SUMMER 2022

Substance

Illinois Mechanical & Specialty Contractors Association

SUMMER

IMSCA President

Chad Fricke,
IMSCA President

We Are All in This Together

Warm weather is finally in the air after a long cold season. Consistent warm weather also triggers the start of the busy season for the construction and service industry. The economy is in full swing and there are a lot of projects underway throughout most regions in our state. Both the private and public construction industry has project needs. Despite continued high demand for our a labor industry, contractors are still facing many of the same challenges that have been rampant for the past year.

These ongoing challenges include a shortage of skilled labor, material and supply chain disruption and unprecedented inflation. Personally, I find a little bit of peace knowing that my company isn't facing these challenges alone – we are all in this together. IMSCA provides athe opportunity for us to discuss these challenges and learn creative ways to address them with our colleagues throughout the state.

Individually, we must do what we can to overcome our own individual challenges. Collectively, we should also be working together to overcome and address our ongoing industry challenges. I encourage you to take an active role in our industry by actively participating in your local association and talking directly to your state legislators. We should take advantage of the opportunity IMSCA provides us to discuss our industry needs with elected officials.

This spring, after a two-year hiatus, IMSCA hosted a successful "Construction Industry Legislative Reception" in Springfield. This event provided all of us with a unique opportunity to learn more about legislation currently being debated in Springfield that has an impact on the Illinois construction industry. In addition, IMSCA members were able to discuss important issues with our elected officials at this very important event. As IMSCA's President, I would like to thank everyone who attended the spring 2022 legislative reception in Springfield. It was great to see my colleagues and fellow contractors taking the opportunity to work together for the betterment of our industry. ■

contents

Legislative Representation for over 2,000 Construction Employers

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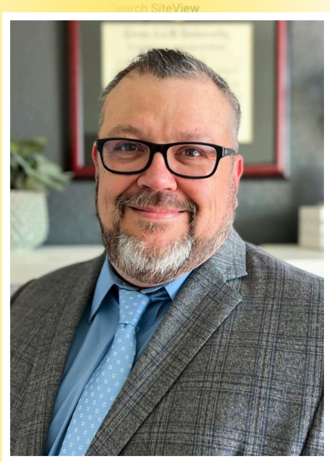

Emerging Technologies

Jared Christman joined ELECTRI international as the Director of Construction Technology in 2022 where he is responsible for researching, identifying, and communicating best practices, technological advancements and educational opportunities for contractors looking to advance their technical capabilities. He will also be evaluating technology, and how it can improve the workflow of electrical contractors, then training on the usage of that technology. Jared is passionate about teaching BIM, 3D modeling and technology workflows to just about anyone who will listen. When not at work, he loves being on his boat fishing or at the beach with his high school sweetheart of 29 years and his grandchildren.

We are surrounded by new technology every day in so many things we do. This ranges from the advanced – robots and artificial intelligence to the common -- cell phones and bluetooth devices.

Historically, the construction industry has lagged behind when it comes to technology. That is no longer the case. Like many other industries, construction is now embracing new technology and innovating ways to incorporate it into their daily workflow. We see new software coming into play on the design side as well as being implemented in the field and construction side. We also have new hardware, from augmented reality and virtual reality to hand-held devices to use in the field to see the 3D construction model. We even see robotics being implemented in certain aspects of construction.

So, let's dive in to explore some examples of technology, how it's implemented, and how it's changing the construction industry.

We can confirm that the software, design firms and contractor office personnel all have pretty much standardized around is Autodesk. When it comes to 3D modeling, Autodesk's Revit is the main stream software used to populate the 3D models. From Revit, the 3D model is then exported to Autodesk's Navisworks where coordination among the trades takes place. This activity includes general contractors, the electrical contractor, and mechanical, plumbing, and fire protection contractors as well.

The main purpose of this coordination is to determine any design issues before the construction process begins. Coordination can last from a matter of weeks to months and will typically continue until all parties can account for design issues and all trades have viable routing. Once coordination tasks are completed, coordinators from each trade will produce shop drawings that their field personnel will use to install their specific component of the project.

