Substance

Illinois Mechanical & Specialty Contractors Association

summer 2015

Tom Morton,
IMSCA President

Greetings IMSCA Members

Now that we have a new Governor, it is more important than ever to have someone in Springfield watching out for us and telling the legislature what our priorities are. It is not only about getting what we want; it is also important to make sure bills are not passed that will adversely affect our industry. This can be a very time consuming process as there is such a great deal of legislation that is presented each session. This year there were 18 pieces of legislation that were addressed by IMSCA. Jessica and Louie also help us decide which battles to fight, and which battles to try and come to a compromise with, as they did this year with HB2635. This bill as written, would have adversely affected our mechanics lien rights. We have been fighting these types of bills over the past and successfully defeated them, but this time around it looked like it was going to pass. With the hard work of our team, we were able to amend HB 2635 to at least preserve our mechanics lien protections.

It looks like it may be a long summer with the brewing fight over the FY 2016 budget; which as of this writing has not been resolved. It is more important than ever with a Governor that appears to be very anti-union to stay involved and support the legislators that support our issues. The only way to do this is to keep them informed on our issues, which Jessica and Louie do a great job. We all must support friendly legislators in their election bids. This is why we have IMSCA-PAC. If each of our members bought one $50.00 ticket to our sports raffle this year, it will go a long way in reaching our goal of having a greater voice in Springfield. The package of prizes was donated from generous IMSCA members including myself, Jim McGlynn and SMACNA of Greater Chicago. I want to personally thank everyone for their prize donations – and encourage all IMSCA members to purchase a ticket for a chance to win.

I hope you enjoy reading this edition of SubStance and will pass it along to all your employees. Have a great and successful summer season.

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Legislative Representation for over 2,000 Construction Employers

IMSCA
Illinois Mechanical & Specialty Contractors Association

Featured Story

Prevailing Wage *Works for the Economy*

Frank Manzo IV, MPP is the Policy Director of the Illinois Economic Policy Institute. He specializes in labor market analysis, infrastructure investment, economic development, and public finance. He has authored several applied research papers specifically pertaining to prevailing wage laws, including studies for Illinois, Indiana, and Michigan. He holds a Master of Public Policy from the University of Chicago Harris School of Public Policy, a Bachelor of Arts in Economics and Political Science from the University of Illinois at Urbana-Champaign, and an Advanced Certificate in Labor Studies from the University of Illinois. He can be contacted at fmanzo@illinoisepi.org

Prevailing wage is a minimum wage for construction workers on projects that are financed using taxpayer dollars. Prevailing wage promotes a skilled workforce by investing a portion of worker incomes into training programs. Prevailing wage also ensures that workers are paid the local market rate so they can support middle-class families in the community where the project is being built. Additionally, taxpayers believe that government should not use its massive purchasing power to undercut privately-established wages in a local economy. Taxpayer dollars should reward the lowest bidder as long as the company is responsible and pays its workers a living wage.

State and local decision-makers should be skeptical of exorbitant "cost savings" claims made by opponents of prevailing wage laws. Data from the Economic Census of Construction reveal that labor costs only account for 20 to 25 percent of total expenditures on public construction projects. Other items such as materials costs or supply costs are of greater significance. Repeal of prevailing wage laws can only "save" around 20 percent if construction workers accept jobs that pay less than the minimum wage. That is, however, implausible and illegal.

The problem is that workers are not as productive if their wages are suddenly cut dramatically by 10 percent or more. They do not go to work the next day, thank their employers, and work just as hard. Higher-skilled employees look for new careers in other industries where their skills will be rewarded. However, public works construction projects require skilled workers who complete jobs safely. For example, construction apprenticeship programs in northern Illinois require at least 6,400 hours of objective, certified training– more than the minimum requirements (5,760 hours) to receive a bachelor's degree from the University of Illinois. Prevailing wage benefits contractors because it provides them with a skilled workforce.

Construction is not low-skilled work. This is reflected in the productivity numbers for public works construction workers: the average construction worker employed on public projects contributes over $164,000 per year to Illinois' gross domestic product (GDP). High productivity should be– and is– rewarded by good wages. Prevailing wage benefits businesses because infrastructure is constructed safely and in the highest quality.

In general, there is an obvious question to ask individuals who claim that the prevailing wage is "too high:" Why haven't they entered the construction industry and joined an apprenticeship program? In economics, wages and benefits are

determined by the supply of workers meeting the demand for workers. If the wage is "too high," workers across the country should be making decisions in their best financial interests and should be flooding the market. This increased supply of available workers would lower the wage, which is determined by certified payrolls submitted by both employers and employees.

