

WINTER 2019/2020



Substance

Illinois Mechanical & Specialty Contractors Association





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VISION 20/20: IMSCA IS LOOKING OUT FOR YOU

It's hard to imagine we already reached the end of the 2019 calendar year. As for myself and maybe others, we have a tendency to look back and reflect on the challenges we faced, goals accomplished and overall level of success. This year the Illinois General Assembly welcomed 50 freshman legislators between both House and Senate Chambers. We saw a change in the Capital Development Board Executive Director position, now occupied by Mr. Jim Underwood. Ah yes, we also lived through the year with new Governor J.B. Pritzker, his brand new administration, and their highly potent agenda that included recreational marijuana, gaming expansion, a capital construction plan, plus many others. Challenges were plentiful.

Fortunately, where lies a challenge also presents opportunity for success. One example of that you – as a member of IMSCA should be especially proud of – is the passing of SB 1636, Retainage Reform, into law (P.A. 101-0432). After years of phone calls, letters, visits and e-mails to state legislators – our members were finally awarded some relief on their business' cash flow when performing under private contracts. An accomplishment nonetheless – thanks to you!

We will soon be flipping the calendar to see what 2020 has in store for us. IMSCA's Executive Director, Jessica Newbold Hoselton, will start the New Year off by reviewing new pieces of legislation introduced by the Illinois General Assembly. Jessica

typically reviews over 6,000 bills on our behalf; identifying those that fall under the construction, subcontracting and small business umbrella. IMSCA's Watch List usually contains 150 pieces of legislation that is important to our industry and is monitored closely by IMSCA. IMSCA's Legislative Committee met in mid-December, to narrow down Watch List items, review legislative ideas brought forward by our members and focus on legislation that may impact our industry. Please check out Jessica's piece in this issue of SubStance magazine regarding IMSCA's 2020 Legislative Agenda for more information.

Don't forget to mark your calendar for IMSCA Lobby Day scheduled for March 24, 2020 in Springfield. It's a great opportunity for our contractors and trade associations to interact with lawmakers and tell our story. This year our goal is to match or beat the 2019 record attendance of 60 people!

One last note as we wrap up the year and look forward to the future. Please keep in mind it will and always has been IMSCA's mission to advocate for its membership with their best interests in mind. The Board of Directors meets often and productively, and to develop strategies that serve the needs of the membership as a whole. We will continue this mission in 2020 and for years to come. IMSCA is looking out for you.

From all of us at IMSCA, we wish you a joyful holiday season and a prosperous New Year.

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*Legislative
Representation
for over 2,000
Construction
Employers*



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E. Jason Tremblay is a partner at the law firm of Saul Ewing Arnstein & Lehr LLP, a full-service law firm with 18 offices in 10 states. He regularly counsels employers on a wide range of employment counseling and litigation matters critical to the evolving workplace.



Alexander Reich is an associate at the law firm of Saul Ewing Arnstein & Lehr LLP. He focuses his practice on employment litigation and counseling matters on behalf of employers.

Illinois Prepares For Mandatory Sexual Harassment Training

According to data from the Equal Employment Opportunity Commission (“EEOC”), in 2018, 6.9% of all sexual harassment charges submitted to the EEOC were filed in Illinois, representing the third highest concentration for any state, behind Texas (9.7%) and Florida (9.6%). Notably, that number has increased each year since 2014.

Enter the Illinois legislature, which, earlier this year, passed an extensive new law designed to weed out discrimination and harassment in the workplace. The law, dubbed the Workplace Transparency Act (“WTA”), combats unlawful employment practices through a variety of methods, including

“This State has a compelling and substantial interest in securing individuals’ freedom from unlawful discrimination and harassment in the workplace,” reads the WTA.

