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*Illinois Mechanical & Specialty Contractors Association
Representing over 2000 Specialty Contractors in Illinois*



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PAMCANI

**PLUMBING AND MECHANICAL CONTRACTORS
AUTHORITY OF NORTHERN ILLINOIS**

PAMCANI is proud of our participation and support of IMSCA, and we rely on the expertise, input and advice from Louie Giordano and his fine staff. Working together, all who are involved in IMSCA are dedicated to strengthening and guarding the quality, skill and productivity of the construction industry's finest and most dedicated contractors and their associations. Keep up the great work, IMSCA – we're all in this together!

PAMCANI's constituency of all union plumbing and mechanical (HVAC) contractors stands together for GOOD WORK. We perform it, provide it, and earn it precisely because our customers value, deserve and expect nothing less.

We provide good work.

The skill and experience of our workforce means that our customers receive the quality results they expect and deserve.

We earn good work.

Value is our foremost goal. Our reputation for doing jobs right the first time allows us to continually acquire steady work from the clients we serve in our varied marketplace.

We supply good work.

The union jobs our contractors offer provide a secure, stable and satisfying livelihood that helps to raise strong families and create dependable futures.

We inspire good work.

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Illinois Mechanical & Specialty Contractors Association

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Dear IMSCA Members:

It is no surprise to any IMSCA member that disarray over the past few years at the federal, state and local levels resulted in a multitude of negative consequences for our industry. Be it uneven regulatory enforcement of safety regulations or immigration reform, iceberg-slow payment by state and local building agencies, or failure of the legislative bodies to produce meaningful positive accomplishments.

We have an opportunity today to help elect a new slate of candidates who will seek to put order to the chaos and re-establish effective governance. In Congress, we will have a contested race between two strong candidates for one of our two U.S. Senate seats, while all 19 Illinois congressmen are up for election. In Springfield, all of the constitutional offices are up for election, including Governor, as are one-third of the Illinois Senate seats and every member of the Illinois House. Many local governments are also holding elections next fall.

These elections provide IMSCA and its members with a golden opportunity to become involved in the process and



Steve Lamb
IMSCA President

choose responsible public officials who will not only properly govern, but also carry into office a deep understanding of the critical role subcontractors play in our economy.

IMSCA will do its part to assist in this process by supporting worthy candidates through our PAC, educating you on candidates you should support, and hosting a gubernatorial candidate's forum in the spring. It is up to you; however, to go meet the candidates for office in your area. Get to know them. Ask them about the issues most important to us. And then go tell your friends, families and colleagues. And of course, get out and vote. Opportunities like this are infrequent . . . ***it is time to seize the day!***

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Association Calendar of Events

ILLINOIS MECHANICAL & SPECIALTY CONTRACTORS ASSOCIATION (IMSCA)

DEC 10	IMSCA LEGISLATIVE COMMITTEE DINNER MEETING, TBD
DEC 11	IMSCA ANNUAL BOARD MEETING, 9:00 A.M., MCA OF CHICAGO OFFICE IN BURR RIDGE

ASSOCIATION OF SUBCONTRACTORS & AFFILIATES

SEPT 24	ASA CHICAGO MEMBERS & GC COUNCIL MEMEBERS, DOWNTOWN AT D4 IRISH PUB, 4-7:00 P.M.
OCT 6	ASA CHICAGO MEMBERS & GC COUNCIL MEMEBERS, VENUTI'S, 4:30-10:00 P.M.
NOV 13	ASA CHICAGO MEMBERS & GC COUNCIL MEMEBERS, EAGLEWOOD RESORT & SPA, 8 A.M. – 5 P.M.

IL ASSOCIATION OF PLUMBING HEATING & COOLING CONTRACTORS

APRIL 28-30 NOV 13	PHCC NATIONAL LEGISLATIVE & LEADERSHIP GREEN PLUMBERS CLASS "WATER EFFICIENT TECHNOLOGY", MARRIOTT BLOOMINGTON/NORMAL 8-5PM
NOV 14	IL PHCC BOARD MEETING, MARRIOTT BLOOMINGTON/NORMAL, 8:30 - NOON

ILLINOIS CHAPTER NECA

SEPT 1	NECA DISTRICT 4 COUNCIL MEETING, JUMER'S HOTEL, ROCK ISLAND IL
SEPT 12-15	NECA NATIONAL CONVENTION, CONVENTION CENTER, SEATTLE WA
OCT 26-30	NECA LABOR RELATIONS CONFERENCE, HILTON HOTEL, SAN ANTONIO TX
NOV 8-11	INTERNATIONAL FOUNDATION, CONVENTION CENTER, ORLANDO FL
DEC 4-5	CHAPTER ANNUAL MEETING, MARRIOTT HOTEL, BLOOMINGTON IL

ILLINOIS EQUIPMENT DISTRIBUTORS

SEPT 16	IED ANNUAL VENDOR NIGHT, WITH AN OLYMPIC UPDATE
OCT 14	ANNUAL MEETING & ELECTION OF OFFICERS, GOING GREEN
DEC 4	INSTALLATION OF OFFICERS AND CHRISTMAS RECEPTION, CARLUCCI'S, DOWNERS GROVE, IL

MECHANICAL CONTRACTORS ASSOCIATION OF CENTRAL ILLINOIS

SEPT 17	ANNUAL SOCIAL, ISLAND BAY YACHT CLUB, SPRINGFIELD IL
SEPT 24-25	MCAA GREAT LAKES PEER GROUP MEETING, CHICAGO IL
OCT 15	REGULAR MEMBERSHIP MEETING, JACKSONVILLE COUNTRY CLUB, JACKSONVILLE IL
DEC 16	REGULAR MEMBERSHIP MEETING, 6:30 PM, ISLAND BAY YACHT CLUB, SPRINGFIELD IL

MECHANICAL CONTRACTORS ASSOCIATION OF CHICAGO

SEPT 8	REGULAR BUSINESS MEETING, CHICAGO MARRIOTT SOUTHWEST, BURR RIDGE
SEPT 22-23	UA TRIPARTITE MEETING, LU 597 TRAINING CENTER, MOKENA (TENT)
OCT 27	REGULAR BUSINESS MEETING, GIBSONS RESTAURANT, ROSEMONT
OCT 28-30	MCAA COLLECTIVE BARGAINING CONFERENCE, INDIANAPOLIS IN
NOV 11-15	BUSINESS CONFERENCE, RITZ-CARLTON, CANCUN, MEXICO
DEC 9	HOLIDAY PARTY

NORTHEASTERN ILLINOIS CHAPTER NECA

SEPT 12-15	NECA 2009 SEATTLE CONVENTION & TRADE SHOW, SEATTLE WA
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NORTHERN ILLINOIS NECA

SEPT 12-15	NECA NATIONAL CONVENTION
SEPT 22	BOARD AND MEMBERSHIP MEETINGS
OCT 27	BOARD AND MEMBERSHIP MEETINGS
NOV 24	BOARD AND MEMBERSHIP MEETINGS
DEC 11	CHRISTMAS PARTY