But workers are not entering the trades. Contractors consistently report that, since many workers are nearing retirement, the demand for skilled construction workers is going up. How does a business attract new workers into an industry that is dangerous, requires a 3- to 5-year personal investment in training, and is unstable (due to the business cycle, seasonal weather patterns, and unbalanced government budgets) where they may only work 1,600 hours over 9 months of the year? The answer is by paying higher wages. Money is typically a good incentive. Prevailing wage benefits workers because it ensures that they earn this local market rate.

Finally, there is the political debate. Illinois Governor Bruce Rauner has cited a study by a consulting firm that claims prevailing wage repeal could save Illinois taxpayers about $160 million per year on school construction costs. There are many reasons to be skeptical of the report, however. First, the author does not consider how lowering workers' wages might impact worker productivity, even though blue-collar construction workers in states with prevailing wage laws are up to 30 percent more productive than their counterparts in states without the law. Second, the report makes no effort to account for project type (elementary school, high school, college, etc.), project size, location of project, complexity of the project, or materials used. The report cited by the Governor is based on assumptions and not actual data from the construction industry.

In the academic research that is grounded in official data, however, the evidence finds that repeal of prevailing wage has no statistical impact on total construction costs. In the mid-1990s, Ohio, Kentucky, and Michigan school districts all experienced changes in prevailing wage requirements– either by eliminating the requirements or introducing them. After accounting for project size, type of project, urban vs. rural schools, and other factors, there was no difference in school construction costs due to prevailing wage. This conclusion has been supported in research on highway construction costs as well. Finally, in states that have repealed a prevailing wage law, the research finds that apprenticeship training fell by 38 percent and worker injuries increased by 12 percent. Thus, any savings from lower labor costs were offset by these productivity losses.

While prevailing wage is only one policy, it is part of a broader debate about the type of state we want to live in. If residents want to live in a state where prosperity means lowering worker wages and discouraging skilled workers from building the roads they drive on every day and the schools their children go to every day, then that path can be followed. However, if we want to live in a state that supports working families, builds quality infrastructure, and raises incomes so that no one has to rely on government assistance, then prevailing wage remains an excellent policy to help achieve this aim. ■

Jessica Newbold,
Legislative Consultant,
IMSCA

IMSCA - PAC:
Why Should I Invest?

The IMSCA-PAC allows the Illinois sub-contracting industry to speak in a united voice on issues that directly impact your business. Often times, lawmakers introduce legislation that has a direct impact on your business without thinking what the consequences might be for small business owners like yourself. A recent example of this was the introduction of HB 3380 (Costello) which would have amended the Illinois Mechanics Lien Act – and would have mandated additional paperwork and signatures to an already arduous process for contractors. Representative Costello introduced this bill on behalf of a constituent who had an issue with a roofing contractor. Your IMSCA lobbying team was able to sit down and discuss how this seemingly small amendment could have wreaked havoc for construction business owners who are treating customers fairly. IMSCA lobbyists work hard to personalize and discuss issues with members of the Illinois General Assembly, and HB 3380 is an example of these efforts paying off.

These conversations are an important and necessary part of the public policy making process. Our elected officials are people just like us who are expected to make important decisions on a variety of issues and do not have intricate knowledge of every issue they are expected to support or oppose. IMSCA-PAC provides your IMSCA lobbying team with the necessary tools to establish and maintain relationships with elected officials. With your financial contributions to IMSCA-PAC, IMSCA is able to maintain an important presence on your behalf in Springfield. Through IMSCA-PAC, we are able to make direct contributions to the campaigns of elected officials who understand the challenges faced by the Illinois construction industry. In addition, during election season, IMSCA is able to endorse candidates who wish to be elected to the Illinois General Assembly. IMSCA has remained legislatively successful – and this success is due to the package of your IMSCA lobbying team and the financial contributions we are able to make with IMSCA-PAC.

Your IMSCA lobbying team is asking you to help us continue our trend of legislative success with a contribution to IMSCA-PAC. We are currently selling raffle tickets for a chance to win FOUR tickets to watch the Cubs vs. the White Sox at U.S. Cellular Field on August 15th, FOUR tickets to watch the Chicago Bears vs. the Los Angeles Raiders on October 4th, $500 StubHub! gift card and a $500 Hilton Hotels gift card. The winning ticket will be drawn on July 31, 2015. Tickets are $50 each – and remember, under Illinois State Law, IMSCA-PAC can accept both corporate and personal checks. More information, including the raffle form can be found at www.imsca.org, or feel free to contact IMSCA staff with your questions.

IMSCA staff would like to thank everyone for their continued IMSCA-PAC support. We hope we can continue to count on you to help keep IMSCA legislatively competitive, and to provide your lobbying team with the tools needed to remain successful on issues that impact your business. Your business is worth protecting – and an investment in IMSCA-PAC helps you do that. ■

Are you a sports enthusiast?

