WINTER 2022

# Substance

Illinois Mechanical & Specialty Contractors Association

# IMSCA President

**Chad Fricke,**
IMSCA President

## Keep your Eye on the Horizon

Another challenging year for the construction industry has come to an end. As if 2020 wasn't challenging enough, 2021 brought a whole new set of challenges to our industry. During this time of year, many of us look back and reflect upon what happened over the past twelve months. While reflection is important – it's also critical to our success as contractors to keep our eyes on the horizon for what is yet to come and be ready to face new challenges head on.

The COVID-19 pandemic continued changing our industry throughout 2021 and will no doubt continue forcing more changes to our professional and personal lives in years to come. While none of us have a crystal ball to see what the future holds for our industry, we must do our very best to prepare for it. During these difficult and uncertain times, I have found myself paying closer attention to what is going on in our industry. Supply chain disruption, material and labor shortages, and constant price change fluctuations, have kept me in constant communication with material suppliers and subcontractors. Phone calls, emails, zoom meetings and webinars are all essential tools for maintaining an open dialogue with our colleagues, and staying on the leading edge in our fields. Hopefully your business has adopted best practices for staying up to date on changes in our industry, and I encourage you to keep focusing on those efforts in the upcoming year.

In addition to ongoing changes in the construction industry, 2021 also brought some pretty big changes in our state government. In January, Speaker Emmanuel "Chris" Welch was elected by his colleagues as the first Black Speaker of the Illinois House in state history. Speaker Welch replaced incumbent Speaker Madigan who held the position since 1983 (with the exception of two years). We may not think about changes in state government in our day-to-day operations, but a change in legislative leadership can have a tremendous impact on the business climate in Illinois. Legislative issues may not be at the forefront of our minds daily, but we can rest assured that IMSCA is there for us and keeping a watchful eye on legislative proposals that may have an impact on the Illinois construction industry. IMSCA not only keeps our members informed on legislative topics, but IMSCA serves as the leading voice on these issues in Springfield. IMSCA protects us from legislation that will have an adverse effect on our businesses, and advocates on our behalf for the betterment our industry.

As we prepare for another challenging year, we can rest assured that IMSCA is watching out for us. I wish you the very best in 2022 and I look forward to working with all of my IMSCA colleagues in the year to come. ■

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*Legislative Representation for over 2,000 Construction Employers*

IMSCA
Illinois Mechanical & Specialty Contractors Association


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*featured story*

COVID-19 Vaccination and Testing Mandates –

# Making Sense of the Patchwork of Overlapping Mandates

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is a business attorney and litigator who advises companies in a wide range of industries on employment law and commercial matters. His experience in employment matters includes counseling, negotiation, and litigation on issues critical to the evolving workplace including wage and hour disputes, restrictive covenant matters, and federal, state and local statutory claims. Jason also provides his clients with an array of services including drafting and negotiating employment and independent contractor agreements and responding to governmental audits and investigations. As an outgrowth of his business-oriented employment and labor practice, Jason serves in a capacity similar to an outside general counsel for clients on a variety of other legal matters including general business, corporate and litigation issues.

*Introductory Note and Legal Disclaimer: The legal issues being discussed in this article are evolving on an almost daily basis. Therefore, nothing herein shall constitute or be construed as legal advice and readers are strongly encouraged to contact this author or other legal counsel on the issues discussed herein.*

There can be no question that keeping up to date with all vaccination mandates throughout the country is becoming a full-time job. Between the federal Occupational Safety and Health Administration's Emergency Temporary Standards (which, as discussed below, are currently stayed), President Biden's Executive Order impacting virtually all federal contractors (which also was recently stayed), and Illinois Governor Pritzker's Executive Order impacting contractors in some industries, employers are increasing facing a minefield of regulatory mandates and potential liability. There are further complications for contractors in the building trades, as many such companies are governed by collective bargaining agreements. This article attempts to summarize the current status of vaccination mandates impacting contractors within Illinois.

## OSHA's Mandate – What is it and What is Next?

On November 4, 2021, the Occupational Safety and Health Administration released its long-anticipated vaccine or testing mandate (the "**OSHA Mandate**") impacting employers throughout the United States with 100 or more employees and estimated to impact over 80 million employees. Among other aspects, the OSHA Mandate requires covered employers to, among other things, collect the vaccination status of its employees and requires their employees to either be fully vaccinated or submit to COVID-testing on a weekly basis. Other significant employer requirements of the OSHA Mandate include drafting and maintaining compliant written vaccination and testing policies, requiring the unvaccinated to wear masks, maintaining certain vaccination and testing documentation, as well as providing paid sick leave to employees receiving or recovering from the COVID-19 vaccine.