PAMCANI

SEPT 16	FINANCIAL TRAINING SEMINAR, HOLIDAY INN, WILLOWBROOK IL, 8-4PM
SEPT 17	PAMCANI BOARD MEETING, MAGGIANO'S, NAPERVILLE IL, 9AM
SEPT 17	PAMCANI LUNCH MEETING, MAGGIANO'S, NAPERVILLE IL, NOON
SEPT 26	"KEEPING YOUR HEAD ABOVE WATER" SEMINAR, HOLIDAY INN, ROLLING MEADOWS IL, 8:30-4:30PM
OCT 5	GREEN SEMINAR, "SOLAR HOT WATER WORKSHOP" SESSION I, (4 HOURS C.E.), NOON – 4PM LEED GREEN ASSOCIATE SEMINAR SESSION II, HOLIDAY INN, ITASCA IL, 5-9PM
OCT 6	CONTRACTOR INSPECTOR NIGHT, "IL PLUMBING CODE" (2 HOURS C.E.), LOCAL 93 HALL, VOLO 5:30-7:30PM
OCT 16	"CARBON MONOXIDE TRAINING FOR PLUMBERS" (4 HOURS C.E.), 4:30PM "WATER SYSTEMS – RECLAIMED WATER TRAINING FOR PLUMBERS" 6:30PM ST. PETER'S SCHOOL, ANTIOCH IL
NOV 17	PAMCANI LUNCH MEETING, SHAW'S CRAB HOUSE, SCHAUMBURG IL, NOOON
NOV 19	"CARBON MONOXIDE TRAINING FOR PLUMBERS" (4 HOURS C.E.), 4:30PM "WATER SYSTEMS – RECLAIMED WATER TRAINING FOR PLUMBERS" 6:30PM BEST WESTERN, DEKALB IL

With New Money Comes New Opportunities for Bid Rigging or *Proceed with Caution*

by Deann French

On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA) commonly referred to as the Stimulus Package. With \$131 billion allocated for construction-related spending, the 2009 Stimulus Package could potentially be the most important piece of legislation in the history of the construction.

On August 19, Governor Pat Quinn announced that Illinois ranks among the top in the nation for the implementation of the ARRA. According to Federal Highway Administration data, Illinois ranks first among all states in the total expenditure of ARRA funds. To date, expenditures of ARRA funds in Illinois total \$170,605,614, which is nearly triple the expenditures of the next highest state.

As a result of the federal stimulus package, 239 highway projects have been started and 45 completed, with \$180 million paid out to contractors and consultants. At press time, 268 highway contracts have been awarded totaling approximately \$552 million.

In addition to the influx of Stimulus dollars, Illinois has over \$30 billion in state money for construction projects. This comes as the result of a recently passed capital program, the first of its kind in 10 years. While the additional funding, and increase in projects, will boost the state's economy, there may also be an increase in temptation to manipulate bids in order to spread the money around.

The pressure on public officials to move funds quickly is inevitable, given the immediate need for economic stimulation in the current financial situation. However, taking shortcuts can increase the chances that bid-rigging will go undetected, since identifying such behavior takes both time and resources. Comments by the newly-appointed Antitrust Division Chief of the U.S. Department of Justice, Christine Varney, serve as a reminder to proceed with caution, not speed.

In her first major public speech, Varney highlighted the potential risk of collusion and other fraudulent activities. In a move designed to avoid the misappropriation of

funds, Varney invested significant staff resources to assist those receiving ARRA funds to detect and deter antitrust offences, such as bid-rigging and price fixing. By the end of May, her organization had "provided training to over 8,000 agents, auditors, grant recipients and other procurement officials, with a view to prevent fraud, waste and abuse of public funds."

Since public procurement is one government activity that is highly susceptible to fraud, Varney's actions were met with praise. But her organization is not alone in its quest to eliminate and expose corruption. The Organization for Economic Co-Operation and Development (OECD), which brings together the governments of countries committed to democracy and the market economy from around the world, reported in May that each year, governments around the world spend an estimated \$4 trillion (U.S.) on procurement and lose an estimated \$400 billion (U.S.) to related fraud.

With the type of projects slotted for stimulus spending, coupled with the volume of funds available, it is not difficult to envision opportunities for bid rigging. And, the federal government has already sent strong signals that bid-rigging and price fixing behavior should be dealt with severely.

To assist governments in battling bid rigging, the OECD issued new guidelines in March to detect bid rigging by prime and sub contractors.

According to the OECD, bid rigging occurs when bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Bidders can eliminate competition in public procurement in many simple ways. Some examples include:

- A competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- A competitor agrees not to bid or to withdraw a bid from consideration.

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With New Money Comes New Opportunities for Bid Rigging or Proceed with Caution ...

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- A competitor agrees to submit bids only in certain geographic areas or only to certain public organizations.

There are many different ways bid rigging occurs, from a simple agreement between a few friends not to outbid each other, to the more complex orchestrated by large companies.

Although there are many schemes used to rig bids, they all have one thing in common – the bidders agree to eliminate competition so that prices are higher and the government pays more.

According to the Fair Trading Commission, bid rigging is likely to take on one of the following forms:

Bid Suppression- An agreement to refrain from bidding or to withdraw a bid to ensure a pre-selected suppliers bid is accepted.

Complementary Bidding- Known as cover or courtesy bidding. This occurs when some bidders bid an amount knowing it is too high or purposefully contains conditions that they know to be unacceptable.

Subcontract Bid Rigging- In exchange for either submitting a bid they know they will lose or not bidding at all, suppliers sometimes receive lucrative subcontracts. This allows the subcontractors to essentially share in the benefits of the bid.

Bid Rotation- Suppliers agree to take turns in submitting the lowest bid so they all receive an equivalent share of contract.

Market Division- Suppliers agree not to compete with each other in specific territories or for specific customers and products.

The OECD Guidelines include a Checklist for Detecting Bid Rigging in Public Procurement. Designed to be used by specialists and non-specialists alike, the Checklist highlights seven areas for active vigilance:

1. Look for markets that are more susceptible to bid rigging.

2. Look for opportunities that the bidders have to communicate with each other.
3. Look for indications that the bidders have communicated with each other.
4. Look for any relationships among the bidders after the successful bid is announced.
5. Look for suspicious bidding patterns.
6. Look for unusual behavior.
7. Look for similarities in the documents submitted by different bidders.

Investigations of fraud and bid rigging are increasing. In fact, according to OECD, “Detection, prosecution and deterrence of cartel offenses, including bid rigging, remains the highest priority of the Justice Departments Antitrust Division.”

Bid rigging is punishable by fines of up to \$100 million for corporations and fines of up to \$1 million and prison sentences of up to 10 years for individuals. The Antitrust Division has recovered more than \$44 billion in criminal fines for cartel behavior since 1997. The average prison sentence for persons engaged in such activities is 31 months with 87 percent of defendants have received jail time.

Allegations of bid rigging are costly to any company. Lengthy criminal investigations are often followed by even longer more expensive civil cases. And in the end, as is the case with most anti-competitive offenses, the ultimate cost is to the consumer and the taxpayer. 

Deann French is a freelance writer living in Springfield, Illinois.

IMSCA Summer Legislative Update

by Louis Giordano

After all of the expectations for a successful start to the Quinn administration we once again met with the reality that all is not well in Illinois Government. The House with a near veto proof majority, the Senate with a 3/5's majority and the new Governor, all Democrats were once again unable to reach agreement on a viable budget for the state of Illinois.

There are serious issues to address and yet on the last day of session there was no resolution to the \$9 billion budget deficit, no resolution to the campaign finance reform, no operating budget for state agencies and a capital program that the Governor was holding hostage until he got "a humane" budget. With all of the issues at stake the General Assembly once again went into overtime session. I believe this is the 3rd year in a row that the General Assembly missed the May 31st deadline to complete regular business without an extraordinary majority vote being required to pass legislation. Instead the House and Senate passed a 50% funding bill that lacked sufficient revenue to be a balanced year budget and blamed the Republican minority for not voting for a tax program to fully fund government.