If so – Enter to WIN your chance to attend Chicago sporting events and an event of your choice!

OVER $2500 in prizes- ONE drawing- WINNER TAKES ALL!

IMSCA-PAC is selling raffle tickets for a $500 StubHub! gift card, a $500 Hilton Hotels gift card, FOUR tickets to watch the Chicago White Sox take on the Chicago Cubs on Saturday, August 15th at U.S. Cellular Field (STADIUM CLUB passes & parking pass included) and FOUR tickets to watch the Chicago Bears against the Los Angeles Raiders at Soldier Field on Sunday, October 4th (parking pass included). This raffle is for anyone who enjoys sporting events – you can also use StubHub! to purchase tickets to any event of your choice, including concerts!

IMSCA-PAC provides financial contributions to candidates who are supportive of issues facing the Illinois construction industry. IMSCA-PAC provides your IMSCA lobbying team with the necessary tools to fight for legislation that is important to YOU as a contractor. By contributing to IMSCA-PAC, you are making your voice heard on issues that affect you and your business!

Join your colleagues in supporting IMSCA-PAC!

The winning ticket will be drawn on July 31, 2015. You do not need to be present to win. Please make your check payable to IMSCA-PAC. Your support is appreciated.

Please return this form to: IMSCA, 519 South Grand Ave., Springfield, IL 62704
If you have additional questions regarding IMSCA-PAC, please contact Jessica Newbold at 217.5234361 or JNewbold@gcsconsult.com

YES! I would like to support IMSCA-PAC!

I want to purchase ________ tickets at $50.00 each. Please make check payable to IMSCA-PAC.
Under State Law, IMSCA-PAC can accept both corporate and personal checks. Your support is appreciated.

Name: ____________________

Address: ____________________

Company: ____________________

Phone: ____________________

A copy of our report filed with the State Board of Elections is available on the Board's officail website www.elections.il.gov or for purchase from the State Board of Elections, Springfield, IL. Contributions are not tax deductible.

Right-to-Work Laws for Private Employers: *Effects & Practicalities*

Steve Burton & Michael McNally are attorneys with the Minneapolis law firm Felhaber Larson. Steve practices in the area of labor law, with extensive expertise in the construction industry. Michael practices in employee benefits, with an emphasis on multiemployer plans.

With Governor Rauner's recent proposal to introduce right-to-work legislation in Illinois, it is an appropriate time to consider what right-to-work laws are, and to understand exactly how they impact the employment relationship. While right-to-work legislation is a hotly debated topic that engenders strong emotions on both sides of the issue, the focus of this article is to provide an objective legal analysis of how right-to-work legislation impacts those that are part of the employment relationship - the employees, their union, and the employer.

The National Labor Relations Act is the federal law that governs the labor relations of most private sector employers. By way of background, Section 8(a)(3) the Act permits employers and unions to negotiate a contract provision requiring employees to establish, or maintain, union membership as a condition of continued employment. Referred to as a "union security clause," if such a provision is incorporated in the collective bargaining agreement, a union may lawfully demand the discharge of an employee, if the employee does not maintain union membership within the meaning of the law.

The obligation to establish union membership is not automatic where employees are represented by a union. Although a union security provision is a mandatory topic of bargaining (meaning that both the employer and the union have a legal obligation to bargain in good faith over such a provision), the provision must be agreed to and incorporated within the collective bargaining agreement before any employee is obligated to establish union membership. Under the Act, most employees must be provided a grace period of 30 days following the commencement of employment before they may be required to establish union membership. In the construction industry, the grace period is shortened to 7 days following the commencement of employment.

Although the Act is, by definition, national in scope, and generally does not permit state regulation of labor-management relations, Section 14(b) of the Act allows states and territories to prohibit union security clauses, and it is such a provision that is known as a "right-to-work" law. On the basis of Section 14(b), 25 states have right-to-work provisions, either by statute, or, constitutional amendments. Historically the earliest adopters of these provisions were Southern and Western states, but most recently, states in the Midwest, including Michigan, Indiana and Wisconsin have enacted right-to-work legislation. Section

14(b) has been interpreted literally by the courts, as only permitting states and territories to adopt such legislation, and not cities and other municipal entities.

The basic thrust of right-to-work laws is to prohibit any contractual requirement that employees must become members in, or provide financial support to, unions as a condition of employment. The majority of the laws adopted by the states not only prohibit a membership requirement, but also expressly prohibit any requirement of paying financial support to unions. In some instances, statutes that are silent on the issue of compulsory dues have been interpreted to have the same effect by the courts. A few state statutes only prohibit mandatory membership, but permit some level of obligatory financial support to the union.

