



ALABAMA UTILITY CONTRACTORS ASSOCIATION

TIM AYERS, EXECUTIVE DIRECTOR
MAY 2020

Director's Comments:



As the month of May winds down, we find ourselves on the brink of Summer, and yet still dealing with the effects of the COVID-19 "Coronavirus" Pandemic. Governor Ivey has amended her "Safer at Home" order (see page 2), and fortunately more businesses have been able to return to operations in at least some capacity.

Thankfully for AUCA members, our industry was deemed essential and never shut down. In fact, most all of our Contractors surveyed are still as busy as they were before this crisis started. However, that doesn't mean there hasn't been some disruptions along the way.

The National Utility Contractors Association (NUCA) has officially recognized June as Trench Safety Month, and will encourage a Trench Safety Stand Down (TSSD) Week from June 15-19th at jobsites across the country. Sadly, two workers from Alabama were tragically killed this month in a trench collapse on a project in Mississippi. The two men were reportedly laying sewer pipe in a trench 10-12 feet below the surface without a trench box.

As an industry, we must be proactive to ensure that these sort of preventable incidents do not occur. AUCA has several member companies that specialize in offering safety training, and/or sell and rent safety equipment. It is absolutely imperative that you always give your workers access to the required training and equipment.

Lastly, I wanted to report that AUCA President Bill McGough is doing extremely well after suffering from a stroke earlier in the month. Please continue to keep Bill and his family in your prayers as he travels on the road to a full recovery.

Tim

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Proceeding With Caution

UPDATED STATEWIDE COVID-19 HEALTH ORDER FOR ALABAMA

AMENDED SAFER AT HOME

Goes into effect on May 22nd at 5 p.m.

Ends on July 3rd at 5 p.m.



NEW UPDATES:

ENTERTAINMENT VENUES (SUCH AS ARCADES, THEATERS, BOWLING ALLEYS)

Open subject to social-distancing and sanitation rules and guidelines

ATHLETIC ACTIVITIES

Practice allowed on May 23; competition allowed on June 15; all subject to social-distancing and sanitation rules and guidelines

EDUCATIONAL INSTITUTIONS

Open on June 1 subject to social-distancing and sanitation rules and guidelines

CHILD DAY CARE FACILITIES

Open subject to social-distancing and sanitation rules and guidelines

SUMMER CAMP

Open subject to social-distancing and sanitation rules and guidelines

WHAT'S STAYING THE SAME:

INDIVIDUALS

Encouraged to stay home and follow good sanitation practices

EMPLOYERS

Businesses may open subject to sanitation and social-distancing guidelines

RETAIL STORES

All retail stores open subject to 50% occupancy rate, social-distancing and sanitation rules

MEDICAL PROCEDURES

Allowed unless prohibited in the future by the State Health Officer to preserve resources necessary to diagnose and treat COVID-19; providers must follow COVID-19-related rules and guidance from state regulatory boards or public health authorities

SENIOR CITIZEN CENTERS

Regular programming still suspended except meals still available through curbside pick-up or delivery

HOSPITALS AND NURSING HOMES

Still must implement policies to restrict visitation

NON-WORK GATHERINGS

Still required to maintain 6 feet of distance between persons not from same household

RESTAURANTS, BARS AND BREWERIES

May open with limited table seating, 6 feet between tables and subject to additional sanitation rules and guidelines

ATHLETIC FACILITIES (SUCH AS FITNESS CENTERS AND COMMERCIAL GYMS)

Athletic facilities may open subject to social-distancing and sanitation rules and guidelines

CLOSE-CONTACT SERVICE PROVIDERS

Close-contact service providers (such as barber shops, hair salons, nail salons, tattoo services) may open subject to social-distancing and sanitation rules and guidelines

BEACHES

Open with no limit on gatherings. Must maintain 6 feet of separation.

Alabama Legislative News:

The Alabama Legislature reconvened in Montgomery on Monday, May 4th, for the first time since March, due to the ongoing COVID-19 Coronavirus Pandemic. Their primary goal was to pass the Education and General Fund Budgets, as well as a \$1.25 billion bond issue for school and college capital projects, and local bills that had been delayed due to the interrupted session.

