

# THE BOTTOM LINE



EXCELLENCE IN  
BONDING

August 2009

Vol. 10 Issue 4

## WHAT DOES THE STIMULUS PACKAGE MEAN FOR NEW YORK STATE AND THE CONSTRUCTION INDUSTRY?

The American Recovery and Reinvestment Act of 2009 signed by President Barack Obama on February 17, 2009 will have a considerable impact on New York State. NYS is slated to receive approximately \$24.6 Billion of the \$787 Billion of funding this legislation will provide.

While some of the allocations have not yet been determined, according to information released by

Governor Paterson's office, approximately \$4.0 Billion will go to Infrastructure and Energy, \$2.0 Billion to Education and \$107 Million to Public Safety. Although all of this is not specifically for rehabilitation and construction, we can expect a sizeable amount to be used for this purpose.

With bridges and highways in desperate need of repair or rebuilding, NYS DOT is expecting to receive

substantial support for mass transit (\$1.25 Billion) and highways and bridges (\$1.1 Billion) infrastructure projects. In the first two weeks of April, 2009 Governor Paterson announced the approval of several improvement projects for regions throughout the State including funding for 59 transportation projects. Although many of the projects are large major highway and

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### Famous Quotes

*"The secret of success is constancy of purpose."*  
- Benjamin Disraeli

*"Leadership is the capacity to translate vision into reality."*  
- Warren G. Bennis

*"Vision is the art of seeing the invisible."*  
- Jonathan Swift

## MANDATORY TAX WITHHOLDINGS AND SECTION 511

While the political pundits gesticulate, the economic experts deliberate and media mongrels salivate over headlines, Americans, overwhelmed by the blow-by-blow commentary, theorizing and grandstanding, clutch the proverbial handlebars of faith and hope on this economic rollercoaster, squeeze their eyes shut and wait for it all to end.

Over the past few years there has been quite a few changes in the markets and laws that affect our economy, the effects of which may take months or years to emerge. But there are some that will come to fruition in a few months that will soon have lasting effects on your bottom-line. One such change is Public Law No.: 109-222.

On May 17, 2006, Former President Bush signed into law H.R. 4297, the Tax Increase Prevention and Reconciliation Act of 2005. Included in the Act (P.L. 109-222) is Section 511, which requires mandatory tax withholdings at a rate of 3% on all payments for products and services made by governments at all levels—federal, state and local—that spend \$100 million or more annually. Apparently, Section 511 was inserted into H.R. 4297 as a last-minute addition without any congressional committee hearings.

According to the U.S. Senate Committee on Finance, Section 511 is intended to "improve taxpayer compliance, reduce the tax gap, and promote fairness" as well as to address "concerns regarding

the poor compliance records of Federal contractors." Section 511 imposes a flat rate of 3% on all government payments to contractors, regardless of the actual tax liability of the contractor. Certain kinds of payments are exempted, however, including payments of interest and payments of wages to which existing withholding requirements apply. Section 511 requirements would apply to government payments to contractors occurring after December 31, 2010.

Many have concerns about the negative impact that such withholding will have on participants on public works projects. The withholding requirement may prove to have a substantial impact to contractors in the public sector, who may

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## WHAT DOES THE STIMULUS PACKAGE MEAN FOR NEW YORK STATE AND THE CONSTRUCTION INDUSTRY?

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bridge repairs, there is also funding being made available to make necessary improvements to our local walkways, bicycle paths and other transportation routes

- \$167 Million for Hudson Valley Infrastructure
- \$98 Million for Capital Region Infrastructure
- \$34 Million for North Country Infrastructure
- \$72 Million for Western New York Infrastructure
- \$82 Million for Central New York Infrastructure
- \$89 Million for Southern Tier Infrastructure
- \$154 Million for Long Island Infrastructure
- \$74 Million for Rochester Area Infrastructure

For full details and specific projects

in your region, you can visit

<https://www.nysdot.gov/recovery>

Schools throughout the State are also in need of repair. NYC expects to receive approximately \$1.0 Billion of the federal stimulus package. The biggest disappointment, however, is that all targeted funds for new school construction were eliminated. Districts can take funds out the stabilization program to modernize or repair schools if they so choose.

