects, delay contract/subcontract work. In the event of a lapse in registration status (or a determination of unfitness) during construction, the contractor/subcontractor cannot be prohibited from completing the contract work. An unfit determination (not merely a notice from DOL of a proposed unfit finding) during contract performance will require the appointment of a moni-

tor, at the contractor’s expense, to oversee the remaining work, and can result in the revocation or suspension of the registration. Questions about who can act as a monitor, and what specifically that role will entail, are unclear but may be addressed in DOL regulations.

Many rightly point out that information required by the new system has historically been addressed by post-bid responsibility determinations, weeding out the unfit through similar or more detailed disclosure forms and existing resources. For example, the State Comptroller’s office maintains the successful New York State Vendor Responsibility System (VendRep), and other available resources, providing most of the information as that to be required by DOL. Currently debarred contractors are plainly listed on DOL’s website, and DOL has data as to violations that could be shared with owners/contracting entities. Similarly, contractors found “non-responsible” by any State entity appear on the Office of General Services (OGS) website.

Perhaps more importantly, the DOL registration system raises concerns

about how the new DOL pre-bid (or pre-work for covered projects) contractor vetting system fits into and affects the current public bidding process and contractors. A registration certificate is presented in the statute as a condition precedent to submitting a public works bid, or performing covered project work. . A DOL finding of unfit for registration apparently results in a de facto debarment of the contractor, arguably on a lesser or at least different standard than historically required for debarment. How long does this debarment last? Where DOL issues a certificate, to what extent can that be relied upon by public entities for post-bid responsibility determinations? Contractors and public/covered contracting entities alike should stay apprised of this topic as DOL regulations are formulated and the details on unfit to be registered come into clearer focus.

*Nell M. Hurley is Of Counsel to Ernstrom & Drete, LLP (www.ernstromdrete.com), a construction and surety law practice in Rochester, New York. ❖*

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# Major Retirement Plan Changes in the SECURE 2.0 Act of 2022

By Nicholas L. Shires, CPA



**O**n December 29, 2023, President Biden signed the Consolidated Appropriations Act of 2023, which contained the Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022 (also known as SECURE 2.0). Included in SECURE 2.0 are dozens of retirement-related provisions that are intended to enhance provisions from the original SECURE Act of 2019. This article summarizes a few key provisions.

## EXPANDING AUTOMATIC ENROLLMENT IN RETIREMENT PLANS

Beginning in 2025, new 401(k) plans must automatically enroll participants when they become eligible. However, the employees may opt out. The initial automatic enrollment contribution amount is at least three percent but no more than 10 percent. Then, the amount is automatically increased every year by one percent until it reaches 10 percent. All current 401(k) and 403(b)

plans are grandfathered, meaning the requirement does not apply to plans established before the applicable date. There is also an exception for small businesses with 10 or fewer employees, new businesses (i.e., have been in business for less than three years), church plans and governmental plans.

## INCREASING THE AGE FOR REQUIRED MINIMUM DISTRIBUTIONS

Employer-sponsored qualified retirement plans, traditional IRAs and individual retirement annuities are subject to required minimum distribution (RMD) rules, which require that accumulated benefits begin to be distributed by the Required Beginning Date. SECURE 2.0 increases the required minimum distribution age to 73 starting on January 1, 2023, and boosts it to 75 starting on January 1, 2033. This change allows people to delay taking RMDs and paying tax on them.


The law also relaxes the penalties for failing to take full RMDs, reducing

the 50 percent excise (or penalty) tax to 25 percent. If the failure is corrected in a “timely” manner, the penalty would drop to 10 percent.

## HIGHER CATCH-UP CONTRIBUTIONS

Defined contribution retirement plans under Code Sec. 401(k), Code Sec. 403(b) or Code Sec. 457(b) are permitted, but not required, to allow participants who are age 50 or older to make additional pre-tax elective deferrals, known as “catch-up” contributions. Catch-up contributions are elective deferrals that, among other things, are not subject to the annual elective deferral dollar limit (\$22,500 for 2023). The annual dollar limit on catch-up contributions is \$7,500 for 2023.

Deferrals under Savings Incentive Match Plan for Employees (SIMPLE) plans are subject to a reduced annual elective deferral dollar limit (\$15,500 for 2023). The annual dollar limit on catch-up contributions to SIMPLE plans is \$3,500 for 2023.



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Beginning January 1, 2025, individuals who are ages 60 to 63 can make catch-up contributions up to the greater of \$10,000 (\$5,000 for SIMPLE plans) or 50 percent more than the regular catch-up amount in 2024 (2025 for SIMPLE plans). The statutory dollar amounts are indexed for inflation commencing in 2026.

### **ELIMINATING UNNECESSARY PLAN REQUIREMENTS RELATED TO UNENROLLED PARTICIPANTS**

Under both the Codes and ERISA, employees that are eligible to participate in a defined contribution plan must receive numerous intermittent notices and explanations of their rights and options under the plan, such as an explanation of available investment options. These intermittent notice requirements generally apply even where eligible employees have opted not to participate in the plan.