The law tasks the Illinois Department of Human Rights (“IDHR”) with producing a model sexual harassment prevention training program aimed at stopping sexual harassment in the workplace, which will be made available to employers and the public online at no cost. The IDHR model program must include:

- An explanation of sexual harassment
- Examples of conduct that constitutes unlawful sexual harassment
- A summary of federal and state

“...in 2018, 6.9% of all sexual harassment charges submitted to the EEOC were filed in Illinois, representing the third highest concentration for any state.”

limits on non-disclosure agreements, mandatory reporting of certain claims, and expansion of legal protections to non-employees. It also seeks to spread awareness of illegal practices by obligating every employer in the state to provide their employees with annual sexual harassment prevention training.

statutes concerning sexual harassment, including remedies available to victims

- A summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment

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Illinois Prepares For Mandatory Sexual Harassment Training (continued from page 2)

The WTA requires all private employers, regardless of size, to use the model program to provide training to all employees on an annual basis. Employers may alternatively establish their own training program that meets the same minimum standards as the IDHR's model program.

There are more stringent training requirements for bars and restaurants, which will also be required to provide supplemental yearly training, specifically aimed at the prevention of sexual harassment in the restaurant and bar industry. The IDHR will also be charged with producing a model supplemental program, which must contain:

- Specific conduct, activities, or videos related to the restaurant or bar industry
- An explanation of manager liability and responsibility under the law
- English and Spanish language options

If an employer fails to provide the mandatory training or supplemental training, the IDHR will issue a

notice to show cause, giving the employer 30 days to comply. Failure to adhere to the notice will result in the IDHR petitioning the Human Rights Commission for entry of an order imposing a civil penalty against the employer. The civil penalties will be paid into the IDHR's Training and Development Fund. For employers with at least four employees, the statute authorizes penalties up to \$1,000, \$3,000, and \$5,000 for first, second and subsequent offenses.

Despite the new year being right around the corner, the IDHR has not yet released the model programs, and has indicated that it might not have them ready until February 2020. While the format of the model program remains a mystery (will it be a video? A bullet-point list? A slide show?), employers may be wise to enlist the assistance of counsel to facilitate the training.

Moving forward, employers should keep the mandatory training on their radar and schedule it as early in

A yellow speech bubble with a black outline, containing the text "#METOO" in a bold, black, outlined font. The bubble is positioned to the right of the main text column.

the year as possible, to leave additional time for any employees who might be absent during the initial training. Although the IDHR's model program likely won't be released for a few months, employers have until the end of 2020 to complete the required training for the first time. Employers need not deliver the training to new employees who are hired in the same calendar year after the initial training, so long as the training is issued each calendar year.

Additionally, employers should be prepared to have all employees sign acknowledgements, indicating that they participated in the training, and those acknowledgements should be placed in the employees' personnel files.



The Rules of the Game, Your Experience Mod

Charles Perrecone is a commercial risk advisor at the national insurance brokerage of Brown & Brown. He works in the Illinois branch located in Naperville, IL. He is the co-chair of the Government Relations Committee at the ASA Chicago Chapter. Charles is also a member of the Illinois Road and Transportation Builders Association and the Chicago Roofing Contractors Association. He and his firm focus on insurance, surety, and risk management for the construction industry.

In order to win the game, a company must first understand all the rules to the game and define what winning means. Since as recently as 2015, The National Council on Compensation Insurance (NCCI) has made changes to factors in the experience mod formula that have impacted most contractors. Some have noticed, but others have not. The contractors that have noticed are usually subcontractors that have seen their experience mod increase when they have not incurred out of the ordinary losses or no additional losses at all. Many of these contractors are met with a similar response of “It’s just your mod” or “It’s just work comp”. It is important to understand the elements that a contractor is being judged on because this experience mod can not only qualify a contractor for a job but can also be directly tied to over 40% of credits on the workers compensation premium.

The Experience Rating Modification Factor, otherwise referred to as a mod or e-mod by definition, is a factor that recognizes differences among qualifying

employers with respect to safety and loss prevention. At the end of the day though, the experience mod is a formula comparing your actual losses to your expected losses.