Despite the pledge of only focusing on these items, many new bills were introduced in both the House and Senate. The Senate also voted for the passage of the amended SB25 for the continuation of the Alabama Onsite Wastewater Board (AOWB) until October 1, 2021. The original bill would have extended the AOWB until 2023, but AUCA had previously lobbied to have the time shortened in order to ensure that the current business practices of the AOWB could be more appropriately reviewed by the Legislature.

House Democrats elected not to participate in the continuation of the session. They cited that it would be better to wait until July to pass State Budgets because of uncertainty over how much the Coronavirus Pandemic will change the Education and General Fund Budgets, which take effect October 1, 2020. However, one Democrat did attend, and the super majority of Republican House Members on hand enabled them to still have a quorum to conduct official business. The Education and General Fund Budgets passed and were sent to Governor Ivey. However, there was concern that she would not sign the Budgets as presented.

Lawmakers reconvened in Montgomery for the final time on Monday, May 18th for the 21st Legislative Day. While the regular session can have up to 30 meeting days, by law it must be concluded within a period of 105 calendar days from the start of the session. Due to the interruption of the 2020 Session caused by the COVID-19 Pandemic, May 18th was their last possible meeting date.

Governor Ivey proposed an Executive Amendment to the General Fund Budget regarding distribution of the \$1.8 Billion from the CARES Act, passed by Congress and signed by President Trump. This is money the federal government sent to the state for some of the enormous costs of the Coronavirus pandemic and must be spent by December 30, 2020. The House and Senate concurred with the Executive Amendment and adjourned sine die.

Governor Ivey has signed the Budgets into law, and now attention will turn towards the possibility of her calling for a special session later this year to address items such as prison reform, Coronavirus lawsuit immunity and other priority bills that died during the abbreviated 2020 regular session.



Upcoming Events:

AUCA Board of Directors Meeting
June 10, 2020 at 10:00 a.m.

Alabama Primary Runoff Election
July 14, 2020



For more information visit
www.jmwood.com

June 16-18, 2020
**Construction, Trucks and Forestry
Equipment Auction
Montgomery, AL**

Due to the COVID-19 Coronavirus, our Spring General Meeting, Golf Tournament and Crawfish Boil has been postponed. We are still exploring options for rescheduling the event. As soon as a we have additional details, we will let you know.

***AUCA 2020 Spring General Meeting,
Golf Tournament and Shrimp & Crawfish Boil
Arrowhead Country Club - Montgomery, AL***



***AUCA 2020 Fall General Meeting
& Sporting Clay Shoot***



Thursday, October 15, 2020

Lower Wetumpka Shotgun Sports Club - Montgomery, AL



News & Notes:

State Licensing Board for General Contractors May 31, 2020 and June 30, 2020 License Renewal Deadlines Automatically Extended as Follows:

Pursuant to Board action summarized below, effective May 20, 2020, an automatic license renewal deadline extension up to and including August 31, 2020 is granted to licensees holding a current unexpired Alabama license that expires on May 31, 2020.

Failure of those whose licensing renewal deadline of May 31, 2020 has been automatically extended, to file the required licensing renewal documentation by August 31, 2020, will result in their license lapsing on September 1, 2020.

Pursuant to Board action summarized below, effective May 20, 2020, an automatic license renewal deadline extension up to and including September 30, 2020 is granted to licensees holding a current unexpired Alabama license that expires on June 30, 2020.

Failure of those whose licensing renewal deadline of June 30, 2020 has been automatically extended, to file the required licensing renewal documentation by September 30, 2020, will result in their license lapsing on October 1, 2020.

Any future notices relating to the above referenced Emergency Rule 230-X-1-.34.01ER will appear on the Alabama Licensing Board for General Contractors website (www.genconbd.alabama.gov). For further information please contact the Board's office at (334) 272-5030.

Governor Ivey Awards Broadband Grants for Projects in Alabama:

Governor Kay Ivey has awarded nearly \$5.1 million to ensure more Alabamians have access to high-speed internet services. The Alabama Department of Economic and Community Affairs (ADECA) is administering the program.