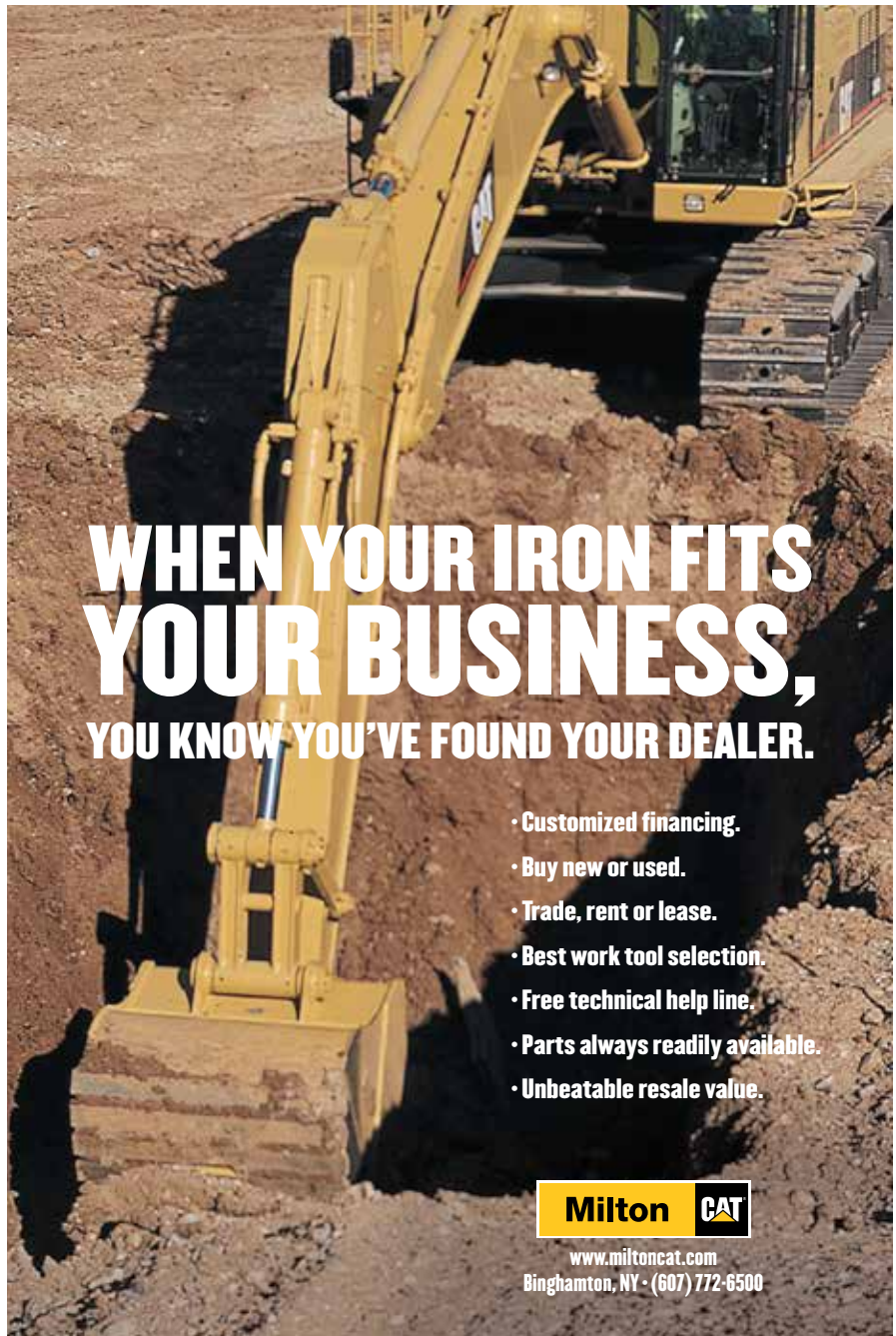
The Act amends the Code and ERISA to provide that defined contribution plans are exempt from intermittent notification requirements concerning eligible participants that elect not to participate, who have already received a summary plan description and any other notices related to initial eligibility to participate in the plan (unenrolled participants). Intermittent notifications include disclosures, notices, and plan documents. However, an unenrolled participant must still receive: (a) an annual reminder notice of their eligibility to participate in the plan, as well as any applicable plan deadlines; and (b) any document they request that they would be entitled to receive under existing law absent this Act provision. This provision applies to plan years beginning after December 31, 2022.

### **CONCLUSION**

SECURE 2.0 is one of the broadest pieces of retirement plan legisla-

tion in decades and will have lasting impacts on all types of retirement plans. It's important for employers to review existing retirement plan documents to ensure compliance with the above rules and other rules included in SECURE 2.0. There may be required amendments needed to bring retirement plans into compliance on the various compliance dates.

*Nicholas L. Shires, CPA, is the partner-in-charge of tax services at Dannible & McKee, LLP, a public accounting firm with offices in Syracuse, Auburn, Binghamton and Schenectady, New York. The firm has specialized in providing tax, audit, accounting, and advisory services since its inception in 1978. For more information on this topic, you may contact Nick at (315) 472-9127 or visit online at [www.dmcpcas.com](http://www.dmcpcas.com). ❖*



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# Largest-ever Dick's House of Sport Underway in Johnson City

**T**he largest store ever built by Dick's Sporting Goods is coming to the Oakdale Commons in 2023.

Located in the former Macy's store at the south end of the revitalized Oakdale Mall in Johnson City, the two-level Dick's House of Sport will encompass 140,000 square feet and feature an indoor climbing wall, batting cage, and footwear department. Outside, a 17,000 square-foot turf field with a track will allow people to try products and will double as an ice rink during the winter.

"We're so excited to bring it back to Binghamton, to our hometown, with the largest store we've ever built," executive chairman Ed Stack said during a news conference at En-Joie Golf Club in Endicott.

## THE FOURTH OF ITS KIND

The Rochester area claimed the title

of the first Dick's House of Sport in 2021, with locations in Knoxville, Tennessee and Minnetonka, Minnesota following suit shortly after.

Along with an indoor batting cage and a 32-foot high rock climbing wall, the Victor location includes three virtual golf bays and the largest physical selection of shoes for the company, with over 380 pairs available, from Nike to sports-specific shoes such as cleats.

As for the outdoor stadium, the Victor location also has the capability to be converted into an ice rink during the winter.

Johnson City's House of Sport will join the recently completed Lourdes Health and Fitness Center and Factory by Beer Tree Brew at the north end of the Oakdale Commons.

## TRANSFORMING OAKDALE COMMONS

The Matthews family acquired the Sears building at the Johnson City mall

in 2019, and Spark JC, an LLC formed by the Matthews and Newman families, closed on the property long known as the Oakdale Mall early in 2022.

Spark JC has rebranded the site as the Oakdale Commons, reflecting its transformation into a mixed-use facility that will provide a "comprehensive lifestyle experience" for the Greater Binghamton Area.

"The mall was important to us ever since it was built," notes Broome County Executive Jason Garnar. "This is going to get people off this highway."

Spark JC was formed for this transformative project. The partnership brings together decades of experience across all classes of commercial real estate.

The development team points to the Sears Building as an example of the revitalization that the community has to look forward to in Oakdale Commons. The goal is to replicate what was done



successfully there: create new jobs and deliver innovative wellness, service, and leisure opportunities to the community – all while retaining the retail experience shoppers expect to find at the mall.