These shop drawings can also be used to implement off-site construction or prefabrication. Prefabrication means building specific items in the contractor's shop, then transporting the completed work to the job site for installation as one unit. This technology and workflow have not only compressed project scheduling but also decreased labor hours. When implemented properly, pre-fab can serve as the backbone for additional technology

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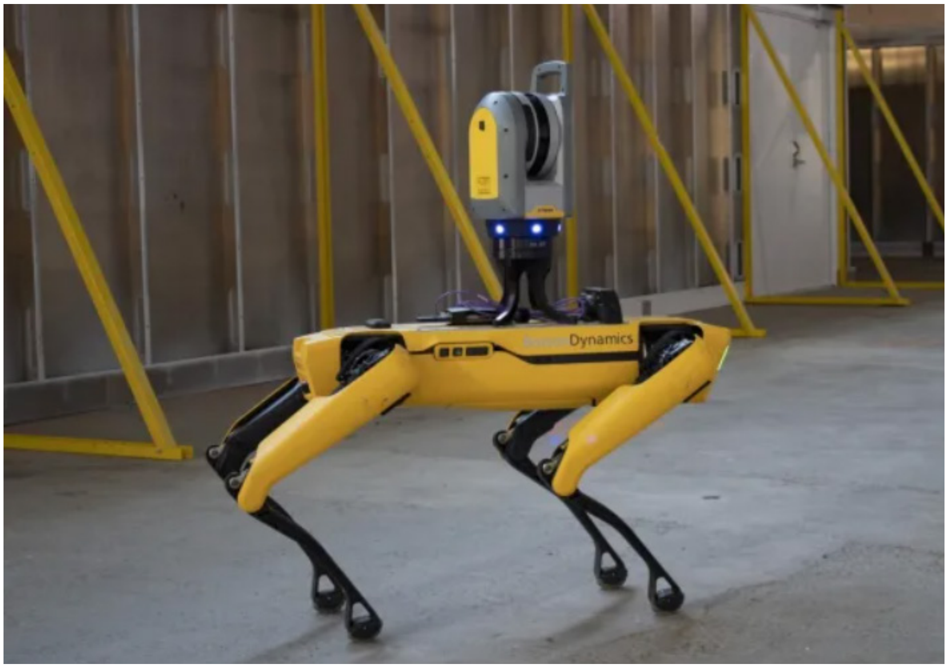


to be used on the job site, including those discussed in this article.

Our first example of hardware technology is augmented reality, specifically the Trimble XR10. When implementing the 3D model or BIM model as mentioned above, you can then load your 3D graphics into the XR10. With your BIM model self-contained in the XR10, you can walk the job site and view the 3D model in the current state of the construction project. Having the ability to overlay the model into existing field conditions is key for establishing the viability of your coordinated model. Another XR10 workflow example would be to load a portion of the building into the XR10 and have it display off-site, perhaps at your office. The benefits of this workflow technology include being able to view the project area and determine construction issues without having to make a trip to the job site.

Another robotic scanning solution offered by Trimble is named Spot. Spot resembles a robotic dog with articulating legs and it can autonomously move around the jobsite. Partnered with the spot-enhanced autonomy payload, Spot uses lidar to increase its depth perception to approximately 120 meters. Spot has an attached, back-mounted bracket that can accommodate adding multiple appendages. The attachment we will discuss is Trimble's point cloud scanner -- the X7, it can provide geo-spatial information that will, in turn, create an accurate depiction of what is in the field.

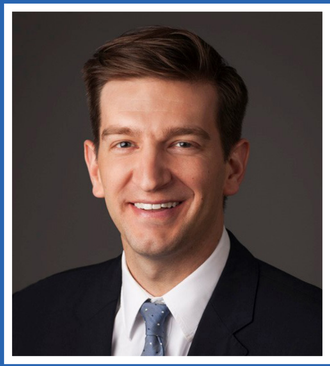
Good examples of using Spot for construction workflow would be for Spot to walk around a portion of the job site using lidar as well as using its artificial intelligence to determine a safe path and its scanner to capture the items installed that day. Spot then uploads the point cloud data to Trimble's Connect, a cloud storage. Office users could then log in, download the point cloud data to their local computer and compare their model to what was installed versus what was coordinated. The significant advantages to this workflow would be that you could determine any coordination issues before material is on site and before trade contractors are ready to install.

One more advance being incorporated into construction industry technology is reality capture. Our example is a 360-degree camera (such as Cupix, OpenSpace, or StructionSite). The benefit of using reality capture for your construction workflow is that, at any point throughout the project, you can walk the job site and document the status of the installed trades. This documentation plays a key role by showing the owner the location of the installed items and confirming that the trades were installed properly. Some reality capture options offer the ability to compare, side-by-side, what was installed in the field vs. what was coordinated in the office, plus providing a certain level of material tracking.

