

MERIT SHOP  
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WISCONSIN

**MAKE APPRENTICESHIP  
EDUCATION LESS TAXING**

**COVID-19  
AND CIVIL LIBERTIES  
IN WISCONSIN**

**LEGAL USE  
OF DRONES**

**KEEPING LOCAL  
MUNICIPALITIES  
FROM OVERSTEPPING  
AUTHORITY ON  
BUILDING CODE**

**& LEGAL  
REGULATORY**

**REPUBLICANS ARE WORKING TO REPEAL 151-YEAR-OLD  
PERSONAL PROPERTY TAX**

ALSO INSIDE:

**THE PAST IS ATTEMPTING  
TO REAR ITS UGLY HEAD**  
PAGE 5

**NEW MEMBERS**  
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# TABLE OF CONTENTS

JULY / AUGUST 2021

# & LEGAL REGULATORY

- 5 President's Message**  
The Past is Attempting to Rear its Ugly Head
- 6 Republicans Repeal 151-Year-Old Personal Property Tax**
- 10 Legal Use of Drones**
- 11 COVID-19 & Civil Liberties in Wisconsin**
- 12 529 College Savings Accounts**
- 14 Keeping Local Municipalities from Overstepping Authority on Building Code**
- 17 Associated Builders and Contractors Events**
- 18 Letter to ABC Members**
- 19 National Legislative Conference**
- 20 Is That Legal? Your Questions, Our Attorneys**
- 22 Associated Builders and Contractors New Members**



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**FROM OUR PRESIDENT**

# The past is attempting to rear its ugly head



**DO THE NAMES CHARLES MULLAN, CHARLES KNOTT OR ED COLWILL MEAN ANYTHING TO YOU?** If they do, you're up on your ABC history.

This group of open shop general contractors were historic figures who helped create Associated Builders and Contractors (ABC). They were the first known group of contractors to face work stoppages, harassment, and even personal threats by trade unions.

Union bosses like Clark "Kingfish" Ellis saw this as a threat to unions' monopoly on commercial- and construction-sector labor. The union tactics to protect "turf" were intended to force nonunion contractors to conform to demands or go bankrupt. ABC founders, like Mullan, would have nothing of it.

"The unions decided they were going to put the three of us and our open shops out of business. None of us wanted that to happen so – even though we were competitors – we decided to form a group and fight," Mullan said. <sup>2</sup>

The first meeting that would form ABC was held in Mullan's living room in Baltimore. As a result, Mullan, Knott and Colwill are forever known as ABC's founding fathers.

ABC members held together to get work done and stand up to union bullying and other tactics. Many general contractors began self-performing specialty work. Mullan's firm even ventured into the steel erection business when a union steel erector refused to work on one of his company's jobsites. <sup>3</sup>

"We could have stayed open shop and fought without forming ABC, but by joining hands, it made everybody stronger," Mullan said. <sup>4</sup>

Roughly two decades later, ABC of Wisconsin was established so contractors in America's dairyland could work together to combat similar issues.

Over time, many open shop contractors have endured harassment, threats and even violence by some who work to

undermine merit contractors in order to protect or reclaim "turf." President Joe Biden pledges to be the most pro-union president we have ever had in this country and if his first 100 days in office are any indication, he means it.

There is a long list of Biden federal policy proposals that if enacted would be disastrous for merit contractors. These changes would essentially take us back to the time when the founders of ABC were fighting for their rights to build merit shop.

As we look forward to celebrating 50 years as a chapter in 2022, we must not become complacent. We must preserve the work of our founding fathers, so their efforts remain fruitful.

I'm sure you've heard the axiom, "Those who cannot remember the past are condemned to repeat it." It evolved from the writings of George Santayana, a writer and philosopher who asserted that history does repeat itself and if we don't know our history, we are doomed to see it repeated.

An ugly past is not enough to prevent it from happening again. It will take efforts by all of us. It's important that we all do what we can on this front and encourage all members, and nonmembers, to join the fight.

“  
THOSE WHO  
CANNOT  
REMEMBER  
THE PAST ARE  
CONDEMNED  
TO REPEAT IT.”

Cook, S. (2005). *Freedom in the Workplace: The Untold Story of Merit Shop Construction's Crusade Against Compulsory Trade Unionism*. Regnery Publishing.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

REPUBLICANS  
ARE WORKING  
TO REPEAL

# 151- YEAR-OLD PERSONAL PROPERTY

By Sen. Duey Stroebel – (R-Saukville)

Rarely does government ever eliminate a tax, and reaching that point requires a herculean amount of effort. In conjunction with the passage of the state budget, Republican lawmakers voted to completely and fully repeal Wisconsin's personal property tax. I was proud to lead this effort along with my Assembly colleague, Rep. Dan Knodl.

The personal property tax first appeared in Wisconsin 151 years ago. As taxes go, it was one of the most inefficient, wasteful and burdensome tax policies a government could adopt. It required business owners to list the value of every single piece of personal property – think tools, computers, office equipment, work benches, etc. – and then apply a depreciation schedule to those items. Once the business owner calculated the present value of all these items, they then paid a tax on it. For nearly one third of all filers the tax was \$100 or less per year.