From June 1st until July 13th the Democratic leadership of both houses and the Governor argued back and forth over how to fund State Government. Tax increase, no tax increase, rearrange debt, refinance

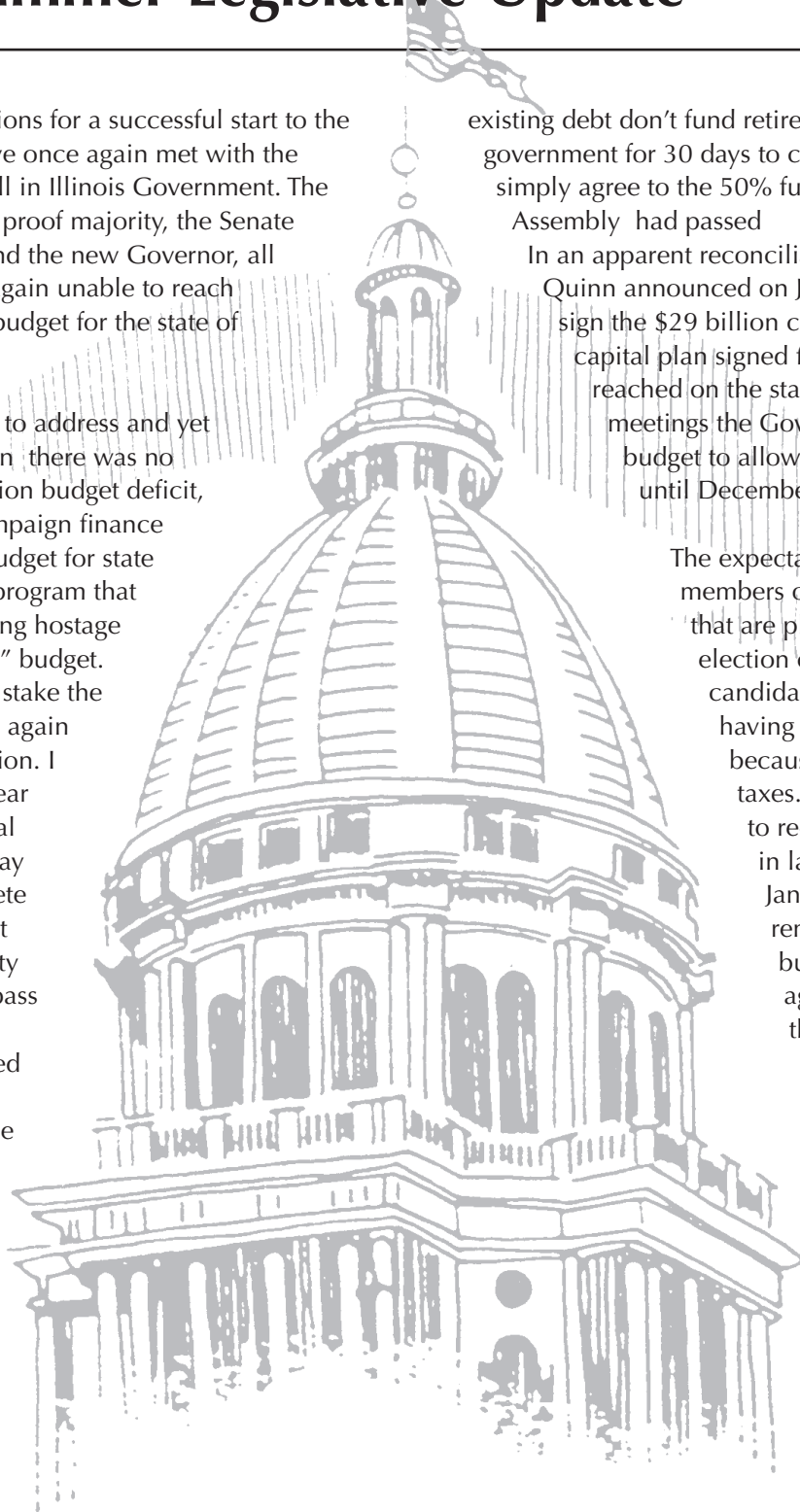
existing debt don't fund retirement systems, fund government for 30 days to continue negotiations or simply agree to the 50% funding bill that the General Assembly had passed

In an apparent reconciliation effort Governor Quinn announced on July 12th that he would sign the \$29 billion capital plan. With the capital plan signed final agreement could be reached on the states' budget. After all the meetings the Governor accepted a year budget to allow state agencies to operate until December 31st.

The expectation now is that the members of the General assembly that are planning to run for re-election can file their petitions of candidacy in December without having primary challenges because they voted to raise taxes. This allows leadership to re-consider the tax issue in late December or early January while voting on the remaining 1/2 year state budget which will fund agencies from January through June 30th.

While all this drama was unfolding from May through July the \$3billion mini capital program approved in April by the General Assembly at the request of the Governor went unused. When the Governor requested this mini program his justification was to take advantage of the construction season. We

now sit at the end of August and the Governor still hasn't released any major capital projects from this program to



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IMSCA Summer Legislative Update...

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assist the struggling construction industry. With the states' financial condition as it is the bond rating agencies have now downgraded the states' bond rating to A from AA-. This simply means the cost of the interest to be paid on general obligation bonds for capital construction will be higher, raising the cost of construction financing.

Lastly, there is another wrinkle in the capital program. The Wirtz family has announced that they were filing a lawsuit challenging the constitutionality of the funding of the \$29 BILLION CAPITAL PROGRAM. It appears that they are challenging funding plan included in the capital bill, the ability of the state to sell the lottery and the fact that taxes were being raised as a part of a bill specifically designed to deal with construction projects. Will this keep the Governor from releasing projects? We don't know

IMSCA, however, during the legislative session was very successful in protecting the interest of our membership. By carefully analyzing bills that could have been harmful to the numerous specialty contractors we represent.

We stopped the passage of numerous bills that would have removed our mechanic lien rights. We were able to amend bills to protect subcontractor rights and we negotiated major modifications to legislation that would have allowed Universities the ability to build buildings without bidding under the guise of energy conservation. We will be paying careful attention to the actions of the General Assembly during the veto session in October and any special sessions scheduled to discuss the states' budget. 🏗️



The logo features the letters 'MCA' in a large, bold, blue sans-serif font. To the right of 'MCA' is a large, light blue '120' with a subtle gradient. Below 'MCA' is the text 'MECHANICAL CONTRACTORS ASSOCIATION' in a smaller, red, all-caps sans-serif font. To the right of the '120' is the word 'years' in a large, blue, cursive script font. On the left side of the logo, there are several vertical, wavy lines in shades of blue and white, resembling a stylized flag or a mechanical component.

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New \$31 billion Capital Construction Plan will mean more than 439,000 Jobs

From Dave Blanchette,
Capital Development Board

Governor Pat Quinn has signed into law bills that create the \$31 billion Illinois Jobs Now! Plan, which will revive the state's ailing economy by creating and retaining more than 439,000 jobs over the next six years. At a bill signing ceremony, Governor Quinn stressed this is the first statewide capital construction effort to become law in more than a decade.

"This is a crucial economic recovery initiative that will generate what's needed most in Illinois: jobs, jobs, jobs," said Governor Quinn. "Illinois Jobs Now! provides many long-awaited improvements to our bridges and roads, transportation networks, schools and communities."

The road and bridge construction projects will be overseen by the Illinois Department of Transportation, while the state facility, university and school construction programs will be administered by the state's Capital Development Board (CDB).

"We will prioritize projects based on three factors: Those that are ready for bidding right away, so construction jobs can be created immediately; the most pressing repair and maintenance projects that will help protect state property; and the grants to school districts who have waited for nearly eight years for promised state funds," said CDB Executive Director Jim Riemer.