Every year, the construction industry gets access to technological advances in hardware, software and artificial intelligence applications. More importantly, construction companies are now embracing this technology. Companies are creating positions specific to the technology and its innovation aspect, such as the Construction Technologist. This gives contractors the ability to change and adapt as fast as the technology.

This is an exciting time for the construction industry. It is rapidly gaining ground on other industries by implementing this new technology and opening doors for the younger and more technical generation. With this new influx of a technology-savvy workforce, it will be interesting to see where and how technology and construction continue to merge in the future.

Neil Flynn was admitted to practice law in Illinois in 1980 and served in a variety of staff positions with the Illinois House of Representatives, including Counsel to the Illinois House Speaker. Neil's areas of concentration include lobbying before the Illinois General Assembly; State government relations; regulatory advocacy before State agencies, departments, boards and commissions; and administrative rule making.



Daniel Flynn has worked abroad at various FIFA (the governing body of international soccer) events and the Illinois House Democratic Staff. Daniel graduated from Saint Louis University School of Law in May 2010 and was officially sworn in as a member of the Illinois Bar later that year. Daniel's area of expertise is providing lobbying services and advocacy strategies on behalf of the clients of Neil F. Flynn & Associates to the Illinois General Assembly

Workers' Rights Amendment on the Ballot in November 2022:

How did it get on the ballot; Will it stay on the ballot; And if so, how does it get ratified by the voters?

A proposed Amendment to the Illinois Constitution will appear on the ballot and be voted upon by Illinois voters throughout the State at the November 8, 2022 elections. The proposed Amendment, if ratified by the voters, will add a new Section 25, entitled "Workers' Rights", to Article I of the Illinois Constitution—Illinois' Bill of Rights.

Process for Amending the Illinois Constitution

By way of quick background, the current Illinois Constitution was adopted at a Constitutional Convention in Springfield on September 3, 1970; was ratified by Illinois voters on December 15, 1970, and became effective July 1,1971. The processes for revising the Illinois Constitution are set forth in Article XIV. The proposed Workers' Rights Amendment was proposed by the Illinois General Assembly pursuant to Section 2 of that Article XIV.

Section 2(a) provides that amendments to the Illinois Constitution may be initiated in either house of the General Assembly; and shall be read in full on three different days in each house before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house "shall be submitted to the electors at the general election next occurring at least six months after such legislative approval …"

Further, Section 2(b) requires that amendments proposed by the General Assembly shall be published with explanations, **as provided by law**, at least one month preceding the vote thereon by the electors…" (emphasis added)

Amending the Illinois Constitution does not require the passage of legislation. Rather, it only requires the adoption of a resolution by a three-fifths majority vote of both the Illinois Senate and House, and ratification by the Illinois voters. Further, and unlike the process for the passage of legislation, no gubernatorial action is required.

In short, the Workers' Rights Amendment, the explanation, and the arguments in favor and against this proposed constitutional amendment will be placed before the Illinois voters at the 2022 elections as a result of two separate resolutions, both of which were previously adopted by both houses of the 102nd Illinois General Assembly. (See Senate Joint Resolution Constitutional Amendment 11; and Senate Joint Resolution 55)

Senate Joint Resolution Constitutional Amendment 11 – *Proposal to Amend the Illinois Constitution*

Senate Joint Resolution Constitutional Amendment 11 of the

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102nd General Assembly (hereinafter "SJRCA 11") was adopted by the Senate on May 21, 2021, by a vote of 49-7, and was adopted by the House of Representatives on May 26, 2021 by a vote of 80-30.

SJRCA 11 proposes to add a new constitutionally protected right to the Bill of Rights Article of the Illinois Constitution. SJRCA 11 provides that employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. It provides that no law shall be passed 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, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment. SJRCA 11 further provides that these provisions are controlling over the home rule powers of any local government.

Senate Joint Resolution 55 – *Explanation of Proposed Constitutional Amendment*

During the General Assembly's 2022 Spring Session, Senate Joint Resolution 55 (hereinafter "SJR 55") was adopted by the Senate on April 8, 2022 by a vote of 53-0, and was adopted by the House of Representatives on April 9, 2022 by a vote of 86-24-4.