All of the provisions adopted by the states are uniform in one sense, and that is that compliance by the bargaining parties is not optional: where a state has adopted right-to-work legislation, subsequently negotiated CBAs cannot contain union security clauses. The remedies and sanctions for violations include possible criminal charges, civil actions for monetary damages, injunctive relief, and potential recovery of attorneys' fees and costs.

In looking at the impact that right-to-work laws have, it is important to consider three different perspectives: that of the employees, the unions, and employers.

For employees, there are a number of consequences that flow from the basic premise that they cannot be obligated to maintain union membership. Our Supreme Court has held that a union's ability to enforce internal union rules is based upon the fact that, by becoming a union member, the individual agrees to abide by the internal rules established by the union. An employee who doesn't establish union membership is, therefore, not subject to union internal rules, such as a rule prohibiting the crossing of a picket line. However, such an employee (1) is still a member of the collective bargaining unit, (2) is entitled to referral from any exclusive hiring hall that may be established in the contract, (3) the union still acts as the employee's bargaining representative, and (4) as a consequence, the union still has a duty to represent the member fairly. Furthermore, such an employee remains entitled to receive the contractual wage scale, and to participate in the jointly trusted fringe benefit funds that are set forth in the collective bargaining agreement. Such an employee's fringe benefits cannot be adversely affected because he or she elects not to establish union membership. Those employees who do not maintain membership will, however, not be able to participate in internal union matters, such as voting in union elections, holding union office, or voting in contract ratification. They may also not be eligible for benefits that are provided solely by the union.

From the perspective of unions, because legally, a union remains the exclusive representative of the bargaining unit, it has an ongoing duty of fair representation to all members of the bargaining unit, including those who do not maintain membership. That is true even though it will not receive financial support from those employees. See Vaca v. Sipes, 386 U.S. 171 (1967). This duty of fair representation encompasses a number of responsibilities, such as representing an employee in grievances, and collective bargaining.

From the perspective of employers, a union remains the bargaining representative of those employees who do not maintain union membership. The employer must still pay such employees contract scale, and it must remit contractually required contributions on their behalf to any jointly trusteed fringe benefit funds as set forth in the contract. However, in terms of the day-to-day direction of such an employee at the workplace, an employer will generally not be able to tell apart employees who have maintained membership, versus those who haven't.

It may come as a surprise that even in non-right-to-work states, employees have a number of avenues to avoid having to establish actual membership in the union, or, to avoid paying the full amount of union dues. Our Supreme Court has held that even in a non-right-to-work state, it is permissible for members to resign their actual union membership, but agree to tender an equivalent amount in dues; these are referred to be "financial core" members. See Pattern Makers v. NLRB, 473 U.S. 95 (1985). Such an individual then will no longer be subject to internal union rules, and cannot be terminated from employment for failure to establish actual union membership. Secondly, the United States Supreme Court has also held that such employees may also refuse to pay any amount of dues beyond what is actually expended on collective bargaining, contract administration, and grievance adjustment; these are referred to as "Beck" objectors. Communications Workers of America v. Beck, 487 U.S. 735 (1988). The union is obligated to provide such an employee with a breakdown of amounts the union expends on such activities, and the amounts it spends on political activities. Third,

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A Brave New World

Subcontractors can pursue opportunities in a changing construction industry to take greater control for successful and profitable completion

Justin Weisburg is a partner in Arnstein & Lehr's Chicago office. He is also chair of the firm's Construction Practice Group. Mr. Weisberg represents private, public, local and international clients in a variety of construction-related transactions and litigation matters. Prior to his legal career, Mr. Weisberg was an engineer and he still maintains his registration as a professional engineer in Illinois and Florida. Mr. Weisberg is a delegate of the Engineers Joint Contract Document Committee (EJCDC) and he was chair of EJCDC in 2012 and 2013. He is a member of the Society of Illinois Construction Attorneys and a member of the ISBA Construction Law Counsel. Mr. Weisberg has lectured about construction law to numerous organizations. He also authored numerous articles and text chapters on construction law issues.

Traditionally, design-bid-build projects required a Trade Contractor ("TC") to shoehorn a bid into a project based upon drawings which were issued without TC input and milestones which a TC was asked to accept without comment. In many cases the drawings were incomplete, requiring the TC to undertake significant design responsibility after it had already provided a bid. Consequently, a TC was asked to take all of the risk of successful and timely completion of its work for a specific price while it had no control over the project.