Several of the construction industry associations are in full support of the stimulus package and see this as the boost the state's needs to get hundreds of thousands of New Yorkers back to work by improving the aging infrastructure, schools, clean energy, parks and sewage and water treatment facilities across the state.

As an agency that specializes in bonding for contractors, Atlynx Surety Brokers LLC has a

keen sense of what's going on throughout the State regarding the letting of projects and obtaining the necessary bonding to secure these projects. We have a relationship with most of the top surety companies as well as companies specializing in the smaller contractors and regional markets.

Our staff of seasoned surety professionals has years of underwriting experience on the surety company side that allows us as agents to know what is needed to successfully procure bonding for all size contractors.

With two offices – Garden City, Long Island and Nanuet, Rockland County – we are able to service contractors throughout the state. Please contact: Louis J. Spina – Garden City Office (516) 745-7502 or [lou@esuretybond.com](mailto:lou@esuretybond.com)  
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## LOOKING AHEAD

## NEW DIVISION OF ATLYNX SURETY BROKERS, LLC.

Atlynx Surety Brokers, LLC., has unveiled a new division of our company designed especially for small and emerging contractors who desire bonding but are unable to qualify through traditional avenues. In next quarter's issue of *The Bottom Line*, we explore the **Small Business Administration's Surety Bond Guarantee Program**. In partnership with the Federal Government's Small Business Administration Office of Surety Guarantees and a few select surety companies, Atlynx will offer contractors new to the bonding market or unable to qualify for traditional surety coverage the edge needed to compete and win public projects.

### *A Little About the Product*

Traditional surety programs are an agreement between the Surety, Oblige and Principal. In the event of contractor default the surety covers 100% of the loss.

The SBA Surety Bond Guarantee Program is an agreement between the SBA, and the Surety, and covers between 70-90% of the surety's loss should the contractor default. This provision makes it possible for a surety company to support an account that may not be able to otherwise meet the underwriting criteria. Additional product details are available upon request.

Atlynx is pleased to invite all contractors, both new and those returning to the bonding market, to partake in this opportunity. Feel free to contact us, Denese Thompson, at [denese@esuretybond.com](mailto:denese@esuretybond.com), and Tara Laverdiere at [tara@esuretybond.com](mailto:tara@esuretybond.com), in the Garden City office or Lydia Baker at [lbaker@esuretybond.com](mailto:lbaker@esuretybond.com) in the Nanuet office. Applications will be made available upon request.

## MANDATORY TAX WITHHOLDINGS AND SECTION 511

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not be able to afford significant disruptions to day-to-day cash flow.

In the competitive environment of construction contracting, the 3% withholding requirement on payments to contractors may erase the small profit margins of many contractors performing public work. Such a requirement certainly will make public construction less desirable from the contractor's perspective.

In Congress, there has been over five bills introduced in the Senate and House of Representatives calling for the repeal of Section 511. In addition there has been legislation requesting its postponement.

Unfortunately, not only contractors will be adversely affected by this new requirement. In a letter dated April 14, 2008, Deputy under Secretary of Defense,

James I. Finley, argued that the Section 511 requirement would not only cost the Department of Defense \$17 billion in the first five years, but place additional cost escalations to its contracts, limit the number of contractors willing to do business with the government, reduce competition and access to new technology. Finley's assessment was part of a report compiled in response to the House Armed Services Committees request for review of the requirement's impact. Finley's report goes on to assert that more than \$22 million will be needed to modify its accounting and payment systems. It is reasonable to assume that these concerns and costs will be reflected in all of the government agencies that buy goods and services.

Former Senator Larry Craig (R-Idaho) has introduced Senate Bill 2821, the Withholding Tax Relief Act of 2006, to repeal Section

511. A similar bill (H.R.1023) was introduced to the House of Representatives.

Since its passing more and more Senators and Representatives from Congress have joined in the rally to repeal or postpone this tax.

In February 17, 2009 their efforts were rewarded in kind when H.R. 1 [111th] or American Recovery and Reinvestment Act of 2009 passed into law. Section 1511 amended the Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, changing the enactment date of the Withholding Tax from December 31, 2010 to December 31, 2011.