The grants were awarded through the Alabama Broadband Accessibility Fund which was created by the Alabama Legislature and signed into law by Governor Ivey. It was created to assist broadband providers in extending high-speed internet service for households, businesses and community anchors in unserved areas of the state or in areas lacking minimum threshold service. Fourteen areas throughout Alabama will be supplied access to broadband services through the latest grants. In March, Governor Ivey awarded 20 grants totaling \$9.5 million to provide broadband access in rural communities and areas without adequate service.



News & Notes:

AUCA Scholarship Program:

AUCA received a record number of scholarship applications this year. We sincerely appreciate all the students that took the time to apply. The selection of the winners will be finalized at the upcoming AUCA Board of Directors Meeting on June 10th.

2020 U.S. Census - Alabama Counts!

Currently, only 58.3 percent of households in Alabama have responded to the 2020 census. This does represent a 9% increase from last month, but is still slightly below the U.S. response rate of 60.3 percent. The census is used to determine the number of congressional seats each state has in the United States Congress. Alabama is potentially at risk of losing a seat, so it is imperative to make sure that everyone takes the time to accurately respond to the census.



WHAT IS AT STAKE?

All of these things are affected by funding. An accurate census count is the only way we receive this money.



HEALTH CARE



JOBS



EDUCATION



**CONGRESSIONAL
REPRESENTATION**



ROADS & BRIDGES



AND MORE



News & Notes:

Alabama Damage Prevention Alliance “Large Project” Committee:

AUCA Executive Director Tim Ayers is currently serving on the Alabama Damage Prevention Alliance (ADPA) “Large Project” Committee. The Common Ground Alliance (CGA) defines a “large/complex” project as a single project or a series of repetitive, small, related-scope, short-term projects that impact facilities over a long period of time or over a large area.

This is a very important topic impacting all stakeholders of underground utility damage prevention. AUCA wants to ensure that the Excavating community is fairly represented in any negotiations. If any AUCA Contractor Members would like to be involved in this process, or at least share your opinions, please contact the office and let us know.

AUCA Newest Member Companies:

Ballard Construction Company, Inc.

Alexander City, AL

Company Representative: John Ballard

One Stop Environmental, LLC

Birmingham, AL

Company Representative: Thomas Harbin



News & Notes:

U.S. Department of Labor's OSHA Issues Guidance to Help Construction Workers During the Coronavirus Pandemic

WASHINGTON, DC – The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has launched a webpage (<https://www.osha.gov/SLTC/covid-19/construction.html>) with coronavirus-related guidance for construction employers and workers. The guidance includes recommended actions to reduce the risk of exposure to the coronavirus.

Employers of workers engaged in construction (such as carpentry, ironworking, plumbing, electrical, heating/air conditioning/ventilation, utility construction work, and earth-moving activities) should remain alert to changing outbreak conditions, including as they relate to community spread of the virus and testing availability. In response to changing conditions, employers should implement coronavirus infection prevention measures accordingly.

The webpage includes information regarding:

- Using physical barriers, such as walls, closed doors, or plastic sheeting, to separate workers from individuals experiencing signs or symptoms consistent with the coronavirus;
- Keeping in-person meetings (including toolbox talks and safety meetings) as short as possible, limiting the number of workers in attendance, and using social distancing practices;
- Screening calls when scheduling indoor construction work to assess potential exposures and circumstances in the work environment before worker entry;
- Requesting that shared spaces in home environments where construction activities are being performed, or other construction areas in occupied buildings, have good air flow; and
- Staggering work schedules, such as alternating workdays or extra shifts, to reduce the total number of employees on a job site at any given time and to ensure physical distancing.

Visit OSHA's [coronavirus webpage](#) frequently for updates. For further information about the coronavirus, please visit the Centers for Disease Control and Prevention.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.



COVID-19 Guidance for the Construction Workforce

OSHA is committed to protecting the health and safety of America's workers and workplaces during these unprecedented times. The agency will be issuing a series of industry-specific alerts designed to keep workers safe.