Designing a tax that is this byzantine and dysfunctional takes some doing. In 1916 – 105 years ago – a state commission called for the repeal of the tax. The commission recognized the tax forever saddled businesses with a significant regulatory cost that wasted human capital, discouraged investment in new equipment and generated revenue in an inconsistent

fashion. It was peak government inefficiency and regulatory overreach.

But as is too often the case in government, the obviously right thing to do didn't happen quickly. Instead of ridding the state of the tax, lawmakers – over the following century – exempted certain types of property based on ownership or use. They also added 22 categories of exemptions to the statutes, affording carve outs to politically favored groups. While these exemptions were all good public policy, better public policy and real political courage would have demanded the repeal of the tax.

In 2014, when I was in the state Assembly, I chaired a Legislative Council study committee that examined the impact of the personal property tax on Wisconsin business owners. Among those who served on the committee was then-state Sen. Tom Tiffany (vice-chair of the committee, now a member of Congress) and Rep. Mandela Barnes, now lieutenant governor for the state of Wisconsin.

The first recommendation received by the committee called for the tax to be repealed. Other recommendations included expanding the types of property exempt from the tax and phasing out the tax over a couple of decades.



# PROPERTY TAX

ONCE THE REPEAL PHASE IN IS COMPLETE IN 2023,  
WISCONSIN SMALL BUSINESS OWNERS AND JOB CREATORS  
WILL SAVE JUST OVER \$200 MILLION A YEAR.

At first glance, slowly expanding the types of property exempt from the tax may appear like a good strategy to build momentum for complete repeal. But eventually the reverse became true: as groups with large amounts of political clout secured their exemption, they stopped worrying about the tax altogether. Among the real heroes of this final repeal of personal property tax are the small business owners represented by a coalition of more than 50 organizations (including ABC of Wisconsin) who found strength in numbers and banded together to demand and champion a full repeal of the tax.

Once the repeal phase in is complete in 2023, Wisconsin small business owners and job creators will save just over \$200 million a

year. That means small businesses won't have to waste time trying to calculate how much of the tax they owe or ponder the ownership implications of upgrading tools and other capital. Instead, they can focus on delivering goods and services to their customers, growing their businesses, and keeping Wisconsin workers employed. All of that will be achieved not because of a new spending program, but because in a rare bipartisan moment Democratic and Republican lawmakers came together and repealed a tax.

Unfortunately, Gov. Tony Evers vetoed the repeal. I'm hopeful that we can approach this issue again, and eventually Wisconsin will have a governor who will sign this kind of meaningful and permanent tax reform into law. [abc.wisconsin.gov](#)



*Sen. Ducey Stroebel (R-Saukville) represents Ozaukee and Washington Counties in the Wisconsin State Senate. Prior to the Senate, he served in the state Assembly. He continues to run a real estate development company that he started after graduating UW-Madison. He is a three-time recipient of ABC's Building Wisconsin award for his efforts on behalf of merit contractors.*

# THE FEDERAL GOVERNMENT, WISCONSIN, AND REGULATE UAS USE, AND VIOLATIONS CAN BE SUBJECT



# LEGAL USE OF DRONES

By John Schulze – ABC Director of Legal & Government Affairs

**W**hile the promise of flying cars is still a distant reality, technology has made drones, technically known as Unmanned Aircraft Systems (UAS), less expensive and more powerful. As a result, the use of a UAS as both a pastime and a key component of some businesses is becoming more prevalent. However, while the sky is the limit for their usefulness and source of enjoyment, UAS are not toys. The federal government, Wisconsin, and local units of government license and regulate UAS use, and violations can be subject to state and federal civil and criminal penalties.

## Background

In Wisconsin, a UAS is any unmanned aircraft operated not equipped to carry a human operator. A camera or recording device is not required.

The federal government's Federal Aviation Administration (FAA) regulates UAS through its authority over the national airspace. All UAS users are required to pay \$5 for a three-year registration, and must also provide their email and physical address, UAS make/model, and credit/debit card. Like a drivers' license, UAS users

must carry their FAA regulation certificate and proof of ownership either physically or digitally when they fly their UAS, and must show the certificate to any federal, local, or state law enforcement officer when requested to do so. The UAS must always have an identification number displayed. Also like a drivers' license, the registration is connected to the individual, not the UAS, so multiple persons operating the same UAS would each need to register with the FAA and pay the \$5 fee. A UAS weighing more than 55 pounds,

including payload like a camera, has additional registration requirements.

Separate rules exist for UAS recreational use, educational use, government use and commercial use. This article will focus on commercial use, defined as any UAS flight that promotes a business in any way.

## Certification

All commercial drone flights must be conducted by someone who obtained a Remote Pilot Certificate from the FAA. The

# LOCAL UNITS OF GOVERNMENT LICENSE AND TO STATE AND FEDERAL CIVIL AND CRIMINAL PENALTIES.

certification includes passing knowledge exams of airspace classifications, drone loading and performance, radio communications, airport operations, emergency procedures, and more. While federal law trumps state law when it comes to drones, Wisconsin and local units of government have passed additional rules and regulations.