However, as has been widely reported in the national media, within

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two days of the issuance of the OSHA Mandate, it was temporarily suspended by the Fifth Circuit Court of Appeals, which was subsequently affirmed by the same Court on November 12, 2021. In light of similar challenges around the country, the Sixth Circuit Court of Appeals was randomly selected to hear a consolidated action. Time will tell whether the OSHA Mandate will be implemented but it is safe to conclude that, given the importance of this issue on both sides of the debate, the U.S. Supreme Court will likely weigh in and make the final decision on the legality of the OSHA Mandate.

At this juncture, many employers covered by the OSHA Mandate are taking a "wait and see" approach by just maintaining their particular status quo. Others are implementing some of the requirements of the OSHA Mandate such as gathering and collecting information regarding the vaccination status of their employees and requiring masking of those that are unvaccinated. Still others are following all the requirements outlined in the OSHA Mandate both in anticipation of it becoming law and to maximize the safety of their employees and customers. There is likely no "right" answer at this juncture, and it largely depends on factors such as the make up of the workforce, how many employees are currently vaccinated, what policies the company has implemented already and the impact that a vaccination or testing mandate may have on employees leaving the company.

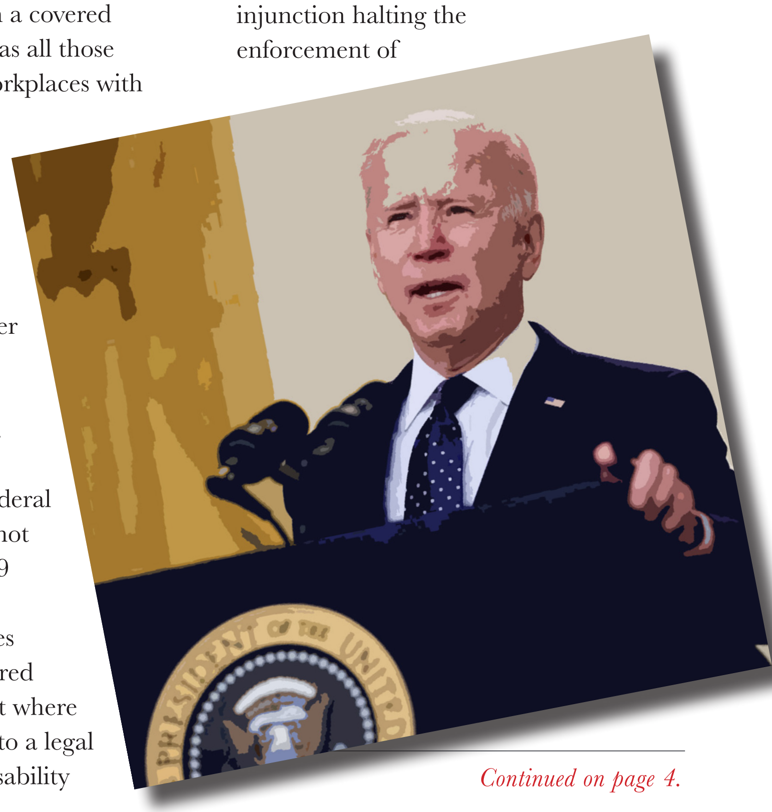
## Biden's Executive Order Addressing Federal Contractors

Prior to the OSHA Mandate, on September 9, 2021, President Biden issued Executive Order 14042 (the "**Federal Contractor Order**") which created a vaccination mandate on most federal contractors and subcontractors. Specifically, the Federal Contractor Order requires employees working on or in connection with a covered federal contract, as well as all those employees who share workplaces with such employees or come into contact with them as part of their employment to be fully vaccinated (currently by January 18, 2022). The Federal Contractor Order also includes mandatory masking and social distancing requirements. Notably, and unlike the OSHA Mandate, the Federal Contractor Order does not allow regular COVID-19 testing as an alternative to vaccination, but it does allow employees of covered contractors to be exempt where the employee is entitled to a legal accommodation (e.g., disability and/or sincerely held religious beliefs) provided such accommodation does not cause undue hardship or pose a direct threat to the health and safety of others.

While the requirements of the Federal Contractor Order do not apply to a federal contractor until it actually enters into a government contract or subcontract that includes a clause requiring compliance, federal agencies are beginning to amend their existing contracts to require contractors to comply with the Federal Contractor Order and to, in turn, require covered subcontractors to take the same action.

Many employers throughout Illinois are already performing work on federal projects. More employers will soon be covered, with the recent passage of the Infrastructure Investment and Jobs Act, which allocates a portion of the $1.2 trillion spending towards surface transportation and other infrastructure construction projects.