Essentially a company is looking to have the lowest numerator possible over the largest denominator possible. Those numerators and denominators are different for almost all contractors. Even two electrical contractors with similar revenues and losses may be two totally different experience mods. They even could have a very similar amount of payroll, but if one employs more labor than estimators, their mods will not be the same. So, when a contractor is comparing their experience mod, they can really only compare it to themselves to see how they can improve. Comparing to another company will never be an apples to apples comparison. A contractor can also bottom out their



Risk Name

Risk ID

Rating Effective Date

2020

Production Date

2019

State: ILLINOIS

Date	Wt	Exp Excess Losses	Expected Losses	Exp Prim Losses	Act Exp Losses	Ballast	Act Inc Losses	Act Prim Losses
(A) (B) (C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exp Losses (H - G)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses		
00	00	\$1,136	79,423	18,284	0	42,250	0	0
Primary Losses		Stabilizing Value		Retable Excess		Totals		
Actual		$C * (1 - A) + G$		$(A) * (F)$		(J)		
0		97,806		0		97,806		
Expected		$C * (1 - A) + G$		$(A) * (C)$		(K)		
18,284		97,806		5,503		121,623		
ARAP		FLARAP		SARAP		WARRAP		Exp Mod
Factors		1.00						(J) / (K)
								.80

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Carrier:

Policy No.

Eff Date:

2018

Exp Date:

2019

Code	ELR	D- Ratio	Payroll	Expected Losses	Exp Prim Losses	Claim Data	IJ	OF	Act Inc Losses	Act Prim Losses
0930	WAIVER OF SUBROGAT			0	0	0001940019	09	O	100,308	17,500
6306	3.98	.20	1,236,220	49,202	9,840					
8227	2.77	.17	115,442	3,198	544					
8810	.06	.31	458,339	275	85					
9812	EMPLOYERS LIABILIT			0	0					
Policy Total:			1,810,001	Subject Premium:	190,939	Total Act Inc Losses:			100,308	

The Rules of the Game, Your Experience Mod (continued from page 4)

experience mod and have their lowest mod possible when they have had no losses over a 57 month period.

While most tend to spend their time looking at the actual losses on the right side of the experience mod work sheet, the left side is where the expected losses are calculated. The expected losses otherwise known as the denominator are mainly driven by the Expected Loss Rate (ELR) and payroll. The more payroll a contractor has the more expected losses generated. It is very similar to how workers compensation premium is calculated, expected losses per hundred multiplied by the ELR. The ELR is just like the workers compensation rate as well. Each class code has its own rate, so an electrical contractor will have a lower ELR than a drywall contractor in the same fashion premiums are calculated.

One of the major changes over the past few years has been the ELR. As workers compensation rates have decreased and contractors have enjoyed premium savings during a soft market, the ELR factors have continued to fall as well. For example, a mechanical contractor with the workers compensation class code of 5537's ELR value from 2015 to 2020 has gone from 4.66 to 2.97, a -36% reduction. That is just over a third of expected losses taken away from the denominator in the experience mod

equation. When there are no losses, this does not hurt a contractor as much. But now when even a small loss or two come up, there is significant impact to the experience mod, as there is less disparity between the numerator and the denominator from the start. This is becoming a growing problem

as the split point. Since 2014 the split point has grown from \$13,500 to the current \$17,500 in 2020, an increase of \$4,000 per loss.

To illustrate why this is important, a small or mid-size contractor with a few hundred thousand dollars of payroll may not be able to have even

“It is important to understand that the NCCI makes ongoing changes to a factor inside a formula that affects contractors on a year to year basis.”

as the NCCI has increased the primary split point for actual losses.

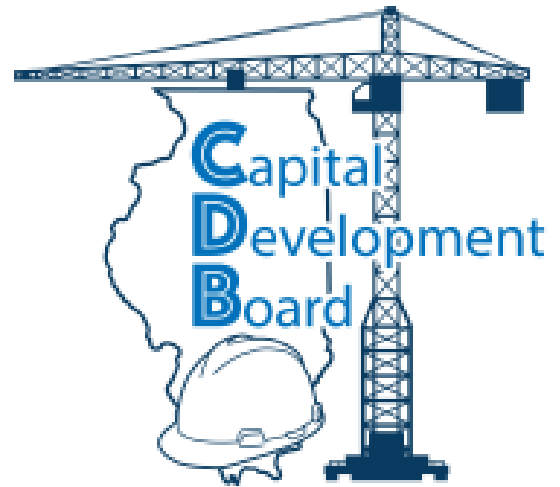
When a contractor has an employee that gets injured at work and files a claim under workers compensation, it will eventually show up on their experience mod. The total claim dollars incurred including reserves will show up on the contractor's actual losses for that policy year. Along with the total loss dollar amount there is the primary loss which in 2020 is \$17,500.