When working in the construction industry, the following tips can help reduce the risk of exposure to the coronavirus:

- Encourage workers to stay home if they are sick.
- Allow workers to wear masks over their nose and mouth to prevent them from spreading the virus.
- Continue to use other normal control measures, including personal protective equipment (PPE), necessary to protect workers from other job hazards associated with construction activities.
- Advise workers to avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six feet, where possible. Where work trailers are used, all workers should maintain social distancing while inside the trailers.
- Train workers how to properly put on, use/wear, and take off protective clothing and equipment.
- Encourage respiratory etiquette, including covering coughs and sneezes.
- Promote personal hygiene. If workers do not have immediate access to soap and water for handwashing, provide alcohol-based hand rubs containing at least 60 percent alcohol.
- Use Environmental Protection Agency-approved cleaning chemicals from [List N](#) or that have label claims against the coronavirus.
- To the extent tools or equipment must be shared, provide and instruct workers to use alcohol-based wipes to clean tools before and after use. When cleaning tools and equipment, workers should consult manufacturer recommendations for proper cleaning techniques and restrictions.
- Keep in-person meetings (including toolbox talks and safety meetings) as short as possible, limit the number of workers in attendance, and use social distancing practices.
- Clean and disinfect portable jobsite toilets regularly. Hand sanitizer dispensers should be filled regularly. Frequently-touched items (i.e., door pulls and toilet seats) should be disinfected.
- Encourage workers to report any safety and health concerns.

For more information, visit www.osha.gov/coronavirus or call 1-800-321-OSHA (6742).

OSHA issues alerts to draw attention to worker safety and health issues and solutions.

Clean Water Construction Coalition Report

From Bob Briant, Jr. - Chairman CWCC & Sante Esposito - Key Advocates

May 2020 Insights

Note: Covid-19 has greatly impacted the congressional legislative process. As of this writing, Congress has not resumed its "normal" legislative schedule, all Hill buildings remain closed except for Members and staff and credentialed press. Members' offices and committees are functioning via email and phones. The situation is challenging for everyone. With these constraints, we have learned the following.

Infrastructure

The President has said at various coronavirus task force press conference his support for infrastructure, and his desire to move ahead on legislation to address it. The President's proposal is \$2T over 10 years. In addition, Treasury Secretary Mnuchin has stated publicly that he is engaged in on-going discussions with House Ways and Means Committee Chairman Neal on ways to finance increased infrastructure spending.

Earlier this month, Speaker Pelosi, along with Minority Whip Clyburn, T&I Chairman DeFazio and Energy and Commerce Chairman Pallone, held a press conference call wherein the Speaker said they were going to include infrastructure in Phase 4 of the coronavirus economic stimulus initiatives. She said that the core of the infrastructure component would be what was announced in the Jan. 28 press conference noted below. The Speaker also said that the House would take action on Phase 4 when it returned at the end of April.

In anticipation of that, the Coalition sent emails to key Leadership, committees and Members' personal staff requesting that any infrastructure package included as part of Phase 4 include an increase in authorization and corresponding appropriations of \$40B for the Clean Water SRF, \$25.4B for the Safe Drinking Water SRF, \$600M for the Alternative Water Source Program, \$500M for the WIIN Grant Program, strike the existing 30-year loan term repayment limit and allow states to make repayments up to the life of the project, and make the current one year option to transfer funds between the CW and SDW SRF's permanent.

Notwithstanding this, the Speaker's proposal to include infrastructure as part of Phase 4 was met with resistance by House Minority Leader McCarthy, Senate Majority Leader McConnell and Senate Minority Leader Schumer. While none said that they were opposed to an infrastructure initiative, all said it was premature at this time and that the focus of Phase 4 should be on the health care crisis. There is already talk about a Phase 5, possibly in June, and that or additional phases might provide an opportunity to include infrastructure.



Clean Water Construction Coalition Report

(Continued from page 10)

Regarding infrastructure, the Republicans say they support putting the government and the private sector together to improve transportation and other core infrastructure needs while the Democrats are talking about direct government spending on roads, transit, rail, clean energy, water education, hospitals, broadband, and housing, among other priorities. Senator Barrasso, Chair of the Environment and Public Works Committee, has already said that he wants the Committee's bipartisan FAST Act reauthorization bill included in any infrastructure package.