Governor Quinn added that Illinois Jobs Now! will create many new "green" weatherization jobs, protect and improve the state's fresh water supplies, and advance high-speed rail from Chicago to St. Louis, which will cut down on auto traffic and emissions.

"With Illinois Jobs Now!, our state rises to the challenge of building a viable green economy for the 21st Century that serves our people and strengthens our businesses," said Governor Quinn.

Illinois Jobs Now! will invest \$31 billion in the Illinois economy over six years; access more than \$3.7 billion in American Recovery & Reinvestment Act (ARRA) funds; and support more than 439,000 Illinois jobs. It features \$14.3 billion for roads and bridges, including \$9.8 billion for the multiyear road program, \$4 billion for new projects, and \$500 million for local projects.

The plan's \$7 billion for developing a 21st century transportation network includes \$2.7 billion to Chicago-area public transit and \$300 million to downstate transit districts, leveraging up to \$2.7 billion in additional federal funds; \$400 million for high-speed rail, which could access up to \$2 billion in ARRA funds; \$380 million for airport improvements and \$110.5 million for the third Chicago airport project; \$322 million for the Chicago Region Environmental and Transportation Efficiency Program (CREATE); \$150 million for conventional intercity rail transit (AMTRAK); and \$10 million for an electrification transportation alternative fuel car-sharing program.

The capital program also features \$3.6 billion for preschool through 12th grade education, including \$3 billion for the school construction program; \$200 million for the school maintenance program; \$196 million for charter schools; \$100 million for a new school energy efficiency retrofit program; \$75 million for vocational education at Chicago Public Schools; \$45 million for a new early childhood facilities program; and \$10 million for student laptop computers.

The plan's \$1.5 billion for higher education features \$788 million for public universities, \$400 million for community colleges, and \$300 million for private universities.

The \$830 million available for community development includes \$300 million for parks and recreational facilities; \$150 million for health care facilities; \$130 million for affordable housing, including projects for veterans and persons with disabilities; \$100 million for museums; \$100 million for public libraries; and \$50 million for community health center construction.

A total of \$2.5 billion has been allocated for economic development projects, including \$715 million for state facilities; \$425 million for weatherization and energy efficiency programs; \$50 million for broadband deployment; \$38 million for River's Edge and Brownfield projects to clean up contaminated sites; \$25 million for the Prime Sites program to develop local infrastructure and create jobs; \$15 million for the creation or retention of jobs in economically depressed areas; and \$10 million

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New \$31 billion Capital Construction Plan will mean more than 439,000 jobs...

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for a fresh food program to bring grocery stores and other fresh food retailers into communities that need them. Environmental projects are funded to the tune of \$1.3 billion, including \$516 million for drinking water and wastewater revolving loans; \$250 million for projects such as levees, flood walls and drainage structures; \$225 million for the Conservation Reserve Enhancement Program; \$128 million for Army Corps restoration programs; \$75 million for the leaking underground storage tank program; \$41 million for dam removal and repair; \$25 million for the Open Land Trust Program; \$10 million for dam safety programs; and \$8 million for the "Mud to Parks" parkland restoration program.

Funding for the \$31 billion Illinois Jobs Now! plan will be provided by a combination of state debt and federal and local matching funds. The 20-year bonds issued to provide funding for the State's \$13 billion share of this six-year capital program will be supported from fee and tax increases. Existing monies deposited into the Road Fund will provide up to \$150 million per year for the repayment of the debt. Debt repayment will also come from fee increases. Motor Vehicle Certificate of Title fees will increase from \$65 to \$105; transfer of registration fees will increase from \$15 to \$30; passenger and "B" truck registration fees will increase from \$79 to \$99; and drivers' license fees will double. Additional sales taxes on candy, sweetened tea, coffee, grooming and hygiene products, wine, spirits and certain beer products will also help retire the debt, and video gaming terminals should raise about \$300 million annually.

A complete list of specific projects can be found at www.JobsNow.illinois.gov. A partial list of projects by region of the state is provided below.

Eastern Illinois . . .

Road & Bridge Projects

- \$86 million to develop additional lanes and a new interchange for I-57/70 around Effingham.
- \$71 million for lane additions, widening and resurfacing and bridge reconstruction on I-74 from Illinois 47 in Mahomet to Prospect Avenue in Champaign.
- \$14.4 million to resurface CH 18/TR 1000N from IL 121 to two miles east and TR 900E to

IL 130 north.

- \$13 million to reconstruct the existing I-57/70 interchange at Fayette Avenue in Effingham.
- \$5.9 million to resurface 21.6 miles on US 36 from Illinois 49 to the Indiana state line.
- \$5.8 million to resurface IL 130 from 1.8 miles south of IL 16 in Charleston to Mary Lane.
- \$4.3 million for resurfacing on IL 122 from IL 32 in Lovington to the east city limits of Arthur in Moultrie County.
- \$4 million for approximately 15 miles of resurfacing on Illinois 9 from the Ford county line to Hoopeston.
- \$2 million for resurfacing on US 50 from four miles west of the Lawrence County Line.

Higher Education

- \$57.3 million to U of I - Urbana/Champaign to renovate Lincoln Hall.
- \$44.5 million to U of I - Urbana/Champaign for an electrical and computer engineering building.
- \$15.4 million to Parkland College to construct a student services addition.
- \$9.9 million to Lake Land College to construct a workforce relocation center.
- \$7.5 million to Lake Land College to construct a rural development technology center.
- \$4.8 million to EIU to upgrade HVAC/plumbing systems in Coleman Hall and the Life Sciences Building.
- \$60 million to U of I Urbana/Champaign for the Petascale supercomputing facility.

Chicago and Cook County . . .

Road & Bridge Projects

- \$360 million for bridge replacement and construction engineering on Wacker Drive.
- \$125 million for Expressway Reconstruction and Auxiliary Lanes at Interstate Route 190 (Kennedy Expressway) from Bessie Coleman Drive to Interstate Route 90.
- \$99 million for reconstruction and additional lanes for LaGrange Road from 131st to 179th.

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New \$31 billion Capital Construction Plan will mean more than 439,000 jobs...

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- \$62 million for intersection improvement at 130th Avenue at Torrence Avenue.
- \$38 million for additional lanes and bridge replacement for U.S. Route 6 from Will-Cook County Line to U.S. Route 45.
- \$19 million for additional lanes for Algonquin Road from Eastings Way to Penney Road.
- \$15 million for interchange modifications at U.S. Route 20 at Illinois Route 59.

21st Century Transportation

- \$2.7 billion to Chicago-area public transit, leveraging up to \$2.7 billion in additional federal funds.
- \$322 million for the Chicago Region Environmental and Transportation Efficiency Program (CREATE).

Higher Education

- \$73 million to Northeastern Illinois University to construct an education building.
- \$41 million to Harper College to construct one stop admissions and campus/student center.
- \$40 million to Chicago State University for a west side campus.
- \$31 million to City College of Chicago - Olive Harvey College to construct academic building.
- \$21 million to UIC for upgrades to campus infrastructure and renovate campus buildings.

Market Street in Waterloo.

- \$26 million for construction of additional lanes on IL Route 159 from Morrison to East Johnson in Collinsville.
- \$13.6 million for bridge replacement over Kaskaskia River on IL Route 127 in Clinton County.
- \$7.5 million for a new interchange at I-70 at Route 160 in Madison County.
- \$4.8 million for reconstruction of intersections on IL Route 158 at IL Route 15 and IL Route 13 in Belleville.