Over the past few years there has been an expansion of alternative project delivery methods which differed from traditional lump sum, design-bid-build projects. Alternative methods include design-bid-build projects which are based upon the General Contractor's ("GC's") cost plus a fee with or without a guaranteed maximum price ("GMP"); projects that use a Construction Manager ("CM"); and design-build projects. In recent years Integrated Project Delivery, in which there is a single integrated form of agreement between an Architect, Contractor and Owner ("IFOA"), has also been developed.

Advantages that are expected from the migration away from hard bid, design-bid-build projects include the promise of increased collaboration and greater efficiency. It must be noted however that the changes in preferred delivery methods have also resulted in a shifting of risk for the ultimate price and schedule of a Project back to the Owner. In cost-plus contracts, the CM or GC either does not commit to a GMP at all, or if there is a GMP, in many cases the Contractor waits to submit its GMP proposal until most or all of the trades have entered separate fixed price contracts. In most cases, the GMP is tied to contingencies to protect the CM and GC from errors, scope holes and other risks that might result in costs above the GMP. In many cases while the construction agreement is based upon the Contractor's cost plus a negotiated fee, the subcontracts remain fixed price contracts, even though the TCs performing the work are carrying most of the risk which could affect schedule or price. Nevertheless, the changing landscape of project delivery methods can provide new opportunities for TCs to have greater control over the risk and reward on a project.

The alternative delivery methods for the most part allow a TC to get involved with the Project before the design is completed. In many case the TC will be involved in the design and also have the opportunity to perform value engineering as the design progresses. A TC that has been given the task of performing design functions might consider the advantages presented by a compensation structure that provides for compensation at, for example, an hourly rate for design development before a price is set for actual construction. Unlike a conventional design-bid-build project, the actual activities of creating design drawings and submittals along with estimates and schedules have value above and apart from the construction of the Project. To protect the value of these activities, the TC would rely upon well-drafted copyright provisions. Depending upon the extent of the design obligations, the earlier the TC becomes involved with the Project, the greater the likelihood the TC will obtain favorable terms and compensation for the Project, while limiting the Project risks. A TC that performed significant deign activities and developed drawings to be used on a Project would rely on its copyrights to the drawings it developed in the event that a CM/GC attempted to obtain competing bids for construction after the TC had submitted its construction proposal. A license to use the drawings and a cost for the license would be negotiated prior to the time that the design services were rendered.

Traditionally on design-bid-build projects, designing, detailing, scheduling and estimating are not directly billed at an hourly rate, but are instead might be considered to be overhead by the TC in preparing its bid. An alternative delivery method can provide a TC with the opportunity to get involved at the planning and design stages of a project. Early involvement provides a TC with much more influence on the direction of the Project; however, this involvement occurs prior to the point where there is sufficient information to develop a bid. Consequently, TCs that are ahead of the curve in developing different compensation and management methods specifically targeted to

alternative project delivery have an opportunity to develop relationships with CM/GCs and Owners based upon their ability to compatibly provide services within the compensation framework between the CM/GC and the Owner. An acceptable compensation model might include specific hourly charges for consulting services during the design phase of the Project to be followed by a proposal for a stipulated sum with identified contingencies and allowances once the design has sufficiently progressed to allow the TC/SC to determine its anticipated construction costs.

A number of provisions historically included in Construction Contract Documents are not necessarily compatible with alternative methods for construction. For example, a provision which requires a TC to only communicate with the engineer or architect, through the General Contractor can be inefficient if not impossible. The coordinated shop drawing process might have limited participation from the CM/GC with a single TC taking the lead. In some cases the scheduling process is also led by a TC. Consequently, traditional submittal provisions in subcontracts do not reflect the actual administration of the Project which utilizes an alternative delivery process.

The termination provisions should also be drafted with the recognition that an alternative delivery project can have at least two phases, the Design Phase and the Construction Phase. The termination provisions should account for the differences in the cost and risk of a termination during the Design Phase as compared to the Construction Phase.

Final submittals such as as-built drawings can also be considerably different than requirements of traditional submittal requirements. In many cases AutoCAD files or BIM models have replaced historical marked up drawings. Many TCs have technology and experience with AutoCAD and BIM which can exceed the technology and experience held by the CM/GC on a given Project.

To sum it up, project owners are moving towards a alternative processes for design and construction. Technologies such as BIM, new goals such as LEED and new practices such as Lean Construction Practices all contribute to the changing ways in which project stakeholders communicate and contract.   In this “brave new world”, a TC can leverage its knowledge, experience and technology to assume more control over a project while insuring that it is compensated for its expanded role. ■

Louis Giordano,
Executive Vice President,
IMSCA

State Capitol *Report*

The Spring 2015 legislative session turned out to be a contentious one – and has continued into overtime session. Republicans and Democrats failed to agree on a budget and many reforms included in Governor Rauner's "Turnaround Agenda". The Democratic controlled House and Senate did pass budget bills – but Governor Rauner warned all along they didn't go far enough in addressing our state's budget woes. As a result, the House and Senate have returned to Springfield every Tuesday since the May 31st adjournment deadline. These Tuesday session days have turned out to be minimal work days for legislators – and the longer they are called to return to Springfield, the fewer legislators actually show up for the overtime session dates. The state's fiscal year ends June 30th – but the real trouble will begin July 15th when the state's first payroll will be due to state employees.