As previously noted, Section 2 of Article XIV of the Illinois Constitution requires that "amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors".

SJR 55 provides that explanation of the proposed Workers' Rights Amendment that is proposed by SJRCA 11. However, SJR 55 also provides brief arguments in favor of and against the proposed amendment that will be set forth in a pamphlet to be published by the Illinois Secretary of State, and it further describes the form in which the amendment will appear on the ballot at the general election on November 8, 2022.

While a comprehensive discussion regarding the merits of the Workers' Rights Amendment is beyond the scope of this article, the General Assembly's explanation of; arguments in favor of; and arguments against the proposed amendment (all of which are set forth in SJR 55) are set forth below.

EXPLANATION

The proposed amendment, which takes effect upon approval by the voters, adds Section 25 to the Bill of Rights Article of the Illinois Constitution. The new section will guarantee workers the fundamental right to organize and to bargain collectively and to negotiate safety conditions, wages, hours, working conditions, and economic welfare. The amendment prohibits the passage of any new law within the State that restricts or prohibits workers from engaging in collective bargaining with their employer over wages, hours, and other terms and conditions of employment, like safety protocols or training.

Arguments In Favor of the Proposed Amendment

This amendment will protect workers' and others' safety. That includes guaranteeing nurses' right to put patient care ahead of profit and making sure construction workers can speak up when there's a safety issue. It will protect workers from being silenced when they call attention to food safety threats, shoddy construction, and other problems that could harm Illinoisans. This amendment protects firefighters and EMTs who put their lives on the line to protect Illinoisans. It means they get the training and safety equipment they need to do their jobs and can speak out when they see a problem without fear of retaliation. This amendment will help our economy by putting more money in workers' pockets who join together and get raises. That will mean more money going into our communities and small businesses as people join the middle class with good-paying jobs.

Arguments Against the Proposed Amendment

A fundamental right provided to all citizens under the First Amendment of

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the United States Constitution is the right to free speech and freedom of association. This amendment prohibits any law or ordinance that allows union workers to choose whether they wish to be a member of the union or not. Under the 2018 United States Supreme Court decision Janus v. Illinois AFSCME, non-union government workers cannot be required to pay union dues as a condition of working in the public sector. Approval of this constitutional amendment will deny that protection to private sector workers. The amendment also states that lawmakers could never "interfere with, negate, or diminish" certain rights. These terms are broad and undefined and leave lawmakers without the ability to clarify through legislation. Our Illinois Constitution provides such protection to public employees. The result of that protection has been to squash efforts by state lawmakers and voters to address Illinois' pension fund deficits.

Legal Challenge

On April 21, 2022, two separate but related lawsuits were filed in the Circuit Court of Sangamon County challenging the proposed Workers' Rights Amendment. The stated intention of the litigation is to prevent the proposed Workers' Rights Amendment from being placed on the ballot and presented to the voters on November 8, 2022. The Complaint, as filed, seeks to prevent the State Board of Elections, Secretary of State and other State agencies from using public funds in connection with placing the Workers' Rights Amendment on the general election ballot because the proposed amendment is preempted by the National Labor Relations Act and therefore, violates the Supremacy Clause of the U. S. Constitution.

Attorneys from the Liberty Justice Center and Illinois Policy Institute filed the lawsuits in Sangamon County Court on behalf of several Chicago Public Schools parents and members. By way of background, these Chicago-based nonprofit entities were also heavily involved in the legal battle and eventual 2018 U.S. Supreme Court decision in Janus v. AFSCME, a decision which struck down so-called "fair share fees" for public sector workers who do not want to join the unions that represent their colleagues.

On June 2, 2022, the Circuit Court of Sangamon County ruled that the Plaintiffs were not entitled to an order prohibiting the placement of the Workers' Rights Amendment on the November ballot and entered an order dismissing Plaintiffs' suits. Plaintiffs, however, have publicly stated that an appeal is likely.

Ratification of the Proposed Amendment

The Workers' Rights Amendment, like any other proposed Illinois constitutional amendment, can be ratified one of two ways. A constitutional amendment is considered ratified by the voters with the affirmative vote of either: (i) a three-fifths (3/5) majority of those voting on the question (i.e., the proposed Workers' Rights Amendment), or (ii) a simple majority of those voting in the election. [See Illinois Constitution, Article XIV, Section 2(b)]

If ratified by the voters on November 8th, the Workers' Rights Amendment would constitute the fifteenth (15th) Amendment to the Illinois Constitution since it became effective in July of 1971.