## SUMMARY OF FEDERAL AND WISCONSIN UAS RULES AND REGULATIONS FOR COMMERCIAL USE

### Prohibited locations

Local units of government have UAS restrictions related to prohibiting where one can be operated but cannot suspend or revoke a certification/license. For example, some Wisconsin communities prohibit drone use over parades, festivals and other public gatherings. In addition to FAA temporary flight restrictions (Presidential movements, emergency situations) an UAS cannot be flown:

- Above 400 feet.
- Within five miles of any military facility, airport or landing strip without permission.
- Within three miles of stadiums one hour before and one hour after the scheduled time of any Major League Baseball game, National Football League game, NCAA Division One Football game, NASCAR Sprint Cup race, Indy Car race or Champ Series race.
- Over a correctional facility, including prison or jail.
- In Wisconsin state parks, recreational areas, natural areas, Kettle Moraine, Point Beach state forests, and the lower Wisconsin state riverway. The one exception is the Richard Bong Special Use Zone.

### Prohibitions on UAS use

- Can only be flown during daylight hours, defined as a half hour before sunrise to a half hour after sunset.
- Must yield to all manned aircraft.
- Cannot be flown near wild animals, or impede, obstruct, or harass a person engaged in hunting, fishing, or trapping, and/or disturbing a lawfully placed hunting blind or stand. Travel, camping, scouting, target shootings, dog training, animal baiting or feeding, and other related acts are included.
- Cannot be operated recklessly, including operating a drone while under the influence of drugs, an intoxicant, or with a prohibited BAC of .04.
- Cannot be weaponized.

### Drone use over private property

In most cases, an ABC member would be using a UAS on behalf of a customer or owner on their property, so this would not be an issue. In other cases, the best course of action is to receive a property owners' permission before operating a UAS over their property. However, flying UAS over private land or water is lawful in Wisconsin unless it is at such a low altitude as to interfere with the property's existing use, or would be considered dangerous or damaging to the persons or the property. Even then, any regular reckless, negligent, inappropriate or harassment by a UAS could be unlawful under

existing Wisconsin law, and a pilot would also be liable for any damage the UAS caused to people or property. Also, using a UAS to photograph, record, or observe an individual or place where there is a reasonable expectation of privacy is prohibited without written consent. The landing of a UAS on someone's property without their permission would likely be considered trespassing unless in case of a forced landing.

### Advice

- Practice, practice, practice. Flying a UAS can be fun, but it is not a toy. Learn to operate your UAS safely.
- Get permission from the property owner when operating a UAS. Also, inform all workers on a job site that it is authorized. Especially on a large job site, a worker may be concerned about prohibited surveillance and notify law enforcement or take it upon themselves to ground the UAS.
- Keep your UAS within your visual line of sight.
- Check the local municipality to see if there are any local restrictions, and FAA's list of airspace restrictions before flying your UAS.
- Check with your insurance carrier to see if you have or need UAS insurance.

### Going forward

Currently there are 900,000 UAS registered with the FAA, and likely many more unregistered being operated. As the UAS market matures, their use will become more and more common, as will related complaints and problems. In addition, businesses are finding more and more uses for UAS. In construction alone, UAS are used for surveying and topographical mapping, monitoring job sites, equipment tracking, and showing clients project progress. Some contractors are even incorporating UAS into their safety programs for fall prevention. Over the last decade, UAS have injured bystanders, halted airline traffic at numerous airports, been used to spy into windows and have crashed into the Golden Gate bridge at least five times.

As with every developing technology, the UAS law is evolving. The UAS hobbyists are a surprisingly powerful lobbying organization and have fought for changes in Wisconsin law to allow drones to cross private property. It is expected that more prohibitions on UAS use and greater penalties for their misuse will happen.

Already in Wisconsin, there is a penalty enhancer for committing a crime with an UAS in addition to the underlying penalty. Legislation has either passed or being considered in other states to protect critical infrastructure like wastewater treatment facilities and electric utilities. 

**PRACTICE,  
PRACTICE,  
PRACTICE.  
FLYING A  
UAS CAN  
BE FUN,  
BUT IT IS  
NOT A  
TOY.**



# COVID-19

# & CIVIL LIBERTIES

## IN WISCONSIN

By Todd Jex – Attorney, Crivello Carlson, S.C.

**O**n Feb. 25, 2021, Gov. Tony Evers signed 2021 Wisconsin Act 4, a law that protects certain entities from civil liability against claims that may be made related to COVID-19. Wisconsin joined 18 other states that enacted similar legislation to provide immunity in some respect for COVID-19 claims. The law took effect on March 1, 2021, but it is retroactive. Therefore, immunity applies to lawsuits filed after that date, but still covers claims that accrued on or after March 1, 2020.

This COVID-19 immunity legislation provides businesses with some peace of mind so they can operate with an understanding they should have protection from civil liability. In a broad and general sense, the Act, now codified as Wis. Stats. § 895.476, provides immunity from civil liability for the death of, or injury to,

any individual for damages caused by any act or omission resulting in or relating to exposure, directly or indirectly, to COVID-19, in the course of or through the performance or provision of an entity's functions or purposes.

### I. Who is immune?

The very general answer to this question is an "entity." The statute defines "entity" as a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or non-profit organization. Entity also includes an employer or business owner, employee, agent, or independent contractor of the entity, regardless of whether the paid or a non-paid volunteer. Entity also includes an employer who is covered under Ch. 108 of

the Wisconsin Statutes for unemployment insurance. Wis. Stats. § 895.476(1)(b).