“When there’s potential to create new jobs and bring a local landmark like the Oakdale Mall back to life, it’s hard for us to pass up the opportunity to help the community,” says Doug Matthews, a Founder of Spark JC.

“We like to keep things local,” notes Spark JC Founder Marc Newman. “Our projects use as many local contractors and vendors as possible, as part of our mission to best support the health of the community.”

The leadership team believes in building long-term relationships with the community and bringing long-term value to the community. It will work with existing mall management, Spino-so Real Estate Group, and current tenants on its master plan for the future.

### THE BINGHAMTON AND DICK’S SPORTING GOODS CONNECTION

Stack’s father Dick opened Dick’s Bait and Tackle in Binghamton in 1948. Within five years, the store grew into a sporting goods store, and in 1953, the store moved 700 yards down the road to 347 Court Street.

Dick opened a second location at Vestal’s Four Corners before Ed and his siblings bought their father’s business in 1984. The Vestal store has since moved to the Town Square Mall. More recently, a 630,000-square-foot distribution center opened in 2018 within the Conklin Corporate Park.

Garnar says the new location would complement the current Vestal store across the river.

“Who would’ve thought that a little fishing shop on the East Side would turn into this,” Garnar says. “This will be more than a store; it’s going to be a destination for people from far beyond this community.” ♦

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# Lovell Safety Group Policyholders Now Eligible for Out-of-State Coverage



By Steve Bell, Vice President, Underwriting & Sales

**F**or the first time in its 109-year history, the New York State Insurance Fund (NYSIF) is now able to offer workers' compensation coverage to New York State (NYS) employers with out-of-state employees. Employers insured through a Lovell Safety Group can now obtain workers' compensation coverage in nearly every state in the country and be billed for all coverages in a single monthly billing statement

from NYSIF. This new offering provides employers with a convenient way of ensuring coverage for their out-of-state worksites and employees while enabling them to benefit from NYSIF's competitive rates.

NYSIF's policy currently extends New York (NY) coverage for NY employees working in other states through endorsement. These endorsements exist to extend NY coverage for regular NY employees working in other states

such as salesmen, telecommuters, employees traveling to foreign locations, employees working temporarily, and casual labor used by truckers to unload. It's important to note that these extensions are for NY coverage and do not provide coverage under any other state's workers' compensation laws.

State-specific coverage is generally needed for all employers with both a physical operation and employees in other states. Similarly, NY employers



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who are working certain types of jobs in other states – especially those that require licensing or building permits – will also need to show coverage specific to that state. This coverage headache is now alleviated with out-of-state coverage through Lovell/NYSIF. All policies will be billed on a single monthly statement.

### **Why obtain other state's coverage through NYSIF?**

Employers working in multiple states can face jurisdictional and coverage issues when employees or jobs take unexpected turns, as each state has its own rules regarding who can file a claim. The employer is not the ultimate arbitrator in deciding where a claim is filed, under what policy, and in which state. This uncertainty can lead to complications when filing a claim or at

audit time. For those already insured through Lovell and NYSIF, obtaining out of state coverage through this program simplifies and alleviates these potential issues and provides for a single bill each month.

### **Who is qualified to participate in the new out-of-state coverage program?**

To qualify for the new out-of-state coverage, a business must:

- Be a new or active Lovell or NYSIF workers' compensation customer.
- Meet the underwriting guidelines.
- Have premium or payroll in NYS that is greater than all other states combined.

The last bullet addresses the purpose of the new out-of-state coverage offering. Its purpose is to enable employers who are primarily based in NYS

to receive the benefits of a Lovell/NYSIF workers' compensation policy while simplifying their ancillary out of state coverage requirements. For that reason, at least 50 percent of a company's workforce or workers' compensation premium must be based in NYS.

### **What else do I need to know about the new out-of-state coverage program?**

For those who qualify, out-of-state coverage can be underwritten in all states except Ohio, North Dakota, Wyoming, and Washington, which require workers' compensation coverage be underwritten by their respective state programs.

NYSIF will bill for the out-of-state coverage on the same monthly bill statement you currently receive for your NYS workers' compensation policy.

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*For those insured already through Lovell or those seeking more information on a Lovell Safety Group, speak with your broker or call us and we'll work with your broker to provide you with more information about your NYS and out-of-state coverage needs.*

This makes keeping things up to date simple, eliminating multiple billing statements, payment methodologies, due dates, and the multitude of headaches that go with trying to manage billing from multiple carriers.

You will receive your other state's policy information pages from Zurich, who serves as the fronting carrier for NYSIF. If you have an out-of-state claim, it will be handled by Zurich claim specialists who are trained to handle state specific issues. If you cancel your NYS workers' compensation coverage, your

other state's coverage will be cancelled to coincide with the NYS cancellation date.

***What do I do to obtain Out-of-State Coverage?***

For those insured already through Lovell or those seeking more information on a Lovell Safety Group, speak with your broker or call us and we'll work with your broker to provide you with more information about your NYS and out-of-state coverage needs.

Lovell Safety Management has been

a leader in the workers' compensation insurance market since 1936. Lovell currently manages 12 different workers' compensation safety group programs, which return profits to policyholders through dividends. Lovell policyholders have been paid over \$1.15 Billion in workers' compensation dividends to date. Lovell Construction Group #469 – NYS Construction Industry policyholders receive up to a 30 percent discount and the most recent dividend to be declared was 27.5 percent. ❖

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# A Year of Success at Alfred State College

ERIN VITALE AND JOE LARAISO CUTTING THE RIBBON WITH, LEFT TO RIGHT, DANIELLE WHITE, VP OF INSTITUTIONAL ADVANCEMENT; DR. STEPHEN MAURO, AFC PRESIDENT; AND DR. JOHN WILLIAMS, DEAN OF SCHOOL OF ARCHITECTURE MANAGEMENT AND ENGINEERING TECHNOLOGY.

By Paul Adair

It's been quite the year for Alfred State College (ASC), which has seen numerous accolades, ribbon cuttings, and newly refurbished spaces that work to enhance the students' educational and campus experience.