Effective Date of the Proposed Amendment

A Constitutional Amendment that is approved by the voters shall be certified and declared adopted by the State Board of Elections within 20 days after the election. (See 5 ILCS 20/3). Because the Workers' Rights Amendment does not contain an effective date, the Amendment, if approved, goes into effect immediately upon the State Board's certification. With respect to this proposed amendment, that would be no later than November 28, 2022.

CONCLUSION

Assuming that the proposed Workers' Rights Amendment is not prevented from being placed on the November 8, 2022 ballot (See pending litigation discussion above), it is clear that campaigning by both the proponents and opponents of the Workers' Rights Amendment in the months ahead will be intense. Assuming that the Workers' Rights Amendment is ratified by Illinois voters in November, further litigation challenging its legality is certain. Accordingly, it may well be some time before Illinois citizens will know whether the current Illinois Constitution has been amended for the fifteenth time.

Illinois Joins Trend Making General Contractors Liable For Paying Subcontrators' Workers

James T. Rohlfing is a partner in the national law firm of Saul Ewing Arnstein & Lehr, and a member of the firm's Construction Practice Group and Litigation Practice Group. Mr. Rohlfing represents subcontractors and other participants in the construction industry. He is editor of Illinois Construction Law Manual, a treatise published by Thomson Reuters. Mr. Rohlfing is the current general counsel as well as the past president of the Illinois Mechanical & Specialty Contractor's Association (IMSCA), the largest organization for subcontractors in Illinois. He is an active member of the ABA Construction Forum, the Society of Illinois Construction Attorneys (SOICA), the Chicago Bar Association's Construction Law committee, and the Association of Subcontractors and Affiliates in Chicago. He has drafted and assisted in passing Illinois legislation critical to the construction industry and he has testified on numerous occasions on construction law issues before committees of the Illinois Legislature.

On June 10, 2022, Governor J.B. Pritzker signed into law two related bills, HB 5412 and HB 4600, sent to him the previous month by the Illinois legislature that will hold a primary contractor (one who has a contract with an owner) liable for the unpaid wages and other amounts owed to employees of subcontractors, of any tier, on Illinois private construction projects. The bills, enacted as, Public Acts 102-1076, and 102-1065 (the "Acts"), will supplement the existing remedies in the Illinois Wage Payment and Collection Act ("WPCA") for contracts made on or after July 1, 2022. Primary contractors already have liability for employee wages owed by their subcontractors on public projects covered by the Federal Davis Bacon Act, and the same responsibility is owed under the prevailing wage acts of many states, including Illinois. Primary contractors may also have liability for subcontractors' wages on private projects pursuant to some states' mechanics lien acts (including Illinois), as well as obligations contained in union collective bargaining agreements to which a primary contractor may be signatory. However, these amendments to the WPCA represent a significant departure from the well-established legal concept known as privity of contract, which provides that a contractor, with few noted exceptions, is not liable for obligations (including debts to workers) of its independent contractors, such as subcontractors on construction projects. This law will impose far-reaching and unpredictable liability for primary contractors in Illinois and, as a result, some construction industry experts foresee fundamental changes in the role of subcontractors on Illinois private construction projects. This article will discuss the new law as well as important exceptions within it.

> *"This article will discuss the new law as well as important exceptions within it."*

Similar bills were pending in the Illinois legislature and hotly debated for the last few years, so observers of the legislative process were unsurprised by the measures' enactment this year. The effort to expand the obligation of primary contractors to guarantee payment of subcontractors' employees on private projects has recently received strong support in several states around the country from the United Brotherhood of Carpenters and Joiners of America as well as its local chapters. California, Maryland, Oregon, Virginia, Washington D.C., and New York have all enacted similar laws in the last several years, and other states are currently considering similar measures. Illinois' enactment of what its proponents call a "wage theft bill" is neither the most

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nor least expansive of the recent spate of laws making primary contractors liable for subcontractors' employee compensation. Unfortunately, the new law's ultimate impact is uncertain, in part due to ambiguities in its language.