The definition of entity provides a very broad-brush stroke as to who is immune. In fact, this is one of the broadest immunity statutes for COVID-19 in the United States. It also provides immunity to someone working for an entity regardless of whether the person is paid or an unpaid volunteer. The inclusion of a volunteer or someone who is unpaid is intended to use this shield from liability in a very broad sense. An employer or owner of a business would not typically be liable for actions by someone who is not an employee or who is not paid. Therefore, it is telling that the Legislature went out of its way to grant civil immunity to non-employees and volunteers of an entity.

## II. What is the scope of the immunity provided?

Again, the immunity granting language in this statute is very broad. It includes immunity for injury or death to any individual. The statute does not mention any related types of claims that might be pursued by another entity. However, claims for death or injury belong to an individual or the individual's estate and not to an entity as defined in the statute.

The immunity granting language also specifies that it applies to damages caused by an act or omission resulting in or relating to exposure. Therefore, the statute would apply to a situation where there is an affirmative act which causes exposure or a failure to act in some capacity that causes exposure. The statute also provides immunity for those acts or omissions that result in or relate to exposure, directly or indirectly to the COVID-19. Therefore, it is even broader in the sense it does not have to be an act or omission by an entity that causes exposure to an individual directly. The use of the words directly or indirectly should hopefully eliminate the need for an interpretation of whether an entity caused the exposure to occur.

The immunity granting language also specifies exposure to COVID-19 must be in the course of or in the performance or provision of the entity's functions or services. The use of this language with the terms "functions" or "services" is broader than what one might consider to be operating in the scope of employment. Typically, an entity could be liable for someone operating in the scope of their employment, but the immunity provided in this statute is even broader when it uses the terms functions or services.

## III. What are the exceptions to the immunity?

The first exception is reckless or wanton conduct. Therefore, to avoid the operation of this statute, a claimant will have to prove the entity was more than just negligent. In fact, the person will have to prove the entity was reckless. Reckless is not necessarily intentional conduct. One can be reckless and cause injury without the requisite intent to actually cause someone to be injured.

The other exception is for intentional conduct. This would involve a situation where an "entity" acted to intentionally disregard the rights of the individual who was exposed to COVID-19. The use of these terms reckless, wanton, or intentional ultimately means someone who was exposed to COVID-19 will be subject to a higher standard and must prove an entity did something more than fail to

meet the standard of care in the industry. For example, if an entity can show it was following CDC Guidelines for attempting to protect workers or other individuals, the entity was likely not acting reckless, wanton, or intentionally and would likely be immune.

## IV. Other Important Considerations.

The immunity provided under this statute is provided in addition to, but not in lieu of, other immunity granted by other Wisconsin laws. It does not impact other immunities that may be available under Wisconsin law. For example, an employer is ordinarily immune from a civil personal injury claim made directly by an employee because the sole remedy available to an employee is under worker's compensation law. The immunity granted in this statute does not negate the immunity already provided under the workers compensation laws.

The statute does not specifically reference the workers compensation statutes directly as far as COVID-19 claims that may be brought by employees against employers. Therefore, it appears the legislature did not intend for this statute to bar claims that may exist for COVID-19 related claims that might be brought by an employee under the worker's compensation statutes. However, it could be argued the statute does provide broad immunity for an entity, so the employer should be immune from COVID-19 worker's compensation claims as well as civil personal injury claims.

The statute also does not address whether it covers any acts or omissions that occur outside of Wisconsin. Therefore, if a person from Wisconsin was exposed to an act or omission by an entity while that person was outside of Wisconsin, the statute does not specify whether immunity would be granted. In such a situation, one might look to a contract to determine if there is a choice of law provision that specifies which state law should apply. In the absence of a contract, the state law that will usually apply is the state where the exposure occurred. This may not be an issue given numerous other states have enacted similar laws. If you are performing work outside of Wisconsin, you will need to determine whether those other states have enacted similar laws providing immunity.

No COVID-19 related lawsuits for injury or death have been reported in Wisconsin. There is still some uncertainty as to how the courts will interpret this statute, if there is a person who raises a challenge or files a lawsuit for COVID-19 related illness or death due to exposure. Wisconsin courts may need to determine what constitutes reckless, wanton, or intentional misconduct in the context of COVID-19, if that becomes an issue. That would be the primary area where one will likely argue immunity should not be granted under the statute.

The other problem with seeking damages for COVID-19 illness or death is the difficulty in proving where one was exposed and whether a particular act or omission actually exposed a person to COVID-19. Causation of COVID-19 illness is difficult to prove or trace in a number of cases and a court will likely require a medical expert to testify the person had a particular exposure which caused them to test positive for COVID-19. Of course, COVID-19 immunity might not be tested in the courts as much at this point since growing numbers of individuals are being vaccinated. 