Notwithstanding the foregoing, on December 7, 2021, and like the OSHA Mandate, a federal judge in Georgia issued a nationwide preliminary injunction halting the enforcement of



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the Federal Contractor Order (which was due to go into effect on January 4, 2022). An appellate court may decide to vacate the injunction and it is expected that the Biden Administration will push to have the injunction vacated expeditiously so time will tell as to whether the Federal Contractor Order will become effective.

Therefore, until further court action, the requirement that covered contractor employees be fully vaccinated will not be enforced. For now, however, private employers, if they so choose, may move forward with enforcing the vaccine mandate, in anticipation that the courts ultimately will uphold its validity. Alternatively, federal contractors and subcontractors may prefer to a adopt a "wait and see" approach. In the event the injunction is vacated, it is likely that the current January 4th deadline for employees to be fully vaccinated will be modified and extended under the circumstances.

## Governor Pritzker's Executive Orders Impacting Contractors

On August 26, 2021, Governor Pritzker issued Executive Order 2021-20 ("**Pritzker's EO**") which imposed masking, social distancing, vaccination and testing requirement for personnel in various industries such as healthcare, education and state-owned and operated

property. More specifically, Pritzker's EO mandates, among other things, that employees and those vendors and contractors working at a "Health Care Facility," "School," "Institution of Higher Education" or "State-Owned or Operated Congregate Facilities" (all those terms are specifically defined in Pritzker's EO) to be fully vaccinated or submit to weekly COVID-19 testing. Therefore, as a practical matter, Pritzker's EO requires contractors working on any daycare center, K-12 school, college and university, community college, health care clinic or facility or at any state-owned or operated facility to comply with the requirements of the Order.

## What If I Am a Unionized Employer?

If the foregoing requirements were not complicated enough for Illinois employers, unionized workplaces face additional questions and hurdles. Union employers must comply with the federal and state vaccination mandates outlined above, while at the same time bargaining with the union over terms and conditions of employment (including vaccination and testing) under collective bargaining agreements.

Like many answers to legal questions of this nature, the answer to whether mandatory vaccination and testing policies are subject to bargaining is "it depends." It largely depends on a number of factors such as the language in the applicable collective bargaining agreement, the past practices between the union and employer, and the position of the applicable union on the topic.

Typically, absent waiver by the union, an employer cannot unilaterally impose a vaccine or testing mandate without first negotiating the issue in good faith with the union. Some collective bargaining agreements, however, provide that the employer has the unilateral right to impose policies that impact workplace safety and health. Even if the applicable collective bargaining agreement is silent on the issue, a union can implicitly waive the right to bargain this issue by its past practice of allowing the employer to unilaterally impose workplace safety rules. But, in the absence of these conditions, unionized employers are encouraged to broach the issue of vaccination and testing with the union before unilaterally imposing such a policy, even in the face of being obligated to comply with mandates such as the Pritzker EO, the Federal Contractor Order and, if it becomes effective, the OSHA Mandate. Thus, even if such employers (and, by extension, their unionized employees) are required to comply with those mandates, it would still be prudent for the employer to negotiate their implementation, such as who needs to be vaccinated or tested, how to pay for such vaccination or testing and the consequences for union employees who fail or refuse to be tested or vaccinated.

## Conclusion

Whether a company is governed by the OSHA Mandate, the Federal Contractor Order or Pritzker's EO (or all of them), it is abundantly clear that Illinois employers must take immediate steps to prepare themselves, their workplaces and their employees for these mandates. Importantly, employers should first determine whether they are subject to any of the mandates. Employers should then organize records collection and retention systems to ensure they are able to begin collecting and preserving such vaccination and testing records, as well as disability, medical, and religious waiver requests. Finally, employers should continue to be flexible as always during this ongoing COVID-19 pandemic, as the requirements detailed in this article may change as a result of litigation, new recommendations from public health agencies, or revised emergency temporary standards.

*Please direct your questions and comments to:*
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### Workers' Rights Amendment 101:

# Illinois Fares Better than "Right-to-Work" States

**Frank Manzo IV, M.P.P.** is the Executive Director of the Illinois Economic Policy Institute. He earned a Master of Public Policy from the University of Chicago Harris School of Public Policy and a Bachelor of Arts in Economics and Political Science from the University of Illinois at Urbana-Champaign.

In November 2022, Illinois voters will have the chance to vote on a Constitutional Amendment that would prevent Illinois from ever passing a state law or local ordinance "that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety." If approved by voters, the Workers' Rights Amendment would permanently ban so-called "right-to-work" laws in Illinois.

"Right-to-work" laws do not in any way affect an individual's right to seek and accept employment. Instead, a "right-to-work" law is a government regulation on a specific type of privately negotiated contract between workers and employers. "Right-to-work" laws allow workers to free ride and take all the benefits of collective bargaining—such as higher wages, benefits, and legal representation—for free, without paying anything for them. By law, unions must represent all employees in a workplace, even in cases where the workers free ride and refuse to pay their fair share. This strains the financial resources of unions and weakens their bargaining power. The spread of "right-to-work" laws has contributed to the decline in union membership across the United States.