Both bills were sent to and signed by the Governor at the same time, though HB 4600 is a trailer bill to HB 5412, intended to clarify and make concessions to opponents of HB 5412. The amendments describe a primary contractor as someone who has a contract directly with a property owner. Likely this includes a tenant of real property, but that is uncertain from the language of the Bills. A primary contractor's liability for wage-earner debts reaches to any tier subcontractor, but does not include subcontractors " … who solely provide goods and transport of such goods related to the contract." The term "Goods" might be intended to include materials, tools, and equipment consumed in the project but because "goods" is not defined in the new law, that is uncertain.

The enactments would expand a primary contractor's liability to include debts due a subcontractor's employee for "unpaid wages or fringe or other benefit payments or contributions, including interest owed, penalties assessed by the Department, and reasonable attorneys' fees, but shall not extend to liquidated damages." HB 5412, § 13.5 (c). Actions against a primary contractor may be brought by the unpaid wage earner or others on behalf of the wage earner, including the Illinois Department of Labor, which has the authority to impose civil penalties and seek criminal sanctions against liable parties for failure to pay compensation to employees. Under the WPCA, a liable party must pay, in addition to other amounts, attorneys' fees incurred by the employee, interest, and an additional sixty percent (60%) per year for as long as the debt is unpaid. If a court interprets the 60% per year imposed by Section 14 of the WPCA to be liquidated damages, then a primary contractor would not be liable for that amount because liquidated damages are exempted. Further, though the liability imposed on a primary contractor under the new law includes "penalties assessed by the Department" of Labor, it does not expressly authorize criminal sanctions, which may be imposed under the WPCA against recalcitrant direct employers found guilty of not paying a wage earner.

The intent of some other provisions likewise is uncertain. For example, Section 13.5 (b) of HB 5412 includes this language: "A property owner who acts as a primary contractor related to the erection, construction, alteration, or repair of his or her primary residence shall be exempt from liability under this Section." Since a primary contractor is defined as a party who has a contract with a property owner, it is difficult to imagine what was intended by the foregoing exemption, especially because the amendments impose no liability on owners. Also, it is unclear whether the following is intended to impose liability on the first-tier subcontractor, or on the subcontractor who fails to pay its employee, which could be a lower-tier subcontractor. Section 13.5 (d) of HB 5412 provides, in part:

> Except as otherwise provided in a contract between the primary contractor and the subcontractor, the subcontractor shall indemnify the primary contractor for any wages, fringe or other benefit payments or contributions, damages, interest, penalties, or attorney's fees owed as a result of the subcontractor's failure to pay wages or fringe or other benefit payments or contributions as provided in this Section, unless the subcontractor's failure to pay was due to the primary contractor's failure to pay moneys due to the subcontractor in accordance with the terms of their contractual relationship.

Though the likely intention of the foregoing is to make the subcontractor who fails to pay its employee responsible to reimburse the primary contractor for any damages caused by non-payment, it does not clearly read that way. Instead, it refers to "a contract between the primary contractor and the subcontractor," a contract which only a first tier subcontractor has, suggesting it is that first tier subcontractor who must indemnify the primary contractor. Moreover, the exemption of a subcontractor from liability when the primary contractor fails to pay "in accordance with the terms of their contractual relationship," similarly assumes the subcontractor providing indemnification has a contract with the primary contractor. Perhaps a court will decide that the purpose of the legislation would be best served if the "guilty party" – the employer who failed to pay its employee, even if not a first-tier subcontractor – ought to reimburse the primary contractor who is liable for the debt under the new law.

HB 4600 (P.A. 102-1065), which was intended to clarify and supplement the provisions of HB 5412 (P.A. 102-1076), makes three notable changes to the impact of the Acts. First, it reduces the statute of limitations for bringing actions from ten to three years. Second, it exempts projects priced at less than $20,000. Finally, it excludes projects for the "alteration or repair of an existing single-family dwelling or to a single residential unit in an existing multi-unit structure." HB 4600 also creates a study group to review the Illinois Construction Bond Act, but those provisions are unrelated to the WPCA.