# 529 COLLEGE SAVINGS ACCOUNTS

ANOTHER WAY  
TO MAKE  
APPRENTICESHIP  
EDUCATION LESS TAXING

By Anthony Perillo – CFP®, Senior Financial Advisor, Wipfli Financial Advisors, LLC

College Savings Accounts (CSA, also known as 529 accounts or Edvest Accounts) have helped families save and invest to pay for college for more than 20 years. Recent changes in federal and Wisconsin tax law means that CSA can now be used to help fund apprenticeship costs as well, such as fees, textbooks, supplies and equipment like required tools. The change not only is another small step to treat apprenticeship equal to every other post-high school education, it also should alleviate some families' concerns that opening a CSA may be a disadvantage if their child decides not to attend college.

Money contributed, after taxes, to CSA accounts grows tax deferred and is withdrawn tax free when used for eligible expenses. Earnings withdrawn for ineligible costs are subject to income tax, plus a penalty.

Anyone can open a CSA or contribute to an existing account. Parents, grandparents, close or distant relatives, and even family friends can be account owners or contributors. Anyone can be named as a beneficiary; an apprentice can even choose to name themselves as a beneficiary to take advantage of the tax benefits. Each beneficiary

can also have multiple accounts from multiple owners. This means that there really is no limit on the number of accounts that can be set up by an owner or for a beneficiary.

#### **DO start saving early**

If you're interested in opening a tax-advantaged education savings plan for a child or grandchild, you have a wide variety of options. According to the Securities and Exchange Commission, all 50 states and the District of Columbia sponsor at least one type of CSA. When selecting a CSA, it's often difficult to identify the factors most important to your situation, partly due to the vast number of choices available for these types of accounts. It can also be a headache to figure out the dos and don'ts after you choose the plan.

#### **DON'T ignore fees within the CSA**

When looking at any investment, it's important to ask, "What is this going to cost me?" Within a CSA, there are typically a few different types of fees to consider, including enrollment or application



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fees, management fees, and expenses related to underlying investments (“load” that a broker-sold CSA would charge). To easily compare the fees of various CSA, check out SavingforCollege.com. This site provides comprehensive, well-sourced information on many topics related to college or post-secondary school financing.

### **DON'T take withdrawals from the account outside of eligible educational expenses if avoidable**

Since the CSA plan is created for college or post-secondary school expenses, any withdrawals that are not used for school-related expenses may result in income tax on the earnings, as well as an additional 10% penalty tax.

### **DON'T be afraid of limits if you'd like to make a sizable dollar contribution to a CSA plan**

For 2020, you may contribute up to \$15,000 per beneficiary (\$30,000 for married couples filing jointly) to a CSA plan without having to pay gift taxes or file a gift tax return. Another benefit to the CSA is that the beneficiaries can be changed at any time. For instance, if one of the beneficiaries does not use the entire amount, the excess can be shifted to another immediate family member or even certain extended family members without tax implications.

College tuition has continued to increase out of sync with inflation since the 1980s, and while apprenticeship tuition is an excellent value and still very affordable in comparison, it is always good to take advantage of the time, cost of money and the favorable tax benefits of a CSA. If you need additional assistance when navigating and selecting a CSA, speak with a planning professional who can provide you with guidance for your situation and needs. 

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To find out more about the Silver Lining and a special discount on home and auto insurance just for members of the **ABC of Wisconsin**, contact an official supplier of the Silver Lining.

For the name of an agency near you, visit [thesilverlining.com](http://thesilverlining.com).



# KEEPING LOCAL MUNICIPALITIES FROM OVERSTEPPING AUTHORITY ON BUILDING CODE

By Lucas Vebber – Wisconsin Institute for Law & Liberty (WILL) Deputy Counsel

Commercial construction is one of the most heavily regulated industries in Wisconsin. Contractors must strictly abide by building regulations and their projects are continuously inspected to ensure compliance. When local governments add unnecessary and costly regulations on top of the already comprehensive building code, project costs increase and development slows, which in the end, benefits no one.

Wisconsin recognized that having cumbersome building codes that differ from municipality to municipality created a needlessly complex regulatory climate for development. So, in 2014 the Legislature adopted 2013 Wisconsin Act 270, which required the adoption of a uniform commercial building code. This act, which was adopted with broad bipartisan support, provides that no city “may enact

or enforce an ordinance that establishes minimum standards for constructing, altering, or adding to” buildings unless that ordinance “strictly conforms” to the uniform building code adopted by the Department of Safety and Professional Services (DSPS). See Wis. Stat. § 101.02(7r)(a).

DSPS regulations further provide that cities may not enact or enforce a local ordinance that imposes “additional or more restrictive” standards than the uniform building code. Wis. Admin. Code § SPS 361.03(5).

Despite this clear language in state law, the city of Madison adopted MGO § 28.129 on Aug. 4, 2020. That ordinance provided that “all exterior construction and development activity” must meet new “bird-safe glass treatment requirements.” Madison’s new minimum



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standard for glass requires dots, patterns, lines, metal screens, or other features “intended to reduce the heightened risk for bird collisions with glass.” The ordinance went into effect on Oct. 1, 2020 and applies to all buildings over 10,000 square feet, skyways, and other glass features.