To review, on January 28, the House Democratic leadership along with the chairs of the key congressional committees of jurisdiction (T&I, Energy and Commerce, and Ways and Means) rolled out a mega infrastructure framework – with more details and legislative language to follow – that focuses on surface transportation issues, broadband, 911 updates, brownfields, safe drinking water, with mention of housing, education and natural resources. Water highlights of interest (note: these do not include water programs from other committees such as the Natural Resource Committee not yet available but to be included in the package) –

- **Clean Water & Wastewater Infrastructure — \$50.5 Billion**

- Funds building new, modern clean water and wastewater infrastructure by investing \$40 billion in the Clean Water State Revolving Fund (CWSRF), to address local water quality challenges, with dedicated funds for urban and rural communities with affordability concerns.
- Encourages the use of energy-efficient and water-efficient technologies.
- Helps communities affordably address local sewer overflow and storm water infrastructure needs, preventing pollution in local rivers and waterways, and disruptions to service.
- Establishes a new EPA program to detect, prevent, and treat discharge of industrial chemicals, including PFAS.

- **Water Infrastructure (Flood protection, navigation, etc.) — \$10 Billion**

- Addresses the impact of severe weather events by tackling the backlog of Army Corps' projects designed to protect communities at risk of flooding, to enhance community resiliency, and to enhance national, regional, and local economic growth.

- **Safe Drinking Water —\$25.4 Billion**

- Protects Americans' drinking water – particularly for vulnerable communities – by investing in the Drinking Water State Revolving Fund and programs to ensure clean drinking water in schools, day care centers and on Native American Reservations.
- Provides funding to local communities dealing with PFAS contamination in the drinking



Clean Water Construction Coalition Report

(Continued from page 11)

water and requires EPA identify and assist these and other communities with effective decontamination techniques.

- **Alternative Water Source Project - \$600 Million**

- Reauthorizes Federal investments in alternative water source projects to address critical water supply needs, especially in arid areas of the Nation.

President's Infrastructure Proposal

To review, the President's FY21 Budget has two major infrastructure components. The first is a \$810 billion, 10-year reauthorization of surface transportation programs. The second is a \$190 billion in investments across a range of infrastructure, as follows:

- **\$60 Billion for a new Building Infrastructure Great grants program:** This "mega-projects" program will focus on delivery of such projects across a range of sectors: surface transportation road, bridge, rail, transit, pipeline, landside port, and intermodal connection capital investments; lock, dam, and canal investments; drinking water and waste treatment capital investments; and energy and broadband capital investments.
- **\$50 billion for a new Moving America's Freight Safely and Efficiently program.** This program will support projects with significant economic, mobility, and safety benefits on our strategic highway, rail, port, and waterway freight networks.
- **\$35 billion for a new Bridge Rebuilding program.** This program will make targeted investments in critical bridge infrastructure to restore them to good condition. \$12 billion will be provided for "off- system" bridges allocated via formula, and \$23 billion will be provided for larger bridges via a competitive process.
- **\$25 billion for a new Revitalizing Rural America program.** This program focuses on the needs and contributions to our economy made by rural communities and helps them deliver broadband, transportation, water and other infrastructure projects.
- **\$20 billion for a Transit State of Good Repair Sprint program.** The program will focus exclusively on rehabilitating existing transit assets (no new capacity projects).
- **\$6.5 billion for a Public Lands Infrastructure Fund.** This program would address the deferred maintenance backlog in our national parks, forests, wildlife refuges and other public lands, along with Bureau of Indian Education school.



ALABAMA CONSTRUCTION LAW NEWSLETTER

WALLACE  JORDAN
WALLACE, JORDAN, RATLIFF & BRANDT, LLC

May 2020

Subcontractor Claim Denied Due to Lack of Proper Licensing

Construction Services Group, LLC v. MS Electric, LLC, No. 2171099, 2019 WL 2710115 at *1 (Ala. Civ. App. June 28, 2019).