> *"'Right-to-work' laws do not in any way affect an individual's right to seek and accept employment."*

A 2021 study by the Illinois Economic Policy Institute (ILEPI) and Project for Middle Class Renewal (PMCR) at the University of Illinois at Urbana-Champaign shows that workers are better off in Illinois than they are in states with "right-to-work" laws.

The average worker in Illinois earns about $57,000 per year in income from wages and salaries, significantly more than in "right-to-work" states. After accounting for the higher cost-of-living in Illinois and other factors, Illinois workers earn 6% more. They are 5% more likely to have health insurance. Fewer Illinois workers are below the poverty line. Illinois' workers have less household debt and lower loan delinquency rates. And Illinois workers are 3% more likely to own their homes, despite facing some of the highest property taxes in the nation.

While some lobbyists claim that "right-to-work" laws attract job-creating businesses, the data tells a different story. First, productivity per worker is 15% higher in Illinois than in "right-to-work" states. Productive workers are good for business. Second, surveys of corporate executives consistently show that "right-to-work" is not a consideration in business location decisions. Things

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like the accessibility of transportation infrastructure and the availability of skilled labor matter far more. Third, over the last decade from 2010 to 2020, the gross domestic product (GDP) of states with "right-to-work" laws grew 3% slower than it did in the states that support workers' rights to collectively bargain.

That's why West Virginia Governor Jim Justice, a Republican, lamented in 2021: *"Really and truly, let's just be brutally honest. We passed the 'right-to-work' law in West Virginia. And we ran to the windows looking to see all the people that were going to come—and they didn't come."* Passage of "right-to-work" legislation in 2016 simply did not attract businesses, jobs, or residents to West Virginia.

Finally, Illinois has safer workplaces than "right-to-work" states. Since 2011, the on-the-job fatality rate has been 2.8 deaths per 100,000 workers in Illinois. In "right-to-work" states, the on-the-job fatality rate has been 4.1 deaths per 100,000 workers. This means that Illinois has had 32% fewer fatalities at work. This is one of the reasons why life expectancy is a full year higher in Illinois than it is in "right-to-work" states.

Safety is particularly important to construction, one of the most dangerous and physically demanding sectors of the economy. Yet so-called "right-to-work" laws tend to have the most dire consequences for the construction industry. Skilled construction tradespeople earn 11% less in "right-to-work" states. "Right-to-work" states also have 31% fewer registered apprentices per 100,000 construction workers because they weaken joint labor-management programs that are funded by cents-per-hour training investments determined through collective bargaining. In Illinois, joint labor-management apprenticeship programs currently train 97% of all construction apprentices. That's one major reason why a recent study of Occupational Safety and Health Administration (OSHA) inspections found that union worksites have 52% fewer safety violations than nonunion worksites in Illinois' construction industry.

As the negative economic impacts of "right-to-work" have become better known, public approval of unions has surged to its highest level in six decades, while opposition to "right-to-work" is becoming a rare area of bipartisan agreement. According to a Gallup poll released just before Labor Day 2021, 68% of Americans support unions. This parallels the 67% of voters in neighboring Missouri who voted to reject a "right-to-work" proposal in 2018. And it follows the 62% of lawmakers in Montana who defeated a "right-to-work" bill, with 29 Republicans joining 33 Democrats to uphold workers' rights.

Bipartisan majorities in the Illinois General Assembly also voted to put the Workers' Rights Amendment on Illinois' 2022 ballot. The constitutional amendment passed 49-7 among state senators (88%) and 80-30 among state representatives (73%).

If passed by voters in November 2022, the Workers' Rights Amendment would safeguard middle-class incomes for workers, protect their health insurance coverage, and promote workplace safety in Illinois. By preventing any future Governor or General Assembly from interfering in private collective bargaining negotiations, the Workers' Rights Amendment would ensure that business and workers determine the wages, benefits, and safety measures necessary to support families and their communities.

The Workers' Rights Amendment would protect essential workers who put their lives on the line to serve Illinois residents. It would mean that police officers and firefighters can continue to receive the training they need to do their jobs professionally. It would mean that nurses can continue to speak out when they see problems in hospitals without fear of retaliation. And it would mean that blue-collar construction workers can continue to go through well-funded apprenticeship programs that deliver safe workplaces and middle-class careers without four-year college degrees.

Ultimately, the data reveals that the Workers' Rights Amendment would support a strong economy for Illinois. ■

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[9] "'Right-to-work,' other bills restricting unions fall short at Montana Legislature." KTVH. 2021. https://www.ktvh.com/news/right-to-work-other-bills-restricting-unions-fall-short-at-montana-legislature.