The website College Factual uses data from the Postsecondary Education Data System (IPEDS) to rank more than 1,800 colleges across the United States in several different criteria. In 2022, College Factual ranked ASC number 1 in New York and number 4 in the country for Construction Supervision.

Not bad for a program that started only five short years ago with less than 10 students enrolled and now has more than 40 every year.

ASC's Bachelor of Technology (BTech) in Construction Supervision

program adds important construction business skills to a technical background. Through the program, students in trades like carpentry, heavy equipment, and electrical – among others – are provided additional training in such topics as construction estimating, scheduling, and contract law. This combination of hard and soft skills makes the ASC Construction Supervision graduate a valuable addition for any company involved in the construction industry.

"Our BTech in Construction Supervision program has definitely provided another path towards eventual management in the construction industry," says Erin Vitale, Chair of the Civil Engineering Technology Department. "As we continue to see growing industry demand for all of our graduates, the

Construction Supervision degree will be there to help fill the gap between number of graduates and number of jobs waiting to be filled."

Last year, ASC responded to the needs of industry and put an additional articulation in place to allow any union journeyman to receive technical credits from approved their apprentice program. This change allows journeymen and women to use their experience earned in the field as a way to enter the BTech Construction Supervision program.

Looking to catch lightning in a bottle twice, ASC hopes to duplicate the success of the BTech Construction Supervision program with the launch of its new Bachelor of Science in Civil Engineering Technology for the upcoming 2023 fall term.



This exciting new program will uniquely cater to individuals who are considering a career in the civil engineering technology field by allowing them to start with a more accessible math and physics background compared to programs at university centers. The program will also focus heavily on applied learning that incorporates several hands-on laboratories where students will learn how to perform tasks expected of them in the “real world”, making them highly sought after employees following graduation, or – eventually – even licensed professional engineers should they so choose.

“To date, we’ve had tremendous interest in the BS Civil Engineering Technology program,” says Vitale. “The program hasn’t even started, and we’ve already received 112 applications for



ERIN VITALE, CHAIR OF THE CIVIL ENGINEERING TECHNOLOGY DEPARTMENT

the fall term. We envision that this new program could potentially increase enrollment in our department by up to 30 percent, if not more.”

When developing this new program, ASC’s Civil Engineering Technology

(CET) Department and School of Architecture Management and Engineering Technology (SAMET) worked closely with team members from Hunt-EAS (Engineers, Architects, and Surveyors), as well as industry professionals, to



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identify competency gaps facing the construction industry on a regional, state, and national level. This close collaboration uncovered three priority areas – transportation, land development, and water/wastewater resource engineering – and identified an industry demand for students interested in and trained to tackle city infrastructure projects related to street, storm water run-off, water, and wastewater systems that allow modern living to be safe and comfortable. Students can also minor in construction management, surveying, or geographic information systems (GIS).

The program's three focus areas also directly align with Engineering Technical Accreditation Council (ETAC) and Accreditation Board for Engineer-

ing & Technology (ABET) requirement that states students need to “perform standard analysis and design in at least three sub-disciplines related to civil engineering.”

“The college’s Civil Engineering Technology department then met regularly to discuss and design the curriculum, ensuring that it could properly address the needs of industry,” says Vitale. “This process was critical to ensure that students within the program are being provided with the essential tools needed to be effective employees and professionals once they graduate, and we’re excited to see where it can take them.”

### **A YEAR OF GRAND OPENINGS**

Named after a successful engineer,

business owner, philanthropist, and decorated veteran – not to mention ASC graduate – the Joseph S. Laraiso Construction and Geomatics Lab officially opened its doors to students in December 2022.

The amazing new space showcases a cutting-edge software lab equipped with twenty computer workstations arranged to encourage greater teamwork and a project-based learning atmosphere. The lab allows construction students to use estimating, scheduling, and project administration software in conjunction with real plans and specifications required on today's most innovative job sites.

Graduating from the mechanical engineering technology program in 1967, Laraiso's career in the construction

industry has spanned nearly 50 years and it was his financial generosity and desire to give back that has made new construction and geomatics lab possible.

“He (Joe) is doing his part to ensure that other Pioneers are also able to find the path that is right for them,” said Executive Director of Institutional Advancement Danielle White at the ribbon cutting. “This new lab will improve the group work environment in a technologically advanced and modern setting. We are so grateful for Joe’s continued support of our students.”

For more than 20 years at ASC, Professor, William “Doc” Bruce was a mentor and friend who gained the wholehearted respect of faculty, industry leaders, and students alike for his excellence in education.

In April 2023, the long-awaited Doc

Bruce Construction Materials Laboratory held its own ribbon cutting, signaling the culmination of a \$500,000 fundraising campaign led by two former students of Bruce – Jimmy Smith, President of Advance Testing Company, and Union Concrete Construction Corporation President, Gary Hill – who wanted to find a way to honor the professor for the impact he made in their lives.

The new space further supports students in the Civil Engineering Technology Department by providing all new equipment to ensure ASC students will experience real world certification tests in relation to concrete, asphalt, and aggregates.

Looking ahead, ASC is excited to open the new Walter Sass Field Prep Lab at the Center for Surveying and Geomatics later this year. Walter Sass is a 1978 Surveying Technology gradu-

ate from ASC and today leads Weisser Engineering & Surveying in Houston, Texas. He is also an ASC Major Gift donor, whose dedication to giving back to the college that gave him the skills required to achieve business success.

When complete, the refurbished lab will give on campus students a great space to start their field labs and will set the college up to offer online surveying classes, which the college is currently pursuing permission from the State University of New York (SUNY) to do.

“When I became department chair, one of my goals was to make our spaces look as amazing as the career opportunities we have for our graduates,” Vitale says. “I have been tremendously fortunate to have that goal coincide with the extreme generosity of some amazing alumni.” ❖



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# Reuse of Fill Material Under a Predetermined Beneficial Use

By Cheyenne J. Dashnaw, PE, Senior Engineer, Atlantic Testing Laboratories



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**N**ew York State Department of Environmental Conservation (NYSDEC) solid waste management regulations specify provisions in 6 NYCRR Part 360.13 that apply to direct use of fill material under a predetermined beneficial use determination (BUD). These provisions apply to on-site and off-site management of fill with limited exceptions. The current regulations allow for self-assessment of fill materials through analytical and physical characterization of the fill to determine if and where the material can be reused. Characterization of fill is required to be performed through a sampling program, with certification from a qualified environmental professional (QEP). Fill that doesn't meet designated criteria would be considered solid waste for disposal at a permitted facility, unless petitioned and approved for use under a case-specific BUD.