Higher Education

- \$78.9 million to SIU Edwardsville to construct/renovate the Science Laboratory.
- \$19 million to Southwestern Illinois Community College for campus improvements.
- \$16.3 million to Lewis and Clark Community College for construction/infrastructure improvements - National Great Rivers Research and Educational Center.
- \$5.6 million to Kaskaskia College for infrastructure improvements at the Vandalia Campus.

Economic Development Projects

- \$39.5 million for construction of an Illinois State Police forensic lab in Belleville.

Metro East . . .

Road & Bridge Projects

- \$75 million for the construction of a new interchange at I-70 at IL Route 3 in Fairmount City.
- \$71 million for construction of a four lane roadway on US Route 67 from Godfrey to two miles north of the Madison County line.
- \$48 million for construction of a new roadway (relocated IL Route 3) between River Park Drive and St. Clair Avenue in St. Clair.
- \$27.6 million for construction of additional lanes on IL Route 3 from North Market Street to South

Peoria/Bloomington Area . . .

Road & Bridge Projects

- \$38.2 million to reconstruct 3 miles of I-55 from I-39 to Veterans Parkway interchange.
- \$30 million towards the construction of Veterans Drive (IL 9) around the south edge of Pekin.
- \$26 million towards the construction of the new Technology Blvd complex in East Peoria.
- \$23 million for the reconstruction of IL 8 to a five lane facility between Summit Dr and Business U.S. Route 24 in Washington.

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New \$31 billion Capital Construction Plan will mean more than 439,000 jobs...

Continued from page 11

- \$13.6 million for a feasibility study for an eastern bypass in Bloomington.
- \$10 million for the construction of Orange Prairie Road extension from US 150 to IL 91.
- \$5.1 million to mill and resurface US 136 from Vermont Road to west of US 24.
- \$4.5 million to mill and resurface 4.8 miles of Business 51 from Raab Road in Normal to Lafayette Street.
- \$4 million to mill and resurface IL 93 from IL 91 South to IL 40 North.
- \$1.6 million to mill and resurface IL 251 from IL 18 to IL 17 East.

Higher Education

- \$54.3 million to Illinois State University to renovate the Visual Arts Center Complex.
- \$4 million to Spoon River College to construct a multi-purpose building.
- \$2.6 million to Illinois Central College to renovate/expand Dirksen Hall.

Economic Development Projects

- \$5 million to BMI for a biodiesel plant outside Peoria.

Quad Cities Area . . .

Road & Bridge Projects

- \$48.9 million for reconstruction of IL 5 (John Deere Expressway) from a four lane to a six lane facility at IL 5 from 16th St to 0.3 Mi E of 70th St in Moline.
- \$24.1 million for resurfacing of I-80 from 0.5 Mi E of IL 82 to Bureau County line.
- \$13.7 million for resurfacing of I-80 from 0.5 mi. E. of the I-74/I-80 interchange to 0.5 mi. E. of IL 82.
- \$7.5 million for patching and resurfacing I-74/I-80/I-280 from 1.3 Mi E. of the Rock Island County line to 0.5 mi. E. of the I-74/I-80 interchange.
- \$6 million for patching and resurfacing of IL 17/US 34 from E. of US 150 (S) to Market St. in Galva.
- \$975,000 for resurfacing of IL 84 from S. of Carbon Cliff to the Henry Co. Line at the Rock River.

Higher Education

- \$15.8 million to WIU – Moline to renovate and construct Riverfront Campus - Phase I.

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New \$31 billion Capital Construction Plan will mean more than 439,000 jobs...

Continued from page 12

- \$42 million to WIU – Moline to renovate and construct Riverfront Campus - Phase II.
- \$22.8 million to Illinois Valley Community College to construct a community technology center.

Western Illinois . . .

Road & Bridge Projects

- \$73.5 million for the reconstruction of US 34 from Gulfport to Monmouth to a four lane facility.
- \$70 million towards the engineering and construction for the IL 336 bypass of Macomb.
- \$33.5 million towards the construction of railroad overpasses on US 150 and Seminary St in Galesburg.
- \$5.4 million to replace the bridges decks on the structures carrying US 34 of I-74.
- \$1.6 million to mill and resurface US 34 from I-74 to north of IL 167.
- \$1 million to mill and resurface US 136 from IL 62 to west of TR 226.

Higher Education

- \$67.8 million to WIU – Macomb to Construct a Performing Arts Center.
- \$3.2 million for capital renewal at WIU-Macomb.

Economic Development Projects

- \$5.4 million for a central chiller at the Quincy Veterans' Home.
- \$1.1 million to begin renovation at three Quincy Veterans' Home buildings.

Rockford Area . . .

Road & Bridge Projects

- \$52 million for complete reconstruction of 2.5 miles of existing interstate with additional lanes

on I-90 from the Wisconsin state line to Rockton Road.

- \$47.9 million for reconstruction and development of a roundabout at IL 2 (North Main Street) from Auburn Street to Riverside Boulevard.
- \$43.7 million for reconstruction and additional lanes on IL 173 from IL 251 to I-90 in Loves Park.
- \$39.7 million for construction of a new four lane expressway from IL 2 from Elmwood Road to Latham Road north of Rockford.
- \$38.2 million for additional lanes and a new bridge to complete the Freeport Bypass on US 20 from US 20 Business west of Freeport to west of IL 26.
- \$30.4 million for resurfacing of approximately 14.2 miles from I-39 LaSalle County Line to McGirr Road.
- \$22.2 million for reconstruction of the intersection at IL 173 and IL 251 in Machesney Park.
- \$16.6 million for reconstruction and widening of IL 2 (South Main Street) from south of Pond Street to Cedar Street.
- \$12.3 million for reconstruction of IL 2 from Beltline Rd to 0.4 miles north of Harrison Avenue.

Higher Education

- \$26.7 million to Rock Valley College to construct an Arts Instructional Center.
- \$14.8 million to University of Illinois – Rockford to construct the National Rural Health Center.

Southern Illinois . . .

Road & Bridge Projects

- \$103 million for new construction of IL 13 in Marion from Walton Way to Division street.
- \$31 million for lane expansion of US 45 from IL 142 in Eldorado to Texas City in Saline County.
- \$5.9 million to patch and resurface Interstate 64 from 7.1 miles east of I-57 to the Wayne County Line in Jefferson County.
- \$3.5 million to patch and resurface IL 13 from

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ASA Chicago

by Brian Maddox
Executive Director
ASA Chicago
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Thank you for the opportunity to share with your readers a description of some of the work that ASA Chicago is performing for subcontractors, professionals and affiliates in the Chicago area. IMSCA has the clout to significantly influence legislation in Illinois and ASA Chicago is pleased to be part of this association. Our membership in IMSCA is a defining element in the ASA Chicago mission and provides us the opportunity to participate with you to produce results that benefit subcontractors. The Illinois Mechanical & Specialty Contractors Association is the principle voice of the rights of subcontracting industry in Illinois and ASA Chicago wholeheartedly supports your efforts.

ASA Chicago is a remarkable association of 427 member companies employing over 10,000 individuals in the Chicagoland construction market. The association is led by President Kay Anagnos of Anagnos Door Co., Inc. and Vice President Mike Hancock of Divane Bros. Electric Co. The Association of Subcontractors & Affiliates (ASA Chicago) was founded in Chicago in 1967 (the same year as IMSCA) and is an independent, nonprofit trade association representing the subcontracting industry and its affiliates. Servicing over 400 union and non-union subcontractor members, trade suppliers and servicers, ASA Chicago is one of the largest trade associations in the Chicagoland area addressing the business initiatives of the subcontractor. ASA Chicago is devoted to providing its members not only education, networking, social and business opportunities, but also government advocacy affecting all subcontractors at the state and local levels. Half of our member companies are located within Cook County and the rest are located in the nine counties surrounding Chicago.