This case demonstrates the importance of following licensing protocols for specific projects. Even if a sub-contractor does have their general license, additional licensing may be required for certain jobs.

The court considered a subcontractor who lacked an

additionally required license from the State Licensing Board for General Contractors on projects over \$50,000 when it submitted its bid and performed electrical work on the project. The court held that the subcontractor could not recover on a claim against the general contractor for unjust-enrichment because the contract itself and the work performed was considered illegal due to the lack of proper licensing for the specific

project. The court also found for the general contractor in a claim against the subcontractor for negligent misrepresentation because the subcontractor knew the job was over \$50,000 and claimed they had the appropriate license on their



Subcontract to Govern on Inconsistent Terms

Peach State Roofing, Inc. v. Kirlin Builders, LLC, No. 1:15cv526-CSC (M.D. Ala. Feb. 5, 2020).

This is an appeal filed from a 2018 case in the previous newsletter. It's worth noting that throughout the opinion, Maryland law was applied, but it was decided in the Middle District of Alabama. This case demonstrates that the subcontract will govern on inconsistent terms and damages to be awarded in the suit.

The court considered a previous dispute between a roofing subcontractor and a general contractor regarding inconsistent terms in the subcontract and the prime contract. Having noted that the terms in the subcontract controlled over those in the prime contract when dealing with inconsistent terms, the court further clarified here that the subcontract controls over the prime contract on issues of damage recovery. The court stated that the general

contractor and subcontractor owed each other contractual duties under the subcontract, and that the subcontract would therefore govern the award of damages to be paid out in the current suit. In this case, the subcontractor was not entitled to attorney's fees and lost profits because the subcontract expressly limited damages to the actual cost of work and labor, plus ten percent.

Arbitration Clause Not Enforced Due to Lack of Signatures

Baker v. Rabren General Contractors, Inc., No. 3:19-cv-00572-RAH (M.D. Ala. May 5, 2020).

This case demonstrates the importance of following formalities, even when the parties have had prior dealings with one another that were informal.

A general contractor motioned to compel/enforce an arbitration clause in a subcontract against a

subcontractor, despite the subcontract not being signed by either party. The subcontract contained explicit language, bolded at the top of each page, that in order for the subcontract and the clauses within to be valid, the subcontract must be signed by both parties. Both had worked with each other in the past, and often agreed by handshake, but the court held that

the subcontract was clear—to be valid, it must be signed by both parties. Therefore, the arbitration clause in the subcontract could not be enforced. The general contractor tried to argue that the subcontractor agreed to the terms because he proceeded with his work without signing. However, because neither party signed, the court rejected this argument.

Proper Procedures Must Be Followed Regarding Termination

Rolin Construction, Inc. v. Wind Clan Construction Co., Inc., No. CA 18-0032-MU (S.D. Ala. April 24, 2020).

The court in this case considered, among other things, a subcontractor that was terminated because of several deficiencies in quality of work, but then brought back to the job through an informal agreement with the general contractor to correct the deficiencies. The deficiencies led to an issue with scheduling and miscommunication on dates because of multiple new fixes needing to be made, which seemed to delay other aspects of the job. Eventually a supplemental subcontractor was brought in to correct the deficiencies, and the

prices for the work performed by the supplemental subcontractor would be deducted from the amount owed to the original subcontractor. The costs ended up exceeding what was owed to the subcontractor, and the general contractor sent a letter stating that no payment would be made for any acceptable work performed up to termination and bringing in the supplemental subcontractor.

The court found that the general contractor did not follow notice requirements from the subcontract to formally terminate the subcontractor and that, despite multiple errors in work, the subcontractor did not delay the job on its schedule overall. The general

contractor was ordered to pay the subcontractor for acceptable work performed. However, the court also found that the subcontractor breached the informal agreement with the general contractor to come back and complete work, which including coming back after the architect and owner completed their punch lists.



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SOLELY TO PROMOTE AND ADVANCE THE
UTILITY INDUSTRY IN THE STATE OF
ALABAMA.***

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