6 NYCRR Part 360 specifies that a written sampling program must be designed and implemented by or under

the direction of a QEP. Representative samples of fill should be collected, with minimum quantities outlined in Table 1 of 6 NYCRR Part 360.13(f) and analyzed by a laboratory certified by the New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP). Grab samples are laboratory analyzed for volatile organic compounds, and composite samples are laboratory analyzed for semi-volatile organic compounds, pesticides, hexavalent chromium, cyanide, metals, and polychlorinated biphenyls. Additionally, visual observation of the fill material should be conducted to estimate the volume of physical contaminants. Analysis for asbestos should be performed if demolition of structures has occurred on the site.

Analytical results and physical characteristics for sampled fill materials are compared to criteria described in Table 2 of 6 NYCRR Part 360.13(f). The fill can then be categorized as to whether it satisfies criteria to be used as general fill, restricted-use fill, or limited-use

fill. Having the most stringent criteria for contaminant levels and physical constituents, general fill can be used in any setting where the fill meets the engineering criteria, with the exception of undeveloped land and agricultural crop land. Restricted-use fill may be used in transportation corridors or on sites where in-situ materials exceed restricted-use or limited-use criteria. It must also be placed above the seasonal high-water table. Limited-use fill may be used under foundations and pavements above the seasonal high-water table, except for sites located in Nassau or Suffolk Counties.

Sampling and analysis for fill material originating outside of New York City are required if there is historical evidence of impacts at the site, or if material exhibits visual or other indication of contamination. Sampling and analysis are also required if the material is from a site subject to industrial land use, or if visual indication of chemical or physical contamination is discovered during excavation. Sampling and analysis for fill



material originating from New York City is required unless the quantity is less than 10 cubic yards from one site and does not contain historical evidence of impacts from contamination.

For off-site use of fill meeting the restricted-use or limited-use beneficial use criteria, and exceeding 10 cubic yards, the NYSDEC must be notified at least five days before delivery. Fill material must also be used within 30 days of arriving at the project site. The generator, processor, and receiver of the material must keep the records of the fill material quantities and analytical results for a minimum of three years. Additional requirements are applicable for material generated in, imported to, or relocated within the City of New York.

If you have a project that may require soil sampling per NYSDEC 6 NYCRR Part 360, ATL, a WBE certified company, has experienced environmental professionals located throughout New York State, to perform sampling and coordinate applicable analysis services.

For more information, contact *Cheyenne Dashnaw, PE*, at 315-386-4578, [cdashnaw@atlantictesting.com](mailto:cdashnaw@atlantictesting.com), or visit [www.AtlanticTesting.com](http://www.AtlanticTesting.com). ❖

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## Update Regarding New York’s New Registration Requirement for Contractors and Subcontractors Performing Public Works and Covered Private Projects

**S**ome significant changes are being made by chapter amendments (S.838 and A.984) to Section 220-i of New York’s Labor Law. Contractors and subcontractors bidding on public contracts and performing work on covered private projects will have two years (by December 30, 2024) to register with the Department of Labor, Bureau of Public Works, rather than one year. The amendments also remove the requirement that a contractor submit registration certificates for all its subcontractors at the time its bid is submitted; amend language with respect to notice and hearing requirements; require re-registration to occur not less than 90 days before expiration; and add language to require a monitor to oversee ongoing work if a contractor or subcontractor is found unfit.

The stated purpose of the law is to help enforce New York’s prevailing wage and other worker protection laws. The DOL will create an online system through which contractors and subcontractors will have to answer questions and submit documents about:

- the business entity and its owners and officers;
- unemployment and workers’ compensation insurance;
- any outstanding wage assessments;
- debarment under New York or federal law, or any other state’s laws;
- final determinations of a violation of any labor laws, employment tax laws, or workplace safety standards (including OSHA); and
- association or signatory to an apprenticeship program.

If the DOL approves the submission, the contractor will receive a registration certificate that remains valid for two years.

The chapter amendments include new details about the process for determining a contractor or subcontractor to be “unfit to be registered.” The DOL will be required to notify the contractor or subcontractor of the reasons for the proposed determination before it is finalized and “an opportunity to cure or be heard prior to the determination.”

The text still offers little guidance regarding grounds for the DOL’s denial. The law provides that any unfit determination must be based on “clearly documented history, official record of past dealings, or a present demonstrable inability to lawfully adhere to the obligations and responsibilities.” Given the information that is being requested of contractors and subcontractors, the DOL is likely to feel empowered to examine a wide range of labor related issues, including safety records.

The amendments still provide that registration can be revoked or suspended upon a final determination of a violation of prevailing wage requirements; however, the contractor or subcontractor shall be afforded an opportunity to be heard prior to revocation or suspension.

Notably, the law states that a contractor shall not be deemed unfit solely because of debarment in the last eight years (rather than 10 years as the law was originally drafted), unless still debarred or otherwise ineligible under a labor law at the time of seeking registration. The law refers

to debarment, not to a finding of non-responsibility, although it is unclear as to whether the DOL will appreciate the difference between debarment and a non-responsibility finding. We will have to see the practical implications of this new law, but the DOL should not be allowed to use this new law as a means of debarment for grounds beyond what is already allowed under the Labor Law.

A potentially troubling aspect of the amendments is the new ability of the DOL to impose monitors. The amendments provide that if a contractor or subcontractor is determined unfit while performing contracted work on a covered project, it may only continue to work "if a monitor is appointed to oversee the work completed at the sole expense of such contractor or subcontractor." The law does not state how long such a monitor can be required, but logically it should not extend beyond the project duration.