An important exemption for union contractors is found in Section 13.5 (g) of HB 5412, which provides: "Primary contractors who are parties to a collective bargaining agreement on the project where the work is being performed shall be exempt from this Section." As was made clear by the sponsor, Representative Marcus Evans, when the bill was debated on the House floor on March 3, 2022, the intent of this section is to exempt union contractors. Representative Evans

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Illinois State Capitol Report

JESSICA NEWBOLD HOSELTON
IMSCA
Executive Director

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****.*

During this spring's abbreviated legislative session, the Illinois General Assembly approved 410 bills that have been sent to Governor Pritzker for his consideration. As of this writing, no vetoes have been issued. The Governor has approved nearly 200 bills, with just over 200 remaining to be reviewed. Although lawmakers adjourned over a month earlier than usual, they tackled many important issues including approval of the FY 23 budget plan, crime and tax relief for working families.

The $46.5 billion FY 23 budget plan (effective July 1) includes $1.8 billion in temporary tax relief, a $1 billion deposit into the state's "rainy day" fund, $1.2 billion toward outstanding debt and $200 million toward public safety measures. As expected, lead budget negotiators for the Democrats describe the FY 23 spending plan as a fiscally responsible plan that utilizes extra revenue to support working families, addresses pension shortfalls and sets the state on a responsible path for the future. Republicans criticized the plan for not providing permanent property tax relief and other structural changes supported by the minority party. Despite objections from their Republican colleagues, the super-majority Democrats approved HB 900 (FY 23 budget); which was approved by Governor Pritzker on April 19th.

While many issues important to the Illinois construction industry were debated this spring, IMSCA's attention was largely focused on HB 5412 (Leader Marcus Evans, Jr./Sen. Cristina Castro). This bill amends the Wage Payment & Collection Act and holds general contractors and subcontractors liable for wage claims at any tier on a private construction project. This legislation is an initiative of the Mid-American Carpenters Regional Council. IMSCA strongly opposed HB 5412 and maintained the position that there is no data to support that these wage claims stem in any significant way from union contractors. IMSCA argued that labor and management have long-standing remedies and processes in place to address non-payment of wages by union contractors. IMSCA engaged in hours of negotiations with the proponents of HB 5412 seeking an exemption for signatories of collective bargaining agreements.

Our hard work finally paid off and we were able to remove our opposition with the adoption of Amendment #3 which includes an exemption for signatories of collective bargaining agreements. The exemption that was included in HB 5412 will benefit union contractors by adding a layer of protection from increased and unknown liability, that will undoubtedly be created by HB 5412.

Although IMSCA and others removed our opposition to HB 5412, a long list of opponents remained. Negotiations with the remaining opponents continued, which led a

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trailer bill, HB 4600, that was approved in conjunction with HB 5412. An important provision included in HB 4600 is the creation of the Bond Reform in the Construction Industry Task Force. The task force shall study innovative ways to reduce the cost of insurance in the private and public construction industry while protecting owners from risk of nonperformance. The task force shall report its recommendations to the General Assembly no later than March 1, 2023.

Additional legislation approved this spring that is of particular interest to IMSCA members includes:

HB 2770 Senate Amendments #2 and #3 (Sen. Tony Munoz/Rep. Katie Stuart) makes the following changes to the Illinois Procurement Code:

- Requires the Capital Development Board (CDB) and the Illinois Department of Transportation (IDOT) to prepare quarterly reports on the status of change order requests that have not been acted upon within 45 days. The reports must be published on the CDB and IDOT websites. The first report is scheduled to be published on or before January 15, 2023.
- Requires construction agencies procuring construction and construction-related professional services to make reasonable efforts to contract with Illinois businesses. Projects with a total construction cost of more than $100,000 will be provided a bid preference to a responsible bidder that is an Illinois business.
- Provides that it is the public policy of the State of Illinois for each purchasing agency to maximize the use of goods, products and materials that are produced in the United States. In the event there is a tie between two bidders who have certified that they will provide products manufactured in the United States, the bidder or offeror that certifies it will provide products manufactured in Illinois shall be given bid preference.
- Creates the State Procurement Task Force. The task force shall survey State procurement processes and make recommendations to (i) ensure that the process is equitable and efficient; (ii) provide departments with the flexibility needed to be successful; (iii) change the current structure of the procurement process; (iv) update the process to reflect modern procurement methods; (v) increase women-owned and minority-owned business participation; (vi) increase participation by State vendors; and (vii) reduce costs and increase efficiency of State procurements.
- Amends the Business Enterprise for

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IMSCA & ICIC Executive Director Jessica Newbold Hoselton welcomed House Republican Leader Jim Durkin (R; 82nd District) to the jointly hosted legislative reception.