# The Impact of the Newly Approved (and legally debated) Legislative & Congressional Maps

**Patrick Pfingsten** is a former award-winning journalist and longtime Republican operative who writes The Illinoize statewide political newsletter. You can read more at www.theillinoize.com or contact him at patrick@theillinoize.com.

When you talk about redistricting in Illinois, you must stipulate two things. First, there's always going to be a lawsuit. Second, it's hard to get people to care about the process that decides which politician will represent them for the next ten years.

But 2021 was a redistricting year like no other in Illinois, and as the calendar is about to roll over to 2022, legislative districts are still under consideration by a panel of federal judges in Chicago.

Typically, results of the decennial census are available in the spring of the next year. Pandemic delays pushed back the official population reports for Illinois to August. That left Democrats in the General Assembly with the choice of either waiting for official population numbers and potentially inviting Republicans to the table due to constitutional deadlines, or to pass a map with population estimates.

Democrats rolled the dice, approving legislative districts in late May with the use of population estimates. Republicans, namely Senate Republican Leader Dan McConchie (R-Hawthorn Woods) and House Republican Leader Jim Durkin (R-Western Springs), immediately sued, claiming the population estimates were illegal and that Latinos were underrepresented in the map.

"The partisan process upon which the legislative maps were drawn flies in the face of the strong recommendations made by countless advocacy groups and citizens who testified at the redistricting hearings," Durkin said in June. "The tone-deaf Democratic Party of Illinois has robbed citizens of a fair and transparent legislative mapmaking process, and I plan to be a conduit for Illinois citizens who demand honesty by ensuring they also have their day in court."

### Democrats defended their version of the map.

"Republicans are doing everything in their power to block a map that reflects the true diversity of Illinois in hopes that they get a chance to single handedly draw a map for their political gain," said House Redistricting Committee Chair Rep. Lisa Hernandez (D-Cicero) in June. "Republicans have done nothing but attempt to obstruct this citizen-driven process. This is just another disappointing waste of taxpayer dollars, but not at all surprising. We have full confidence in the maps passed by the legislature and signed by Governor Pritzker, and we will continue to review this lawsuit."

Governor JB Pritzker was widely criticized by Republicans and good government groups for breaking a campaign promise that he would veto any map drawn by politicians. Pritzker tried to walk back the flip-flop claiming he wanted an independent redistricting commission, but it wasn't enacted in time for the 2021 redistricting cycle.

Republicans were joined in a separate lawsuit by the Mexican

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American Legal Defense and Education Fund (MALDEF), claiming the rising Latino population in the state wasn't adequately represented by the map.

"Illinois voters, including the growing Latino voter community, are entitled to districts that accurately reflect the population as determined by the constitutionally mandated decennial census," Thomas Saenz, MALDEF president and general counsel said in June. "Ultimately, the General Assembly will have to redraw lines for the 2022 elections using the proper decennial census data."

When the census figures were eventually released in August, concerns about population figures were realized, showing multiple districts exceeded allowable population deviation.

Lawmakers returned in late August trying to head off the legal problems at the pass.

"Following the recent release of 2020 census data from the U.S. Census Bureau, the House will be returning for a one-day special session on August 31 to amend the legislative map enacted in June to incorporate the latest census data," said House Speaker Chris Welch in August. "We want to make sure every voice is heard and represented."

Republicans accused Democratic leaders of trying to subvert the constitution that requires a bipartisan commission if maps aren't approved by June 30.

"The proclamation for a special session is [an] admission that the Democrats' enacted map was unconstitutional," McConchie said. "Instead of ensuring the protection of Illinoisans' voting rights, Governor Pritzker and his Democratic insiders drafted an unconstitutional map that sought to ensure their absolute power for another decade. With the data on the people's side, we are confident the court will see through the Democrats' charade and agree with our motion to void this map."

Democrats approved a new map at the end of August, but Republicans and MALDEF continued their legal efforts, claiming the maps continued to disenfranchise Latino residents. The census showed Latinos became the largest minority group in the state in the past decade, but actually lost Latino-majority seats under the map.

The NAACP of East St. Louis also sued over two districts in the Metro East, claiming a group of Black East St. Louis residents were "cracked" out of one district and moved into a majority-white district to protect a Democratic representative in that district.

The federal court threw out the May map in October and set up an early December showdown in federal court over the constitutionality of the September version of the map. Both Republicans and MALDEF have submitted potential changes to the legislative maps.

In a 9-hour hearing in federal court in Chicago, both sides went back and forth with judges over their arguments.