When bidding on a contract for public work, a contractor must submit its own registration certificate. It will be the contractor's responsibility to ensure that its subcontractors are registered before they begin working, but registration certificates for subcontractors will not be required to be submitted at bid time. For covered projects

performed under private contract, the owner or developer must ensure that the contractor and all subcontractors are properly registered. The lapse of a registration will not prohibit a contractor or subcontractor from completing their work on a covered project.

Covered private projects are defined to be those covered by Labor Law Section 224-a (paid for in whole or in part out of public funds where the amount of all such public funds, when aggregated, is at least 30 percent of the total construction project costs and the project costs are over \$5 million) and Labor Law Section 224-d (renewable energy projects procured with public credits).

The law also provides for a \$1,000 penalty, after notice and hearing, against any unregistered contractor who submits a bid on a contract for public work, and for any contractor who allows an unregistered subcontractor to commence work on a covered project; and, against any owner or developer on a covered project that commences work under a private contract, using any contractor or subcontractor they knew or should have known were unregistered.


How this new law will do anything better than the multiple legal protections that already exist for workers and

public entities, including through other registration systems such as the New York State Vendor Responsibility System, is unclear. And there may be challenges to its scope. The law also may create a prequalification type process prohibited by New York's competitive bidding laws and be incompatible with design-build procurement methods.

Please contact Christopher Kinzel if you have any questions.


The information herein does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained here without first seeking legal advice.

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# Planning for a Carbon-Free Economy

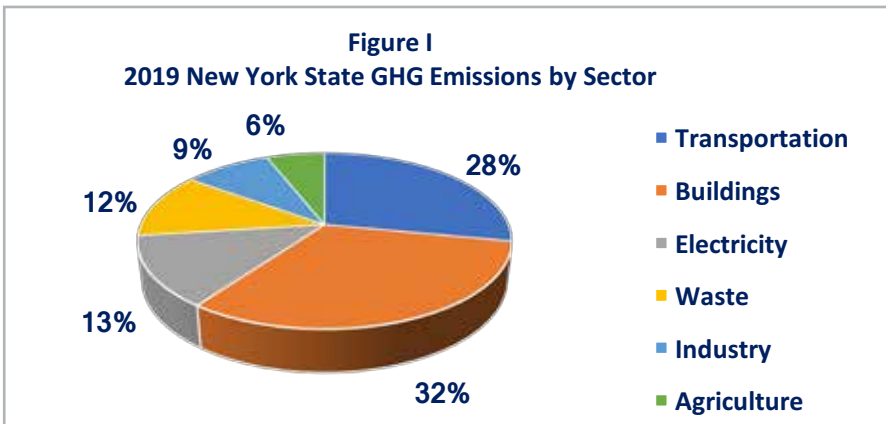
By Ronald L. Epstein, President and CEO, New York Construction Materials Association

In December 2022, the Climate Action Council (CAC) formally adopted the statutorily required Scoping Plan by a vote of 19-3. The Scoping Plan, intended to provide the framework for implementation of the State's Climate Leadership and Community Protection Act (Climate Act), details dozens of actionable policies and strategies necessary for New York to achieve the State's ambitious greenhouse gas reduction and carbon neutrality goals. The adopted policies and strategies impact every sector of

the State's economy and prioritize the accelerated transition from fossil fuels to renewable sources of electricity. Enhanced labor protections, such as prevailing wage, project labor agreements and local hiring preferences, support the "just transition" of adversely affected employees, and require that no less than 35 percent – with a goal of 40 percent – of the investments in clean energy and emissions reduction projects and programs benefit historically disadvantaged communities. The adoption of the Scoping Plan is the cul-

mination of a multi-year process that included hundreds of staff, advisory panel, working group, Climate Action Council, and other public meetings and hearings.

The transportation sector, which is responsible for approximately 28 percent of the state's emissions (Figure I), is specifically targeted in the Scoping Plan as an area requiring aggressive emission reduction actions. According to an analysis conducted by the Department of Environmental Conservation (DEC), transportation sector emissions were approximately 16 percent higher in 2019 than they were in 1990. This is largely due to the sector's near-exclusive reliance on petroleum-based fuels. What the analysis fails to recognize is that New York uses the least energy per capita for transportation purposes of any state in the nation. This level of energy efficiency is directly attributable to the State's significant investment in and high utilization of public transportation services.