It's not just state employees or state government supported departments and facilities that are facing difficult times with the failed budget negotiations. Illinois contractors will also be impacted the longer budget negotiations fail. This month, the Capital Development Board alerted all contractors currently under contract to "stop work" as of June 30th. This is a direct result of the absence of an agreed FY2016 budget. The announcement stated all work completed prior to June 30th can be invoiced and will be paid – but no work is to commence after June 30th. If you are currently working on a Capital Development Board project – I encourage you to be very mindful of their announcement.

IMSCA lobbyists had their hands full monitoring the back and forth between the two parties and also keeping track of the many bills that directly impacted the Illinois construction industry. Those proposals included mechanics liens and single vs. multiple prime contracting – among others.

Here is a round-up of bills of particular importance to IMSCA members:

IMSCA filed two pieces of legislation on behalf of our members – SB 1395 (McCann) and HB 2451 (Verschoore). Unfortunately, neither one of our initiatives were able to pass before the committee deadline. SB 1395 sought to cap retention at 5% and was assigned to the Senate Labor Committee. We were told early on by the Chairman of the Labor Committee that he didn't plan on calling many bills assigned to committee. He bluntly told us he preferred to move all bills assigned to Senate Labor to "sub-committee". HB 2451 sought to amend the Unemployment Insurance Act to read that if an employee is attending a department approved training course, the unemployment benefits are not charged to the employer – but instead be charged to the state. HB 2451 was never released from the House Rules committee. We were told it was possible that later on in session HB 2451 could be included in a larger package of unemployment insurance bills – but this never came to fruition.

Three bills seeking to alter the Illinois Mechanics Lien law were introduced this session and included HB 2635 (Sandack/Nekritz/Bennett), HB 2757 (Bennett) and HB 3380 (Costello). HB's 2635 and 2757 were both repeat bills of the previous "bonding over" legislation that we fought in the past. These bills would allow a bond to replace a mechanics lien filed by a contractor. We learned quickly that HB 2635 had strong legs and was very likely to move. After discussing this bill at our spring IMSCA board meeting – it was decided our best course of action would be to seek an amendment to the legislation in an attempt to make the bill as livable to the industry as possible. We approached the sponsors and the proponents of the bill – and thanks to the hard work of Jim Rohlfing, an amendment was agreed upon by all parties. The amended version includes a bond amount of 175% of the lien and attorney's fees may be paid to the prevailing party. HB 2635 as amended was passed by both chambers and will be sent to Governor Rauner for his signature. Due to the movement of HB 2635, HB 2757 was assigned to subcommittee since it was the same bill.

HB 3380 was sent back to the Rules Committee earlier this spring. HB 3380 would have required a contractor to submit a separate, sworn statement of those furnishing labor, services, or other materials to a homeowner before any payments are required to be made to the contractor. Representative Costello introduced this legislation on behalf of a constituent in his district who fell victim to an unscrupulous contractor. We discussed our concerns with the bill with the sponsor – and he agreed to hold the legislation and work with us to find a proper avenue to address the issue for his constituent.

The Capital Development Board moved forward with legislation to increase the use of single prime contracts. The bill, HB 3497, received a lot of support in both chambers. We knew early on that despite our efforts to oppose this bill, it was likely to pass. IMSCA reached out to the Associated Building Contractors and the Illinois Black Chamber to assist us in amending HB 3497. With their help, we were able to come to an agreement with the Capital Development Board and the Governor's office. The amended version includes: projects of $5 million and under will be multi-prime with 50% of those projects potentially single-prime, the Procurement Policy Board has oversight and approval on 1 of 5 single prime projects up to $10 million for two years, and the Capital Development Board must submit quarterly reports for four years on all single prime projects. HB 3497 as amended passed both chambers.