Attorneys for MALDEF argued that while Chicago's population has shrunk over the last decade, the Latino population has grown by 300,000, yet Latinos are not proportionally in power in state government. The group has drawn its own map, which has nine house districts and four senate districts in which Latinos are the majority of eligible voters, compared with four and two in the Democrats' September map.

Sean Berkowitz, an attorney defending the maps, disputed the plaintiffs' claims and said the Democrat-drawn maps actually expand opportunities for minorities through coalitions, rather than packing certain districts with minorities. He showed numerous state elections (the election of President Obama, Maylor Lori Lightfoot, Sen. Tammy Duckworth, and many of the state-level elected positions) where white voters crossover to vote with minorities.

Federal judges are expected to rule on the legality of legislative maps before the end of the year.

Democrats did wait until census data was in before passing a new congressional map. Due to population loss, Illinois lost a congressional seat for the next decade. Instead of 18 districts, the state had to be carved into 17 seats.

Democrats passed a map that they believe can give Democrats a 14-3 majority in the state's congressional delegation, though it came with some risks. The new 17th district, which is being vacated by Congresswoman Cheri Bustos (D-East Moline), picks out urban areas in Rockford, the Quad Cities, Peoria, and Bloomington-Normal. Republicans, though, believe they can win the seat in November. Congressman Bill Foster's (D-Naperville) 11th District and Congresswoman Lauren Underwood's (D-Naperville) 14th district are also considered in play.

Two Democrats are facing a potential primary. Congressman Sean Casten (D-Downers Grove) faces a challenge from Congresswoman Marie Newman (D-LaGrange), who had her 3rd district seat dismantled for a second

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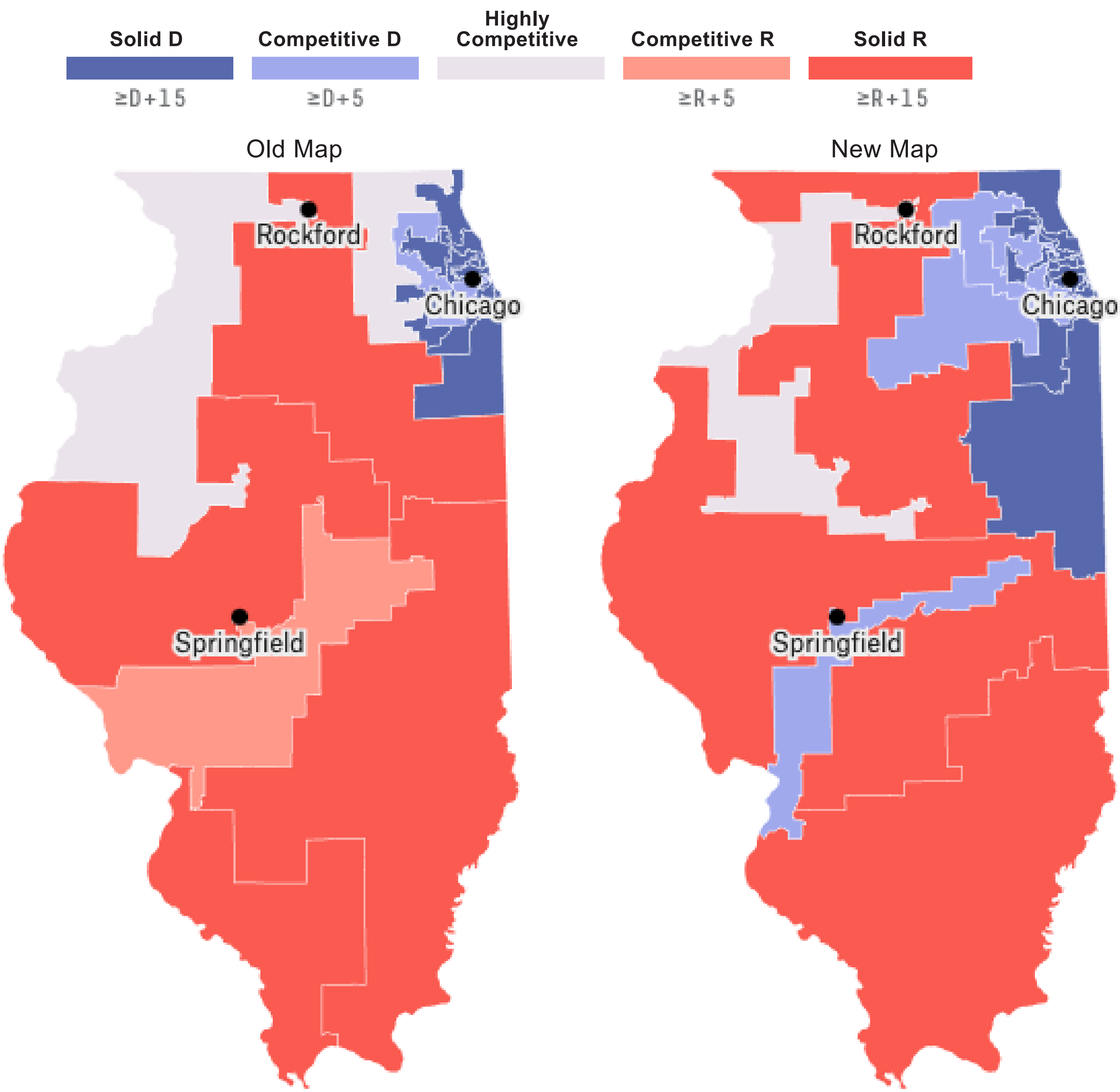
Latino-majority seat on the north side of Chicago and suburbs.