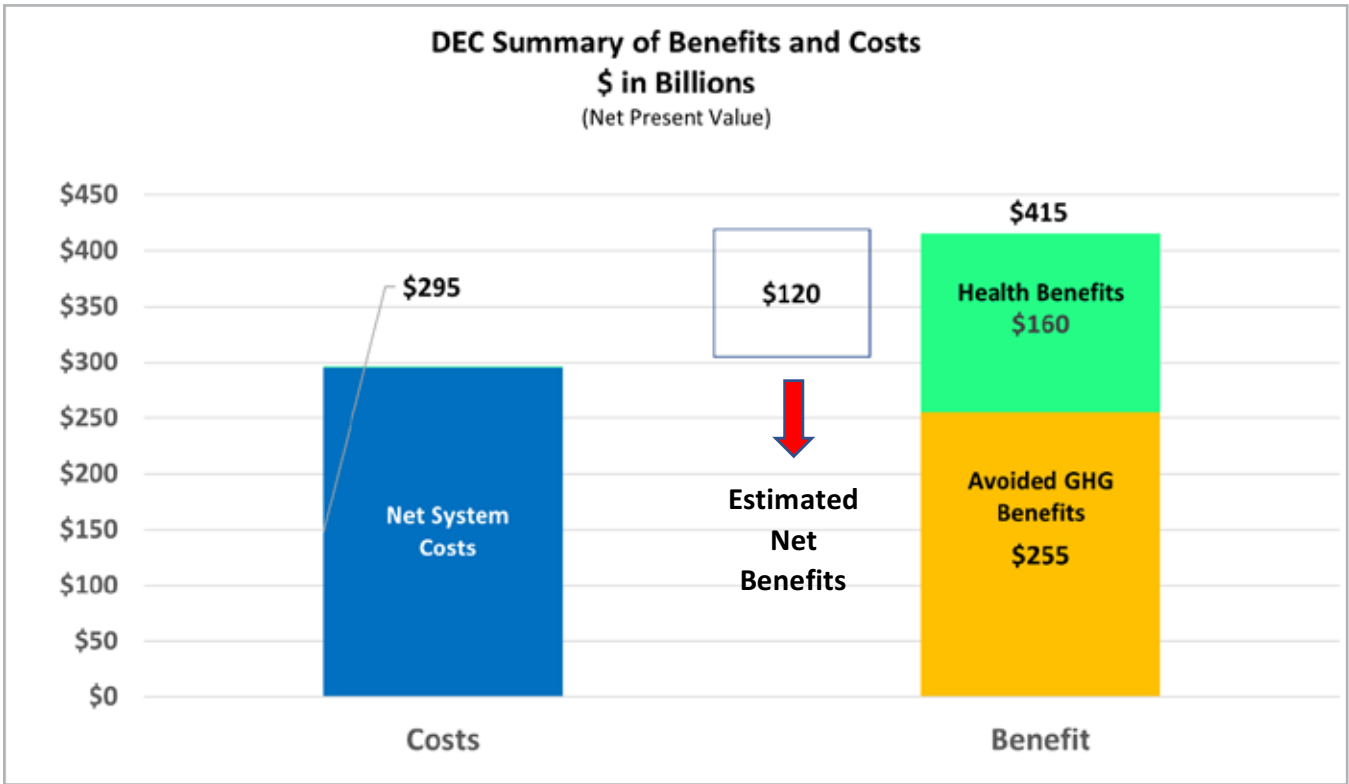


## CLIMATE ACT GOALS

Implement actions to achieve a reduction in economywide greenhouse gas (GHG) emissions of 40 percent by 2030, 85 percent by 2050 from 1990 levels; achieve net zero emissions statewide by 2050. Actions include:

- 70 percent renewable electricity by 2030.
- Require that no less than 35 percent – with a goal of 40 percent - of the investments in clean energy and emissions reduction projects and programs benefit historically disadvantaged communities.
- 9,000 MW of offshore wind by 2035.
- 6,000 MW of solar by 2025.
- 100 percent zero-emission electricity by 2040.
- 3,000 MW of energy storage by 2030.
- 185 trillion Btu of end-use energy savings.





In terms of the cost to achieve the statutory emission and carbon neutrality goals, the macroeconomic analysis prepared for DEC in support of the Climate Act acknowledges that the recommendations may exceed \$295 billion. The analysis assumes, however, that those direct costs will be more than offset by monetizing the benefits of reduced air emissions, associated public health benefits and mitigated impacts from future extreme weather events.

While the Scoping Plan is generally ambiguous in terms of on “pay-fors” to implement the policies and strategies, it does specifically recommend the adoption of an economywide Cap-and-Invest Program. Governor Hochul expressed support for advancing the Cap and Invest Program in her State of the State Address. Cap-and-Invest, in its most basic form, is a market-driven carbon fee. The more restrictive the emissions cap, the more revenue

that is generated from carbon intensive sectors, including the construction materials industry. The general theory is that higher emitters of greenhouse gas emissions (GHG) will adopt cleaner sources of energy. In addition, revenues generated under Cap-and-Invest during this transition would be used to support programs and incentive that further accelerate reductions in GHG emissions. The proposal, one of the more controversial strategies advanced in the Scoping Plan, would need to be designed in a way that helps to realize the State’s Climate Act goals while limiting both economic and emissions leakage to neighboring states. Other sources of potential revenues referenced in the plan include area-specific congestion pricing, emissions-based or Vehicle Miles Traveled (VMT) fees, and new fees on the purchase of internal combustion engine vehicles. The Scoping Plan also assumes that new jobs created through Climate Act

investments will outnumber displaced jobs by 2030 by a ratio of 10 to 1, with more than 50 percent of the employment growth in the Building Sector.

In terms of sector specific recommendations, the following provides a high-level summary of the recommended policies and strategies that will directly impact NYMaterials members:

- **Transportation** – By 2030, 50 percent of new medium- and heavy-duty vehicle sales will be required to be zero-emission; and by 2050 nearly all vehicles in the state will be required to have zero tailpipe emissions. The Scoping Plan assumes that these goals will be achieved through a combination of new regulations and procurement incentives.
- **Buildings** – By 2050, 85 percent of all homes and commercial buildings statewide will be required to be electrified. The Scoping Plan assumes that this transition will be

accomplished by establishing standards and codes for decarbonizing the construction of new residential construction beginning in 2025; and commercial building construction beginning in 2028.

- **Industry** – The Scoping Plan details numerous strategies to decarbonize industrial sectors beginning immediately. The Scoping Plan specifically identifies “manufacturing, mining and quarrying” activities as energy and emission-intensive industries. In the near-term, the plan seeks energy efficiency from scaled electrification and other sector actions; however, longer-term the plan recognizes the need for alternative energy sources such as the use of clean hydrogen. The industry sector strategies gen-

erally rely on incentive-based approaches, to avoid leakage to other states, such as direct technical and financial assistance to help alleviate unique barriers to emissions reductions; incentivizing the procurement and other mechanisms that lead to greater utilization of low-carbon products; and enhanced public support for research, development, and demonstration of new zero-emission technologies to realize lower costs. The Scoping Plan also establishes an expanded GHG emission registry and reporting system to track emissions from industrial sources.

- **Electricity** – By 2030, 70 percent of statewide electricity is required to come from renewable energy sources (70x30); and by 2040, the State is

required achieve a zero-emissions electricity system (100x40). This will require upgrading and expanding the power transmission and distribution systems to deliver energy from where generation is located to where demand exists. It also requires significant investments in the development and deployment of renewable energy resources including the installation of 6,000 megawatts (MW) of distributed solar by 2025; 3,000 MW of energy storage by 2030, and 9,000 MW of offshore wind by 2035.

- **Waste** – The Scoping Plan recognizes opportunities to reduce or avoid GHG emissions by improving current materials management practices. For the construction materials industry, this includes the increased recycling



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and beneficial use of concrete, asphalt and other construction materials that are currently landfilled.

• **Labor** - In terms of labor provisions, the Scoping Plan emphasizes prevailing wage, project labor agreements, apprenticeship programs, and local hiring preferences for construction, operations and maintenance activities supported by the Climate Act.