The primary loss is the amount that will count against your experience mod in full. Any amount over the primary loss is actually discounted so it does not fully penalize the contractor. That \$17,500 is referred to

one loss in a four year period to stay under a 1.0 experience mod due to the increased split point and lowered expected losses. When a contractor does go over a 1.0 experience mod they may not qualify for certain jobs that require a max experience mod of 1.0 and their insurance costs may sky rocket because they no longer qualify for the Illinois contractor's credit. It is important to understand that the NCCI makes ongoing changes to a factor inside a formula that affects contractors on a year to year basis. There are ways to mitigate the effect of some losses on the experience mod and it is important to review all information the NCCI is going to use before the evaluation date.



Capital Development Board Update



Jim Underwood is the Executive Director at the Illinois Capital Development Board (CDB), which is the vertical construction management agency for the State of Illinois. Jim completed a 4-year apprenticeship with International Brotherhood of Electrical Workers IBEW Local 146 Decatur in 1982 and worked 13 years as a journeyman wireman before becoming an assistant business manager/organizer with the local in 1995. He earned a BA in Labor Studies in 2000 and started a career in state government in 2001. CDB oversees new construction and renovation projects at over 8,000 state-owned buildings. The agency responds to capital improvement needs identified by other State agencies, institutions of higher education, and governmental units, which are approved by the Governor and enacted by the General Assembly.

This past May I was honored to be selected by the Capital Development Board (CDB) to return to the Executive Director (ED) of CDB position to help to transform and rebuild the State of Illinois's building portfolio. Shortly after my return, Governor Pritzker and Illinois General Assembly worked together to pass a major infrastructure improvement plan. With CDB receiving \$9.6 billion dollars for vertical infrastructure projects in the 2019 Rebuild Illinois capital plan, I guess you can say I bring good luck to the agency!

All kidding aside, there have been several changes to the way the state does business and there are a large number of construction projects, of all sizes, rolling out from the design pipeline. The Rebuild Illinois capital plan was signed into law

this past June by Governor JB Pritzker and contains approximately \$5.6 billion in funding to help drive down the state's significant deferred maintenance backlog for state facilities and higher education campuses and approximately \$4 billion for new building construction projects for state facilities and higher education campuses. This funding also includes 4 new capital grant programs for early childhood centers, community health centers, private universities and hospital construction grants. The funding is expected to spend out over a six-year period.

Just to give you a sense of the workload, the agency currently has nearly 600 active projects across design and construction, with many more on the way. Projects can range from the replacement of a failing heating or roofing system to the restoration of internationally significant historic structures or a new science building at a community college or higher ed facility.

So, whether you are a seasoned contractor who regularly works with CDB, have never done work with the agency, or it's been awhile since you bid



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state work, I want to share some helpful updates and information to prepare your company to bid with the agency.

CDB primarily uses the design-bid-build construction delivery method with the multiple prime, single prime, design-build, and construction-manager at agency variations. We encourage all interested parties to bid on available opportunities. When the agency uses the single prime delivery method, any trade within the project scope can pick a prime to bid with or be the prime contractor themselves and hire the other trades. It's important to point out that over the course of CDB's 14-year single prime program, the agency has always

be corrected. Not only are protected subcontractors protected on bid day, but throughout the entire duration of a CDB project because a company cannot be removed from a job without the consent of CDB.

In order to bid on work as a prime contractor or participate as a protected subcontractor, the agency requires companies to be prequalified. The processing of prequalification applications may take up to 30 days, so firms are encouraged to prequalify now in order to be ready for upcoming projects. It's worth noting that minority, female and veteran firms must also get certified with the Illinois Department of Central Management Services (CMS) or other

tradespersons. FEP serves as a resource to all companies to ensure companies understand the agency's processes and forms regarding how to meet diversity goals and how to do business as a prime or participate as a subcontractor on construction projects. I encourage any companies seeking guidance regarding how to build your capacity with CDB bidding opportunities to reach out to the knowledgeable FEP staff.