A series of bills involving the plumbing industry were introduced and include HB 3975 (Tryon), HB 3541 (McAsey) and SB 1381 (Martinez). HB 3975 would have created an exemption for licensed engineers and licensed environmental practitioners who provide continuing education for licensed plumbers from having any oversight or review or their continuing education courses. IMSCA, along with our plumbing industry members were opposed – and Representative Tryon agreed not to move the bill. HB 3541 would have amended the Energy Efficient Building Act and would have added "green standards" to construction. This bill was supported by the Laborers union – but was opposed by the Plumbers union. A series of meetings was held among the opponents and proponents – and ultimately, the chairman of the House Labor Committee (Representative Hoffman) said he would not call a bill in his committee that had two unions at opposite sides of an issue. HB 3541 was sent back to House Rules. SB 1381, as amended, amends the Fire Sprinkler Contractor Licensing Act and states that after January 1, 2016 no initial licenses will be granted under the grandfather clause. Prior to the amendment, IMSCA opposed the bill – but the amendment has allowed us to back off of our opposition. SB 1381 passed the Senate but failed to advance in the House.

IMSCA supported two initiatives seeking to establish a long-term renewable resources procurement plan – HB 2607 (Nekritz) and SB 1485 (Harmon). These bills are companion bills in the House and Senate. SB 1485 passed out of its Senate Committee – but failed to be passed before the May 31st deadline.

Legislation that would have caused much harm to the construction industry in the event of a property foreclosure is SB 1487 (Cunningham/Evans, Jr.). This legislation creates a pilot program in Cook County and as originally written, would have a court order before any lien can be recorded once a foreclosure case begins. This would have included mechanics liens – which was our main concern. IMSCA opposed this measure and successfully worked with the bill's proponents on an amendment. The amended version includes a complete exemption of mechanics liens. With this amendment, we were able to remove our objections. SB 1487 passed both chambers.

SB 1296 (Mulroe) would have created the Insured's Independent Counsel Act and was also problematic to the construction industry. Our ultimate concern with this bill is it appears the insurance companies want to limit what constitutes a conflict of interest when a judge-

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"Right to Work Laws..." continued

it is important to understand that even in a non-right-to-work state, employees cannot be required to have union dues automatically deducted from their checks. Rather, the employee must first voluntarily authorize the deduction, with such an authorization being in writing, and it cannot be irrevocable for more than one year, or, expiration of the contract, whichever occurs first. However, such an employee would then be obligated to pay dues directly to the union. Fourth, Section 19 of the Act permits employees with religious objections to joining a union to not be a union member. The Act provides that such employees may be required to pay an amount equivalent to periodic dues and initiation fees to a non-religious charitable organization that is exempt from taxation. Finally, there is a procedure called a union shop deauthorization petition, by which a majority of employees in a secret ballot election may revoke the authority of the union to negotiate or enforce a union security provision, even in a non-right-to-work state.

In closing, right-to-work legislation is a topic with a strong debate that is sure to continue. Considering the implications from a legal perspective is important to understanding both sides of the debate. ■

"State Capitol Report" continued

ment is brought against an insured. We voiced our objections to Senator Mulroe – and he agreed not to move the bill this session.