The full Scoping Plan, including the detailed policies and strategies is available at <https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>.

In terms of next steps, now that the Scoping Plan has been adopted, DEC has until January 1, 2024 to draft and promulgate enforceable regulations to ensure the State meets the Climate Act's GHG emission limits. Other near-term actions include incorporating the Scoping Plan's recommendations in the State Energy Plan; having the Public Service Commission (PSC) conduct a comprehensive review of the State's renewable energy program every two-years, including reporting on the progress in meeting the Climate Act's overall emission reduction targets; and requiring the PSC to continue to advance programs that are designed to provide substantial benefits to Disadvantaged Communities in the implementation of the renewable energy, energy efficiency, and energy storage programs. It's also fully expected that the 2023 legislative session will result in several bills that seek to accelerate the recommendations contained in the Scoping Plan including the reintroduction of the Build Public Renewables Act and

the Fossil Fuels Facilities Replacement and Redevelopment Blueprint Act.

The New York Construction Materials Association has long supported practical and feasible measures to enhance environmental sustainability and reductions in carbon emissions. At the same time, actions by the State to decarbonize all sectors of the economy

must support fuel and technology diversity; be supported by a benefit cost analysis that communicates impacts on costs directly to businesses and consumers; ensures a safe, reliable, and resilient power grid; and not place the State at a competitive disadvantage with other states and nations. ❖



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# Building the Perfect Team: How to Hire for Your Construction Business

By Lynn Novo

**A**re you struggling to find and hire the right workers for your growing company? Well, you're not alone. According to the US Bureau of Labor Statistics, employment in the construction industry grew by an average of 22,000 per month in 2022, which is fantastic news for the economy of New York State, but it also means that there's a challenge on the horizon.

The latest survey by The Associated General Contractors of America found that most contractors are optimistic about demand for construction but worried about finding enough workers to fill positions. That's why finding, hiring, and retaining the right workers is essential to the success of your construction company.

## WHERE TO FIND CANDIDATES

Where do you find candidates? There are several options available to you. Start by looking within your current team.

Can anyone be cross-trained and promoted? This approach shows your current employees that you value their contribution and provides opportunities for growth and development, which aids in employee retention.

Another option is to ask for referrals from your employees. Offering a referral bonus can be a great incentive for your employees to recommend candidates who are a good fit for your company. Referrals can also help you find candidates who are a good cultural fit, as your employees will likely recommend people they know and trust.

Word-of-mouth and networking can also be powerful tools in finding candidates. Talking with industry colleagues can inform you of projects that are ending and potential candidates who are looking for work.

If you're having difficulty finding candidates through in-house options, you may consider using an outside recruiter or employment agency that specializes in the construction industry. Not only can these companies refer screened and qualified candidates quickly, but they can also help you make an offer that will be accepted.

Some builders participate in campus recruiting or job fairs, especially at trade schools. This approach helps build your company reputation and gives a pipeline of junior-level people that can be contacted later in their career.

## JOB POSTING TIPS

But how do you create an attractive job posting? The most important thing to remember is that a job posting is not the same as a job description. Your job posting should be interesting and engaging to attract the right candidates, more like an advertisement than a list of duties. Here are some tips for posting job listings:

1. Start with a two-sentence "grabber" that captures the candidate's attention and makes them want to learn more about the job.
2. Use bullet points to highlight the most important aspects of the job duties. Make sure to put the most relevant information at the top of the post so candidates can quickly determine if the job is a good fit for them.



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3. Provide information about the benefits of the job, beyond health insurance and mandatory sick time off. Include information about free lunches, any employee discounts, social events, opportunities for growth and development, or work-life balance.
4. Describe the experience and background that candidates should have. Be specific, but don't be too restrictive. You may be missing out on qualified candidates if you require too many qualifications.
5. End with a call to action, such as how to apply for the job and whether or not you need to see a resume. (I recommend that you don't require a resume.)

### INTERVIEWING FOR SUCCESS

Once you have posted the job and received responses from potential candidates, it's essential to act quickly. Try to respond within the same day if possible – it will show that you value the candidate's time and interest in your company.

When it comes time to interview candidates, it's essential to approach the process like a pro. Here are some tips for conducting effective interviews:

1. Prepare for the interview by reading the candidate's resume and checking out their LinkedIn profile. This will give you a better understanding of their background and qualifications.
2. Have three to five questions prepared and ask the same questions to each candidate. This will help you compare their answers and make a more informed decision.
3. Listen carefully to the candidate's responses. Actively listening can help you understand their perspective and assess their suitability for the job.
4. Make the candidate feel comfortable during the interview. Remember non-verbal cues, such as body language, and try to create a welcoming and relaxed atmosphere.
5. Think of the interview as a conversation, not an interrogation. Don't talk about yourself too much, and instead, ask

- questions that allow you to get to know the candidate.
6. Ask open-ended questions that require more than a yes or no answer. Follow up with a second question if necessary to get more information.
7. End the interview with a call to action, such as when you will be in touch with the candidate about the next steps in the hiring process.

But hiring the right workers is only half the battle. Retaining your key employees is just as important. The construction industry has one of the highest employee turnover rates, averaging around 25 percent per year. So what can you do to keep your talented employees?

### BUILDING A STRONG TEAM

First and foremost, managers who have a stable workforce and retain their good employees are good at establishing clear goals and expectations for the team. They also encourage open communication and collaboration.

Offering training and development opportunities can help your team members improve their skills and contribute more to your company's success. Creating a positive work environment also helps retain talented employees.

Finally, recognize and reward employees for their contributions. Showing appreciation for your employees' hard work boosts morale. Recognition can be as simple as a text message acknowledging a job well done. Rewards don't need to be expensive. The best rewards are personal and recognize the interests or preference of the recipient, like giving a gift card for someone's favorite lunch place.

Building the perfect team for your construction business requires careful planning and consideration. By using a variety of methods to find candidates, posting effective job listings, and conducting professional interviews, you can attract and hire the right people for your team. Remember that building a strong team takes time and effort, but the benefits of having the right people in place are well worth it in the end. ❖



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www.mazza-hvac.com

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Apalachin, NY 13732  
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**Weatherpanel, Inc.**

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