When it comes to getting paid, CDB currently turns payments around in approximately seven days and funds projects from dedicated revenue sources, not out of the General Revenue Fund. For subcontractors, the state law requires contractors to pay subcontractors and suppliers within 10 business days or 15 calendar days, whichever occurs earlier. The agency holds 10% retainage on projects until they reach 50% completion, at which time retainage is reduced to 5% as long as no project delays or issues have arisen.

In closing, I want to encourage you to reach out to CDB staff or head over to our website (<https://www2.illinois.gov/Cdb/Pages/default.aspx>) if you have questions about the prequalification process. There is going to be a ton of bidding opportunities both small and large for any size company. We value the longstanding, positive working relationship with IMSCA and look forward to our continued partnership to building a better Illinois.

“In order to bid on work as a prime contractor or participate as a protected subcontractor, the agency requires companies to be prequalified.”

required protected subcontractors to be named on bid day by company name and price to lock them in and ensure they cannot be bid shopped after bid opening. Protected subcontractors include the general, heating, venting, plumbing, electrical, and fire sprinkler trades and if they are not properly identified in the bid submittal, this has and will continue to result in a material bid rejection that cannot

CDB approved entity in order to apply their participation towards diversity contracting goals.

Governor Pritzker and CDB have a strong commitment to diversity and inclusion through contracting and workforce goals. The CDB Fair Employment Practice's Office is an entire unit dedicated to promoting diversity and inclusion of minority, female and veteran vendors and

Building a Better Illinois

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Building a Better Illinois



JESSICA NEWBOLD
IMSCA
Executive Director

Illinois State Capitol Report

The Illinois General Assembly gathered in Springfield October 28-30 and November 12-14 for fall veto session. This year's veto session started and finished in dramatic fashion. On the first day of veto session, news broke that now former Representative Luis Arroyo was arrested on public corruption charges. He was caught on an FBI wiretap attempting to bribe a State Senator for his support of legislation seeking to legalize "sweepstakes" machines that he planned to introduce during veto session.

The Senator wearing the wire was reported to be State Senator Terry Link, although Sen. Link continues to deny any involvement. These revelations set the tone for the first week of veto session and sucked energy away from getting much legislative work completed. When veto session adjourned, Senate President John Cullerton announced his plans to retire. He plans to leave the Senate in January before the spring 2020 legislative session begins. The Senate will meet in January to elect their next President. Currently, the two frontrunners are Senator Kim Lightford and Senator Don Harmon.

Once the dust settled from the Arroyo news, legislators buckled down for the second week of veto session and addressed many important legislative issues. A few legislative items of particular interest to the Illinois construction industry were addressed during veto session by Illinois lawmakers.

Those bills include:

SB 1557 – House Amendments 1 and 2 (Steans/Villanueva) is a trailer bill to the recreational cannabis law. The changes included in the trailer bill are narrow and technical in nature; but does offer clarifications to the employer protections section of the law. The employer protections included in the original law created concerns for many IMSCA members. Those concerns revolved around contractor employers' ability to protect themselves against litigation while also maintaining worksite safety once the law becomes effective January 1st.

The trailer bill provides clarity that employees do not have a cause of action against an employer for **"actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test"**. The trailer bill goes a bit further than the protections included in the underlying Act by providing clarification that an employer can conduct random drug tests, discipline, terminate, or withdraw a job offer due to failure of a drug test.