The Mission of ASA Chicago is to serve subcontractors by providing networking opportunities, education, and advocacy within the construction industry. Our vision is to be the most recognized and respected association for subcontractors within the construction industry. The leadership here is strong with 16 very active committees and another 6 task forces that all serve to make this association the place to be. Our organization has an impressive agenda of 50 events planned for the coming year.

One of the most exciting current activities is our work to support the bid for the 2016 Olympics. ASA Chicago

members did a much of the build out and preparations for the IOC Evaluation visit in April and we have been very active supporting the 2016 effort. ASA Chicago created the "Build for 2016" a task force to foster local construction allegiance and influence to support Chicago's bid for the 2016 Olympics. Members of the Task Force include subcontractors, general contractors, vendors and professionals, all members of ASA Chicago. We have formed nine sub-committees to work with the Task Force. Judy DeAngelo of JADE Carpentry Contractors and Past President of ASA Chicago is the Build for 2016 Task Force Chair. She said, "Volunteering on one of the sub-committees will enable you to get first hand information when Chicago is selected as the host city for 2016." Lori Healy, President of Chicago 2016 was the keynote speaker for our Annual Awards Dinner held in May and has worked closely with ASA Chicago to include our organization in supporting the bid. The decision by the IOC (International Olympics Committee) will be made on October 2, 2009 and we are planning a celebration with a live feed from Copenhagen Denmark where the announcement will be made.

One of the committees that has the most visibility at ASA Chicago is the Business Opportunities Committee (BOC). Chaired by Ron Phillips of AON Risk Services Inc. Construction Services Group, this group hosts more than 12 networking events each year. One of their most popular events of the year is the "Meet the GC's night" to be held on October 6, 2009. Last year's event hosted 30 GCs bringing over 130 General Contractors to meet over 550 subcontractors.

The ASA Chicago General Contractors Council is comprised of more than 40 top general contractors in the Chicago area and the opportunity to connect directly with those decision makers at our events is a great value to our membership. This committee also hosts the Fall Getaway to Galena November 13-15, 2009 which is an exclusive networking retreat that allows subcontractors, general contractors, professionals, and affiliates to meet and build relationships in a relaxed setting near Chicago.

The Government Relations Committee is chaired by Past President of ASA Chicago Steve Boren of Contractors Adjustment Company. The mission of ASA Chicago's government relations committee is to foster a beneficial

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ASA Chicago Member Profile ...

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relationship between ASA Chicago members and local and state government bodies, follow and report on current legislation, government programs and regulations, and propose legislation favorable to ASA Chicago members. The committee is a watchdog for the organization calling members to action when needed, crafting and proposing legislation, and keeping us informed and involved in local and state government. The committee has a significant list of legislative wins and many of those were won with the support of IMSCA and championed by Louie Giordano our lobbyist in Springfield. Mary Kay Minaghan is the ASA Chicago lobbyist in Chicago and she represents the organization on a variety of fronts. Her involvement and direction have produced results for ASA Chicago members and have aligned the organization with the City of Chicago where appropriate. This relationship has been enhanced with the city's bid for the 2016 games and ASA Chicago's involvement in that process.

Our organization is remarkable in many ways but the most surprising fact about our membership is the diversity and make up of our member companies. We are Subcontractor companies of all sizes and from all areas of the construction industry including foundations, stabilization, roofing, glass, electric, carpentry, drywall, painting and landscaping performing work for both public and private entities in all areas of the market. We also have professional and affiliate members who supply services and products to our subcontractors. We offer those members a variety of benefits including those listed below.

- **Networking Opportunities-** The opportunity to meet and establish relationships with general contractors has never been greater than at ASA Chicago monthly membership meetings and events. We have 10 of these throughout the year and companies attend to make contacts with others who can further their business interests.
- **Business Practice Interchange-** (BPI) The BPI, or Business Practice Interchange, held prior to monthly membership meetings, is a free and open discussion about the business practices of contractors, developers, project managers, and others, providing you the advantage to gather pertinent information before you submit any bid,

possibly saving your firm thousands of dollars annually.

- **Subcontractors Estimating Qualification Listing (SEQL) + and Professional Resource Listing (PRL)-** An online listing of members providing information for General Contractors and others to find the right subcontractor or professional for their companies. Our members are being contacted for information and bids. You can too!
- **Education-** We offer a number of seminars and classes, ASA Chicago can help you sharpen your business skills and keep you up to date on developing opportunities as well as providing information on legal, safety, computer and management issues affecting your bottom line.
- **News and Information-** The Association produces two member publications in print and online, it's quarterly magazine, Construction Connection and the monthly newsletter, Chicago SubTimes.
- **Legislative Clout-** ASA Chicago is your voice in protecting your rights on both private and public work projects representing the interests of its members in Springfield and Chicago and to regulatory agencies.
- **Member Directory-** ASA Chicago's comprehensive annual directory, sent to 3000 decision makers, insures your firm is listed with other top subcontractors and material suppliers in the Chicagoland area. The directory is available online at the ASA Chicago website.

Why Subcontractors Join ASA Members find value in the opportunities we provide. Here are a few examples.

"Prior to becoming a member of ASA Chicago, I used to walk into jobsite trailers, only to get, "the cold shoulder", from the Superintendents for the General Contractors on site. Now since our company's involvement with ASA Chicago, the situation has changed considerably. When I now present myself and Twin Oaks Landscaping as members of ASA Chicago, it

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Disaster Preparedness

by Daniel Bulley

I recently attended a program entitled, "Lessons Learned: A Contractor's Guide to Disaster Recovery". To be honest, the real lesson was about disaster preparedness. Though this program highlighted the highs and lows of Gallo Mechanical after Hurricane Katrina, the lesson was that everyone needs to be prepared for some kind of disaster. Whether it be a roof leak, a fire, or just simply a power failure everyone should be prepared for the possibility of disaster.

Since we live in an area where tornadoes and flooding happen it is not unreasonable to look at large scale disaster preparedness/ recovery. There are some very simple things you can do to get ready for this unlikely event; it is well worth the small investment in time and money. David Gallo identified 4 key obstacles immediately following the disaster along with suggestions on how to prepare.

- **Communication** is the biggest issue. Right after the incident one of Gallo's biggest wishes was that he had a communication plan that had been worked out ahead of time with employees. Something as simple as a phone number to call or a website to check. Obviously the company phone number probably wouldn't be sufficient but a cell phone could have a special voice message that gave instructions to employees. Better yet, a website could have been effective, or you could set up a text messaging or SMS distribution system. (Gallo would have liked a satellite phone). If there was a fire at your office wouldn't it be nice if your employees knew where to go for information about where to report or what to do?
- **Fuel?** David simply said that diesel was easier to get and store and suggests it is a much better fuel in a crisis situation.
- **Banking?** David Gallo now loves direct deposit and electronic payment. When their bank got back up and running, they gave him only three emergency checks.

What would you do if you only had three? Having the option of electronic payment can make a real difference.

- **Customers?** Preparing for disaster can be your opportunity to assist your customers. If you have a good communication plan already in place you will be better suited to assist your customers. Gallo exited Katrina with almost double the sales as they had previously.