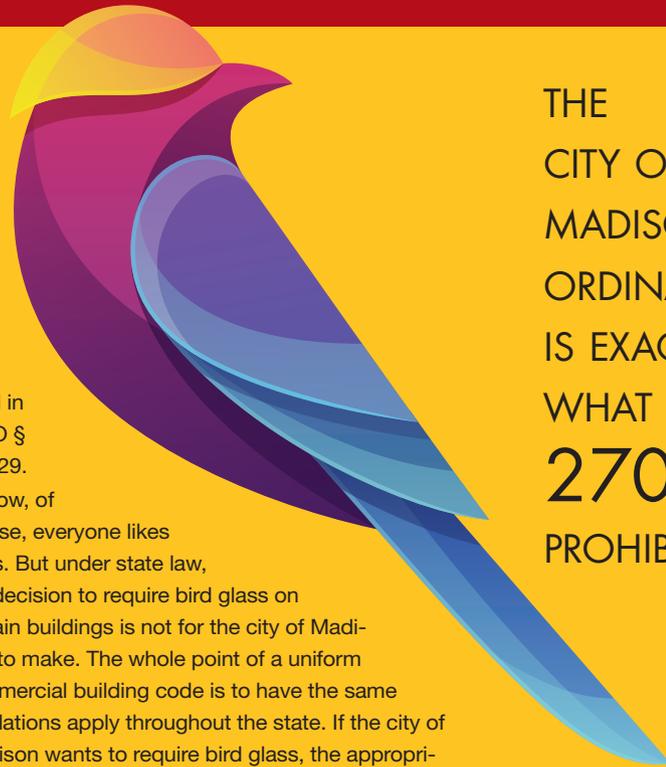
The city of Madison’s ordinance is exactly what Act 270 prohibited. Wisconsin’s uniform commercial building code adopts various national and international standards, including the International Building Code (IBC). The IBC, among other things, governs the quality of glass used in buildings (see 2015 IBC, ch. 24) by imposing requirements concerning the materials, design, construction, safety, and quality of glass. Specifically, the IBC’s requirements impose requirements upon each pane of glass used in a building, including the manufacturer’s identifying mark that must appear on the glass, the framing, and the durability of the glass to wind, load, and human impact forces. The IBC also includes provisions specifying the type of glass and the type of installation required for such structures as glass railings and glass walkways. The IBC does not include any bird-safety features, and specifically does not include the requirements as out-

lined in MGO § 28.129.

Now, of course, everyone likes birds. But under state law, the decision to require bird glass on certain buildings is not for the city of Madison to make. The whole point of a uniform commercial building code is to have the same regulations apply throughout the state. If the city of Madison wants to require bird glass, the appropriate path would be to ask DSPS to amend the state’s code.

However, the city of Madison chose not to go the lawful route. Instead they adopted a plainly unlawful

THE CITY OF MADISON’S ORDINANCE IS EXACTLY WHAT ACT 270 PROHIBITED



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# THE WHOLE POINT OF A UNIFORM COMMERCIAL BUILDING CODE IS TO HAVE THE SAME REGULATIONS APPLY THROUGHOUT THE STATE.

and cumbersome new bird glass regulation. In response, the Wisconsin Institute for Law & Liberty (WILL), where I work, has collaborated with several groups, including Associated Builders and Contractors (ABC) of Wisconsin to push back. In March 3, 2021, we threatened legal action against Madison, sending them a letter outlining our concerns as to why the ordinance was preempted and unlawful.

Under state law, bringing a lawsuit against a municipality requires a specific process to be followed. This letter—also called a “Notice of Claim”—is the first step in that process. State law gives municipalities 120 days to respond to such a letter before any lawsuit can be brought to try and enforce the claim made. Once the claim is formally “denied” or once 120 days passes with no explicit denial, the claimant can file suit. Our 120-day window ended on July 1, 2021—and since Madison gave us no response—it is deemed to be denied. We are now able to file a lawsuit in circuit court challenging the ordinance.

While potential legal action against Madison is pending, it seems as though our push back has worked to discourage other municipalities from moving forward with their own unlawful bird glass ordinances. The city of Wauwatosa had considered imposing one, but that ordinance has not advanced.

We are certainly proud to stand with ABC of Wisconsin against this unlawful government action and we are pleased that other municipalities have not followed Madison’s lead. However, we need to remain vigilant. Beyond just bird glass requirements, local governments could try imposing a host of other building code requirements that differ from state law. If you see anything like this, please let us know.

And while the state legislature has explicitly pre-empted such local building code provisions, there are a variety of other areas where local governments may overstep their authority. For ex-

ample, “a municipality cannot lawfully forbid what the Legislature has expressly licensed, authorized or required, or authorize what the legislature has expressly forbidden” (Fox v. City of Racine, 225 Wis. 542, 545, 275 N.W. 513 (1937)). While municipalities have broad power to act, they cannot act in conflict with state law.

The Legislature may also withdraw power from local governments to act. Our Supreme Court has provided several tests for determining when the Legislature has made such a withdrawal of authority. Specifically, courts in Wisconsin will consider: (1) whether the Legislature has expressly withdrawn the power of municipalities to act; (2) whether the ordinance logically conflicts with the state legislation; (3) whether the ordinance defeats the purpose of the state legislation; or (4) whether the ordinance goes against the spirit of the state legislation (Anchor Sav. & Loan Ass’n v. Equal Opportunities Comm’n, 120 Wis. 2d 391, 397, 355 N.W.2d 234, 238 (1984)).