Congressman Rodney Davis (R-Taylorville) was drawn out of his 13th District and into the safely Republican 15th District. Controversial pro-Trump Congresswoman Mary Miller (R-Oakland) had her district dismantled and faces a likely challenge to Congressman Mike Bost (R-Murphysboro) if she wants to say in Congress.

Republicans will lose Congressman Adam Kinzinger (R-Channahon), who had his 16th district chopped up between multiple new districts. Kinzinger has been vehemently anti-Trump and has been ostracized by many Republicans. Democrats drew him into a potential primary with Congressman Darin LaHood (R-Dunlap), and Kinzinger decided not to seek re-election.

Because of the delays, Democrats pushed the 2022 primary from its traditional March date to late June. ■

**The partisan breakdown of Illinois's new map**



# Illinois State Capitol Report

**JESSICA NEWBOLD HOSELTON**
IMSCA
Executive Director

The Illinois General Assembly convened in Springfield October 19-21 and 26-28 for fall veto session. Lawmakers worked long hours and approved many of their top legislative priorities, including approval of the new congressional map **(HB 1291)** and legislation clarifying the intent of the Health Care Right of Conscience Act **(SB 1169)**. Lawmakers also debated legislation of particular interest to the Illinois construction industry including approval of the Reimagining Electric Vehicles in Illinois Act **(HB 1769)**. However, the most concerning issue to IMSCA debated during veto session, was legislation seeking to amend the Wage Payment and Collection Act **(HB 3293)**.

IMSCA, along with our construction industry partners were surprised by an unexpected amendment filed to **HB 3293 (Sen. Castro/Rep. Gong-Gershowitz)**. The amendment seeks to hold general contractors and subcontractors liable for wage claims at any tier on a private construction project. The legislation is an initiative of the Mid-American Carpenters Regional Council and is supported by the IL AFL-CIO. IMSCA and various other construction industry associations oppose HB 3293. The proponents of the legislation argue it is aimed at protecting workers from wage theft, but IMSCA contends HB 3293 will result in unintended consequences that will negatively impact the Illinois construction industry by:

- In an effort to limit their liability, general contractors may be incentivized to self-perform more work and not hire subcontractors, which will result in diminished project and employment opportunities for subcontractors.
- Creates a barrier of entry for smaller and minority-owned businesses by encouraging general contractors to work with more financially established companies.
- Litigation between general contractors and subcontractors at various tiers over who has the liability of wage claimants will increase, which will ultimately lead to higher construction costs.

This legislation advanced at lightning speed but did not receive approval before the Illinois General Assembly adjourned in October. The bill awaits a concurrence vote in the Illinois House of Representatives, and it will likely pass when legislators return to Springfield in January. In an effort to continue fighting against HB 3293 as amended, IMSCA is working with our construction industry partners to determine whether any proposal to soften the impact of the anticipated law has a chance of success.

Governor Pritzker unveiled a package of tax credits and incentives aimed at kickstarting the electric vehicle