Please do your part and voice your opinion to your elected representatives in Congress.

*This information was obtained from the National Association of Surety Bond Producers and GovTrack.us. These materials are provided solely for educational and informational purposes. They are not to be considered the rendering of legal advice in specific cases or to create a lawyer-client relationship. Readers are responsible for obtaining legal advice from their own counsels, and should not act upon any information contained in these materials without such advice.*

### REPEAL OF WITHHOLDING TAX TIMELINE

11.10.2005	H.R. 4297	House of Representatives Bill included Section 511 requiring federal, state and local government to withhold 3% on all payments for goods and services. Sponsor: Rep. Williams Thomas [R-CA]
5.17.2006	P.L. 109-222	Tax Increase Prevention and Reconciliation Act of 2005 signed into law by President George W. Bush. This Act became Public Law No.: 109-222
5.17.2006	S.2821 [109 <sup>th</sup> ]	Senate Bill (Withholding Tax Relief Act of 2006) to repeal Section 511 of the TIPRA 2005 Sponsor – Sen. Larry Craig [R-ID] Status: Dead
9.28.2007	H.R. 6242 [109 <sup>th</sup> ]	House of Representatives Bill to repeal Section 511 of the TIPRA 2005. Sponsor – Rep. Walter Heger [R-CA] Status: Dead
2.13.2007	H.R. 1023 [110 <sup>th</sup> ]	House of Representatives Bill to repeal the withholding on certain payments made to vendors of government entities. Section 511 of TIPRA 2005 Sponsor – Sen. Kendrick Meek [D-FL]
3.6.2007	S. 777 [110 <sup>th</sup> ]	Senate Bill to repeal Section 511 of TIPRA 2005. (Withholding Tax Relief Act 2007) This bill is before the Committee on Finance. Sponsor – Sen. Larry Craig [R-ID]
1.7.2009	H.R. 275 [111 <sup>th</sup> ]	Rep. Kendrick B. Meek [FL-17] introduces bill to repeal Section 511
1.21.2009	S. 292 [111th]	Sen. Arlen Specter [D.PA] introduces bill, it was referred to Committee on Finance.

### DELAY OF WITHHOLDING TAX TIMELINE

4.8.2008	H.R. 5719	House Bill to delay implementation of withholding taxes on government contractors.
4.14.2008	H.R. Resolution 1102	Amendment to H.R. 5719
2.17.2009	H.R. 1 [111th]	Recovery Act Passed, Withholding Tax delayed for an additional year.

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Website: [www.atlynx.com](http://www.atlynx.com)**NEW OFFICE!  
NEWER,  
BIGGER FAMILY!**

Our sister company, The Amerisc Corp., has unveiled a new satellite office based in Rockland County, New York. The new affiliate is AFC Amerisc. This office will provide an extension of the services, (Personal and Commercial Insurance and Financial Services), offered in the Nassau County offices. For more information on the new office and services offered please visit our website at [www.theamerisc.com](http://www.theamerisc.com) or [www.atlynx.com](http://www.atlynx.com).

**NEW OFFERS FROM ATLYNX!**

The Center for Medicare and Medicaid Services (CMS) has issued a new surety requirement for DMEPOS (Durable Medical Equipment, Prosthetics, Orthotics and Supplies) suppliers. A \$50,000 bond is required for each billing location for existing providers no later than October 2, 2009. All providers submitting an invoice to Medicare for payment must provide this bond. Please contact our offices for further information.

**Letter From the Editorial Staff**

This newsletter is designed with our readers in mind. All inquiries or suggestions regarding this or future newsletters are appreciated. Please send all inquiries to [denese@esuretybond.com](mailto:denese@esuretybond.com).

If you know anyone who you feel would like a copy of our newsletter, please let us know so that we can include them in our mailing list. Please let us know if you would like to receive this newsletter via email.

Check our website [www.atlynx.com](http://www.atlynx.com) for past editions of our newsletter.

The Bottom Line is published bi-annually by Atlynx Surety Brokers, LLC. A service for our clients, contacts and friends, it is meant to provide advice and encourage its readers to keep up with all the latest developments. These articles are not intended to provide a complete discussion of the subjects presented.



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