So, whether we are dealing with the city of Madison’s bird glass ordinance or any other regulation or requirement anywhere in the state, it is important to keep in mind first and foremost that government actors only have the power that has been given to them. Just because an ordinance exists, does not necessarily mean it is lawful. If something seems strange, it probably warrants a closer look. We certainly value our relationship with ABC of Wisconsin, and will always continue to push back against government actors anywhere who are exceeding their authority. 

*Lucas Vebber is deputy counsel at WILL where he focuses on separation of powers and regulatory issues. The Wisconsin Institute for Law & Liberty (WILL) is a nonpartisan, not for profit law and policy center based out of Milwaukee. Through litigation, education, and participation in public discourse, WILL advances the public interest in the rule of law, individual liberty, constitutional government, and a robust civil society.*

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**ABC of Wisconsin sent this letter to all Wisconsin municipalities regarding  
PLA legal analysis relating to the federal American Rescue Plan Act (ARPA).**



July 6, 2021

I write on behalf of Associated Builders and Contractors of Wisconsin ("ABC"). Our members include more than 900 construction industry contractors and vendors in Wisconsin and surrounding states. A fundamental interest for ABC and its members is to ensure fair and open competition in the awarding of governmental construction contracts. Wisconsin's citizens and taxpayers are best served through a process whereby contracts are awarded based on merit and the quality of the construction services provided, not on third-party affiliations.

As you know, the U.S. Congress passed the American Rescue Plan Act (ARPA) earlier this year, and President Biden signed that bill into law on March 11. On May 10, the U.S. Department of Treasury issued guidance concerning the \$350 billion of federal funding in the law that is designated for state and local fiscal recovery, which includes investments in our nation's infrastructure. In its guidance, the Treasury Department "encourages recipients [of ARPA funds] to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreement and community benefits agreements . . ."

An encouragement is not a mandate, but my organization's members are concerned that some Wisconsin municipalities might erroneously rely on Treasury's guidance encouraging expensive, discriminatory, and costly project labor agreements (PLAs) and overlook their statutory obligations under Wisconsin law.

*Legal analysis indicates that PLAs are not required for ARPA projects, and Wisconsin law prohibits government-mandated PLAs.*

Wisconsin determined that PLAs were bad policy for public construction work by enacting PLA neutrality (2017 Wisconsin Act 3) to promote healthy competition between contractors that will result in good value for Wisconsin taxpayers. As a result, government bodies in our state, like [municipality name] may not condition or encourage the awarding of contracts using ARPA funds on contractors' use of PLAs.

We trust that [municipality] will follow these legal requirements; we are providing this letter in advance, however, to avoid any confusion that proponents of PLAs may attempt to create on this matter.

Thank you for helping ensure that all contractors and employees in our state will continue to have equal opportunities to bid on publicly funded construction projects based on their own merit. Our members have provided outstanding, high quality, safe, and valuable construction services throughout Wisconsin for over six decades and we look forward to helping rebuild Wisconsin's infrastructure and economy after more than a year of a costly world-wide pandemic. If you have any questions, please don't hesitate to contact John Schulze on my staff at 608-244-5883.

Respectfully,

John Mielke  
President  
Associated Builders & Contractors of Wisconsin  
5330 Wall Street  
Madison, WI 53718  
(608) 244-5883-office  
(608) 332-5824-cell

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# NATIONAL LEGISLATIVE CONFERENCE

ABC of Wisconsin members risked the heat and humidity of Florida to participate in the national Legislative Conference. Steve Klessig of ABC of Wisconsin member Keller Inc. presided over the week long meeting as national Chair, the second Wisconsin member to achieve the duty. At the conference, Wisconsin was awarded the Silver Grassroots Award for Grassroots Advocacy.



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\* Federal law prohibits ABC of Wisconsin from providing specific legal advice for free, but this service enables members to better understand their legal issue and potential solutions. Call ABC of Wisconsin at 608-244-5883 for more information.

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**Bob Sanders**

Husch Blackwell, LLP  
MILWAUKEE



**Mark Johnson**

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
MILWAUKEE

## BIDDING

Wisconsin and federal public projects, alternative delivery methods, bid protests/mistakes



**Lauren Triebenbach**

Michael Best & Friedrich, LLP  
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MILWAUKEE

## LABOR

Unions/picketing, bannering/elections



**Daniel Barker**

Jackson Lewis, P.C.  
MADISON

## CONSTRUCTION CLAIMS

Liens, insurance & surety, defects & defaults, delays, failures, dispute resolution



**Joshua Levy**

Husch Blackwell, LLP  
MILWAUKEE



**Steven Slawinski**

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## OSHA

Citations, inspections, interpretations



**Chuck Palmer**

Michael Best & Friedrich, LLP  
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## CONST. CONTRACTS & REAL ESTATE



**Todd Jex**

Crivello Carlson, S.C.  
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Formation, succession planning, tax



**Tom Moniz**

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### Doug Witte

Boardman & Clark, LLP  
MADISON

# NEW MEMBERS

For membership information contact **Bill Stranberg, Membership Director**  
Associated Builders and Contractors of Wisconsin – 608-244-5883