Now you might think that you won't have to worry about that kind of disaster. But what if we're only talking about a fire or a power outage? Pre-planning is still important. As one person put it, "the event is irrelevant, the response is everything". You need to be able to do certain things. Here is a potential list of things you want to plan for:

1. Protect your records (financial and plans/ drawings) or have the ability to recreate them.
2. Ability to communicate (perhaps through texting/ SMS)
3. Offsite computer back up
4. Have site picked for back up headquarters (officers home, vacation home, branch office)
5. Ensure employee safety (fire exits, maybe smoke masks [evac-u-8])
6. Be ready to help your customers
7. Be able to pay your bills

At this point you're probably starting to realize that this article is not really about telling you exactly what to do but rather that you need to do something...and do it now! There are many resources available including a new MCAA bulletin on Disaster Recovery (log on to MCAA's online management methods manual or call MCA Chicago for a copy). There are also consultants out there, but whatever approach you do choose, please start it now. You'll be thankful later. Just ask David Gallo. 

Protecting Your Children's Future

GE-41413 (10/07)

by Kent Dolenc
AXA Advisors, LLC
(Member FINRA, SIPC)

Whether you're a couple or a single parent, it's important to have a plan to protect your children in the event something happens to you.

As a parent, you're always thinking about what's best for your children. But have you thought about what might happen if you're no longer around? It's not a pleasant subject, but it is important. Planning for your children's future is even more important if you're not around to help.

DESIGNATING GUARDIANS

If you haven't already, make sure to have a will drafted by an attorney, in which you name one or more individuals to be the legal guardian of any minor child--typically until the child reaches age 18. A guardian will have to make decisions regarding the care and upbringing of the child. The person(s) named should be consulted before the will is drafted to be sure they are willing to accept the responsibility. Since the designated guardian may become unable to serve, it is also a good idea to name one or two successor guardians. You may name a different person to be responsible for overseeing your children's financial affairs.

ESTABLISHING A TRUST

While a child may be an adult in years, he or she may not yet be mature enough to handle, invest or manage property. You can establish a trust to protect the property you intend to pass on to children, no matter what their age. Trusts can protect assets for anyone you desire and may continue even until the death of the child and beyond.

One of the most important decisions is who should be the trustee. The trustee (individual or professional) will manage the assets and make distributions based on instructions you provide in the trust document.

PAYING ESTATE TAXES

Under current tax law, the amount subject to estate tax and the percentage to be taxed on the remaining estate will decrease until 2010 when the estate tax is repealed. However, unless current law is extended by Congress, the estate tax is due to be reinstated in 2011. Because of the uncertainty as to the future of the estate tax, individuals with assets over \$1 million should consult an attorney, a Tax Advisor and a Financial Professional to consider effective estate planning strategies.

In addition to federal estate taxes, some states impose their own estate or inheritance tax. In addition, some forms

of property, such as traditional IRAs, pensions, deferred compensation survivorship benefits, and deferred annuity death benefits may be subject to income taxes.

Gifts or bequests to a surviving spouse are generally exempt from federal estate taxes under the unlimited marital deduction. In addition, the income tax due on IRA and qualified plan distributions payable to a surviving spouse can be deferred by rolling them over to a surviving spouse's IRA.

INCOME PROTECTION

Parents should consider a financial protection plan that includes Life and Disability Income Insurance, which they can develop with their Financial Professional. You should determine how much capital or income is necessary to help protect children or other beneficiaries. For example, money may be needed to help maintain a home for children, pay for college or other expenses in the event of the bread winner's death or disability. This financial protection plan should be coordinated with a will or trust.

LIVING DOCUMENTS

All parents should have an up-to-date power of attorney, health care proxy and living will. A power of attorney basically gives another person the right to pay bills on your behalf and otherwise manage your finances according to the terms of the document, which is typically drawn up by a qualified Estate Planning Attorney. The second and third documents give you the opportunity to express your desires concerning the use of life support and other treatments to keep you alive, and permit medical decisions to be made for you if you are unable to do so. Often, married couples rely on each other to make these types of decisions.

Although it is a difficult subject to face, you have options when it comes to protecting your estate and your family. The steps you take now can help prevent the wrong people from making decisions for your loved ones.

AXA Advisors, LLC does not provide legal or tax advice. Please consult your tax or legal advisor regarding your individual situation.

Kent Dolenc offers securities through AXA Advisors, LLC (member FINRA, SIPC) 3161 West White Oaks Drive, Suite 102, Springfield, Illinois 62704 and offers annuity and insurance products through an insurance brokerage affiliate, AXA Network, LLC and its subsidiaries.



Change Orders: Do they have to be in Writing?

by Richard P. Reichstein, Esq.
Law Office of Richard P. Reichstein

Frequently an owner or general contractor will take the position that when a written contract requires that extra cost change orders be made in writing, it is not responsible for verbal orders. The issue is especially sticky when the contractor is seeking reimbursement for delay and disruption when there was never a written change order accepting the charges.

Case in point: Millennium Park on Chicago's lake front. It is said that it took longer to resolve the contractors' claims for delay and disruption than it took to build the project. By most accounts, the project ran three hundred million dollars over budget and four years behind schedule. Much of this was due to the fact that the original scope of the work kept changing and that the project was "fast track", meaning that construction was begun without a full set of plans and specifications. Indeed, revisions to the plans necessitated numerous tear out and rebuild of previously completed portions of the project.

The City of Chicago contended that it was not responsible for the costs of delays unless there was a written change order permitting extra costs for delay. This is taking it too far. Illinois law allows for the oral modification of written construction contracts. A clause in a building contract that extra work is to be done only if provided for in writing may be waived by conduct. *Joray Mason Contractors, Inc. v. Four J's Const. Corp., Inc.*, 61 Ill. App. 3d 410, 412, 378 N.E.2d 328 (2nd Dist. 1978). In *G.M. Harston Const. Co., Inc. v. City of Chicago*, the court acknowledged the following persistent theme that runs through Illinois cases on construction contract extras:

A contractor should be fairly paid for the work he has satisfactorily completed when the work was authorized by the owner. If he has increased costs through no fault of his own he should be compensated for those costs, if they are reasonable. But the owner should have no obligation to reimburse a contractor for increased costs on work beyond the scope of the original contract, when they are due to the contractor's inefficiency

or extravagance. In short, there has to be a determination of what costs are attributable to the owner and what costs are attributable to the contractor.

371 F. Supp. 2d 949, 952 (N.D. Ill. 2005). In other words, Illinois law allows oral modifications of written contracts even when the contract expressly requires a written change order--but the costs must be reasonable.

Boiler plate type contracts usually include a "no compensation for delay" clause. But what exactly is a delay? Workers standing around doing nothing is certainly a different situation than workers performing out of sequence work or performing piece meal work that was never part of work flow that was bid on. As previously noted, parties can waive even a written requirement that change orders be in writing. They waive it by conduct. The contract says what it says, but when it comes to the real world on the job site, the trades and project manager are constantly giving instruction or *failing to give instructions* that impact the flow and efficiency of the work. Isn't it a little bit disingenuous for one party to order and accept changes, then when the job is over, point to the contract and say "look, we don't have to pay because the change order wasn't in writing". In the construction industry the work goes forward and the paperwork follows. In the case of a "no compensation for delay" clause, the delay complained of has to reasonably be within the contemplation of the parties at the time of contract formation.

An owner or general contractor may be quick to point to the "no compensation for delay" clause. They will interpret the clause to mean "whatever happens, it's your fault" or "whatever happens, you can't claim compensation for delay because, look, it says so right in the contract". Not exactly. This type of exculpatory clause will only be enforced when the cause of the delay is (1) not attributable to the project manager's ignorance or incompetence, (2) not contemplated (foreseeable) at the time of contract formation, and (3) not of unreasonable duration.