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This language may not be a perfect solution, or put all Illinois employers at ease, but it does provide some clarity of an employer's protections. IMSCA, along with our construction industry partners submitted language to exempt collective bargaining agreements from the recreational cannabis law. However, our proposal was met with reluctance due to the fear that other groups would seek exemptions as well. Legislators indicated they felt such an exemption was "too broad". In addition, IMSCA members have voiced concerns regarding the amendments that were made to the **"Right to Privacy in the Workplace Act"** that were included in the original recreational cannabis law. **During debate on the house floor, House sponsor Representative Villanueva stated there is a commitment to address some of the "Right to Privacy in the Workplace Act" concerns during the spring session.** Rep. Villanueva stated any changes to that section of the law are more substantive in nature, and the focus of the veto session trailer bill was "narrow and technical". IMSCA staff will continue to seek feedback from IMSCA members and will continue to be engaged in this issue next spring. **SB 1557 was signed in to law by Governor Pritzker on December 4, 2019 (P.A. 101-0593)**

SB 659 (Martwick/Willis) amends the Fire Sprinkler Contractor Licensing Act by increasing the qualifications needed to perform inspections and testing duties. Inspectors will now need to possess a NICET Level 3 certification (currently Level 2) or complete a certified sprinkler fitter

apprenticeship program. The effective date of SB 659 is June 1, 2020 and the increased certifications must be obtained by December 31, 2021. This bill was supported by the Illinois Pipe Trades Association, Sprinkler Fitters Local 281 and other labor organizations. The measure was opposed by alarm detections systems, home builders and other business industry groups including the Illinois Chamber. Despite opposition to this bill, it was fast-tracked through the legislative process this week.

SB 177 – House Amendments 1, 2 and 4 (Harris III, Davis) is a trailer bill to SB 534 which was signed in to law this summer. SB 534 sought to increase minority participation on construction projects by making changes to the MBE/DBE/WBE requirements. Some of those changes were deemed unconstitutional, and a trailer bill during veto session was expected. The amendments to SB 177 create an incentive program for contractors and subcontractors by allowing them to earn "bid credits" on future construction projects for employing apprentices who complete the Illinois Works Pre-apprenticeship Program on public construction projects. The program will be administered by the Department of Commerce and Economic Opportunity (DCEO). The sponsors of the legislation believe this program will encourage minority participation in apprenticeship programs and will also provide an incentive to contractors to employ those individuals. Questions remain regarding how this program will be implemented. Lawmakers stated during committee and floor

debate, implementation questions will be ironed out during the rulemaking process. SB 177 passed both chambers with bi-partisan support. **SB 177 was signed in to law by Governor Pritzker on December 10, 2019 (P.A. 101-0601).**

IMSCA's Legislative Committee met in December to establish IMSCA's 2020 Legislative Agenda. IMSCA plans to introduce a bill in 2020 that will amend the Mechanics Lien Act. The bill will amend Section 24 which requires subcontractors to serve a notice of lien on the owner of the property and others. Currently, the notice must be served within 90 days of a subcontractors' last date of furnishing labor or materials. The bill we will introduce will seek to permit the notice to be served within 90 days of the completion of the contractor's contract with the owner. This change is intended to give more time for filing liens for subcontractors who work earlier in the project cycle. Please be on the lookout in the coming months for more information on this legislative initiative and ways you can help with this effort.

Please **"Save the Date"** and plan to attend IMSCA's annual **Lobby Day** event on **Tuesday March 24, 2020** in Springfield, IL. Lobby Day provides you with the opportunity to learn about important legislative items being debated by the Illinois General Assembly that are important to you as a contractor. You will also have the opportunity to meet with your elected officials to discuss these issues.

Jessica can be reached by calling 217.523.4361 or by email at jnewbold@boldnewstrat.com.



Illinois State Rep. Keith Wheeler (seated center left) attended IMSCA's Board and Membership Meeting on June 14th. Rep. Wheeler provided everyone with an update on the recent passage of the Illinois Capital Bill, Retainage Reform, and other key legislative bills pertinent to the Illinois construction industry.

*Photo Credit:
PCA Midwest / Plumbing Council*

2020 LEGISLATIVE SCHEDULE

JANUARY

28, 29, 30

FEBRUARY

4, 5, 6

18, 19, 20

25, 26, 27

MARCH

3, 4, 5

18, 19, 20

24 (LOBBY DAY) 25, 26, 27
31

APRIL

1, 2, 3

21, 22, 23, 24

28, 29, 30

MAY

5, 6, 7

12, 13, 14, 15

18, 19, 20, 21, 22

25, 26, 27, 28, 29, 30, 31
(ADJOURNMENT)

SAVE THE DATE

LOBBY DAY

MARCH 24