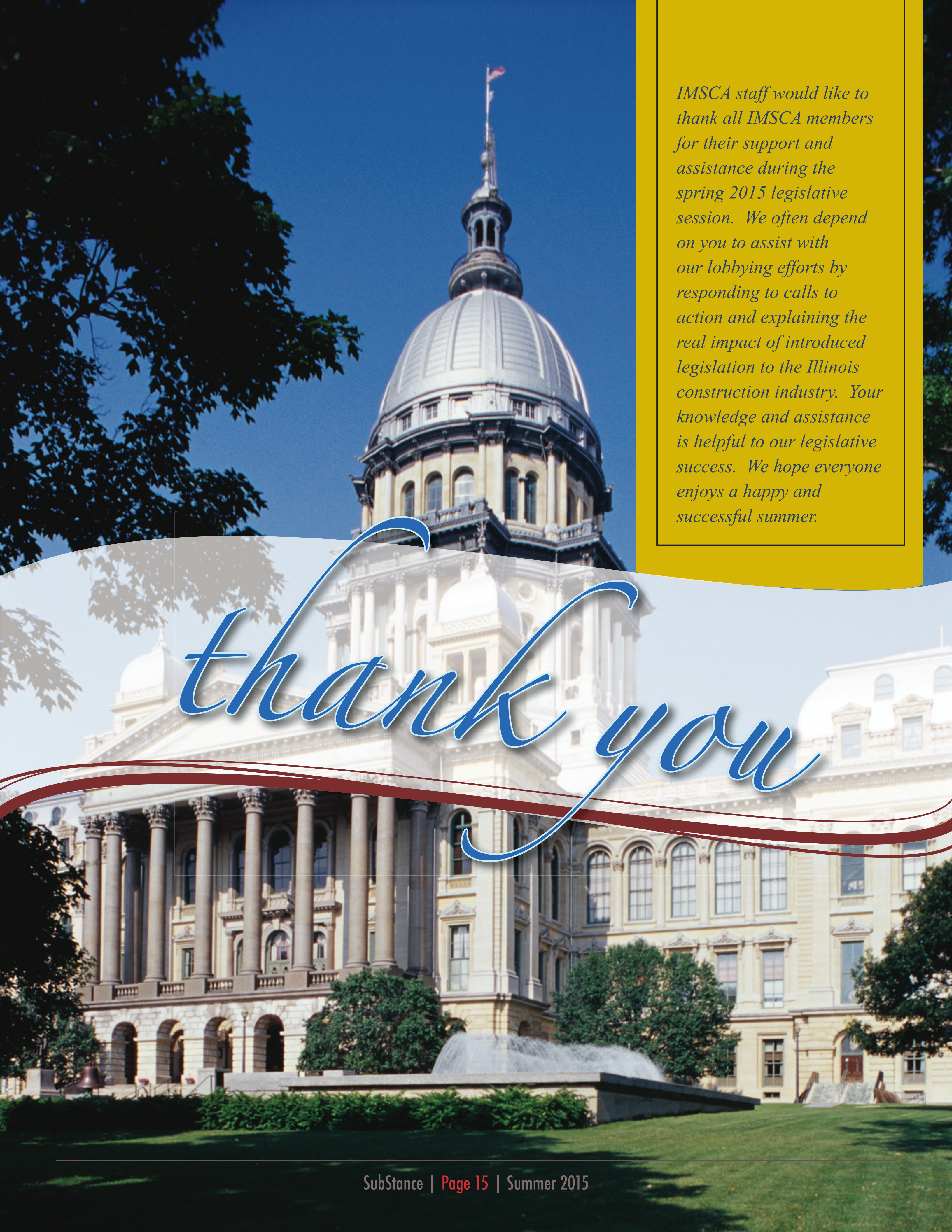
A bill that caused us great concern at the beginning of session failed to move. HB 201 (Fine, McAuliffe) sought to create a system within the Illinois Department of Professional Regulation that would accept proof of bond insurance for general liability coverage from general contractors, painters, drywallers, HVAC technicians and electricians. The goal of this bill was to prevent the aforementioned industries from having to apply for a bond in every single local government where they are conducting work and to ultimately save money and reduce paperwork. IMSCA supported the idea of this proposal in theory – but believed there were some issues that need to be cleaned up in order to make the bill better. However, these issues appeared to be too much to overcome and the bill didn't move forward.

IMSCA joined a coalition of other business groups to support HB 3336 (Franks) – an initiative of the Illinois Chamber. HB 3336 failed to meet committee deadline in March, so the new bill became SB 504 (Link). This legislation sought to provide tax incentives to encourage companies to build data centers in Illinois. Illinois has lost out on many projects to surrounding states because we don't provide competitive tax incentive packages. The major hurdle faced by this legislation is the current fiscal climate in our state. Some legislators were hesitant to support creating new tax credits at a time when budgets have been cut across all agencies and programs. The Chamber – along with the data center coalition members – continue to discuss the benefits data centers could bring to our state, including increased jobs in all sectors – including the construction industry.

SB 1095 (Rose) is a bill that popped up late in session that also could have caused problems for our industry. The bill was supported by the higher education community and proposed removing higher education out of the state's procurement system. Their argument included higher education institutions are spending more money on construction because the lowest bids are being thrown out due to missing paperwork and other minor issues. We explained our position on this to the bill's sponsor – and indicated we feel their pain on this issue, but believe there's a better way. One suggestion we made was creating a "cure period" where instead of bids being thrown out for missing paperwork, that the state allow a period of time for the bidder to complete the bid documents and produce anything that was missing. The bill didn't move forward this session, and the sponsor had indicated to the higher education proponents they would need to work with our industry in the future on this issue.

SB 1334 (Clayborne/Turner) is another higher education/community college construction bill that received a lot of support. This bill increases the minority and female owned business goal in state construction projects from 10% to 20%. Members of our construction industry coalition understood this would be a difficult bill to oppose. The suggestion we made for an amendment to this bill was the inclusion of a cure period to address any bid deficiencies, as mentioned above. SB 1334 was amended to include the cure period and also addressed other issues. SB 1334 passed both chambers.

We hope legislators are able to come to a budget agreement in the very near future. As legislators continue returning to Springfield, your IMSCA lobbying team will be here monitoring their budget negotiations. ■



IMSCA staff would like to thank all IMSCA members for their support and assistance during the spring 2015 legislative session. We often depend on you to assist with our lobbying efforts by responding to calls to action and explaining the real impact of introduced legislation to the Illinois construction industry. Your knowledge and assistance is helpful to our legislative success. We hope everyone enjoys a happy and successful summer.

thank you