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Fee Awards May Help Lien Claimants Get Paid

by James T. Rohlfling
Rohlfling & Oberholtzer

A recent Illinois Appellate Court case should help subcontractors who have to fight for their final payment at the end of a project. Unfortunately, it is an all too common occurrence for a subcontractor to be faced with an ugly dilemma when its work is complete and the final payment application on a project is ready to be submitted. Though there might be no dispute about incomplete or improper work, a shortage of funds at the owner or general contractor level often prompts a demand on a subcontractor to reduce its final payment application. The subcontractor is told to either accept a reduction in the final payment or instead, receive nothing and initiate expensive and time-consuming legal proceedings.

Faced with such a choice, many subcontractors agree to waive their right to full payment because they need the cash being offered to fund their operations and continue with other jobs. For example, if a subcontractor is asked to accept \$10,000 less so it will receive a final draw of \$90,000 rather than \$100,000, it might recognize that even if it sued and won, it would pay attorneys' fees of more than \$10,000, so it would not be worth litigating. If, however, all parties knew in advance that if the final draw was withheld without justification and, that the party who would prevail in the dispute would be paid its attorneys' fees by the losing party, then maybe the subcontractor would insist on full payment and the owner and general contractor might be more willing to pay the full amount due.

In 1995, in an effort to correct this problem, through the work of IMSCA and others, section 17 of the Mechanics Lien Act was amended to provide that if an owner fails to pay "without just cause or right,... the court may ... [award] reasonable attorney's fees of the lien claimant..." Until a court case decided this June, however, *O'Connor Construction Co. v. Belmont Harbor Home Development, LLC*, such fees were very rarely awarded to successful lien claimants. Instead, trial court judges only awarded fees in extreme circumstances, choosing to keep with the traditional rule whereby litigants pay their own fees, even if they lose the case. The *O'Connor* case advances the intention of section 17 of the Mechanics Lien Act by making it clear that courts must award attorneys' fees to successful claimants when their money is withheld for no legitimate reason.

In *O'Connor*, the appellate court overturned the trial

court's award of minimal attorneys' fees for a portion of the work and determined that section 17 of the Mechanics Lien Act mandated an award of fees to the successful subcontractor in the case, perhaps in a substantial amount. The *O'Connor* opinion reads in relevant part:

We hold that the trial court erred in refusing to consider an award of attorney fees to *O'Connor*. It is important to note that the defendants acknowledged in the trial court and during oral argument before this court that they knew that *O'Connor* was owed an undisputed amount of \$47,562.19 pursuant to the contract. Yet, the defendants paid *O'Connor* nothing on that amount and have offered no reasonable explanation for withholding payment on an amount which was not in dispute. Therefore it is clear that *O'Connor* was entitled to attorney fees. Because the trial court never reached the issue of whether the amount of attorney fees sought by *O'Connor* was justified and reasonable, we remand the matter to the trial court with directions to conduct a hearing on that issue.

This is the first explicit ruling from the appellate court that the provision in the Mechanics Lien Act awarding fees to successful lien claimants is not subject to the unfettered whim of the trial court. In other words, the appellate court held for the first time that, though the trial court has discretion on whether to award fees, that discretion is limited by its reasonable judgment as to whether there was any good reason to not make a payment. After all, the intention of the amendment to section 17 was to prevent the withholding of payment when there is no reason to do so and to provide a financial incentive to all parties to the dispute to make payment when it is due. Conversely, when a lien claimant makes a claim for no good reason, whether he is a subcontractor, material supplier or general contractor, the same section of the Mechanics Lien Act makes that claimant liable for attorneys' fees incurred by others in defending against it.

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New \$31 billion Capital Construction Plan will mean more than 439,000 jobs...

Continued from page 13

- Murphysboro to Carbondale in Jackson County.
- \$2.3 million to patch and resurface IL 142 from Jefferson County Line to McLeansboro in Hamilton County.
- \$1.5 million to patch and resurface IL 146 from West Vienna to the west city limits of Vienna in Johnson County.

Higher Education

- \$56.7 million to SIU – Carbondale to construct a transportation education center.
- \$4.3 million to Southern Illinois University – Carbondale for a communication center.
- \$4 million to IECC - Wabash Valley to construct a student center.
- \$451,000 to Rend Lake College to construct art program addition.

Economic Development Projects

- \$3 million to the Phoenix Foundation of Southern Illinois to reopen hospital in Carmi.
- \$700,000 to begin construction of a 50 bed addition at the Anna Veterans' Home.

Springfield/Decatur Area . . .

Road & Bridge Projects

- \$61.3 million for 6.3 miles of four lane expressway expansion from Rochester to Taylorville.
- \$35.5 million for four lane expressway expansion on US 67 from 2.2. mile east of IL 100 to 0.2 mile east of Concord/Arenzville Road.
- \$23 million for completion of the multi-lane corridor on Wabash Avenue from Interstate 72 to I-55BL in Springfield.
- \$10 million for lane additions on Dirksen Parkway from Ridge Avenue to Clearlake Avenue in Springfield.
- \$3.5 million for the reconstruction of Brush College Road Underpass between Faries Street and Cerro Street in Decatur, Macon County.

Higher Education

- \$4 million to the University of Illinois – Springfield to Renovate/Construct a Public Safety Building.
- \$3.5 million to Richland Community College to Renovate/Expand Student Success Center.
- \$3 million to Lincoln Land Community College to renovate Logan and Mason Halls.



ASA Chicago Member Profile ...

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becomes a wonderful ice-breaker for me."

Bob DuBree
Twin Oaks Landscaping

"At first, I was not getting the results I was looking for. Being a new member, I decided to join a committee to meet new people and be more involved. You get out what you put in and since joining a committee and becoming more involved; I am seeing the results I expected."

Josh Hancock
Wesco Distributors

"Thank you ASA for being there for Cutting Edge Electric. It's nice to know that all one has to do is ask for help and help is given. Thanks for the lead which helped us in getting in contact with the right people who added us to a multi million dollar contract."

Mark Morales
Cutting Edge Electric, Inc.

ASA Chicago is looking forward to a whole new year of programming and events that serve our membership. Please join us. We would love to show you how much fun we have and what we can offer.



Change Orders: Do they have to be in Writing?...

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Now I digress, but this is worth knowing: a recent appellate court decision says that if an owner withholds payments from a contractor “without just cause” the owner is responsible for the contractor’s attorney fees. *O’Connor Construction Co. v. Belmont Harbor Home Development, LLC*, 909 N.E. 2d 294 (May 19, 2009). In this case the carpentry contractor submitted pay applications for base contract work plus extra cost change orders. The owner and general contractor admitted that they owed the carpentry contractor for much of the work, but that they disputed some of the extras. They reasoned that so long as some of the extras were in dispute, they weren’t going to process the change order at all. A harsh position? Yes of course, but how often do we find owners refusing to process the pay application until the contractor yields to a compromise on the extras?

In Illinois, the Mechanics Lien Act holds that if an owner fails to pay the full contract price, including extras, *without just cause or right*, the court may tax the owner the costs of the contractor’s attorney fee. This portion of the Mechanics Lien Act has been routinely disregarded. Until now. Your reporter predicts that after *O’Conner*,

courts will be so inclined to award contractors their attorney fees in addition to their other damages if the court finds that the owner withheld payment and said “you either take this or nothing”.

Questions or comments are invited to:

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This decision benefits all well-intentioned parties to a construction dispute by helping to curb unjustified claims and to encourage payment of earned draws, especially at the end of a project. Of course, there will still be efforts to exert unfair advantage by those who have the ability to withhold money, just as there will be overly aggressive lien claims by those hoping to intimidate owners. Nonetheless, laws are good when they exert economic incentives which punish bad behavior and reward good behavior and this decision does just that.

James Rohlfsing is a Chicago attorney who practices primarily in the area of construction law. Please send any questions or comments to jrohlfsing@rolaw.net.



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