Minorities, Women, and Persons with Disabilities Act. Provides that the Business Enterprise Council shall have the authority and responsibility to adopt a procedure to grant automatic certification to businesses holding a certification from specified entities and to develop and maintain a repository for specified non-certified vendors.

HB 5035 (Rep. Will Davis/Sen. Ram Villivalam) amends the Public Construction Bond Act to provide that the Department of Transportation may implement a 5-year pilot program to allow a contractor to provide a non-diminishing irrevocable bank letter of credit in lieu of specified bond requirements on contracts under $500,000. The projects selected by the Department of Transportation for this pilot program must be classified by the Department as low-risk scope of work contracts.

HB 4772 as amended (Rep. McLaughlin/Senate Republican Leader Dan McConchie) creates the county Design-Build Authorization Division in the Counties Code, thereby allowing county governments to utilize the design-build delivery method. HB 4772 includes scope and performance criteria for design build contracts, a two-phase procedure for selection of contracts, requirements for submission of proposals, procedures for awarding contracts, requirements of reports and evaluation of contracts and provides that nothing shall prevent a county from using a qualification-based selection process for design professionals or construction managers for design-build projects.

SB 3625 (Sen. Melinda Bush/Rep. Joyce Mason) extends the sunset for the Capital Development Board's statutory authority to use the design-build delivery method through 2027.

SB 2981 (Sen. Ram Villivalam/House Asst. Majority Leader Marcus Evans, Jr.) allows the Illinois Department of Transportation (IDOT) and the Tollway to utilize "Progressive Design Build" (PDB). Proponents of SB 2981 report that PDB facilitates involvement of the design-build team during the earliest stages of the owner's project development, and PDB is becoming the preferred model for many states. This legislation is drafted similarly to existing design build statutes.

An important issue that wasn't resolved this spring is the Unemployment Trust Fund (UI Trust Fund deficit. The UI Trust Fund deficit ballooned to nearly $4.5 billion and remains a hot button issue. Earlier this spring, SB 2803 (Asst. Majority Leader Holmes/Majority Leader Harris) was approved by the General Assembly and appropriated $2.7 billion of the state's remaining American Rescue Plan funds to shore up a portion of the deficit. However, those involved in the negotiations failed to agree on a plan to address the remaining deficit and prevent the situation from repeating itself in the future. Upon the announcement that a deal couldn't be reached, SB 157 (Sen. Michael Hastings/Rep. Michael Zalewski) was approved by lawmakers and delays triggers in state law that will increase employer taxes and decrease worker benefits. This action is delayed until January 1, 2023.

Now that the Illinois General Assembly has adjourned for the summer, the political focus has turned to the upcoming Primary (June 28) and General (November 8). On June 28, voters will have the opportunity to select their party nominees for every constitutional officer. Ballots can also be cast for one U.S. Senate seat, two seats on the Illinois Supreme Court, all 17 of Illinois Congress members, every member of the Illinois General Assembly, and numerous county and judicial offices. IMSCA members are encouraged to participate in the upcoming elections. It is important to make your voice heard and take part in the election of those who will make decisions that will have an impact on our industry. ■

IL Joins Trend... (Continued from page 8.)

explained that employees subject to a collective bargaining agreement already have protection from their unions in the form of wage bonds and advocacy for individuals in enforcing their legal rights and, therefore, union contractors should not be required to take on the additional liability imposed by the new law. Therefore, based both on the wording of the Acts and the legislative history, the apparent intent is that on any project, for which the primary contractor employs any union laborers, the primary contractor will not have any additional liability under the new law for unpaid debts due to subcontractors' employees on that project.

One unfortunate but likely consequence of the Acts is to incentivize primary contractors to shy away from hiring smaller and less well-financed subcontractors, and to self-perform more of the work, so as to minimize the risk of having to pay twice for their subcontractors' workers. Meanwhile, the risks to contractors and subcontractors from unexpected claims by subcontractors' workers will be substantial and difficult to quantify, so prudent primary contractors and higher tier subcontractors may want to obtain proof, before making final payment, that all of their subcontractors' employees are fully paid. The Illinois Department of Labor, which is authorized to interpret the WPCA, may weigh in on the meaning and intent of the Acts by propounding clarifying regulations. Ultimately, the courts will determine what the Legislature intended when enacting the new amendments to the WPCA. ■