## MAY 2021

### • C&V Plumbing

*Lucas Drake*

N120W12628 Freistadt Road  
Germantown, WI 53022

**Phone:** 262-573-1409

**Description:** Plumbing Contractor

**Sponsor:** Roger Thimm, Wondra Construction, Inc.

Beam Club Members-to-date: 23.5

### • C. Braaksma Electric, Inc.

*Chris Braaksma*

P.O. Box 192

Waupun, WI 53963

**Phone:** 920-319-1614

**Description:** Electrical Contractor

**Sponsor:** Andy Kaehny, Steiner Electric, Inc.

Beam Club Members-to-date: 1

### • Complex Security Solutions, Inc.

*Ryan Bachmann*

S83W18396 Saturn Drive

Muskego, WI 53150

**Phone:** 414-299-0119

**Description:** Security Solutions Contractor

**Sponsor:** Jessica Cannizarro, Milestone Plumbing Inc.

Beam Club Members-to-date: 2

### • Elec-cellent Electric, LLC

*Randy Landphier*

633 Hillside Ct.

Evansville, WI 53536

**Phone:** 608-438-6729

**Description:** Electrical Contractor

**Sponsor:** Dan Bertler, Supreme Structures Inc.

Beam Club Members-to-date: 28

### • Ernstmeyer Plumbing Co.

*Thadd Ernstmeyer*

E4038 Old K Road

Reedsburg, WI 53959

**Phone:** 608-415-1146

**Description:** Plumbing Contractor

**Sponsor:** Scott Truehl, Friede & Associates, LLC

Beam Club Members-to-date: 14

### • Gillett Electric, LLC

*Kyle Gillett*

1137 B W. South Park Ave.

Oshkosh, WI 54902

**Phone:** 920-410-7209

**Description:** Electrical Contractor

**Sponsor:** Troy Carlson, Ansay & Associates, LLC

Beam Club Members-to-date: 22

### • H&M Wiring

*Dustin Henriksen*

3004 County Road A

Oxford, WI 53952

**Phone:** 608-697-2856

**Description:** Electrical Contractor

**Sponsor:** Jeff Disher, Disher Electric Inc.

Beam Club Members-to-date: 3

### • PM Plumbing & Mechanical, LLC

*Paul Weidner*

6008 Mt. Vernon Way

Mt. Pleasant, WI 53406

**Phone:** 262-770-0039

**Description:** Mechanical/Plumbing Contractor

**Sponsor:** JR Reesman, Reesman's Excavating & Grading, Inc.

Beam Club Members-to-date: 24

### • Sand Valley Builders, LLC

*Matt Orval*

208 Steeple Ct.

Johnson Creek, WI 53038

**Phone:** 920-988-2735

**Description:** General Contractor

**Sponsor:** Tom Altmann, Altmann Construction Co., Inc.

Beam Club Members-to-date: 43

## JUNE 2021

### • Beeline Electric, Inc.

*Nick Derr*

P.O. Box 259071

Madison, WI 53725

**Phone:** 608-692-1448

**Description:** Electrical Contractor

**Sponsor:** Dan Bertler, Supreme Structures Inc.

Beam Club Members-to-date: 49

### • Bill's Earth Services

*William Atkinson*

515 W. Fulton St., Unit C

Stoughton, WI 53534

**Phone:** 608-285-2293

**Description:** Contractor Member

**Sponsor:** Amber Anderson, Aerotek

Beam Club Members-to-date: 1

### • Dave Burns Plumbing, Inc.

*Dave Burns*

S74 W17586 Lake Drive

Muskego, WI 53150

**Phone:** 262-679-1001

**Description:** Plumbing Contractor

**Sponsor:** JR Reesman, Reesman's Excavating & Grading, Inc.

Beam Club Members-to-date: 25

### • E80 Millwright & Rigging, LLC

*Tim Pfeil*

7120 Patton Road

De Forest, WI 53532

**Phone:** 608-846-1880

**Description:** Millwright Contractor

**Sponsor:** Jon Templin, Hausmann-Johnson Insurance

Beam Club Members-to-date: 1

### • Element Electric, LLC

*Brian Buss*

4720 W. Devonshire Drive

Franklin, WI 53132

**Phone:** 414-405-4362

**Description:** Electrical Contractor

**Sponsor:** Eric Messer, The Starr Group

Beam Club Members-to-date: 1

### • J. Cox Plumbing, LLC

*Justin Cox*

2835 Homestead Drive

Oshkosh, WI 54904

**Phone:** 920-410-7939

**Description:** Plumbing Contractor

**Sponsor:** Troy Carlson, Ansay & Associates, LLC

Beam Club Members-to-date: 23

### • Precision Electrical Contractors, Inc

*Hannah Kavemeier*

2940 S. 166th St., Ste. 4

New Berlin, WI 53151

**Phone:** 262-888-9497

**Description:** Electrical Contractor

**Sponsor:** Cheryl Sment, Interstate Sealant & Concrete Inc.

Beam Club Members-to-date: 21

### • Trilling Electric, Inc.

*Thomas Trilling*

2205 South 10th Street

Sheboygan, WI 53081

**Phone:** 920-627-0355

**Description:** Electrical Contractor

**Sponsor:** Stuart Johnson, A.C.E. Building Service, Inc.

Beam Club Members-to-date: 1



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