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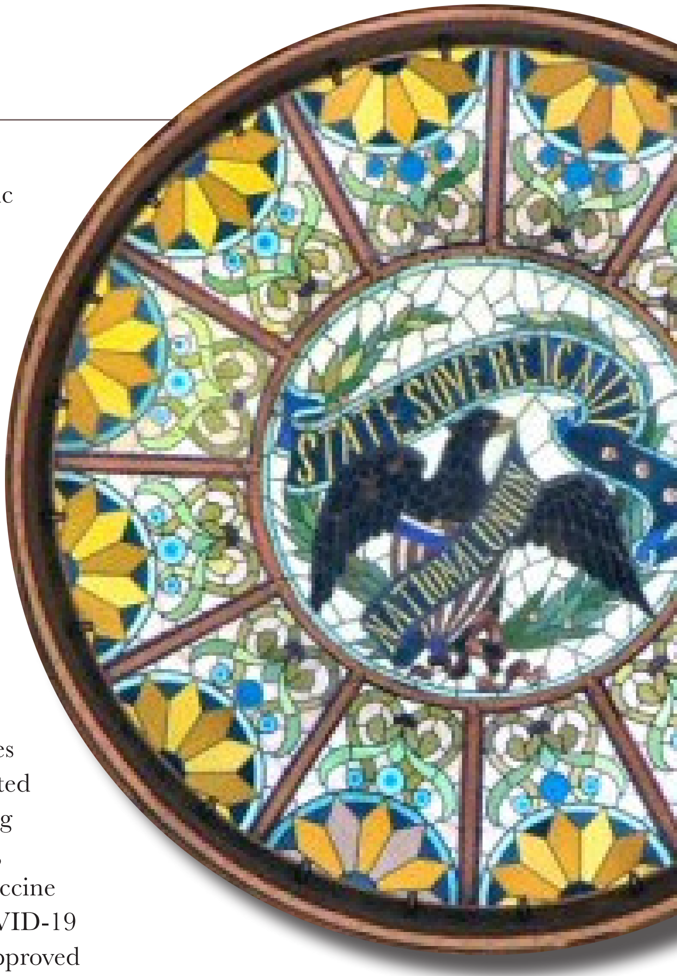

industry in Illinois. **HB 1769 (Sen. Stadelman/Rep. Vella)**, also known as the **Reimagining Electric Vehicles in Illinois (REV) Act** provides tax credits for large business development and allows businesses to claim some income tax withholdings attributed to new employees. In addition, the legislation provides for construction job credits for building facilities, creates a streamlined permitting process and establishes a state government procurement price preference for electric vehicles built in Illinois. HB 1769 was approved in both chambers with overwhelming bi-partisan support and was signed into law on November 16, 2021.

**HB 594 (Senate Majority Leader Lightford/House Assistant Majority Leader Hoffman)** also received approval during veto session. This legislation contains a series of sunset extensions, including the renewal of the Capital Development Board's statutory authority to use the single prime delivery method through 2024. As a reminder, the current statute states "the CDB shall not use the single prime delivery method for more than 50% of the total number of projects under $5 million bid for each fiscal year". HB 594 was signed into law on November 30, 2021.

Lawmakers spent many hours during veto session debating the proposed congressional maps drawn by the Democratic majority. Internal disagreements and opposition to the new maps within the House Democratic caucus nearly sidelined the approval of the maps – and many insiders believed approval of the maps would be pushed back until January. The maps were revised several times, and the fourth version of the plan, **HB 1291 (Senate President Harmon/Assistant Majority Leader Hernandez)**, was approved and signed into law on November 23, 2021.

In response to the continued debate and struggles over COVID-19 vaccine mandates, the Democratic majority also approved **SB 1169 (Senate President Harmon/ Assistant Majority Leader Gabel)**; which proponents argue clarifies the intent of the Health Care Right of Conscience Act (HCRCA). Proponents of the clarification argue the HCRCA was originally intended to protect healthcare providers from any consequences for refusing to perform services they objected to providing, such as abortions and contraception. However, the law is being used by employees who work in settings with mandated COVID-19 vaccinations including schools, hospitals, nursing homes, police and firefighters to avoid vaccine mandates and evade regular COVID-19 testing. The language recently approved provides that it is not a violation of the HCRCA for any person or public official, or for any public or private association, agency, corporation, entity, institution or employer to take measures or impose requirements intended to prevent the transmission of the COVID-19 virus. SB 1169 was signed into law on November 8, 2021.

IMSCA's top legislative priority in 2022 will be a continuation of our previous work on retainage reform. As IMSCA members are aware, IMSCA worked hard for many years seeking a reduction in retainage on private, commercial construction projects, which became law in 2019. Some local governments, such as the City of Chicago and Cook County, have voluntarily reduced or eliminated the withholding of retainage on their projects. Other state agencies, like the Illinois Capital Development Board have voluntarily reduced retainage to five percent for the second half of their projects. Most other states restrict the amount of retainage that may be withheld on public projects, but Illinois is not one of them.

Retainage is still withheld at an unreasonably high rate of 10% for most local government construction projects, even though a payment and performance bond is also required to protect local governments from defects and delinquencies. The combination of the two is excessive and creates unnecessary cash flow burdens. To ease this financial burden, IMSCA will seek an amendment to the Public Construction Bond Act to provide that a local government entity may not require retainage when a contractor has furnished a surety bond or its equivalent. Our proposed legislation will be sponsored by Assistant Senate Majority Leader Linda Holmes.

Legislators are scheduled to return to Springfield on January 4th to start the spring 2022 legislative session. ■

*If you have any questions regarding this information, please do not hesitate to contact Jessica Newbold Hoselton by calling 217.523.4361 or by email at jnewbold@boldnewstrat.com.*